KNOW YOUR RIGHTS
FREEDOM OF RELIGION

ACLU National Prison Project

Much of the following information was taken from a book by John Boston and Daniel Manville called the Prisoners' Self-Help Litigation Manual (3d ed. 1995).

Important Note: The law is always evolving. If you have access to a prison law library, it is a good idea to confirm that the cases and statutes cited below are still good law. The date at the bottom of this page indicates when this information sheet was last updated.

The Free Exercise Clause: When is Religious Exercise Protected?
Generally, beliefs that are "sincerely held" and "religious" are protected by the Free Exercise Clause of the First Amendment to the United States Constitution.

Courts often disagree about what qualifies as a religion or a religious belief. So-called "mainstream" belief systems, such as Christianity, Islam and Judaism, are universally understood to be religions. Less well-known or nontraditional faiths, however, have had less success being recognized as religions. While Rastafari, Native American religions, and various Eastern religions have generally been protected, belief systems such as the Church of the New Song, Satanism, the Aryan Nations, and the Five Percenters have often gone unprotected. The Supreme Court has never defined the term "religion." However, in deciding whether something is a religion, lower courts have asked whether the belief system addresses "fundamental and ultimate questions," is "comprehensive in nature," and presents "certain formal and external signs." Africa v. Pennsylvania, 662 F.2d 1025, 1032 (3rd Cir. 1981); see also Dettmer v. Landon, 799 F.2d 929, 931-32 (4th Cir. 1986). If you want a nontraditional belief system to be recognized as a religion, you may have better luck if you can show how your beliefs are similar to other, better-known religions: Does your religion have many members? Any leaders? A holy book? Other artifacts or symbols? Does it believe in a God or gods? Does it believe that life has a purpose? Does it have a story about the origin of people?

In addition to proving that something is a religion, you must also convince prison administrators or a court that your beliefs are sincerely held. In other words, you must really believe it. In deciding whether a belief is sincere, courts sometimes look to how long a person has believed something and how consistently he or she has followed those beliefs. See Sourbeer v. Robinson, 791 F.2d 1094, 1102 (3rd Cir. 1986); Vaughn v. Garrison, 534 F.Supp. 90, 92 (E.D.N.C. 1981). Just because you have not believed something your entire life, or because you have violated your beliefs in the past, does not automatically mean that a court will find that you are insincere. See Reed v. Faulkner, 842 F.2d 960, 963 (7th Cir. 1988); Weir v. Nix, 890 F. Supp. 769, 775-76 (S. D. Iowa 1995). However, if you

recently converted or if you have repeatedly acted in a manner inconsistent with your beliefs, you will probably have a hard time convincing a court that you are sincere.

RFRA and RLUIPA: Restrictions on Religious Activity

You have an absolute right to believe anything you want. You do not, however, always have a constitutional right to do things (or not do things) just because of your religious beliefs.

Under current law, the right of free exercise does not excuse anyone, including prisoners, from complying with a "neutral" rule (one not intended to restrict religion) of "general applicability" (one that applies to everyone in the same way) simply because it requires them to act in a manner inconsistent with their religious beliefs. See Employment Div. v. Smith, 494 U.S. 872, 879 (1990). A rule that applies only to a religious group is not generally applicable. See Church of the Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520, 543 (1993).

A prisoner's right to exercise his or her religion is balanced against the government's interests. The general balancing test is that the government may not impose a substantial burden on the religious exercise of prisoners unless that burden (1) is in furtherance of a *compelling governmental interest*; and (2) is the *least restrictive means* of furthering that interest.

This balancing test applies to federal and District of Columbia prisoners under the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb. O'Bryan v. Bureau of Prisons, 349 F.3d 399, 401 (7th Cir. 2003); Kikimura v. Hurley, 242 F.3d 950, 960 (10th Cir. 2001); see also Gartrell v. Ashcroft, 191 F.Supp.2d 23 (D.D.C. 2002) (prison grooming policies requiring Muslim and Rastafarian prisoners to shave their beards and cut their hair are subject to scrutiny under RFRA). The test applies to state prisoners under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C.S. § 2000cc, et seq. Cutter v. Wilkinson, 125 S.Ct. 2113 (2005).

***Turner v. Safley*: Specific Religious Practices**

Before RFRA and RLUIPA were passed, Courts upheld restrictions on religion as long as the restrictions were "reasonably related to legitimate penological interests." Turner v. Safley, 482 U.S. 78, 89 (1987). The Turner standard did not protect prisoners' religious practice as much as RFRA or RLUIPA do. Therefore, if a religious practice was protected under Turner, it will probably be protected under RFRA or RLUIPA. If the practice was not protected under Turner, prisoners may still have a chance of protecting the practice under RFRA or RLUIPA.

Religious foods

Prisoners have enjoyed a fair amount of success with claims protecting religious dietary practices. Ford v. McGinnis, 352 F.3d 582, 597 (2nd Cir. 2003) ("[A]

prisoner has a right to a diet consistent with his or her religious scruples."); Lomholt v. Holder, 287 F.3d 683 (8th Cir. 2002) (prisoner's allegation that he was punished for religious fasting stated a First Amendment claim).

