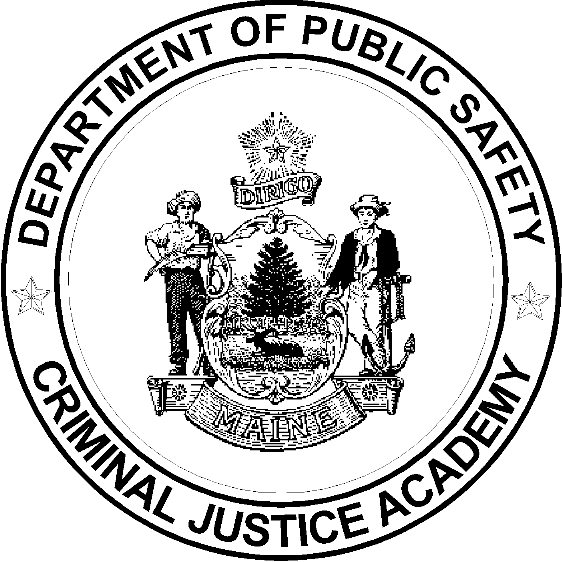
# UNIT TITLE: Corrections Law

**Basic Corrections Training Program**

**UNIT NUMBER: 3.2.0**

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## Maine Criminal Justice Academy

15 Oak Grove Road

Vassalboro, ME 04989

Prepared by: Date:

Prepared by Dianne Sleek – Attorney General’s Office Revised 3/21/2012

**Reviewed MCJA Staff April 2017**

**Lesson Plan Title: Corrections Law**

**Revision Date: March 21, 2012 (numbered 5/2012)**

**Lesson Plan Number:** 3.2.0

**Maine Standards:**

**ACA Standards:**

**Facility Policies:**

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| This course on corrections law is intended to provide new correctional officers with a basic understanding of the legal rights of convicted prisoners and pre-trial detainees. These rights arise primarily from the United States Constitution and from statutory enactments of the United States Congress, including the Americans With Disabilities Act and the Maine Legislature. The course, also, provides correctional officers with an overview of the common law, the federal and state court systems, and the nature of inmate lawsuits. |
| **Administrative Information**   |  |  | | --- | --- | | **Estimated Time Range** | 4 hrs. |  |  |  | | --- | --- | | **Methods** | **Media** | | 1. Lecture 2. In-class Discussion | 1. PowerPoint- Corrections Law 3.2.0 |  |  |  | | --- | --- | | **Material / Equipment Required** | **Student Outside Assignments** | | 1. PowerPoint projector |  |   **Notes:** |

**Instructional Goal**

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| This unit of instruction will provide the student with basic knowledge of federal constitutional law, state and federal statutory law, including the Americans with Disabilities Act, and state common law as they affect the correctional officer’s duties and powers, as well as an overview of inmate lawsuits. |

