



Location: [Stuff](#) » [Criminal Justice](#) » [Criminal Justice: An Overview of the System](#) »

*Criminal Justice | Section 6.3: Prisoner's Rights*

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## **Criminal Justice**

### *An Overview of the System*

ADAM J. MCKEE

### *Section 6.3: Prisoner's Rights*

American courts were reluctant to get involved in prison affairs during most of the 19<sup>th</sup> century. Until the 1960s, the courts used a hands-off approach to dealing with corrections. Since, it the court has recognized that “Prison walls do not form a barrier separating prison inmates from the protections of the Constitution” (Turner v. Safley, 1987). Prisoners do give up certain rights because of conviction, but not all of them. The high courts have established that prisoners retain certain constitutional rights. As the Court stated in *Hudson v. Palmer* (1984), “While prisoners enjoy many protections of the Constitution that are not fundamentally inconsistent with imprisonment itself or incompatible with the objectives of

incarceration, imprisonment carries with it the circumscription or loss of many rights as being necessary to accommodate the institutional needs and objectives of prison facilities, particularly internal security and safety.” From this statement, it can be seen that institutional safety and security will usually trump inmate rights when the two collide in Court.

## **POLITICAL RIGHTS**

The phrase **political right** is used to refer to rights related to the participation in the democracy of the United States. Chief among these is the right to vote. The Constitution of the United States allows states to revoke a person’s right to vote upon conviction, but does not require it. Several states revoke the right to vote while a person is incarcerated but restore the right once the person is released from prison. A few states revoke the right to vote for life when a person is convicted of a felony. The right to vote cannot be denied to those who are pretrial detainees confined to a jail, or someone who is a misdemeanor. These individuals are usually given the right to vote by absentee ballot.

## **THE RIGHT TO FREE SPEECH AND ASSEMBLY**

The First Amendment right of prisoners to free speech is curtailed, but not eliminated. Prison administrators must justify restrictions on free speech rights. The rights to assemble is generally curtailed. As a rule, prison administrators can ban any inmate activity that is a risk to the security and safety of the institution.

## **THE RIGHT TO FREEDOM OF RELIGION**

Generally, prisoners have the right to free exercise of their religious beliefs.

These, however, can be curtailed when the health and safety of the institution are at risk. To be protected, the particular religious beliefs must be “sincerely held.” Prison officials may not, however, legally show a preference for one religion over another. In practice, some religious customs have conflicted with prison policies, such as requiring work on religious holidays that forbid labor. These types of policies have been upheld by the courts.

## **THE RIGHT OF ACCESS TO THE COURTS**

The First Amendment guarantees the right “to petition the Government for a redress of grievances.” For prisoners, this has translated to certain types of access to the courts. The two major categories of petitions that can be filed by prisoners are criminal appeals (often by habeas corpus petitions) and civil rights lawsuits. The right to petition the courts in these ways is referred to as the **right of access to the courts**. The court discusses this right at length in the case of *Johnson v. Avery* (1969).

## **FREEDOM FROM RETALIATION**

Inmates who file complaints, grievances, and lawsuits against prison staff have a constitutional right to be free from retaliation. The Supreme Court based this right on the logic that retaliation by prison staff hampers the exercise of protected constitutional rights. In practice, this right has been difficult for inmates to assert. Prison staff can often find legitimate reasons for taking action that was intended as retaliation.

## **RIGHTS DURING PRISON DISCIPLINARY PROCEEDINGS**

In the landmark case of *Wolff v. McDonnell* (1974), the Supreme Court defined the contours of prisoner rights during prison disciplinary proceedings. While not all due process rights due a criminal defendant were due the prisoner in a disciplinary proceeding, some rights were preserved. Among those rights were:

- Advance written notice of charges must be given to the disciplinary action inmate, no less than 24 hours before his appearance before the Adjustment Committee.
- There must be a written statement by the factfinders as to the evidence relied on and reasons for the disciplinary action.
- The inmate should be allowed to call witnesses and present documentary evidence in his defense if permitting him to do so will not jeopardize institutional safety or correctional goals.
- The inmate has no constitutional right to confrontation and cross-examination in prison disciplinary proceedings, such procedures in the current environment, where prison disruption remains a serious concern, being discretionary with the prison officials.
- Inmates have no right to retained or appointed counsel.

## THE RIGHT TO PRIVACY

The right to privacy is closely related to the law of search and seizure. In the landmark case of *Hudson v. Palmer* (1984), the Court determined that inmates do not have a reasonable expectation of privacy in their living quarters. In the Court's rationale, the needs of institutional security outweigh the inmate's right to privacy. The policy implication of this decision is that **shakedowns** may be conducted at the discretion of prison staff, and no evidence of wrongdoing is necessary to justify the search.

## THE RIGHT TO BE FREE FROM CRUEL AND UNUSUAL PUNISHMENT

The right to be free from cruel and unusual punishment as guaranteed by the Eighth Amendment to the United States Constitution. The amendment only applies to criminal punishments; it has no bearing on civil cases.

Conditions in prison must not involve the “wanton and unnecessary” infliction of pain. Prison conditions, taken alone or in combination, may deprive inmates of the “minimal civilized measure of life’s necessities.” If this happens, the Court will judge the conditions of confinement unconstitutional. Conditions that cannot be said to be cruel and unusual under “contemporary standards” are not unconstitutional. According to the Court, prison conditions that are “restrictive and even harsh,” are part of the penalty that criminal offenders pay for their “offenses against society” (*Rhodes v. Chapman*, 1981).

In *Estelle v. Gamble* (1976), the court ruled that “Deliberate indifference by prison personnel to a prisoner’s serious illness or injury constitutes cruel and unusual punishment contravening the Eighth Amendment.”


### Key Terms

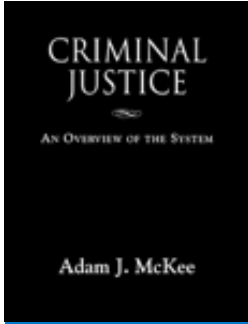
*Estelle v. Gamble* (1976), [Hudson v. Palmer \(1984\)](#), *Johnson v. Avery* (1969), Political Right, Right to Access to the Courts, Right to Assemble, Right to be Free from Cruel and Unusual Punishment, Right to Free Speech, Right to the Free Exercise of Religion, Right to Vote, Shakedown, [Wolff v. McDonnell \(1974\)](#)

[\[Back\]](#) | [\[Contents\]](#) | [\[Next\]](#)

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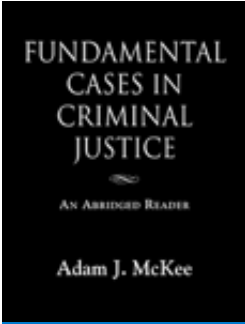
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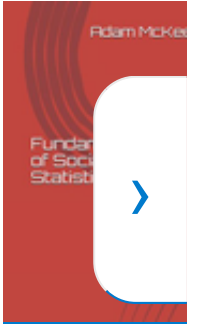
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