

Detention and Corrections **CASELAW QUARTERLY**

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Third Interim Supplement for the
23rd Edition *Detention and Corrections Caselaw Catalog*

Issue No. 59

This issue of *Detention and Corrections Caselaw Quarterly* (DCCQ) provides summaries of 99 federal court decisions that were published after the 23rd Edition *Detention and Corrections Caselaw Catalog* (2011-12) was released. It serves as the third interim supplement for the 23rd Edition, or may be used as a stand-alone review of cases by readers who do not have the *Catalog*.

PART 1 provides complete case summaries in alphabetical order.

PART 2 presents the case summaries according to major topics, using the same organization and format as the *Detention and Corrections Caselaw Catalog*. The left margin describes the level of court and also identifies subtopics for each case summary.

CONTENTS

PART 1: Complete Case Summaries.....	1		
PART 2: Summaries by Major Topics... 39			
1. Access to Courts.....	39	26. Juveniles.....	76
2. Administration.....	41	27. Liability.....	77
3. Administrative Segregation.....	45	28. Mail.....	83
4. Assessment of Costs.....	47	29. Medical Care.....	83
5. Attorney Fees.....	47	30. Mental Problems (Prisoner).....	91
6. Bail.....	47	31. Personnel.....	93
7. Civil Rights.....	48	32. Pretrial Detention.....	95
8. Classification & Separation.....	52	33. Privacy.....	100
9. Conditions of Confinement.....	53	34. Programs-Prisoner.....	101
10. Cruel and Unusual Punishment.....	51	35. Property-Prisoner Personal.....	103
11. Discipline.....	55	36. Release.....	103
12. Exercise and Recreation.....	56	37. Religion.....	106
13. Ex-Offenders.....	57	38. Rules & Regulations-Prisoner.....	108
14. Failure to Protect..... 59		39. Safety and Security.....	109
15. Facilities.....	65	40. Sanitation.....	113
16. False Imprisonment/Arrest.....	66	41. Searches.....	114
17. Female Prisoners.....	67	42. Services-Prisoner.....	114
18. Food.....	68	43. Sentence.....	115
19. Free Speech, Expression, Assoc.....	68	44. Standards.....	115
20. Good Time.....	69	45. Supervision.....	117
21. Grievance Procedures, Prisoner.....	69	46. Training.....	118
22. Habeas Corpus.....	71	47. Transfers.....	120
23. Hygiene-Prisoner Personal.....	72	48. Use of Force.....	121
24. Immunity.....	72	49. Visiting.....	122
25. Intake and Admissions.....	75	50. Work-Prisoner.....	123
		TABLE OF CASES.....	124

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13. EX-OFFENDERS

U.S. District Court
CLAIMS

Hampton v. Sabie, 891 F.Supp.2d 1014 (N.D.Ill. 2012). A former inmate at a juvenile correctional facility brought a § 1983 action against a correctional officer and the facility superintendent, alleging that the officer sexually assaulted him and that the superintendent was deliberately indifferent to the inmate's constitutional rights by failing to protect him from the assault. The superintendent moved to dismiss. The district court granted the motion. The court held that the inmate's § 1983 claim was governed by the state's general two-year limitations period for personal injury claims, rather than the state's six-year statute applicable to sexual assaults against a child. (Illinois Youth Center)

U.S. District Court
RELEASE

Rogers v. District of Columbia, 880 F.Supp.2d 163 (D.D.C. 2012). A former prisoner brought an action against the District of Columbia, alleging he was over-detained and asserting claims for negligent training and supervision. The district moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to when the prisoner was to be released. The district court began its opinion as follows: "Our saga begins with the tale of plaintiff's numerous arrests. Plaintiff was arrested on four different charges in 2007: two felony charges for violating the Bail Reform Act, one felony charge for Possession with Intent to Distribute a Controlled Substance and one misdemeanor charge for carrying an open can of alcohol without a permit." During the prisoner's time in jail he was sentenced for all of the remaining charges. The prisoner claimed he was over-detained by approximately two months, and that this was the direct result of the D.C. Jail's negligent training and supervision of its employees with regard to calculating jail credits. (District of Columbia Jail)