**Performance Objective**

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| After this unit of instruction, the student will be able to:  3.2.1 Outline the significance for corrections of the following U. S. Constitutional Amendments: a. First Amendment  b. Fourth Amendment  c. Fifth Amendment  d. Sixth Amendment  e. Eighth Amendment  f. Fourteenth Amendment  3.2.2 Outline the following correctional issues as they relate to constitutional law:  a. access to courts b. religion  c. correspondence (receiving and sending mail) & visitation  d. grievances  e. discipline  f. administrative segregation  g. interrogation  h. inmate safety/protection from other inmates  i. medical/mental health treatment  j. use of force/control  k. searches    3.2.3 Define the significance of the Americans With Disabilities Act as it relates to corrections  a. medical needs  b. non-medical special needs (reasonable accommodations)    3.2.4 Explain civil and criminal liability and understand other aspects of corrections law, including immunity    a. negligence (common law)  b. deliberate indifference (constitutional law)  c. criminal liability | | |
| **Instructional Unit** | **Time** | **Objectives/Notes** |
| **Preface – Legal actions and the courts**  **I. THE NATURE OF LEGAL ACTIONS**  Every legal action in any court of the United States or in the State of Maine takes one of two forms. It is either criminal or civil.  **A. Criminal Prosecutions**  A criminal action is one in which the United States or the state charges a person with a violation of the criminal law. Such an action is prosecuted by the government on behalf of the entire population of the jurisdiction and may result in fines, probation, imprisonment, or other sanctions. The purposes behind criminal prosecutions and sanctions include punishment for wrongdoing, protection of the public, deterrence of future wrongdoing (by the person convicted or others), and rehabilitation of the convicted person. It is the responsibility of the government to prove criminal liability beyond a reasonable doubt.  **B. Civil Lawsuits**  A civil action is one in which a private party claims that he or she has been somehow harmed by the conduct of another, conduct which most often is not also criminal in nature. It is the private party who claims to be harmed who brings the lawsuit and who is usually seeking the payment of money to compensate for the harm done (compensatory damages). The private party may also seek to be paid punitive damages to “punish” the person liable for the harm if that person caused the harm intentionally or in certain other circumstances.  It should be pointed out that sometimes conduct is both a violation of the criminal law and also gives rise to a civil lawsuit. Thus, for example, a person who is prosecuted criminally for an assault may also be sued civilly by the person assaulted.  **C. Civil lawsuits against correctional officers**  These generally take one of two forms:  1. Either, a claim that an officer caused harm to the prisoner by a violation of the prisoner's constitutional or statutory rights – this claim is usually made in a “section 1983” lawsuit;  2. Or, a claim that the officer caused harm, such as a physical injury to the prisoner or damage to his or her property, in a way that does not necessarily involve a violation of the Constitution or a statute – this claim is made in a common law tort lawsuit.  3. It should be pointed out that sometimes conduct is both a violation of a constitutional or statutory right and also constitutes a tort (civil wrong). Thus, for example, an officer who uses force might be subject to both a constitutional rights lawsuit under the Eighth Amendment prohibition on cruel and unusual punishment and a common law tort lawsuit for assault.  **II. THE STRUCTURE OF THE COURT SYSTEM**  **A. The Federal Court System**    The federal system of courts consists of three tiers. These are the U.S. District Courts, the U.S. Courts of Appeals and the U.S. Supreme Court. Federal courts are authorized to hear only those civil cases which arise under the U.S. Constitution or statutes or other laws of the United States, disputes between States, disputes involving persons of different states (with specified monetary requirements), and disputes involving **foreign** countries. The federal court system also has jurisdiction over federal criminal prosecutions.  **1. U.S. District Court**  Maine has one U.S. District Court, which sits in both Portland and Bangor. It is a trial court, and there is a right to trial by jury in the U.S. District Court in most civil cases. It is also where federal criminal trials take place.  The U.S. Court of Appeals for Maine (as well as N.H., Mass. R.I., and Puerto Rico) sits in Boston and is called the U.S. Court of Appeals for the First Circuit It only hears appeals from the U.S. District Courts for the above listed jurisdictions, primarily on questions of law. The decisions of the First Circuit must be followed by all of the federal district courts within these jurisdictions. Most federal court appeals do not go beyond this level.  **2. U.S. Court of Appeals**  **3. The U.S. Supreme Court**  a. Is the highest court in the land and, as such, its decisions are binding upon all federal and state courts. It sits in Washington, D.C. The U.S. Supreme Court has the authority to hear appeals from the U.S. Courts of Appeals, primarily on questions of law, and, in addition, to hear appeals from the highest courts in the individual States, if they involve issues of federal law. The U.S. Supreme Court will generally hear only those cases that involve extremely important issues or issues that have been decided differently by different federal courts of appeals.  