



## **Know Your Rights: Due Process in Prison** (September 2025)

*\*\*This document contains general legal information and is not legal advice specific to your situation. You may want to do research or contact an attorney to get more specific advice.*

The Constitution prohibits states from taking your rights to “**life, liberty or property**, without **due process** of law.”<sup>1</sup> Due process is the idea that if the prison takes away certain rights, they must follow certain rules. Life means your safety and health, liberty means your freedom, and property means the things you own. This guide focuses on your right to liberty.<sup>2</sup>

If you were convicted of a crime, prisons can confine you and enforce rules against you. However, you still may have some due process rights. For example, when you get disciplined, the prison must follow certain procedures. These include telling you what you did wrong (called notice) and giving you a chance to defend yourself (a hearing). Your right to due process looks different based on your situation.

To sue a prison for violating your right to due process, you must prove two things:<sup>3</sup>

- 1) Prison staff harmed one of your constitutional rights to life, liberty of property. Most cases are about **liberty interests**.
- 2) You did not get all of the **procedural protections** that you had a right to. Examples include notice, a hearing, an impartial decision maker, and a written statement explaining the disciplinary board’s decision.

**\*\* Before you can bring a lawsuit in federal court, you must go through the entire grievance process.** For more information, see UPLC’s grievance guide.

### **Step 1: Do you have a protected liberty interest?**

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<sup>1</sup> This rule is found in the Fifth and Fourteenth Amendments.

<sup>2</sup> If your property is lost or destroyed by IDOC, you likely do **not** have a due process claim that you can bring in federal court. See *Parratt v. Taylor*, 451 U.S. 527 (1981). However, you may be able to bring a **state lawsuit** in the Illinois Court of Claims.

<sup>3</sup> *Wolff v. McDonnell*, 418 U.S. 539 (1974).

First, you must prove that the punishment you received affected your right to liberty. To decide this question, the courts look at “the nature of the deprivation.”<sup>4</sup> Courts ask whether you are going to spend more time in prison because of your discipline. They also examine your living conditions and how long you are in them.

Not all punishments create a liberty interest. You have a legal liberty interest if the punishment either extends the time you will spend in prison or “imposes **atypical and significant hardship**” compared to “the ordinary incidents of prison life.”<sup>5</sup> You may need to compare your situation to previous examples.

Examples where you **always have** a liberty interest:

- Discipline that affects the length of your incarceration.<sup>6</sup>
  - Loss of good time credits.<sup>7</sup>
  - Change in credit earning class.<sup>8</sup>
- Involuntary transfer to a mental hospital.<sup>9</sup>
- Involuntary administration of mental health drugs<sup>10</sup>

Examples where you **likely do not have** a liberty interest:

- Short periods of disciplinary segregation (even with many restrictions).<sup>11</sup>
- Segregation under 6 months where conditions are not unusually harsh.<sup>12</sup>
- Transfers between prisons.<sup>13</sup>
- Short term administrative segregation or investigative status.<sup>14</sup>

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<sup>4</sup> *Sandin v. Conner*, 515 U.S. 472, 481 (1995).

<sup>5</sup> *Id.* at 483-484.

<sup>6</sup> *Wilkinson v. Austin*, 545 U.S. 209 (2005) (Prisoners had a liberty interest in their transfer to a supermax prison because placement there would disqualify them from parole eligibility).

<sup>7</sup> *Scruggs v. Jordan*, 485 F.3d 934 (7th Cir. 2007).

<sup>8</sup> *Piggie v. Cotton*, 344 F.3d 674 (7th Cir. 2003).

<sup>9</sup> *Vitek v. Jones*, 445 U.S. 480 (1980).

<sup>10</sup> *Washington v. Harper*, 494 U.S. 210 (1990).

<sup>11</sup> *Williams v. Ramos*, 71 F.3d 1246 (7th Cir. 1995) (19 days straight in a closed front segregation cell); *Thomas v. Ramos*, 130 F.3d 754 (7th Cir. 1997) (70 days); *Lekas v. Briley*, 405 F.3d 602 (7th Cir. 2005) (3 months); *Kervin v. La Clair Barnes*, 787 F.3d 833 (7th Cir. 2015) (30 days).

<sup>12</sup> *Hardaway v. Meyerhoff*, 734 F.3d 740 (7th Cir. 2013) (6 months in disciplinary segregation where cell conditions triggered childhood trauma, and the plaintiff was attacked by his cellmate).