U.S. District Court
RELEASE

Ward v. Brown, 891 F.Supp.2d 1149 (E.D.Cal. 2012). A former prisoner brought a § 1983 action against a state prison, the state's department of corrections, and prison officials, alleging violation of various constitutional rights, negligence, false imprisonment, and intentional and negligent infliction of emotional distress. Following the grant of the defendants' motions to dismiss the federal claims, and denial of the defendants' motion to dismiss the state claims, the defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by: (1) a material fact issue as to whether a prison official was deliberately indifferent to the prisoner's right to be free from state custody; (2) material factual disputes as to whether the prison official properly retained the prisoner's release date; (3) a material dispute of fact as to whether the department of corrections was put on notice of the prison official's alleged miscalculation of the prisoner's release date; and (4) material disputes of fact as to whether the department of corrections falsely imprisoned prisoner. The inmate challenged the defendants' alleged refusal to correct his release date from a state prison, causing him to be over-incarcerated in a federal prison, in violation of his constitutional rights. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
SEX OFFENDERS

Wilson v. Flaherty, 689 F.3d 332 (4th Cir. 2012). An ex-convict petitioned for a writ of habeas corpus to challenge his state rape conviction after he had fully served his sentence, alleging that the sex offender registration requirements of Virginia and Texas law imposed sufficiently substantial restraints on his liberty so as to amount to custody. The district court dismissed the petition for lack of subject matter jurisdiction, but granted a certificate of appeal (COA). The petitioner appealed. The appeals court affirmed, finding that sex offender registration requirements did not place a sex offender in custody for the purposes of federal habeas jurisdiction, since they did not constitute physical restraints. According to the court, the requirements did not disincentivize moving by making it more onerous for offender to live in other places because registration and notification requirements were the same from state to state, and the particularized collateral consequences stemming from the way that states and individuals have reacted to persons who have been convicted of sex offenses were same as the collateral consequences faced by other persons convicted of a felony. (Virginia)

14. FAILURE TO PROTECT

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT
PROTECTION FROM
HARM

Bistrrian v. Levi, 696 F.3d 352 (3rd Cir. 2012). A federal inmate brought a civil rights action against prison officials and employees, alleging, among other things, that the defendants failed to protect him from inmate violence, and that the defendants placed him in a special housing unit (SHU) in retaliation for exercising his First Amendment rights. The inmate alleged that prison investigators used him to intercept notes being passed among other inmates, and then failed to protect him after they fouled up the operation and the inmates discovered his involvement. When the target inmates threatened to retaliate, the inmate contended he repeatedly begged the officials responsible for help, but no one took any preventive measures. Later, one of the inmates against whom inmate had cooperated, along with two others, beat him while they were together in a locked recreation pen. A few months later, an inmate wielding a razor-blade type weapon also attacked the inmate in the recreation pen. The district court denied the defendants' motion to dismiss. The defendants appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that: (1) the officials' decision to keep the inmate, who had acted as an informant, in SHU after his cooperation with the officials was not

unreasonable; (2) the officials were deliberately indifferent to the inmate's safety when they placed him in a recreation yard with prisoners who were aware of his complicity with officials by informing on them; (3) the officials were not deliberately indifferent to a risk of harm when they placed the inmate in the yard with a prisoner who had a history of violent assaults against other inmates; (4) the inmate stated a failure-to-protect claim with respect to the officer's failure to intervene in the assault, where he intervened in another prisoner's assault on the inmate in the special housing unit's (SHU) recreation yard "only after several minutes of continued pummeling;" and (6) the inmate stated a substantive due process claim. The court noted that the federal inmate, who was either not yet convicted, or convicted but not yet sentenced, when he was attacked by other inmates in the prison's recreation yard, had a clearly established due process right to have prison officials protect him from inmate violence. (Federal Detention Center, Philadelphia, Pennsylvania)

U.S. District Court
WRONGFUL DEATH
SUPERVISION

Carmichael v. City of Cleveland, 881 F.Supp.2d 833 (N.D. Ohio 2012). The estate of a murder victim brought an action against police officers, cities, and other defendants under § 1981, § 1983, and state law. The defendants moved for dismissal and judgment on the pleadings. The district court granted the motions. The court held that the wrongful death claims brought by the estate of the murder victim against the County Board of Commissioners, alleging actions or inactions of the County through its officials and employees, with respect to the monitoring of the murderer as a registered sex offender, were based on the County's provision or non-provision of police services or protection, and/or enforcement of the law, and therefore they fell within the general grant of immunity in the Ohio Political Subdivision Tort Liability Act for political subdivisions engaged in governmental functions. The court found that the wrongful death claims brought by the estate against the Ohio Department of Rehabilitation and Corrections (ODRC) were barred by the Eleventh Amendment, since the ODRC had not consented to suit in the district court. The court noted that as a state agency, ODRC is not a "person" that can be held liable for money damages under § 1983. (Ohio Department of Rehabilitation and Corrections, Cuyahoga County Board of Commissioners, Ohio)