b. Lawsuits brought by prisoners against correctional officers in federal court are usually brought under a federal statute found at Title 42 of the United States Code section 1983. These are often called civil rights lawsuits.    3. This section of the United States Code states that any person while, acting under color of state law, violates the federal constitutional or statutory rights of another shall be liable to that person for damages. A corrections officer who is sued for conduct while acting in the scope of employment is acting under color of state law. Usually the points of contention in a civil rights suit are what exactly the officer did or did not do and whether this conduct violated a federal constitutional or statutory right. It is the responsibility of the person suing to prove these things by a preponderance of the evidence.  **B. The Maine Court System**    The Maine court system is primarily two-tiered, consisting of the trial courts (either the Maine District Courts or the Maine Superior Courts) and the primary appellate court (the Maine Supreme Judicial Court). Maine courts are authorized to hear all civil cases in which at least one party is a resident of the state or the dispute arose from conduct occurring in the state. They hear cases which arise under federal or state law. The state court system also has jurisdiction over state criminal and juvenile criminal prosecutions.  **1. Maine District Courts**  Maine has a number of district courts scattered throughout the State. The district court is the trial court for civil lawsuits where the amount in controversy does not exceed a specified limit. It is also the court that handles juvenile criminal proceedings and less serious adult criminal trials. There is no right to a trial by jury in the Maine district courts.  **2.** **Maine Superior Court**  There is one superior court per county in Maine, with the superior court for Aroostook county sitting in both Caribou and Houlton. The superior court is both a trial court for civil lawsuits where the amount in controversy exceeds a specified amount and the court where the more serious criminal trials take place. It also hears some appeals from Maine district court decisions, such as appeals from juvenile court decisions and appeals of probation revocation decisions made in the district court. In addition, the superior courts in Maine are the trial courts for almost all lawsuits against state or local governments, government agencies, and government employees, including corrections officers, regardless of the amount of money in dispute. There is a right to trial by jury in the Maine superior courts.  **3. Maine Supreme Judicial Court**  The Maine Supreme Judicial Court (called the “Law Court”) is the court  of highest authority in Maine (though it can be overruled by the U.S. Supreme Court). It sits in Portland most of the time and is an appeals court which primarily decides only questions of law. It hears appeals from the superior courts and sometimes directly from the district courts.  With few exceptions, the Maine Law Court, unlike the U.S. Supreme Court, cannot pick and choose which appeals to hear.  **4. Sources of Prisoner Rights:**    a. U.S. Constitution (and, secondarily, the Maine Constitution)  b. U.S. and Maine statutes    c. U.S. and Maine regulations.  d. Maine common law  **5. The U.S. Constitution is the supreme law of the land**  Thus, the rights guaranteed by it are the minimum which must be provided. A State may choose to accord more rights or a higher level of rights to those within its jurisdiction than does the U.S. Constitution (except in the rare case where the U.S. Constitution forbids it), but a State cannot accord fewer rights or a lesser level of rights. Although worded differently, the Maine Constitution provides prisoners with the same rights as the U.S. Constitution.  **6. Prisoners (and others) also have rights provided to them by federal and state statutes. These include the Americans with Disabilities Act and its state counterpart, the Maine Human Rights Act.**  In addition, there may be federal and state regulations that provide certain rights. One example is the Maine Attorney General’s Office arrestee strip search regulations.  **7. Common Law**  State law that has evolved over centuries as judges have decided civil lawsuits that are not governed by constitutional, statutory, or regulatory provisions. Inmates have the right to be free from the commission of common law torts against them (unjustified actions that cause bodily injury, property damage, etc.)  The courts have repeatedly held that prisoners retain all the rights of an ordinary person except those rights that are expressly or by necessary implication withheld or restricted as a result of incarceration.  **8. Justification for the retraction or restriction of prisoner constitutional or other rights are:**  a. security  b. safety of staff and other prisoners,  c. orderly management of the institution  d. protection of the public,  e. rehabilitation of the prisoner.  **III. General Overview of Specific U.S. Constitutional Amendments as they Impact Corrections (3.2.1)**  **A. First Amendment Rights**  The First Amendment to the U.S. Constitution guarantees the rights of:  1. Religious freedom  2. free speech (expression),  3. press,  4. assembly (association), and  5. petition the government.  The U.S. Supreme Court has held that prisoners do not forfeit their First Amendment rights as a result of incarceration, but that those rights may  be restricted for legitimate penological objectives such as security.  An important consideration in evaluating the legitimacy of restrictions on First Amendment rights is whether there are alternative means of  exercising the specific right in question.  Thus, for example, a correctional facility may restrict an inmate’s access to telephone calls in light of alternative means for inmates to communicate with the outside world, such as visitation and mail.  **B. Fourth Amendment Rights**  The Fourth Amendment to the U.S. Constitution guarantees protection from unreasonable search.    In the prison and jail context, however, this right is severely restricted. Security and safety require that officers strictly monitor the activities of prisoners, including the possession and flow of items of personal property and of contraband. Thus, courts have routinely upheld the practice of  conducting cell searches, random and otherwise, and, depending on the intrusiveness of the particular method used, and the justification, searches of a prisoner's person.  **C. Fifth Amendment Rights**  The Fifth Amendment to the U.S. Constitution prohibits compulsory self- incrimination. This right applies equally to prisoners.  **D. Sixth Amendment Rights**  The Sixth Amendment to the U.S. Constitution guarantees the right to counsel (representation by an attorney) in criminal cases.  **E. Eighth Amendment Rights**  The Eighth Amendment to the U.S. Constitution provides protection from cruel and unusual punishment. This is an especially important amendment to prisoners, as it protects them from physical or psychological cruelty.  **F. Fourteenth Amendment Rights**  The Fourteenth Amendment to the U.S. Constitution guarantees all persons, including prisoners, the rights to due process and equal protection.  **IV. Specific Constitutional Rights and Prisoners (3.2.2)**  ***A. Right of access to the courts***  The First Amendment free speech and petition rights combined with the Sixth Amendment right to the assistance of counsel mean that prisoners have a right to communicate with the courts or attorneys. Thus, prisoners must be allowed reasonable times and places to consult confidentially with attorneys. Mail to or from the courts or attorneys must not be read by officers. Prisoners must be provided with law books and, if needed, writing materials and postage. Additionally, prisoners must be able to have their legal papers notarized. They have a limited right to the assistance of fellow inmates who are often known as “jailhouse lawyers.”  ***B. Religious rights***  Prisoners have an absolute right to believe whatever they want to when it comes to religion. However, their right to engage in religious practices is subject to reasonable limits for the purposes of maintaining security and safety and even for economic reasons. The First Amendment protection of religious freedom is complicated in prisoner cases by the Religious Land Use and Institutionalized Persons Act (RLUIPA), a federal statute that prohibits a governmental entity that has accepted federal funding from imposing a substantial burden on religious exercise by prisoners unless it is the least restrictive means of furthering security, safety, or orderly management. Because of this statute, passed in 2000, the law is less clear than it used to be. However, it still appears to be the law that prisons and jails do not have to go as far to accommodate a single prisoner’s religious beliefs as the beliefs of a group. Thus, a single prisoner who wishes to worship outside his cell in a place where guard supervision is required does not have to be allowed to do so due to the strain on resources involved in tying up a guard for the duration of the service. It is still also true that security trumps religion. So, for example, prisoners do not have a right to religious items that create a security risk, such as wine or items that could be used as weapons.  ***C. Speech, general correspondence, and visitation***    The “speech” protected by the First Amendment takes several forms. Not only is the freedom of oral communication protected, but also written and  symbolic speech. Written speech includes letter-writing and writing for publication. Symbolic speech includes such avenues of expression as gestures and clothing. Restrictions on any of these forms of speech, both inside a prison or jail or in the "free world" do exist. For example, speech intended to incite a riot and threats may be restricted. Such restrictions obviously have even more validity in a correctional setting. In addition, concerns unique to the correctional setting permit stricter restrictions on prisoner speech. Thus, for example, disrespectful speech, even if it is not obviously threatening speech, directed to an officer may be punished through the disciplinary process, even though the same words said “on the street” would come within freedom of speech protections. On the other hand, merely expressing an opinion about, for example, how well the governor is doing, may not be restricted. Prisoners who start arguing about such matters may, however, be told to act in a civil manner.  