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April 24, 1993

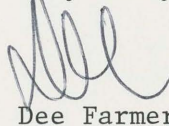
Attached are the notes I have made recommending changes to various portions of The Rights of Lesbians and Gay Males In Prison.

I think that much consideration should be given to up-dating the references, and wherever possible supplementing those references with both federal and state case law. Though, many of the standards listed in the chapter remain the same some have changed, especially in the area of the First Amendment (Turner v. Safley and Abbott v. Thornburg), the Fifth Amendment has been supplemented (Superintendent v. Hill), and the Eighth Amendment is still a battle ground (the Circuits are not certain how to apply the deliberate indifference standard after Wilson v. Seiter).

I would also recommend adding a chapter on Prisoners with AIDS, as the majority of the AIDS prison population involves lesbian and gay prisoners. And, a section on transgendered prisoners, as there has been a overwhelming number of cases on the issue of treatment to transsexual prisoners. Transsexualism differing from lesbian and gay males prisoners inasmuch it is a recognized medical condition mandating treatment.

I hope that my input has been of some assistance. And, if I can be of further assistance in directing you to cases on the subjects I recommended to be added or any of the existing subjects, please do not hesitate to contact me.

Very truly yours,



Dee Farmer

THE RIGHTS OF LESBIANS AND GAY MALES IN PRISON

§12.01 INTRODUCTION

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§12.01 INTRODUCTION

The introduction is not that bad. I would like to see something added on the increase on the womens' prison population and it's continued lack of essential rehabilitation programs, etc.

Further, I believe that there should be something on the fact that prison officials do not offer anytype of gay awareness to the prison populations, which increases the likelihood of assault and mental abuse of lesbian and gay male prisoners by prisoners and their keepers.

Finally, I would suggest that something be noted to the extent that AIDS has hurdled new hardships upon the lesbian and gay prisoners. Not only are they sujet to the normal prisoner abuses, but they are suspect of being carriers of the disease and often mistreated and ostracized for this reason alone!

I do not know if something needs to be added about the transgendered prisoner. There is a large selection of cases on the issue of treatment for transgendered prisoners. And, within the last five years, the Court has been passing along a number of decisions that deal with transgendered prisoners. There is probably more cases dealing with the transgendered prisoner than the lesbian or gay prisoner. This is because the transgendered prisoner is seen by medical and legal professionals as suffering from a serious medical problem, while the lesbian and gay male prisoner is seen as a choosen "life-style."

INTRODUCTION FOOTNOTES

I would suggest the following as to changes and clarifications in the footnotes of the Introduction Section.

11. This footnote should be expanded to include issues such as denial of half-way house, parole and furloughs, well as ostracism from the general prison population and harassment and anti-gay epithets from prisoners and staff. (The other issues which I suggested be included in the introduction section may also be referenced here. That is, suspicion of AIDS, etc.)

§12.02 MAJOR LEGAL PROBLEMS

This section should be clarified to show that the reason that lesbian and gay male prisoners do not enjoy the rights that the gay community does on the outside is because neither state or federal governments, in most instances, have adopted rules and laws recognizing lesbian and gay life style, etc. While many City and County governments have passed laws that govern lesbian and gay rights. Thus, a lesbian or gay male prisoner may enjoy certain rights at the San Francisco Jail, but would not enjoy those same rights once convicted and imprisoned in the California Department of Corrections.

Additionally, though there is still a "lack" of activism on the behalf of lesbian and gay male prisoners, the AIDS movement, which greatly affects lesbian and gay male prisoners, has brought the activist into full bloom in an attempt to save and preserve the lives of HIV and AIDS lesbian and gay prisoners behind bars. This movement has, of course, sprouted out to include some of the basic rights of lesbian and gay prisoners. (Note. The establishment of the Lesbian and Gay Prisoners Legaue in Washington State. This organization is making lesbian and gay male prisoners issues within the gay community visible, which has been uncommon much to long.)

12.1.1 Protective Custody : Seeking Protection From Harm

There are several problems with this section. First, it should be recognized that very few, if any, prisons have "protective custody units" that are separate from other units/prisoners within the prison. Today, prison systems have developed what is generally referred to as "Special Housing Units". This is one unit, that houses a variety of inmates requiring special housing. For example, in one cell there may be an inmate on protective custody status, in the next cell there may be an inmate pending investigation for a fight or something, and yet still in another cell there may be an inmate on disciplinary segregation status.

Secondly, a lesbian or gay male prisoner seeking protective custody is not always placed in protective custody status. The Courts have established that a prisoner requesting protective custody status shall be removed from the general population; however, if institution staff cannot establish that that prisoner is indeed in need of protection they can remove that prisoner from protective custody and require that they reenter the general population; if the prisoner refuses to enter the general population disciplinary actions can be taken against him/her.