<sup>13</sup> *Meachum v. Fano*, 427 U.S. 215 (1976) (Prisoners had no liberty interest in their transfer from medium security to maximum security because it did not affect their good time credit).

<sup>14</sup> *Townsend v. Fuchs*, 522 F.3d 765 (7th Cir. 2008) (59 days in temporary lock up, double bunked in a 12x6.5 ft cell and given a thin, wet, and moldy mattress).

- Loss of usual privileges, such as C grade restrictions or restrictions on family visits, recreation, commissary use, and personal items.

Examples where you **may have** a liberty interest:

- Long time spent in segregation (a year or more)
- Short time spent in segregation in extremely harsh conditions.<sup>15</sup>
  - Note: You must show that your prison conditions are much worse than what most people in prison experience.<sup>16</sup> For example, compare segregation conditions to normal conditions in general population.

## **Step 2: What procedural protections are you entitled to?**

If the court finds that you have a liberty interest, you have the right to some procedural protections. *These procedures depend on your liberty interest.* If you do not have a liberty interest, you do not have the right to any special procedures.

**Type A:** If the **length of time you spend in prison** is impacted, then you have the following rights:

- Written explanation of the charges against you (e.g. which rule you violated)
- 24 hours notice before any disciplinary hearing
- Opportunity to be heard before an impartial decision maker (usually a member of the adjustment committee)<sup>17</sup>
- Opportunity to call witnesses and present evidence to prove your innocence.<sup>18</sup>
  - Note: The adjustment committee can deny witnesses or evidence if they are irrelevant, repetitive, unnecessary, or a safety risk.<sup>19</sup> They are supposed to tell you why they are denying your witnesses or evidence.
  - Example: Surveillance footage could be used as evidence to support your innocence if you explain why it is important.<sup>20</sup>

<sup>15</sup> *Bryan v. Duckworth*, 88 F.3d 431 (7th Cir. 1996) (Prisoner sentenced to one year of disciplinary segregation).

<sup>16</sup> *Wagner v. Hanks*, 128 F.3d 1173 (7th Cir. 1997); *Lekas v. Briley*, 405 F.3d 602 (7th Cir. 2005).

<sup>17</sup> *Prude v. Meli*, 76 F.4th 648 (7th Cir. 2023).

<sup>18</sup> *Scruggs v. Jordan*, 485 F.3d 934 (7th Cir. 2007) (The court did not permit the prisoner to submit evidence that he hit a prisoner to defend another because he already admitted to the beating).

<sup>19</sup> *Piggie*, 344 F.3d.

<sup>20</sup> *Ealy v. Frank*, 109 F.4th 958 (7th Cir. 2024) (The prisoner never argued that the surveillance footage was proved his innocence, so the court did not consider it as evidence).

- A written explanation from the adjustment committee of the evidence they relied on and the reasons behind your discipline
  - Note: The disciplinary board’s decision only needs to be supported by “some evidence.”<sup>21</sup> Unfortunately, this is a very low standard and is hard to challenge.

**Type B:** If the court finds that you have a liberty interest based on the **length or conditions of your time in segregation** OR you are **forced to take mental health drugs** against your will or are **transferred to a mental health facility** without your agreement, then you are entitled to:<sup>22</sup>

- “Some notice” of reasons for your placement or punishment.
- An opportunity to present your opinions through a written statement or informal hearing.

\*\*These procedures might be very simple, such as a disciplinary report and a short hearing. If you get those basics, you may not have a strong due process claim.

**Type C:** If none of these things apply, then the prison does not have to give you any sort of hearing or reason for their action.

### **Conclusion and Next Steps**

Though your freedom has been greatly affected by your incarceration, you may still have due process rights when it comes to discipline. At the very least, if your liberty is affected, you should have some notice of what you did wrong and some opportunity to present your story.

Use the cases that we cited in this handout to start your research. Try to find facts that are similar to yours in cases that won. Try to find facts that are different from yours in cases that lost. Use those facts to help you tell your story to the court.

Lastly, remember that you must sue people who have *personal involvement* in the constitutional violation. This might include the investigator, adjustment committee members, and perhaps the warden, depending on your case.

(Funding provided by the Illinois Department of Human Services, Office of Welcoming Centers for Refugee and Immigrant Services.)

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<sup>21</sup> *Superintendent, Massachusetts Correctional Institution v. Hill*, 472 U.S. 445 (1985).

<sup>22</sup> *Ealy*, 109 F.4th at 965-966.