

RELIGIOUS ACCOMMODATIONS IN PRISON: THE STATES' POLICIES V. THE
CIRCUIT COURTS

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DEDICATION

To Jim and Barbara Riley, my parents, who have been my cheering section through my entire academic career. They both have worked so hard their entire lives so their children could have a better life than they did. It is from them that I have learned to never give up and to try to leave the world in better shape than I found it. I also dedicate this to my aunts: Rosemary, Ann, Joan, and Alice. They had to go to work – only the boys could go to college. Thanks for instilling us with your love of learning. Finally, to Aunt Bernie, my rock, my calm, my oasis in the storm...everyone should have an Aunt Bernie.

ABSTRACT

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As a fundamental right of United States citizens, freedom of religion does not stop at the prison door. In the last 50 years, legislation and litigation involving management of religion in prisons has been quite active. This study reviews such activity, showing the history of prison-religion law development, along with the case law in the U.S. Supreme Court and lower courts since the inception of the Religious Land Use and Institutionalized Persons Act. A review of relevant laws and cases, coupled with examination of existing policies from different states, correctional administrators and legislators may derive policy implications for future accommodations of offenders' religious rights.

KEY WORDS: Religious accommodations, Prison, Religious Land Use and Institutionalized Persons Act, Religious property, Religious Assembly, Religious Diet, Religious Grooming, Pat Searches, Strip Searches

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CHAPTER I

Introduction

The founders of the United States built the U.S. Constitution upon a foundation of fundamental rights to include freedom of religious expression (Sidhu, 2012). They enshrined this right in the First Amendment of the U.S. Constitution (U.S. Const. amend. I). Many immigrants came to the United States for just that reason, to practice religion freely – without fear of persecution or hindrance. Over the years, the issue of religion freedom has remained a strongly protected right and a hotly contested topic. Cases involving prayer in schools, religious items at public buildings, and public funding for religion related programs have all made the headlines in recent years. Such attention indicates the significance of this right to the average American.

When an individual comes into the criminal justice system, things change. “Prisoners are often not afforded the same rights as civilians, and those diminished rights have been held to include restrictions on their religious freedoms” (Kao, 2005, p. 1). Courts attempt to balance an offender’s rights against the rights of society to be free from whatever behavior placed the offender in the criminal justice system. Often, this balancing act causes courts to modify the rights of the offender in a diminishing sense. The rights of the average American to peaceably assemble, speak freely, and freely exercise religion do not apply without reservation to the incarcerated individual.

Religion can make a big difference in an offender’s life (Johnson, 2012). Since abandoning the “Hands-Off” Doctrine, the courts’ philosophy is that offenders do not give up all constitutional rights (Seymour, 2006). This change in philosophy has had a large effect on how prisons manage their offenders. Several state systems have changed

their policies because of, or in anticipation of, a lawsuit (e.g., *Basra v. Cate*, 2011; *Couch v. Jabe*, 2012). Prison systems in the U.S. have policies covering the spectrum from conservative to liberal religious accommodation policies. Clemmer (1958) defined accommodation as “that process which ends conflict by mutual agreement or by superior power and skill” (p. 86). In the case of religion in prison, the conflict is the offender’s right to freely practice his or her religion and the prison administration’s duty to safely manage the offenders in their custody.

Society believes prisons should diminish an offender’s rights because they can no longer trust the offender to act in the manner proscribed by society (Nelson, 2009) – therefore, he or she is in prison for deterrence or punishment, depending on the correctional theory to which one ascribes. The public does not want to spend tax dollars on offenders when they can spend them on things such as better schools or roads (Hallett & Johnson, 2014). Prison administrators closely examine each religious accommodation request, trying to consider offenders’ motives to determine if there is some underlying agenda that will cause a potential breach of security.

While many offenders are sincere in their religious beliefs, some attend services as a means to break up the monotony of prison life (Clear, Hardyman, Stout, Lucken, & Dammer, 2000; Clemmer, 1958; Dye, Aday, Farney, & Raley, 2014). Some offenders, however, have used religious claims for nefarious purposes, which have resulted in harm to staff and other offenders. Several years ago, a Texas death row offender pulled the arm of a volunteer chaplain, who was passing a Bible to him through the food slot, into the cell and methodically began to slice the skin from the volunteer’s arm with a razor (“Texas Death Row Inmate,” 2000). In another incident, an offender’s attorney mother

sent a hacksaw blade to him hidden in a Bible (Colloff, 2002). Gang members have used religious assembly as a ruse to carry out activities and communication (Davis, 2000; United States Commission on Civil Rights [USCCR], 2008). Incidents such as these may cause prison officials to question whether an offender's desire to practice his or her religion is sincere or is merely a means to attempt to violate the security mission of the prison (USCCR, 2008). They also cause the courts to have a tendency to defer to the expertise and decisions of prison officials in determining if a religious activity would violate a legitimate governmental purpose (Gaubatz, 2005).

Conversely, "Prisoners may have minimal control over their daily routines, but the Supreme Court has clarified that status as a prisoner does not entail forfeiture of all constitutional rights" (Seymour, 2006, p. 538). The deprivation of liberty is the offender's punishment, without stripping of all other rights (DiIulio, 1987). Despite the situations when offenders have used religion for manipulative or dangerous purposes, many offenders are sincere in their beliefs and the exercise of their religion is meaningful to their rehabilitation (Johnson, 2012). There are many converts in prison, a time of rock bottom for numerous individuals. A religious belief may give them hope for a new life (Seymour, 2006).

"Balancing religion is particularly complicated in the prison environment" (Solove, 1996, p. 462). The judiciary branch constantly struggles between the fundamental right of religion expression and the right of society for protection from harmful acts. The issue of religious freedom seems to bring out the passion in people. Throughout the last 50 years, legislation and litigation have been quite active in the area of religious freedom in prisons. The pendulum in case law has swung from tests of strict

scrutiny to rational basis review and back again. Historical evidence indicates many stakeholders are not always going to agree on how prison administrators should manage religious accommodations in prisons. A review of the literature on this topic shows this to be the case. Even though the majority of law reviews had the same basic concepts – the protection of individual rights to practice religion, many did not agree on how to make it happen.

The majority of the examined journal articles showed concern for the rights of the prisoners rather than concern for the upholding of prison regulations. One author wrote, “The Court has tended to side with the government against individuals’ claims that a particular law burdens the free exercise of religion” (Seymour, 2006, p. 536). Another wrote, “The government cannot completely deny a prisoner’s constitutional right to exercise religion, and it cannot impinge upon a prisoner’s right to religious exercise without a rational penological justification” (Chiu, 2004, p. 999). Contrary to the beliefs of scholars, it was difficult to find any entity, either court or prison system, which did not believe prisoners have certain rights to practice their religious beliefs. The scholars, courts, and prison systems, however, were vastly different in their opinions as to how the exercise of these religious beliefs can be safely managed in a prison setting. The courts appeared to believe, for the most part, that prison systems only have to show their governmental interest in an infringing regulation is necessary and of greater weight than the rights of the offender (Seymour, 2006).

Scholars suggest different options for managing religion. They agree religion has a place of primary importance in the rehabilitation of prisoners. As Gaubatz wrote, there is “strong evidence that spiritual development and religious practice promote

rehabilitation and reduce recidivism in inmates” (Gaubatz, 2005, p. 511). Administrators weigh that importance, however, against the other factors in place at the time of religious exercise. Some suggest, “correctional facility officials should defer to religious leaders in determining whether an inmate is a bona-fide member of a recognized religious group” (Davis, 2000, p. 776). Others have suggested “correctional facility officials should assume all inmates claiming individualized religious beliefs are sincere in those beliefs, and provide such inmates with a uniform set of religious privileges” (Davis, 2000, p. 785). Other suggestions were more specific, such as one author’s opinion on how the Texas Department of Criminal Justice should change its grooming policies to accommodate religious beliefs (Gaubatz, 2005, p. 549), something that later occurred as a result of judicial decision (*Holt v. Hobbs*, 2015). The *Harvard Law Review* suggested following the examples of Texas and Arizona by recording the religious preferences of offenders exactly as reported to avoid infringement on religious freedom (“Developments of the Law,” 2002). Other prison systems use categories of traditional religions and “other.”

This study will address the rights of the prisoner to practice his or her religion, and case law leading up to and since the inception of the Religious Land Use and Institutionalized Persons Act (RLUIPA). Chapter II examines the history of the law regarding religion in prisons as well as the current governing law. Chapter III reviews the research of other scholars on religious accommodations in prison and the role religion plays in the lives of offenders. Chapter IV discusses the methodology of the current research. Chapter V is a summary of the U.S. state and federal prison systems’ policies on religious accommodation. Chapter VI explores the U.S. Courts of Appeals cases on

the areas of religious accommodations in prison for property, assembly, diet, grooming, pat and strip searches, and general exercise of religious freedom cases. Chapter VII analyzes the case law as compared to prison policies.

CHAPTER II

The Law and Religion in Prisons

The Road to RLUIPA

Any discussion of religion in prisons must begin with why society even needs to be concerned with the rights of prisoners to exercise their religious beliefs. While there is a school of thought that believes “out of sight, out of mind” for incarcerated individuals, the U.S. Supreme Court has ruled, “Prison walls do not form a barrier separating prison inmates from the protections of the Constitution” (*Turner v. Safley*, 1987, p. 84). A prisoner does not lose all rights merely by virtue of his or her incarceration. Nonetheless, the U.S. Supreme Court has tended to rule in favor of prison systems in matters weighing religious freedom against institutional security, but only if any infringement was reasonable and consistent. That has not always been the case.

There are many who would argue the encouragement of religious involvement of any type serves penological and rehabilitative interests. “It is neither in the interest of inmates nor in the interest of society as a whole to force prisoners to go without the humanizing benefits that religion can provide” (Welty, 1998, p. 604). Most religious dogmas espouse some inclusion of personal responsibility and code of ethics. The involvement in religious programming also provides offenders with another outlet of personal expression, one of the few opportunities in a correctional setting. “Religion can play a dual role in rehabilitating the inmate while simultaneously enabling the prison administrative apparatus to guard against the inmate’s regression” (Seymour, 2006, p. 544).

For many years, the courts took a deferential stand towards the judgment of prison administrators (Kao, 2005). “The Court repeatedly refused to ‘substitute [its] judgment on...difficult and sensitive matters of institutional administration’” (Seymour, 1984, p. 539 quoting *Block v. Rutherford*, 1984, p. 599). There may be arguments both for and against deference towards prison administrators. In most cases, judges do not have the same knowledge about prison practices as do prison administrators (Solove, 1996). On the other hand, “Deference dilutes a court’s critical powers; the more deferential a court becomes, the less it investigates the regulation and the more it accepts the opinions of those who designed the regulation” (Solove, 1996, p. 481).

Regardless, prior to the latter half of the 19th century, the courts’ deference to prison administrators existed. Initially, this deference manifested itself in a “Hands-Off” Doctrine (Kao, 2005). The courts based this philosophy on five beliefs. First, the courts considered the prison systems a part of the executive branch of government (Collins, 2004). Due to the separation of powers, the judicial branch was reluctant to meddle in executive branch affairs (Frey, 1997).

Second, the courts believed prison administrators had the best knowledge and expertise to manage their institutions (Solove, 1996). The courts did not believe judges had the knowledge and expertise to scrutinize decisions made by prison administrators. The courts believed their intervention could cause harm to the prison systems by undermining security and discipline (Collins, 2004).

Third, in 1871, *Ruffin v. Commonwealth* ruled that offenders were “slaves of the state” (p. 796). Offenders lost their rights once they were convicted and became incarcerated (Collins, 2004). The infringement on offenders’ rights spread to the

fundamental right of religious freedom (Kao, 2005). With the “slave of the state” viewpoint, any prison official could deny an offender’s religious accommodations for any or no reason (Rom, 2009). Fourth, prisons were not a matter of great importance to society. This judicial period was before the days of internet and highlighting prisons as a media focal point. Once incarcerated, offenders and their daily lives became mostly invisible to the general public (Del Carmen, Ritter & Witt, 2008). Finally, due to the concept of federalism, federal courts stayed out of the affairs of state prison systems (Collins, 2004).

With *Sherbert v. Verner* in 1963, the Court made a step away from the “Hands-Off” Doctrine and ruled “the Free Exercise Clause necessitated a strict scrutiny review of neutral, generally applicable laws that impose burdens on religious exercise” (Chiu, 2004, p. 1003). Thus, essentially any law burdening religious exercise was subject to strict scrutiny. The *Sherbert* Court also defined substantial burden, stating it “is present when an individual is required to ‘choose between following the precepts of her religion...or the other’” (*Sherbert v. Verner*, 1963, as cited in Gaubatz, 2005, p. 506 – 507). Any law or regulation that was a substantial burden to religious exercise was unconstitutional unless it furthered a compelling governmental interest, and was the least restrictive means to achieve that interest (*Sherbert v. Verner*, 1963).

The U.S. Supreme Court further reduced the “Hands-Off” approach in *Cooper v. Pate* (1964), when the Court determined the offender’s complaint regarding the denial to purchase religious publications and prison administrator’s retaliation due to the offender’s religious beliefs was a 42 U.S.C. §1983 cause of action. The importance of

this case was to signal to the federal courts that §1983 was a remedy when correctional officials violated prisoners' constitutional rights.

Although this case was important in giving offenders a voice at the highest court and showing a shift from the "Hands-Off" Doctrine (Blischak, 1988), the ruling in *Cooper* did not set forth any standards of evaluating the constitutionality of regulations infringing on offenders' constitutional rights (Kao, 2005). Nonetheless, Kao noted this movement towards eliminating the "Hands-Off" Doctrine was important because "it intended to break down the walls formed to separate prisoners from their constitutional rights" (2005, p. 30). Despite the Court's decision in *Cooper*, the judicial branch continued with the philosophy that prison administrators were best suited to determine whether a religious accommodation would infringe upon a compelling governmental interest (Gaubatz, 2005).

Cruz v. Beto (1972) continued with this trend when the Court ruled that prison administrators could not deny an offender a reasonable opportunity to exercise his religious freedom if they afforded other offenders that same right. Prison officials had argued that the offender, a Buddhist, was causing conflict with other offenders by his religious expression (DiIulio, 1987). "In the 15 years following *Cruz v. Beto*, prisoners enjoyed the highest level of protection for their First Amendment religious exercise rights in the nation's history" (Gaubatz, 2005, p. 507). In 1972, the Court went further in its decision in *Wisconsin v. Yoder* (1972) ruling, "only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion" (p. 215).

During the 1970's, the U.S. Supreme Court fluctuated on the issue of prison rights. In *Procunier v. Martinez* (1974), the Court first put in place a standard for evaluating the constitutionality of a prison regulation. This case highlighted “concerned prisoners’ challenges to the constitutionality of rules that restricted their personal correspondence and gave prison officials the right to screen both incoming and outgoing mail” (Blischak, 1988, p. 461). The “prison policy must support an important governmental interest” and “it must not burden prisoners beyond what is necessary to promote that interest” (*Procunier v. Martinez*, 1974, as cited in Kao, 2005, p. 7). The Court also wrote, “When a prison regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights” (*Procunier v. Martinez*, 1974, p. 405 – 406).

After this brief bout of dabbling in the protection of prisoners’ rights, the U.S. Supreme Court reversed its course with *Pell v. Procunier* (1974) and *Bell v. Wolfish* (1979). In both of these cases, the standard of deference to the expertise of prison administrators was again applied (Seymour, 2006). In *Pell* (1974), the Court ruled internal security was the most important objective of the prison system and courts should uphold regulations if another alternate means to achieve the prisoner’s religious expression and communication existed. “The Supreme Court upheld prison regulations forbidding media interviews with individual inmates” (Blischak, 1988, p. 462). The Court balanced the rights of the offender against the compelling governmental interests and also found the prison accommodated the offenders’ religious exercise by alternative means (Kao, 2005). In *Bell* (1979), the Court ruled the prison’s regulations did not

amount to punishment of pre-trial detainees, but instead met the purpose of maintaining the goals of safety and security.

Between *Pell* and *Bell*, *Jones v. North Carolina Prisoners' Union* (1977) established the rational basis standard for review of prison regulations. In this case, the prison administrators met the standard because they showed a reasonable relationship between the regulation and the rational goal of the prison. The offenders wanted to solicit other prisoners to join the union. Prison administrators had a prohibition against offenders sending mail to other offenders encouraging them to join. The Court ruled the offenders had other reasonable means with which to communicate and thus, the regulation was constitutional (Kao, 2005). Unlike strict scrutiny, this case indicated the government prevailed if administrators showed a rational relationship between the regulation and the legitimate mission of the prison. The rational basis standard swung back to the deference of prison officials with a less stringent standard than strict scrutiny.

The Court further solidified the rational basis standard in *Turner v. Safley* (1987). While the Court noted, "Prison walls do not form a barrier separating prison inmates from the protections of the Constitution" (*Turner v. Safley*, 1987, p. 84), they also determined prison officials did not have to spend large amounts of time and resources attempting every possible alternative to meet an offender's religious accommodations (Nelson, 2009; Seymour, 2006). The Court developed a new test for the constitutionality of prison regulations that impinged on offenders' free exercise of their religious freedom. Based on four prongs, Table 1 presents a summary of the *Turner* test. Plaintiffs are not required to meet all four factors, but the court should consider the factors relevant in

cases where the courts must decide the constitutionality of a prison regulation that infringes on an offender's rights (Kao, 2005).

Table 1

Turner Prongs: Turner v. Safley, 482 U.S. 78 (1987) (Rational basis)

#	Prong
1	The prison regulation must be justified by a legitimate government interest
2	The prison system must offer an alternative means to exercise the right
3	There must be consideration of the effect any accommodation of the right would have on the prison system's effective management of its offenders and the impact on available resources
4	There must be consideration of any alternative that provides full accommodation of the right with a minimum cost to prison operations/efficiency, and the rule cannot be an exaggerated response

One author saw *Turner* as a step back for prisoners' rights, "The modern day application of the *Turner* test is a restoration of the hands-off doctrine" (Kao, 2005, p. 32). The author believed the Court's test would lead to discretionary, and implicitly inconsistent, rulings by the lower courts. A further criticism was "the entire burden is on the plaintiff to present evidence to negate all assumptions of the prison regulations' validity. The correctional administrators merely have to provide a legitimate penological interest such as security or budget concerns" (Kao, 2005, p. 41). Another author emphasized the importance of the decision, writing, "Surely *Turner* remains the most influential of all prisoners' rights cases" (Robertson, 2006, p. 123). These factors remain

as “good” case law and, if Congress were to repeal the current governing law (RLUIPA), these factors would again be the primary test of a state prison’s religious accommodation regulation’s acceptability (Kao, 2005).

O’Lone v. Estate of Shabazz (1987) first used the *Turner* test to determine if a rule governing an offender’s exercise of religion was constitutional. The Court ruled prison administrators could infringe upon a prisoner’s right to free exercise if the infringement related to a legitimate penological interest. It was a landmark case as it applied the reasonable basis test to religious regulations in prison and completely abandoned the strict scrutiny test (Kao, 2005). *Shabazz* “...addressed the constitutionality of prison regulations that prevented Muslim inmates from absenting themselves from a work crew to attend a Friday daytime prayer” (Robertson, 2008, p. 273). In this case, the Court reasoned prison administrators needed the use of rational basis to be proactive and innovative with security needs (Seymour, 2006). Kao (2005) saw *Shabazz* as a continuation of the courts’ tendency to defer to the expertise of prison administrators. Blischak showed concern regarding the trend, writing, “The clear message in *Shabazz*, therefore, was that the Constitution permits prison officials to substantially restrict or absolutely deprive prisoners’ religious practices with only minimal justification” (Blischak, 1988, p. 478). The argument of security frequently prevailed over Free Exercise arguments (Becci & Dubler, 2017).

The Court modified the use of reasonable basis in *Employment Division v. Smith* (1990). In *Smith*, the U.S. Supreme Court looked at laws that prohibited a religious practice. The case was applicable to all religious freedom cases, not just those in prisons. In *Smith*, the Court held religious exercise burdened by a “neutral and generally

applicable law” (*Employment v. Smith*, 1990, as cited in Gaubatz, 2005, p. 509) was sufficiently constitutional under rational basis scrutiny, but strict scrutiny was required for any law that impeded a specific religious practice. For *Smith*, the use of peyote was illegal for everyone, not just members of Native American religions, and thus, the regulation was not unconstitutional (Seymour, 2006).

Seeing it as a weakening of a fundamental constitutional right, the U.S. Congress took exception with the U.S. Supreme Court’s ruling in *Smith* and passed the Religious Freedom Restoration Act (RFRA) in 1993. “Congress believed that the *Smith* decision would cause every religion in America to suffer” (Frey, 1997, p. 764). Congress wanted any infringement on the fundamental constitutional rights of an individual to be required to withstand strict scrutiny. “Accordingly, RFRA mandated that cases involving prisoners’ religious free exercise be reviewed with the same strict scrutiny as regular free exercise cases, promising prisoners a significant increase in the protection of their free exercise rights” (Solove, 1996, p. 471). This Act essentially invalidated *Smith* and mandated courts to use strict scrutiny when evaluating any Free Exercise Clause cases (Solove, 1996). As noted by Turner, this made it much more difficult for prison systems to prevail in court challenges, as a compelling interest was much harder to prove than a rational basis for a regulation (Turner, R., 2009). Prison administrators seemingly anticipated difficulty. Prior to RFRA’s passage, “all fifty state prison directors signed a letter asking Congress not to require strict scrutiny in the prison context” (Welty, 1998, p. 616).

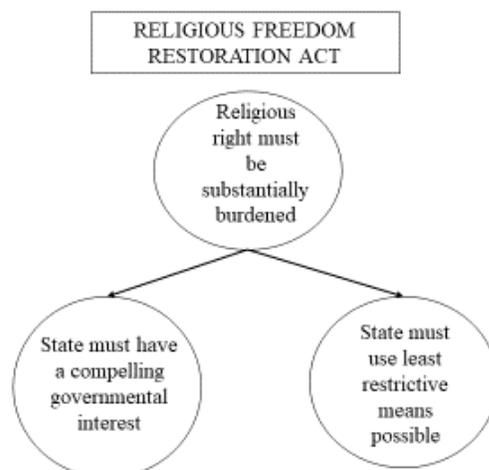


Figure 1. RFRA. Strict Scrutiny

The RFRA was unsuccessful and only lasted four years. The courts defied Congress in their rulings. “Lower courts...gutted the protections afforded to prisoners’ religious exercise under the ...RFRA...in the four years it applied to the states (before being held unconstitutional), ruling against prisoners in over 90% of the cases” (Gaubatz, 2005, p. 504). For an offender to prevail under RFRA, he or she had to show the prison regulation impeded the practice of a “central tenet” of the offender’s religious belief. The standard was so onerous; many offenders could not meet it (Solove, 1996).

One problem with RFRA as noted by Frey (1997) was the lack of guidance regarding what constituted a substantial burden. Courts were thrust into the position of determining what constituted a religion; the impossible task of assessing the depth of an offender’s religious sincerity; and calculating how much a regulation burdened an offender’s free exercise of religion (Marshall, 2014). The Seventh Circuit Court of Appeals addressed this issue in *Mack v. O’Leary* (1996), a case where an offender

brought suit alleging his religious exercise was substantially burdened by the prison's failure to accommodate his beliefs during Ramadan (Frey, 1997). The court ruled the prison's accommodation of the offender was reasonable, but more importantly, set forth a definition of substantial burden. The Seventh Circuit defined a substantial burden on religious exercise as one "that forces adherents of a religion to refrain from religiously motivated conduct, inhibits or constrains conduct or expression that manifests a central tenet of a person's religious beliefs, or compels conduct or expression that is contrary to those beliefs" (*Mack v. O'Leary*, 1996, p. 1179, as cited in Frey, 1997, p. 768).

Under *Turner* and RFRA, the offender had to show his or her religious belief was sincere. As noted by Davis (2000), insincere religious beliefs have no protection under *Turner*. The measurement of sincerity was subjective as noted by Solove who wrote, "Courts can use sincerity as a proxy for injecting their own prejudices and ignorance into the balance" (Solove, 1996, p. 488). How can courts measure an offender's sincerity? It was difficult because of course the judge could not pry open an offender's brain to make a determination. Nonetheless, several federal court cases addressed the issue of sincerity of religious beliefs. The result was a morass of opinions without clarity on what constituted "sincerity."

In *DeHart v. Horn* (2000), "the court held that only beliefs that are both 'sincerely held' and 'religious in nature' are allowed constitutional protection" (Kao, 2005, p. 20). In this case, *Turner* was expanded so that offenders did not have to provide evidence that their religious exercise was mandatory or usual. The sincerity and nature of the exercise was enough to reach the threshold required for the *Turner* analysis (Kao, 2005). The Second Circuit Court addressed the issue of religious sincerity in 1999 (*Jackson v.*

Mann), when the court ruled, “an inmate need not be a member of a religious group to be considered sincere in his or her religious beliefs” (Davis, 2000, p. 774). With different judicial interpretations, proving sincerity remained a difficult task for an offender (Glyn, 2009).

The ultimate rebuttal came from *City of Boerne v. Flores* (1997), when the U.S. Supreme Court declared RFRA unconstitutional. The Court ruled Congress had exceeded its Fourteenth Amendment authority “by defining rights instead of enforcing them” (*City of Boerne v. Flores*, 1997, as cited in Solove, 1996, p. 510). The Court held RFRA was only unconstitutional in its application to the states, not to the federal (e.g., the Federal Bureau of Prisons) government (*Gonzales v. O Centro Espirita Beneficente União do Vegetal*, 2006).

To continue the tug of war between the two branches of government, Congress then passed RLUIPA in 2000 (Larson, 2007). RLUIPA is the current governing law and applies to all state-incarcerated individuals who are exercising their religious freedom (Chiu, 2004). “RLUIPA was designed to overturn *City of Boerne* and mandated that courts use strict scrutiny rather than the *Turner* test when evaluating inmates’ religious claims” (Seymour, 2006, p. 542). In response to the court rulings that had undermined the Congressional intent for RFRA, Congress was diligent in its building of RLUIPA to ensure it would protect the rights of prisoners to exercise religious freedom. Congress did this by designing RLUIPA with consideration of the U.S. Supreme Court rulings regarding religious exercise protected under the Free Exercise Clause (Gaubatz, 2005). To avoid the pitfalls of RFRA regarding Congressional powers, “rather than relying on the Fourteenth Amendment in enacting RLUIPA’s prisoner provisions, Congress invoked

its Spending and Commerce Clause powers” (Gaubatz, 2005, p. 535). The states were required to follow RLUIPA as a condition of receiving federal funds (Gaubatz, 2005; Schnizler, 2006).

RLUIPA differs from RFRA in that it does not require a practice or exercise to be required or central to a religion (Gaubatz, 2005; Glyn, 2005). As noted in *Thomas v. Review Board of Indiana Employment Security Division* (1981), there is not always agreement within a religion about its practices (Gaubatz, 2005; Nelson, 2009).

“Intrafaith differences...are not uncommon among followers of a particular creed, and the judicial process is singularly ill equipped to resolve such differences” (*Thomas v. Review Board of Indiana Employment Security Division*, 1981, p. 707). As Solove wrote, religions rarely have mandatory practices and frequently allow exceptions to practices for various reasons such as health, age, and other similar factors (1996). This was important because the majority of the RFRA-era cases which held no substantial burden was proved, did so because the courts found the practice at issue was not mandated (Gaubatz, 2005). “Unlike the ‘central tenet’ test employed by many courts under RFRA, RLUIPA encourages an effort that values religious experience, requiring that the judiciary engage in a balancing test that considers the perspective of the religious adherent” (Gower, 2004, p. 20). Congress created a bridge between the application of RFRA for federal prisons, and RLUIPA for state prisons. In RLUIPA, the legislatures clarified that even for RFRA, a religious practice does not have to be a central tenet to the religion (Marshall, 2014).

RLUIPA differs from *Turner* in that it is not as deferential to prison administrations. The law prohibits the imposition of substantial burdens unless they are “the least restrictive means of furthering a compelling government interest” (Chiu, 2004,

p. 1000). Walston (2001) took the pro-deference stance and believed RLUIPA did not appropriately give it credence. “RLUIPA burdens state penal authorities, which have traditionally been subject to exclusive State regulation as long as a deferential reasonableness standard is met, with the arduous burden of justifying prison regulations under strict scrutiny” (Walston, 2001, p. 504).

The U.S. Supreme Court examined the issue of deference in the oral arguments of *Holt v. Hobbs* (2015). The justices asked attorneys for both sides about the level of deference that should be given to prison administrators. In her concurring opinion, Justice Sonia Sotomayor clarified her stance on deference:

I do not understand the Court's opinion to preclude deferring to prison officials' reasoning when that deference is due – that is, when prison officials offer a plausible explanation for their chosen policy that is supported by whatever evidence is reasonably available to them. But the deference that must be "extend[ed to] the experience and expertise of prison administrators does not extend so far that prison officials may declare a compelling governmental interest by fiat." *Yellowbear v. Lampert*, 741 F. 3d 48, 59 (CA10 2014). Indeed, prison policies "grounded on mere speculation" are exactly the ones that motivated Congress to enact RLUIPA. 106 Cong. Rec. 16699 (2000) (quoting S. Rep. No. 103-111, 10 (1993) (*Holt v. Hobbs*, 2015, p. 867).

In summary, the perception is that RLUIPA places a stronger burden on prison systems to avoid impinging on offenders' religious exercise (Chiu, 2004). Yet another perception is RLUIPA is an additional way in which prison administrators seek to

“meddle” in what should be a private right (Becci & Dubler, 2017, p. 241). A visual portrait of the road to RLUIPA is illustrated in Figure 2.

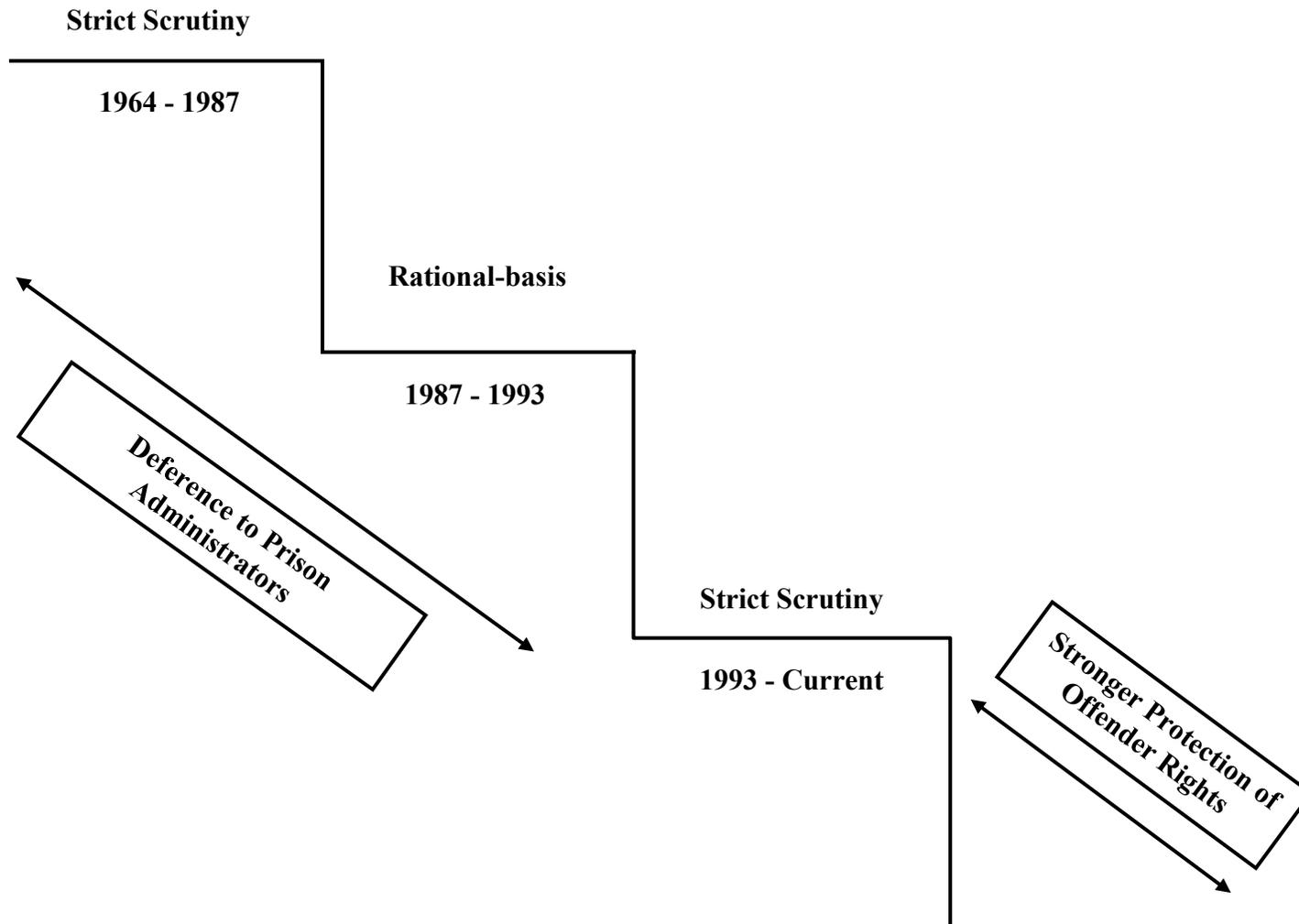


Figure 2. The Road to RLUIPA.

Governing Law

There are several laws used by offenders to base their claims for religious freedoms in prison. The First, Fourth, Eighth, and Fourteenth Amendments have all been used. “The Law relating to inmates’ religious rights derives from four basic sources: (i) the U.S. Constitution and state constitutions, (ii) federal and state legislation, (iii) federal and state case law, and (iv) administrative regulations, policies and procedures” (Turner, R., 2009, p. 26). Of these, the First Amendment is primary. The First Amendment of the United States Constitution states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances” (U.S. Const. amend. I). It is on the foundation of this law that the courts base all other measures regarding religious rights in the United States.

The First Amendment’s free exercise clause allows a person to hold whatever religious beliefs he or she wants, and to exercise that belief by attending religious services, praying in public or in private, proselytizing or wearing religious clothing such as yarmulkes or headscarves. Also included in the free exercise clause is the right not to believe in any religion, and the right not to participate in religious activities. (*The United States Constitution: What It Says*, 2005, p. 39)

Courts applied the First Amendment only to federal cases until 1940 when *Cantwell v. Connecticut* made it applicable to the states through the Fourteenth Amendment (Cookson, 2003).

Building on the First Amendment, but applying specifically to prisoners and the First Amendment right of religious freedom, RLUIPA states:

(a) General rule. No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997), even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person –

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(b) Scope of application. This section applies in any case in which –

(1) the substantial burden is imposed in a program or activity that received Federal financial assistance; or

(2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes (Religious Land Use and Institutionalized Persons Act, 2000).

A summarization of the Act appears in Figure 3 below:

Religious Land Use and Institutionalized Persons Act (2000)

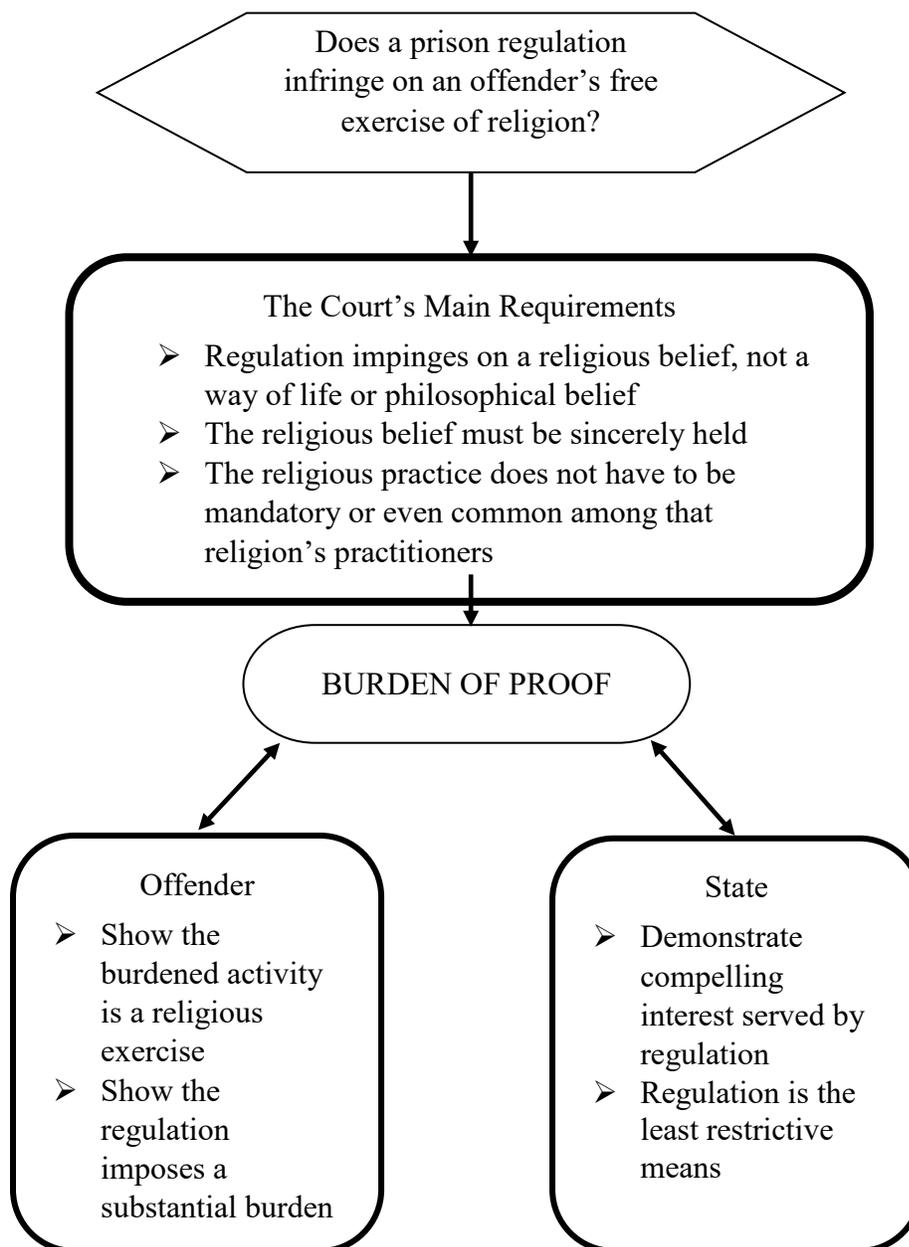


Figure 3. Religious Land Use and Institutionalized Persons Act (2000). Note: Relies on Spending and Commerce Clauses of the U.S. Constitution (Strict Scrutiny)

If a prisoner fails to demonstrate by appropriate evidence that there is a substantial burden on his or her religious exercise, RLUIPA does not apply” (Gaubatz, 2005, p. 514 – 515). The exercise must be religious and not merely a lifestyle choice.

For the government, the State must prove the compelling interest in the goal achieved by the regulation, as well as show there is not some less restrictive path that can achieve the same result (Gaubatz, 2005). “In contrast to the deferential *Turner* standard, RLUIPA prohibits government officials from imposing substantial burdens on the religious exercise of institutionalized person unless the burdens are the least restrictive means of furthering a compelling interest” (Chiu, 2004, p. 1001).

It is worth noting one court’s opinion that, “RLUIPA guarantees prisoners greater freedom to engage in religious conduct than does the First Amendment” (*Meyer v. Teslik*, 2006, p. 988). Another author made the comment, “in principle, inmate religious claims against states are given more solicitous consideration than are nonprisoner religious claims against states” (“Developments of the Law,” 2002, p. 1985). The U.S. Supreme Court examined RLUIPA in *Cutter v. Wilkinson* (2005) after Ohio offenders claimed their free religious exercise was restricted. The Court found that RLUIPA was not a violation of the Establishment Clause of the Fourteenth Amendment (Farmer, 2005).

CHAPTER III

Religion in Prison

Deprivation theory partially explains the prevalence of religion in prison (Dammer, 2002). Prison separates offenders from their community. The anesthetizing effects of drugs and alcohol keeping the pain of their lives at bay are gone. For many, their lives are at rock bottom (Maruna, Wilson, & Curran, 2006). Offenders turn to religion for several reasons. They may believe it will help them with their parole chances (Clear, et al., 2000; Dammer, 2002; Maruna et al., 2006). They may believe it will help them live a better life upon release and escape their criminal past (Seymour, 2006). They may use religion as a way to assuage their guilt over their crimes and the effects of their incarceration on their families (Clear, et al., 2000). Their belief in a higher power may become their only coping strategy for the time they are incarcerated (Dammer, 2002; Hamm, 2007; Dye, et al., 2014). Others affiliate with a religion as a means of security or protection (Clear, et al., 2000; Dammer, 2002; Hamm, 2007; Pass, 1999). One study found 49 percent of surveyed offenders attended religious services at least once a year (O'Connor & Perreyclear, 2002). Some offenders however, consider pious offenders as weak (Clear, et al., 2000), and irritating with their proselytizing (Clemmer, 1958).

Although many are cynical about offenders' sincerity in religion and make derisive comments about "jailhouse conversions" (Clear, et al., 2000; Clemmer, 1958; Hallett, 2017; Hamm, 2007; Johnson, 2006; Maruna et al., 2006), there are many famous examples of offenders who have significantly changed their lives because of religion in prison. Texas executed Karla Faye Tucker in 1998 in Texas despite many appeals for clemency based on her widely documented religious conversion (Price, 2006). Watergate

figure Charles Colson not only experienced a religious conversion in prison, but also formed the Prison Fellowship Program upon his release to help other offenders achieve the same spiritual awakening (Dammer, 2002). Famed civil rights activist Malcolm X also experienced a life-altering religious transformation (Gerwig-Moore, 2012).

The majority of offenders in federal prisons identify as affiliated with a Christian-based faith (USCCR, 2008). Nonetheless, the U.S. Commission on Civil Rights (2008) reported that non-Christian religions were present in prison populations at a higher percentage than were present in the general public. This may be due to the co-mingling of offenders, often for the first time, with others from different cultures and value systems. It may also be due to the contemplation of philosophical questions at a time when an offender is sober for the first time in many years. Despite the overrepresentation of non-Christian faiths, the Commission (2008) also found that prison administrative remedies such as grievances only contained a small percentage concerned with religious matters. Of the small number of grievances however, the majority were from offenders identifying with non-Christian religious faiths.

During the review of the literature, scholars universally agreed religion in prison life was generally beneficial. They only differed in their opinions regarding how prison officials should accommodate these religious beliefs (Kao, 2005; Lupu & Tuttle, 2011). Some officials believe prison is a place for offenders to learn how to conform to rules and regulations (Frey, 1997; McMullin, 2005). Some administrators believe prisons should not make exceptions to rules and regulations because offenders will only use religious claims to manipulate for extra items and privileges not afforded other offenders (Frey, 1997; Hamm, 2007; Nelson, 2009). Accommodations can be expensive in terms of

resources as well as security risks (Davis, 2000), and were the main reasons for denials (USCCR, 2008). Other administrators believe involvement in religious activities reduces the likelihood of institutional misconduct (Glyn, 2009; O'Connor & Perreyclear, 2002; Rarric, 2002). Most of the literature focused on the positive aspects of religious involvement in prison and bemoaned the fact that a few spectacularly bad incidents had created hardship for those who were sincere in their beliefs (Gaubatz, 2005; Glyn, 2009).

Gender and Religion in Prison

There are many fundamental differences between men and women in prison (Jiang & Winfree, 2006). There are also fundamental differences between men and women in the ways they practice religion (Stark, 2002). Female offenders are more likely than male offenders to participate in religious activities (Levitt & Loper, 2009). Women are generally allowed to have gender-specific property in prison such as makeup, feminine care products, and their own underclothing. Male offenders, who comprise the vast majority of the prison population, have different property allowances (Arkles, 2012).

