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THE ACLU OF UTAH AND COMPLAINTS REGARDING DISCRIMINATION AT UTAH'S JAILS AND PRISONS

Introduction

Thank you for contacting the American Civil Liberties Union (ACLU) of Utah. We are committed to combating unconstitutional jail and prison conditions and practices, and your complaint is important because it helps us identify problems in Utah's correctional facilities.

Discrimination based on race, ethnicity, sex, or sexual orientation

The Fourteenth Amendment to the United States Constitution (the Equal Protection Clause) prohibits jails and prisons from discriminating based on race, ethnicity, or sex. The Equal Protection Clause may also prohibit discrimination based on sexual orientation. A jail or prison violates the Equal Protection Clause if it disadvantages one of the above populations for no legitimate government reason. Keep in mind that if jail or prison officials can demonstrate that a policy or practice is reasonable and is necessary for maintaining safety and security, then a court is likely to hold that policy as constitutional even if it affects one particular group of inmates more than another.

Rulings regarding violations of the Equal Protection Clause include the following:

- In 2005, the U.S. Supreme Court ruled that California's longstanding policy of racially separating its prisoners during an initial sorting period that occurred when inmates first arrived in the prison system or transferred to a new facility was unconstitutional (*Johnson v. California*).
- In 1994, a federal court in Virginia ruled that a "boot camp" program available only to male inmates violated the Equal Protection Clause. The program included physical training, manual labor, academic education, career assessment, drug abuse education, and life skills training, and provided inmates the opportunity to significantly reduce their sentences (*West v. Virginia Dept. of Corrections*).
- In 2004, the Fifth Circuit Court of Appeals ruled inmates could sue jail or prison officials for damages due to discrimination based on sexual orientation. The ruling came in a lawsuit on behalf of a gay man who argued, because of his sexual orientation, prison officials did not protect him from rape by prison gangs (*Johnson v. Johnson*).

Differences in treatment among prisoners may not always be due to discrimination. Prisoners who suspect that they have experienced discrimination because of their race, ethnicity, sex, or sexual orientation should get as much information as possible about the situation to learn whether there is a pattern of discrimination.

If you feel the jail or prison has discriminated against you because of your race, ethnicity, sex, or sexual orientation, file a formal grievance with the jail or prison within 7 working days of the incident.

Discrimination based on disability

Under the Americans with Disabilities Act (ADA) of 1990, inmates with disabilities have additional legal protections. The ADA defines disability as:

- A physical or mental impairment that substantially limits one or more of the major life activities of an individual;
- A record of such an impairment; or
- Being regarded as having such an impairment.

A “physical or mental impairment” could include hearing and vision problems, mental illness, physical disabilities, certain diseases, or many other conditions. “Major life activities” may include many private or public activities, such as seeing, hearing, reproduction, working, walking, or movement (*Bragdon v. Abbott*, 1998). “Substantially limited” means that a person’s participation in the activity is significantly restricted (*Albertson’s, Inc. v. Kirkingburg*, 1999). It does not mean only that the person participates in a different way, but it also need not reach the point where the disabled person cannot participate in the activity at all (*Bragdon v. Abbott*, 1998). Furthermore, if a disability is corrected to the point that it does not significantly limit a major life activity, it no longer counts as a disability under the ADA (*Sutton v. United Air Lines*, 1999).

Under the ADA, the jail or prison cannot discriminate against a person if he or she has a disability. Inmates with disabilities must be able to participate in the same programs, services, and activities as inmates without disabilities. If you cannot participate in a program or activity, or receive a service, then you must request an accommodation.

Some examples of an ADA accommodation include:

- Being allowed to use a shower chair if standing in the shower is impossible.
- Accommodating a MAP program, such as the Sex Offenders Treatment Program, so you can read and understand it and do the assignments.
- Having important jail/prison or program information in a format you can understand if you are deaf or blind.

If you need to request an accommodation for your disability

If you are housed at a jail, you must find out what formal processes the jail has put in place to request ADA accommodations. Follow the jail’s formal processes exactly. If jail administrators deny your ADA accommodation request, you may then file a grievance with the jail.

If you are housed at a prison, go through the following instructions:

- Obtain an ADA Request Form from your jail or prison case manager or housing officer.
- Fill it out carefully. Fill in all the spaces. Clearly explain why you think you need the accommodation you are requesting. If you need help filling out this form, ask your housing officer to call your case manager to come help you.
- Place the form in an envelop addressed to: Facility ADA Coordinator
- Put the envelope in the prison mailbox.
- Ask another inmate to witness that you put your ADA Request Form in the prison mailbox and ask this inmate to write down the time and date you did this. Ask him to sign this paper.
- Keep that inmate’s written statement for your records.

If officials deny your ADA accommodation request, you may file a grievance. You must file a grievance within seven (7) working days after your request was denied. If you wait longer than 7 days, you will have to make another ADA accommodation request and wait for it to be denied again before filing a grievance.

Please note that jail or prison officials are not required to provide accommodations that impose “undue financial and administrative burdens” or that require “fundamental alteration in the nature of [the] program” (*Southeastern Community College v. Davis*, 1979). Prison officials are also allowed to discriminate if the disabled inmate’s participation would pose “significant health and safety risks” or is a “direct threat” to others (*School Board of Nassau County v. Arline*, 1987). Finally, some courts have said that jail or prison officials can discriminate against disabled prisoners as long as the discriminatory policies serve “legitimate penological interests” (*Gates v. Rowland*, 1994). In other words, if jail or prison administrators can show that a policy is necessary for maintaining prison safety and order, then a court is likely to uphold that policy even if it negatively affects disabled inmates.

The ACLU of Utah compiled the above information from the following sources:

1. “A General Guide for Inmates Who Have Disabilities” by the Disability Law Center
2. “Know Your Rights: Disabled Prisoners” by the ACLU National Prison Project, November 2003