Thirdly, the current standard (though the circuits are split on the issue since Wilson v. Seiter, _____ U.S. _____ (1991)) requires that the prisoner show that prison officials have "actual knowledge" of an impending harm. See McGill v. Duckworth, _____ F.2d _____ (7th Cir. 1991) but see, Young v. Quinlan, _____ F.2d _____ (3d Cir. 1992)

In the McGill case a gay prisoner was raped while housed in a special housing unit. McGill, the gay prisoner was on protective custody status, however, there were other prisoners housed within the unit that was on disciplinary status. McGill was raped in the shower. The jury found in his favor, but the Court of Appeals reversed holding that the prison officials had no "actual knowledge" that McGill was going to be raped. The Court called prison dangerous places where some form of sexual aggression among inmates are inevitable. And, therefore prison guards are aware that a rape is going to happen, but they do not fill the prisons, classify the prison or allocate space, etc., therefore, they are not in a position to prevent these "inevitable rapes".

In the Young case, The district court had granted the prison officials summary judgment. Young had been repeatedly raped while housed in the federal penitentiary in Lewisburg, Pennsylvania. AND, while he had informed prison officials that inmates were pressuring him, etc., for sexual favors they refused to take any action. They also placed him in a strip-cell for a number of days and refused to permit him to shower or use the bathroom facilities. In contrast to McGill, the Third Circuit held that Young claims were colorable because prison officials "should have known" that he was going to be raped.

Also, there are two cases out of the Second Circuit, One is United States v. Lara, and the other is United States v. Gonzales, in both of these cases the Court granted a downward departure in the Sentencing Guidelines because of

the possibility of sexual assault to the prisoners. In one case, the prisoner was an admitted bi-sexual. Both, defendants were however of slight built, young and effeminate. The Court concluded that the only way the Bureau would be able to protect the inmates was to keep them segregated, which the Court believed was a severe injustice. (A lesbian or gay male inmate serving ten years in segregation without any privileges and the non-gay inmate serving his time in general population with all of his privileges.)

Lastly, because of the new development of "Special Housing Units" all inmates within that unit basically have the same privileges. There is no work or education; recreation is limited to one hour periods five times per week, which generally consist of walking around inside or outside in a small fenced in area equivalent to a dog kennel.

Because of the severe physical and mental punishment that lesbian and gay male prisoners receive at the hands of both inmates and prison officials and given the "fact" that there is no rights guaranteed the "gay prison population" most gay prisoners are underground at least to the prison administration. A gay prisoner should always be consulted and advised of the severe consequences (possible denial of parole, visiting, etc.) prior to an attorney writing a letter to prison officials about the prisoners sexual orientation and their duty to protect him/her from harm.

12.1.2 INVOLUNTARY CLASSIFICATION AND DISCIPLINE

The current state of the law on an inmates classification is that prison officials should take reasonable steps to isolate and classify offenders according to their crime and violence, etc. Prison officials can place any inmate into segregation for the "security and good order of the institution" or if they believe that the inmate poses a risk to "his own safety, the safety of other inmates or staff". Prison officials may also segregate an inmate who they believe is in danger within the general population. However, prison officials should, if possible, transfer the inmate to a lesser security institution or other appropriate facility where his life will not be in danger. See e.g., *Hewitt v. Helms*, _____ U.S. ____ (____). (a full discussion on prison officials authority to segregate inmates) (Note: If you need other current cases in this area let me know.)

With regard to disciplinary actions, though the due process protections mandated by the Supreme Court in Wolff v. McDonnell, still govern, it must be noted that the Supreme Court in Superintendent v. Hill, _____ U.S. ____ (1985) stated that prison officials only need "some evidence" upon which to base their decision that a prisoner committed a disciplinary infraction.

12.1.3 BEHAVIOR CONTROL

Most of the behavior control methods outlined in this section have been banned by the Courts. For example, see Washington v. Harper, 108 L.Ed.2d 178 (1989).

Control Unit Prisons have become the new behavior modification program for the prison systems within the United States. These are prison where the inmates are locked in their cell constantly and the objective of these4 prisons is to exercise full physical and psychological control over the prisoner. Many lesbiand andg gay male prisoners are being sent to these control unit prisons as away of removing them from the general population. (Judy, should have plenty of information on this subject. There is a large lawsuit going on in California against the control unit prison, P Pelican Bay.)

Because oof this new type of behavior modification some of the recommendation about attorneys attempting exercise public pressure against licensee professionals is irrelevant. But, I must note that there is no requirement that prison professionals have license and many prison healthh professionals do not have license, unless the State legislatures have mandates that they do.

12.1.4.4 FIRST AMENDMENT ISSUES

The Supreme Court has redefined prisoner First Amendment rights in *Abbott v. Thornburg* and *Safley v. Turner*, ___ U.S. ___ (). Under the Turner analysis prison officials can restrict an inmates First Amendment right if it is related to a legitimate governmental purpose, etc. *Turner* also gives the inmate the opportunity that there is an alternative means of exercising his right which less restrictive.

(Note. The Courts have been applying the Turner test to many claims of prisoners that there constitutional rights have been violated.)