U.S. District Court
TRANSPORTATION
WRONGFUL DEATH

Curtis v. TransCor America, LLC, 877 F.Supp.2d 578 (N.D. Ill. 2012). A prisoner's son brought a wrongful death action against a prisoner transport company, alleging that the company was liable for damages resulting from the death of the prisoner while in the company's custody. The district court held that it was necessary and proper for the court to resolve a narrow question of fact prior to trial for choice of law purposes, that Illinois law, rather than the law of Indiana, governed the issue of compensatory damages, and that the prisoner's son would be allowed to pursue punitive damages. The prisoner suffered a stroke that was allegedly caused, at least in part, by excessive temperatures in the prisoner compartment of the transport vehicle. According to the court, even though the complaint for wrongful death of the prisoner during a ride in a bus with a broken air conditioning unit had not requested punitive damages, the plaintiff could seek such damages against the prisoner transport company at trial. The court noted that although the company faced increased liability exposure, allegations suggesting that the employees ignored indications that the prisoner was in distress went beyond mere negligence. (TransCor America, LLC, Transport from Leavenworth, Kansas to the Federal Correctional Complex in Terre Haute, Indiana)

U.S. District Court
PRISONER ON PRISONER
ASSAULT

Ebrahime v. Dart, 899 F.Supp.2d 777 (N.D. Ill. 2012). A pretrial detainee at a county jail brought a § 1983 action against a county sheriff and jail officials arising from an attack by a fellow detainee. The district court granted the defendants' motion for summary judgment. The court held that county jail officials were not deliberately indifferent in preventing the attack on the detainee, who reported theft of commissary items from his table, by the accused fellow inmate. The court noted that the detainee did not himself feel there was threat, and the fellow inmate did not know that the detainee had reported him, but rather, he only knew that the detainee's associates had reported their items stolen from detainee's table. The court found that the county jail officials were not deliberately indifferent in failing to intervene in the attack on the pretrial detainee, even though the corrections officer who was with the detainee when the attack began did not respond on his own, he called for backup which arrived, in force, within a minute or two. (Cook County Jail, Illinois)

U.S. District Court
PRISONER ON PRISONER
ASSAULT

Facey v. Dickhaut, 892 F.Supp.2d 347 (D. Mass. 2012). A prisoner at a state correctional institution filed a pro se § 1983 action against the prison and officials alleging his Eighth Amendment right to be free from cruel and unusual punishment was violated when officials knowingly placed him in danger by assigning him to a housing unit where he was violently attacked by members of a rival gang. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the complaint stated a claim against the deputy superintendent and an assistant for violation of the Eighth Amendment, by alleging that officials were aware of the feud between two rival prison gangs, that the prisoner was a known member of one of the gangs, that despite this knowledge officials

had assigned the prisoner to a section of the prison where a rival gang was housed, and as a result he was violently attacked and sustained permanent injuries. The court found that the official who had instituted the gang housing policy could not be held personally liable, since he did not implement the policy, nor was he deliberately indifferent in supervising or training those who did. According to the court, state prison officials who had placed the prisoner known to be a gang member in danger by assigning him to a housing unit where he was violently attacked by members of a rival gang, were not entitled to qualified immunity in the prisoner's § 1983 suit. The court noted that clearly established law provided that the Eighth Amendment was violated if officials disregarded a known, substantial risk to an inmate's health or safety, and the officials had disregarded this risk, as well as violated a prison policy, by placing rival gang members in same housing unit. (Souza Baranowski Correctional Center, Massachusetts)