For security, safety, and orderly management reasons, prisoner mail may be read when there is a reasonable suspicion that crimes or violations of prison rules are being planned. Similarly, a visitor may be required to submit to a search as a condition of visiting, including even a strip search when there is a reasonable suspicion that the visitor is planning to bring in contraband. A specific visitor or prisoner may be prohibited from visits altogether for any of these same reasons. Visitation may be restricted to non-contact visits even in the absence of specific suspicions.  ***D. Privileged correspondence***  Prisoner correspondence with courts, attorneys, and many, though not all, public officials, if discussing legal or government matters, is deemed to be privileged mail and, therefore, is given greater protection than general mail. Incoming privileged correspondence should be opened only in the presence of the prisoner and checked only for contraband. Outgoing mail that appears to be privileged should not be opened unless there is a suspicion, and the reason for that suspicion can be clearly articulated, that the mail is something other than what it purports to be, and, even then, in the presence of the prisoner. Genuine privileged mail should not be read or censored.  E. G***rievances***  The First Amendment right to petition the government includes a right for prisoners to file grievances or otherwise communicate their complaints to prison and jail officials and to not be retaliated against for doing so. While there is no constitutional requirement for a formal prisoner grievance process, it is best for there to be one, as a federal statute, the Prison Litigation Reform Act, requires that prisoners use administrative procedures to try to resolve their complaints, if procedures are available, prior to filing a federal civil rights lawsuit.   F. ***Due process and discipline***  The Fourteenth Amendment prevents a person from being deprived by the government of life, liberty, or property without due process of law. This means, for one thing, that prior to a prisoner being disciplined by the loss of liberty (by losing good time), certain procedures must be followed. These include giving the prisoner adequate prior notice of the disciplinary charges (at least 24 hours in advance of the disciplinary hearing), the right to present his or her own evidence (with reasonable restrictions on calling repetitive witnesses, for example), the right to know what the incriminating evidence is (with necessary protection for confidential informants), a neutral hearing officer, and, if the prisoner is illiterate, developmentally or mentally disabled, or otherwise needs help with the disciplinary process, the right to assistance. In addition there is a right to have the basis for a finding of guilt provided in writing.  ***G. Disciplinary and*** ***administrative segregation***  Due process protections do not, however, apply to disciplinary hearings that do not involve the loss of good time but result only in disciplinary segregation (or lesser punishments) or administrative reviews that result in administrative segregation, unless the conditions in segregation constitute “an atypical and significant hardship in relation to the ordinary incidents of prison life,” something which is rarely the case.  ***H. Equal protection***  The Fourteenth Amendment also guarantees equal protection. This does not require that all prisoners be treated the same. It only requires that prisoners who are similarly situated be accorded substantially similar treatment. Usually, so long as treating prisoners differently is reasonably related to a legitimate purpose, like safety or security, there is no violation of this amendment. However, if a “fundamental” right is involved (like freedom of religion), then the differential treatment must be the least restrictive way of accomplishing the purpose. As well, different treatment of prisoners based on factors like religion, race, color, ethnicity, or birthplace (suspect classes) are never justified and differential treatment based on gender or age are almost never justified.    ***I. Medical and mental health treatment***  Inmates have a right, both under the Eighth Amendment to the U.S. Constitution and pursuant to Maine statutory and common law, to medical treatment. Inmates also have a legal right to treatment for mental health conditions giving rise to a risk of suicidal or homicidal behavior or other seriously disruptive behavior by inmates while incarcerated. Only when prison or jail officers or other staff exhibit deliberate indifferenceto a serious medical or mental health need will they be held to have violated a federal constitutional right of the prisoner.  **J. Deliberate indifference** occurs when an officer knows of and disregards an excessive risk to an inmate’s health or safety. An example would be an officer knowing that a prisoner has a broken arm but delaying calling the on duty medical staff, or, if there is no medical staff on duty, delaying calling an ambulance, unless the reason for the delay was the need for the officer to deal with an even more serious problem, like securing the prisoner who broke the other prisoner’s arm. Deliberate indifference entails something more than negligence, but is satisfied by something less than acts or omissions with the intent of causing harm or with knowledge that harm will result. **Farmer v. Brennan 511 U.S. 825 (1994) see summary at the end of the lesson plan.