Regarding religious accommodations however, the differences between male and female are very small. The main difference is grooming. As will be discussed, women are allowed much more freedom with their hair length than male offenders (Nelson, 2009, citing *Warsoldier v. Woodford*, 2005). Prison administrators argue this policy difference is because female offenders generally have less institutional misconduct and thus, are less likely to be a security risk (Trulson, DeLisi, & Marquardt, 2011). Several prison systems require male offenders to shave, while female offenders generally do not have facial hair to the same extent as male offenders. Religious property, assembly, and diet vary little between male and female offenders. More resources for specialized diets

and meeting space are typically available to male offenders simply because they are the vast majority of the prison population. As one prison administrator frequently lamented, “People always forget about the women” (J. Cockrell, personal communication, July 24, 2013).

Property

Many religions have items that are symbolic of central religious beliefs or used in religious ceremonies. Prison cells and dormitory cubicles are small spaces with little room for storage (Schnizler, 2006). Additionally, prison officials scrutinize every piece of property an offender maintains in his or her possession, to ensure the item will not be a risk to security (Rarric, 2002). Finally, prison officials must consider equal protection of offenders (Kao, 2005; Seymour, 2006; Valley, 2007). An offender should not have to belong to a specific religion to be able to have a valued item of property if allowed for other offenders (Glyn, 2009; Johnson, 2006). Navigation of these issues can be tricky for prison officials and the courts. In a 2012 survey of prison chaplains, 82 percent of respondents estimated that inmate requests for religious books or texts were usually approved, but only 51 percent estimated religious items or clothing requests were usually approved (Pew Research Center, 2012).

The use of items to practice religious beliefs has ancient roots. People use clothing, statutes, symbols, jewelry, and other types of items to symbolize a part of their religion’s beliefs or to represent their affiliation with the religion (Davis, 2000). Others use items such as the Bible or a prayer rug to practice their religion (Gaubatz, 2005). Some items are common such as a rosary or yarmulke (Gaubatz, 2005). Others are not as common, such as runestones or tarot cards (Glyn, 2009; Johnson, 2006). Examples of

different religious property are listed in Table 2. Some correctional officers have difficulty understanding the significance of property used by an offender for an unfamiliar religious practice (Glyn, 2009).

Table 2

Examples of Religious Practices Requiring Property

Religion	Property
Christianity	Bible
Sunni Islam	Prayer Oil, Kufi ¹ , and Prayer Rug
Native American Nation of Gods and Earth	Buffalo bones, eagle feathers, and peyote Literature
Orthodox Jewish	Yarmulke (kippah) and Tallit Katan (rectangular piece of cloth with four corners and fringe)
Catholic	Rosary and Religious Medals
Sikh	Kacchera (loose undergarment) and Turban
Odinist	Runestones
Santeria	Orshaiba beads
Wicca	Tarot cards and bells

The offender’s perspective: Property and religious beliefs. According to RLUIPA, an offender’s religious belief does not have to be a central tenet of his or her religion to require accommodation. If prison officials can show the offender’s religious belief is not sincere however (e.g., changing religious affiliations three times in a six month span), the prison may deny the religious accommodation. For some offenders, the

¹ “...a knit skullcap...” (*Ali v. Stephens*, 2016, p. 780).

hurdle is educating officials who are unfamiliar with the religion (Gaubatz, 2005; Miller, 2011). For example, to a correctional administrator affiliated with a Christian religion, the use of satanic items may be abhorrent to them personally (Harrison, 2012). The offender may have to overcome the hurdle of prejudice against his or her religious beliefs when seeking an accommodation (Johnson, 2006; Schnizler, 2006).

Dilulio even noted that “inmate religious stratification and inadequate staff sensitivity to certain religious traditions may have contributed to the 1971 Attica prison riot (NY State Comm. Attica 1977)” (2009, p. 118). Prisons generally deny the use of some items regardless of the offender’s sincerity (Glyn, 2009). For example, they deny the use of peyote or wine because of the prison’s interest in keeping oft-abused or illegal substances out of the hands of offenders (Liu, 2004). For offenders who have a sincerely held belief, this may be burdensome. If a prison disallows an item, failure to use the item may bring shame or ostracism to the offender from other members of his or her religion (Krueger, 2005).

Prison officials’ perspective: Difficulties in allowing religious accommodation in property. Aside from the previously mentioned space issue, prison officials have several reasons to deny a religious accommodation for a special property item. The primary reason is for security. In prison, the ingenuity of offenders constantly amazes. Inmates can turn the most innocuous item into a weapon, such as using a rosary as a device to strangle. They have used religious items to identify themselves as security threat group members.

Prisons must be consistent in their application of accommodations. If officials allowed an accommodation for one group, they would have difficulty denying the same

accommodation to another without a compelling reason (Kao, 2005). Additionally, if an item is valued, an offender should not have to declare a religious affiliation to obtain access to that item (Davis, 2000; Johnson, 2006). Searches are another issue for prison officials. The more property an offender has, the more difficult it is to search (Rarric, 2002). The process also becomes more staff intensive (Krueger, 2005). A Sikh may request to wear a turban in accordance with his religion. The courts must weigh the right of the offender to practice his religion against the compelling governmental interest in searching the offender on a regular basis. Unwrapping and searching a turban as well as an offender's hair is much more time consuming and staff intensive (Johnson, 2006). In periods of staff shortages, a cursory search could result in the smuggling of contraband (Rarric, 2002).

Finally, prison officials may deny an item such as separatist literature or even in some cases Islamic texts, because of the religious group's beliefs (Hamm, 2007; Krueger, 2005). Concerns about the potential for racist incitement or the growth of terroristic recruitment in prisons have caused administrators to ban some documents (Glyn, 2009; Robertson, 2008).

Assembly and Ceremonies

Most religions have a community aspect to them (Gaubatz, 2005; Miller, 2011). While some components are solitary, generally people come together as a group at some point (Gerwig-Moore, 2012), as illustrated in Table 3. "Exercise of religion, like every other aspect of life and work in America, requires physical space: Whenever two or more believers congregate, they must have a place to do so" (Banvard, 2003, p. 281). Participating in rituals and meetings together reinforces the individual's faith and creates

solidarity with other believers (Miller, 2011). The multitude of churches available in most communities indicates the importance of assembly (Gerwig-Moore, 2012).

For those in prison, religious assembly can take on an even greater importance. As noted by Sykes (1958), “...if the rigors of confinement cannot be completely removed, they can at least be mitigated by the patterns of social interaction established among the inmates themselves [emphasis in original].” In his study conducted in the early 1930’s however, Clemmer (1958) disagreed that religion was important to most inmates, noting that a cross-section indicated 51 percent of the offender population “...declared that they had no religious preference” (p. 51). In a 2012 survey of prison chaplains, 71 percent of respondents estimated that inmate requests for meeting with leaders of the inmates’ identified faith were usually approved (Pew Research Center, 2012).

Table 3

Examples of Religious Practices Requiring Assemblies and Ceremonies

Religion	Assemblies and Ceremonies
Islam	Jumu’ah Ramadan and Eid Al-Fitr
Baptist	Bible Study
Native American	Sweat Lodge
Catholic	Catholic mass (with wine)
Orthodox Jewish	Access to Orthodox Jewish Synagogue; no work on Sabbath (wine as part of Sabbath and Passover)
Christian Separatist Church Society	Services with whites only
Shi’ite Muslims	Right to hold services separate from Sunni Muslims

The offender's perspective: Assembly and religious ceremonies. Religious assembly and ceremonies are important to “free world” communities (Gerwig-Moore, 2012). The same holds true for offender communities (Miller, 2011). Studies found offenders who participated in religious services had lower rates of recidivism (Gaubatz, 2005; Hamm, 2007; Young, Gartner, O'Connor, Larson, & Wright, 1995). Their association with other like-minded individuals resulted in better institutional behavior and often, greater community support from other church members upon release (O'Connor & Perreyclear, 2002). The time spent with other offenders in a positive atmosphere created social bonds that inhibit inappropriate behavior (O'Connor & Perreyclear, 2002). To those with sincerely held religious beliefs, prison officials may interrupt a ceremony or assembly by imposing security measures or restrictions (Vallely, 2007). Some offenders view these procedures and regulations as attempts to harass offenders for their belief in religion that are different or the antithesis of the beliefs of mainstream religions (Irwin, 1980).

Prison officials' perspective: Difficulties in allowing religious accommodation for assemblies and ceremonies. There are several reasons why religious accommodations for assemblies and ceremonies are difficult for correctional officials, to include security risks, management of prison schedules, and use of limited resources (“Developments of the Law,” 2002). Officials must balance these concerns against the rights of offenders to practice their religious beliefs. Any time a group of offenders gathers, the security risks escalate. Cressey, in his foreword to Clemmer's *The Prison Community*, noted that one way to run a successful prison “is to keep inmate society as unorganized as possible, to prevent individuals from joining forces” (Clemmer,

1958, p. ix). It may be argued that religious assembly certainly has the potential to bond individuals together as a cohesive group. As a matter of logic, correctional staff can quell a disturbance by one or two offenders much easier than a disturbance by 10 or 20 offenders.

Officers note religious services are notorious venues for the passing of contraband and messages as well as sexual assignations (Dammer, 2002; Hicks, 2008).

Administrators do not allow some groups to have services together because their purpose in meeting was uncovered as a means to plan security threat group activities (Davis, 2000; Johnson, 2006) or recruit for terroristic purposes (Hamm, 2007; Robertson, 2008; Seymour, 2006; Irwin, 1980).

Since the events of 9/11, U.S. security-related administrators have paid much more attention to religious affiliations and assembly in prisons. The former director of the Federal Bureau of Investigations, Robert Mueller, testified before the U.S. Congress, “Prisons continue to be fertile grounds for extremists who exploit both a prisoner’s conversion to Islam while still in prison, as well as their socio-economic status and placement in the community upon their release” (*Current and Projected National Security Threats to the United States: Hearing Before the Select Commission on Intelligence*, 109th Congress, as cited in USCCR, 2008, p. 32). BOP officials perceived the threat of prisoner radicalization as much more serious as did their state prison counterparts (USCCR, 2008). One study identified radical Islam and right-wing Christian extremist groups (e.g., Aryan Nations) as leaders in prisoner radicalization, but pointed out that radicalization attempts are frequently unsuccessful (Cilluffo, Saathoff, Lane, Taynor, Cardash, Bogis, Magarik, Lohr, & Whitehead, 2006).

The BOP combated radicalization attempts by supervision of religious assemblies (Cilluffo, et al., 2006), but state prison officials reported that radicalization attempts were not a primary consideration in their security procedures (USCCR, 2008). A report by the Homeland Security Policy Institute and Critical Incident Analysis Group Prison Radicalization Task Force (Cilluffo, et al., 2006), strongly urged, that despite lack of funding and overcrowding, prisons should make the mitigation of prisoner radicalization a top priority. Services may require the presence of a staff member or volunteer (Hicks, 2008). If these monitors are not available, prison administrators may cancel the service because of lack of available monitoring (Nelson, 2009).

Other equal protection issues have arisen. Muslim offenders sued because prison officials shackled them on the way to religious services (Vallely, 2007). In such cases, the requirements of security usually undermine the offenders' religious rights (Nelson, 2009). For other religious groups, prison administrators find their accommodations would inhibit the management of prison schedules.

One seminal case, *O'Lone v. Estate of Shabazz* (1987) found the prison did not violate the First Amendment rights of offenders scheduled to work on Saturday during a religious ceremony. The Court found the legitimate penological interest in the accomplishment of the prison's work outweighed the First Amendment rights of the prisoners to attend the religious ceremony.

Additionally, some prison administrators argue the accommodation of every group's religious practice would unduly burden the prison's resources (Davis, 2000; Kao, 2005). The largest religious groups traditionally receive the most resources (Johnson, 2006; Vallely, 2007). If the shared meeting space is completely booked for larger

religious groups, smaller groups may not have a place to gather. If staffing is low, the prison may cancel a service simply because there are not enough officers to cover each area.

Prisons are also not required to hire chaplains or religious advisors for every group (Johnson, 2006). Courts have held that hiring only for the largest religious groups is not a First Amendment violation for smaller groups who do not receive such assistance (Johnson, 2006). Despite this ruling, the plethora of religions represented in the states' policies examined in this study show a vast change in prison officials' religious acceptance over the years. In Sykes' *The Society of Captives* (1958), the prison schedule indicated only two religious services: Roman Catholic and Protestant (p. 139). Modern prisons accommodate other groups, to include non-traditional religions (USCCR, 2008).

Diet

Food is prevalent in almost every aspect of life. In addition to the nourishment of bodies and survival, the ritual of food is important to the way people interact as well as an important facet of culture or religion (Clemmer, 1958; Liu, 2004; Miller, 2011). Examples of religious dietary practices are listed in Table 4. Individuals use meals as a means of fellowship, drawing each other closer as a group as well as identity (Chow, 2003). Food also represents relationships between difference species of the world. For religious groups, some animals may have spiritual significance and are taboo to eat (Liu, 2004). For others, the preparation of meals is of great importance. If not prepared properly, the food is not fit for consumption from a spiritual perspective (Liu, 2004; Chow, 2003).

Diet is one of the main points of contention in the religious accommodation of offenders (Liu, 2004). It is also one of the areas most easily accommodated (Liu, 2004). The courts have not found however, that prison officials are required to accommodate every offender's religious diet request. Deference to administrators and considerations of resource availability impede the legal challenges of smaller, less mainstream religious groups (Liu, 2004; Vallely, 2007). In a 2012 survey of chaplains, only 53 percent estimated that inmate requests for a special religious diet were usually approved (Pew Research Center, 2012).

Table 4

Examples of Religious Dietary Practices

Religion	Dietary Requirements
Catholic	No meat during some religious days
Rastafarians	Vegetarian
Islam	Halal meat, pork-free, dates during Ramadan
Ultra-Orthodox / Hasidic Jewish	Kosher; pork-free
Hindu	Vegetarian preferred but not mandatory; no beef
Seventh Day Adventist	Vegetarian
Wicca	Lacto-ovo vegetarian
Buddhism	Vegetarian

The offender's perspective: Diet and religious beliefs. Similar to following other religious beliefs, offenders wish to adhere to the practices of their faith when they eat (Chow, 2003). There is a major difference with diet however. An offender does not have to have certain property (except perhaps for medication), assembly, ceremonies, or

grooming practices to sustain life. An offender does, however, have to eat to live. If the prison does not allow a religious diet, the offender has to eat food that violates his or her beliefs (Davis, 2000; Liu, 2004). Religious diets are important because they are the one area where prison regulations may force an offender to choose between violating their religious beliefs and survival (Chiu, 2004). If the offender does not follow the laws of his or her religion, penalties or ostracism may ensue from other faith adherents (Krueger, 2005).

Prison officials' perspective: Difficulties in allowing religious accommodations in diet. Dietary restrictions are one area where prison officials have difficulty claiming security risks. The main argument against dietary religious accommodations is resource availability (Davis, 2000; Liu, 2004). Providing different types of meals to different groups is expensive (Armijo, 2005). It requires the purchase of additional food items and kitchen equipment. The preparation is also staff intensive (Krueger, 2005). Many prison systems provide pork-free and vegetarian diets in addition to regular prison meals. Others concentrate religious populations, such as those of the Jewish faith, at one prison facility so that only one special (e.g., kosher) kitchen is required (e.g., Texas Department of Criminal Justice). This can prove problematic if an offender has other special needs such as security, medical, or educational requiring housing at a different unit than the one that has the religious accommodation. Often in those cases, the offender's other needs will take priority over his religious accommodation requirements.

Diet can also cause a problem for prison officials, causing dissension over differential treatment. If one religious group is given a special meal, non-affiliated

offenders may believe they are denied a privilege due to their religious (or lack of) beliefs (Armijo, 2005). In almost every aspect of prison, officials maintain equilibrium in confined spaces by equitable treatment (Davis, 2000). Any difference, no matter how slight, may cause a conflict.

Grooming

For purposes of this study, grooming refers primarily to the practice of male offenders, specifically regarding hair length and the allowance, or length of, facial hair (Sidhu, 2012). Although female offenders are also included in some states' offender grooming policies, the policies are often different for women, as female offenders are a much smaller percentage of the population and less likely to be high security risks or dangerous offenders (Nelson, 2009, citing *Warsoldier v. Woodford*, 2005; Trulson, et al., 2011).

Hair and grooming has played an important part in religious practices since Delilah cut Samson's hair in the Bible, sapping his God-given strength (Bromberger, 2008). Some religions do not allow men to cut their hair or shave their beards. Some religions mandate the hair is not to be combed or cut, typically resulting in dreadlocks. The symbolism of hair removal or hair growth may indicate withdrawal from society, virility, or entry into sexual activity (Bromberger, 2008).

The maintenance of similar grooming standards creates a kinship amongst followers of a religion, a way of setting themselves apart. To deviate may bring shame and disgrace on the follower because, "everywhere, hairstyles mark the limit between submission and disobedience" (Bromberger, 2008, p. 384). In some religions, practitioners perceive the forcible shaving or cutting of hair as punishment (Krouse,

2012). Although an examination of state policies did not indicate administrators were using forcible shaving or hair cutting as punishment, offenders with sincerely held religious beliefs might perceive such practices as something that shames them or forces them to abandon their religious convictions (Krueger, 2005). In a 2012 survey of prison chaplains, only 28 percent estimated that inmate requests for special hairstyles or grooming were usually approved. Of the respondents, 36 percent estimated the requests were usually denied (Pew Research Center, 2012). Table 5 provides some of the grooming practices of different religions.

Table 5

Examples of Religious Grooming Practices

Religion	Grooming Practice
Assemblies of Yahweh	Not permitted to cut the hair or beard
Cherokee	Kouplock - a 2" x 2" square lock of hair which is not cut
Native American	Not permitted to cut the hair or allow others to do so
Nazirite Christian	Not permitted to cut hair
Orthodox Jewish	Not permitted to shave any part of their beard
Rastafarians	Hair is not to be combed or cut
Sikh	Males are required to have unshorn hair
Sunni Islam	The Koran requires males to wear a beard
Ultra-Orthodox / Hasidic Jewish	Required to wear beards and sidelocks

The offender's perspective: Grooming and religious beliefs. Different religions have religious practices regarding grooming (Schneider, 2004). The majority of these pertain to male offenders. Compliance with penological rules and regulations may force offenders with sincerely held religious beliefs to abandon the practices of their

religion to comply with penological rules and regulations (Schnizler, 2006). For those prison systems with restrictive policies that do not allow for religious accommodations, offenders may be disciplined or denied privileges if they refuse to comply for religious reasons.

Particularly for those prison systems that allow offenders to have a beard for medical reasons, but do not allow it for religious accommodations, offenders have questioned why a differentiation is necessary to meet legitimate penological interests (Sidhu, 2012). One medical condition that may require a shaving accommodating is pseudofolliculitis. Prison administrators may allow an offender to have a “shaving pass” or a very short beard, as a preventative measure for those offenders prone to pseudofolliculitis (Schneider, 2004). Pseudofolliculitis is a condition “when the sharp edge of the hair shaft transects the wall of the hair follicle or re-enters the epidermis” (Luelmo-Aguilar & Santandreu, 2004, p. 308). Prison officials have argued that accommodations to avoid a medical difficulty are different from a religious accommodation because one may cause physical pain while the other does not.

The U.S. Supreme Court did not agree with this distinction in *Holt v. Hobbs* (2015). If they do have sincerely held religious beliefs, offenders often feel unfairly persecuted, especially if they are not members of a mainstream religion (Sidhu, 2012). Offenders may believe correctional officers unfairly target them for enforcement of regulations more stringently than they do other offenders due to their religious affiliation (Rom, 2009). This has particularly been a concern for Muslim offenders (Glyn, 2009; Rom, 2009).

Prison officials' perspective: Difficulties in allowing religious accommodations in grooming. Prisons have typically justified grooming policies by citing four purposes: identification, security, sanitation, and order (Johnson, 2006; Sidhu, 2012). Officials claim allowing offenders to alter their hair length or facial hair would enable offenders to avoid identification – an important component in prison security (Schneider, 2004). Offenders may use distinct hairstyles to identify themselves for security threat group membership, which also creates a safety issue (Sidhu, 2012). Additionally, the presence of excess hair, on either the head or face, provides hiding places for contraband that may cause a problem for security or require additional resources for the extra time it takes to properly search the offender (DiIulio, 1987; Schneider, 2004). In *Holt v. Hobbs* (2015), the Court did not find the extra resources or security requirements for a one-inch beard would be burdensome enough to warrant burdening the offender's religious freedom.

For sanitation, confinement of many individuals in a limited space develops the potential for spread of disease or parasites (Schneider, 2004). The spread of communicable diseases in prison is not uncommon, and prison administrators go to great lengths to ensure lice or bed bugs do not overrun their institutions. Research shows that shorter hair is a less welcoming host for such parasites (Bailey & Prociv, 2000). Advocates for freedom in grooming argue prison administrators typically allow female offenders to have long hair without issue (Sidhu, 2012). Prison officials may respond by noting that female offenders comprise a much smaller percentage of the prison population and are easier to maintain parasite-free.

Order is another common justification for grooming regulations. DiIulio (1987) quoted one Texas warden on the importance of grooming, “You have to have rigid discipline – that’s the heart of the Texas idea...It begins with the most basic things...the dress code and grooming standards...No grooming standards gets you no grooming, or damned little” (p. 140). Prison administrators perceive uniformed grooming as a way to teach offenders self-discipline and self-respect. They point to the importance of grooming in military forces as way of instilling discipline and ask why the same policies should be modified for offenders. If an offender is taught to comply with rules and regulations in prison, he or she will be better able to reintegrate into society upon release (DiIulio, 1987). DiIulio (1987) quoted former Texas prison administrator Dr. George Beto: “...In prison, these men, most of them for the first time in their lives, are made to experience external discipline. They must take a bath each day. They must shave. They must wear fresh clothes...We hope that they come to learn the benefits of doing such things...[and] turn away from their former lives and ways of behaving.” (p. 176)

Pat and Strip Searches

The subject of modesty is a central belief for many religions (Ingram, 2000). Some of the security practices used by prison systems include pat and strip searches (searches). Most offenders bring challenges to cross-gender searches under Fourth and Eighth Amendment violation claims, not First Amendment. Pat searches were an issue in *Jordan v. Gardner* (1993) and defined as follows by the Washington Corrections Center for Women prison training material:

“[U]se a flat hand and pushing motion across the [inmate’s] crotch area. . . .

[P]ush inward and upward when searching the crotch area and upper thighs of the

inmate.” All seams in the leg and the crotch area are to be “squeezed and kneaded.” Using the back of the hand, the guard also is to search the breast area in a sweeping motion, so that the breasts will be “flattened” (*Jordan v. Gardner*, 1979, p. 1523, as cited in Weiser, 2003, p. 31).

Strip searching was an issue in *Bell v. Wolfish* (1979) and defined as follows by the U.S. Supreme Court.

If the inmate is a male, he must lift his genitals and bend over to spread his buttocks for visual inspection. The vaginal and anal cavities of female inmates also are visually inspected. The inmate is not touched by security personnel at any time during the visual search procedure (*Bell v. Wolfish*, 1979, p. 558 n.39).

Although not as invasive as a physical cavity search, many offenders consider these searches as demeaning and humiliating ordeals (MacGregor, 2003). “In *Bell*, the Supreme Court recognized that unclothed body searches or strip searches might be offensive. Nevertheless, the Court held these searches were neither unreasonable nor cruel and unusual when done in a professional manner” (*Bell v. Wolfish*, 1979, as cited in Weiser, 2003, p. 39 n. 47).

The offender’s perspective: Searches and religious beliefs. In many societies, citizens view the modesty of a female as more important to maintain than the modesty of a male (Ingram, 2000). Courts also treat females differently, noting that many female offenders have historically been the victims of male physical and sexual abuse in their lifetime (Gerwig-Moore, 2012; Wieser, 2011). Many prison systems have policies prohibiting male officers from strip-searching female offenders (also pat searches except

in emergency circumstances); so typically, it is not an issue except for situations of employee misconduct (Ingram, 2000).

Males also may have a religious basis to their modesty. For some religions, it is improper for any female to see a male's body except for his wife (Jackson, 1998). Many prison systems have male and female correctional staff working at the same units, regardless of the gender of the offenders housed there (Ingram, 2000). The restrictions that apply for opposite gender searches of female offenders do not typically apply to male offenders (Gallagher, 2011; Ingram, 2000). It is therefore, much more common for a female officer to search a male offender. Along with the embarrassment of having someone of the opposite sex seeing him naked, the offender's sincere religious beliefs are breached (Seymour, 2006). Table 6 provides some examples of religious beliefs regarding nudity and touching.

Table 6

Examples of Religious Beliefs Regarding Nudity and Touching

Religion	Practice
Jehovah's Witness	Women are expected to be modest
Islam	Only spouse is allowed to see individual nude
Christian	Only spouse is allowed to see individual nude

Prison officials' perspective: Difficulties in allowing religious accommodations in searches. Maintaining security in a prison is a constant struggle. Prison administrators must conduct searches to maintain the safety and security of the prison and prevent the introduction contraband (Weiser, 2003). Offenders hide items in the most unusual places (Petrie, 2005). Prison officials have found contraband in

offenders' hair (DiIulio, 1987; Petrie, 2005), their mouths (Boyd, 2006), their ears (Smith, 2011), their armpits, underneath their scrotum (*Florence v. Board of Chosen Freeholders of County of Burlington et al.*, 2012), inside their vagina (Brown, 2013; Smith, 2011) or anus (*Daily Mail*, 2012; DiIulio, 1987), and even in the skin folds of an obese offender (Turner, A., 2009). If the offender attempts to smuggle in contraband, a proper strip search will often enable correctional staff to find it.

In most situations, working as a correctional officer is not a glamorous or high paying position. The median salary of a correctional officer in 2010 was \$39,020 (Bureau of Labor Statistics, 2013). During their daily duties, the correctional officer may endure an attempted stabbing; have feces or urine thrown on him or her; or at the very least, receive a plethora of expletives speculating about their parentage. For that reason, prison administrators have done everything they can to widen the pool of potential applicants, especially with recruiting females.

Female officers have been working in female prison units for almost as long as formal prisons have existed (Gallagher, 2011). They have not however, been working at male prison units until the last half of the 20th century (Gallagher, 2011). Female officers have proven to be a valuable employee resource. In 2007, female officers comprised 37 percent of U.S. correctional staff (Winters, 2014). With such dependence on female officers to fill positions, many of them work in male facilities (Gallagher, 2011). Prison administrators would have a difficult time if forced to prevent female officers from performing such essential security functions as searches (Jackson, 1998). Prohibiting male officers from searching female offenders is not as much of an impact

because the percentages of females in prison populations are so much lower (Gallagher, 2011).

CHAPTER IV

Methodology

The study used a congruent method of research, combining legal research methods with social science research methods (Nolasco, Vaughn, & del Carmen, 2010). The method provides “a composite approach [that] can significantly add to the scholarship in the discipline [criminal justice]” (Nolasco, et al., 2010, p. 18). The author used the legal database LexisNexis® and Westlaw to determine the state of the law regarding religious accommodation policies in prison. The search included only U.S. Supreme Court and U.S. Court of Appeals cases.

The study used only cases decided after September 22, 2000, the effective date of RLUIPA, the current governing law for the religious freedom of offenders. Only cases based on RFRA or RLUIPA were included. Seminal U.S. Supreme Court cases leading to the development of RLUIPA however, were included, even if decided prior to September 22, 2000.

Non-reported or non-published cases were not included². Cases about prison employees were not included, only those involving offenders. Cases only included incarcerated persons, not those who were briefly detained (e.g., less than 24 hours at a border crossing [*Tabbaa v. Chertoff*, 2007]). Cases dismissed as moot were not included. If the substantive issue had been decided in the district court, and the Court of Appeals case only decided an issue regarding a peripheral matter, the case was not included (e.g., district court decided issue on grooming, but the Court of Appeals only decided an

² “Unpublished opinions, unlike published opinions, are given non-binding precedential status: their precedential value is treated differently merely because a judge has decided the case is not worthy of publication and therefore not worthy of binding precedential value.” (Weisgerber, 2008, p. 622).

attorneys' fees issue for the case). If the case was related to discrimination based on religion and not infringement of religious freedom, it was not included.³

The search for property accommodation cases used the terms “prison,” “religious,” and “property.” The results included 12 U.S. Supreme Court cases and 81 Courts of Appeals cases. Of those, 35 Court of Appeals cases applied.

The search for religious assembly cases used the terms “prison,” “religious,” and “assembly.” The search resulted in 11 U.S. Supreme Court cases and 56 Courts of Appeals cases. Of those, 32 Court of Appeals cases applied.

Religious diet cases included the search terms “prison,” “religious,” and “diet,” resulted in seven U.S. Supreme Court cases and 72 Courts of Appeals cases. Of those, 43 Court of Appeals cases applied.

For grooming cases, the search strategy included the terms “prison,” “religious,” and “grooming” resulted in nine U.S. Supreme Court cases and 55 Courts of Appeals cases. Of those, one Supreme Court cases and 26 Court of Appeals cases applied.

Strip search cases were the smallest category. Using the terms “prison,” “religious,” and “strip searches,” resulted in seven U.S. Supreme Court cases and 22 Court of Appeals cases. Of those, two Court of Appeals cases applied. Using “pat search,” “religious,” and “prison,” found two U.S. Supreme Court cases and seven Court of Appeals cases. Of those, zero Court of Appeals cases applied. There were 21 general exercise cases.

³ In *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), a post-9/11 detainee alleged he was subjected to “serial strip and body-cavity searches when he posed no safety risk to himself or others” (p. 668). The detainee also alleged he was not allowed to pray. The first issue was not included because it was based solely on the allegation of discrimination against him because he was Muslim; not that it kept him from practicing his faith. The second issue was included because he was kept from his religious practices.

To gather information about prison practices, the author examined each state's website to search for prison policies regarding accommodations of offenders' religious exercise. Additionally, the author searched each state's administrative codes for related topics. If the author could not find the state prison system's policies by either method, she communicated with the system's administration, either by telephone or by email. All 50 states' and the federal BOP's policies are represented.

The study divided cases and policies into groups according to U.S. Court of Appeals Circuit. The study compared the court rulings of each circuit to the policies of the prison systems in that circuit. Additionally, the study examined the number of cases per state against the population rates of prisons within those states to determine if the number of offenders incarcerated made a difference.

The study evolved from a panel discussion on U.S. Supreme Court cases during an Academy of Criminal Justice meeting. Dr. Marvin Zalman of Wayne State University and Dr. Michael S. Vaughn of Sam Houston State University spoke about the lack of research comparing court decisions and correctional policies. The study sought to fill the research void regarding religious accommodations in prison. The author expected to find a wide variety of court decisions and religious accommodations policies from circuit to circuit, with very little specific guidance from the U.S. Supreme Court.

The author gave some thought to the examination of prison policies as categorized by Dilulio's *Governing Prisons* (1987): control, responsibility, and consensual models. After further review however, the author determined that such an examination would be beyond the scope of this project. Due to the changes in prison systems because of court decisions, federal oversight, and new laws, it is unclear that Dilulio's categorizations

would still hold true at the time of this writing. For example, a researcher could argue that California's system has moved away from a consensual model towards a control model due to overcrowding and budgetary issues. An accurate categorization would require review of each prison system and its status as laid out by Dilulio. At some later date however, a study of religious accommodations compared to a prison system's model type would be of great interest. Particularly with the growing popularity of faith-based prison units and housing areas (Hallett & Johnson, 2014), along with therapeutic communities, it is expected that participating prison systems that have a consensual component to their penological management would provide more religious accommodations to the offenders in their custody.

Major Research Questions

The study examined several issues related to the correctional policies related to religious accommodations in each circuit, as well as the court decisions related to challenges within each circuit. In many areas of correctional law, prison systems have latitude on some issues and are restricted in others.

In Chapter V, the scrutiny of prison systems' policies expected to show the range of religious accommodations in different systems. The expectation was that different regions of the United States would have different practices of accommodation. The study expected policies within the same circuit to be consistent however.

In Chapter VI, the research reviewed whether the U.S. Supreme Court provided specific guidance in any of the five areas to include property, assembly, diet, grooming, and searches. A category was also included for General Exercise of Religious Freedom.

A U.S. Supreme Court decision would cause any religious accommodation, or lack thereof, to be consistently applied throughout the United States.

Law is a fluid entity and evolves over time along with societal mores. The study explored whether this had been the case in any of the five areas since the passage of RLUIPA. Chapter VI scrutinized cases within circuits to identify changes in direction as well as for the impetus for those changes. Finally, the study teased out trends among cases to determine what assisted an offender to prevail in a legal challenge and what factors enabled prison administrators to prevail.

Once the study examined each branch's (executive and judicial) contribution to penal religious accommodations, it moved on to an analysis of the relationship between them. In Chapter VII, the study observed if there was consensus between the policies, court decisions, and between circuits on any of the five issues. Such consensus would be considered an indication of a national consensus of a particular area of penal religious accommodation, making it more difficult in the future to revert back to a regional or prison system-specific culture of accommodation in that area. The study also looked at any differences between large and small prison systems, measuring based on prison population. This analysis was conducted to determine also if some circuits had more accommodation cases than others did. The study reviewed the intersection of legal decisions and policies to ascertain in which direction the issue of religious accommodations in prison was moving since the inception of RLUIPA.

CHAPTER V

Summary of State Prison Systems' Policies

Property

A complete listing of the U.S. state prison systems' policies is included in Appendix A. While some states were very specific about the property allowed (e.g., Alabama and Illinois), some were very general (e.g., Delaware and Georgia). Policies included information about where property could be kept or even worn (e.g., in cell, during services, or at any time). Some policies were event specific about the color of an item. It was not uncommon to put a monetary limit of the worth of religious property. Prohibitions were primarily based on security and space considerations. The use of property as a means of gang affiliation was a primary concern. Many policies set forth procedures regarding the process of procuring religious items.

Assembly

A complete listing of the U.S. state prisons systems' policies is included in Appendix A. Some states were very specific regarding the recognized religions that were allowed to assemble. One state even listed the religions that were not allowed to assemble (Michigan). To the author's dismay, the Church of the Flying Spaghetti Monster was not included in any of the policies, although it is a recognized religion.

Other states were very general, simply noting the policy of the state is to allow offenders to freely exercise their religious beliefs as long as institutional order and security are maintained. Along with naming the religious categories of faiths allowed to assemble (e.g., Islam, Judaism, Roman Catholic) several states also listed specific special events that were allowed (e.g., baptism, communion, Ramadan, and Passover).

Space and availability of a faith leader were often required. Many policies had procedures for the approval of new religions and services. Topics frequently addressed included the use of communion wine, tobacco, and sweat lodges. Communion wine and tobacco were typically used only by the officiant, symbolically on behalf of the congregation. Other services included counseling, spiritual study, and family interaction (e.g., next of kin notification in case of illness or death).

Diet

A complete listing of the U.S. state prisons systems' policies is included in Appendix A. The majority of states had religious accommodations for meals. Only one state did not (Mississippi). In addition to specific meals for every day, most states allowed food for special ceremonies such as Passover, fasting for Ramadan and Yom Kippur, and Potlach. Some states allowed special food for an assembly to be donated or purchased from an approved vendor. It was noted in some states that any need for medical diet took precedence over a request for a religious diet.

If an offender requested a religious diet, most states had a requirement that the offender adhere to that diet. This included not eating the regular meal or ordering prohibited (by the religion) foods from the commissary. Abuses of the accommodation included punishments such as being suspended from the diet for 90 days, or even up to one year.

Other states would allow special diets only for those who could purchase them from the commissary. Some states noted that the available religious diet were only provided based on demand (for example, if only one offender requested the meal, it would typically not be made available). Other states would house all requestors in a

single facility, to make availability more cost effective through economies of scale (e.g., one facility has a kosher kitchen).

Some states were very general in their policies, simply stating policies such as, “Committed persons shall be permitted to abstain from any foods the consumption of which violates their religious tenets” (Illinois 20 Admin. Code §I.d.425.70). Other states only allowed special diets because of a lawsuit (e.g., Indiana).

Grooming

A complete listing of the U.S. state prisons systems’ policies is included in Appendix A. The vast majority of policies allowed offenders to have beards in accordance with *Holt v. Hobbs* (2015). Only one state prohibited any facial hair for males (Alabama). States, such as Texas, allowed clipper shave passes (¼” beard) for offenders diagnosed medically indicated for pseudofolliculitis (*Texas Department of Criminal Justice* [TDCJ], 2012) and in part, that lead to the decision in *Holt v. Hobbs* (2015). The Court reasoned that if the medical accommodation could be allowed; there should be no reason to deny the religious accommodation of one-inch long facial hair.

Many states allowed offenders to groom as they wish as long as the prison’s requirements for safety, sanitation, identification, or security were met. Some states implemented grooming restrictions based on job assignments, such as food service or working around machinery (e.g., California, and BOP), participation in a program (Michigan), or the offender’s custody (New Mexico).

Security requirements included prohibiting styles that could signify security threat group (STG) affiliation (e.g., Illinois, and Tennessee). Many states also required offenders to take a new photograph if an offender significantly altered his identity by the

use of grooming practices (e.g., Alaska, and Tennessee). Some, as with Colorado, provided for hair to be cut and facial hair shaved upon intake for identification purposes and photographs with offenders allowed freedom in grooming afterwards. Others requested a new photograph if any significant change was made (i.e., beards shaved or beards grown).

Several states indicated they changed their policies as a result of lawsuits filed by offenders (e.g., *Basra v. Cate*, 2011). In California, the California Department of Corrections and Rehabilitation (CDCR) changed their policy to allow offenders to grow beards longer than ½” in response to ongoing litigation (ACLU, 2011).

When asked about some states’ grooming policies, there were three staff members who requested anonymity and noted the prison systems’ policies read much more liberally than they were actually enforced. One administrator said, “We allow offenders to wear their hair and their beards however they want – as long as they don’t cause a problem with security or sanitation. Those are some very subjective terms. If I have concerns about an inmate’s hair or beard, I’m going to find a potential security or sanitation problem and make him cut his hair or shave.” For some states, administrators considered staff ability to easily be able to search hair and beards for contraband as very important (Alaska, Colorado, Louisiana, Oregon, and Wyoming).

Pat and Strip Searches

A complete listing of the U.S. state prison systems’ policies is included in Appendix A. The vast majority of the policies are taken word for word from PREA Standard §115.115 (see standard below in Chapter VI, Summary of Pat and Strip Searches). Alabama did not have any policy regarding cross-gender searches, while

Arkansas did not have a prohibition against cross-gender pat searches. Three state policies were unavailable.

CHAPTER VI

U.S. Courts of Appeals Cases

Throughout the United States, the courts have heard many cases regarding the religious accommodations of non-traditional groups in prisons. Prisons are simply not able to accommodate all religious requests. “While any one accommodation may or may not have...an impact, accommodating the multiple idiosyncratic requests of every inmate claiming individualized religious beliefs would severely tax correctional staff and resources” (Davis, 2000, p. 791). Valley (2007) writes that RLUIPA causes challenges involving non-traditional groups to be more difficult to prevail. “By its generality in language and lack of more stringent rules for prison administrators, RLUIPA discriminates against individuals with minority religious views that have not been historically accommodated in the penological system.” (Valley, 2007, p. 234). Discrimination may take place because of a group’s racial or political views, or it may be simply because the group simply does not have many practicing offenders – the squeaky wheel truly does get the grease (Valley, 2007).

Gaubatz (2005) however, suggests two ways in which offenders can prevail against the states in their legal challenges. Both include showing how the accommodation is managed in other instances. Gaubatz’s (2005) reasoning is if the accommodation is made elsewhere (geographically), it should be allowed for religious exercise. The first example is to show how the accommodation is made for reasons other than religion within that prison system (e.g., such as for medical reasons). The second example is to show how other prison systems successfully manage the same accommodation (Gaubatz, 2005). This reasoning has been used in some of the cases

discussed below, and is an intriguing possibility for offenders who wish to challenge regulation of their religious exercise.

It should be noted that some facets of religious litigation favor prison systems while others are more favorable to offenders due to the nature of the issue. For instance, “Prisoners requesting special dietary accommodations based on their religious beliefs have a greater likelihood of success than prisoners challenging grooming policies, due to the lack of safety and security concerns involved in potential dietary accommodations” (Vallely, 2007, p. 218).

Detractors ask why some states, which allow religious accommodations, are able to maintain order, while other states, which do not permit accommodations, cite threats to security and order. As ruled by the 8th Circuit in *Fowler v. Crawford* (2008),

...as prisons differ, so may the means by which prison officials ensure order and stability. ‘Although prison policies from other jurisdictions provide some evidence as to the feasibility of implementing a less restrictive means of achieving prison safety and security, it does not outweigh the deference owed to the expert judgment of prison officials who are infinitely more familiar with their own institutions than outside observers’ [citing *Hamilton v. Schriro*, 1996, p. 1557, n. 15]. The point is that prison officials may, quite reasonably, exercise their discretion differently based upon different institutional circumstances (*Fowler v. Crawford*, 2008, p. 942).

Property

Gaubatz (2005) noted the deletion of the requirement under RLUIPA that a religious exercise be mandated or common to a religion has allowed more offenders to prevail in cases regarding property. Offenders no longer have to show possession of items is an essential tenet of their religious belief. It was under this condition that most property claims under RFRA were dismissed (Gaubatz, 2005).

Since RLUIPA's passage, through January 2018, the following U.S. Courts of Appeals' cases were decided. They are categorized as shown in Table 7.

Table 7

Summary of Property Cases

Topic	# of Cases
Clothing	2
Constitutionality and Tape Recorder	1
Jewelry	3
Jewish items	5
Muslim Prayer Oil	1
Native American items	6
Odinist items	2
Religious texts	14
Religious seals	1

Clothing. In discussing *Boles v. Neet* (2007), the issue was the wearing of Jewish orthodox items when transported from prison to the hospital. “*Boles* demonstrated that the much criticized *Turner* test can have ‘teeth’ ...” (Robertson, 2008, p. 274). The state denied the offender’s request to wear his yarmulke and tallit katan while being transported to a hospital. The offender showed that it substantially burdened his sincerely-held religious beliefs and that wearing the items would not have interfered with prison security. The state failed to identify that the regulation had a legitimate penological purpose.

In *Ali v. Stephens* (2016), a Sunni Muslim offender sued over the right to wear a kufi, other than in his housing area or during religious assembly. The Texas Department of Criminal Justice did not challenge the substantial burden of the offender’s religious exercise. However, they did not show how wearing the headcovering would differ from the hats that offenders were already allowed to wear at work. The prison officials also did not show any instance where an offender had been found to smuggle contraband under or in a kufi. The appeals court affirmed.

Constitutionality and tape player. The prison officials argued RLUIPA was unconstitutional, but the court found it was a constitutional exercise of Congress’s power under the Spending Clause and that South Dakota could avoid adhering to its mandates by declining federal grants. In *Van Wyne v. Reisch* (2009), the court reversed the summary judgment and noted the court lacked jurisdiction for some of the offender’s claims. They noted that the Jewish offender did not need a tape recorder in his cell to learn the Hebrew but could use the tape recorder available during group assembly to learn the language and practice it later in his cell.

Jewelry. *McFaul v. Valenzuela* (2012) involved a Celtic druid offender who was denied a medallion that cost more than the policy allowed. The court found that the policy prohibiting nonconforming property did not violate free exercise. The policy for uniformity in property was a legitimate concern for security reasons. Also, the offender did not show that he had a lack of alternatives; that the policy was not equally applied; or that the burdens of his free exercise were substantial.