U.S. District Court
MEDICAL CARE
WRONGFUL DEATH

Gabriel v. County of Herkimer, 889 F.Supp.2d 374 (N.D.N.Y. 2012). The administrator of a pretrial detainee's estate brought a § 1983 action against a county, jail officials, and jail medical personnel, alleging deliberate indifference to a serious medical need, due process violations, and a state claim for wrongful death. The county brought a third-party complaint against a hospital demanding indemnity. The defendants moved for summary judgment and the hospital moved to dismiss the third-party complaint. The district court held that severance of the third party complaint involving the hospital was warranted, where a separate trial regarding indemnity, following a verdict on liability, would be both economical and convenient. The court found that summary judgment was precluded by material fact issues as to: (1) whether a nurse practitioner was aware of the detainee's history of depression, anxiety, tachycardia, angina, mitral valve prolapsed, degenerative back disease, and sciatic nerve, but consciously disregarded the risk of harm to him; (2) whether the detainee had a serious medical condition; and (3) whether a policy or custom of the county led to the denial of medical treatment for the detainee. According to the court, there was no evidence that a corrections officer disregarded an excessive risk to the safety of the pretrial detainee, noting that when the officer witnessed the detainee fall, he assisted him and promptly contacted the medical unit. According to the court, a lieutenant was not a policymaker, as required to support a § 1983 claim by the estate, where the lieutenant was responsible for jail security and had no involvement in the jail's medical policies and procedures. (Herkimer County Jail, New York)

U.S. District Court
SUICIDE

Glover v. Gartman, 899 F.Supp.2d 1115 (D.N.M. 2012). The personal representative of the estate of a pretrial detainee who committed suicide while in custody brought an action against a warden of a county detention center and corrections officers, alleging under § 1983 that the defendants violated his substantive due process rights when they provided him with razor blades and failed to respond in a timely manner to his emergency calls for help. The officers moved to dismiss for failure to state a claim. The district court granted the motion. The court held that a county corrections officer's act of providing the pretrial detainee with two razor blades and then leaving the detainee alone for over an hour so that detainee could shave before trial, during which time the detainee committed suicide, did not violate the detainee's substantive due process rights under the United States Constitution or the New Mexico Constitution, where the officer did not know that the detainee posed any suicide risk. The court also held that the officer was entitled to qualified immunity from the § 1983 claim that the officer violated the pretrial detainee's substantive due process rights, where there was no due process violation, as the officer did not know that the detainee posed any suicide risk, and a detainee's substantive due process right not to be left alone with razor blades was not clearly established at the time of the incident. The court also found that a corrections officer was entitled to qualified immunity from the § 1983 claim that the officer violated the substantive due process rights of the detainee by failing to respond to the detainee's calls for help. According to the court, the officer's conduct did not rise to the level of a due process violation, and the substantive due process right of the detainee to have an officer respond to a call was not clearly established absent evidence that the officer heard the call or knew of a suicide risk. (Lea County Detention Center, New Mexico)

U.S. District Court
SEXUAL ASSAULT

Hampton v. Sabie, 891 F.Supp.2d 1014 (N.D.Ill. 2012). A former inmate at a juvenile correctional facility brought a § 1983 action against a correctional officer and the facility superintendent, alleging that the officer sexually assaulted him and that the superintendent was deliberately indifferent to the inmate's constitutional rights by failing to protect him from the assault. The superintendent moved to dismiss. The district court granted the motion. The court held that the inmate's § 1983 claim was governed by the state's general two-year limitations period for personal injury claims, rather than the state's six-year statute applicable to sexual assaults against a child. (Illinois Youth Center)

U.S. District Court
OFFICER ON PRISONER
ASSAULT
USE OF FORCE

Jackson v. Gandy, 877 F.Supp.2d 159 (D.N.J. 2012). A state prisoner brought a § 1983 action against a department of corrections, corrections officers, and prison officials, alleging violations of his Eighth Amendment right against cruel and unusual punishment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that there was no evidence that prison officials were personally involved in a corrections officers' alleged assault on the state prisoner, as required to establish supervisory liability against the officials under § 1983, despite defense counsel's bare assertions of deliberate indifference and notice of assaultive history. The court ruled that summary judgment was precluded by genuine issues of material fact as to whether the force used by corrections officers to subdue the prisoner was excessive and in violation of Eighth Amendment, and whether a corrections officer participated in the alleged assault on the prisoner. The court held that the corrections officers were not entitled to qualified immunity where the prisoner's complaint alleged a violation of the constitutional right to be free from unnecessary and wanton infliction of pain, and such right was clearly established at the time of the officers' alleged misconduct. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether the prisoner exhausted his administrative remedies regarding the excessive force claim against corrections officials in accordance with the requirements of the Prison Litigation Reform Act (PLRA). (N.J. Department of Corrections, Bayside State Prison)