**  A prisoner may be able to bring a state common law tort lawsuit when staff negligently fails to recognize or treat a medical problem. **Negligence** occurs when the actual officer involved did not recognize that there was a risk to inmate health or safety, but should have. It does not matter why the actual officer involved did not recognize the risk (not a competent officer, competent usually, but distracted by health or family issues, etc.); the only issue is whether a reasonable officer would have recognized the risk.  ***K. Living conditions, use of force, and inmate safety***  Prisoner living conditions that are deemed to “fall below the minimal civilized measures of life’s necessities” are considered cruel and unusual punishment under the Eighth Amendment, including infestation by rodents, insufficient heat in the winter, food that does not meet minimal nutrition requirements, etc., if the conditions exist because of deliberate indifference by prison or jail officers or other staff.  The use of force by officers constitutes cruel and unusual punishment if it is excessive and is done “maliciously and sadistically for the very purpose of causing harm” as opposed to its use being a “good faith effort to maintain or restore” order in the facility or good behavior by the prisoner.  Inmates also have a right to protection from assaults by fellow prisoners under the Eighth Amendment. Officers will be held responsible for such an assault only when they display deliberate indifference to a serious risk of harm to the prisoner.    L. ***Searches***  The Fourth Amendment to the U.S. Constitution protects the right of persons to be free from unreasonable search (and seizure). In the prison or jail context, however, this right is severely restricted. Security, safety and orderly management require that officials strictly monitor the activities of prisoners, including the possession and flow of personal property items and contraband.  A prisoner has no legitimate expectation of privacy in his or her cell, and therefore no right protected by the Fourth Amendment when it comes to cell searches. With that said, individual prisoners may not be subjected to cell searches for harassment purposes or there might be a violation of equal protection under the Fourteenth Amendment or of the ban on cruel and unusual punishment under the Eighth Amendment. Instead, cell searches should be conducted only as part of a routine facility or housing unit “shakedown,” on a random basis, or when there is a suspicion that contraband is present.  Body searches present a different issue. A prisoner does retain a legitimate expectation of privacy in his or her person, though not as much as persons “on the street.” Body searches may be relatively unintrusive as in the case of a simple pat search or highly intrusive as in the case of a body cavity search. Pat searches may be conducted without the necessity of any suspicion, but, again, are not to be used for harassment purposes. Strip searches require either reasonable suspicion that contraband is present that cannot be dealt with via a pat search or have to be done routinely for a legitimate security purpose (for example, all prisoners returning from outside work details are to be strip searched). Body cavity searches require probable cause and a warrant issued by a court or probable cause and an emergency that means there is no time to get a warrant. There are also limits on cross gender searches and, for body cavity searches, the requirement that they be conducted by medical personnel. Generally, searches are to be conducted by the same sex unless exigent circumstances exist. Finally, there is a special state law that limits strip searches and body cavity searches of arrestees being admitted to a jail or state juvenile correctional facility. It is found in regulations adopted by the Maine Attorney General’s Office.  ***M. Interrogations***  The Fifth Amendment right against compelled self-incrimination and the Sixth Amendment right to counsel mean that interrogation of a person in custody about a suspected crime must be preceded by the officer reading the Miranda rights and the waiver by the person of those rights. There is no such requirement, however, for an officer who does nothing more than listen to someone who just “blurts out” or otherwise volunteers on his or her own incriminating information. *Questioning initiated by law enforcement officers after a person is taken into custody or otherwise deprived of his or her freedom in any significant way, thus requiring that the person be advised of his or her applicable constitutional rights.*  **.....** Click the link for more information.  **V. Americans with Disabilities Act (3.2.3)**  The Americans with Disabilities Act (ADA) is a federal statute that prohibits [discrimination](http://en.wikipedia.org/wiki/Discrimination) based on [disability](http://en.wikipedia.org/wiki/Disability). There is a state statute, the Maine Human Rights Act (MHRA), which is similar, though not identical. Disability is defined by the ADA as "a physical or mental impairment that substantially limits a major life activity." Some conditions are obviously disabilities, including, but not limited to, blindness, deafness, inability to walk, severe developmental disability, and severe mental illness. Certain conditions are excluded as disabilities, such as substance abuse. Otherwise, the determination of whether any particular condition is a disability is made on a case by case basis.  