

# **KNOW YOUR RIGHTS**

## **ENVIRONMENTAL HAZARDS AND TOXIC MATERIALS**

### **ACLU National Prison Project**

**Important Note:** The law is always evolving. If you have access to a prison law library, it is a good idea to confirm that the cases and statutes cited below are still good law. The date at the bottom of this page indicates when this information sheet was last updated.

#### **What rights do prisoners have?**

Exposing prisoners to dangerous conditions or toxic substances may violate the Eighth Amendment of the Constitution, which prohibits cruel and unusual punishment. Prison officials violate the Eighth Amendment if, with deliberate indifference, they expose a prisoner to a condition that poses an unreasonable risk of serious damage to that prisoner's future health. Helling v. McKinney, 509 U.S. 25, 35 (1993). Deliberate indifference is more difficult to prove than negligence or carelessness.

#### **What types of conditions have courts found to violate the Eighth Amendment?**

**Inadequate ventilation.** Board v. Farnham, 394 F.3d 469 (7<sup>th</sup> Cir. 2005); Keenan v. Hall, 83 F.3d 1083, 1090 (9<sup>th</sup> Cir. 1996); Ramos v. Lamm, 639 F.2d 559, 569-70 (10<sup>th</sup> Cir. 1980).

**Excessive heat.** Gates v. Cook, 376 F.3d 323, 339-40 (5<sup>th</sup> Cir. 2004); Reece v. Gragg, 650 F. Supp. 1297, 1304 (D. Kan. 1986); Rhem v. Malcolm, 371 F. Supp. 594, 627 (S.D.N.Y. 1974); but see Chandler v. Crosby, 379 F.3d 1278, 1297-98 (11<sup>th</sup> Cir. 2004) (cell temperatures that occasionally approached 100 degrees did not violate the Eighth Amendment).

**Excessive cold.** Gaston v. Coughlin, 249 F.3d 156, 164-65 (2<sup>nd</sup> Cir. 2001); Palmer v. Johnson, 193 F.3d 346, 352-53 (5<sup>th</sup> Cir. 1999); Dixon v. Godinez, 114 F.3d 640, 642 (7<sup>th</sup> Cir. 1997); Foulds v. Corley, 833 F.2d 52, 54 (5<sup>th</sup> Cir. 1987).

**Lack of drinkable water.** Hearns v. Terhune, 413 F.3d 1036, 1042-43 (9<sup>th</sup> Cir. 2005) (lack of cold water where yard temperatures reached 100 degrees); Jackson v. Arizona, 885 F.2d 639, 641 (9<sup>th</sup> Cir. 1989) (allegation that drinking water was polluted was not a frivolous claim); Jackson v. Duckworth, 955 F.2d 21, 22 (7<sup>th</sup> Cir. 1992).

**Toxic or noxious fumes.** Johnson-El v. Schoemehl, 878 F.2d 1043, 1054-55 (8<sup>th</sup> Cir. 1989) (pesticides sprayed into housing units); Cody v.

Hillard, 599 F.Supp. 1025, 1032 (D.S.D. 1984) (inadequate ventilation of toxic fumes in inmate workplaces), aff'd in part and rev'd in part on other grounds, 830 F.2d 912 (8<sup>th</sup> Cir. 1987) (en banc); but see Givens v. Jones, 900 F.2d 1229, 1234 (8<sup>th</sup> Cir. 1990) (no Eighth Amendment violation where prisoner suffered migraine headaches as a result of noise and fumes during three week long housing unit renovation).

**Exposure to sewage.** DeSpain v. Uphoff, 264 F.3d 965, 977 (10<sup>th</sup> Cir. 2001) (exposure to flooding and human waste).

**Exposure to second-hand tobacco smoke.** Helling v. McKinney, 509 U.S. at 35 (1993) (prisoner stated an Eighth Amendment claim where his cellmate smoked 5 packs of cigarettes a day); Lehn v. Holmes, 364 F.3d 862, 872 (7<sup>th</sup> Cir. 2004); Atkinson v. Taylor, 316 F.3d 257 (3<sup>rd</sup> Cir. 2003); Reilly v. Grayson, 310 F.3d 519 (6<sup>th</sup> Cir. 2002).

**Excessive noise.** Keenan v. Hall, 83 F.3d 1083, 1090 (9<sup>th</sup> Cir. 1996).

**Sleep deprivation.** Gates v. Cook, 376 F.3d 323, 340 (5<sup>th</sup> Cir. 2004); Harper v. Showers, 174 F.3d 716, 720 (5<sup>th</sup> Cir. 1999).

**Sleeping on the floor.** Thompson v. City of Los Angeles, 885 F.2d 1439, 1448 (9<sup>th</sup> Cir. 1989) (“[A] jail’s failure to provide detainees with a mattress and bed or bunk runs afoul of the commands of the Fourteenth Amendment.”).

**Lack of fire safety.** Hadix v. Johnson, 367 F.3d 513, 525 (6<sup>th</sup> Cir. 2004); Hoptowit v. Spellman, 753 F.2d 779, 784 (9<sup>th</sup> Cir. 1985); Gates v. Collier, 501 F.2d 1291, 1300, 1305 (5<sup>th</sup> Cir. 1974).