U.S. District Court
MEDICAL CARE

Jones v. Pramstaller, 874 F.Supp.2d 713 (W.D.Mich. 2012). The estate of a prisoner who died of viral meningoencephalitis brought an action under § 1983 against a doctor who provided the prisoner with medical care under contract with the contractor that provided health care to state prisoners. The doctor moved for disqualification of the estate's expert witness. The district court granted the motion. The court held that the estate failed to show that the expert witness' testimony was based on common sense rather than expertise and experience, and the estate failed to show that the expert witness's opinion was based on reliable principles and methods. The proposed expert witness, a physician, believed that the doctor's unreasonable delay in having the prisoner hospitalized was probably a cause of the prisoner's death. (Ernest Brooks Facility, Michigan Department of Corrections)

U.S. Appeals Court
SUICIDE

Luckert v. Dodge County, 684 F.3d 808 (8th Cir. 2012). The personal representative of the estate of her deceased son, who committed suicide while detained in a county jail, filed a § 1983 action against the county and jail officials for allegedly violating due process by deliberate indifference to the detainee's medical needs. Following a jury trial, the district court entered judgment for the personal representative, awarding actual and punitive damages as well as attorney fees and costs. The jury awarded \$750,000 in compensatory damages and \$100,000 in punitive damages. The district court denied the defendants' motion for judgment as a matter of law and the defendants appealed. The appeals court reversed the denial of the defendants' motion and vacated the awards. The appeals court held that while the detainee had a constitutional right to protection from a known risk of suicide, the jail nurse and the jail director were protected by qualified immunity, and the county was not liable. According to the court, the county jail nurse's affirmative but unsuccessful measures to prevent the pretrial detainee's suicide did not constitute deliberate indifference to his risk of suicide, where the nurse assessed the detainee twice after learning from his mother that he had recently attempted suicide, the nurse arranged for the detainee to have two appointments with the jail's psychiatrist, including an appointment on the morning of the detainee's suicide, the nurse contacted the detainee's own psychiatrist to gather information about the detainee's condition, she reviewed the detainee's medical records, and she responded in writing to each of the detainee's requests for medical care.

The court held that the county jail director's actions and omissions in managing jail's suicide intervention practices did not rise to the level of deliberate indifference to the pretrial detainee's risk of suicide, even though the director delegated to the jail nurse significant responsibility for suicide intervention before formally training her on suicide policies and procedures, and the jail's actual suicide intervention practices did not comport with the jail's written policy. The court noted that the jail had a practice under the director's management of identifying detainees at risk of committing suicide, placing them on a suicide watch, and providing on-site medical attention, and the detainee remained on suicide watch and received medical attention including on the day of his suicide. The court held that the county lacked a custom, policy, or practice that violated the pretrial detainee's due process rights and caused his suicide, precluding recovery in the § 1983 action. The court found that, even though the county had flaws in its suicide intervention practices, the county did not have a continuing, widespread, and persistent pattern of constitutional misconduct regarding prevention of suicide in the county jail. (Dodge County Jail, Fremont, Nebraska)

U.S. District Court
OFFICER ON PRISONER
ASSAULT
USE OF FORCE
INTIMIDATION

Morrison v. Hartman, 898 F.Supp.2d 577 (W.D.N.Y. 2012). A state prisoner brought a § 1983 action against several state corrections officers, alleging use of excessive force and sexual and verbal abuse in violation of his Eighth Amendment rights. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether, and to what extent, the corrections officers' alleged beating of the prisoner caused injuries or exacerbated pre-existing injuries, and whether the officers acted in a good-faith effort to maintain or restore discipline, or rather with malicious and sadistic intent to cause harm. The court found that the prisoner's allegations that a corrections officer pinched his left nipple and forced him to touch his own buttocks and then his mouth were not severe enough to be considered objectively and sufficiently serious to support the prisoner's § 1983 claim of sexual abuse in violation of his Eighth Amendment rights. According to the court, the prisoner's allegations of verbal abuse by a corrections officer during an incident in which officers allegedly beat the prisoner did not state an independent § 1983 claim of violation of his Eighth Amendment rights, but those allegations were potentially admissible in support of the prisoner's excessive force claim against the officer in relation to the beating. (Attica Correctional Facility, New York)