In *Davila v. Gladden* (2015), an offender, also a Santerian priest, brought suit that a necklace and shells had been denied to him, violating RFRA and the First Amendment. The court found that the offender's beliefs were substantially burdened. However, the federal BOP officials did not show that the denial was in furtherance of a compelling governmental interest or that the policy was the least restrictive alternative. Summary judgment for the First Amendment claim was affirmed though, as RFRA does not authorize suits for monetary damages from officers in their official capacity.

The court found that the Wiccan offender's religious beliefs were substantially burdened in *Knowles v. Pfister* (2016). He requested an injunction allowing him to wear a religious medallion with a five-pointed star (a pentacle). The state contended that the star could be used as a gang symbol. The court granted the preliminary injunction stating the offender's "freedom of religion has been gratuitously infringed by the prison" (*Knowles v. Pfister*, 2016, p. 519).

Jewish items. In *Walker v. Maschner* (2001), the African Hebrew Israelite offender claimed he was not allowed to attend Jewish services or possess Jewish religious items. The offender admitted he had not exhausted his administrative remedies. Therefore, the court ruled that his Free Exercise claim did not prevail. The same issue

arose in *Gallagher v. Shelton* (2009). The offender sued over denial of his request for a Menorah and candles to celebrate Hanukkah. Again, the offender did not first exhaust his administrative remedies and the court found for the state of Kansas officials.

In the next case, *Benning v. GA* (2004), the court found that Congress did not overstep its powers by predicating receipt of federal funds on adherence to RLUIPA. The offender claimed that RLUIPA violated the Establishment Clause of the First Amendment and the Tenth Amendment. The Jewish offender brought suit that he was not allowed to constantly wear a yarmulke, eat only kosher foods, and observe holy days and rituals. The offender's claims against individuals were dismissed.

In Washington state, contract chaplains denied property (Torah, Jewish calendar, and visit by rabbi) to the offender as they did not consider him to be Jewish. The court ruled that the offender's religious status was religious, not penological (*Florer v. Congregation Pidyon Shevuyim, N.A.*, 2010/2011). The congregation was contracted to provide religious services, and the court affirmed the conclusion "that Florer had not named a state actor as a defendant" (p. 919).

Butts v. Martin (2017) was brought by a Hasidic Jewish offender who claimed he was forced to choose between eating his meal and wearing his yarmulke. The prison official denied the offender a meal because the offender was wearing a yarmulke that the official claimed was the wrong color. The offender failed to exhaust his administrative remedies against all but one prison official – the one who initially denied the meal. The court ruled that summary judgement was inappropriate for the First Amendment Free Exercise claim, and due process claim. They remanded on the retaliation claim, and affirmed on the Equal Protection claim.

Muslim prayer oil. *Charles v. Verhagen* (2003) was an interesting case because the offender filed his claim based on RLUIPA and the First Amendment. The court found that the denial of prayer oil violated RLUIPA but did not violate the First Amendment. Under the First Amendment, the state showed that the regulation was based on a legitimate penological interest. Under RLUIPA, the state did not show that the regulation was the least restrictive means. As Gower (2004) wrote, “such an analysis best demonstrates the contrasting standards and inconsistent results that govern inmates’ religious exercise claims” (p. 34). Further it is noted that such discrepancies between standards are, in Gower’s opinion, an excellent argument for RLUIPA being used as the sole standard for reviewing the religious exercise suits of offenders.

Native American items. An offender claimed a violation of the Equal Protection clause. He was not allowed Native American religious items because he was not Native American. In *Morrison v. Garraghty* (2001), the state did not prove that the items were more dangerous in the hands of a non-Native American more than a Native American.

The State, in *Fowler v. Crawford* (2008), showed prohibiting a sweat lodge was in furtherance of a compelling governmental interest, and denying the request was the least restrictive means to further compelling interest in safety and security. The offender wished to practice his Native American beliefs with other offenders. The Missouri prison officials showed the use of items such as rocks, willow poles, shovels, deer antlers, and split wood necessitated by the sweat lodge could be used as weapons and was a potential threat to the safety and security of the maximum security prison.

A Native American offender claimed a violation of his Bill of Rights by the prohibition against the use of tobacco for Native American ceremonies and the wearing

of headbands. In *Alvarez v. Hill* (2008), the issue was if the failure of the offender to invoke RLUIPA would vanquish its use in his suit. The court ruled that the facts of the case established “a ‘plausible’ entitlement to relief under RLUIPA” (p. 1157).

Chance v. TDCJ (2013) was filed by an offender who claimed a violation of RLUIPA. The prison officials did not allow him to possess a deceased relatives’ lock of hair. The court ruled that the prohibition was a substantial burden on the offender’s free exercise of religion. He had asserted that the practice was a central tenet of his faith, and part of the Keeping of Souls ritual.

In the Wisconsin Department of Corrections, a Navajo offender wanted to wear a multi-colored headband for worship. The prison officials only allowed white or black headbands. The offender offered to wear it only in his cell. The prison officials claimed the accommodation would cause a problem with gang identification. The court pointed out it was not a problem if the offender only wore it in his cell. The DOC also did not show that the prohibition was the least restrictive means of obtain a legitimate penological purpose. Therefore, the policy did violate the offender’s free exercise of his religious beliefs (*Schlemm v. Wall*, 2015).

Davis v. Davis (2016) was a case where the offender brought suit alleging a violation of RLUIPA and his First Amendment rights. At issue was the prohibition against wearing his medicine bag to and from his cell. The offenders did not adequately brief the court on the issue and the court considered it abandoned. Thus, the ruling for summary judgment was upheld.

Odinist. An Odinist offender brought suit in *Smith v. Allen* (2007) regarding the possession of quartz crystal and the use of a fire pit. The offender was released prior to

the decision, but was reincarcerated and thus, bound by the same decisions – so the claim was not moot. However, the offender did not show the denials substantially burdened his religious beliefs.

In *Mayfield v. TDCJ* (2008), the Fifth Circuit Court ruled the offender must prove the burdened activity is a religious exercise and the burden is substantial. The state must prove it is supported by a compelling interest and is the least restrictive means. In this case, Odinist offenders claimed violation of religious exercise by not allowing them to assemble without an approved volunteer; prohibition of possession of runestones; and the limitation of access to rune publications in the library. The district court held the prohibition of possession of runestones was in furtherance of a legitimate penological interest as they could be used for gambling, gang identification, or secret communication. The offenders showed evidence the policy requiring an approved volunteer was applied in an inconsistent manner. The state did not show any penological interest in denial of access to rune publications. The district court had held the offender's claims were barred by the Eleventh Amendment. The Fifth Circuit noted the offender could still pursue declaratory and injunctive relief. Summary judgment for the state under §1983 was overturned for the issue of the approved volunteer policy; upheld regarding the policy on runestones; and remanded the issue regarding rune literature. The RLUIPA claims regarding the approved volunteer policy and possession of runestones were vacated by the Fifth Circuit as the state did not show their policies were narrowly tailored.

Religious seals. In *Mark v Gustafson* (2008), the offender claimed the state had violated his religious rights by breaking religious seals he had on his walls and doors. The offender did not show how the seals had religious meaning to him. The state,

however, was able to show legitimate reasons for not allowing offenders to affix anything to cell doors or walls. The policy was intended to enhance the efficiency and effectiveness of searches as well as to eliminate potential conflict between cellmates. The court also held the policy was neutral and was not intended to affect any particular religion.

Religious texts. The offender did not prevail however, in *Dunlap v. Losey* (2002), as he could not show why a softcover bible would not have been an adequate substitution for the hardcover bible he was prohibited. The offender was only denied access to the bible for a month while he was at a reception center. The court ruled the regulation did not coerce the offender into acting against his religious beliefs.

Tarpley v. Allen County, Indiana (2002) was a case where the offender's bible was taken and another given to him. He claimed the new bible did not have the study materials he needed. The court ruled that the provision of an alternative bible was the least restrictive means of meeting a compelling governmental interest because the offender's essential religious materials were provided.

An offender alleged that the Wisconsin DOC did not make Wotanist literature and videos available to offenders although other religions were allowed access to similar materials. The DOC did not recognize the organization as a religion due to its white supremacy credo. The court ruled that the refusal to make the materials available because of that failure to recognize the religion did violate Constitutional rights. The court may have found that there was a legitimate penological interest in not recognizing a white supremacy organization but no evidence of this was brought by the DOC (*Lindell v. McCallum*, 2003).

In *Sutton v. Rasheed* (2003), the Nation of Islam offenders were not allowed to have their religious texts in the housing unit for high-risk offenders. Although the Pennsylvania DOC did not show they met the *Turner* test, their qualified immunity was affirmed.

An offender claimed his First Amendment rights were violated by limiting the number of books he could keep in his cell. The Kansas DOC argued that the policy was related to legitimate administrative and penological policies regarding fire safety, institutional security, control of contraband, and behavior-incentives. The court agreed and ruled that the limitation of the amount of property did not substantially burden the offender's religious freedom (*Neal v. Lewis*, 2005).

In *Borzych v. Frank* (2006), the Odinist offender was not allowed to have books he claimed were necessary to practice his religion. The court examined whether a policy forbidding publications "advocat(ing) racial or ethnic supremacy" violated RLUIPA (p. 391). It determined it did not burden the offender's free exercise and that the Wisconsin DOC's mission for order gave it a compelling interest to enforce the policy.

As a member of the Children of the Sun Church, the offender claimed his religion required him to read four Afro-centric books each day. The Pennsylvania Department of Corrections' policy prohibited offenders from keeping more than 10 books in their cells at one time on the basis of security, hygiene, and safety interests. In *Washington v. Klem* (2007), the court ruled a substantial burden exists when a follower is forced to choose between following the precepts of his religion – thus forfeiting benefits otherwise generally available to other offenders, and the alternative of abandoning one of the

precepts of his religion in order to receive a benefit. It also found the policy was not the least restrictive means of protecting the relevant government interests.

British nationals detained at Guantanamo Bay alleged "...denying them copies of the Koran and prayer mats and throwing a copy of the Koran in a toilet bucket" (*Rasul v. Myers*, 2008, p. 650). The District of Columbia Circuit held (2008) that non-citizen detainees were not subject to the protections of RFRA. The U.S. Supreme Court (2008) vacated and remanded in light of the decision in *Boumediene v. Bush* (2008)⁴. The D.C. court again held (2009) that non-citizen detainees were not subject to the protections of RFRA.

Immediately after the attacks of September 11, 2001 in the United States, the plaintiff alleged his Koran was routinely confiscated. In *Iqbal v. Hasty* (2008), the Second Circuit held that the defendants at the federal BOP were not entitled to qualified immunity due to failure to state a claim and because the defendants claimed no personal involvement. The Supreme Court held (2009) that conclusory allegations that government officials knew of actions taken by subordinates could not be a basis for an unlawful discrimination claim.

In the New York prison, the offenders' *Holy Blackness* book was confiscated as well as correspondence with a self-publishing company. At issue was whether the policy against proselytizing violated offenders' free exercise by not allowing them to have personal possession of the book. The court disagreed, noting that offenders were allowed access to the book by submitting a request to the chaplain (*Jova v. Smith*, 2009).

⁴ Foreign detainees were entitled to habeas corpus hearings.

In *Colvin v. Caruso* (2010), the Jewish offender brought suit against the lack of Jewish services and books in the library. However, the court ruled that the offender did not show the Michigan prison was required to have a certain number of books. The offender did not show he was deprived of receiving books through an alternative manner.

In *DeMoss v. Crain* (2011), the offender brought suit claiming the Texas policy prohibiting the carrying of a pocket-sized Bible or Koran during medical appointments, work, and recreation was a violation of RLUIPA. The Fifth Circuit ruled that the offender did not show that the policy limiting access was a substantial burden to his religious practice.

A straightforward case was presented in *Kendrick v. Pope* (2012). The offender complained her rosary beads, Bible, and other religious items were confiscated and never returned. The Arkansas DOC argued that the inmate had not exhausted her administrative remedies. The court disagreed and remanded the case back to the district court.

In *Kaufman v. Pugh* (2013), the offender wanted to wear a “knowledge thought ring” and also have the atheism books he donated available in the library. The Seventh Circuit found that the denial of the ring was not a substantial burden on the offender’s free exercise. Also, it was reasonably justified by security reasons. The three books had been lost, but there was no indication that they were lost purposefully by the Wisconsin prison system.

Assemblies and Ceremonies

The majority of cases regarding religious assembly fall into two categories: either the service is offered and the offender is not allowed to attend; or the service is not

offered. Gaubatz wrote the difference between cases under RLUIPA and those under *Turner* and RFRA is significant. “Plaintiffs have consistently prevailed in establishing that prison restrictions on group worship are substantial burdens” (Gaubatz, 2005, p. 566). The two main reasons a prison system will cite for prohibiting assembly are because of security threat group concerns or limited resources (Vallely, 2007, p. 224).

A summary of the case law disposition for religious assembly is given in Table 8.

Table 8

Summary of Religious Assembly and Ceremonies Cases

Topic	# of Cases
Atheism	2
Church of the New Song	1
Food and Wine	1
Jewish	7
Muslim	5
Odinism	2
Religious Categorization	1
RLUIPA issue	2
Security	1
Sweat Lodge	1
Tobacco	2
Trained Volunteer	2

(continued)

Topic	# of Cases
Universal Life Church Assembly	1
White Supremacy	1
Wiccan	3

Atheism. In the Wisconsin DOC, an offender wanted to start a new group to study atheism and was denied. The prison officials had classified the request as an activity rather than a religious group. The court noted that the U.S. Supreme Court had ruled atheism “as equivalent to a ‘religion’ for purposes of the First Amendment on numerous occasions” (*Kaufman v. McCaughtry*, 2005, p. 682). Eight years later, in *Kaufman v. Pugh* (2013), the same issue arose. The court found that only two members had an interest in the group and thus, there was a legitimate penological purpose in denying the use of resources.

Church of the New Song. The Church of the New Song, otherwise known as CONS, had been ruled as a religion by the Eighth Circuit in *Remmers v. Brewer* (1974). However, it had been deemed a “masquerade” in a similar case in Texas (*Theriault v. Silber*, 1978). Nonetheless, when Iowa offenders sued over denial of prison officials to recognize their church as a religion in *Goff v. Graves* (2004), the Eighth Circuit ruled that their circuit’s precedent stood.

Food and wine. In *Levitan v. Ashcroft* (2002), the District of Columbia Circuit ruled that the district court had granted summary judgment without considering the *Turner/O’Lone* test. The offenders had brought suit over the denial of communion wine.

The court noted that the partaking of wine was not mandatory in Catholic masses. The court reversed and remanded to the lower court.

Jewish. In *Walker v. Maschner* (2001), an African Hebrew Israelite offender claimed he was not allowed to attend Jewish services. He admitted that he had not exhausted his administrative remedies and the court found for the Iowa DOC.

In *Baranowski v. Hart* (2007), the state argued the offender was provided reasonable alternative accommodations. The religious services policy did not place a substantial burden on the prisoner's free exercise as no rabbi or approved volunteer were available on the days when services were not already provided. Also, the state showed the dietary policy was the least restrictive means of meeting compelling government interests of maintaining prison order and operating within available resources.

An offender brought suit against the lack of Jewish services in *Colvin v. Caruso* (2010). The Michigan DOC had a policy requiring a certain level of interest by a number of offenders before allowing group services. The court ruled that the state had a legitimate governmental interest in committing its resources to those faiths which had the most offenders' interest. The court also noted the offender was not prohibited from practicing his religious beliefs in other ways.

In the Sixth Circuit, the Michigan offender sued over the lack of Jewish services (*Little v. Jones*, 2010). The state argued that the offender was the only one at the unit who requested them and it was not in their legitimate penological interest to use the resources for just one offender. The court agreed and ruled that the lack of Jewish services were not a violation of the offender's constitutional rights.

A Washington state offender sued when contract chaplains denied a visit with a rabbi as they did not consider him Jewish. In *Florer v. Congregation Pidyon Shevuyim, N.A.* (2010/2011), the court ruled that the decision about the offender's religious status was religious, not penological. They also found that contract agents could not substantially burden religious exercise through a religious sincerity decision.

In *Sisney v. Reisch* (2012), the Jewish offender claimed he was denied permission to eat his Succoth meal in a succah in a recreation yard. He sued for compensatory damages. The Prison Litigation Reform Act (PLRA) does not allow for compensatory damages if physical injury did not result. The offenders did not clearly show that the use of a succah was a "reasonable dietary and meal accommodation" (p. 19). Therefore, the denial of the succah was not a violation of the offender's constitutional rights.

The Indiana offenders sued over their transfer to a new facility to maintain a kosher diet, but before group services were available at the new facility. At the time of the transfer, the court pointed out there was no clearly established constitutional right to assemble and study without outside clergy to supervise. They held that it was not a constitutional violation to have assembly services unavailable (*Kemp v. Liebel*, 2017).

Muslim. In New York, a Muslim offender claimed that he was denied the opportunity to celebrate the end of Ramadan with the Eid ul Fitr Feast. *Ford v. McGinnis* (2003) found that the offender's religious beliefs were substantially burdened by the policy. The court vacated the lower court's decision and remanded to ascertain whether the prison officials' policies were reasonably related to legitimate penological purposes.

In *Lovelace v. Lee* (2006), a Virginia offender alleged his Nation of Islam religious exercise was denied. The offender was on a list of offenders allowed to

participate in Ramadan. While participating, he complained about some of the items provided. The officer to whom he complained later claimed the offender had broken fast and Lovelace was removed from the Ramadan participation list. With this removal, he not only was denied the Ramadan meals, but he was also denied the opportunity to participate in any Ramadan activities. The officer later admitted he had made a “mistake.” The state did not show any evidence the offender had, in fact, broken his fast and therefore, the court ruled his religious exercise was substantially burdened. The court also wrote, “A reasonable fact-finder could conclude that (the officer) acted intentionally, perhaps even maliciously, in misidentifying Lovelace and in failing to correct his error during the remainder of Ramadan 2002” (p. 196). The state did not show the Ramadan policy was in furtherance of a legitimate government interest or that it was the least restrictive means of achieving any such interest.

In New York, an offender brought several issues before the court in *Salahuddin v. Goord* (2006). The offender claimed:

- Sunni Muslims had to worship with Shi’ite Muslims – the court ruled the offender's free exercise was substantially burdened and was not “justified by a legitimate penological interest or...the compelling governmental interest...” (p. 275);
- He was not allowed to attend services or eat holiday meals while in keeplock for assaulting another inmate – Again, the DOC did not show the policy was justified by either of the two prongs required;

- The facility would not provide a Muslim chaplain and no Koran was kept in the library – The DOC's attorneys did not request summary judgment for the Koran/chaplain allegation;
- He was not allowed to bring legal mail into the religious assembly – The offender's free exercise was not shown to be substantially burdened regarding the legal mail, therefore summary judgment was affirmed; and
- He was forced to choose between attending religious services and going to the law library – the court ruled that summary judgment was vacated.

The court, in essence, ruled that, absent some justification, they could not violate an offender's free exercise of his or her religion.

Immediately after the attacks of September 11, 2001 in the United States, the plaintiff alleged he was not allowed to attend Friday night prayers. In *Iqbal v. Hasty* (2008), the Second Circuit held that the defendants at the federal BOP were not entitled to qualified immunity due to failure to state a claim and because the defendants claimed no personal involvement. The Supreme Court held (2009) that conclusory allegations that government officials knew of actions taken by subordinates could not be a basis for an unlawful discrimination claim.

In Texas, the offender claimed the policy of recording Muslim services was discriminatory in that it was not required of other faiths. The state argued that Muslim services were allowed without a volunteer or staff present. The court, in *DeMoss v. Crain* (2011), found that the taping of Muslim services was not a substantial burden to offenders' religious exercise. The policy ensured security, e.g., that the service was held, that it did not promote violence, and that other faiths were not disparaged.

Odinism. An Alabama offender requested the use of quartz crystal and a fire pit in a designated place of worship for his Odinist beliefs. The offender was released prior to the case, but was reincarcerated and bound by the same decisions – so the claim was not moot (*Smith v. Allen*, 2007). The court ruled however, that the offender did not show the denials substantially burdened his religious beliefs.

In *Mayfield v. TDCJ* (2008), Odinist offenders were not allowed to meet without an outside, security-trained, religious volunteer. The only one available lived some distance from the prison unit and was unable to be present for regular services. The state denied the offenders' request to meet under the supervision of prison security. However, Muslim and Native American religious groups were allowed to meet without outside volunteers. The court ruled that the policy was imposed in a discriminatory manner and that the policy violated RLUIPA.

Religious categorization. In *Freeman v. TDCJ* (2004), the Church of Christ offenders protested being lumped as “Christian/Non-Catholic.” The court found that the use of five “major faith sub-groups” (p. 859) were not unconstitutional and the offenders were treated the same as similarly-situated offenders. The policy was reasonable related to the state's penological mission and was a neutral policy.

RLUIPA issue. The Oregon offender requested an order requiring the hiring of a Native American Spiritual Leader, and to allow pipe ceremonies, drums, and the use of a weekly sweat lodge (*Alvarez v. Hill*, 2008). The state argued that the failure of the inmate to invoke RLUIPA vanquished its use in the suit. The court ruled that it did not, and the facts of the case established “a ‘plausible’ entitlement to relief under RLUIPA” (p. 1157).

Offenders requested more assembly and language study time in *Van Wyhe v. Reisch* (2009). They also requested a succah and tape player for a religious ceremony. They were denied and claimed they were substantially burdened in their free exercise. They also claimed that RLUIPA was unconstitutional under the Spending Clause. The court ruled that RLUIPA was constitutional and that a state does not waive its Eleventh Amendment immunity for monetary damages by accepting federal funds under RLUIPA. The court found that the offenders were not substantially burdened in their free exercise and the state was entitled to summary judgment.

Security. In *Greene v. Solano County Jail* (2008), a maximum security detainee claimed that his religious freedom was substantially burdened by the prohibition against assembly. The court ruled that the jail did not show that the policy was the least restrictive means to achieve a legitimate penological interest – less restrictive measures had not even been considered. The court remanded the case for further consideration.

Sweat Lodge. Two groups of death row offenders in Kentucky filed suit that their rights were violated by denial of access to a sweat lodge. In *Haight v. Thompson* (2014), the offenders offered to pay for the sweat lodge. The court remanded the case for consideration of a promised policy study ordered by the DOC Commissioner.

Tobacco. In *Chance v. TDCJ* (2013), the court ruled that offenders did not have to be allowed a personal peace pipe, avoiding contracting diseases by sharing pipes. TDCJ responded by having the Native American chaplain symbolically smoke for the assembly. Also in Texas, an offender brought suit in *Davis v. Davis* (2016), alleging that his RLUIPA and First Amendment rights were violated with the prohibition against participation in the pipe ceremony. Citing *Chance v. TDCJ* (2013), the court ruled that

logistics, health, and security concerns outweighed the burden on religious accommodations.

Trained volunteer. In *Adkins v. Kaspar* (2004), the offender alleged he was unable to practice his religion properly as the prison did not allow proper lay-ins or assembly. The offender was allowed to listen to tapes on Mondays but not Saturdays (Sabbath) unless an approved volunteer was available. The State showed an alternative accommodation was provided by the availability of tapes. The offender did not have an Equal Protection claim because all religious groups were required to have an approved volunteer to lead services, not just Yahweh Evangelical Assembly. This policy did not place a substantial burden on the offender's free exercise because the State's policy did not cause the offender to significantly modify his behavior or violate his religious beliefs.

The New York Tulukeesh offenders were required to obtain an outside religious clergy leader, as well as an inmate facilitator to hold group meetings. The state argued the policy was in place to ensure organizations were not covers for gang organizations or other nefarious purposes. The offenders were alternatively allowed to practice their religion in their cells. Otherwise, the offenders would be charged with unauthorized organization. The court ruled that the policy requiring outside clergy met the least restrictive means of furthering governmental interests (*Jova v. Smith*, 2009).

Universal Life Church Assembly. For seven years, a Universal Life Church offender was allowed to preach in the chapel. The new warden prohibited him from continuing preaching with the threat of disciplinary action if he continued to do so. In *Spratt v. Rhode Island DOC* (2007), the court ruled that the state did not show the compelling governmental interest in prison security was furthered by prohibiting

offenders from preaching. The state did not even show that the prohibition would have been the least restrictive means available.

White supremacy. Under RLUIPA and the Equal Protection Clause, the court in *Murphy v. Missouri Department of Corrections* (2004) required more than allegations of violence for prisons officials to overcome strict scrutiny review. The same allegations however, were enough to overcome the rational basis review of the Equal Protection Clause. The offender's religion of choice (Christian Separatist Church Society) included beliefs in white supremacy. He sued over the prison's restrictions on assembly, television programming, and delivery of religious publications. Prison administrators claimed such decisions were made to avoid racial disruption and violence. The court determined the policies were in the interest of prison security and found that the other group services allowed did not have separatism as a central belief. The policies were rationally related to legitimate government interests in security. The Eighth Circuit remanded the issues of unlawful censorship and RLUIPA violation. Sufficient evidence as to the inflammatory nature of the publication was not shown.

Wiccan. The Wiccan offenders sued over limitation of the Samhain religious holiday observation, specifically the time allotted and the food permitted (*Gladson v. Iowa*, 2009). The court held that it was not a violation of their First Amendment rights because the offenders did not show that the policy substantially burdened their ability to practice their religion.

In *McCullum v. California Department of Corrections and Rehabilitation* (2011), offenders and their volunteer Wiccan chaplain claimed their religious accommodations were denied because five other faiths had paid chaplains and the Wiccan offenders only had a volunteer chaplain. The

court determined that the offenders did not show that the use of a volunteer Wiccan chaplain infringed on their free exercise. They noted that prisons are not required to provide a paid, full-time chaplain. Furthermore, the volunteer chaplain's claim was dismissed. The court ruled that a third-party who is not incarcerated may not seek relief under RLUIPA.

Offenders claimed the failure to hire a full-time Wiccan chaplain hindered their free exercise of religion. They claimed there were more practicing Wiccan offenders at the California prison than there were Jewish, Muslim, or Catholic inmates. The court ruled that the failure to provide a paid, full-time chaplain for their faith did not burden the offenders' free exercise of religious beliefs. The offenders were already provided with a volunteer Wiccan chaplain (*Hartmann v. California Department of Corrections and Rehabilitation*, 2013).

Diet

“Several cases have involved challenges to prison policies refusing to accommodate kosher or other religious diets and have almost all met with success under RLUIPA” (Gaubatz, 2005, p. 558). As noted by Valley (2007), RLUIPA protects those practices that are an element of, but not necessarily essential to, a religious belief. This includes dietary requests. Therefore, prison officials often find they are unable to successfully prohibit such requests (Valley, 2007).

A summary of the case law for religious diets is given in Table 9.

Table 9

Summary of Diet Cases

Topic	# of Cases
African Hebrew Israelite	1
Church of the New Song	1
Eid ul Fitr Feast	2
Halal	4
Kosher	15
Meat-free	1
Native American	2
Pork	2
Ramadan	4
RLUIPA issue	2
Succoth Meal	1
Thelema	1
Tulukeesh	1
Vegan	2
Vegetarian	3
Wotanist	1

African Hebrew Israelite. An African Hebrew Israelite offender claimed he was not given blackstrap molasses, sesame seeds, kelp, brewer's yeast, parsley, fenugreek,

wheat germ, and soybeans as required by his religion. The court ruled that while the *Turner* prongs must be considered, they do not have to be separately addressed by prison officials. The practice of other prisons of allowing the supplements is not, in and of itself, sufficient to override prison's argument that denial meets a legitimate penological interest (*Mays v. Springborn*, 2013).

Church of the New Song. Offenders sued over prison official's denial to allow banquet food trays to offender members in segregation. CONS had been ruled a religion in the 8th Circuit, but deemed a masquerade in Texas. The court ruled the denial of food trays was not a violation of the offenders' First Amendment rights and was rooted in a legitimate penological purpose (*Goff v. Graves*, 2004).

Eid ul Fitr Feast. A Muslim offender claimed he was denied the opportunity to celebrate the end of Ramadan with the Eid ul Fitr Feast. In *Ford v McGinnis* (2003), the court found that the offender's religious beliefs were substantially burdened by the policy. The court vacated the lower court's ruling and remanded to ascertain whether the prison officials' policies were reasonably related to legitimate penological purposes.

In *Shakur v. Selsky* (2004), the district court had held that denial of a single religious festival meal was not a substantial burden on the offender's religious exercise. The district court dismissed the claim. On appeal, the Second Circuit remanded the case to the district court for further proceedings in regards to the offender's First Amendment and RLUIPA allegations. The claims regarding due process and equal protection were dismissed.

Halal. *Williams v. Morton* (2003) was unsuccessful for some Islamic offenders' attempting to force the New Jersey prison system to provide halal meat. The court ruled

the regulation furthered a legitimate penological interest in simplified food service, security, and costs. It also determined the offenders' equal protection claims were not valid because it was not shown that the meals provided to Jewish offenders contained meat. The meals offered as an alternative were vegetarian (Gower, 2004).

The offender did not prevail in *Patel v. United States Bureau of Prisons* (2008) as the offender did not show how the dietary policy of the BOP substantially burdened his practice of religion. As a Muslim, he claimed the alternative means offered by prison administrators were inadequate. The court ruled the offender did not show evidence that he requested to be allowed to store halal food for days when kosher meat would be served. The record also did not show why foods available to the offender at the commissary would not be appropriate to his religious beliefs on those days when kosher meat would be served.

In *Perez v. Westchester County Department of Corrections* (2009), the jail officials did not want to provide halal meals to Muslims as often as it provided kosher meals to Jewish offenders. Although the case was ultimately dismissed, the offenders still prevailed. The lawsuit was dismissed after the jail agreed, not willingly, to serve halal meals at the same rate as kosher meals. Attorneys' fees were also awarded to the offenders' attorneys because the offenders prevailed even though the lawsuit was dismissed.

An Oklahoma offender claimed he was forced to accept pudding and jello that was not halal. He claimed that the non-pork and vegetarian diets were not sufficient. The court ruled, in *Abdulhaseeb v. Calbone* (2010), that the offender showed his free exercise was substantially burdened. The court remanded the case in order for the state to

show that the policy served a compelling governmental interest and was the least restrictive means for doing so.

Kosher. In *Madison v. Ritter* (2003), denial of a kosher diet, when mandated by a religion, placed a substantial burden on the offender's religious exercise. The Virginia prison offender identified himself as a Hebrew Israelite and noted his religious beliefs required he maintain kosher dietary practices. The prison system denied his request for kosher meals and claimed the diets currently provided (regular, vegetarian, and no pork) were adequate for his purposes. The system's denial was based on disbelief of the offender's sincerity in his religious beliefs as well as his prolific institutional behavioral problems. The offender brought suit based on RLUIPA and prevailed as the State did not prove a rational or compelling reason for its denial (Gower, 2004). The prison system subsequently appealed on the constitutionality of RLUIPA. While the district court had found RLUIPA to be a violation of the Establishment Clause, the Fourth Circuit ruled the Act was not a violation.

A BOP offender who was an Orthodox Jew required a kosher diet. At that time, offenders were required to submit a "written statement articulating the religious motivation for participation" in the diet (*Resnick v. Adams*, 2003, p. 765). The court found that the requirement to fill out a form to receive kosher food was not a violation of the First Amendment. They wrote, unless the offenders "participated, or attempted to participate, in the [diet program], he could not be injured by, and would have not standing to challenge," the policy (*Resnick v. Adams*, 2003, p. 767). The offender also sued under RFRA in another case (*Resnick v. Adams*, 2003), but again the court ruled that the

offender had not shown sufficient cause to constitute a RFRA violation and affirmed summary judgment for the BOP officials.

Searles v. Dechant (2004) was a Tenth Circuit case that was brought by a Jewish offender. Despite the rabbi telling him that it was allowable, he refused to work at a job assignment in a non-kosher kitchen and received disciplinary cases. As a result of the disciplinary cases, he lost his privileges to own some property items. The court ruled that working in the kitchen was not a violation of the offender's religious expression of freedom, as evaluated by the *Turner* test.

In *Madison v. Virginia* (2006), the offender brought suit over the denial of kosher meals. The state counter argued that RLUIPA was unconstitutional. The Fourth Circuit held that RLUIPA was not an overreach of Congress' powers nor was it a violation of the Spending and Commerce Clause. The case was remanded to the district court for reconsideration of the kosher diet issue.

Baranowski v. Hart (2007) said that the State did not need to change their religious diet policy if doing so would place undue costs and administrative burdens on the State. The Texas Department of Criminal Justice was sued by a Jewish offender for not providing a kosher diet. The court held the policy of not providing kosher meals was the least restrictive means of meeting a compelling government interest in prison order and controlling costs.

In *Shakur v. Schriro* (2008), the Arizona offender had originally adopted a vegetarian diet. However, the offender asked to switch to a kosher meat diet after experiencing some health issues. He claimed the prison's refusal violated the Free

Exercise Clause of the First Amendment. The court agreed and found that the offender's belief was sincere.

After several disciplinary cases, an offender was sent to a Michigan facility that had segregation, but did not serve kosher meals. When the warden was notified the offender was not eating, she transferred him to another facility. The court ruled that the unavailability of kosher meals for five days was not a violation of the offender's Eighth Amendment rights because the warden transferred him as soon as she became aware of the issue (*Cardinal v. Metrish*, 2009).

In accordance with the PLRA, the Tenth Circuit affirmed the decision of the lower court in *Gallagher v. Shelton* (2009). The Kansas offender alleged there were bodily fluids in his kosher meal. The court ruled that the offender did not exhaust his administrative remedies.

In Maryland, an offender was not able to eat many of the available food items and still keep kosher. He lost 23 pounds and sued under RLUIPA. The Fourth Circuit found that RLUIPA does not allow damages to be awarded against "private individuals who are not themselves recipients of federal funding" (*Rendelman v. Rouse*, 2009, p. 187). The offender had been transferred to a federal prison, prior to the decision, to serve additional sentences. The Maryland DOC also changed its policy. The court ruled the offender's request for injunctive relief was moot based on the offender's transfer to the BOP and Maryland's change in policy.

Colvin v. Caruso (2010) was a case where a Jewish offender was mistakenly believed to be Muslim and not given kosher meals for 16 days. Even after the error was discovered, there were still occasions when he was accidentally given non-kosher food.

The court ruled that the offender's lack of knowledge of Jewish scholarship did not necessarily indicate an insincere belief in his religion.

The Eighth Circuit court was not clear in *El-Tabech v. Clarke* (2010). After a Nebraska offender sued for kosher meals, the district court awarded him monetary costs and fees. The court was not firm on whether RLUIPA allowed for monetary costs and fees, but remanded the case to the lower court for reconsideration of the award.

In *Little v. Jones* (2010), a Michigan offender was mistakenly taken off his kosher diet and was also served food that was non-kosher. The court found that the mistaken removal of an offender from a kosher diet did not violate his constitutional rights. The court affirmed the granting of summary judgment.

A Texas offender demanded free kosher food as he had been provided on his previous unit. He was transferred due to a serious disciplinary infraction. The Fifth Circuit denied a rehearing, stating that RLUIPA does not require prison officials to provide kosher foods (*Moussazadeh v. TDCJ*, 2012/2013). The state had noted that the offender would order and consume non-kosher items from the commissary, giving rise to doubts about the sincerity of his beliefs.

In Florida, an Orthodox Jewish offender sued over his request to have kosher meals (*Rich v. Sec., FDOC*, 2013). In the Florida DOC, a new policy was enacted that would have required the offender to eat non-kosher food for 90 days before being considered. The court ruled that the new policy substantially burdened the offender's religious freedom and was not the least restrictive means to render the offender's claim moot. There was also no indication that the kosher meals would be ongoing – rather than a short-term policy.

In *U.S. v. Secretary of Florida Department of Corrections* (2015/2016), the state claimed that the provision of kosher meals was prohibitively expensive. The offenders sued. The court held that the denial of kosher meals did not meet a compelling governmental interest and was not the least restrictive means of doing so. Along with not meeting the *Turner* test, the state failed to show why other states and the BOP provided kosher meals and they could not. They also failed to show why kosher was difficult when they provided vegan, medical, and therapeutic diets.

Meat-free. A Catholic offender requested a non-meat diet for all meals as part of his penance and was denied. The offender lost approximately 50 pounds. The court asked if the denial of the diet was a substantial burden of free exercise for the offender's religion. The answer was yes, and the court held that if the offender had been affiliated with a less traditional group, the diet would have been accommodated (*Nelson v. Miller*, 2009).

Native American. *Haight v. Thompson* (2014) was a case where two groups of death row offenders filed suit claiming their rights were violated by the denial of buffalo meat and other traditional foods for a powwow. The offenders offered to pay for the food. The court found that there was "a triable issue of fact over whether RLUIPA gives the inmates a right to buffalo meat and other traditional foods for a faith-based once-a-year powwow" (p. 558). The case was remanded for consideration of whether in the inmates' beliefs were sincerely held and whether the State met the *Turner* prongs.

In *Schlemm v. Wall* (2015), a Navajo offender requested venison or even ground beef for a Ghost Feast. He argued that outside vendors were allowed to send in sealed Seder platters for Jewish offenders. The court wrote that the denial was a violation of the

offender's free exercise. The Wisconsin DOC did not show that the policy was the least restrictive means. They had not tried to price outside vendors. The court limited the decision to the current situation and stated, "the costs of accommodating other inmates' requests (should any be made) can be left to future litigation" (*Schlemm v. Wall*, 2015, p. 366).

Pork. In Pennsylvania, an offender was fired for refusing to handle pork and given a job where he made less money (*Williams v. Bitner*, 2006). The Third Circuit court pointed out the U.S. Courts of Appeal from the Fifth (*Kenner v. Phelps*, 1979), Seventh (*Chapman v. Kleindienst*, 1974, and Eighth Circuits (*Hayes v. Long*, 1995) had previously held that prison officials were required to accommodate a Muslim inmate's religious beliefs regarding the handling of pork. Also, the Third Circuit court itself (*Williams v. Bitner*, 2005), along with the U.S. Supreme Court (*Sherbert v. Verner*, 1963) supported the principles underlying the inmate's asserted right. Thus, the state of the law at the time of the violation gave the prison officials fair warning that their treatment of the inmate was unconstitutional.

An Oregon DOC offender alleged he was served pork in a pie, contrary to his religious beliefs (*Jones v. Williams*, 2015). He also alleged he was required to cook pork in his job. He also alleged the method of cleaning grills did not ensure that pork grease was removed. The court held the allegation that the pork was in a pie was hearsay and summary judgment was awarded to the DOC. The DOC violated the offender's right when they required him to cook pork. The claim regarding the grill cleaning was denied, with the court affirming summary judgment in favor of the DOC.

Ramadan. In *Lovelace v. Lee* (2006), a Virginia offender alleged his Nation of Islam religious exercise was denied. The offender was on a list of offenders allowed to participate in Ramadan. While participating, he complained about some of the items provided. The officer to whom he complained later claimed the offender had broken fast and Lovelace was removed from the Ramadan participation list. With this removal, he not only was denied the Ramadan meals, but he was also denied the opportunity to participate in any Ramadan activities. The officer later admitted he had made a “mistake.” The state did not show any evidence the offender had, in fact, broken his fast and therefore, the court ruled his religious exercise was substantially burdened. The court also wrote, “A reasonable fact-finder could conclude that (the officer) acted intentionally, perhaps even maliciously, in misidentifying Lovelace and in failing to correct his error during the remainder of Ramadan 2002” (p. 196). The state did not show the Ramadan policy was in furtherance of a legitimate government interest or that it was the least restrictive means of achieving any such interest.

A New York offender was required to give a urine sample during Ramadan when he could not drink water, and was disciplined for doing so (*Holland v. Goord*, 2014). The DOC argued that the matter was a *de minimis* burden on the offender’s religious exercise. The court disagreed and ruled that it was a substantial burden to the offender’s religious exercise.

In *Wall v Wade* (2014), the Nation of Islam offender was required to show property related to his religion in order to sign up for Ramadan. The offender claimed his property had been lost during a transfer. He argued that he was forced to choose between not eating and his religious beliefs. The court agreed and held that the state did not show

that the policy was the least restrictive means of meeting a compelling governmental interest.

A Muslim offender was denied meal bags during part of Ramadan. The Wisconsin DOC claimed he had violated policy and was thus denied the bags. The court found that the state “intentionally and unjustifiably forced this burdensome choice” on the offender, causing him to choose between his religious beliefs and starvation (*Thompson v. Holm*, 2016, p. 381). If the facts were disputed and decided in the most favorable light to the non-moving party, the court ruled the state did infringe on the offender’s RLUIPA rights.

RLUIPA issue. A Jewish offender in Georgia brought suit that he was not allowed to constantly wear a yarmulke, eat only kosher foods, as well as observe holy days and rituals, in violation of RLUIPA (*Benning v. GA*, 2004). The DOC argued that RLUIPA violated the Establishment Clause and the Tenth Amendment. The court disagreed and ruled that the U.S. Congress did not overstep its power by predicating receipt of federal funds on adherence to RLUIPA. The case was remanded to the district court for a decision on the other matters.

In *Van Wyhe v. Reisch* (2009), the offenders requested a succah for religious ceremonies in which to eat their meals. They were denied and claimed they were substantially burdened in their free exercise. They also claimed that RLUIPA was unconstitutional under the Spending Clause. The court ruled that RLUIPA was constitutional and that a state does not waive its Eleventh Amendment immunity for monetary damages by accepting federal funds under RLUIPA. The court found that the

offenders were not substantially burdened in their free exercise and the state was entitled to summary judgment.

Succoth meal. In *Sisney v. Reisch* (2012), the offender was denied permission to eat his Succoth meal in a succah in the recreation yard. He sued the South Dakota DOC for compensatory damages. The court held that the denial of a succah was not a violation of the offender's constitutional rights and noted that the PLRA does not allow compensatory damages if physical injury does not result. It was not clear that use of a succah was a "reasonable dietary and meal accommodation" (*Sisney v. Reisch*, 2012, p. 19).

Thelema. An Illinois offender was denied a non-meat diet because it was not required by his religion, Thelema⁵. In the Illinois DOC, the offenders were required to have their religious affiliation verified by a prison chaplain. The court held that the length of time the offender pursued the issue showed his belief was sincere. The policy requiring verification of sincerity from a religious leader was not in furtherance of a compelling governmental interest, nor was it the least restrictive means available. Therefore, the delay in the recognition of a change in the offender's religious beliefs was a violation of his freedom of religious practice (*Koger v. Bryan*, 2008).

Tulukeesh. New York offenders claimed they must eat "only a complex, highly regimented non-soybean-based vegan diet" (*Jova v. Smith*, 2009, p. 414). The court ruled that the state did not prove that their religious/meatless diet was the least restrictive means of further the New York DOC's compelling governmental interests. The case was remanded to determine if an entirely vegetarian diet was possible.

⁵ A religion based on the teaching of English philosopher Aleister Crowley (DuQuette, 2005).

Vegan. In *DeHart v. Horn* (2004), a Buddhist offender requested a special diet. The state complained that the diet would require individualized preparation and denied it. The court held that the religious practice held that the religious practice did not have to be usual or even mandatory to inhibit someone's religious freedom rights. The court also clarified that RLUIPA replaced RFRA for the U.S. states.

A Moorish Science Temple of America offender claimed he was required to have a vegan diet, even though his religion required a pork-free diet. The offender was moved to another prison and received a vegan diet there. The court found that a sincerely held belief is entitled to RLUIPA protections even if it not the central tenet of a religion. However, if the request for the diet was not related to religious purposes, the chaplain did not err in denying it (*Vinning-El v. Evans*, 2011).

Vegetarian. *Kind v. Frank* (2003) was a case where a Muslim offender requested a vegetarian diet. The state offered him a pork-free diet in convention with Islamic practices. The court found that the denial of the vegetarian diet was not a violation of the offender's sincerely held religious beliefs and affirmed the granting of summary judgment.