**Risk of injury or death in the event of an earthquake.** Jones v. City and County of San Francisco, 976 F.Supp. 896, 909-10 (N.D. Cal. 1997).

**Inadequate food or unsanitary food service.** Phelps v. Kanoplas, 308 F.3d 180 (2<sup>nd</sup> Cir. 2002); Ramos v. Lamm, 639 F.2d 559, 570-71 (10<sup>th</sup> Cir. 1980); Wilson v. VanNatta, 291 F.Supp.2d 811, 817 (N.D. Ind. 2003); Drake v. Velasco, 207 F.Supp. 2d 809 (N.D. Ill. 2002).

**Inadequate lighting or constant lighting.** Gates v. Cook, 376 F.3d 323, 341-42 (5<sup>th</sup> Cir. 2004) (inadequate lighting); Keenan, 83 F.3d at 1090-91 (constant illumination).

**Exposure to insects, rodents, and other vermin.** Gates v. Cook, 376 F.3d 323, 340 (5<sup>th</sup> Cir. 2004); Gaston v. Coughlin, 249 F.3d 156, 166 (2<sup>nd</sup> Cir. 2001); Jackson v. Duckworth, 955 F.2d 21, 22 (7<sup>th</sup> Cir. 1992); Williams

v. Griffin, 952 F.2d 820, 825 (4<sup>th</sup> Cir. 1991); Foulds v. Corley, 833 F.2d 52, 54 (5<sup>th</sup> Cir. 1987).

**Defective plumbing.** Jackson, 955 F.2d at 22; Williams, 952 F.2d at 825; McCord v. Maggio, 927 F.2d 844, 847 (5<sup>th</sup> Cir. 1991).

**Deprivation of basic sanitation.** Gates v. Cook, 376 F.3d 323, 337-38 (5<sup>th</sup> Cir. 2004); McBride v. Deer, 240 F.3d 1287, 1292 (10<sup>th</sup> Cir. 2001); Palmer v. Johnson, 193 F.3d 346, 352 (5<sup>th</sup> Cir. 1999); Harper v. Showers, 174 F.3d 716, 717, 720 (5<sup>th</sup> Cir. 1999); Bradley v. Puckett, 157 F.3d 1022, 1025 (5<sup>th</sup> Cir. 1998); Howard v. Adkison, 887 F.2d 134, 137 (8<sup>th</sup> Cir. 1989).

**Denial of adequate toilet facilities.** Gates v. Cook, 376 F.3d 323, 340-41 (5<sup>th</sup> Cir. 2004); Mitchell v. Newryder, 245 F.Supp.2d 200 (D. Me. 2003).

**Exposure to asbestos.** Powell v. Lennon, 914 F.2d 1459, 1463 (11<sup>th</sup> Cir. 1990); but see McNeil v. Lane, 16 F.3d 123, 125 (7<sup>th</sup> Cir. 1994) (exposure to “moderate levels of asbestos” did not violate the Eighth Amendment).

**Exposure to the extreme behavior of severely mentally ill prisoners.** Gates v. Cook, 376 F.3d 323, 343 (5<sup>th</sup> Cir. 2004) (exposure to constant screaming and feces-smearing of mentally ill prisoners “contributes to the problems of uncleanness and sleep deprivation, and by extension mental health problems, for the other inmates”).

**Miscellaneous unhealthy or dangerous conditions.** Hall v. Bennett, 379 F.3d 462 (7<sup>th</sup> Cir. 2004) (unsafe conditions for prisoner performing electrical work); Brown v. Missouri Dep’t of Corrections, 353 F.3d 1038, 1040 (8<sup>th</sup> Cir. 2004) (prisoner injured in vehicle accident after transport officers refused to fasten his seat belt).

### **What types of conditions do not violate the Eighth Amendment?**

Some courts have suggested that dangerous conditions do not violate the Constitution if workers in the surrounding community work in the same conditions. For example, an allegation that a prisoner was forced to work in heavy corn dust without a mask, causing nosebleeds, hair loss, and sores on his face, did not state an Eighth Amendment claim unless “the practice clearly differed from that of the surrounding agricultural community or violated a clearly established law.” Jackson v. Cain, 864 F.2d 1235, 1245 (5<sup>th</sup> Cir. 1989). Similarly, exposure to a pesticide did not violate the Eighth Amendment when the exposure violated only a non-mandatory regulation and was not shown to be any different from practices in the surrounding agricultural community. Sampson v. King, 693 F.2d 566, 569 (5<sup>th</sup> Cir. 1982).

**Are prisons required to comply with civilian environmental regulations?**

The Constitution does not require prisons to comply with all civilian environmental regulations. French v. Owens, 777 F.2d 1250, 1257 (7th Cir. 1985) (finding that a prison does not need to comply with OSHA or state regulations). However, these regulations may be enforced by various government agencies, and a prisoner may be able to argue that they are evidence of contemporary standards of decency.

If you have a case involving dangerous conditions or toxic substances, it may be helpful to complain to state or local health departments, the federal Occupational Safety and Health Administrations (OSHA), or other relevant agencies. State or local regulations may be enforceable in state courts.