U.S. District Court
SEXUAL ASSAULT
PLRA- Prison Litigation
Reform Act

Morrison v. Parmele, 892 F.Supp.2d 485 (W.D.N.Y. 2012). A state prisoner brought a § 1983 action against corrections officers, alleging that his constitutional rights were violated while he was incarcerated, when officers assaulted him in retaliation for his complaints that he was being sexually assaulted by another inmate, and filed a false misbehavior report against him. The officers moved for summary judgment. The district court granted the motion, holding that the prisoner failed to show that special circumstances excused his failure to exhaust his administrative remedies, as required by the Prison Litigation Reform Act (PLRA). (Groveland Correctional Facility, New York)

U.S. District Court
SUICIDE
MEDICAL CARE
SUPERVISION

Ponzini v. Monroe County, 897 F.Supp.2d 282 (M.D.Pa. 2012). Survivors of a pretrial detainee sued prison officials, medical care providers and a corrections officer under § 1983 and state tort law, claiming that they were deliberately indifferent to the serious medical needs of the detainee, who committed suicide. The detainee allegedly did not receive his medication during his confinement. The survivors noted that one of the medications, Paxil, has "a short half-life and leaves a user's system very quickly," and that its withdrawal symptoms include "worsening of underlying anxiety or depression, headache, tremor or 'shakes', gastrointestinal distress and fatigue-, all of which were allegedly present in detainee during his incarceration." The detainee had also been taking Trazadone. The survivors alleged that during the period in which the detainee was incarcerated at the facility, officers were aware that the detainee should have been monitored closely and placed on a suicide watch. The survivors asserted that, although the detainee was not on a suicide watch, the inmate housed in an adjacent cell was on such a watch. An officer was expected to pass the neighboring cell, and by virtue of its location, the detainee's cell, every fifteen minutes. The survivors alleged that the officer falsified documents demonstrating that he properly made his rounds every fifteen minutes, and that officer failure to properly maintain a suicide watch on the detainee's neighbor facilitated the detainee's own suicide. The detainee killed himself by swallowing shreds of his own t-shirt. The court held that the survivors stated a § 1983 claim under the Fourteenth Amendment against prison officials for deliberate indifference to the serious medical needs of the detainee, who committed suicide allegedly as a result of a lack of daily medication necessary to treat depression and other psychological issues. According to the court, the complaint raised the possibility that prison officials knew that the detainee suffered from a severe medical condition and did not attempt to provide appropriate, necessary care in a timely manner. The court held that the survivors also stated a § 1983 claim under the Fourteenth Amendment against the corporate medical provider for deliberate indifference. (PrimeCare Medical, Inc., and Monroe County Correctional Facility, Pennsylvania)

U.S. District Court
MEDICAL CARE
WRONGFUL DEATH

Rigg v. City of Lakewood, 896 F.Supp.2d 978 (D.Colo. 2012). The wife of a detainee who died while in the custody of police officers filed suit, on her own behalf and as the personal representative of her decedent's estate, asserting due process claims pursuant to § 1983 and common law wrongful death claims against two cities and two police departments. The defendants moved to dismiss. The district court granted the motions. The court held that the representative failed to sufficiently allege a § 1983 claim for municipal liability against the two cities for deprivation of due process by their purported indifference to the detainee's medical needs, since the complaint did not allege the existence of a municipal custom or policy that was causally linked to the due process violation. (Lakewood Police Station, Colorado)