When *Koger v. Bryan* (2008) was decided, the offender prevailed. The offender in this case also had changed his religious affiliation (several times). He was denied a vegetarian diet because he did not have a letter from a rabbi verifying his religious affiliation and that the diet was part of the religious belief. The court ruled the length of time the offender pursued the issue was testament to the sincerity of his religious beliefs. The policy requiring verification from the rabbi was shown neither to be a compelling

government interest or the least restrictive means of furthering such an interest if it existed.

A Shetaut Neter⁶ offender sued over a use of force and denial of a vegetarian meal. The state argued that the officers thought the offender was Muslim. The court held that the denial of a specific meal did not violate the Equal Protection clause if the official did not know the offender was entitled to receive the meal. In addition, the offender did not show he was treated any differently than any other inmate in such a situation (*Furnace v. Sullivan*, 2013).

Wotanist. In Wisconsin, an offender alleged that his Wotanist⁷ dietary restrictions were ignored (*Lindell v. McCallum*, 2003). The court agreed that refusal to allow dietary restrictions because of the failure to recognize a religion violated the offender's Constitutional rights. The case was remanded to the district court for recognition of the religion.

Grooming

In the recent decision of *Holt v. Hobbs* (2015), the U.S. Supreme Court ruled that the Arkansas Department of Corrections violated RLUIPA when it did not allow a Muslim offender to grow a short beard. The offender met his burden of proof by showing that growing a beard was a religious exercise, and that the department's policy prohibiting it substantially burdened his right of free exercise. The state was required to show that the policy was "...in furtherance of a compelling governmental interest; and

⁶ A religion based on Egyptian/African philosophy including yoga practices (Ashby, 2007).

⁷ Wotanism is a religion based on the concepts of white supremacy and paganism, also known as Odinists (Lane, n.d.).

(2) [was] the least restrictive means of furthering the compelling governmental interest” (RLUIPA, 2000). The Court found the state did not meet its burden.

The state’s case rested on the compelling governmental interest in offender identification and preventing the concealment of contraband. Justice Stephen Breyer mentioned that the state was not able to show a single example when contraband was found secreted in a prisoner’s beard (*Holt v. Hobbs*, 2015, oral arguments, p. 48). The state’s argument that permitting facial hair would allow an offender to quickly alter his appearance was also set aside. Justice Ruth Ginsburg mentioned that it would be easy enough to take two pictures of the offender upon intake – one with facial hair and another with the offender clean shaven. Thus, the policy was not the least restrictive means, even if the state was found to have a compelling interest. It was also observed that many other states were able to operate with less restrictive policies (*Holt v. Hobbs*, 2015). Also, Arkansas’s policy allowing short beards for medical reasons undermined the states’ arguments regarding security (*Holt v. Hobbs*, 2015, oral arguments).

The case was not without its points for the state however. In oral arguments, Chief Justice John Roberts expressed concern about parameters of the case, stating, “I don’t want to do these cases half inch by half inch” (*Holt v. Hobbs*, 2015, oral arguments, p. 7). He was concerned that the case would not really settle the issue. Justice Antonin Scalia pointed out that even having an inch long beard would be a violation of the offender’s religious beliefs. The plaintiff’s attorney responded that it would be less of a violation.

Chief Justice Roberts’ fears seem to have been shared somewhat by Justice Sotomayor, who concurred but wanted the Court to have a consensus on the deference to

be given to prison officials. She opined that deference was owed to prison officials, but should be tempered with good judgment.

A summary of the case law for religious grooming is in Table 10.

Table 10

Summary of Religious Grooming Cases

Topic	# of Cases
Dreadlocks	5
Facial Hair	9
Facial Hair and Long Hair	3
Hair Length	7
Kouplock	2

Dreadlocks. A Rastafarian offender brought suit against the California policy that required him to cut his dreadlocks, claiming it violated his religious beliefs (*Wyatt v. Terhune*, 2002/2003). The offender had filed using RFRA, which had been declared unconstitutional. The Ninth Circuit reversed the ruling in this case, and the equal protection claim was dismissed because the offender's administrative remedies had not been exhausted. The policy was ruled constitutional. A rehearing was denied in 2003 and the previous opinion vacated.

In *Grayson v. Schuler* (2012), an African Hebrew Israelite offender claimed the ban on his dreadlocks was a violation of his First Amendment rights. Illinois prison officials claimed they were a security risk, but allowed Rastafarians to have them. The court ruled that despite the chaplain's opinion that the African Hebrew Israelites did not

require dreadlocks, the policy was discriminatory. It was not constitutional to allow one religious group to have an accommodation that is not allowed for another group.

In *Stewart v. Beach* (2012), a Rastafarian offender was required to cut his dreadlocks or forfeit a transfer to be closer to his ill mother. Officers were warned the policy may violate the First Amendment. The court held that the warning of a potential First Amendment violation did not negate an officer's qualified immunity. Also, the court held that RLUIPA does not allow individual-capacity claims. The warden was properly granted summary judgment as denying a grievant appeal did not create a personal violation of rights. The plaintiff did not clearly establish that the enforcement of the policy violated his rights. RLUIPA only allowed a cause of action against the government, not individuals.

Lewis v. Sternes (2013) was a case regarding an offender who had made a Nazirite vow committing to not cutting his hair. The offender's hair was in dreadlocks. The Illinois DOC's policy allowed long hair if it did not create a security risk. The offender was not allowed to have visitors until he consented to have his hair cut. Prior to the court hearing, the offender was given the choice of cutting his hair or going into segregation. He cut his hair. The Seventh Circuit examined if the ad hoc policy of removing the dreadlocks in some cases violated RLUIPA and determined it did not. The Illinois prison had a different policy from another similar Illinois prison. However, their visitation policies were different. The offender's dreadlocks were too difficult to search and the vow was not mandatory for the religion.

In *Ware v. Louisiana Department of Corrections* (2017), a Rastafarian offender sued under RLUIPA against the policy that prohibited his dreadlocks. The Fifth Circuit

agreed the policy was unconstitutional, stating the state did not show that the policy was the least restrictive means of meeting a compelling governmental interest.

Facial Hair. Shortly after RLUIPA was passed, a Muslim offender filed suit regarding the Texas prison policy that required him to be clean shaven. He claimed it violated the First Amendment Free Exercise Clause. The court affirmed the district court, finding the policy was “reasonably related to legitimate penological interests” and “did not deprive [the] plaintiff of all means of expressing his religious beliefs” (*Green v. Polunsky*, 2000, p. 391).

In *Taylor v Johnson* (2001), a Muslim offender in a Texas prison sued over the policy which did not allow beards, claiming it violate his First Amendment rights. The court found the policy prohibiting the wearing of facial hair was not unconstitutional. In *Green v. Polunsky* (2000), the court had found the policy reasonably related to legitimate penological practices. The Equal Protection claim was vacated and remanded. It was later vacated by the lower court as the offender had been released from prison.

British nationals detained at Guantanamo Bay alleged “...forced shaving of their beards, banning or interrupting their prayers, denying them copies of the Koran and prayer mats and throwing a copy of the Koran in a toilet bucket” (*Rasul v. Myers*, 2008, p. 650). The District of Columbia Circuit held (2008) that non-citizen detainees were not subject to the protections of RFRA. The U.S. Supreme Court (2008) vacated and remanded in light of the decision in *Boumediene v. Bush* (2008)⁸. The D.C. court again held (2009) that non-citizen detainees were not subject to the protections of RFRA.

⁸ Foreign detainees were entitled to habeas corpus hearings.

In *DeMoss v. Crain* (2011), the Texas offender claimed that the policy requiring offenders to be clean-shaven was a violation of RLUIPA. The state argued the policy aided in the identification of offenders, searching for contraband, and saving money by limiting required grooming equipment. The court ruled the grooming policy was the least restrictive means of serving a compelling governmental interest.

In *Kuperman v. Wrenn* (2011), the New Hampshire DOC provided a religious waiver to offenders, allowing a ¼” beard. An offender sued to allow a full, untrimmed beard in accordance with his faith. The court stated the beard length restriction was reasonably related to a legitimate penological interest. Prison administrators were granted summary judgment as the offender did not show evidence repudiating the prison’s claim that the policy was reasonably related to security.

Another case prior to *Holt v. Hobbs* (2015), a Sunni Muslim housed in a Virginia prison was denied permission to grow a 1/8” beard. While the offender showed his free exercise was substantially burdened, the state did not show the policy was the least restrictive means for achieving a compelling governmental interest. The court found for the offender (*Couch v. Jabe* 2012).

Garner v. Kennedy (2013) was another Texas case where an offender claimed that the policy prohibiting facial hair violated his exercise of religious freedom. The court ruled the Texas prison’s policy requiring short facial hair was not the least restrictive means of furthering a compelling governmental interest. The Texas Department of Criminal Justice (TDCJ) did not show the actual cost of changing the policy. The argument of offender identification was negated because shaving their heads would cause similar identification needs.

An Islamic offender in a Georgia prison claimed that the policy requiring he shave his beard was in violation of his religious beliefs (*Smith v. Owens*, 2017). The district court's ruling was vacated and remanded in light of the decision in *Holt v Hobbs* (2015).

In *Ali v. Stephens* (2016), a Muslim offender claimed his free exercise was burdened by the prohibition against wearing a kufi and a 4" beard. The court agreed that it was, noting the Texas prison system did not show that the policies were in the government's compelling interest or that they were the least restrictive means.

Facial Hair and Long Hair. *Flagner v. Wilkerson* (2001) was a case where an Orthodox Hasidic Jewish offender requested damages after prison officials forcibly cut his beard and sidelocks. The court did not determine that the defendant's actions violated a clear constitutional right. They reversed denial of summary judgment and remanded to consider the constitutionality of the policy.

Jackson v. the District of Columbia (2001) was a case filed by Rastafarian and Muslim offenders. They alleged a violation of RFRA due to the prison policy requiring short hair and prohibiting beards. The district court ruled they had not exhausted their administrative remedies. The court considered whether the PLRA applied to RFRA actions and found that it did. They also considered if the "irreparable injury" argument was sufficient to find the PLRA did not apply in this case (p. 267). They found it did not. The case was remanded with an order to dismiss without prejudice so that the administrative remedies could be exhausted.

An offender claimed that the Arkansas grooming policy was a violation of his free exercise (*Fegans v. Norris*, 2008). He claimed the policy violated his equal protection

rights as the women offenders were allowed a different, less restrictive policy. He also noted the medical exemption policy that allowed offenders to groom a short beard for medical reasons. The court ruled that the policy requiring clean-shaven offenders and short hair was not a violation of RLUIPA. The state had pointed out the female offenders are historically less violent than male offenders. The court found that different policies did not violate the offender's equal protection rights. Also, the offender did not argue that he wanted to wear a beard the same length as those granted in medical exemptions. Finally, the court found the policy was reasonably related to the government's interests in safety and security.

Hair Length. *Henderson v. Terhune* (2004) was a case where an offender sued over the California prison system's policy regarding hair length, claiming that it violated his free exercise. The Ninth Circuit found the policy was in keeping with prison goals, and would unduly burden administrators if removed. The American Indian Religious Freedom Act (AIRFA) did not provide for legal recourse. The court held that the policy meet the *Turner* test, but the offender could not obtain recourse under AIRFA.

A Native American offender appealed regarding the hair length policy for male offenders in Arizona prisons. He was housed at a minimum security prison and pointed out the policy for female prisoners was different. The Ninth Circuit found the state did not show that the security level of the offender was considered, or that they had considered less restrictive means. They also did not show why the females' policy differed from the males'. The court also noted that a higher standard of proof was required to show compelling governmental interests over legitimate penological interests (*Warsoldier v. Woodford*, 2005).

A Fifth Circuit case, *Longoria v. Dretke* (2007), involved a Native American offender who claimed that denial of his request to grow his hair violated his free exercise rights. The court ruled it did not. The offender, in his *pro se* complaint, did not name RLUIPA. The court had decided the same issue under RFRA and ruled that the test was “sufficiently the same” (p.901).

An offender’s head was forcibly shaved in accordance with the maximum security unit use of force policy (*Smith v. Osmint*, 2009). The offender claimed it violated his rights under RLUIPA. The Fourth Circuit wrote that the policy was not the least restrictive means of furthering a compelling governmental interest. The state did not prove that the policy furthered its interests in hygiene and security.

In California, an offender claimed the grooming policy imposed a substantial burden on his free exercise. He sought monetary damages (*Holley v. California Department of Corrections*, 2010). The policy was changed during the course of the lawsuit, and the offender was allowed to have long hair. The court ruled that acceptance of federal funds did not require the state to waive sovereign immunity regarding RLUIPA.

An offender sued over hair length in *Kimbrough v. California* (2010). Before reaching the appeals court, he had been released and the California prison system had changed the hair policy. The district court never actually ruled on the offender’s claims. The Ninth Circuit court ruled that if the case becomes moot, and no actual violation of the offender’s rights is thus found, attorney’s fees should not be awarded.

In *Knight v. Thompson* (2013/2015), offenders challenged a policy requiring short hair as a violation of practicing their Native American religious freedom. The court

found that the Alabama prison system's policy requiring short hair was the least restrictive means of furthering a compelling governmental interest. The case was different from *Holt v. Hobbs* (2015) due to the "detailed record developed" showing the policy was necessary to mitigate "actual security, discipline, hygiene, and safety risks" (*Knight v. Thompson*, 2015, p. 1293).

Kouplock. In *Hoevenaar v. Lazaroff* (2005), the Ohio offender brought suit over the policy requiring he cut his hair in violation of his Native American beliefs. An injunction allowed him to keep a kouplock. The state argued that the offender had a long history of institutional misconduct regarding contraband. The Sixth Circuit held that RLUIPA and RFRA required that suitable deference should be given to prison officials in creating policy. The injunction allowing the kouplock should not have been given.

In *Davis v. Davis* (2016), a Texas offender alleged the policy prohibiting the growing of a kouplock was a violation of his RLUIPA and First Amendment rights because female offenders were allowed to grow their hair long. The Fifth Circuit vacated summary judgment because of *Holt v. Hobbs* (2015) and the need to reassess the security risk of allowing kouplocks.

Pat and Strip Searches

The seminal case regarding pat and strip searches is *Bell v. Wolfish* (1979), as discussed earlier. Although there are several cases at the district court level regarding pat and strip searches, they do not often rise to the level of the appeals courts. Unlike with diets, prison officials can make a strong case for searches and their compelling interests in having such policies.

Kaemmerling v. Lappin (2008) was a case involving the BOP. An offender claimed extracting DNA from any type of sample from his body was a violation of his religious free exercise. The D.C. Circuit found that the offender did not show any specific free exercise that was substantially burdened. He did not argue the collecting of the sample was problematic; only the extraction of DNA from the sample. The court ruled that the DNA Analysis Backlog Elimination Act of 2000 did not violate free exercise.

Tulukeesh offenders claimed they could not appear nude in front of non-members (*Jova v. Smith*, 2009). The Second Circuit ruled the New York policy for pat and strip searches had obvious security benefits and was not a violation of their religious exercise.

A summary of the case law for pat and strip searches related to religious beliefs is given in Table 11.

Table 11

Summary of Religious Pat and Strip Searches Cases

Topic	# of Cases
DNA sample	1
Tulukeesh	1

General Exercise of Religious Freedom Cases

The exercise of religious freedom is a fundamental constitutional right. “Prison regulations that prohibit or penalize inmates for following their religious beliefs constitute a significant burden” (Chiu, 2004, p. 1020). RLUIPA cases determine if the

regulation is a significant burden, and if so, does it further a compelling government interest and is it narrowly tailored to be the least restrictive means of doing so.

A summary of the case law for general offender religious exercise is given in Table 12.

Table 12

Summary of General Religious Exercise Cases

Topic	# of Cases
Access to Religious Television Programming	1
African Hebrew Israelite Fellowship	1
Banning or Interrupting Prayers	1
Cross-religion beliefs	1
Five Percent Nation	1
Muslim	3
Name	1
Odinist housing/ritual	1
Pork	1
Praying	1
RFRA applicability to enemy combatants	1
RLUIPA issue	3
Sweat Lodge Ceremony	1
Trained Volunteer	1

(continued)

Topic	# of Cases
Tulukeesh sparring	1
Universal Life Church Preaching	1
Wotanism	1

Access to religious television programming. In a Missouri prison, a white supremacy religion was only allowed to be practiced individually (*Murphy v. MO*, 2004). The court considered if the policy that prohibited assembly, access to television programming and religious publications due to the white supremacy beliefs of the faith was a violation of the Equal Protection clause and RLUIPA. The court found it was not for the Equal Protection clause and it was for RLUIPA. The court held:

- The state’s allegations of violence were enough to meet the rational basis of review of the Equal Protection clause for group meetings;
- Television programming was not specific to the religion; and
- The state’s claims regarding inflammatory publications were not enough to meet the strict scrutiny review of the RLUIPA.

The offender’s claim was ultimately denied.

African Hebrew Israelite Fellowship. During the grievance process about the loss of religious services, the Illinois offender claimed he was “never informed that grievance was incomplete or procedurally deficient” (*Maddox v. Love*, 2011, p. 712). The court ruled that the cancellation of services due to budget cuts was a violation of the offender’s religious rights. The failure to “provide reasonable access to religious materials” was not an issue that was administratively exhausted, so the court affirmed the

lower court's ruling (p. 712). The two counts regarding budget allocations were reversed due to preliminary dismissal during the grievance screening. The claim regarding group worship was vacated.

Banning or Interrupting Prayers. British nationals detained at Guantanamo Bay alleged "...banning or interrupting their prayers..." (*Rasul v. Myers*, 2008, p. 650). The District of Columbia Circuit held (2008) that non-citizen detainees were not subject to the protections of RFRA. The U.S. Supreme Court (2008) vacated and remanded in light of the decision in *Boumediene v. Bush* (2008)⁹. The D.C. court again held (2009) that non-citizen detainees were not subject to the protections of RFRA.

Cross-religion beliefs. A BOP Buddhist offender alleged he was denied pastoral visits from a Methodist minister (*Kikumura v. Hurley*, 2001). The court considered if RLUIPA required a religious belief to be mandated by the religion, and determined it did not. The offender did not have to implicitly state whether his beliefs required pastoral visits. The court held the requests for visits were a religious exercise protected by RLUIPA.

Five Percent Nation¹⁰. The offenders sued over the decision to designate the Five Percent Nation as a Security Threat Group. The court ruled that the policy did not violate the offenders' First Amendment rights. The policy was constitutional under the *Turner* test (*Fraise v. Terhune*, 2002).

⁹ Foreign detainees were entitled to habeas corpus hearings.

¹⁰ "The Five Percent Nation originated in New York City in the 1960s after its leader, Clarence Smith (also known as Clarence 13X and Father Allah), broke away from the Nation of Islam. The group's name derives from its belief in "Supreme Mathematics," which breaks down the population of the world into three groups: the Ten Percent, the Eighty Five Percent, and the Five Percent... Finally, the Five Percent are African Americans who have achieved self-knowledge" (*Fraise v. Terhune*, 2002, p. 511).

Muslim. Detained immediately post 9/11, the plaintiff alleged he was not allowed to pray in prison because he was a Muslim. The Second Circuit held that the defendants were not entitled to qualified immunity (*Iqbal v. Hasty*, 2008). The court noted, “Hasty’s arguments that the repeated banging on Iqbal’s cell while he prayed shows that he was at least allowed to pray” (p. 85). The U.S. Supreme Court held that conclusory allegations that government officials knew of actions taken by subordinates could not be a basis for an unlawful discrimination claim (*Iqbal v. Hasty*, 2009).

A BOP offender claimed his termination from his prison job was due to his supervisor’s prejudice towards the Islamic faith, in violation of RFRA (*Johnson v. Rowley*, 2009). The court determined the failure to submit the RFRA allegation until the last step of the grievance did not constitute exhaustion of administrative remedies. The BOP policy did not allow offenders to amend their grievance with other issues not raised in lower levels of the grievance process.

In *Mack v. Warden Loretto FCI* (2016), the BOP offender brought suit under RFRA for harassment due to his Muslim faith, and its effects on his ability to pray at work. The court ruled that RFRA prohibited individual conduct that substantially burdens an offender’s religious exercise. The offender’s failure “to challenge a prison policy or regulation does not defeat his RFRA claim” (*Mack v. Warden Loretto FCI*, 2016, p. 302).

Name. In *Abdus-Shahid M.S. Ali v. District of Columbia* (2002), an offender sued over his transfer to a District of Columbia prison where administrators decided he must serve his sentence under his birth name rather than his legal name (which he had changed for religious purposes). The court did not determine if the policy was a burden to the

offender's free exercise in violation of RFRA, but ruled that, for recordkeeping, administrators could continue to use the name under which the offender was convicted.

Odinist housing/ritual. An Odinist offender claimed that the California prison system's housing policy would interfere with his religious beliefs by potentially housing him with a non-white cellmate. He also claimed he could not perform an Odinist ritual in front of any non-white person – therefore, he would be precluded from performing the ritual due to the housing policy. The Ninth Circuit held that while the offender's religious beliefs were substantially burdened by the policy – the policy itself is the least restrictive means of meeting the compelling governmental interest of nondiscrimination in housing offenders (*Walker v. Beard*, 2015).

Pork. The Moorish Science Temple of America offender claimed his job as a dishwasher caused him to come into contact with pork products violating his religious beliefs (*Clark v. Long*, 2001). The offender had to choose between washing pans or disciplinary action. The court reviewed the lower court's decision to grant judgment as a matter of law¹¹. Upon review, the court held that the judgment was correct because the offender had sufficient notice to correct his case weaknesses.

Praying. In Texas, an offender sued over the policy requiring offenders to sit in the day room so that officers could have an unobstructed view. He claimed it was a violation of RLUIPA because he had to leave the dayroom to pray. The Fifth Circuit

¹¹ “Motion for judgment as a matter of law (1956) A party's request that the court enter a judgment in its favor before the case is submitted to the jury, or after a contrary jury verdict, because there is no legally sufficient evidentiary basis on which a jury could find for the other party. • Under the Federal Rules of Civil Procedure, a party may move for judgment as a matter of law anytime before the case has been submitted to the jury. This kind of motion was formerly known as a motion for directed verdict (and still is in many jurisdictions). If the motion is denied and the case is submitted to the jury, resulting in an unfavorable verdict, the motion may be renewed within ten days after entry of the judgment. This aspect of the motion replaces the court paper formerly known as a motion for judgment notwithstanding the verdict. Fed. R. Civ. P. 50” (*Black's Law Dictionary*, 2010).

determined the offender's religious exercise was not substantially burdened as he was allowed to decide whether to stay in the dayroom or go to his cell to pray (*DeMoss v. Crain*, 2011).

RFRA applicability to enemy combatants. In *Padilla v. Yoo* (2012), the plaintiff was arrested and detained after 9/11, after being designated as an enemy combatant. He alleged, among other issues, that he was not able to freely exercise his religion in violation of RFRA. The Ninth Circuit ruled that the prison officials were entitled to qualified immunity, as it was not clearly established that RFRA was applicable to enemy combatants.

RLUIPA issue. A Jewish offender in a Georgia prison brought suit that he was not allowed to constantly wear a yarmulke, eat only kosher foods, and observe holy days and rituals (*Benning v. GA*, 2004). The Eleventh Circuit also considered the issue if RLUIPA violated the Establishment Clause or the Tenth Amendment. The court ruled Congress did not overstep its powers by predicating receipt of federal funds on adherence to RLUIPA.

In *Madison v. Virginia* (2006), an offender brought suit over the denial of kosher meals. The state argued that RLUIPA was unconstitutional. The Fourth Circuit examined whether RLUIPA was an overreach of Congress' powers and a violation of the Spending and Commerce clause and determined it did not. The court ruled however, that RLUIPA does not require monetary damages to be paid.

A Native American offender sued for the right to practice religion without discrimination or harassment (*Alvarez v. Hill*, 2008). The Ninth Circuit ruled the failure

of the inmate to invoke RLUIPA did not vanquish its use in this suit. The facts of the case established “a ‘plausible’ entitlement to relief under RLUIPA” (p. 1157).

Sweat Lodge ceremony. In *Fowler v. Crawford* (2008), the offender brought suit over the Missouri prison system’s refusal to allow him access to a sweat lodge. The state refused on the basis that the ceremony would include access to property such as rocks, willow poles, shovels, deer antlers, and split wood, which could be used as weapons. The Eighth Circuit found that the offender did not have a right under RLUIPA to exercise his Native American religious beliefs through sweat lodge ceremonies with other offenders at the maximum-security prison. The prohibition against the sweat lodge met a compelling governmental interest and was the least restrictive means to obtain safety and security.

Trained volunteer. An offender claimed his Yahweh Evangelical assembly free exercise was hindered because officials would not let followers observe holy days or allow assembly without a trained volunteer (*Adkins v. Kaspar*, 2004). The Fifth Circuit determined the prohibition against assembly without a trained volunteer did not substantially burden the offender’s religious exercise. The state allowed sufficient alternative means for the followers to practice their religious beliefs.

Tulukeesh sparring. In *Jova v. Smith* (2009), Tulukeesh offenders claimed they must fight and spar with each other as part of their religious practice. The Second Circuit ruled the prohibition against sparring had obvious security benefits. The prohibition of potentially violent physical activities provided the least restrictive means of fulfilling a compelling governmental interest.

Universal Life Church preaching. In Rhode Island, an offender had been given permission to preach at group services and had done so for seven years. Upon the arrival of a new warden, the offender was told he was no longer allowed to preach and if found doing so, he would be subject to disciplinary action. The new warden cited prison policy as his reason for the prohibition which only permitted institutional chaplains to direct services. Although the State had a compelling interest in maintaining prison security in *Spratt v. Wall* (2007), they failed to show that prison security was furthered by barring the offender from engaging in preaching at any time. The court ruled the State did not show a blanket ban on all offender preaching was the least restrictive means available to achieve its interest.

Wotanism. The trial court in *Lindell v. McCallum* (2003), denied the offender the right to proceed *in forma pauperis* noting his complaint was motivated by harassment. The crux of the offender's complaint was the Wisconsin Department of Corrections' refusal to recognize Wotanism as a mainstream religion. The system's rationale was the religion was based on racist beliefs and potentially disruptive to prison life. The Seventh Circuit remanded the case for further proceedings noting the claim was reasonable under RLUIPA even if the main intent was harassment. The circuit court also ruled the federal courts should not rule on whether the prison system should extend more credit to offenders for their legal endeavors, as it was not their business. Upon remand, the district court dismissed the offender's suit for failure to follow the Federal Rules of Civil Procedures.

Summary

Generally, there was ambiguity over when the Turner test was used. Also, non-citizen detainees were not subject to RFRA. The entity being sued has to be a state actor, not a contract agent, and the one bringing suit has to be incarcerated. Failure to invoke RLUIPA does not mean the suit cannot be tried under RLUIPA. The PLRA does not allow for compensatory damages if physical harm does not result. A state does not waive its Eleventh Amendment immunity for monetary damages by accepting federal funds under RLUIPA. RLUIPA only allows cause of action against the government not individuals.

In the above cases, some general findings were noted. The findings are illustrated in *Figure 4*. Following is a brief summary of the case types regarding agreement between circuit. The category of General Exercise is not included because the case subjects were so varied.

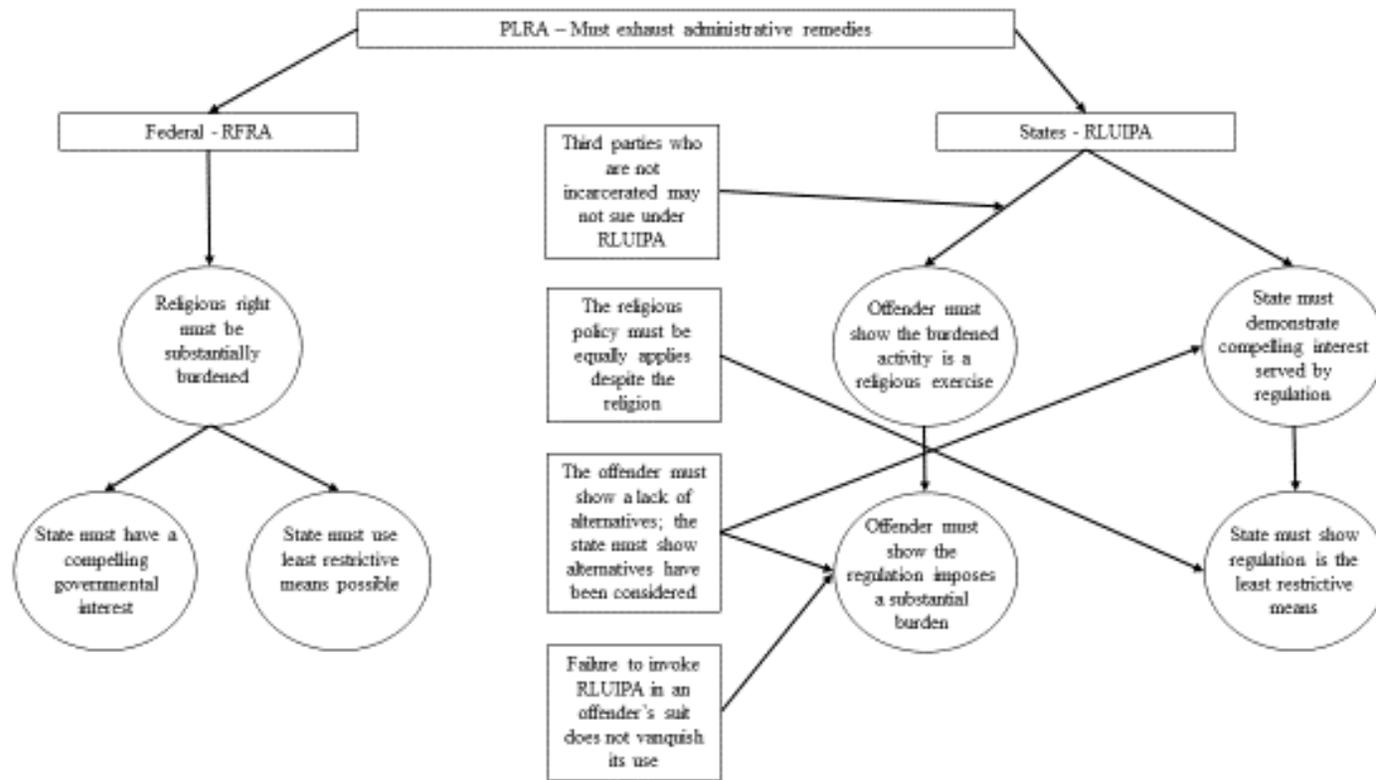


Figure 4. Summary of Case Law for RFRA and RLUIPA.

Summary of Property Cases. Property issues included what property was allowed and where it was allowed. When the state argued that space for storing property was a consideration, they tended to prevail. The outcome was mixed however, on where property was allowed. Offenders usually prevailed on being able to wear religious clothing and head covering outside their cells. For other property, the courts sometimes decided it was only available through the chaplain.

Offenders brought suit against property that was a central tenet to their religious, which usually prevailed, unless it was a danger to the security of the institution. There were differences in the types of property that was allowed for individuals and the property available to group assembly. Surprisingly, color mattered. The state would argue the color of an item, unless regulated, could be used to identify an offender as a gang member. The courts did not always agree, noting that it was not the least restrictive means of meeting a compelling governmental interest. The majority of cases were about religious texts.

Finally, the use of property with an incendiary message could be decided for prison officials if they banned the property for security reasons. They would not prevail however, if the state refused to recognize the religion because of its central tenets (e.g., white supremacy).

Summary of Assembly Cases. Lack of religion is the same as a religion. Prison officials could use available resources serving the largest groups. Accommodations could be denied because of the small number of offenders involved. It is very difficult to rule what is and what is not a religion. Prison officials usually prevailed if efforts were made to obtain a paid or volunteer spiritual leader to conduct services. The compelling

governmental interest in having assemblies of offender monitored (to ensure gang or other nefarious activities were taking place) was recognized by the courts.

The state absolutely has to argue its side of the case. Several cases appeared to be found for the offender simply because the state did not refute each of the offender's arguments (e.g., *Salahuddin v. Goord*, 2006). All religions have to be treated equally or some compelling reason must be shown why they are not. Also, least restrictive means must be examined and, if rejected, sufficient reason must be shown why the decision was made. Finally, health concerns went along with security concerns in decisions regarding peace pipes.

Summary of Diet Cases. While the category of diet had quite a few cases, the offender typically prevailed. It is hard for prison officials to show that denying a special diet is the least restrictive means to achieve a compelling governmental interest – especially when they already provide medical diets. Although costs were frequently an argument used by the states – it was one that rarely prevailed (although it did in *Baranowski v. Hart*, 2007). Courts simply asked the states why they could not provide special diets to offenders when other states could (*U.S. v. Secretary of Florida Department of Corrections*, 2015/2016). They rarely had an answer. Also, the state had to show that they had considered alternative means and rejected them for reasonable fiscal and logistical issues.

The majority of cases were related to kosher diets. Filling out a form to receive a diet was not burdensome. Working in a kitchen serving pork was also burdensome if the offender's religious practices forbade it (*Searles v. Dechant*, 2004; *Williams v. Bitner*, 2005/2006; *Jones v. Williams*, 2015).

If an offender was mistakenly given the wrong diet, it was not a violation of his constitutional rights. Sincerity or lack thereof can be shown by the offender eating prohibited foods (prohibited by religious tenets) either from the commissary or the dining hall. Offenders should not have to choose between not eating and his religious beliefs. Also, offenders do not have to have their sincerity verified by a religious leader.

One article pointed out the difficulty in providing special diets for offenders. “When a prison begins to offer a kosher alternative meal, often a large number of inmates will begin to claim that they are Jewish, also requiring the other meal” (Naim, 2005, note 312). The same article quoted an interview with the Utah Director of Corrections. “In the case of the Church of the New Song their religion required a special diet of Porterhouse steak and Bristol Cream Sherry.” (Naim, 2005, note 311). Such requests do not typically prevail, but require time and resources to address.

Summary of Grooming Cases. *Holt v. Hobbs* (2015) is the ruling case, allowing facial hair. *Ali v. Stephens* (2016) ruled that Texas offenders should be allowed to grow a four inch beard for religious purposes, bringing to fruition the U.S. Supreme Court’s fear that the beard issue would be decided inch by inch. Again, if a practice is allowed for other groups of offender, it should be allowed for the plaintiff. Likewise, if prison officials allow facial hair for medical reasons, it is difficult to argue why it cannot be done for religious accommodations.

If the state had been able to show any example where contraband had been secreted in hair or a beard, the outcome may have been different (see *Knight v. Thompson*, 2015). State must prove that the policy furthers its interests in hygiene and security.

The states have argued that grooming policies were needed for identification purposes. The courts argued that other states managed their populations with less restrictive grooming policies, with adverse effects. The courts also noted that identification problems could arise whether an offender was bearded or clean shaven. For example, if an identification card showed a clean shaven individual and the inmate escaped, subsequently growing a beard – law enforcement may have more difficulty locating him. The court pointed out the opposite was true. If an offender had a beard and escaped, they could change their features simply by shaving their face.

An offender arguing that women’s grooming policies are less restrictive is unlikely to prevail on that argument alone. Women are historically less violent (Trulson, et al., 2011).

Summary of Pat and Strip Searches. *Bell v. Wolfish* (1979) is the leading case regarding cross-gender pat and strip searches. There were not many cases on this topic, primarily due to the ubiquitous nature of the *Prison Rape Elimination Act* (2003), specifically Standard §115.115 which states in part,

(a) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.

(b) ...the facility shall not permit cross-gender pat-down searches of female inmates, absent exigent circumstances. *Prison Rape Elimination Act* (2003)

As noted in Appendix A, many of the states' policies for pat and strip searches have almost this exact same language. Therefore, one could reasonably assume that the driving force behind same sex searches is PREA and not religious accommodations. A review of *Cross-gender Searches: A Case Law Survey* (Smith & Loomis, 2013) indicated that the majority of cases on cross-gender searches were brought under §1983, Fourth, Eighth, and Fourteenth Amendment claims. A few cases involved RFRA or RLUIPA, but those cases were at the district court level only.

CHAPTER VII

Analysis

Analysis

As noted above, the policies tended to mirror the case law with few exceptions. Alabama did not allow facial hair nor did Mississippi allow religious diets. Different religious property was allowed – presumably based on requests received. Assembly was primarily based on space and security requirements, following the case law.

Diet cases and policies differed from state to state, with unique policies stemming from the requests made and the case law in each circuit. There was uniformity in the determination that forcing an inmate to choose between not eating and adhering to religious beliefs was a violation of religious freedom. Also, there was consensus regarding offenders working in kitchens where pork was served. If the offenders' religious beliefs were violated by the job assignment, the courts ruled that it was a constitutional violation. Of course, the only cases examined involved working in kitchens that served pork. It would be interesting to see how courts would rule if an offender claimed another type of job, such as working in the fields, violated his constitutional rights.

Grooming was almost completely uniform across the country because of *Holt v Hobbs* (2015). Pat and strip searches policies were consistent because of *Bell v. Wolfish* (1979) and PREA. The case law was very sparse on this subject because prison officials' legitimate penological interest in searches speaks to the goal of institutional safety and security. Also, it would be difficult for offenders to argue anything other than cross-gender searches, which were generally not allowed.

Does the Prison System Population Size Matter?

The review of religious accommodation policies was used to determine if there was a difference between the policies of large prison systems compared to small prison systems. As a basis for comparison, the largest prison systems for prisoners under custody were compared to the smallest prison systems for prisoners under custody. Table 13 lists the prison systems and their jurisdiction populations as of December 31, 2016 (U.S. Dept. of Justice, 2018).

Table 13

Ten Largest and Ten Smallest U.S. Prison Systems by Prisoners under Jurisdiction in 2016

Ten Largest U.S. Prison Systems	Custody Population	Ten Smallest U.S. Prison Systems	Custody
Texas	163,703	Vermont	1,735
California	130,390	North Dakota	1,791
Florida	90,974	Wyoming	2,374
Georgia	53,627	Maine	2,404
Ohio	52,175	New Hampshire	2,818
New York	50,716	Rhode Island	3,103
Pennsylvania	49,244	Montana	3,814
Illinois	43,657	South Dakota	3,831
Arizona	42,320	Alaska	4,434
Michigan	41,122	Nebraska	5,302

The number of cases per state were divided by the 2016 population and multiplied by 1,000. The rate per thousand was then sorted to produce the following table, Table 14.

Table 14

Federal and State Prison Systems' Top Ten Court Case Rates per 1,000 as of 2018

State	Rate per 1,000 offenders
South Dakota	1.31
Iowa	0.66
Rhode Island	0.64
Kansas	0.60
Wisconsin	0.51
Oregon	0.33
Virginia	0.24
New York	0.22
Michigan	0.19
Nebraska	0.19

New York and Michigan were the only state in the top 10, population-wise, that were also in the top 10 of the case rates. South Dakota, the top state in case rate per 1,000, was in the bottom 10 of the number of offenders in its jurisdiction. Rhode Island was another small state that had a high rate per 1,000. Quite a few states had a rate of 0.00 including: Alaska, Connecticut, Delaware, Hawaii, Idaho, Maine, Massachusetts, Mississippi, Montana, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Tennessee, Utah, Vermont, West Virginia, and Wyoming. It was surprising that the states with the most restrictive policies did not necessarily have the highest case per rate.

CHAPTER VIII

Conclusion

The concept of an individual being able to freely express his or her religious beliefs is a founding philosophy of the United States. Scholars sometimes question whether this inherent right extends to those incarcerated by society. Offenders have shown an inability to follow the rules of society and courts send them to prison. As part of the punishment, they may lose some of the freedoms that law-abiding citizens enjoy. The courts have heard many cases regarding the right of an offender to freely express his or her religious beliefs compared to the difficulty of accommodating those beliefs in a prison setting, while still meeting the goals of security and rehabilitation.

In the current political climate, it is unclear how courts will rule on future accommodation cases. The current executive branch is appointing judges at a fevered rate (Kim, 2018), and has already appointed two U.S. Supreme Court justices. As the administration is self-reportedly conservative, it could signal the demise of strides made in offenders' rights. However, it should also be noted that judges have been known to surprise those who appoint them.

Strictly by examining recent cases, *Burwell v. Hobby Lobby, Inc.* (2014), and *Holt v. Hobbs* (2015), one would presume that only the most significant circumstances would be reason for infringing on someone's religious freedom. In a recent case involving an execution however, the U.S. Supreme Court lifted a stay of execution, in a 5-4 vote, for a Muslim offender who sued to have his imam present in the execution chamber, rather than the Christian chaplain employed by the state of Alabama. "Attorneys for the state said only prison employees are allowed in the chamber for security reasons" (Chandler,

2019, ¶4). The 11th Circuit had stayed the execution, but the Supreme Court “cited the fact that Ray did not raise the challenge until Jan. 28 as a reason for the decision”¹² (Chandler, 2019, ¶7). It will be interesting to see if the case outcomes change after the recent additions to the U.S. Supreme Court.

For many legal issues, scholars write articles about the case law or the practices of different entities. It is important to bring the two together. The case law influences the policies and practices of a prison system, but the policies and practices of a prison system may also influence case law. It was noteworthy to determine the policies and procedures of each prison system typically reflected each circuit’s case law in that circuit.

Prison policies can be very fluid and change quickly, unlike legislation. A limitation of this article is the fluidity of the data on state policies that were gathered; nonetheless, it is an accurate portrayal of state policies as of 2019. Some of the states had a lengthy policy approval process while others were able to change policies with the flick of a pen.

Another limitation is the accuracy of the policies themselves in reflecting the actual practices of the prison system. As with any entity, although a policy may be in place, prison official may not actually implement it. Unless interested parties conduct field research or interviews in each prison system to determine if the practice matches the policy, the reader must assume consistency between the two. Even if a study included such research methods at each system, it would be difficult to ensure accuracy in responses. Prison staff would most likely be reluctant to admit not following policy.

¹² The offender was executed February 7, 2019.

Does religion in prison make a difference? Does lack of religious accommodation make a difference? Future research should study how traditionally liberal states' religious accommodation policies compare to traditionally conservative states' religious accommodations (DiIulio, 2009). Additionally, recidivism rates between offenders who actively practice a religion during incarceration compared to offenders who do not, may prove insightful – especially if study results indicated differences between rates for conservative and liberal (in terms of religious accommodations) states. Further study on incidents when religious accommodations have led to safety or security breaches would help establish whether there are actually legitimate penological interests in restricting religious accommodations.

As mentioned above, the author gave some thought to the examination of prison policies as categorized by DiIulio's *Governing Prisons* (1987): control, responsibility, and consensual models. A review of the prison systems' current categorization along with a study of religious accommodations compared to a prison system's model type would be of great interest. Prison systems containing faith-based prison units and housing areas (Hallett & Johnson, 2014), to have a consensual component to their penological management would provide more religious accommodations to the offenders in their custody.

Other proposed studies could include a review of the district court level cases, as well as the non-published cases regarding accommodation of religious beliefs and practices. Although beyond the scope of this very lengthy dissertation, perhaps the author will muster enough life force to tackle these additional projects at a later date.

In conclusion, religion is an important right for everyone in the United States, but it may also have a positive effect on incarcerated offenders. It can be difficult to separate those offenders who have embraced religion sincerely from those who have done so as a means to a manipulative end. For prison officials, there may be those who deny religious accommodations because they would truly cause difficulty in meeting the mission of the prison system, while others may deny them based on the belief that offenders should not be allowed any rights at all. For the courts to parse out the constitutionality in each case can be difficult.