Oftentimes, prisoners claim disability discrimination when what is really happening is a disagreement with medical treatment. Courts have held, however, that there is no violation of the ADA or the MHRA when it comes to medical treatment unless the prisoner can show that he (or she) was “intentionally treated differently from other inmates because of his disability.” On the other hand, if what a disabled prisoner is requesting is an accommodation (for example, a change to a facility practice or a piece of equipment) to enable him or her to access a program or service of the prison or jail, then the ADA and MHRA require it to be provided so long as the prisoner is qualified for the program or service, either with or without the accommodation, and the accommodation is reasonable and not unduly burdensome. Deliberate indifference to the prisoner’s request could result in a lawsuit.  **VI Civil and Criminal Liability and Immunity (3.2.4)**  The differences between criminal and civil liability were discussed above, as were the differences between deliberate indifference and negligence in civil lawsuits. Another important aspect of civil lawsuits is that, even if the prisoner bringing a lawsuit against a prison or jail officer shows that his or her rights were violated, the officer might still win the lawsuit on the basis of absolute or qualified immunity from liability.  **A. Absolute immunity**  Under the Maine Tort Claims Act, a correctional officer has absolute immunity from liability if the officer is sued for conduct within the course and scope of employment and the function or duty being performed was discretionary in nature. In other words, the function or duty required the officer to make a discretionary decision between at least two choices. As an example, an officer faced with a prisoner who is defying an order to go back to his cell has a choice whether to use force to gain compliance or to call for assistance or to withdraw the order (and perhaps has other choices as well). If that officer chooses to use force and the prisoner suffers an injury as a result, so long as the force was not clearly beyond what an officer could ever be allowed to do, the officer would be immune from a common law tort lawsuit.  **B. Qualified immunity**  A correctional officer has qualified immunity, in other words immunity from a federal civil rights lawsuit, if, as discussed above, the officer is sued for conduct within the course and scope of employment and the function or duty being performed was discretionary in nature, but, in addition, the officer’s conduct did not violate a clearly established federal constitutional or statutory right, or if it did violate such a right, a reasonable officer in the same situation could have believed that what he or she was doing was lawful in light of the factual circumstances and the state of the law at the time.  **C. Maine Department of Corrections (MDOC) regulations**  Regulations are the law, just like constitutional, statutory, and common law, although if there are inconsistencies between them, the constitution prevails over all other law, and statutes prevail over both regulations and the common law.  Maine statute requires that the MDOC adopt regulations for the running of the jails. Under these regulations, the DOC periodically inspects the jails for compliance with both the mandatory and desirable standards for jail operation adopted by the MDOC. The MDOC also investigates jails for compliance with the standards if there is a death in a jail or other serious issue.  The MDOC has also adopted regulations for the operation of its own facilities on selected topics.  **D. Policies and procedures**  Although MDOC policies and procedures are not generally law in and of themselves (except for a few that have been adopted as regulations) and jail policies and procedures are never law in and of themselves, they are all written to be in compliance with the law. Therefore, a correctional officer’s best protection against liability is to always follow the applicable policies and procedures.  Farmer v. Brenan Summary:  Dee Farmer, a [male-to-female transsexual](http://en.wikipedia.org/wiki/Male-to-female_transsexual), was incarcerated with the general male population after being transferred to the [US Penitentiary Terre Haute](http://en.wikipedia.org/wiki/Federal_Correctional_Complex,_Terre_Haute), [Indiana](http://en.wikipedia.org/wiki/Indiana). She was repeatedly raped and beaten by the other inmates and acquired [HIV](http://en.wikipedia.org/wiki/HIV) as a result. Farmer claimed that the prison administration should have known that she was particularly vulnerable to sexual violence.  The majority opinion of the Court agreed that it was the responsibility of prison officials to prevent prisoners from harming each other, to the point where prison officials who were "deliberately indifferent" were ruled liable under the Eighth Amendment. The court did not make prison officials liable for all violence between inmates.  We [...] hold that a prison official may be held liable under the Eighth Amendment for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.  Justice Blackmun's concurring opinion went further, saying that the government was responsible for the conditions inside even if no specific agent of the government had acted in a particularly culpable manner.  