U.S. District Court
PRISONER ON PRISONER
ASSAULT
SUPERVISION
WRONGFUL DEATH

Sledge v. U.S., 883 F.Supp.2d 71 (D.D.C. 2012). A federal inmate's relatives brought an action under the Federal Tort Claims Act (FTCA) against the United States, alleging claims for personal injury and wrongful death based on the failure of Bureau of Prisons (BOP) employees to prevent or stop an attack on the inmate. The attack resulted in the inmate's hospitalization and death. The relatives also sought to recover for emotional distress that the inmate and his mother allegedly suffered when BOP employees denied bedside visitation between the mother and the inmate. Following dismissal of some of the claims, the United States moved to dismiss the remaining claims based on FTCA's discretionary function exception. The district court granted the motion. The court found that a correction officer's decision to position himself outside the housing unit, rather than in the sally port, to smoke a cigarette during a controlled move was discretionary, and thus the United States was immune from liability under the Federal Tort Claims Act's (FTCA) discretionary function exception. The court noted that the prison lacked mandatory guidelines that required correctional staff to follow a particular course of action regarding supervision of inmates during controlled moves, and the officer's decision implicated policy concerns, in that it required consideration of the risks posed by inmates moving throughout prison, and required safety and security calculations. The court found that the Bureau of Prisons' (BOP) alleged decision not to allow the mother of federal inmate, who was in coma after being severely beaten by a fellow inmate, to visit her son after the BOP allegedly failed to complete a visitation memorandum, was not so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in civilized community, thus precluding the mother's intentional infliction of emotional distress claim under Missouri law. (Federal Correctional Institution, Allenwood, Pennsylvania)

U.S. District Court
PRISONER ON PRISONER
ASSAULT
PROTECTION FROM
HARM

Solivan v. Dart, 897 F.Supp.2d 694 (N.D.Ill. 2012). A pretrial detainee brought a § 1983 action against a county, corrections officers, and a sheriff, alleging deliberate indifference to undue punishment. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the detainee's § 1983 complaint stated a claim against a correctional officer for deliberate indifference to a serious need in violation of the Fourteenth Amendment, where the complaint alleged facts that indicated that the officer left inmates visually and audibly unsupervised for hours, knowing that a substantial risk of harm was present. The complaint further alleged that there were no light bulbs in the detainee's cell, no intercoms or emergency call buttons in cells, and no overhead cameras on his tier of the jail. According to the court, the complaint stated that the harm the detainee suffered at the hands of other inmates was significant, including severe injuries to his right eye and bleeding from his ear, and the complaint alleged that the detainee was the only person of Hispanic origin housed in the maximum security tier, while a significant majority of other inmates were African American, and that these circumstances put the detainee in an identifiable group of prisoners who were singled out for attack. (Division One, Cook County Department of Corrections, Illinois)

U.S. District Court
PRISONER ON PRISONER
ASSAULT

Todd v. Montoya, 877 F.Supp.2d 1048 (D.N.M. 2012). A pretrial detainee brought a § 1983 action against a corrections officer and prison officials, alleging cruel and unusual punishment, and state claims for negligence, gross negligence, and recklessness. The corrections officer moved for summary judgment and the detainee moved for additional discovery. The district court granted the officer's motion and denied the detainee's motion. The court found that there was evidence that the detainee suffered an injury that was more than de minimis, as required to meet the objective element of a § 1983 claim against corrections official for deliberate indifference to a substantial risk of serious harm, in violation of the Due Process Clause. According to the court, there was evidence showing that the detainee received a beating from two other prisoners, including having them hit him in the face and attacking him for two to three minutes. But the court held that there was no evidence that a corrections officer acted with deliberate indifference when the detainee was physically assaulted by the other prisoners. The court noted that the officer called other officers to come stop the fight almost immediately after the physical altercation involving the detainee began. The court held that there was no evidence that the corrections officer permitted two prisoners to discover the detainee's criminal history as a sex offender in such a way that caused the detainee's beating, as required to support the detainee's negligence claim against the officer under New Mexico law. (Bernalillo County Metropolitan Detention Center, Albuquerque, New Mexico)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT

U.S. v. Wilson, 686 F.3d 868 (8th Cir.2012). Following the denial, in part, of his motion to suppress evidence, the defendant, the chief administrator of a county jail, was convicted, by a jury in the United States District Court of four counts of deprivation of rights and two counts of making false statements, arising out of injuries caused to four inmates. He appealed. The appeals court affirmed. The appeals court held that the district court did not err in applying the physical-restraint enhancement where the defendant violated his victims' constitutional rights while they were prisoners locked up in enclosed areas in a county jail, and the jury found that he purposefully moved two of them from cells where they

were safe so that they would be assaulted in a cell holding violent inmates. The court noted that not only did the administrator, in moving the two prisoners, insinuate that the other inmates should assault them, but he rewarded the assaulting inmates with cigarettes after each of the incidents. The district court sentenced the administrator to 120 months' imprisonment on each of the § 242 counts, and 60 months' imprisonment on each of the § 1001 counts, with all terms to be served concurrently. (Washington County Jail, Missouri)