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APPENDIX A

States' Religious Property Policies

State	Property Policy Specifics	Comments	Source
Alabama	<p>“Buddhist are only allowed...a picture of Buddha, prayer oil, incense and incense holder, prayer beads, books, and study materials...These items will be stored in the Chaplain’s office and be used at the assigned area for them” (p. 23) Also allowed are medallions on breakable string, fezzes, koofies, and yarmulke, prayer oils, prayer beads, prayer rugs, prayer shawl, religious literature, audios, DVDs, VCR tapes of videocassettes (that are not racially offensive or would cause a security problem of conflict), Islamic Turban, dream catcher, medicine bag, feathers, moccasins, herbs, drums and rattles, ceremonial items such as armbands, chokers, and headbands, talking stick, Wiccan items.</p>	<p>Policy specifically prohibits ritual knives, broadswords, robes, skyclad (ritual nudity), drugs, scourge. Although the policy allows wine for Catholic ceremonies, it also prohibits alcohol.</p>	<p>Alabama DOC AR 462 <i>Religious Program Services</i>, Aug. 11, 2015</p>

(continued)

State	Property Policy Specifics	Comments	Source
Alaska	<p>“Permit prisoners to possess and wear head covering and religious attire... one faith medallion or pendant, or medicine bag, which must be worn underneath clothing and suspended from an approved chain or strap” (p. 4) Religious publications allowed.</p>	<p>Only property “consistent with the listing for a recognized faith group...” (p. 4)</p>	<p>Alaska Policy Index #816.01, 8/24/2014</p>
Arizona	<p>“Religious symbols or clothing items, including head coverings may be worn openly only during religious ceremonies and at no other time or place” (#904, p. 11) “Publications threatening the safety and security of the institution, e.g., materials that advocate violence, rebellion or blatant prejudice/bigotry against any race or creed shall not be included [in the library]” (#904, p. 3) Pipes, drums, musical equipment, smudging material and communion supplies are allowed (offenders are not allowed to use alcohol).</p>	<p>Inmates placed in detention lose property, to include religious property. Inmates may be excused from work on holy days.</p>	<p>Arizona Dep. Order #704, 1/12/2017 Arizona Dep. Order #904, 6/11/2016</p>

(continued)

State	Property Policy Specifics	Comments	Source
Arkansas	Offenders are allowed a religious medal or emblem worn on the chain for their I.D. Prayer mat/rugs, special headdress (during religious service only), beads, Wiccan worship items (book, bell, chalice, and religious text), rune stones, and tarot cards are allowed.		Arkansas DOC <i>Inmate Handbook</i> , July 2015 Arkansas DOC Policy and Procedure, <i>Religious Services Manual</i> , 9/15/17 #625
California	Offenders are allowed to have medicine bags. Otherwise, not specified.	Prior written approval is necessary for any offender to possess a religious artifact or wear it outside of approved events. “All religious items shall be subject to searches by staff.”	Article 1 §3213, California Code of Regulations Title 15
Colorado	Offenders allowed religious medallions, medicine bags, prayer beads, rosaries, teffilin, prayer rug/meditation cushion, “Tallit Katan,” and religious head coverings	Homemade items are not allowed.	Colorado DOC Reg. No. 800-01 Jan. 1, 2015

(continued)

State	Property Policy Specifics	Comments	Source
Connecticut	<p>“An inmate may retain a religious article on admission in accordance with the following criteria:</p> <p>A. The article conforms to Attachment B, Female Property Matrix or Attachment C, Male Property Matrix, as appropriate, and to the approved commissary list;</p> <p>B. The value of the article does not exceed fifty dollars (\$50.00) except an inmate may retain religious pendants or medallions, the aggregate value of which does not exceed \$50; and,</p> <p>C. The size, volume, design or other characteristics are not deemed a threat to safety and security.”</p>	<p>Religious articles shall be available for commissary purchase...Inmates requesting to purchase religious articles not available through the commissary may be allowed to purchase these items via mail order with the written authorization of the Director of Programs and Treatment (Division) or designee...Religious articles shall be worn or carried under the inmate’s clothing, and shall not be openly displayed.”</p>	<p>Policy #6.10, Inmate Property, 3/14/2018</p>
Delaware	<p>Nothing specific to religious items.</p>	<p>Very general. Offenders may not have property, except for a wedding band, with a value of more than \$25.00.</p>	<p>Policy 8.36, Inmate Personal Property, 9/29/15</p>

(continued)

State	Property Policy Specifics	Comments	Source
Florida	Allowed prayer shawl, prayer rug, runes and accompanying cloth bag, prayer rope, black or brown Rakusu, Koofi, prayer rope, scapular, tarot cards, tefillin, Tzitzit, yarmulke(kippah), zafu, medicine bag, headband, feather, headscarves, prayer beads, symbols or medallions, stones or crystals, sacred texts, prayer books, and devotional literature.	“Limitations on possession or access, if any, that may be dictated by the characteristics of the inmate’s custody classification or management status...Religious property and other religious items shall be acquired through an authorized source, bona fide religious organization, or donor.”	Admin. Rule 33-503.001 8/15/17 and 33-602.201 8/15/17
Georgia	“Religious...equipment, and supplies shall be provided at each institution in accordance with the needs of the institutional population.” “Religious literature and related material which a visiting clergyman or guest speaker proposes to distribute shall be submitted to the institution in advance in order to avoid any inference of contraband entering the institution by this means.”	The <i>Offender Orientation Handbook</i> does not contain any prohibitions specific to religious items.	Georgia Administrative Code 125-4-7-.01 7/20/85 & 125-4-7-.03 7/20/85

(continued)

State	Property Policy Specifics	Comments	Source
Hawaii	<p>“Literature, publications, and/or books of or about religion, or religious ideology shall be permitted...Liturgical apparel, such as skull caps and prayer shawls, temple garments and/or ritual underwear, or other articles of religious significance may be retained by offenders...Requests to wear liturgical garments outside of religious services shall require written verification from the head of the offender’s affiliated church” (p. 11)</p> <p>“Offender may also wear religious medallions or ornaments on break-away chains...shall not contain any precious stones [metals]...Oils utilized for religious ceremonies, rites, and/or rituals may be kept by the offender in his/her cell...other religious items may be allowed upon prior written authorization from the Warden” (p. 12).</p>	<p>Items may be disallowed if they “jeopardize the security, safety and good government of the facility.”</p>	<p>Hawaii Department of Public Safety CO.12.05 5/3/17</p>

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State	Property Policy Specifics	Comments	Source
Idaho	<p>“...may wear a neck adornment and/or medallion tucked underneath the offender’s shirt, except during a religious ceremony or service or in the inmate’s cell. Head covers, headbands, other religion (sic) apparel, icons, photographs, etc. must only be worn or displayed during a religious ceremony or services or in the inmate’s cell...religious apparel and accessories must not be worn in any other locations, including when going to and from religious ceremonies or services. Prayer/ceremonial rugs must remain in the inmate’s cell.</p>	<p>Personal property policy had an appendix which listed the property that was allowed. Religious Activities policy has an appendix which listed the group activities property that was allowed.</p>	<p>Idaho DOC SOP 320.02.01.002 11/25/15 Idaho DOC SOP 403.02.01.001 9/22/17</p>

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State	Property Policy Specifics	Comments	Source
Illinois	<p>“...shall be permitted to have...two traditionally accepted religious symbols...These may include ...medals, medallions, scapulas, or prayer beads...items may be limited, restricted, or denied...based upon concerns such as safety, security...institutional order...shall not exceed 2” in height or width. The chain...shall not exceed 24” in length. The combined value...shall not exceed \$50...may restrict the color of religious items...Medals or medallions shall not contain precious gems or stones...(or) be of a design that could be used as a weapon or to conceal contraband...pins shall not be permitted...candles and incense, shall be restricted...for use during approved religious activities...Prayer rugs may be permitted...but...limited to the...living area during prayer or the area of religious service. Committed persons may wear articles of religious clothing, including ...robes, prayer shawls, or talits, (fezzes, kufis, and yarmulkes) in their ...sleeping areas during prayer or in the area of religious service...”</p>	<p>“Staff shall not touch personal religious items, such as medicine bags, considered sacred by the wearer and worn as part of the traditional or religious dress of a volunteer or religious specialist. These items may be thoroughly inspected visually, with the volunteer handling the items. When a visual inspection indicates no threat to security, these items may be worn into the facility for the scheduled programming.”</p>	20 Admin. Code I.d.425.90

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State	Property Policy Specifics	Comments	Source
Indiana	<p>“Religious practice and symbols/items related to a religion unfamiliar to the Department and for which a request for services or religious symbols/items has been made shall undergo an authorization process...When a Warden/designee considers that an authorized religious practice, item, or symbol should be restricted based upon facility mission, identifiable security concerns, and/or management concerns, the Warden/designee shall notify the Director of the request for an exemption.”</p> <p>“Religious practice and symbols/items related to a religion unfamiliar to the Department and for which a request for services or religious symbols/items has been made shall undergo an authorization process.</p>		<p>Policy 01-03-101 1/1/2018</p>

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State	Property Policy Specifics	Comments	Source
Iowa	<p>“Offenders may be authorized to designate three personal religious items, in addition to the medallion...One religious medallion not to exceed one and one-half inches on a light gauge chain (which shall not exceed 24 inches in length). If the item is worn around the neck or wrist it is considered a medallion and must be placed on inventory...Rosaries and prayer beads shall be black in color. Items shall be allowed only upon approval of the appropriate chaplain or authorized staff member and must not jeopardize security. Religious cassette tapes, compact discs and religious books shall be included as part of the limits for all tapes and books.”</p>		<p>Iowa Policy IS-RO-03 April 2017</p>

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State	Property Policy Specifics	Comments	Source
Kansas	<p>“Offenders shall generally be allowed to possess a bible or other primary text of their religion that shall be provided to them... religious items shall be provided to offenders at State expense. The use or possession of religious items may be limited to religious services, supervised activities, ceremonies, or prayers that the offender is allowed to conduct privately in his or her assigned living area, room or cell, with the items being unavailable to the offenders at all other times...religious medallions and scapulars shall be worn around the neck, inside the shirt. Medicine bags shall be worn around the neck inside the shirt, or carried in a pocket. Yarmulkes, koofi and tams may be worn at all times. Offenders shall not be permitted to wear religious attire, including clothing, jewelry or other ornaments, or head garments unless the prohibition against the particular attire is not based on legitimate concerns for order, security, and hygiene.”</p>		Kansas DOC Policy 10-110D 1/30/18

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State	Property Policy Specifics	Comments	Source
Kentucky	Headwear – kufi, headband, crown, turban, hlath ¹³ Females – scarf, headband, hijab, dress The institution shall permit an inmate to possess items identified in the Religion Reference Manual (not available) as personal religious items.		Kentucky DOC Policy 23.1 11/16/18
Louisiana			Not available
Maine	State has a length list of items that are available, categorized by religion: Buddhism, Christianity, Hinduism, Islam, Jehovah’s Witness, Judaism, Native American, Odinism, Pagan/Wicca, and Santeria	“A personal religious item must pass a security inspection prior to being allowed to the prisoner. After being allowed to the prisoner, a personal religious item is subject to security inspection at any time.”	Maine DOC Policy 10.1 (12/10/18) and 24.3 (2/15/09)
Maryland	Includes general property (e.g., Menorah, medicine bag), cards, medallions, chains/necklaces, beads, books, deity picture/statue, special clothing, herbs and small objects.	The <i>Religious Services Manual</i> has an appendix showing the specific items allowed.	Maryland Department of Public Safety and Correctional Services <i>Religious Services Manual</i> 3/20/2017

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¹³ For Odinist or Asatru faiths.

State	Property Policy Specifics	Comments	Source
Massachusetts	<p>“Religious Articles. Inmates may retain certain authorized religious articles. A list of approved religious articles shall be posted quarterly in the inmate libraries. If an inmate seeks to retain religious articles which are not on the approved list or authorized for retention pursuant to 103 CMR 403.00, he or she must submit an Inmate Religious Services Request Form to the Institution Director of Treatment, for processing, pursuant to 103 CMR 471.00: Religious Programs and Services.”</p>	<p>Includes items such as prayer rugs, meditation beads, crosses, yarmulke, Star of David, fez, Moorish Science Circle Seven pendant, medicine bag, tarot card, and kufi caps.</p>	<p>Massachusetts DOC Policy 103 CMR 403.00 6/30/17</p>
Michigan	<p>“In addition to religious reading material, prisoners are allowed to possess personal religious property which is necessary to the practice of the prisoner’s religion unless an item presents a threat to the safety, security, and good order of the facility.” Appendix includes listing of property allowed.</p>	<p>Includes items such as prayer rugs, meditation beads, crosses, yarmulke, Star of David, fez, Moorish Science Circle Seven pendant, medicine bag, tarot card, and kufi caps.</p>	<p>Michigan DOC Policy 05.03.150 10/15/2018</p>

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State	Property Policy Specifics	Comments	Source
Minnesota	<p>“Offenders/residents are authorized to designate five personal religious items, which includes religious clothing, that may be kept in their possession and are governed by facility property procedures. Community religious items may be stored in a safe and secure staff-designated location.”</p>	<p>“Offenders/residents are allowed to wear or use personal religious items in their cells, or during religious services, activities, and scheduled religious group meetings, unless the warden determines that the wearing or use of such items would threaten institution security, safety, or good order. Articles of ceremonial clothing that may be worn for religious services or in the offender’s/resident’s cell, but not on the grounds, housing units, or visiting room, include such examples as a tabard or shalwar/kurta.”</p>	<p>Minnesota DOC Policy 302.300 7/3/18</p>
Mississippi	<p>Only general policy regarding property – nothing specific to religious property.</p>		<p>MDOC <i>Offender Handbook</i> (June 2016)</p>

(continued)

State	Property Policy Specifics	Comments	Source
Missouri	<p>“Approved items may be acquired by purchase from outside vendors in accordance to department policy. Vendor catalogs are made available to offenders.”</p> <p>“Free literature – includes donated ‘sacred texts’ and religious educational materials...”</p>		<p>Personal Religious Property Retrieved from https://doc.mo.gov/divisions/adult-institutions/religious-spiritual-support</p>
Montana	<p>Contains appendix listing property available for the following religions: Asatru/Odinist, Buddhist, Islam, Judaism, Native American, Protestant Denominations, Roman Catholic, and Wiccan</p>		<p>Montana DOC Policy MSP 4.1.3 8/11/1997</p>

(continued)

State	Property Policy Specifics	Comments	Source
Nebraska	Offenders who have specified a religious affiliation are allowed to possess approved religious property as set forth in Appendix E of the policy (appendix not available). Items specified in the policy itself included head covering, audio-recorded religious material, Chinshasha ¹⁴ , prayer ties, books and other religious publications, medicine bags, and sacred pipes.	<p>“Inmates are not permitted to possess custom-made, handmade, or hobby-produced religious articles.”</p> <p>“Religious head covering that have blue, red or black, as a predominant color are not permitted...may be worn any place or at any time...except where such compromises the safety, security, and good order of the facility.”</p> <p>“Fragrant oil may not be used in a manner which causes a safety or security concern.”</p>	Nebraska Admin. Reg. 208.01 10/31/2018

(continued)

¹⁴ A tobacco substitute “made from the bark of red willow trees” (AP, 2005, ¶8).

State	Property Policy Specifics	Comments	Source
Nevada	<p>“No inmate may be approved to purchase or have a religious item unless the inmate has completed and submitted a Faith Group Affiliation Declaration Form...and the requested item is allowed for his declared faith as listed in the Faith Group Overview.”</p>	<p>Faith Group Overview has items allowed for all faith groups and then a separate section delineating property available for American Indian, Asatru/Odinism, Baha’I, Buddhism, Christian (Non-denom), Christian (Orthodox), Christian (Protestant), Church of Christ (Scientist), Scientology, Druid, Celtic Pagans, Pre-Christian, Hindu, Islam/Muslim (orthodox), Nation of Islam, Jehovah’s Witness, Judaism, Judaism (Messianic), Hare Krishna, Moorish Science Temple of America, Mormons, Rastafarian, Roman Catholic, Seventh Day Adventist, Siddha Yoga, Sikh, Thelema, and Wicca.</p>	<p>Nevada DOC <i>Religious Practice Manual</i> 9/5/17</p>

(continued)

State	Property Policy Specifics	Comments	Source
New Hampshire	<p>Offenders are allowed:</p> <ul style="list-style-type: none"> *11 books (secular and religious) *Head coverings *Medallion *Dreamcatchers *Runes *Headband *Prayer Oils <p>Additional property is listed in Attachment 3 of the policy for the following faith groups: Buddhist, Catholic, Episcopal/Anglican, Islam/Muslim, Jehovah’s Witnesses, Jewish, Native American, Neo-pagan, Protestant/Christian, Rastifarian, Russian Orthodox, Seventh Day Adventist, Siddha Yoga, Taoist, and Mahailimara/Thelema</p>	<p>Offenders must claim a preference for a religion to obtain additional property. Religious head coverings must be removed during count and upon request during searches</p>	<p>NH DOC Policy 9.02 06/15/14</p>
New Jersey	<p>Offenders permitted to have:</p> <ul style="list-style-type: none"> *Religious medal and chain *Prayer Rug 	<p>“Inmates shall be permitted to receive through the mail and retain religious literature and the indicia of religion, such as missals, prayer books, shawls and prayer rugs.”</p>	<p>N.J.A.C. §10A:17-5.12 <i>New Jersey DOC Inmate Handbook</i> (n.d.)</p>

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State	Property Policy Specifics	Comments	Source
New Mexico	Policy Attachment A contains property allowed for the following religious groups: *American Indian / Alaskan Native *Asatru (Odinism) *Baha'I *Buddhism *Roman Catholic *Church of Christ Scientist *Church of Scientology *Eastern Orthodox *Hindu *Islam/Muslim *Jehovah's Witness *Jewish *Mormon *Protestant (General Christian) *Satanism *Seventh Day Adventist *Unitarian Universalism *Universal Life Church *Wicca		NM DOC CD-101300 12/20/16

(continued)

State	Property Policy Specifics	Comments	Source
New York	Offenders may possess one musical instrument, prayer rug, scarfs (solid color only), books, head coverings, beads, and Tefillin ¹⁵ , medicine bag, sacred herbs, personal smoking pipe, smudging astray, artifacts or symbols, religious beads, shrines, rosarys, dhikr beads, religious publications and texts	New York offenders are allowed to possess cigars, tobacco and snuff according to the policy, but Dir #4202 refers to the department’s non-smoking policy.	NY CCS Dir #4913 10/27/16 NY CCS Dir 4202 10/19/2015
North Carolina	Contains specific property allowed for the following religions: American Indian, Asatru, Assemblies of Yahweh, Buddhism, Christian (Protestant), Christian (Catholic), Christian (Eastern Orthodox), Hindu, Islam, Judaism, Moorish Science Temple, Rastafarian, and Wiccan	“All approved religious items are subject to routine searches, but all items must be handled with the utmost respect.”	<i>North Carolina Department of Correction Division of Prisons Religious Practices Reference Manual</i> (2004)
North Dakota	Allowed religious medallions/necklaces, spiritual books, papers, and magazines		<i>Facility Handbook</i> March 2018

(continued)

¹⁵ Two small boxes attached to straps. “The two boxes each contain four sections of the Torah Inscribed on parchment” (Cowen, 1981).

State	Property Policy Specifics	Comments	Source
Ohio	<p>Allow:</p> <ul style="list-style-type: none"> *Chain (necklace) with religious medallion *Japa Mala Beads (wood, no red) *Prayer Beads (wood, no red) *Prayer Robe (white) *Prayer Rug (solid or multicolored, no solid red...) *Skull Cap (Yarmulke, Kufi; white or beige cloth) *Religious literature and recordings <p>Specific policies provided additional property guidance for the following religions:</p> <p>Protestant, Jehovah Witness, Jewish, Buddhist, Wiccan, Asatru, Roman Catholic, Muslim, and Native American.</p>	<p>“All religious objects, apparel, and literature are subject to the general regulations affecting similar property in institutions...Religious items not otherwise permitted in the institution may be approved if their use or possession is religiously based and their presence does not constitute a threat to the security and good order of the institution.”</p>	<p>Ohio DORC Policy #61-PRP-01 2/25/19</p> <p>Ohio DORC Policy #72-REG-02 3/12/18</p> <p>#72-REG-03 #72-REG-05 #72-REG-07 #72-REG-08 #72-REG-09 #72-REG-10 #72-REG-11 #72-REG-12 #72-REG-13</p>

(continued)

State	Property Policy Specifics	Comments	Source
Oklahoma	“Inmates may receive and retain possession of personal religious items/symbols essential to their stated religious preference.”	Personal items allowed included altar cloth, prayer beads, religious neckwear (medallions/necklaces), bell, battery-operated candles, chalice, dream catcher, feathers, kangha ¹⁶ , medicine bag, meditation cushion/zafu, Omamori Gohonzon ¹⁷ , Tefillin (Phylacteries), prayer cloth, prayer rug/Zabuton, prayer shawl, prayer wheel, religious headgear, religious literature, religious undergarments, runes set, scapular, sea salt, sun wheel, tarot card deck, Thor’s hammer. The policy specifies which property goes with which religious affiliation. Another policy provides a list of property that is allowed for group worship.	Oklahoma DOC policy OP-030112 1/30//2017

(continued)

¹⁶ Wooden comb used by the Sikh Muslim followers (Oklahoma DOC Policy OP-030112, 2017, Attachment B).

¹⁷ A portable altar used in the Buddhist faith (Chip, 2017).

State	Property Policy Specifics	Comments	Source
Oregon	“Items authorized are only to be used in a manner consistent with the purpose of the item.” Items allowed include Native American prayer feathers, spiritual medallions, modesty clothing (shorts or robes for Muslim men and women while showering), Islamic prayer rugs, tefillin (sincerity interview must be given), and religious literature.	Policy contains two lists; one for offenders in general housing and one for offenders in special housing.	ODOC Policy 90.2.4 11.14.08
Pennsylvania	Allow religious medal, religious headgear, prayer rugs, articles of clothing, Native American Medicine Bag, prayer beads, hijabs, prayer phylacteries/tefillin, prayer rope, cloth scapular, altar cloth, and sacred texts	Offenders are not allowed to have sacred objects that contain colors other than white; may also not have robes, incense or oils, any symbols associated with a STG, individual prayer cushion, or individual religious smoking instrument. The policy has an attachment with allowed religious items, including pictures, vendors, and pricing.	DC – ADM 819 <i>Religious Activities Procedures Manual</i> 5/12/16
Rhode Island	Allow religious medal with neck chain, religion handbook (Bible, Koran, etc.), Muslim oil		<i>Inmate Guide Book</i> Mar. 11, 2013

(continued)

State	Property Policy Specifics	Comments	Source
South Carolina	Religious media, religious literature, religious necklace (medallions, crucifixes, etc.). Appendix contains property allowed for each recognized religious group.	Inmate may not possess more than 10 books/magazines/photo albums.	PS-10.05 <i>Inmate Religion</i> 8/6/2015
South Dakota	“Religious items pertinent to the practice of an inmate’s chosen religion, which do not pose a threat to the safety, security and/or orderly operation of the institution, may be authorized by the Cultural Coordinator or designated staff...”		Policy 1.3.C.4 <i>Inmate Personal Property</i> 8/15/2017
Tennessee	“Inmates may possess objects of religious significant in accordance with policy...” Religious property is subject to space constraints. “...certain objects may be prohibited if they are identified as security threat material...”	“By July 1 of each year, the Commissioner shall publish a list of religious property that inmates are permitted to have in their possession, and/or in approved group religious gatherings.”	Tennessee DOC Policy Index #118.01 2/15/2014
Texas	Offenders are allowed “...one religious text, specific to the offender’s declared faith, if those items are consistent with chaplaincy guidelines.” Another reference is made to unspecified “religious items” that are allowed		<i>Offender Orientation Handbook</i> Feb. 2017

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State	Property Policy Specifics	Comments	Source
Utah	Inmates may have one approved religious symbol in their possession (Native American eagle feather, prayer beads, rosary beads, neck chain). Also allowed are religious literature, approved medicine bag/necklace, head apparel.	Other items are allowed as indicated in the “Inmate Property Matrix.” Lists the symbol allowed for each religion including Asatru, Assembly of God, Baptist/Southern Baptist, Buddhism, Catholic (Roman), Catholic (Greek Orthodox), Catholic (Russian Orthodox), Episcopalian, Hindu, Islam (Muslim), Jehovah’s Witness, Judaism/Hebrew, International Society for Krishna Consciousness, Church of Jesus Christ of Latter-Day Saints, Lutheran, Native American religions, Non-Denominational (Christian), Odinist, Protestant, Seventh Day Adventist, Wicca.	Utah DOC FD14 <i>Inmate Property</i> 8/1/06 Utah DOC FH03 <i>Access to Religious Programs</i> 8/27/2012

(continued)

State	Property Policy Specifics	Comments	Source
Vermont	May keep religious medallions and symbols, medicine bag, prayer rugs, religious head coverings, religious beads, oils, religious publications and texts, cards, herbs, teas, feathers	“Inmate possession of security threat group materials or symbols is prohibited. First Amendment free exercise of religion protection applies to religious ideas and symbols by faith groups whose only purpose is religious; it does not extend to security threat group use of religious ideas and symbols as a means of organizing and meeting.”	Directive #380.01, Religious Observance – Facilities 04/03/2017
Virginia	“Offenders may possess individual items as authorized on Attachment 5, <i>Approved Religious Items</i> . [Not available]”	“In the course of searching or examining offender religious items, employees shall remain cognizant that consecrated or blessed items, or items that are considered sacred, should be treated with respect and appropriate care.”	Operating Procedure #841.3, Offender Religious Programs 3/1/2018
Washington	“The wearing or carrying of relevant religious apparel and paraphernalia must comply with Allowable Individual Religious Items (Attachment 1). Apparel and paraphernalia are subject to inspection procedures.”	Attachment 1 contains a list of allowable items (3 pages).	Washington State DOC Policy 560.200, <i>Religious Programs</i> , 2/17/2014

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State	Property Policy Specifics	Comments	Source
West Virginia	N/A	N/A	N/A
Wisconsin	“Inmates may possess approved religious property items associated with their recorded religious preference.”	List includes religious emblem/pendant/jewelry, and floor covering – prayer rug, throw rug, yoga mat Attachment to DAI Policy 309.61.02 has list of all items that may be allowed for umbrella religious, Catholic, Eastern Religion, Islam, Jewish, Native American/American Indian, Pagan, and Protestant/Other Christian	DAI Policy 309.20.03 <i>Inmate Personal Property and Clothing</i> 10/1/18 DAI Policy 309.61.02 <i>Religious Property</i> 8/12/11
Wyoming	“Inmates may receive and retain individual possession of approved religious objects/symbols provided the object/symbol is not viewed as a threat to the safety, security and good order of the facility...”	“Inmates may have property items that are approved in WDOC Form #355, <i>Unified Matrix for Authorized Personal Religious Property</i> even when this is not their declared faith.”	Wyoming DOC Policy #5.600 <i>Inmate Religious Activities</i> 7/1/2018

(continued)

State	Property Policy Specifics	Comments	Source
BOP	<p>“Each inmate, upon commitment, will be permitted to retain religious items approved by the Warden.” “The Warden will authorize retention of religious items unless they pose a threat to the security and orderly running of the institution.”</p>	<p>Items permitted include “one religious medallion and chain with no stones, non-metallic...” and prayer shawls and robes, Kurda or ribbon shirts, medals and pendants, Medicine pouches, various types of approved headwear.</p>	<p>BOP Program Statement CPD/CSB #5580.08 <i>Inmate Personal Property</i> 8/22/11</p>

States' Religious Assembly Policies

State	Assembly Policy Specifics	Comments	Source
Alabama	Traditional religious ceremonies are allowed for Buddhism (solo study only), Catholics, Five Percent Nation of Islam, Jehovah's Witness, Judaism, Moorish Science Temple of America, National of Islam, Native American, Protestants, Seventh-Day-Adventist, Sunni Muslims, Wiccan. Includes Sweat Lodge ceremonies. "Any inmate who speaks at any religious service, large or small, must have the prior approval of the Chaplain of that institution" (p. 22).	Work proscriptions are not noted for the religious ceremonies.	Alabama DOC AR 333 <i>Religious Program Services</i> , December 17, 2004
Alaska	"Prison participation in organized faith group activities where there is supervision...shall not be limited except by documented threat to the secure or orderly operation of the institution." (p. 3).	Offenders are allowed to miss work, without pay, for religious purposes. In ceremonies, the "use of a non-alcoholic substitute for altar wine must be considered.	Alaska Policy Index #816.01, 8/20/2014

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State	Assembly Policy Specifics	Comments	Source
Arizona	<p>“Approval of worship study opportunities based on: inmate requests, space availability, time considerations of the monthly religious services calendar, institutions’ safety and security requirements, and availability of a qualified religious leadership” (p. 4) Sweat Lodge ceremonies, multi-faith gathering, and smoke generating ceremonies are allowed.</p>	<p>Offenders are allowed one-half ounce of communion wine.</p>	<p>Arizona Dep. Order #904, 6/11/2016</p>
Arkansas	<p>Worship approved if space and security concerns permit. “A minimum of three (3) inmates...are required to schedule specific denominational services” (p. 64) Baptism, communion, Jumu’ah Prayer, Ramadan, E’id-UI-Fitr, E’id-UI-Adea, and Jewish Services are permitted.</p>	<p>Offenders are allowed one-half ounce of communion wine.</p>	<p>Arkansas DOC Policy and Procedure, <i>Religious Services Manual</i>, 9/15/17</p>

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State	Assembly Policy Specifics	Comments	Source
California	<p>“When feasible, separate space for services of the faith groups represented by a substantial number of inmates shall be provided. However, in some facilities, such as camps, it shall be necessary for the various faith groups to share such space as is available for religious services...Accommodation for religious services that are not granted, shall be for reason(s) which would impact facility/unit safety and security, and orderly day to day operations of the institution.”</p>	<p>Offenders are allowed to used tobacco product in religious ceremonies. Sweat lodges are permitted.</p>	<p>Article 1 §3210, California Code of Regulations Title 15</p>
Colorado	<p>“The DOC shall...ensure that offenders have the opportunity to participate in practices deemed essential by the faith judicatory of that faith group, individually or corporately, as authorized. This shall be limited only by documentation showing threat to the safety of DOC employees, contract workers, volunteers, offenders, or other persons involved in such activity, or that the activity itself disrupts the security or good order of the facility.”</p>	<p>“...To ensure adequate meeting space and volunteer...DOC employee coverage...certain faith groups will be combined into umbrella faith groups.”</p>	<p>Colorado DOC Reg. No. 800-01, Jan. 1, 2015</p>

(continued)

State	Assembly Policy Specifics	Comments	Source
Connecticut	<p>“An inmate may have the opportunity to participate in practices of his/her religious faith that are in accordance with that faith, limited only by documentation showing threat to safety of persons involved in such activity or that the activity itself disrupts order in the institution.” “An inmate may only participate in collective religious activity for the religion in which the inmate is registered. Based upon present inmate designations, those denominations are: Catholics, Protestant, Jewish, Muslim, Native American and Jehovah’s Witness.”</p>	<p>“In determining what constitutes legitimate religious practices, the Director of Religious Services should consider whether there is a body of literature stating principles that support the practices and whether the practices are recognized by a group of persons who share common ethical, moral or intellectual views.”</p>	<p>Dir. 10.8, Religious Services, 12/3/18</p>
Delaware	<p>“The DOC acknowledges the inherent and constitutionally protected rights retained by offenders to believe express and exercise the religion of their choice. The DOC shall extend to all individuals under its custody and/or supervision those opportunities necessary to practice religious freedoms consistent with the prudent requirements of facility security, safety, health and orderliness. The DOC will not tolerate offenders being subjected to coercion, harassment or ridicule due to religious affiliation.”</p>	<p>Very general</p>	<p>Policy 3.16, <i>Religious Activities</i>, 2/26/15</p>

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State	Assembly Policy Specifics	Comments	Source
Florida	<p>“In the interest of security, order, or effective management of the institution, the warden may limit the number of religious services or activities inmates may attend per week. When it is considered necessary for security or good order of the institution, the warden may limit attendance at or discontinue completely a religious service or activity. The warden may not restrict or allow the religious group itself to restrict attendance at or participation in a religious service or activity on the basis of race, color, or nationality...The warden or designee may authorize the introduction into the institution of altar or sacramental wine to be used in a sectarian or interfaith service when the use of such wine is deemed essential to the observance of the service...Approved tobacco, lighters, and matches may be used during approved religious ceremonies.”</p>	<p>“It is the policy of the Department to extend to all inmates the greatest amount of freedom and opportunity for pursuing individual religious beliefs and practices consistent with the security and good order of the institution.”</p>	<p>Admin. Rule 33-503.001 8/15/17</p>

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State	Assembly Policy Specifics	Comments	Source
Georgia	<p>“A worship service is held each week at every institution. In addition, religious education is available, either as a class, or through correspondence. Pastoral counseling is also available.”</p> <p>“Inmates may not be required to attend Religious Services.”</p> <p>“Religious instruction on the Bible, the Koran and other spiritual guides is available.”</p>	<p>“Participation in any meeting or gathering which has not been specifically authorized...” is considered a security violation. The <i>Facility Descriptions</i> contains the religious programs available at each facility to include Seventh Day Adventist, Jehovah’s Witness, Catholic, Protestant, Jumah and Talim services, Kairos, Islamic Studies,</p>	<p><i>Georgia DOC Offender Orientation Handbook</i>, p. 15 & 28</p> <p>Georgia Admin. Code 125-4-7.01 7/20/85.</p> <p><i>Facility Descriptions</i>, p. 5</p>

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State	Assembly Policy Specifics	Comments	Source
Hawaii	<p>“...no offender shall be denied the right to practice the religion of his/her choosing, and to allow religious programs for offenders, including opportunities to practice the requirements of one’s faith, and use of community resources, while balancing security concerns of the facility...offenders will have the opportunity to participate in practices of their faith group, both individually and as a group, that are deemed to be essential by the tenets of that faith without being subjected to coercion, harassment, and ridicule” (p. 4).</p> <p>“Offender shall be offered the opportunity to attend services, activities, or meetings of other denominations unless there is a compelling reason to restrict attendance due to custody and/or security reasons” (p. 5).</p>	<p>“Religious beliefs may not be used to subvert correctional authority or interfere with the order and security of the facility.”</p> <p>Sacramental wine may be used by officiant and white tea is substituted for kava.</p> <p>Unique policy in that pg. 8-9 contains religious practices and activities that are prohibited.</p>	<p>Hawaii Dept. of Public Safety COR.12.05 5/3/17</p>

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State	Assembly Policy Specifics	Comments	Source
Idaho	<p>“The IDOC provides reasonable and equitable opportunities to inmates of all faiths to pursue religious beliefs and activities, when those opportunities can be provided within budgetary limitations and are consistent with the safe and orderly operation of a facility and its custody level. The IDOC does not interfere with an inmate’s religious belief. However, the IDOC has a compelling government interest to maintain safety and security in its facilities. Therefore, the IDOC may substantially burden an inmate’s exercise of religion when the application of the burden is based on a compelling IDOC interest and it is the least restrictive means of furthering that interest” (p. 3)</p>	<p>Contains a list of prohibited activities (e.g., domestic or foreign terrorism, nudity, etc.) (p. 4-5). “Sermons, teachings, and admonitions must be delivered in English” (p. 6). Wine for officiant only, sweat lodge. Provides procedure to request property or activity for new or unfamiliar religious components.</p>	<p>Idaho DOC SOP 403.02.01.001 9/22/17</p>

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State	Assembly Policy Specifics	Comments	Source
Illinois	<p>“Committed persons shall be provided reasonable opportunities to pursue their religious beliefs and practices subject to concerns regarding security, safety, rehabilitation, institutional order, space, and resources.” “Religious activities approved by the Chief Administrative Officer shall be conducted or supervised by a chaplain or religious program volunteer...The Chief Administrative Officer may limit, restrict, discontinue, or deny a religious activity based upon concerns regarding security, safety, rehabilitation, institutional order, space, or resources...Nothing in this Part shall require the provision of group religious activities to committed persons in impact incarceration program facilities, reception and classification centers, or in segregation areas, the condemned unit, or specialized housing units within the facility, such as the hospital...Nothing in this Part shall require the Department to provide each separate religious group or sects within a group with a chaplain or with separate religious activities regardless of the size of the religious group or the extent of the demand for the activities.</p>	<p>Policy contains provisions for assembly if a chaplain or approved volunteer are not available.</p>	<p>20 Admin. Code I.d.425.60 and 425.30</p>

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State	Assembly Policy Specifics	Comments	Source
Indiana	<p>Policy allows for offenders to identify as Native/Indigenous, Jewish, Islamism, Buddhist/Eastern, Muslim/Islam , Wicca , Catholic, Eckankar, Other, General Christian , Rastafarian, Asatru/Odinism , Hebrew Israelite, Satanism, Orthodox Christian, Yahwist/Messianic, Other or None.</p> <p>“Offenders shall be free to practice...a personal religious belief within the limitations of this policy and administrative procedure. No offender shall be required to, or coerced into, adopting or participating in any religious belief or practice.”</p> <p>“Religious practice and symbols/items related to a religion unfamiliar to the Department and for which a request for services or religious symbols/items has been made shall undergo an authorization process.”</p>		Policy 01-03-101 1/1/2018

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State	Assembly Policy Specifics	Comments	Source
Iowa	<p>“It is the policy of the IDOC to support offender participation in religious worship and activities. IDOC affirms an offender’s right to maintain religious beliefs in the prison setting and shall accommodate religious expression consistent with the governmental interest in institutions and the security, health and safety of its staff and offenders.”</p> <p>The policy sets forth procedures to “request recognition of a new religion, religious group or new religious accommodation.”</p>		Iowa policy #OP-RP-01 3/2016

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State	Assembly Policy Specifics	Comments	Source
Kansas	<p>“Offenders shall be permitted to practice a religion to which they sincerely ascribe within the limitations imposed by individual facility physical structures, staffing levels, other considerations of security, good order and discipline, consistent with consideration of costs and limited resources...Offenders shall be permitted the opportunity to learn about other religious affiliations but shall not be allowed to fully engage in the practices of other religions except when a change of affiliations is requested...The use or possession of religious items may be limited to use or possession by clergy during visits, religious services or ceremonies...Fermented wine for use in communion services may be authorized by the warden/superintendent or designee...tobaccos and/or tobacco mixtures shall be allowed in specified amounts in accordance with facility policy.”</p>		<p>Kansas DOC Policy 10-110D 1/30/18</p>

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State	Assembly Policy Specifics	Comments	Source
Kentucky	<p>“The Department of Corrections shall ensure that an inmate has the opportunity to participate in practices of his religious faith in accordance with the Religion Reference Manual...These practices shall include religious publications, religious symbols, congregational religious services, individual and group counseling, and religious study classes...Religious practices shall be limited only by documentation showing a threat to the safety of persons involved in an activity or that the activity itself disrupts order in the institution.</p>	<p>Policy contains a list of practices that are not allowed, such as animal sacrifice.</p>	<p>Kentucky DOC Policy 23.1 11/16/18</p>
Louisiana	<p>“Inmates shall be permitted to attend religious services of their own denomination.” Allows faith group services and studies for: Protestants, Catholics, Jehovah’s Witnesses, Muslims, Institute of Divine Metaphysical Research and WICCA. “Chaplains, chaplains (sic) assistants and volunteers of the appropriate faith group conduct services and faith group studies. Chaplains (sic) assistants and volunteers teach discipleship groups and intensive biblical studies.”</p>		<p>Chapter 31 §3109, Louisiana Administrative Code Dixon Correctional Institute webpage</p>

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State	Assembly Policy Specifics	Comments	Source
Maine	Services are allowed for: Buddhism, Christianity, Hinduism, Islam, Jehovah's Witness, Judaism, Native American, Odinism, Pagan, Santeria, and Wicca	"Where feasible and not contrary to safety, security, or orderly management of the facility, group religious ceremonies...shall be allowed consistent with a religion's recognized practices."	Maine DOC Policy 24.3 2/15/09
Maryland	"The Religious Services Program is designed to afford offenders a reasonable opportunity to pursue the practice of religion within a correctional setting where a plurality of religious beliefs, traditions, and practices are accommodated within program limits...When necessary to place a burden on the religious exercise of offenders, the Department will do so in the least restrictive means."	"Requests for accommodations of certain religious practices and observances shall be considered from offenders who provide sufficient evidence of their belief and affiliation with the religion...equal <u>and</u> consistent treatment of all religions or religious beliefs may not always require the same accommodations or the same religious practices in all facility or for all offenders."	Maryland Department of Public Safety and Correctional Services <i>Religious Services Manual</i> 3/20/2017

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State	Assembly Policy Specifics	Comments	Source
Massachusetts	<p>“Each institution shall make reasonable efforts to establish and maintain religious activities and services for all inmates who are affiliated, or wish to become affiliated, with recognized religious denominations or groups. Approved religious practice and property items for recognized religious denominations or groups are listed in the <i>Religious Services Handbook</i> [not available].”</p> <p>“Recognized religious groups or denominations are listed in the <i>Religious Services Handbook</i>. An inmate who is affiliated with, and wishes to participate in, a recognized religious group not currently functioning at an institution, should comply with the procedures outlined in 103 CMR 471.09.”</p>		<p>Massachusetts DOC Policy 103 CMR 471 3/10/17</p>

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State	Assembly Policy Specifics	Comments	Source
Michigan	<p>Religious groups authorized to conduct group religious services/activities: Muslim (Al-Islam), Asatru/Odinism, Baha'i, Buddhism, The Church of Christ, Scientist, Mormons, Church of Scientology, Hare Krishna, Institute of Divine Metaphysical Research, Jehovah's Witnesses, Judaism, Moorism Science Temple of America, Nation of Islam, Native American, Orthodox Christian, Protestant Christianity Roman Catholic, Sacred Name, Seventh Day Adventist, and Wicca.</p>	<p>Although recognized religious groups, the following are not authorized to conduct group religious services/activities: Hebrew Israelite, Hinduism, Thelema, and Yoruba.</p>	<p>Michigan DOC Policy 05.03.150 10/15/2018</p>
Minnesota	<p>"Minnesota Department of Corrections (DOC) facilities provide offenders/residents with reasonable opportunities to pursue individual religious belief and practices, within facility budgetary and security constraints." "Offenders/residents are banned from all facility-scheduled religious activities for 60 days or more for inappropriate conduct during a ceremony or meeting. This ban may be progressive if inappropriate conduct is repeated. Any ban may be coupled with formal discipline."</p>	<p>"Offenders/residents may request the introduction of new or unfamiliar religious components into the religious programming at a facility."</p>	<p>Minnesota DOC Policy 302.300 7/3/18</p>

(continued)

State	Assembly Policy Specifics	Comments	Source
Mississippi	<p>“Inmates will be assisted by Religious Programs chaplains to participate in activities (i.e., worship, study groups) related to their stated religious preference. Disruptive behavior on the part of any individual may result in disapproval to meet within group activities. Inmates in administrative segregation, disciplinary detention, protective custody, death row or other lock-down situations will be assisted by the chaplain to practice their faith individually.”</p>		<p><i>MDOC Offender Handbook</i> (June 2016)</p>
Missouri	<p>Fully accommodated religions include: Al-Islam/Muslim, Buddhism, Christian – General, Christian – Roman Catholic, Judaism, Messianic, Moorish Science Temple of America, Nation of Islam, Native American Spirituality and Wicca “Faith specific worship services and study programs provided weekly.”</p>		<p>Retrieved from https://doc.mo.gov/divisions/adult-institutions/religious-spiritual-support</p>

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State	Assembly Policy Specifics	Comments	Source
Montana	<p>“It is the policy of the Department of Corrections to provide reasonable and equitable opportunities to pursue religious activities.”</p> <p>“Offenders will be provides the opportunity to participate in activities deemed essential by the governing body of the offender’s faith when consistent with safety and security requirements...The facility must provide, to the extent practical, resource to support religious activities including adequate space and staff supervision.”</p>		<p>Montana DOC Policy 5.6.1 11/7/14</p>