Courts have often found that inmates have a right to avoid eating foods that are forbidden by their religious beliefs. See Moorish Science Temple of Amer., Inc. v. Smith, 693 F.2d 987, 990 (2nd Cir. 1982). Where reasonable accommodations by the prison can be made to provide religious meals, courts have ordered such diets be made available to inmates. See Ashelman v. Wawrzaszek, 111 F.3d 674, 678 (9th Cir. 1997). Courts have also required accommodations for special religious observances related to meals. See Makin v. Colorado Dep't of Corrections, 183 F.3d 1205 (10th Cir. 1999) (failure to accommodate Muslim fasting requirements during Ramadan infringed on inmate's First Amendment rights); Levitan v. Ashcroft, 281 F.3d 1313 (D.C. Cir. 2002) (reversing summary judgment for defendants in Catholic prisoners' challenge to denial of communion wine). Some courts have rejected efforts by prison officials to charge inmates for religious diets. See Beerheide v. Suthers, 286 F.3d 1179, 1192 (10th Cir. 2002) (finding no rational relationship between penological concerns and a proposed co-payment requirement for inmates requiring kosher diet).

Prisoners requesting highly individualized diets, however, have rarely been successful. See DeHart v. Lehman, 9 F.Supp.2d 539, 543 (E.D. Pa. 1998).

Religious services

Courts have generally protected prisoners from regulations that interfere with their ability to attend religious services or engage in prayer according to their religious beliefs. Mayweathers v. Newland, 258 F.3d 930, 938 (9th Cir. 2001) (upholding injunction against disciplining Muslim prisoners for missing work to attend Friday services); Omar v. Casterline, 288 F.Supp.2d 775, 781 (W.D. La. 2003) (refusal to tell Muslim prisoner the date or time of day to allow him to pray and fast states First Amendment claim); Youngbear v. Thalacker, 174 F.Supp.2d 902 (N.D. Iowa 2001) (one year delay in providing sweat lodge for Native American religious activities violates First Amendment).

Sabbath

Courts have also found that restrictions requiring prisoners to violate the Sabbath or other religious duties violate the First Amendment. McEachin v. McGuinnis, 357 F.3d 197, 204-05 (2nd Cir. 2004) (district court improperly dismissed prisoner's complaint that intentionally giving Muslim prisoner an order while he was praying violated First Amendment); Hayes v. Long, 72 F.3d 70 (8th Cir. 1995) (requiring Muslim prisoner to handle pork violated First Amendment); Murphy v. Carroll, 202 F.Supp.2d 421 (D. Md. 2002) (prison officials' designation of Saturday as cell-cleaning day violated Free Exercise rights of Orthodox Jewish prisoner).

Religious objects
Courts have often concluded that prison officials could generally ban religious objects if they could make a plausible claim that the objects could pose security problems. See Spies v. Voinovich, 173 F.3d 398, 406 (6th Cir. 1999); Mark v. Nix, 983 F.2d 138, 139 (8th Cir. 1993). However, prison officials could not ban some religious objects and not others without any justification. See Sasnett v. Litscher, 197 F.3d 290, 292 (7th Cir. 1999) (Free Exercise Clause violated where prison regulation banned the wearing of Protestant crosses but allowed Catholic rosaries without any reasonable justification for distinction). Courts have also concluded that prison officials are not required to provide religious objects as long as inmates are free to purchase or obtain the objects themselves. See Frank v. Terrell, 858 F.2d 1090, 1091 (5th Cir. 1988).

Religious literature
Courts have concluded that restrictions on a prisoner's right to religious literature violates the First Amendment. Sutton v. Rasheed, 323 F.3d 236 (3rd Cir. 2003).

Personal grooming
Prisoners have rarely been successful in challenging grooming and dress regulations. Courts have generally upheld restrictions on haircuts. See Hines v. South Carolina Dep't of Corrections, 148 F.3d 353, 356 (4th Cir. 1998); Sours v. Long, 978 F.2d 1086, 1087 (8th Cir. 1992). This has also been true with regard to headgear and other religious attire. See Muhammad v. Lynaugh, 966 F.2d 901, 902-03 (5th Cir. 1992); Sutton v. Stewart, 22 F.Supp.2d 1097, 1106 (D. Ariz. 1998).

A prison rule about grooming may, however, be vulnerable to attack if it is not enforced equally against all religions. See Sasnett v. Litscher, 197 F.3d 290, 292 (7th Cir. 1999); Swift v. Lewis, 901 F.2d 730, 731-32 (9th Cir. 1990) (where prison permitted long hair and beards for some religions but not others, it must present evidence justifying this unequal treatment); Wilson v. Moore, 270 F.Supp.2d 1328, 1353 (N.D. Fla. 2003) (Native American prisoners allowed to wear religious headgear only during religious services, while other prisoners were permitted to do so at all times). Additionally, a prison rule regarding grooming may be vulnerable if the prison provides no factual justification for it. See, e.g., Burgin v. Henderson, 536 F.2d 501, 504 (2nd Cir. 1976).