U.S. Appeals Court
SEARCHES
USE OF FORCE

Washington v. Hively, 695 F.3d 641 (7th Cir. 2012). A federal pretrial detainee filed a § 1983 action alleging that a county jail guard improperly touched him during a pat down and strip search. The detainee alleged that while patting him down, the guard spent five to seven seconds gratuitously fondling the plaintiff's testicles and penis through the plaintiff's clothing and then while strip searching him fondled his nude testicles for two or three seconds, contrary to a jail policy which forbids touching the inmate in the course of a strip search, and again without any justification. The district court entered summary judgment in the guard's favor, and the detainee appealed. The appeals court reversed and remanded. The appeals court held that: (1) the detainee's allegation that the guard touched his private parts to humiliate him or to gratify the guard's sexual desires was sufficient to state a claim, whether or not the force exerted by the guard was significant; (2) fact issues remained as to the guard's subjective intent in conducting the pat down and strip search; and (3) a statute barring federal civil actions by prisoners for mental or emotional injuries absent a showing of physical injury did not bar the pretrial detainee from seeking both nominal and punitive damages in his § 1983 action, even though the detainee did not claim to have suffered any physical injury. (Waukesha County Jail, Wisconsin)

U.S. District Court
PRISONER ON PRISONER
ASSAULT

Wilkins v. District of Columbia, 879 F.Supp.2d 35 (D.D.C. 2012). A pretrial detainee in a District of Columbia jail who was stabbed by another inmate brought an action against the District. The district court entered judgment as a matter of law in favor of the District and the detainee moved for reconsideration. The district court granted the motion and ordered a new trial. The court held that the issue of whether the failure of District of Columbia jail personnel to follow national standards of care for inmate access to storage closets and monitoring of inmate movements was the proximate cause of the detainee's stabbing by a fellow inmate was for the jury, in the detainee's negligence action, under District of Columbia law. Another inmate who was being held at the D.C. Jail on charges of first-degree murder attacked the detainee. The inmate had received a pass to go to the jail's law library, unaccompanied. Apparently he did not arrive at the library but no one from the library called the inmate's housing unit to report that he had not arrived. An expert retained by the detainee asserted that failure to monitor inmate movements violated national standards for the operation of jails. En route to the jail mental health unit, the detainee saw the inmate enter a mop closet. The inmate, along with another inmate, approached the detainee and stabbed him nine times with a knife. During court proceedings there was testimony that the inmates had hidden contraband in the mop closets. The closets are supposed to be locked at all times, other than when the jail is being cleaned each afternoon. But there was evidence from which the jury could infer that all inmates except those who did not have jobs cleaning in the jail had access to them. According to the detainee's expert witness, keeping mop closets locked at times when the general inmate population is permitted to be in the vicinity of the closets is in accordance with national standards of care for the operation of detention facilities. According to the district court, "In sum, the circumstantial evidence of Mr. Foreman's [inmate who attacked the detainee] freedom of movement is enough to have allowed a jury to conclude that the District's negligence was a proximate cause of Mr. Wilkins's injury..." (District of Columbia Central Detention Facility)

U.S. Appeals Court
SEXUAL ASSAULT
OFFICER ON PRISONER
ASSAULT

Wood v. Beauclair, 692 F.3d 1041 (9th Cir. 2012). A male state prisoner filed a civil rights action alleging sexual abuse by a female prison guard in violation of the First, Fourth, and Eighth Amendments. The district court granted summary judgment to the defendants and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that: (1) the prisoner established non-consent; (2) sexual abuse of the prisoner by a prison guard constituted malicious and sadistic use of force; (3) the sexual assault on the prisoner by the prison guard was deeply offensive to human dignity and was completely void of penological justification; (4) supervisory prison officials were not on notice that the prison guard presented a substantial risk to the prisoner through sexual abuse; and (5) prison officials did not retaliate against the prisoner for filing a grievance. According to the court, the prisoner established non-consent for purposes of surviving summary judgment, where the prisoner and guard were in a consensual relationship that involved hugging and kissing, then they were involved in a disagreement and the prisoner told the guard to "back off" and that they had to "stop" seeing each other for a while, and then the initial sexual encounter that gave rise to the action occurred. (Idaho Correctional Institution of Orofino)

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