(continued)

State	Assembly Policy Specifics	Comments	Source
Nebraska	<p>“To the extent possible, except in Community Corrections facilities, each accommodated religious group (two or more inmates) shall receive comparable religious programming, time and space, including one weekly worship opportunity, and opportunities to observe a religious holidays, as approved.”</p> <p>“Special religious events may be approved by the facility Warden. No religious group will displace the time and space allotted for another religious group for special religious activities.”</p> <p>Ceremonies listed included Native American Sweat and Pipe Ceremony, Baptism, and Funerals.</p>	<p>“With staff supervision and approval, religious groups may conduct worship or study without a volunteer present.”</p> <p>“No general population inmate will be denied an opportunity to attend group worship unless his/her attendance threatens the safety or good order of the institution. Inmates may be removed from worship and/or religious study events for non-participation and/or causing disruption.”</p>	Nebraska DOC Policy No. 208.01 10/31/18

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State	Assembly Policy Specifics	Comments	Source
Nevada	<p>“The NDOC acknowledges the inherent and constitutionally protected rights retained by inmates to believe, express, and exercise the religion of their individual choice. The NDOC, therefore, extends to inmates those opportunities necessary to practice religious freedom that are consistent with the security, safety, health and orderly operation of each institution/facility.”</p>	<p>Recognized faith groups include: American Indian, Asatru/Odinism, Baha’I, Buddhism, Christian (Non-denom), Christian (Orthodox), Christian (Protestant), Church of Christ (Scientist), Scientology, Druid, Celtic Pagans, Pre-Christian, Hindu, Islam/Muslim (orthodox), Nation of Islam, Jehovah’s Witness, Judaism, Judaism (Messianic), Hare Krishna, Moorish Science Temple of America, Mormons, Rastafarian, Roman Catholic, Seventh Day Adventist, Siddha Yoga, Sikh, Thelema, and Wicca</p>	<p>Nevada DOC <i>Religious Practice Manual</i> 9/5/17</p>
New Hampshire	<p>“All individuals under DOC custody shall have access to religious resources, services, instruction or counseling on a voluntary basis.”</p> <p>“The institution shall extend to all individuals under DOC custody the greatest amount of freedom and opportunity to pursue any recognized religious belief or practice...within the boundaries of security, safety, discipline and the orderly operation of the institution.”</p>	<p>Attachment 3 of the policy delineates the special assemblies for the following faith groups: Buddhist, Catholic, Episcopal/Anglican, Islam/Muslim, Jehovah’s Witnesses, Jewish, Native American, Neo-pagan, Protestant/Christian, Rastifarian, Russian Orthodox, Seventh Day Adventist, Siddha Yoga, Taoist, and Mahailimara/Thelema</p>	<p>NH DOC Policy 7.17 10/15/17</p>

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State	Assembly Policy Specifics	Comments	Source
New Jersey	<p>“Each inmate has the right to freedom of religious affiliation and voluntary religious worship while incarcerated, but the exercise of such right may be subject to reasonable restrictions related to penological interests in order to maintain the safe, secure and orderly operation of the correctional facility.”</p>	<p>“(a) Correctional facility Administrators shall not be required to provide every religious sect or group with</p> <ol style="list-style-type: none"> 1. Outside clergy; 2. Space; and/or 3. Schedule time for religious activity.” <p>Procedures in place to review requests and approve those that “would not threaten or otherwise interfere with the internal discipline, safety, security, or orderly operation of the correctional facility...”</p>	<p>N.J.A.C. §10A:17-5.1 N.J.A.C. §10A:17-5.17</p>

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State	Assembly Policy Specifics	Comments	Source
New Mexico	<p>Policy Attachment A contains assembly allowed for the following religious groups:</p> <ul style="list-style-type: none"> *American Indian / Alaskan Native *Asatru (Odinism) *Baha’I *Buddhism *Roman Catholic *Church of Christ Scientist *Church of Scientology *Eastern Orthodox *Hindu *Islam/Muslim *Jehovah’s Witness *Jewish *Mormon *Protestant (General Christian) *Satanism *Seventh Day Adventist *Unitarian Universalism *Universal Life Church *Wicca 	<p>“The New Mexico Corrections Department (NMCD) shall provide religious programming for an inmate that is appropriate for the inmate’s custody placement, including program coordination and supervision, opportunities to practice one’s sincerely held beliefreligion (<i>sic</i>), and the use of community resources, including volunteers, religious facilities and equipment. The religious programs offered will reflect the diversity of traditions available in the larger, outside community, to the extent possible.”</p>	<p>NM DOC CD-101300 12/20/16</p>

(continued)

State	Assembly Policy Specifics	Comments	Source
New York	<p>Policy contains procedures for approval of a new or unfamiliar religion. The number of times the religion is allowed to assemble is based on the number of recognized members it has. Generally, offenders must be a member of a religion to attend its services but they can attend up to three services per year of another religion about which they wish to learn.</p>	<p>“In recognition of the First Amendment right of “religious liberty” and in pursuit of the objective of assisting inmate to live as law abiding citizens, it is the intent of DOCCS to extend to inmates as much spiritual assistance as possible, as well as to provide as many opportunities as feasible for the practice of their chosen faiths, consistent with the safe and secure operations of the DOCCS correctional facilities.”</p>	<p>NY CCS Dir#4202 10/19/15</p>
North Carolina	<p>Contains specific assembly procedures allowed for the following religions: American Indian, Asatru, Assemblies of Yahweh, Buddhism, Christian (Protestant), Christian (Catholic), Christian (Eastern Orthodox), Hindu, Islam, Judaism, Moorish Science Temple, Rastafarian, and Wiccan</p>	<p>“Inmates in the general population will be permitted to attend religious activities of their choice so long as that attendance does not cause undue hardship on their work or program assignments and does not interfere with the orderly operations of the facility.”</p>	<p><i>North Carolina Department of Correction Division of Prisons Religious Practices Reference Manual</i> (2004)</p>
North Dakota	<p>“Bible studies and fellowship services are available on a weekly basis. Religious group activities will be listed on the weekly religious activity schedule.”</p>	<p>“You are entitled to freedom of religious affiliation and worship. You have the responsible to recognize and respect the religious rights of others.”</p>	<p><i>Facility Handbook</i> March 2018</p>

(continued)

State	Assembly Policy Specifics	Comments	Source
Ohio	<p>Specific policies provided additional assembly guidance for the following religions: Protestant, Jehovah Witness, Jewish, Buddhist, Wiccan, Asatru, Roman Catholic, Muslim, and Native American.</p>	<p>“It is the policy of the Ohio Department of Rehabilitation and Correction (DRC) to ensure that inmates, who wish to do so, may subscribe to any religious belief they choose. Inmate religious practices, as opposed to beliefs, may be subject to reasonable time, place and manner restrictions. Inmate participation in religious activities shall be voluntary. The opportunity for inmates to engage in particular religious practices shall be subject to the legitimate departmental or institutional interests and concerns, including security, safety, health, discipline, rehabilitation, order, and the limitations of and allocation of resources.”</p>	<p>Ohio DORC Policy #72-REG-01 1/05/15 #72-REG-03 #72-REG-05 #72-REG-07 #72-REG-08 #72-REG-09 #72-REG-10 #72-REG-11 #72-REG-12 #72-REG-13</p>

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State	Assembly Policy Specifics	Comments	Source
Oklahoma	<p>“All inmates remanded to the custody of the Department of Corrections (ODOC) retain the right to choose their religious beliefs and to practice their religion. Religious practices will be allowed in accordance with security needs and must conform to all safety and health requirements. When it is necessary to place a burden on the religious exercise of inmates, ODOC will do so in the least restrictive means.”</p>	<p>Recognized religions include: Christianity, Judaism, Left-Hand Path, Pagan, Native American, Pagan, Moorish Science, Buddhism, Islam, Krishna, Sikhism, Mormon</p>	<p>Oklahoma DOC policy OP-030112 1/30//2017</p>
Oregon	<p>“Inmates should have the opportunity for reasonable access to religious activities which may include but are not limited to the following:</p> <ul style="list-style-type: none"> (a) Regular religious services and ceremonies; (b) Special ceremonies, holiday services, and sacraments; (c) Individual religious counseling; (d) Inmate religious group meetings; and (e) Religious moral instruction.” 	<p>“An inmate whose religious expression includes odor or smoke-producing substances (e.g., tobacco, sage, sweet grass, kinnick kinnick, and incense) may be authorized to burn small amounts of these substances as part of an approved religious activity in a manner consistent with facility security, safety, health and order.”</p>	<p>Admin. Rule Chapter 291-143-0080 Religious Activities 11/10/17</p>

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State	Assembly Policy Specifics	Comments	Source
Pennsylvania	<p>“Each facility will provide a separate physical location for use as a Religious Services Area that shall be made available for religious activities. This space will be faith-neutral when not in use. Faith group symbols will be displayed only when a respective faith group is using the Religious Services area.”</p>	<p>Facilities may provide a Religious Library.</p>	<p>DC-ADM 819 <i>Religious Activities Procedures Manual</i> 03/22/2013</p>
Rhode Island	<p>“All inmates have the right to the free exercise of their religious beliefs and the liberty of worship according to the dictates of their consciences. However, the exercise of this right may be restricted for legitimate security reasons...No inmate shall be required or expected to attend any religious programs or services, or to adhere to any religious belief.”</p>	<p>“All religious organizations have equal access to the physical space, equipment and services which the institution normally provides for religious purposes...The Warden or designee may limit religious programs, practices, or services if such would threaten the security, safety, or well-being of the institution, its visitors, inmates, or staff, and whether there are specific facts to substantiate the threat.” “Religious organizations include, but are not necessarily limited to: Catholic, Protestant, Jewish, and Muslim faiths.”</p>	<p>Policy 240-RICR-10-00-2</p>

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State	Assembly Policy Specifics	Comments	Source
South Carolina	Inmates will be given the opportunity to practice their religious faith to the extent that such practice does not interfere with the security and safety of the institution, staff, or other.	Recognized groups include Al-Islam (Muslim), Buddhism, Christianity, Roman Catholic, Protestant, House of Yahweh, Native American, Odinism/Asatru, Rastafarian, Shetaut Neter, Unitarian Universalist, Wicca, World Deist Society, and other faiths recognized but not requested (not sure what they meant by that).	PS-10.05 <i>Inmate Religion</i> 8/6/2015
South Dakota	“Permissible religious practices are practices of that religion for the purpose of worship, devotion, instruction and spiritual development which are not contrary to the safety or security requirements of the institution.”	Recognized groups include Wiccan, Asatru, Buddhist, Islam, Judaism, Native American, and Christian church dinners as determined by the pastor.	Policy 1.5.F.4 <i>Inmate Religious and Cultural Activities</i> 6/18/2018
Tennessee	“The Department shall provide opportunities for inmates to voluntarily practice their religion and receive appropriate pastoral care during incarceration.”	“Religious worship and study groups shall be open to all inmates unless such participation is limited to maintain order and security of the institution. Inmate attendance shall be voluntary.”	Tennessee DOC Policy Index #118.01 2/15/2014

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State	Assembly Policy Specifics	Comments	Source
Texas	<p>“Religious services and support are provided to all interested offenders. There is at least one chaplain assigned to each unit. Chaplains provide general spiritual support.”</p>	<p>“It is the policy of the TDCJ to extend to all offenders as much freedom and opportunity as possible for pursuing individual beliefs and practices, consistent with security, safety and orderly operations of the institution.”</p> <p>The website refers to Muslim chaplains as well as Native American and Jewish chaplains.</p>	<p><i>Offender Orientation Handbook</i> Feb. 2017 TDCJ Chaplaincy website</p>
Utah	<p>“It is the policy of the Department that inmates have:</p> <p>A. the opportunity for free exercise of their religion within the limits of security, safety, orderly operation of facilities or other compelling governmental interests; and</p> <p>B. access to individual and congregate religious worship services, counseling and assistance within security and classification guidelines.”</p>	<p>Recognized religions included:</p> <p>Asatru, Assembly of God, Baptist/Southern Baptist, Buddhism, Catholic (Roman), Catholic (Greek Orthodox), Catholic (Russian Orthodox), Episcopalian, Hindu, Islam (Muslim), Jehovah’s Witness, Judaism/Hebrew, International Society for Krishna Consciousness, Church of Jesus Christ of Latter-Day Saints, Lutheran, Native American religions, Non-Denominational (Christian), Odinist, Protestant, Seventh Day Adventist, Wicca</p>	<p>Utah DOC <i>FH03 Access to Religious Programs</i> 8/27/2012</p>

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State	Assembly Policy Specifics	Comments	Source
Vermont	<p>“All recognized inmate religious groups will have equal access to the physical space, which is dependent on the number of adherents, equipment, and services, which the institution normally provides for religious purposes... The Superintendent/designee retains the right to limit participation in religious programs. This would occur upon documentation of a compelling governmental interest such as an individual has shown a threat to the safety of staff, inmates, or other persons involved in the religious activity; or an individual’s conduct which disrupts the security or order in the facility.”</p>		<p>Directive #380.01, Religious Observance – Facilities 4/30/2017</p>

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State	Assembly Policy Specifics	Comments	Source
Virginia	<p>“All facilities will designated adequate space and equipment appropriate for the conduct and administration of religious activities to include adequate office space, storage space, and an area for a Religious Library.”</p> <p>The following religions are approved to operate in the Virginia DOC: African Hebrew-Israelite, Asatru/Odinism, Buddhists, Christian Science, Church of Jesus Christ of Latter Day Saints/Mormons, Coptic Church, Druidry-Celtic, Eckankar, Green Orthodox/Eastern Orthodox, Hare Krishna, Hindu, Humanism (Religious and Secular), Integral Yoga, Islam (Sunni Muslims, Shiite Muslims, World Community of Islam), Jehovah’s Witnesses, Jewish, Messianic Jews, Moorish Science Temple of America, Nation of Gods and Earths, Nation of Islam, Natsarim Israel, Philadelphia Church of God, Protestants (Baptists, Church of Christ/United Church of Christ, Episcopalians/Anglican, Lutherans (cont.).</p>	<p>(cont.) Mennonites, Methodists, Pentecostal, Presbyterians, Quakers/Society of Friends, Seventh Day Adventists), Rastafarians, Roman Catholics, Santeria, Shetaur Neter/Neterianism, Sikh, Temple of the Way-Out (of sin) Church, Unitarian Universalist, Wicca, House of Yahweh. Lost and Found National of Islam are specifically not approved.</p>	<p>Operating Procedure #841.3, Offender Religious Programs 3/1/2018</p>

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State	Assembly Policy Specifics	Comments	Source
Washington	“The Department will provide religious as well as cultural opportunities for offenders within available resources, while maintaining facility security, safety, health, and orderly operations.”	“The Department will not endorse any religious faith or cultural group and will ensure that religious programming is consistent with the provisions of federal and state statutes...The Department recognizes that many religions incorporate religious, traditional, and cultural practices. The Department offers offender cultural/diversity and religious faith groups the opportunity to celebrate events.”	Washington State DOC Policy 560.200, <i>Religious Programs</i> , 2/17/2014
West Virginia	N/A	N/A	N/A

(continued)

State	Assembly Policy Specifics	Comments	Source
Wisconsin	<p>“The Division of Adult Institutions shall ensure incarcerated inmates have opportunities to pursue lawful practices of the religion of their choice consistent with security practices and principles; rehabilitative goals; health and safety; allocation of limited resources; and the responsibilities and needs of the correctional facilities.”</p>	<p>“DAI does not permit activities of property that</p> <ul style="list-style-type: none"> a. Advocate racial, ethnic or gender supremacy or purity. b. Cast aspersions on any group based on race, religion, ethnicity, nationality, gender, sexual orientation, gender identity or disability. c. Promote hate crimes against persons or property as specified in federal or state laws. d. Are inconsistent with DAI Policy 306.00.18 and/or any STF management procedures. e. Jeopardize the security and order of the facility. f. Violate federal or state laws or DOC administrative rules, policies and procedures.” 	<p>Wisconsin DOC DAI Policy #309.61.01 <i>Religious Beliefs and Practices</i> 10/24/16</p>

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State	Assembly Policy Specifics	Comments	Source
Wyoming	<p>“Within the inherent limitations of resources and the need for facility security, safety, health and good order, it is the policy of the WDOC to: Offender inmates incarcerated in WDOC correctional facilities the opportunity to reasonably practice the religion of their choice...”</p>	<p>“It is the policy of the WDOC to require correctional facilities to provide space and equipment adequate for the conduct and administration of religious programs and to make available non-inmate clerical services for confidential material.”</p>	<p>Wyoming DOC Policy #5.600 <i>Inmate Religious Activities</i> 7/1/2018</p>
BOP	<p>“The Bureau of Prisons provides inmates of all faith groups with reasonable and equitable opportunities to pursue religious beliefs and practices, within the constraints of budgetary limitations and consistent with the security and orderly running of the institution and the Bureau of Prisons.”</p>	<p>“The Warden may periodically review religious practices to determine whether a religious practice remains within the scope of best correctional practices and religious accommodation. If upon review, the Warden determines that a religious practice jeopardizes institution safety, security and good order, the practiced may be temporarily restricted. The religious practice may resume only upon completion of a thorough evaluation of the practice with respect to compelling government interests and least restrictive alternatives.”</p>	<p>RSD/RSB #5360.09, CN-1, <i>Religious Beliefs and Practices</i>, 6/12/2015</p>

States' Religious Diet Policies

State	Vegetarian/ Vegan	Pork- Free	Kosher	Halal	Comments	Source
Alabama	X	X	X	X	Food may be brought into the unit by a “free-world” sponsor (p. 6) for Kairos events, Ramadhan Eid Feast, Harvest Moon Festival, Jewish Passover, Samhain.	Alabama DOC AR 333 <i>Religious Program Services</i> , December 17, 2004 AR 701 <i>Food Service Admin.</i> Mar. 19, 2014 ASCA Vegan Religious Diet Survey (2011)

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State	Vegetarian/ Vegan	Pork- Free	Kosher	Halal	Comments	Source
Alaska	X	X	X		<p>“A request for a religious diet must be made through the institution’s Religious Coordinator who will review the request and make recommendations to the Superintendent...Regular menu food items consistent with the religious diet(e.g., no pork) will be used unless otherwise approved by the Superintendent” (p. 6).</p> <p>Temporary accommodations for: “a. Kosher meals for Passover; b. Fasting for Ramadan; and c. Fasting for Yom Kippur” (p. 7). Allow a Potlach¹⁸</p>	Alaska Policy Index #805.03, 11/05/18
Arizona	X		X		<p>Medical diets take precedence over religious diets. If an offender is on the religious diet and refuses it, he will not be allowed to have the general population meal.</p>	Arizona Dep. Order #912, 9/3/2015 Arizona DOC <i>Diet Reference Manual</i> , Apr. 30, 2008

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¹⁸ “An Alaska native festival meal sometimes associated with gift giving in conjunction with the meal” (*Alaska #805.03*, p. 3)

State	Vegetarian/ Vegan	Pork- Free	Kosher	Halal	Comments	Source
Arkansas			X		No specifics listed. “An inmate may abstain from food items...prohibited by the religion of the inmate. The inmate may receive approved substitute food items. The Chaplain...shall arrange opportunities for the observance of occasional or annual religious requirements of practices of a religious faith” (p. 91). If an inmate abuses the Special Religious Diet, removal from the Special Diet list may result. Abuse includes, but is not limited to, refusal to eat the Special Religious Diet food, eating foods from the regular diet line, and purchasing commissary items not allowed on the Special Religious Diet. Such abuse will result in forfeiture of any religious diet for a period of twelve (12) months” (p. 92).	Arkansas DOC Policy and Procedure, <i>Religious Services Manual</i> , 9/15/17 #630 ASCA Vegan Religious Diet Survey (2011)
California	X		X	X	“Medical diets shall take precedence over religious diets.” Religious meat alternate diet also available.	Article 4 §3054, California Code of Regulations Title 15

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State	Vegetarian/ Vegan	Pork- Free	Kosher	Halal	Comments	Source
Colorado	X		X	X	An approved outside volunteer may provide food items for holy days. Offender may also bring unopened canteen food items.	Colorado DOC Reg. No. 800-01, Jan. 1, 2015 Dir. 1550-06, Religious Diets, 6/15/12 ASCA Kosher Diet Survey (2011)
Connecticut			X	X	“Common Fare shall be offered to the general population as an alternative to the Main Cycle entrée offered under a 28-day menu. There are no restrictions as to who is allowed to participate in this special diet. The Common Fare menu shall meet all of the dietary requirements.	Dir. 10.8, Religious Services, 12/3/18 ASCA Vegan Religious Diet Survey (2011)

(continued)

State	Vegetarian/ Vegan	Pork- Free	Kosher	Halal	Comments	Source
Delaware		X	X		<p>“Religiously mandated diets are accommodated through the provision of alternative meals. Inmates may also purchase foods from the commissary to supplement their diet.”</p> <p>“The only vegetarian meal...[provided] is medically ordered.”</p>	<p>Policy 14.3, <i>Religious Diet Program</i>, 5/18/15 ASCA Kosher Diet Survey (2012) ASCA Vegan Religious Diet Survey (2011)</p>
Florida	X		X		<p>“The alternate entree and the vegan meal pattern provides meal options for the religious requirements of inmates.”</p>	<p>Admin. Rule 33-204.003 5/15/14 ASCA Vegan Religious Diet Survey (2011)</p>
Georgia	X				<p>The Georgia DOC provides an Alternative Entrée Plan that does not contain animal products, by-products or blood.</p>	<p>ASCA Kosher Diet Survey (2012) Winslow, 2007</p>

(continued)

State	Vegetarian/ Vegan	Pork- Free	Kosher	Halal	Comments	Source
Hawaii	X		X		“Religious diets are not classified as medical diets. Food Service may offer an alternative vegetarian meal for all three meals for the entire population in addition to the regular menu to decrease requests for special diets” (p. 2)	Winslow, 2007 Yoro, 2014 Hawaii Dep’t of Public Safety COR.10.1F.02 11/06/18
Idaho	X	X	One request permitted through courts		No request for halal “Inmates must choose from the IDOC diet options to meet the needs of their religion’s dietary requirements.”	ASCA Kosher Diet Survey (2012) Winslow, 2007 Idaho DOC SOP 403.02.01.001 9/22/17
Illinois	X	X	X		“Committed persons shall be permitted to abstain from any foods the consumption of which violates their required religious tenets.”	ASCA Kosher Diet Survey (2012) 20 Admin. Code I.d.425.70

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State	Vegetarian/ Vegan	Pork- Free	Kosher	Halal	Comments	Source
Indiana	X		X		Kosher allowed per <i>Willis v. Indiana DOC</i> (S.D. Indiana, 2010)	ASCA Kosher Diet Survey (2012) Policy 04-01-301 10/1/2018
Iowa			X		Meatless entrée offered daily for lunch and supper	ASCA Kosher Diet Survey (2012)
Kansas	X				They do provide some food items that are kosher, but not a kosher meal or kosher diet “Offenders may be provided with a diet required by their religion and that provides adequate nutrition...an offender whose request for a religious diet has been accommodated may be denied continued access to the diet if he or she consistently consumes meals from the facility meal line that are inconsistent with the approved religious diet...”	ASCA Kosher Diet Survey (2012) Winslow, 2007 Kansas DOC Policy 10-110D 1/30/18

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State	Vegetarian/ Vegan	Pork- Free	Kosher	Halal	Comments	Source
Kentucky	X		X		Ramadan Fast ”The department shall, to the extent it is feasible and within appropriate institutional resources, provide each inmate with the opportunity to satisfy the minimum dietary requirements deemed essential by the Religion Reference Manual.	ASCA Kosher Diet Survey (2012) Kentucky DOC Policy 23.1 11/16/18
Louisiana	X	X	X	X	“The Department does not prepare kosher meals, however, approval has been granted for a Jewish congregation to donate pre-packaged kosher meals to one offender – three times per day, seven days a week.	ASCA Kosher Diet Survey (2012)
Maine	X	X			“...shall ensure that sufficient quantities of pork-free and vegetarian foods are available to meet religious dietary needs for...prisoners...	ASCA Kosher Diet Survey (2012) Maine Policy 16.3 2/1/02

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State	Vegetarian/ Vegan	Pork- Free	Kosher	Halal	Comments	Source
Maryland	X		X	X	All manner of religious services, fasting, feast days, etc. are made available to the faith membership.	ASCA Kosher Diet Survey (2012) Maryland Department of Public Safety and Correctional Services <i>Religious Services Manual</i> 3/20/2017
Massachusetts	X	X	X	X	“It is the policy of the Department of Correction to provide at each institution special diets accommodating inmates whose religion places restrictions on diets. Each Superintendent shall develop written procedures regarding the preparation and provision of religious diets which are consistent with 103 CMR 471, Religious Programs and Services.”	ASCA Kosher Diet Survey (2012) Winslow, 2007 Massachusetts DOC Policy 103 CMR 760 3/1/13

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State	Vegetarian/ Vegan	Pork- Free	Kosher	Halal	Comments	Source
Michigan	X		X		<p>Kosher meal bags are provided during major fast days. During Passover, all foods are certified as kosher for Passover.</p> <p>“The regular diet menu shall be posted a minimum of one week in advance in all facilities at which meals are provided to prisoners to permit observance of any religious dietary restrictions. Prisoners shall be permitted to abstain from any foods that violate their religious tenets. Non-meat entrees shall be available.”</p>	<p>Michigan DOC Policy 05.03.150 10/15/2018</p>

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State	Vegetarian/ Vegan	Pork- Free	Kosher	Halal	Comments	Source
Minnesota	X	X	X		<p>“Kosher meals are provided in the form of purchased entrée.”</p> <p>“Offenders/residents requesting a religious diet are provided a reasonable and equitable opportunity to observe their essential religious dietary practices within facility budgetary and security constraints.”</p> <p>“Offenders/residents may attend an annual religious group meal if they meet requirements specified in Policy 302.300, "Religious Programming."</p>	<p>ASCA Kosher Diet Survey (2012)</p> <p>Minnesota DOC Policy 302.300 7/3/18</p> <p>Minnesota DOC Policy 302.030 8/7/18</p>
Mississippi					<p>“We have no religious diets at this time.”</p>	<p>ASCA Kosher Diet Survey (2012)</p>
Missouri			X		<p>They “provide a certified religious diet to try and accommodate several religious diets. The diet contains foods in their natural state and kosher certified foods.”</p> <p>“Religious diets – meals that meet religious requirements are provided to those who apply and who qualify in accordance to department policy.”</p>	<p>ASCA Kosher Diet Survey (2012)</p> <p>Religious Support Missouri website</p>

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State	Vegetarian/ Vegan	Pork- Free	Kosher	Halal	Comments	Source
Montana	X	X	X		Very few requests for religious diets “Religious diets are provided to offenders whose religious beliefs require close adherence to religious dietary laws and will be approved by areligious activities director on a case-by-case basis.”	ASCA Kosher Diet Survey (2012) Montana DOC Policy 4.3.2. 5/10/16
Nebraska	X		X	X	“All religious diets are meatless and prepared kosher” “The religious diet meals are vegetarian and meet recommended energy intake and nutritional requirements. The religious diet meals are prepared using certified kosher foods and an approved kosher process.”	ASCA Kosher Diet Survey (2012) Nebraska DOC 108.01 11/30/18

(continued)

State	Vegetarian/ Vegan	Pork- Free	Kosher	Halal	Comments	Source
Nevada			X		<p>“The Common Fare menu intends to accommodate inmates whose sincere religious/spiritual dietary needs cannot be met by the Master Menu without prohibiting their free exercise of or without substantially burdening their sincere religious/spiritual exercise in a manner that is prohibited by controlling legal authority.”</p> <p>“The Common Fare Menu...shall be confirmed to meet or exceed Kosher Orthodox Union standards...”</p> <p>Offenders may be removed from the diet list for eating food that is not allowable under their religious beliefs.</p>	<p>Nevada DOC AR 814 6/17/12</p>
New Hampshire	X	X	X	X	<p>*”Vegetarian with egg: No meat, poultry, game, fish, shellfish or by-products of slaughter”</p> <p>*”Vegetarian without egg: no meat, poultry, game, fish, shellfish or by-products of slaughter and no egg.</p> <p>*No Pork</p> <p>*Halal or Kosher</p>	<p>ASCA Kosher Diet Survey (2012) Winslow, 2007 NH DOC Policy 7.17 10/15/17</p>

(continued)

State	Vegetarian/ Vegan	Pork- Free	Kosher	Halal	Comments	Source
New Jersey	X				“An inmate who cannot eat the food served to the general population because of the inmate’s religious beliefs may request a steady diet of religious vegetarian meals that shall be provided on a continuing basis.”	ASCA Kosher Diet Survey (2012) N.J.A.C. §10A:17-5.9
New Mexico	X				“Special diets for inmates whose religious beliefs require the adherence to religious dietary laws shall be made within the inherent limitation of resources, and the need for facility security, safety, health and order, through standard menu alternatives, canteen selections and Religious Programs.	ASCA Kosher Diet Survey (2012) NM DOC CD-101400-101401 6/28/18
New York			X		“The Department offers a Kosher Diet as an alternative religious meal option for multiple religions.”	ASCA Kosher Diet Survey (2012) NY CCS Dir 4202 10/19/2015

(continued)

State	Vegetarian/ Vegan	Pork- Free	Kosher	Halal	Comments	Source
North Carolina	X	X	X		“It is the policy of the Division of Adult Correction/Prisons that religious menu accommodations are made available for inmates who religious beliefs,...require adherence to religious dietary laws.”	ASCA Kosher Diet Survey (2012) <i>North Carolina Department of Correction Division of Prisons Religious Practices Reference Manual (2004) Policy (04/01/13)</i>
North Dakota	X				“Every facility must have a written policy and procedure that includes:...Special diets for inmates whose religious beliefs require adherence to religious dietary laws...”	Winslow, 2007 North Dakota Correctional Facility Standard 72 1/1/2018
Ohio			X		Meatless entrée available	ASCA Kosher Diet Survey (2012)

(continued)

State	Vegetarian/ Vegan	Pork- Free	Kosher	Halal	Comments	Source
Oklahoma	X	X	X	X	“Meals are provided by purchased frozen entrée and supplemented with facility prepared items such as salad. kosher and halal [menus] are the same...”	ASCA Kosher Diet Survey (2012)
Oregon			X		“Requests for inmate religious dietary needs that cannot be satisfied within the context of the Food Services cyclical menu will be considered...Inmate requests for special religious diets must be rooted in religious exercise.”	Admin. Rule 291-143-0112 Religious Dietary Accommodation 11/01/17
Pennsylvania	X		X		Pennsylvania “offers a kosher Diet Bag meal” “In addition to the balanced diet of foods provided by the Department, the Department seeks to accommodate the sincerely held religious beliefs of inmates as it related to their religious dietary requirements.” Provide Kosher, no animal products, Nation of Islam/Muhammad’s Temple of Islam diets.	ASCA Kosher Diet Survey (2012) Winslow, 2007 DC-ADM 819 Religious Activities Procedures Manual 6/8/2018

(continued)

State	Vegetarian/ Vegan	Pork- Free	Kosher	Halal	Comments	Source
Rhode Island					“An inmate may request a diet based on religious requirements.”	Policy 240-RICR-10-00-2
South Carolina	X				“An ‘Alternative Entrée Diet’ or vegan diet is available to all inmates who religious preference requires no meat.	ASCA Kosher Diet Survey (2012) PS-10.05 <i>Inmate Religion</i> 8/6/2015
South Dakota	X		X	X	“Religious and alternative diets shall be nutritionally adequate and consistent with maintaining the safety, security and orderly operation of each facility.”	ASCA Kosher Diet Survey (2012) Policy 1.5.F.2 <i>Inmate Religious and Alternative Diets</i> 3/22/2017
Tennessee	X				“Inmates may request to participate in the Religious Diet Program per Policy #116.08 [not available]....”	Winslow, 2007 Tennessee DOC Policy Index #118.01 2/15/2014

(continued)

State	Vegetarian/ Vegan	Pork- Free	Kosher	Halal	Comments	Source
Texas		X	X		Provides a regular diet tray and a meat-free diet tray or a pork-free diet tray.	ASCA Kosher Diet Survey (2012)
Utah	X		X		Vegan and alternative fare meet halal requirements “Inmates may request special dietary accommodations based on religious tenets...Dietary requests for religious periods of time such as Lent, Fast of the Ramadan or other ceremonial and/or holiday meals...”	Winslow, 2007 Utah DOC FH03 <i>Access to Religious Programs</i> 8/27/2012
Vermont	X				“...the DOC provides meals that appropriately meet the dietary needs of inmates who have a medical, dental, or religious basis for a special diet, or who choose the alternative meatless diet.”	Directive #354, 1/30/2017

(continued)

State	Vegetarian/ Vegan	Pork- Free	Kosher	Halal	Comments	Source
Virginia		X	X		The only religious diet is the common fare diet which is non-pork and meets the requirements of all religious diet meals. “Common Fare is a religious diet offered at selected institutions as designated by the Chief of Corrections Operations and is intended to accommodate offenders whose religious dietary needs cannot be met by the Master Menu.”	ASCA Kosher Diet Survey (2012) Operating Procedure #841.3, Offender Religious Programs 3/1/2018
Washington	X		X	X	“Recognized religious diets are: Mainline Alternative – Vegetarian, Halal, Kosher”	Washington State DOC Policy 560.200, <i>Religious Programs</i> , 2/17/2014
West Virginia		X			“Will let inmates order special items at their own expense for certain holiday observations”	ASCA Kosher Diet Survey (2012)

(continued)

State	Vegetarian/ Vegan	Pork- Free	Kosher	Halal	Comments	Source
Wisconsin	X	X	X	X	“The Division of Adult Institutions shall make religious diets available through standard menu alternatives as resources permit for inmates whose religious beliefs require the adherence to religious dietary laws.”	ASCA Kosher Diet Survey (2012) Wisconsin DOC DAI Policy #309.61.03 7/01/17
Wyoming	X	X	X		“It is the policy of the WDOC to provide inmates with a wholesome, nutritionally balanced diet, which allows for daily variety and for personal choice from among the menu items offered on the food services main line, in order to meet individual dietary needs and most restrictions on diet that result from dietary preferences espoused by most religions.”	ASCA Kosher Diet Survey (2012) Wyoming DOC Policy #5.601 <i>Religious Diet Program for Inmates</i> 4/15/2018

(continued)

State	Vegetarian/ Vegan	Pork- Free	Kosher	Halal	Comments	Source
BOP	X				“The Bureau provides inmates requesting a religious diet reasonable and equitable opportunity to observe their religious dietary practice within the constraints of budget limitations and the security and orderly running of the institution and the Bureau through a religious diet menu.”	RSD/RSB #5360.09, CN-1, <i>Religious Beliefs and Practices</i> , 6/12/2015

States' Grooming Policies

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Alabama	X					From Inmate Handbook: ●"Male inmates are expected to be clean shaven and neat... There are no exceptions granted for religious reasons. All displays of religious expressions, regarding clothing or appearance, are limited to the service areas during service times" (p. 10).	Alabama DOC <i>Male Inmate Handbook</i> 9/25/17
Alaska		X	X	X	X	●"Prisoners' grooming and dress must not conflict with an institution's requirements for safety, security, identification, and hygiene." ●"Staff shall routinely search prisoners' hair for contraband." ●"Prisoners need not wear a particular hair style unless the superintendent requires a certain hair style for program, security, safety, or hygiene requirements in the institution" (p. 1).	Alaska Policy Index #806.02, Feb. 15, 2013

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Arizona		X	X	X		●Hair may not cover the eyes or ears and exotic hairstyles are prohibited	Arizona Dep. Order #704, 1/12/2017
Arkansas				X		●"All inmates must maintain a hair style that is worn loose, clean, and neatly combed. No styles are permitted that make it difficult to search the hair, including cornrows, braid, ponytails or dread locks. If an inmate chooses to maintain facial hair, the inmate will be required to shave so that his appearance without facial hair can be documented.	<i>Holt v. Hobbs</i> (2015) Arkansas DOC <i>Inmate Handbook</i> November 2017

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
California		X	X	X	X	<ul style="list-style-type: none"> •"An inmate's hair or facial hair may be any length but the inmate's hair shall not extend over the eyebrows or cover the inmate's face. The hair and/or facial hair shall not pose a health and safety risk. If hair or facial hair is long, it shall be worn in a neat, plain style, which does not draw undue attention to the inmate." •<i>Basra v. Cate</i>, CDRC changed policy to allow offenders to grow beards longer than one-half inch 	Article 5 §3062, California Code of Regulations Title 15

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Colorado		*	X	X	*	<ul style="list-style-type: none"> ●"It is the policy of the DOC to allow offenders' freedom in personal grooming as long as their appearance does not conflict with requirements for safety, security, identification, and hygiene." ●"Admission procedures...require that newly admitted offenders be clean shaven during the admission process... Beards will not permitted. Sideburns will not extend below the earlobe. Moustaches will be neatly trimmed and no exceed the corner of the mouth. *●"An offender who claims that long hair and/or a beard is a fundamental tenet of a sincerely held religious belief will not be required to have a haircut ..." 	Colorado DOC Reg. No. 850-11, Dec. 15, 2015

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Connecticut		X	X	X	X	"Hair shall be clean and appropriately groomed" Offenders are allowed freedom in grooming but must keep their hair neat and clean.	Admin. Dir. 6.10, 6/26/13, Personal interview, Jan. 6, 2012
Delaware		X	X	X	X	<ul style="list-style-type: none"> ● "Grooming and attire standards... shall be consistent and support security interests." ● "Male offenders are permitted hair styles, beards, and mustaches provided they are kept clean and trimmed." ● "When staff determines that the offender's hair style or length presents a health or sanitation problem, the offender shall be required to wear a hair net or trim the hair." 	Policy 5.3, <i>Standards for Offender Grooming and Attire</i> , 6/22/15 Personal Corr., Jan. 10, 2012

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Florida	X					...no inmate shall be permitted to have..hair...dyed, cut, shaved or styled according to fads or extremes that would call attention to the inmate or separate inmates into groups based upon style...(including) dreadlocks, tails, woven braids, cutting, sculpting, clipping or etching numbers, letters, words, symbols or other designs...Male inmates shall have their hair cut short to medium uniform length at all times with no part of the ear or collar covered...Sideburns shall not extend beyond the bottom of the earlobes ...inmates shall...either...be clean shaven or...grow and maintain a ½” beard...upon intake...each inmate having hair on the face or the front of the neck shall be clean shaved once (for identification).”	Title 33, DOC, 33-602.101 10/9/18

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Georgia			X	X		<ul style="list-style-type: none"> •Mustaches may not extend beyond the edge of the mouth •Sideburns may not extend below the bottom of the ear lobe. Violations: “The growing or wearing of a beard, goatee, or otherwise not being clean shaven; except mustaches, which do not extend beyond the edge of the mouth and are kept trimmed at all times.” <ul style="list-style-type: none"> •Hair shall not be longer than 3” 	Offender Orientation Handbook, p. 36 – 36, 47
Hawaii		X	X	X	X	Upon intake, male offenders are photographed with facial hair are clean-shaven only with their consent. If they decline to shave, and then shave during their incarceration, they must be photographed again.	Personal Interview, Jan. 9, 2012 COR.08.11 12/4/17

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Idaho		X	X	X	X	<ul style="list-style-type: none"> ●Facial hair must remain neatly trimmed, clean, and cannot exceed one-half inch in length ●"Offenders housed at the Northern Idaho Correctional Institution are not permitted to grow facial hair, to include mustaches, and sideburns, because it would interfere with the standards developed for that retained jurisdiction program. However, offenders are allowed to grow facial hair in accordance with...religious exception..." ●"Inmates may grow beards up to 1” in length for religious purposes...Identification of any practiced religion is not a basis for denial of the inmate’s religious exception request" (p. 16). 	SOP 306.02.01.001 Personal Interview, Jan. 5, 2012 Idaho DOC SOP 403.02.01.001 9/22/17

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Illinois		X	X	X	X	<ul style="list-style-type: none"> ●"An individual who continuously changes his appearance and thereby interferes with the orderly function of the facility, or otherwise creates a security risk or a sanitation problem, may be required to abide by an individual grooming policy, at the discretion of the Chief Administrative Officer." ●Hair may not signify STG affiliation - general statements about sanitation and hiding contraband" ●"Committed persons may have any length of hair, sideburns, mustaches, or beards so long as they are kept neat and clean and do not create a security risk." 	Title 20, chapter I.e. Section 502.110 Personal Interview, Jan. 5, 2012

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Indiana		X	X	X	X	<ul style="list-style-type: none"> ●"Based upon the need to ensure the health and wellbeing of staff and offenders, all male intake units shall cut the offender's hair upon arrival...[to] ensure...the offender's hair does not touch the collar, extend over the eyebrows or cover the ears."" Religious beliefs shall be respected to the extent possible ●"Moustaches, sideburns and beards must be...of reasonable length and style. Beards shall not extend below the chin more than 3"" and no more than 1 1/2"" in length and growth on the side of the face. Sideburns shall not extend below the ear and shall not be more than 1 1/2"" in length and growth on the side of the face. Beards are not permitted in facilities housing juveniles." ●May cut an offender's hair again if there is a sanitation or security issue." 	Policy and Admin. Procedures #02-01-104 11/1/2013 Personal Interview, Jan. 11, 2012

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Iowa		X	X	X	X	<ul style="list-style-type: none"> •"When the length or style of an offender's hair, including beards and mustaches, is found to present a health or sanitation problem, the offender may be required to trim or cut the hair or wear a hairnet or other covering." •"Hairstyles of any personal appearance exhibiting or depicting any form of Security Threat Group (STG) relationship, affiliation, or membership will not be permitted." •"Periodic examination of the hair by medical personnel may be required for health reasons. At any time concealment of contraband is detected in the hair, restricted hair standards will be enforced." 	<ul style="list-style-type: none"> •IS-SH-01 (ISP-01) Nov. 2015 Personal interview, Jan. 5, 2012

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Kansas		X	X	X	X	<ul style="list-style-type: none"> •"Inmates working in food services shall not have facial hair in excess of 1" in length or shall wear beard nets...." 	Article 12 §44-12-106 Kansas DOC Policy 10-110D 1/30/18
Kentucky		X		X	X	<ul style="list-style-type: none"> •Sideburns are not specifically addressed •"An inmate shall not have cutouts or symbols cut into body hair or eyebrows." •"Hair, mustache, and beard length may be restricted if not kept clean and neat." •"Every inmate shall maintain an identification card that matches his current appearance (hair length, beard, mustache)." 	Policy #15.1 1/12/18

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Louisiana				X		<ul style="list-style-type: none"> An offender's hair shall be groomed in such a manner as to prevent the concealment of contraband and to limit the offender's ability to change his appearance both in prison and in the event of an escape. Further, offender hairstyles may not interfere, delay, or create difficulty in conducting search procedures. 	Personal interview, Jan. 11, 2012
Maine		X	X	X	X	<p>“Prisoners shall be permitted freedom in personal grooming as long as their appearance does not conflict with the facility’s requirements for safety, security, identification, and hygiene.”</p>	Policy 17.03 5/8/13 Personal Interview, Jan. 9, 2012

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Maryland		X	X	X	X	● "Wear clothing and hair as he/she wishes, if it does not violate institutional rules and is safe and clean."	Maryland Dep't of Public Safety and Correctional Services Dir. DPDS-185-0011 4/30/2015
Massachusetts		X	X	X	X	● "Inmates may be permitted certain choices in personal grooming, as long as their appearance does not conflict with the institution's requirements for safety, security, identification and hygiene."	Policy #103 DOC 400.02, 2/9/18 Mass. DOC Policy 103 CMR 750 4/5/15