Where a legislature refuses to fund a prison adequately, the resulting barbaric conditions should not be immune from constitutional scrutiny simply because no prison official acted culpably. [...] The responsibility for subminimal conditions in any prison inevitably is diffuse, and often borne at least in part, by the legislature. Yet, regardless of what state actor or institution caused the harm and with what intent, the experience of the inmate is the same. A punishment is simply no less cruel or unusual because its harm is unintended. In view of this obvious fact, there is no reason to believe that, in adopting the Eighth Amendment, the Framers intended to prohibit cruel and unusual punishments only when they were inflicted intentionally.  The decision marked the first time the [Supreme Court](http://en.wikipedia.org/wiki/United_States_Supreme_Court) had directly addressed prisoner rape.  **Bibliography**  **Ferdico, John N., Maine Law Enforcement Officer’s Manual (2008-2010 Edition) Swan’s Island Press, Bowdoinham, ME**  **Sleek, Diane, Ass’t Attorney General, Maine Office of the Attorney General, Augusta, Maine.**  **Harburger, Richard, retired Supervising United States Probation Officer, Bangor, Maine.**  **Farmer v. Brennan, 511 U.S. 825 (1994) – U.S. Supreme Court Case**  **CRITERION TEST**  **1.**  The Maine State Court System comprises three parts, they are:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  2. Name two sources of prisoner’s rights:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  3. Name three rights guaranteed by the First Amendment of the U.S. Constitution  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  4. The Fourth Amendment to the U.S. Constitution guarantees protection from:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  5. TRUE\_\_\_\_ FALSE\_\_\_\_\_ The Eighth Amendment to the U.S. Constitution provides protection from cruel and unusual punishment.  6. The right to due process and equal protection derive from what U.S. Constitutional Amendment? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  7. TRUE\_\_\_\_\_ FALSE\_\_\_\_\_ All prisoners no matter where they are held, have a right to medical treatment.  8. TRUE\_\_\_\_\_ FALSE\_\_\_\_\_\_ A prisoner has no legitimate expectation of privacy in his/her cell.  9. The Federal Statute that prohibits discrimination based on disability is called The Americans \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Act.  10. A correctional officer has absolute immunity from liability if the officer is sued for conduct within the course and scope of employment and the function or duty being performed was discretionary in nature, is outlined under the Maine \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Act.  11. TRUE\_\_\_\_\_ FALSE\_\_\_\_\_ Maine statute requires that the Department of Corrections adopt regulations for the operation of the jails in the state.  12. TRUE\_\_\_\_\_ FALSE\_\_\_\_\_\_ A correctional officer’s best protection against liability is to always follow the applicable policies and procedures.  **CRITERION TEST ANSWER SHEET**  **1.**  The Maine State Court System comprises three parts, they are:  Maine District Court  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Maine Superior Court  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Maine Supreme Judicial Court  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  2. Name two sources of prisoner’s rights:  U.S Constitution, Maine Constitution, U.S. and Maine statutes  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  U.S and Maine regulations, Maine common law  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  3. Name three rights guaranteed by the First Amendment of the U.S. Constitution  Religion, free speech, press, assembly , petition  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  4. The Fourth Amendment to the U.S. Constitution guarantees protection from:  Unreasonable searches  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Unreasonable seizures  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  X  5. TRUE\_\_\_\_ FALSE\_\_\_\_\_ The Eighth Amendment to the U.S. Constitution provides protection from cruel and unusual punishment.  6. The right to due process and equal protection derive from what U.S. Constitutional Amendment? \_\_\_14th \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  X  7. TRUE\_\_\_\_\_ FALSE\_\_\_\_\_ All prisoners no matter where they are held, have a right to medical treatment.  X  8. TRUE\_\_\_\_\_ FALSE\_\_\_\_\_\_ A prisoner has no legitimate expectation of privacy in his/her cell.  9. The Federal Statute that prohibits discrimination based on disability is called The Americans \_With Disabilities\_\_\_\_\_\_ Act.  10. A correctional officer has absolute immunity from liability if the officer is sued for conduct within the course and scope of employment and the function or duty being performed was discretionary in nature, is outlined under the Maine \_\_\_\_Tort Claims\_\_\_\_\_\_\_\_\_\_\_\_\_ Act.  X  11. TRUE\_\_\_\_\_ FALSE\_\_\_\_\_ Maine statute requires that the Department of Corrections adopt regulations for the operation of the jails in the state.  X  12. TRUE\_\_\_\_\_ FALSE\_\_\_\_\_\_ A correctional officer’s best protection against liability is to always follow the applicable policies and procedures. |  | 3.2.1              3.2.2                              3.2.3      3.2.4            Summary of Farmer v. Brennan  Note: Important case |
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