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Michigan		X	X	X	X	<ul style="list-style-type: none"> ●Offenders ""may maintain head and facial hair in accordance with their religious beliefs provided that reasonable hygiene is maintained and prisoner identification cards are kept current"" ●Offenders in the Special Alternative Incarceration Program may not have beards, mustaches, goatees, or sideburns below the ear and must have short hair." 	<ul style="list-style-type: none"> ●Directive #05.01.142 6/18/13 ●Michigan DOC Policy 05.03.150 10/15/2018
Minnesota		X	X	X	X	<ul style="list-style-type: none"> ●"Offenders will be permitted freedom in personal grooming as long as their appearance does not conflict with the facility's requirements for safety, security, identification and hygiene." 	<ul style="list-style-type: none"> Directive 303.020 4/3/18

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Mississippi			Unknown	X	X	<ul style="list-style-type: none"> "Male inmate's hair will be kept clean and neatly cut so the hair does not fall below the collar and is not more than 3" in length. Mustaches will be neatly trimmed at all times. Beards and goatees in excess of 1/2" are not permitted for identification purposes." 	MDOC Inmate Handbook, Chapter VI, Section IV.D. (June 2016)

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State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Missouri		X	X	X	X	<ul style="list-style-type: none"> ● "The department has determined that incarcerated offenders at all custody levels may have whatever hair and beard length they prefer. ● Any offender may be required to cut their hair and beard and maintain short hair and a clean shaven face for the following reasons: <ul style="list-style-type: none"> ● concealing or transporting any contraband or weapon in their hair or beard; ● refusing to promptly follow staff directions with regard to a search of their hair or beard; ● having a history of escape or attempted escape; ● failing to maintain a clean and neat appearance; or ● having health, safety, or hygiene problems related to hair or beard." 	Instit. Services Policy No. IS6-1.3, Personal corr., January 4, 2012

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State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Montana		X	X	X	X	<ul style="list-style-type: none"> ●Religious accommodations - can change only once a year instead of day to day. ●Work assignments may require stricter grooming standards. ●Database maintained. ●Progressive disciplinary system where forced showers and haircuts are allowed. ●Intricate braiding and STG related styles not allowed. 	Montana State Prison Operational procedures MSP 4.4.1 10/1/1997, Personal interview, Jan. 10, 2012
Nebraska		X	X	X	X	<ul style="list-style-type: none"> ●"Freedom in personal grooming. This choice is limited only by institutional requirements for safety, security, identification, or hygiene." 	Admin. Reg. 116.01, p. 3 10/31/18

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Nevada		X	X	X	X	<ul style="list-style-type: none"> ● "Inmates shall be permitted freedom in personal grooming as long as their appearance does not conflict with the institution's requirements for safety, security, identification and hygiene." ● "Beards, sideburns and mustaches may be required to be removed for security reasons." ● "During the intake process inmates may be required, for health and/or security reasons, to submit to a haircut and/or shave." Force may be used. ● Some assignments require specific grooming standards 	Nevada DOC AR 705 10/20/14

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State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
New Hampshire		X	X	X	X	<ul style="list-style-type: none"> ● "Hair length is a personal choice as long as there is no safety hazard when working around machinery or a sanitation hazard when working around food." ● "Inmates are not required to shave. Inmates who choose not to shave must maintain facial hair length of no more than 1/4" and are not allowed to groom or sculpt their beards in any way..." ● "Mustaches are allowed, but cannot grow lower than corner of mouth." ● "Sideburns cannot be lower than bottom of earlobe." ● "Reasonable boundaries must be maintained regarding hair styles. A hair style that presents a security or safety hazard is inappropriate. An example of a hair style being a legitimate security hazard would be if the sheer volume of the hair can conceal a weapon or other contraband." 	Manual for the Guidance of Inmates 2011 Personal Corr., January 10, 2012

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State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
New Jersey		X	X	X	X	<ul style="list-style-type: none"> •"Inmates shall be permitted to have the hair style or length of hair they choose, including beards and mustaches, provided their hair is kept clean and does not present a safety hazard, or a health, sanitary or security problem." •"When the length, style or condition of an inmate's hair is found to present a safety hazard, or a health, sanitary or security problem, the inmate shall be required to trim or cut his or her hair or wear an appropriate protective head and/or beard covering." 	New Jersey Admin. Code, Title 10A, §10A:14-2.5

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State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
New Mexico			X	X		<ul style="list-style-type: none"> ●"Freedom in personal grooming shall be permitted..." ●"Inmates having a...sincerely held religious belief which prohibits the inmate from cutting his hair may request an exception to the grooming standards..." ●Special Management offenders: "All male inmates' hair will be cut neatly and will not exceed three inches in length...so as not to touch the shirt collar...Hair shall not touch or cover any portion of the ears." "Sideburns will not extend below the ear lobe." "Moustaches will be neatly trimmed, not to exceed 3/4" in length, not extend below the corners of the mouth or cover the lip." "Beards and goatees are not permitted and no other facial hair is permitted." Medical and religious exceptions allowed. 	NM DOC CD-151100 6/9/16

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State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
New York		X	X	X	X	<ul style="list-style-type: none"> •"Initial shaves and haircuts shall be required of all newly committed male inmates and returned parole violators." •An offender who "professes to be of a religion that would not allow him to shave and thus refuses the initial shave based on a religious objection..." may be exempted. •A returning offender "who professes to be a Rastafarian, Taoist, Sikh, Native American, Orthodox Jew, or member of any other religious sect of a similar nature and refuses to have an initial haircut cannot be forced to comply with the initial haircut requirements." Also, those offenders with court orders restraining haircuts. •After initial haircut and shave, "an inmate may grow a beard and/or mustache, but beard/mustache hair may not exceed one inch in length unless" he has a religious exemption or a court order. 	Directive 4914 7/6/2015

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State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
North Carolina		X	X	X	X	The manual contains grooming standards specific to individual religions.	Personal corr., January 10, 2012 <i>North Carolina Dept. of Correction Division of Prisons Religious Practices Reference Manual (2004)</i>

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
North Dakota		X	X	X	X	<ul style="list-style-type: none"> •"Every...facility's policies shall allow an inmate to request an exception to the facility's hair and facial hair restrictions, if any, based on the inmate's sincerely held religious beliefs." •"When the length or style of your hair is a security, health, sanitation, or safety problem, you may be required to trim or cut your hair or wear a hair net or other covering to alleviate the problem...A trimmed mustache is permitted. Beards must be neatly trimmed and clean." •"Haircuts, facial hair, or eyebrows that provide identification or affiliation with security threat groups are prohibited and you will be required to change, modify, or remove any features that identify you with a security threat group." 	Inmate Handbook - Mar. 2018 North Dakota Correctional Facility Standard 69 1/1/2018

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State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Ohio			X	X	X	<ul style="list-style-type: none"> ● Hair may not be any longer than 3 inches from the scalp but braids are allowed (for men as well) ● Sideburns, beards, and mustaches must be clean and neatly trimmed. Facial hair must not protrude more than one-half inch from the skin. ● Allow exemption for sincerely held religious belief. ● Required re-photographing if inmate drastically changes his or her appearance 	Admin. Rule #5120-9-25

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State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Oklahoma		X	X	X	X	<ul style="list-style-type: none"> ●For initial intake, offender's hair is cut and facial hair removed as close as health reasons allow for picture ●After initial picture, "Thereafter, male hairstyles and appearances, including facial hair, will not conflict with security, sanitation, safety, or health requirements of the department...compliance with...conventional community standards." ●A new ID is required if there is a change in the offender's appearance and the offender is charged for it. 	OP-030501

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State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Oregon		X	X	X	X	<ul style="list-style-type: none"> •"Head and facial hair must be maintained daily in a clean and neat manner. •If a hair search needs to be conducted by staff, it may be necessary to require that the inmate unbraid, loosen, or cut the hair to complete the search. •Inmates who work with machinery and whose hair length, in the judgment of staff, poses a safety or health problem must wear protective hair covering when performing their job assignment in conformance with OSHA guidelines. •Head and facial hair must be worn in a manner that does not draw undue attention or otherwise compromise internal order and discipline, institutional security, or the health and safety of the inmate, other inmates, and staff." 	Oregon Admin. Rules 291-123-0015 2/7/19

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State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Pennsylvania		X	X	X	X	<p>“Inmates are not restricted with regard to the length of their hair. All hair must be maintained in a manner that does not pose a concern relating to the health, safety, and security of the facility. Inmates may have all hair searched for the purposes of health, safety, and security...a beard, goatee, mustache, or sideburns shall be permitted.”</p> <p>.</p>	<p>DC - ADM 807 <i>Inmate Grooming and Barber/Cosmetology Programs Procedure Manual</i> 7/1/2016</p>
Rhode Island		X	X	X	X	<p>Personal Hygiene contains no reference to grooming of hair, just requirement to bathe once a week.</p>	<p>Policy 18.47-1 Personal corr., Jan. 9, 2012</p>

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
South Carolina				X		<ul style="list-style-type: none"> ● "All male inmates' hair must be neatly cut (not to exceed 1" in length" and must remain above the shirt collar and above the ear (not touching the ear..." ● "Facial Hair, full beards or mustaches only, of a ½ inch maximum length are permitted for all inmates." ● Refusal to comply with standards may result in limitation of visitation and also be considered a voluntary refusal of a meal. 	<ul style="list-style-type: none"> ● OP-22.13 11/1/2006 Personal corr., Jan. 5, 2012

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
South Dakota		X	X	X	X	<ul style="list-style-type: none"> "Hair, including facial hair, must be kept clean and neat in appearance and cannot pose a threat to the safety or security or sanitation of the institution." 	<ul style="list-style-type: none"> South Dakota DOC <i>Inmate Living Guide</i> October 2017 Personal interview, Jan. 6, 2012

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Tennessee		X	X	X	X	<ul style="list-style-type: none"> •"Inmates shall be permitted freedom in personal grooming and dress as long as their appearance does not conflict with the institution's requirements for safety, security, identification, sanitation, and hygiene." •"Forcible cutting or trimming of hair shall not be done except upon orders of a physician for health reasons." •"Hairstyles, including facial hair, which identify inmates as security threat group members are prohibited." 	Tennessee DOC Index #502.03 6/30/18

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Texas			X	X	X	<p>“Male offenders shall be clean-shaven. No beards, mustaches, or hair under the lip shall be allowed, unless the offender has been approved to grow a beard for religious purposes.”</p> <p>“Offenders with religious belief [sic] who want to grow a beard...shall be required to shave once a year, during the month of the offender’s birthday and have a clean-shaven picture taken for current identification purposes, after which time the offender shall be allowed to regrow the religious beard.”</p> <p>“Religious beards shall be no more than fist length and not exceed four inches outward from the face.”</p> <p>“Male offenders shall keep their hair trimmed up the back of their neck and head. Hair shall be neatly cut. Hair shall be cut around the ears. Sideburns shall not extend below the middle of the ears...No fad or extreme hairstyles/haircuts are allowed...”</p>	<p><i>Offender Orientation Handbook</i> Feb. 2017</p>

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Utah		X	X	X	X	<ul style="list-style-type: none"> ●Religious accommodations are allowed. ●"Hair length and the wearing of beards may be regulated by work agreements or contracts." "An inmate may wear a mustache or beard or both."	Personal interview, Jan. 11, 2012 Utah DOC FD22 <i>Inmate Code of Conduct</i> 8/27/12
Vermont		X	X	X	X	No policy specific to hair grooming	Personal interview, Jan. 6, 2012

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Virginia			X	X	X	<ul style="list-style-type: none"> ●"Offenders are permitted freedom in personal grooming within the standards set forth in this operating procedure. Hair styles and beards that could conceal contraband; promote identification with gangs; create a health, hygiene, or sanitation hazard; or could significantly compromise the ability to identify an offender are not allowed." ●"Male offenders' hair will be neatly cut, no longer than above the shirt collar and around the ears..." ●"Sideburns will not extend below the middle of the ear." ●"Beards of a ½ inch maximum length are permitted for all offenders." ●"A mustache is authorized for male offenders; however, it must be neatly trimmed and must not extend beyond the corner of the mouth or over the lip." 	Virginia Operating Procedure 864.1 8/1/2016

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Washington		X	X	X	X	<ul style="list-style-type: none"> •"Offenders will be allowed to express their religious customs and beliefs through head and facial hairstyles consistent with their religious tradition while maintaining personal hygiene." 	Washington State DOC Policy 560.200, <i>Religious Programs</i> , 2/17/2014
West Virginia	X					<ul style="list-style-type: none"> •Only if they have a shave slip from a doctor •"Hair length will not exceed the top of the collar or ears, be no more than 3" on top and be kept neat and clean. Hair will have a tapered appearance and may not be blocked." •"Facial hair will not be permitted. Medical and religious issues will be addressed on a case by case basis." 	<i>Jackson v. McBride</i> , S.D. W.Va., 2007 Personal corr., Jan. 5, 2012

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Wisconsin		X	X	X	X	<ul style="list-style-type: none"> •The department has the authority to regulate the length of hair, mustaches, and beards based upon institution health and safety concerns. •Inmates assigned to food preparation and serving areas shall be required to wear hairnets or other suitable hair covering. •Inmates performing work assignments that may reasonably be considered to be hazardous shall maintain suitably cropped hair or wear protective appliances or headgear for safety purposes 	<ul style="list-style-type: none"> •Wis. Admin. Code, Chapter DOC 309.24 •Personal interview, Jan. 10, 2013

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
Wyoming		X	X	X	X	<ul style="list-style-type: none"> ●It is the policy of the WDOC that each inmate shall be allowed freedom in personal grooming except when a valid interest justifies otherwise. ●Male inmates will...receive a standard military style haircut prior to being photographed. ●Should the inmate opt not to receive a haircut for religious or other reasons, he will be photographed with his existing hairstyle, as long as that hairstyle otherwise complies with this policy. ●If the inmate opts to not receive an intake haircut and his hairstyle is in violation of this policy, his presence...shall be deemed to create a threat to security and good order of the facility or the safety of any person and he shall be placed into an appropriate segregation status pending review and hearing. 	Wyoming DOC Policy and Procedure 4.201, <i>Inmate Grooming, Hygiene and Sanitation</i> 5/15/2019 Personal interview, Jan. 12, 2012

(continued)

State	Do not allow facial hair or long hair	Allow				Comments	Source
		Long Hair	Sideburns	Mustaches	Beards		
BOP		X	X	X	X	<ul style="list-style-type: none"> •The Bureau of Prisons permits an inmate to select the hair style of personal choice, and expects personal cleanliness and dress in keeping with standards of good grooming and the security, good order, and discipline of the institution. •Inmates with beards will be required to wear beard coverings when working in food service or where a beard could likely result in a work injury. 	BOP CPD 5230.05 <i>Grooming</i> , 11/4/1996

States' Policies Regarding Religious Accommodation for Pat and Strip Searches

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Alabama	X	X	X	X	No	Although the policy specifically states “There shall be no cross-gender searches...” of visitors or employees, there is not such caveat for offenders (p. 4 – 5).	Alabama DOC AR 336 Searches, April 6, 2005
Alaska					Yes	“No cross-gender pat-down searches of female prisoners may occur, unless exigent circumstances exist...No cross-gender strip searches may occur except when exigent circumstances that immediately impact the safety or security or the institution exist...No cross-gender pat-down searches of known, male Muslim prisoners/arrestees may occur, unless exigent circumstances exist” (p. 1).	Alaska Interim Policy and Procedures Memorandum 4/19/2018 (“[Based partly on <i>United States v. McConney</i> , (1984).]” (p. 2).

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Arizona	*	**				<p>*"Male officers shall not pat search female inmates, except in emergency situations" (p. 10)</p> <p>**"Female officers may pat search male inmates if no male staff member is available to conduct the search with a reasonable amount of time" (p. 10)</p> <p>Cross gender pat searches must have one other staff member present, whenever possible.</p>	Arizona DOC #708, March 21, 2014

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Arkansas	X	X	*	*		<p>“Pat searches may be conducted by an employee of either gender and may be performed in any area of the facility and during movements” (p. 3).</p> <p>“Strip searches shall be conducted in a professional manner by staff the same gender as the offender. [*]In cases of emergency (i.e., escape, riot, etc.), this provision may be waived” (p. 4).</p>	Arkansas DOC #401, Sept. 11, 2011

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
California	*	X	**	**		<p>**"Body inspection of clothed female inmates shall be conducted by female correctional employees only, except in emergency situations requiring the immediate search of inmates to avoid the threat of death, escape, or great bodily injury."</p> <p>***"Correctional employees, other than qualified medical staff, shall not conduct unclothed body inspections of inmates of the opposite sex except under emergency conditions with life or death consequences."</p>	<p>Article 1 §3287, California Code of Regulations Title 15</p>

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Colorado	*	X	**	**		<p>“Pat searches of male offenders may be conducted by DOC employees or contract workers of either sex; female offenders shall only be pat searched by female DOC employees or contract workers, absent exigent circumstances...DOC employees shall be trained in how to conduct cross-gender pat-down searches...”</p> <p>***“[Strip] searches will be conducted by a DOC employee of the same sex as the offender being searched, except in exigent circumstances or when performed by medical practitioner.”</p>	Colorado DOC Reg. No. 300-06, Sep. 15, 2015

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Connecticut	X	X	*	*	No	<p>“Reasonable accommodations shall be made to provide for same gender pat-searches of female inmates...Reasonable accommodations shall be made to provide for same gender strip-searches. When such accommodation cannot be made and the strip-search is deemed to be essential without delay, then a cross gender strip-search shall be conducted.” All cross gender searches shall be reported.</p>	Directive 6.7, Searches Conducted in Corr. Facilities, 6/29/18

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Delaware	X	X	*	*		*"Strip searches shall be conducted by officers of the same gender as the offenders being searched, except during emergencies or exigent circumstances." "Frisk searches should be conducted by a Correctional Officer of the same gender as the individual, whenever possible."	Directive 8.32, <i>Contraband: Search, Seizure and Disposition,</i> 12/22/14

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Florida	*	X	**	**	No	<p>“[*]Clothed searches of female inmates by male staff will only be conducted during an emergency situation as determined by the shift supervisor. The only exception to this provision is an instance when time and circumstances do not permit the arrival of female staff or consultation with the shift supervisor prior to conducting the search due to an imminent threat of physical violence and a search is needed to secure the inmate to prevent injury to staff or inmates...[**]Strip searches of inmates shall be conducted only by Correctional Officers who shall be of the same sex as the inmate, except in emergency circumstances.”</p>	Admin. Rule 33-602.204, 9/4/05

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Georgia	**	X	*	*	No	<p>•**"The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (Meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners."</p> <p>•***"The facility shall not conduct cross-gender pat searches of female inmates, absent exigent circumstances."</p>	GDOC SOP 208.06 12/1/2014
Hawaii	**	X	*	*	No	<p>*Exceptions for cross-gender strip searches only allowed in exigent circumstances.</p> <p>**Exceptions for cross-gender pat strip searches of females only allowed in exigent circumstances.</p>	ADM.08.08 9/22/2017

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Idaho	X	X	**	**	No	*“When it is necessary to conduct a clothed body search, an employee of either gender may conduct the search.” ***“When it is necessary to conduct an unclothed body search, an employee of the same gender as the offender must conduct the search (except during an emergency)” (p. 1)	Idaho DOC Policy 317 12/20/07
Illinois	N/A	N/A	No	No	No	“Strip searches and visual searches of anal or vaginal body cavities of committed persons shall be conducted by persons of the same sex as the committed person and in an area where the search cannot be observed by persons not conducting the search, except in cases of an emergency.”	20 Admin. Code I.e.501.220

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Indiana	N/A	N/A	No	No	No	“No facility shall conduct cross-gender strip searches or cross-gender visual body cavity searches except in emergency circumstances or when performed by medical personnel.”	Indiana DOC Policy 02-01-115 8/1/2016
Iowa	N/A	N/A	N/A	N/A		“Sufficient same-gender staff shall be available to perform searches of offenders involved in programs and services.”	Iowa DOC Policy IO-SC-17

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Kansas	*	**	***	***	No	<p>*“Pat-down searches of male offenders may be conducted by trained staff of the same or opposite gender as the offenders being searched”</p> <p>**“Pat-down searches of female offenders and all juvenile offenders shall be conducted by a trained staff member of the same gender only, except in exigent circumstances”</p> <p>***“...strip search shall be performed by, and only in the presence of, employees of the same gender as the offender being searched, except in exigent circumstance.”.</p>	Kansas DOC Policy 12- 103D 12/12/17

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Kentucky	**	***	*	*	No	<p>*“Except in exigent circumstances, a strip search shall be conducted by a staff member of the same gender as the inmate...”</p> <p>**“All cross-gender pat down or frisk searches of female inmates shall only be conducted under exigent circumstances and shall be documented.</p> <p>***Other pat down or frisk searches, or area searches of inmates may be conducted as deemed necessary by correctional staff.”</p>	Kentucky DOC Policy 9.8 6/1/18
Louisiana	No	No	No	No	No	<p>“Visual body searches shall be conducted by trained personnel of the same sex as the inmate and shall avoid force, undue embarrassment or indignity.”</p>	Chapter 31 §3109 Louisiana Administrative Code

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Maine	*	Yes	**	**	No	<p>Policy referenced PREA Standard §115.15 ***"...shall not conduct cross-gender strip searches or cross-gender body cavity searches..except in exigent circumstances or when performed by medical practitioners." **"...shall not permit cross-gender pat-down searches of female inmates, absent exigent circumstances."</p>	<p>Maine DOC Policy #23.8 (AF) 11/18/16</p>

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Maryland	*	Yes	**	**	No	Facility meets PREA Standard §115.15 **"IIU.100.0008 Strip and Body Cavity Searches prohibit cross gender strip and body cavity searches, except in exigent circumstances." **"EMD.DOC.100.0026 Search Plans...(and) OPS.100.026 Search Plan prohibits cross-gender pat-down searches of female inmates, except in exigent circumstances."	PREA Audit: Auditor's Summary Report Adult Prisons & Jails – North Branch Corr. Inst. 11-10/12-2014, p.6

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Massachusetts	*	Yes	**	**	No	<p>*** Cross-gender pat searches of female inmates shall not be permitted absent exigent circumstances.”</p> <p>***“Except for gender non-conforming inmates, cross-gender strip searches or cross-gender visual body cavity searches shall not be conducted except in exigent circumstances or when performed by medical practitioners.”</p>	Massachusetts DOC Policy 103 CMR 506 1/31/19

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Michigan	*	*	**	**	No	<p>*"Department employees have authority to conduct a pat-down or clothed body search of a prisoner at any time. For male prisoners, these searches need not be conducted by a staff member of the same sex as the prisoner being searched. Pat-down and clothed body searches of female prisoners shall be conducted only by female staff except when female staff are not readily available to conduct a search in an emergency or where there is a reasonable suspicion that the prisoner is in possession of contraband."</p> <p>**"A strip search shall be performed only by employees of the same sex as the prisoner being searched."</p>	Michigan DOC Policy 04.04.110 8/14/2017

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Minnesota	*	Yes	**	**	No	<p>**"Except in exigent circumstances, pat searches of female offenders must be conducted by staff of the same gender."</p> <p>***"Except in exigent circumstances, unclothed body searches are conducted in private, by two staff of the same gender as the offender searched."</p>	Minnesota DOC Policy 301.010 12/31/18
Mississippi						Unavailable	
Missouri						Unavailable	

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Montana	*	**	***	***	No	<p>*"Cross gender clothed body searches of residents in juvenile facilities, juveniles and adult females are not permitted unless an exigent circumstance requires a cross gender clothed body search."</p> <p>**"Staff will conduct clothed body searches of individuals of the same gender as themselves whenever possible."</p> <p>***"Written procedures will provide that, except in emergency situations, staff of the same gender as the offender will conduct offender unclothed body searches..."</p>	Montana DOC Policy #3.1.17 2/2/17

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Nebraska	*	Yes	**	**	No	<p>*"Staff shall not conduct cross-gender pat searches of female inmates, absent exigent circumstances."</p> <p>**"Staff shall not conduct cross-gender strip searches or cross-gender visual body cavity searches...except in exigent circumstances or when performed by medical practitioners."</p>	Nebraska DOC Policy 116.01 10/31/18

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Nevada	Yes	Yes	Yes	Yes	No	<p>“Inmates are subject to pat-down searches, frisk, strip visual body cavity, intrusive body cavity, and property searches, if necessary, for the safety and security of the institution/facility.”</p> <p>“Pat down, frisk, strip and visual body cavity searches of inmates and their property will be conducted by staff trained in conducting searches.”</p> <p>There were no specifics regarding cross-gender searches in the policy.</p>	Nevada DOC Policy 422 (11/16/2016)

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
New Hampshire	Yes	Yes	No	No	No	*"Officers of the opposite sex may perform pat down searches, when officers of the same sex are not immediately available, the situation is of an emergency nature..." *For strip searches, "Trained staff of the same gender will conduct this inspection."	NH DOC Policy 5.22 7/31/12

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
New Jersey	Yes	No	**	**	No	<p>**"Pat searches may be conducted by either male or female custody staff members upon male inmates. Except in emergent circumstances, pat search shall only be conducted by female custody staff members upon female inmates."</p> <p>***"A strip search shall be conducted...by custody staff of the same gender as the inmate and may include a scanning/testing device operator(s) of the same gender as the inmate...may be conducted...by...the opposite gender under emergent conditions."</p>	N.J.A.C. §10A:3-5.6

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
New Mexico	*	*	*	*	No	*“The facility shall document all cross gender strip searches and cross gender visual body cavity searches and shall document all cross gender pat-down searches of female inmates. These types of searches will only be conducted in the most exigent circumstances.”	NM DOC CD-150100 10/31/18

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
New York	*	**	***	***	Yes	<p>*Male Facilities - "Pat frisks will be performed by Officers regardless of sex. However a female Officer shall not perform a non-emergency pat frisk of any male Muslim inmate over the objection of the inmate if a male Officer is present at the location where the pat frisk is to be conducted and is available to perform the pat frisk."</p> <p>***"Facilities shall not permit cross gender pat frisks of female inmates, absent exigent circumstances."</p> <p>***"Strip searches or strip frisks shall be conducted by an Officer or employee of the same sex as the inmate being searched."</p>	NY Dir. #4910 11/7/2017

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
North Carolina	*	**	*	***	No	<p>*"Routine (pat/frisk) and/or Complete (strip) searches of female inmates by male staff will only be conducted during an emergency situation as determined by the shift supervisor."</p> <p>**"Routine (clothed) searches of male inmates may be conducted by correctional officers of either sex."</p> <p>***"Complete (strip) searches of inmates will be conducted only by correctional officers of the same sex as the inmate, except in emergency circumstances as determined by the shift supervisor."</p>	NCDPS Policy F.0100 7/10/13

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
North Dakota	No	No	No	No	No	“Unclothed cross-gender body searches may not be conducted on male or female inmates absent exigent circumstances.”	North Dakota Correctional Facility Standard 36 1/1/2018
Ohio	**	Yes	*	*	No	*“The facility DOES NOT conducts (sic) cross-gender strip or cross-gender visual body cavity searches of residents.” ***“The facility does not permit cross-gender pat-down searches of female residents, absent exigent circumstances.”	PREA Auditor’s summary Report November 30, 2014

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Oklahoma	**	Yes	*	*	No	<p>**Pat down, frisk, strip, and visual body cavity searches of offenders...will be conducted by staff trained in conducting searches. Strip searches and visual body cavity searches will be conducted by gender specific staff...except in exigent circumstances of when performed by medical practitioners.”</p> <p>**Cross-gender pat searches of females must be documented.</p>	OP-040110 Search and Seizure Standards 7/29/2014

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Oregon	No	Yes	No	No	No	<p>“Cross-gender clothed searches of female inmates will not occur unless there is an emergency, and shall be documented.”</p> <p>“Except in emergencies, inmates undergoing unclothed searches will be removed to a private area for the search.”</p>	<p>Admin. Rule 291-041-0020 Searches (Institutions) 3/24/16</p>
Pennsylvania	Yes	Yes	No	No	No	<p>For strip searches, “Absent exigent circumstances, same gender correctional personnel shall search inmates.”</p>	<p>DC-ADM 203 <i>Searches of Inmates and Cells Procedures Manual</i> 5/25/2004</p>

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Rhode Island	No	Yes	No	No	No	Refrains for conducting cross-gender pat searches of female inmates in non-exigent circumstances.	<i>PREA Audit Report Rhode Island Department of Corrections 8/24/18</i>
South Carolina	*	*	**	**	No	*"Whenever possible, staff of the same sex as the inmate should conduct frisk searches; however, if circumstances dictate otherwise, staff of the opposite sex are authorized to conduct frisk searches." **"Strip searches will be performed by employees of the same sex as the person being searched, except in extreme emergencies..."	<i>OP-22.19 Searches of Inmates 11/1/06</i>

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
South Dakota	N/A	N/A	N/A	N/A	N/A	“All inmates are subject to pat search, visual search and strip search.”	<i>South Dakota DOC Inmate Living Guide</i> Nov. 2018
Tennessee	No	Yes	No	No	No	“Female correctional officers may frisk search inmates of both genders. Male correctional officers may frisk search only male inmates. Strip searches will only be conducted by staff members of the same gender.”	Tennessee DOC Index #506.06 <i>Searches</i> 3/16/18
Texas	No	Yes	No	No	No	“Staff shall not conduct cross-gender strip searches or cross-gender visual body cavity searches, such as a search of the anal or genital opening, except in exigent circumstances or when performed by medical practitioners...”	<i>TDCJ Safe Prisons/PREA Plan</i> February 2019

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Utah	-	-	-	-		Utah is one of two states (also Arkansas) that do not comply with PREA standards. No policy was found regarding offender searches.	Ramseth, 2017
Vermont	*	X	**	**	No	“Inmate strip searches, inmate pat searches, and drug testing observations, will be conducted by staff members of the same birth-sex, except when exigent circumstances exist; such as no female staff is on shirt, or in an emergent situation when the search of an inmate is imperative to the safety and security of an inmate, or to the operations of a facility.”	Interim Revision Memo Inmate Pat Searches; 9/13/10 Directive #409.01, Searches, 9/1/2015

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Virginia	No	No	No	No	No	“Operating Procedure 445.1 (rev 2015): Requires strip searches to be conducted by trained DOC employees of the same gender as the offender being searched, unless there is an immediate threat to the safe, secure, and orderly operation of the facility and there is no other available alternative.”	Virginia DOC <i>PREA Audit Report</i> 10/25/2017

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Washington	*	Yes	No	**	No	<p>“*Pat searches of female offenders will only be conducted by female employees/contract staff, except in emergent situations.”</p> <p>“Strip searches of female offenders will be conducted by female employees.”</p> <p>***“Strip searches of male offenders require that one of the employees conducting the search be male. If the second person conducting the strip search is female, she will position herself to observe the employee doing the strip search, but will not be in direct line of sight with the offender.”</p>	<p>Washington State DOC Policy 420.310, <i>Searches of Offenders</i>, 1/1/2014</p>

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
West Virginia	*	Yes	**	Yes	No	“WVARJCFA Policy 3052, N., Limits to Cross-Gender Viewing and Searches, **prohibits staff from conducting cross gender strip searches and cross gender body cavity searches absent exigent circumstances...*The agency also prohibits cross gender pat down searches of females absent exigent circumstances.”	West Virginia PREA Audit 5/15/2018

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Wisconsin	*	*	**	**	No	<p>**"Except in exigent circumstances, adult facilities shall not permit cross-gender pat-down searches of female offenders nor shall juvenile facilities permit cross-gender pat-down searches of either gender."</p> <p>***"Executive Directive 72 Sexual Abuse and Sexual Harassment in Confinement (PREA) outlines facilities shall not permit-cross-gender strip or body cavity searches except in exigent circumstances or when performed by medical practitioners."</p>	Wisconsin DOC PREA Audit 3/2/2018

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
Wyoming	-	-	-	-		<p>“Cross-gender pat-down searches of male inmates by female...employees who have been trained in proper cross-gender pat-down search procedures shall not be routinely limited...”</p> <p>Cross-gender pat-down searches of female inmates by male WDOC employees may be conducted by trained personnel if a female employee is not available, delay is not reasonable, and the search is conducted under the full-view of a security camera or video camera. “Cross-gender pat-down searches of female offenders may also be authorized during emergencies...” Cross-gender strip searches are not permitted.</p>	<p>Wyoming DOC Policy and Procedures #3.013 <i>Searches</i> 5/15/2017</p>

(continued)

State	Pat Searches		Strip Searches		Relig. Accom. Allowed	Comments	Source
	Male Officer	Female Officer	Male Officer	Female Officer			
	Female Offender	Male Offender	Female Offender	Male Offender			
BOP	Yes	*	Yes	**	No	<p>*"Cross-gender pat searches of female inmates are permitted if exigent circumstances exist."</p> <p>**Strip-searches – "Staff of the same sex as the inmate shall make the search, except where circumstances are such that delay would mean the likely loss of contraband."</p>	<p>BOP CPD/CSB #5521.06, <i>Searches of Housing Units, Inmates, and Inmate Work Areas,</i> 6/4/2015</p>

APPENDIX B

U.S. Supreme Court Cases

Title of U.S. Supreme Court Case	Category	Facts	Issue	Holding
<i>Holt v. Hobbs</i> 135 S. Ct. 853 (2015)	Grooming	Arkansas offender claimed DOC policy prohibiting facial hair violated his free exercise of religious beliefs.	Is it unconstitutional to require offenders to violate their religious beliefs in favor of prison policy? MAYBE	The offender had to choose between violating the policy or his sincerely held religious beliefs. RLUIPA applied even if the religious practice was not mandatory. DOC did not show the policy furthered compelling interests.
<i>Sossamon v. Texas</i> 563 U.S. 277 (2011)	Assembly	Offender claimed he was denied access to religious assembly and the chapel at the prison.	Does RLUIPA allow for damages against an official acting in his or her individual capacity? NO	"States, in accepting federal funding, do not consent to waive their sovereign immunity to private suits for money damages under RLUIPA."

(continued)

Title of U.S. Supreme Court Case	Category	Facts	Issue	Holding
<i>Beard v. Banks</i> 548 U.S. 521 (2006)	Property	Long-term segregation offenders claimed policy denying newspapers, magazines, and photographs violated the First Amendment.	Does the denial of materials to offenders with a history of institutional misconduct violate the First Amendment?	No. The policy met the <i>Turner v. Safley</i> test, and the district court had not deferred enough to the prison officials' expertise.
<i>Cutter v. Wilkinson</i> 544 U.S. 709 (2005)	RLUIPA Challenge	Offenders claimed RLUIPA violated the First Amendment Establishment Clause by giving greater protection to religious rights than other constitutional rights.	Does RLUIPA violate the Establishment Clause of the First Amend.? NO	RLUIPA is constitutional and does not violate the Establishment Clause of the First Amendment.
<i>Employment Division v. Smith</i> 494 U.S. 872 (1990)	Religious Exercise	Plaintiffs were fired after the use of peyote for sacramental purposes and claimed a violation of religious freedom.	Is a state law criminalizing the use of peyote, even for religious purposes, unconstitutional? NO	Rational basis scrutiny is used when the burden is due to a neutral and generally applicable law. Strict scrutiny is used if the law burdens specific religions or practices.

(continued)

Title of U.S. Supreme Court Case	Category	Facts	Issue	Holding
<i>O'Lone v. Shabazz</i> 482 U.S. 342 (1987)	Religious Exercise	Muslim offenders working offsite were not allowed to leave work and return to the prison for Jumu'ah.	Is a regulation prohibiting offenders to leave work in order to return to the unit for religious services unconstitutional? NO	A prisoner's right to free exercise may be infringed upon if the infringement relates to a legitimate penological interest.
<i>Turner v. Safley</i> 482 U.S. 78 (1987)	Religious Exercise	Offenders were not allowed to correspond with offenders in other prisons except under restrictive circumstances, if approved.	Are regulations restricting correspondence with other offenders as well as restrictions on the approval to marry unconstitutional? NO	A prison regulation that infringes on a prisoner's constitutional right is acceptable if it is reasonably related to legitimate penological interests.
<i>Bell v. Wolfish</i> 441 U.S. 520 (1979)	Property	Pretrial detainees claimed conditions of confinement were tantamount to punishment without due process	Is a jail regulation prohibiting prisoners' receipt of hard-bound books unconstitutional? NO	Evaluation of regulation showed a rational basis.
<i>Goulden v. Oliver</i> 442 U.S. 922 (1979)	Grooming			

(continued)

Title of U.S. Supreme Court Case	Category	Facts	Issue	Holding
<i>Jones v. North Carolina Prisoners' Union</i> 433 U.S. 119 (1977)	Assembly	The warden forbade offenders from engaging in union activities, and halted delivery of union-related materials to offenders.	Is it unconstitutional to ban offenders from soliciting other offenders to join the union or sending literature through the mail for such solicitation? NO	Prison officials' concern about any potential security risk arising from the activities of the prisoners' union were reasonable. The regulations were least restrictive means to ensure security.
<i>Pell v. Procunier</i> 417 U.S. 817 (1974)	Religious Exercise	Offenders brought suit over regulation, "press and other media interviews with specific individual inmates will not be permitted."	Is a regulation prohibiting media interviews of individual inmates unconstitutional? NO	Internal security is the single most important objective of the prison system and regulations may be upheld if offenders have alternate means to achieve their interests.

(continued)

Title of U.S. Supreme Court Case	Category	Facts	Issue	Holding
<i>Procunier v. Martinez</i> 416 U.S. 396 (1974)	Religious Exercise	Offenders claimed censorship regulations for mail were unconstitutional under the First Amendment	Is a rule restricting personal correspondence and screening of mail unconstitutional? NO	Regulation of First Amendment freedoms must further an important governmental interest and should be least restrictive means to protect that interest.
<i>Cooper v. Pate</i> 378 U.S. 546 (1964)	Property	Offender claimed he was denied religious publications and privileges allowed other offenders because of his religious beliefs.	Is it unconstitutional for an offender to be denied the right to purchase religious publications when other offenders were allowed to purchase them? YES	Denial for offender to purchase religious publications was a cause of action. Signaled ending of hands-off doctrine although no standard of review was promulgated.
<i>Wisconsin v. Yoder</i> 406 U.S. 205 (1972)	Religious Exercise	Amish and Mennonite parents claimed the law requiring their children to attend school until 16 years of age infringed on their First Amendment rights.	Is a regulation that is neutral on its face, unconstitutional if it unduly burdens the free exercise of religion? YES	Only interests of highest order justify limitation of religious freedom.

(continued)

Title of U.S. Supreme Court Case	Category	Facts	Issue	Holding
<i>Cruz v. Beto</i> 405 U.S 319 (1972)	Religious Exercise	Buddhist offenders claimed the prison system did not allow them to use the prison chapel, and were discriminated against because of their religious beliefs.	Does an offender have a constitutional right to petition for redress of grievances, right against racial segregation, and right against the denial of privileges given to other offenders for religious exercise? YES	If other offenders are given opportunities to practice their religious, the State cannot deny an offender a reasonable opportunity to pursue his faith.
<i>Sherbert v. Verner</i> 374 U.S. 398 (1963)	Religious Exercise	Employee declined to work on Sundays because of her religious beliefs. She was subsequently fired. When she applied for unemployment compensation, she was denied because her religious restriction disqualified her.	Is a requirement for an employee to choose between her job and her religious practice constitutional? NO	Any neutral, general laws that burden religious exercise are subject to strict scrutiny.

U.S Courts of Appeals cases regarding religious property accommodations since passage of RLUIPA (2000)

Title of Property Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Butts v. Martin</i> 877 F.3d 571 (2017)	Fifth Circuit	Offender claimed he was forced to choose between eating his meal and wearing his yarmulke.	Does the color of the yarmulke matter?	No. This case is ridiculous.
<i>Knowles v. Pfister</i> 829 F.3d 516 (2016)	Seventh Circuit	The state contended that the five pointed star could be used as a gang symbol and would not allow the offender to keep it. He filed for an injunction.	Is the wearing of such a medallion only one facet of their religion, not to be considered as a substantial burden? NO	The court reversed and instructed the district court to grant the preliminary injunction.
<i>Davis v. Davis</i> 826 F.3d 258 (2016)	Fifth Circuit	Offender brought suit alleging violation of RLUIPA and First Amendment with the prohibition against wearing his medicine bag to and from his cell.	Does a policy against allowing medicine bags to and from their cells violate RLUIPA and the First Amendment? NO	Offenders did not adequately brief the issue and the court considered it abandoned.

(continued)

Title of Property Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Ali v. Stephens</i> 822 F.3d 776 (2016)	Fifth Circuit	Muslim offender claimed his free exercise was burdened by prohibition against wearing kufi and 4" beard.	Does the policy prohibiting a 4" beard and wearing a kufi at all times violate RLUIPA? YES	The prison did not show that the policies were in the government's compelling interest or that they were the least restrictive means.
<i>Schlemm v. Wall</i> 784 F.3d 362 (2015)	Seventh Circuit	Navajo offender wanted to wear a multi-colored headband for worship. The DOC only allows white or black headbands	Does the policy regarding headbands violate the offender's free exercise? YES	The DOC did not show that it was the least restrictive means. They did not show that the accommodation would cause a problem with gang identification when the offender offered to wear it only in his cell.

(continued)

Title of Property Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Davila v. Gladden</i> 777 F.3d 1198 (2015)	Eleventh Circuit	Inmate, a Santerian priest, brought suit that necklace and shells had been denied him, violating RFRA and the First Amendment.	Does refusing the possession of specific "infused" necklace and shells violate RFRA and the First Amendment? MAYBE and NO	The court reversed and remanded on the lower court's ruling of summary judgment for injunctive relief. The offender's beliefs were substantially burdened; were not shown to be in furtherance of a compelling gov't interest; and were not shown to be the least restrictive alternative. RFRA does not authorize suits for monetary damages for officers in their official capacity. Summary judgment for First Amendment claim was affirmed.

(continued)

Title of Property Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Chance v. TDCJ</i> 730 F.3d 404 (2013)	Fifth Circuit	Offender claimed violation of RLUIPA by not allowing participation in communal pipe smoking and possession of a deceased relatives' lock of hair.	Is the denial of the lock of hair a substantial burden on the offender's free exercise of religion?	YES. The offender had asserted that the practice was a central tenet of his faith (e.g., the Keeping of Souls ritual).
<i>Kaufman v. Pugh</i> 733 F.3d 692 (2013)	Seventh Circuit	Offender wanted to wear a "knowledge thought ring" and also have the library make available the books on atheism books he donated.	Is the denial of the property a violation of the offender's free exercise? NO	The denial of the ring was not a substantial burden on the offender's free exercise and was reasonably justified by security reasons. The three books were lost and there was no indication that they were lost purposefully by the prison system.

(continued)

Title of Property Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>McFaul v. Valenzuela</i> 684 F.3d 564 (2012)	Fifth Circuit	Celtic Druid offender was denied a medallion that cost more than policy allowed.	Does prohibition on nonconforming property violate free exercise? NO	Policy for uniformity in property is a legitimate concern. Offender did not show: a lack of alternatives; policy was not equally applied; and that the burdens on his free exercise were substantial.
<i>Kendrick v. Pope</i> 671 F.3d 686 (2012)	Eighth Circuit	The offender's rosary beads, Bible, and other religious items were confiscated and never returned.	Did the offender exhaust her administrative remedies? YES	Remanded because the court ruled the offender had exhausted her administrative remedies.
<i>Florer v. Congregation Pidyon Shevuyim, N.A.</i> 639 F.3d 916 (2011) 603 F.3d 1118 (2010)	Ninth Circuit	Contract chaplains denied property to Wash. offender as they did not consider him as Jewish.	Can contract agents substantially burden religious exercise through a religious sincerity decision? NO	The decision about the offender's religious status was religious, not penological.

(continued)

Title of Property Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>DeMoss v. Crain</i> 636 F.3d 145 (2011)	Fifth Circuit	The offender claimed the policy prohibiting the carrying of a pocket-sized Bible or Qur'an during medical appts, work, and recreation was a violation of RLUIPA.	Does a policy limiting access to religious texts during activities violate RLUIPA? NO	The offender did not show that the policy limiting access was a substantial burden to his religious practice
<i>Colvin v. Caruso</i> 605 F.3d 282 (2010)	Sixth Circuit	Jewish offender was mistakenly believed to be Muslim and not given kosher meals for 16 days. When the error was discovered, there were still occasions when he was accidentally given non-kosher food. Offender also brought suit against lack of Jewish services and books in the library.	Does prison's dearth of Jewish books violate the offender's constitutional rights?	NO. The offender did not show the prison was required to have a certain number of books and he was not deprived of receiving them through an alternate manner.

(continued)

Title of Property Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Jova v. Smith</i> 582 F.3d 410 (2009)	Second Circuit	Offenders' "Holy Blackness" book was confiscated as well as correspondence with self-publishing company.	Does the policy against proselytizing violate the offenders' free exercise by not allowing them to have personal possession of the "Holy Blackness" book? NO	Offenders are allowed access to the book by submitting a request to the chaplain.
<i>Van Wyhe v. Reisch</i> 581 F.3d 639 (2009)	Eighth Circuit	The offenders challenged the constitutionality of RLUIPA, and denial of request for tape player.	Is RLUIPA constitutional under the Spending Clause? YES Does a state waive its 11 th Amend. immunity for monetary damages by accepting federal funds under RLUIPA? NO Does denial of tape player significantly burden free exercise? NO	RLUIPA is constitutional. The offenders were not substantially burdened in their free exercise. The state was entitled to summary judgement.

(continued)

Title of Property Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Iqbal v. Hasty</i> 490 F.3d 143 (2008) 556 U.S. 662 (2009)	Second Circuit	Detained immediately post 9/11, plaintiff alleged his Koran was routinely confiscated.	Were defendants entitled to qualified immunity due to failure to state a claim and because defendants claimed no personal involvement? NO	The Second Circuit held that the defendants were not entitled to qualified immunity. The U.S. Supreme Court held that conclusory allegations that government officials knew of actions taken by subordinates could not be a basis for unlawful discrimination claim. Second Circuit noted, "...the repeated confiscation of his Koran shows that he was at least permitted to have a Koran need no response" (p. 85).

(continued)

Title of Property Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Rasul v. Myers</i> 512 F.3d 644 (2008) 555 U.S. 1083 (2008) 563 F.3d 527 (2009)	District of Columbia Circuit	British nationals detained at Guantanamo Bay alleged “forced shaving of their beards, banning or interrupting their prayers, denying them copies of the Koran and prayer mats and throwing a copy of the Koran in a toilet bucket” (512 F.3d 644, p. 650).	Are non-citizen detainees protected by RFRA? NO	SCOTUS vacated and remanded in light to decision in <i>Boumediene v. Bush</i> , 553 U.S. 723 (2008). D.C. Circuit held that non-citizen detainees were not subject to protections of RFRA.
<i>Fowler v. Crawford</i> 534 F.3d 931 (8th Cir. 2008)	Eighth Circuit	The offender brought suit over refusal to allow access to a sweat lodge. The state refused on the basis that the ceremony would include access to property such as rocks, willow poles, shovels, deer antlers, and split wood, which could be used as weapons.	Does an offender have a right under RLUIPA to exercise his Native American religious beliefs through sweat lodge ceremonies with other offenders at the maximum security prison? NO	Prohibition of sweat lodge met a compelling governmental interest and was the least restrictive means to obtain safety and security.

(continued)

Title of Property Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Mark v. Gustafson</i> 286 Fed. Appx. 309 (2008)	Seventh Circuit	Offender claimed the state violated his religious rights by breaking seals he had placed on his cell doors.	May a prison system implement a neutral policy if it is not designed to interfere with religious practice? YES	The offender did not show the seals had religious meaning to him and the State showed legitimate reasons for not allowing offenders to place items on cell walls or doors.
<i>Mayfield v. TDCJ</i> 529 F.3d. 599 (2008)	Fifth Circuit	Odinists offenders were prohibited from possessing runestones and access to rune literature in the library was limited. The state argued the stones could be used for gambling, and gang activity. The stones could be used when the volunteer Odinist was present.	Does the prohibition of possession of runestones violate the First Amendment right to free exercise? NO	<ul style="list-style-type: none"> • Possession of runestones could be prohibited as it was reasonably related to compelling penological interests. During the course of the suit, a pilot program allowing limited access to runestones was planned. • The state did not show that banning rune-related literature from the prison library was the least restrictive means of meeting its interests.

(continued)

Title of Property Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Alvarez v. Hill</i> 518 F. 3d 1152 (2008)	Ninth Circuit	Offender claimed violation of Bill of Rights by not allowing use of tobacco for Native American ceremonies and not allowing headbands.	Does the failure of the inmate to invoke RLUIPA vanquish its use in this suit?	No. The facts of the case establish "a 'plausible' entitlement to relief under RLUIPA" (p. 1157).
<i>Smith v. Allen</i> 502 F.3d 1255 (2007)	Eleventh Circuit	Odinist offender requested the use of quartz crystal and a fire pit.	Does RLUIPA require a religious practice to substantially burden the offender? YES	Although the offender was released prior to the case, the offender was reincarcerated and bound by the same decisions -- so the claim was not moot. However the offender did not show the denials substantially burdened his religious beliefs.

(continued)

Title of Property Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Washington v. Klem</i> 497 F.3d 272 (3rd Cir. 2007)	Third Circuit	Offender was only allowed to have 10 books at a time, and claimed it hindered his religious freedom. The state argued the policy was necessary for “security, hygiene, and safety reasons.”	Does a policy which permits only 10 books to be allowed in an offender’s possession at one time violate an offender’s rights under RLUIPA if the offender belonged to religion that required him to read four books per day? YES	A substantial burden exists when an offender is required to choose between practicing his religious beliefs or giving up access to privileges available to other offenders who do not practice that religious belief.
<i>Boles v. Neet</i> 486 F.3d 1177 (2007)	Tenth Circuit	The offender was not allowed to wear his yarmulke and tallit katan when leaving the facility.	Does a restriction on wearing religious items when leaving a prison facility serve a legitimate penological purpose?	Prohibition denying right to wear yarmulke and tallit katan during transport to hospital was a substantial burden on sincerely held religious beliefs as the state did not show the regulation would interfere with penological interests.

(continued)

Title of Property Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Borzych v. Frank</i> 439 F.3d 388 (2006)	Seventh Circuit	Odinist offender was not allowed to have books he claimed were necessary to practice his religion.	Does a policy forbidding publications "advocat(ing) racial or ethnic supremacy" violate RLUIPA?	No. Although it does burden the offender's free exercise, the prison's mission for order gives it a compelling interest to enforce the policy.
<i>Neal v. Lewis</i> 414 F.3d 1244 (2005)	Tenth Circuit	Offender claimed his First Amendment rights were violated by limiting the number of books he could keep in his cell.	Is the policy limiting religious property a violation of the First Amendment? NO	The limitation of amount of property did not substantially burden the offender's religious freedom and was related to legitimate administrative and penological policies regarding fire safety, institutional security, control of contraband, and behavior-incentives.
<i>Benning v. GA</i> 391 F.3d 1299 (2004)	Eleventh Circuit	Jewish offender brought suit that he was not allowed to constantly wear a yarmulke, eat only kosher foods, and observe holy days and rituals.	Does RLUIPA violate the Establishment Clause or the Tenth Amendment? NO	Congress did not overstep its powers by predicating receipt of federal funds on adherence to RLUIPA.

(continued)

Title of Property Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Lindell v. McCallum</i> 352 F.3d 1107 (2003)	Seventh Circuit	The offender alleged prison did not make Wotanist literature and videos available to offenders although other religions were allowed access to materials.	Does refusal to make available materials because of failure to recognize a religion violate Constitutional rights? YES	The court may find there is a legitimate penological interest in not recognizing a white supremacy organization but no evidence of this was brought by the DOC.
<i>Charles v. Verhagen</i> 348 F.3d 601 (2003)	Seventh Circuit	Practicing Muslim offender sued under RLUIPA for rule prohibiting allowance of prayer oil.	Does RLUIPA violate the Spending and Commerce Clause, the 10 th Amendment, and the Establishment Clause? NO	Denial of prayer oil violated RLUIPA but did not violate the First Amendment. State had legitimate interest in denying but did not show that doing so was the least restrictive means.
<i>Sutton v. Rasheed</i> 323 F.3d 236 (2003)	Third Circuit	Nation of Islam offenders were not allowed to have their religious texts in the unit for high-risk offenders.	Did the policy limiting the religious texts meet the Turner test? NO	Although the state did not show they met the Turner test, their qualified immunity was affirmed.

(continued)

Title of Property Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Tarpley v. Allen County, Indiana</i> 312 F.3d 895 (2002)	Seventh Circuit	Offender's Bible was taken and another Bible given to him. He claimed the new Bible did not have the study materials he needed.	Was the provision of an alternative Bible the least restrictive means of meeting a compelling gov't interest? YES	The offender's "essential" religious materials were provided.
<i>Dunlap v. Losey</i> 40 Fed. Appx. 41 (2002)	Sixth Circuit	The offender was required to put his hardcover Bibles in storage for one month, and only allowed a softcover Bible.	Does temporary deprivation of hardcover Bible violate RLUIPA if softcover Bibles are available? NO	The prisoner's rights were not substantially burdened as the deprivation was temporary and he did not show why a softcover Bible would not be sufficient.
<i>Walker v. Maschner</i> 270 F.3d 573 (2001)	Eighth Circuit	African Hebrew Israelite offender claimed he was not allowed to attend Jewish services or possess Jewish religious items.	Does an offender's Free Exercise claim prevail if administrative remedies have not been exhausted? NO	The offender admitted he had not exhausted his administrative remedies.

(continued)

Title of Property Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Morrison v. Garraghty</i> 239 F. 3d 648 (2001)	Fourth Circuit	Offender claimed violation of Equal Protection. He was not allowed Native American religious items because he was not Native American.	Should non-Native Americans be allowed Native American religious items? YES	State did not prove that items were more dangerous in the hands of a non-Native American more than a Native American.

U.S. Courts of Appeals cases regarding religious assembly accommodations since passage of RLUIPA (2000)

Title of Assembly Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Florer v. Congregation Pidyon Shevuyim, N.A.</i> 603 F.3d 1118 (2018) 639 F.3d 916 (2011)	Ninth Circuit	Contract chaplains denied a visit with a rabbi to a Wash. offender as they did not consider him Jewish.	Can contract agents substantially burden religious exercise through a religious sincerity decision? NO	The decision about the offender's religious status was religious, not penological.
<i>Kemp v. Liebel</i> 2017 WL 6273825 (2017)	Seventh Circuit	Offenders sued over transfer to maintain kosher diet but before group services were available at the new facility.	Is it a constitutional violation to not have assembly services available? NO	At the time of the transfer, there was no constitutional right established to assemble and study without outside clergy to supervise.

(continued)

Title of Assembly Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Davis v. Davis</i> 826 F.3d 258 (2016)	Fifth Circuit	Offender brought suit alleging violation of RLUIPA and First Amendment with the prohibition against the pipe ceremony participation. In <i>Chance v. TDCJ</i> (2013), the court ruled that offenders did not have to be allowed a personal peace pipe, avoiding contracting diseases by sharing pipes. TDCJ responded by having the Native American chaplain symbolically smoke for the assembly.	Does a policy against allowing individual peace pipes violate RLUIPA and the First Amendment? NO	Logistics, health, and security concerns outweigh the burden on religious accommodations.
<i>Haight v. Thompson</i> 763 F.3d 554 (2014)	Sixth Circuit	Two groups of death row offenders filed suit that their rights were violated by denial of access to a sweat lodge. The offenders offered to pay for the sweat lodge.	"Is there a triable issue of fact over whether RLUIPA gives the inmates a right to have access to a sweat lodge for faith-based ceremonies?" (p. 558) YES	Remanded for consideration of a promised policy study ordered by the DOC Commissioner.

(continued)

Title of Assembly Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Chance v. TDCJ</i> 730 F.3d 404 (2013)	Fifth Circuit	Offender claimed violation of RLUIPA by not allowing participation in communal pipe smoking and possession of a deceased relative's lock of hair.	Does policy disallowing communal pipe ceremony for health and safety reasons violate RLUIPA?	NO. The prison system could not find a way to ensure that the use of the pipe by multiple people would not spread infectious disease.
<i>Kaufman v. Pugh</i> 733 F.3d 692 (2013)	Seventh Circuit	Offender wanted to start a new group to study atheism and was denied.	Is the denial of permission to form a religious group a violation of the offender's religious rights? NO	Only two members had an interest in the group and there was a legitimate penological purpose in denying the use of resources.
<i>Hartmann v. Cal. Dep't of Corr. & Rehab.</i> 707 F.3d 1114 (2013)	Ninth Circuit	Offenders claimed failure to hire full-time Wicca chaplain hindered their free exercise of religion. They claimed more practicing Wiccan offenders at prison than practicing Jewish, Muslim, or Catholic inmates.	Does failure to provide a paid, full-time chaplain for their faith burden the offenders' free exercise of religious beliefs? NO	Offenders did not show that the use of volunteer Wiccan chaplain infringed on their free exercise. Prisons are not required to provide a paid, full-time chaplain.

(continued)

Title of Assembly Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Sisney v. Reisch</i> 674 F.3d 839 (2012)	Eighth Circuit	Offender was denied permission to eat his Succoth meal in a succah in a recreation yard and sued for compensatory damages.	Was denial of a succah a violation of the offender's constitutional rights? NO	The PLRA does not allow compensatory damages if physical injury did not result. It was not clear that use of a succah was a "reasonable dietary and meal accommodation" (p. 19).
<i>McCollum v. Cal. Dep't of Corr. & Rehab.</i> 647 F.3d 870 (2011)	Ninth Circuit	Offenders and volunteer Wiccan chaplain claimed their religious accommodations were denied because five other faiths had paid chaplains and Wiccan offenders only had a volunteer chaplain.	Does failure to provide a paid, full-time chaplain for their faith burden the offenders' free exercise of religious beliefs? NO May a third-party who is not incarcerated seek relief under RLUIPA? NO	Offenders did not show that the use of volunteer Wiccan chaplain infringed on their free exercise. Prisons are not required to provide a paid, full-time chaplain. Chaplain's claim under RLUIPA was dismissed because he was not an offender.

(continued)

Title of Assembly Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>DeMoss v. Crain</i> 636 F.3d 145 (2011)	Fifth Circuit	The offender claimed the policy of recording Muslim services was discriminatory in that it was not required of other faiths. Muslim services were allowed without a volunteer or staff present.	Is the taping of Muslim services a substantial burden to offenders' religious exercise? NO	The policy ensured security (that the service was held, that it did not promote violence, that other faiths were not disparaged), and was not a substantial burden to religious exercise.
<i>Colvin v. Caruso</i> 605 F.3d 282 (2010)	Sixth Circuit	Jewish offender was mistakenly believed to be Muslim and not given kosher meals for 16 days. When the error was discovered, there were still occasions when he was accidentally given non-kosher food. Offender also brought suit against lack of Jewish services and books in the library.	Does a policy requiring a certain level of offenders' interest before allowing group services violate free exercise? NO	The state has a legitimate governmental interest in committing its resources to those faiths which have the most offender interest. The offender was not prohibited from practicing his religious beliefs in other ways.

(continued)

Title of Assembly Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Little v. Jones</i> 605 F.3d 282 (2010)	Sixth Circuit	Offender sued over lack of Jewish Services	Is the lack of Jewish services a violation of the offender's Constitutional rights? NO	The offender was the only one at the unit who requested them and it was not in legitimate penological interest to use the resources for just one offender
<i>Van Wyhe v. Reisch</i> 581 F.3d 639 (2009)	Eighth Circuit	The offenders challenged the constitutionality of RLUIPA, and denial of request for more assembly and language study time. Offenders requested a succah for religious ceremony.	Is RLUIPA constitutional under the Spending Clause? YES Does a state waive its 11 th Amend. immunity for monetary damages by accepting federal funds under RLUIPA? NO Does denial of additional assembly significantly burden free exercise? NO	RLUIPA is constitutional. The offenders were not substantially burdened in their free exercise. The state was entitled to summary judgement.
<i>Gladson v. Iowa DOC</i> 551 F.3d 825 (2009)	Eighth Circuit	Wiccan offenders sued over limitation of Samhain observation, specifically time allotted and food permitted.	Is the limitation of time or food a violation of the offenders' First Amendment rights? NO	The offenders did not show that the policy substantially burdened their ability to practice their religion.

(continued)

Title of Assembly Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Iqbal v. Hasty</i> 490 F.3d 143 (2008) 556 U.S. 662 (2009)	Second Circuit	Detained immediately post 9/11, plaintiff alleged he was not allowed to attend Friday night prayers.	Were defendants entitled to qualified immunity due to failure to state a claim and because defendants claimed no personal involvement? NO	The Second Circuit held that the defendants were not entitled to qualified immunity, The U.S. Supreme Court held that conclusory allegations that government officials knew of actions taken by subordinates could not be a basis for unlawful discrimination claim.
<i>Mayfield v. Tex. Dep't of Crim. Justice</i> 529 F.3d 599 (2008)	Fifth Circuit	Odinists offenders were not allowed to meet without an outside, security-trained, religious volunteer. The only one available lived far away and was unable to be present for regular services. Offenders were denied request to meet under the supervision of prison security.	Does the policy requiring a volunteer be present during religious assembly violate RLUIPA? YES	Muslim and Native American religious groups were allowed to meet without outside volunteers. The policy was imposed in a discriminatory manner.

(continued)

Title of Assembly Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Alvarez v. Hill</i> 518 F.3d 1152 (2008)	Ninth Circuit	Offender requested order requiring the hiring of a Native American Spiritual Leader, and to allow pipe ceremonies, drums, and the use of a weekly sweat lodge.	Does the failure of the inmate to invoke RLUIPA vanquish its use in this suit?	No. The facts of the case establish "a 'plausible' entitlement to relief under RLUIPA" (p. 1157).
<i>Greene v. Solano County Jail</i> 513 F.3d 982 (2008)	Ninth Circuit	Maximum security detainee claimed his religious freedom was substantially burdened by prohibition against assembly.	Must a prison or jail show they have considered less restrictive measures before adopting a policy that infringes on a religious exercise right? YES	The jail did not show that the policy was the least restrictive means to achieve a legitimate penological interest. Remanded to lower court for further consideration.

(continued)

Title of Assembly Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Baranowski v. Hart</i> 486 F.3d 112 (5th Cir. 2007)	Fifth Circuit	Offender claimed that Jewish offenders were treated less favorably than other religions and that religious services were not provided on a weekly basis to Jewish offenders.	Was the denial of weekly Jewish religious services as well as other holy day services along with failure to provide kosher diet a violation under the First and Fourteenth Amend. and RLUIPA? NO	<ul style="list-style-type: none"> •Offender had alternative means for religious expression; no rabbi was available for days requested by offender for service. •Dietary accommodations not required if they would cause undue costs and admin. burden on State and no kosher meals were least restrictive means of obtaining legitimate gov't interest. •Overall policy on religious services did not substantially burden the offender.

(continued)

Title of Assembly Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Spratt v. Rhode Island Dep't of Corrections</i> 482 F.3d 33 (2007)	Fifth Circuit	For seven years, Universal Life Church offender was allowed to preach in the chapel. New warden prohibited him from continuing preaching with the threat of disciplinary action if he continued to do so.	Did the change in policy which no longer allowed an offender to preach violate his rights under RLUIPA? YES	The State did not show the compelling government interest in prison security was furthered by prohibiting offenders from preaching or even that the prohibition would have been the least restrictive means available.
<i>Lovelace v. Lee</i> 472 F.3d 174 (2006)	Fourth Circuit	Offender was removed from list of offenders allowed to observe Ramadan and attend services. An officer "erroneously" identified the offender as breaking the fast by accepting a lunch tray. The officer admitted he made a mistake.	Was the Ramadan policy the least restrictive means of achieving a legitimate gov't interest? NO	The state did not show that the policy was the least restrictive means. The offender's free exercise was substantially burdened. "A reasonable factfinder could conclude (the officer) acted intentionally...in misidentifying..." (p. 196).

(continued)

Title of Assembly Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Salahuddin v. Goord</i> 467 F.3d 263 (2006)	Second Circuit	<ul style="list-style-type: none"> • Offender claimed Sunni Muslims had to worship with Shi'ite Muslims • Offender claimed he was not allowed to attend services or eat holiday meals while in keeplock for assaulting another inmate • The offender claimed the facility would not provide a Muslim chaplain and no Quran was kept in the library • Offender claimed he was not allowed to bring legal mail into religious assembly • Offender claimed he was forced to choose between attending religious services and going to the law library." 	Did the DOC's policies substantially burden the offender's free exercise of his religious beliefs?	<ul style="list-style-type: none"> • The offender's free exercise was substantially burdened and was not ""justified by a legitimate penological interest or,...the compelling governmental interest..." • Again, the DOC did not show the policy was justified. • The DOC's attorneys did not request summary judgment for the Qur'an/chaplain allegation. • The offender's free exercise was not shown to be substantially burdened regarding the legal mail, therefore summary judgment was affirmed. • Summary judgment vacated.

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Title of Assembly Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Kaufman v. McCaughtry</i> 419 F.3d 678 (2005)	Seventh Circuit	Offender wanted to start a new group to study atheism and was denied.	Is classifying the study of atheism as an activity instead of a religious group, a violation of the offender's religious rights? YES	The U.S. Supreme Court ruled atheism "as equivalent to a 'religion' for purposes of the First Amendment on numerous occasions."
<i>Adkins v. Kaspar</i> 393 F.3d 559 (2004)	Fifth Circuit	Offender claimed his Yahweh Evangelical Assembly free exercise was hindered because officials would not let followers observe holy days or allow assembly without a trained volunteer.	Does prohibition of assembly without a trained volunteer substantially burden the offenders' religious exercise? NO	The state allowed sufficient alternative means for the followers to practice their religious beliefs.
<i>Shakur v. Selsky</i> 391 F.3d 106 (2004)	Second Circuit	The district court held that denial of a single religious festival meal was not a substantial burden on the offender's religious exercise. The claim was dismissed.	Is the denial to attend the Muslim holiday Eid Ul Fitr a legitimate claim under an offender's First Amend. and RLUIPA rights? YES	The court remanded the case to the district court for further proceedings in regards to the offender's First Amend. and RLUIPA allegations. Claims regarding due process and equal protection were dismissed.

(continued)

Title of Assembly Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Freeman v. Tex. Dep't of Crim. Justice</i> 369 F.3d 854 (2004)	Fifth Circuit	Church of Christ offenders protested being lumped as "Christian/Non-Catholic."	Is use of five "major faith sub-groups" (p. 859) unconstitutional? NO	Offenders were treated the same as similarly-situated offenders. Policy was reasonably related to penological mission and was neutral.
<i>Murphy v. Mo. Dep't of Corr.</i> 372 F. 3d 979 (8th Cir. 2004)	Eighth Circuit	White supremacy religion was only allowed to be practiced individually. Access to religious television programming was denied as well as a religious publication.	Was the policy that prohibited assembly, access to television programming and religious publication due to the white supremacy beliefs of the faith a violation of the Equal Protection Clause and RLUIPA? NO for the Equal Protection Clause and YES for RLUIPA	The State's allegations of violence: <ul style="list-style-type: none"> •Were enough to meet the rational basis review of the Equal Protection Clause for group meetings; •Television programming was not specific to the religion; and •State's claims regarding inflammatory publication were not enough to meet the strict scrutiny review of the RLUIPA. The offender's claims were ultimately denied.

(continued)

Title of Assembly Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Goff v. Graves</i> 362 F.3d 543 (2004)	Eighth Circuit	Offenders sued over denial of prison officials to recognize their church as a religion. CONS had been ruled a religion in THE 8th Circuit, but deemed a "masquerade" in Texas.	Is CONS a religion? YES	Precedent of 8th Circuit (<i>Remmers v. Brewer</i> , 494 F.2d 1277[8th Cir., 1974]) stood.
<i>Ford v. McGinnis</i> 352 F.3d 582 (2003)	Second Circuit	Muslim offender claimed he was denied the opportunity to celebrate the end of Ramadan.	Were the offender's religious beliefs substantially burdened by the policy? YES	Vacated and remanded to ascertain whether the prison officials' policies were reasonably related to legitimate penological purposes.
<i>Levitan v. Ashcroft</i> 281 F.3d 1313 (2002)	District of Columbia Circuit	Offenders brought suit over denial of communion wine.	Is the refusal to allow communion wine a substantial burden on offender's First Amendment rights? NO	The district court granted summary judgment without considering the <i>Turner/O'Lone</i> test. The partaking of wine was not mandatory in Catholic masses. Reversed and remanded.

(continued)

Title of Assembly Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Walker v. Maschner</i> 270 F.3d 573 (2001)	Eighth Circuit	African Hebrew Israelite offender claimed he was not allowed to attend Jewish services or possess Jewish religious items.	Does an offender's Free Exercise claim prevail if administrative remedies have not been exhausted? NO	The offender admitted he had not exhausted his administrative remedies.

U.S. Courts of Appeals cases regarding religious dietary accommodations since passage of RLUIPA (2000)

Title of Dietary Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>U.S. v. Secretary of Florida Dep't of Corrections</i> 828 F.3d 1341 (2016) 778 F.3d 1223 (2015)	Eleventh Circuit	State claimed provision of kosher meals was prohibitively expensive. Offenders sued.	Does the denial of kosher meals meet a compelling gov't interest and is it the least restrictive means of doing so? NO	Along with not meeting the Turner test, the state failed to show why other states and the BOP provided kosher meals and they could not. They also failed to show why kosher was difficult when they provided vegan, medical, and therapeutic diets.
<i>Thompson v. Holm</i> 809 F.3d 376 (2016)	Seventh Circuit	Muslim offender was denied meal bags during part of Ramadan. State claimed he had violated policy and was thus denied the bags.	If the facts are disputed and decided in the most favorable light to the non-moving party, did the state infringe on the offender's RLUIPA rights? YES	The state "intentionally and unjustifiably forced this burdensome choice" on the offender, causing him to choose between his religious beliefs and starvation (p. 381).

(continued)

Title of Dietary Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Jones v. Williams</i> 791 F.3d 1023 (2015)	Ninth Circuit	Offender alleged he was served pork in a pie, contrary to his religious beliefs. He also alleged he was required to cook pork in his job. The method of cleaning grills did not ensure that pork grease was removed.	Does the insertion of pork into food unknowingly violate the offender's rights? NOT DECIDED Does the requirement to cook pork violate the offender's rights? YES Does the grill cleaning method violate the offender's rights? NO	The allegation that pork was in a pie was hearsay and summary judgment awarded to the DOC. The DOC violated the offender's rights when the required him to cook pork. The claim regarding the grill cleaning was denied, with the court affirming summary judgment in favor of the DOC.
<i>Schlemm v. Wall</i> 784 F.3d 362 (2015)	Seventh Circuit	Navajo offender requested venison or even ground beef for Ghost Feast. Outside vendors are allowed to send in sealed Seder platters for Jewish offenders.	Does the denial of the request for game meat for the Ghost Feast violate the offender's free exercise? YES	The DOC did not show that it was the least restrictive means. They did not try to price outside vendors. The court limited the decision to the current situation and stated, "the costs of accommodating other inmates' requests (should any be made) can be left to future litigation" (p. 366).

(continued)

Title of Dietary Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Holland v. Goord</i> 758 F.3d 215 (2014)	Second Circuit	Offender was required to give urine sample during Ramadan when he could not drink water, and disciplined for not doing so.	Is the requirement to drink water during a fast or face disciplinary action a de minimis burden on the offender's religious exercise? NO	The requirement to break the fast by drinking water is a substantial burden to the offender's religious exercise.
<i>Haight v. Thompson</i> 763 F.3d 554 (2014)	Sixth Circuit	Two groups of death row offenders filed suit that their rights were violated by denial of buffalo meat and other traditional foods for a powwow. The offenders offered to pay for the food.	"Is there a triable issue of fact over whether RLUIPA gives the inmates a right to buffalo meat and other traditional foods for a faith-based once-a-year powwow?" (p. 558) YES	Remanded for consideration of whether the inmates' beliefs were sincerely held and whether the State met the <i>Turner</i> prongs.

(continued)

Title of Dietary Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Wall v. Wade</i> 741 F.3d 492 (2014)	Fourth Circuit	Nation of Islam offender was required to show property related to his religion in order to sign up for Ramadan. Offender claimed his property had been lost during a transfer. Offender was forced to choose between not eating and his religious beliefs.	Did the policy require the offender to choose between survival and his religious beliefs? YES	The state did not show that the policy was the least restrictive means of meeting a compelling gov't interest.
<i>Rich v. Sec., FDOC</i> 716 F.3d 525 (2013)	Eleventh Circuit	Orthodox Jewish offender sued over request to have kosher meals. New policy was enacted that would have required offender to eat non-kosher diet for 90 days before being considered.	Was the new Florida policy the least restrictive means to render the offender's claim moot? NO	The new policy substantially burdened the offender's religious freedom and there was no indication that the kosher meals would be ongoing, rather than a short-term policy.

(continued)

Title of Dietary Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Furnace v. Sullivan</i> 705 F.3d 1021 (2013)	Ninth Circuit	Shetaut Neter offender sued over use of force and denial of vegetarian meal.	Does denial of a specific meal violate the Equal Protection clause if the official did not know the offender was entitled to receive the meal? NO	The offender did not show he was treated any differently than any other inmate in such a situation. The officers thought the offender was Muslim.
<i>Mays v. Springborn</i> 710 F.3d 631 (2013) 575 F.3d 643 (2009)	Seventh Circuit	African Hebrew Israelites offender claimed he was not given blackstrap molasses, sesame seeds, kelp, brewer's yeast, parsley, fenugreek, wheat germ, and soybeans as required by his religion.	Was denial of dietary supplements an impediment to the offenders free exercise? NO	While the <i>Turner</i> prongs must be considered, they do not have to be separately addressed by prison officials. The practice of other prisons of allowing the supplements is not, in and of itself, sufficient to override prison's argument that denial meets a legitimate penological interest.

(continued)

Title of Dietary Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Moussazadeh v. TDCJ</i> 709 F.3d 487 (2013) 703 F.3d 781 (2012)	Fifth Circuit	Offender demanded free kosher food as he had on his previous unit. He was transferred due to a serious disciplinary infraction. Offender would order and consume non-kosher items from the commissary, giving rise to doubts about the sincerity of his beliefs.	Does RLUIPA require that prison officials provide kosher foods? NO	Rehearing was denied.
<i>Sisney v. Reisch</i> 674 F.3d 839 (2012)	Eighth Circuit	Offender was denied permission to eat his Succoth meal in a succah ¹⁹ and sued for compensatory damages.	Was denial of a succah a violation of the offender's constitutional rights? NO	The PLRA does not allow compensatory damages if physical injury did not result. It was not clear that use of a succah was a "reasonable dietary and meal accommodation" (p. 19).

(continued)

¹⁹ "A temporary shelter covered in natural material, built near a synagogue or house and used especially for meals during the Jewish festival of Succoth" (Stevenson & Lindberg, 2015, Succah definition using "Search" feature).

Title of Dietary Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Vinning-El v. Evans</i> 657 F.3d 591 (2011)	Seventh Circuit	Moorish Science Temple of America offender claimed her was required to have a vegan diet, even though his religion required a pork-free diet.	Is the denial of a diet a violation of RLUIPA if the practice is not a central tenet of the religion in question? MAYBE	Offender was moved to another prison and received a vegan diet there. A sincerely held belief is entitled to RLUIPA protections even if it is not the central tenet of a religion. However, if the request for the diet was not related to religious purposes, the chaplain did not err in denying it.
<i>El-Tabech v. Clarke</i> 616 F.3d 834 (2010)	Eighth Circuit	After offender sued for kosher meals, the district court awarded him monetary costs and fees.	Does RLUIPA allow for monetary costs and fees? MAYBE	Remanded to district court for reconsideration of award.
<i>Little v. Jones</i> 605 F.3d 282 (2010)	Sixth Circuit	Offender was mistakenly taken off kosher diet and also served food that was non kosher.	Does the mistaken removal of an offender from kosher diet violate his Constitutional rights? NO	The court affirmed the granting of summary judgment.

(continued)

Title of Dietary Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Colvin v. Caruso</i> 605 F.3d 282 (2010)	Sixth Circuit	Jewish offender was mistakenly believed to be Muslim and not given kosher meals for 16 days. When the error was discovered, there were still occasions when he was accidentally given non-kosher food. Offender also brought suit against lack of Jewish services and books in the library.	Were the wrongful-removal and failure to reinstate claims moot?	No. The offender's lack of knowledge of Jewish scholarship did not necessarily indicate an insincere belief in his religion.
<i>Abdulhaseeb v. Calbone</i> 600 F.3d 1301 (2010)	Tenth Circuit	Offender claimed he was forced to accept pudding and jello that was not halal. He claimed non-pork and vegetarian diets were not sufficient.	Does denial of halal diet when non-pork and vegetarian diets are available, infringe on religious exercise?	Offender showed his free exercise was substantially burdened. Remanded for state to show that the policy is from a compelling governmental interest and is the least restrictive means in doing so.

(continued)

Title of Dietary Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Gallagher v. Shelton</i> 587 F.3d 1063 (2009)	Tenth Circuit	Offender alleged there were bodily fluids in his meal.	Is the offender required to exhaust administrative remedies before bringing suit? YES	Affirmed because offender did not exhaust his administrative remedies.
<i>Perez v. Westchester County Dept. of Corr.</i> 587 F.3d 143 (2009)	Second Circuit	The Westchester County jail did not want to provide halal meals to Muslims as often as it provided kosher meals to Jewish offenders.	Were offenders the prevailing party even though the case was dismissed? YES	The jail must provide halal meals to Muslim offenders as often as it provides kosher meals to Jewish offenders. Lawsuit was dismissed after jail agreed, not willingly, to serve halal meals at same rate as kosher. Attorneys fees were awarded to offenders' attorneys because offenders prevailed even though the lawsuit was dismissed.

(continued)

Title of Dietary Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Jova v. Smith</i> 582 F.3d 410 (2009)	Second Circuit	Offenders claim they must eat "only a complex, highly regimented non-soybean-based vegan diet."	Did the state prove the religious/meatless diet was the least restrictive means of furthering their compelling governmental interest? NO	The state did not prove that their religious/meatless diet was the least restrictive means of furthering the compelling governmental interests. Remanded to determine if an entirely vegetarian diet was possible.
<i>Van Wyhe v. Reisch</i> 581 F.3d 639 (2009)	Eighth Circuit	The offenders challenged the constitutionality of RLUIPA, and denial of request for more assembly and language study time. Offenders requested a succah for religious ceremony in which to eat their meals.	"Is RLUIPA constitutional under the Spending Clause? YES	The offenders challenged the constitutionality of RLUIPA, and denial of request for more assembly and language study time. Offenders requested a succah for religious ceremony in which to eat their meals.

(continued)

Title of Dietary Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Nelson v. Miller</i> 570 F.3d 868 (2009)	Seventh Circuit	Catholic offender requested non-meat diet for all meals as part of penance and was denied. Offender lost approximately 50 pounds	Was the denial of a non-meat diet a substantial burden of free exercise of religion? YES	If offender had been affiliated with a less traditional group, the diet would have been accommodated.
<i>Rendelman v. Rouse</i> 569 F.3d 182 (2009)	Fourth Circuit	Offender was not able to eat many available food items and keep kosher. He lost 23 pounds and sued under RLUIPA. He was transferred to federal prison to serve additional sentences. MDOC changed its policy.	Does RLUIPA allow damages to be awarded against "private individuals who are not themselves recipients of federal funding" (p. 187)? NO	The offender's request for injunctive relief was moot based on transfer and change in policy.

(continued)

Title of Dietary Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Cardinal v. Metrish</i> 564 F.3d 794 (2009)	Sixth Circuit	After several disciplinarys, offender was sent to a facility that had segregation, but did not serve kosher meals. When warden was notified the offender was not eating, she transferred him to another facility.	Was unavailability of kosher meals for five days a violation of the offender's Eighth Amendment rights?	NO. The Warden transferred him as soon as she became aware of the issue.
<i>Patel v. U.S. BOP</i> 515 F.3d 807 (2008)	Eighth Circuit	Offender argued practice regarding halal meals substantially burdened his free exercise.	Does a policy have to require additional access to halal foods to meet offenders' free exercise rights? NO	The BOP did not act with discriminatory purposes. The offender did not show why alternative means were not acceptable.

(continued)

Title of Dietary Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Koger v. Bryan</i> 523 F. 3d 789 (7 th Cir. 2008)	Seventh Circuit	Offender was denied non-meat diet because it was not required by his religion. Offenders were required to have their religious affiliation verified by a prison chaplain.	Is a delay in the recognition of a change in the offender's religious beliefs a violation of his freedom of religious practice? YES	The length of time the offender pursued the issue showed his belief was sincere. The policy requiring verification of sincerity from religious leader was not in furtherance of a compelling government interest nor was it the least restrictive means available.
<i>Shakur v. Schriro</i> 514 F.3d 878 (9 th Cir. 2008)	Ninth Circuit	Originally adopting a vegetarian diet, the offender asked to switch to a kosher meat diet after experiencing health issues. Claimed prison's refusal violated the Free Exercise Clause.	Does denial of a kosher meal for the practice of religious beliefs constitute a First Amend. violation? YES	The court found the offender's belief was sincere and the State's refusal to allow him a kosher meat diet violated the First Amendment.

(continued)

Title of Dietary Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Baranowski v. Hart</i> 486 F.3d 112 (2007)	Fifth Circuit	The offender claimed that the provision of pork-free and vegetarian options was not a sufficient substitute for kosher meals.	Was the denial of weekly Jewish religious services as well as other holy day services along with failure to provide kosher diet a violation under the First and Fourteenth Amend. and RLUIPA? NO	<ul style="list-style-type: none"> •Offender had alternative means for religious expression; no rabbi was available for days requested by offender for service. •Dietary accommodations not required if they would cause undue costs and admin. burden on State and no kosher meals were least restrictive means of obtaining legitimate gov't interest. •Overall policy on religious services did not substantially burden the offender.

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Title of Dietary Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Lovelace v. Lee</i> 472 F.3d 174 (2006)	Fourth Circuit	Offender was removed from list of offenders allowed to observe Ramadan and attend services. An officer “erroneously” identified the offender as breaking the fast by accepting a lunch tray. The officer admitted he made a mistake.	Was the Ramadan policy the least restrictive means of achieving a legitimate gov’t interest? NO	The state did not show that the policy was the least restrictive means. The offender’s free exercise was substantially burdened. “A reasonable factfinder would conclude the officer acted intentionally in misidentifying...”
<i>Madison v. Virginia</i> 474 F.3d 118 (2006)	Fourth Circuit	Offender brought suit over denial of kosher meals and state argued that RLUIPA was unconstitutional.	Is RLUIPA an overreach of Congress's powers and a violation of the Spending and Commerce Clause? NO	RLUIPA does not, however require monetary damages to be paid.

(continued)

Title of Dietary Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Williams v. Bitner</i> 455 F.3d 186 (2006)	Third Circuit	Offender was fired for refusing to handle pork and given a job where he made less money.	Is firing an offender from his kitchen job for refusing to serve pork unconstitutional? YES	The U.S. Courts of Appeal from the Fifth, Seventh, and Eighth Circuits had previously held that prison officials were required to accommodate a Muslim inmate's religious beliefs regarding the handling of pork, and the Third Circuit Court itself along with the U.S. Supreme Court supported the principles underlying the inmate's asserted right. Thus, the state of the law at the time of violation gave the prison officials fair warning that their treatment of the inmate was unconstitutional.

(continued)

Title of Dietary Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Benning v. GA</i> 391 F.3d 1299 (2004)	Eleventh Circuit	Jewish offender brought suit that he was not allowed to constantly wear a yarmulke, eat only kosher foods, and observe holy days and rituals.	Does RLUIPA violate the Establishment Clause or the Tenth Amendment? NO	Congress did not overstep its powers by predicating receipt of federal funds on adherence to RLUIPA.
<i>DeHart v. Horn</i> 390 F.3d 262 (2004)	Third Circuit	Buddhist offender requested a special diet. The state claimed it would require individualized preparation and denied it.	Does RLUIPA replace RFRA for the states? YES	The court held that the religious practice did not have to be usual or mandatory
<i>Goff v. Graves</i> 362 F.3d 543 (2004)	Eighth Circuit	Offenders sued over denial of prison officials to allow banquet food trays to offender members in segregation. CONS had been ruled a religion in the 8th Circuit, but deemed a "masquerade" in Texas.	Was denial of food trays for CONS offenders a violation of their First Amendment rights? NO	The ban on food tray deliveries was rooted in a legitimate penological purpose.

(continued)

Title of Dietary Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Searles v. Dechant</i> 393 F.3d 1126 (2004)	Tenth Circuit	Jewish offender did not work in non-kosher kitchen job assignment and received disciplinary cases, losing his privileges to own some property items. The rabbi told him that it was not against his religion to work in a non-kosher kitchen.	Does working in a non-kosher kitchen violate an offender's expression of religious freedom? NO	Working in the kitchen was not a violation of the offender's religious expression of freedom, as evaluated by the Turner test.
<i>Shakur v. Selsky</i> 391 F.3d 106 (2004)	Second Circuit	The district court held that denial of a single religious festival meal was not a substantial burden on the offender's religious exercise. The claim was dismissed.	Is the denial to attend the Muslim holiday Eid Ul Fitr a legitimate claim under an offender's First Amend. and RLUIPA rights? YES	The court remanded the case to the district court for further proceedings in regards to the offender's First Amend. and RLUIPA allegations. Claims regarding due process and equal protection were dismissed.

(continued)

Title of Dietary Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Ford v. McGinnis</i> 352 F.3d 582 (2003)	Second Circuit	Muslim offender claimed he was denied the opportunity to celebrate the end of Ramadan, with Eid ul Fitr feast.	Were the offender's religious beliefs substantially burdened by the policy? YES	Vacated and remanded to ascertain whether the prison officials' policies were reasonably related to legitimate penological purposes.
<i>Lindell v. McCallum</i> 352 F.3d 1107 (2003)	Seventh Circuit	The offender alleged that his Wotanist dietary restrictions were ignored.	Does refusal to allow dietary restrictions because of failure to recognize a religion violate Constitutional rights? YES	Remanded to district court for recognition of religion.

(continued)

Title of Dietary Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Madison v. Riter</i> 355 F. 3d 310 (4th Cir. 2003)	Fourth Circuit	Hebrew Israelite offender sued over prison officials' refusal to provide a kosher meal, citing availability of regular, vegetarian, and no pork daily meals.	Is denial of kosher meals due to doubt of the offender's sincere beliefs a violation of RLUIPA? YES Is RLUIPA a violation of the Establishment Clause? NO	If mandated by the offender's religion, denial of a kosher diet places a substantial burden on offender's religious freedom. The State did not prove a rational or compelling reason for denial of the meal. The district court held that RLUIPA was a violation of the Establishment Clause. Upon appeal, the Fourth Circuit determined it was not.
<i>Resnick v. Adams</i> 348 F.3d 763 (2003)	Ninth Circuit	Offender was an Orthodox Jew who required a kosher diet. Offenders were required to submit a "written statement articulating the religious motivation for participation" in the diet (p. 765).	Is the requirement to fill out a form so as to receive kosher food a violation of the First Amendment? NO	Unless the offenders "participated, or attempted to participate, in the [diet program], he could not be injured by, and would have no standing to challenge," the policy (p. 767).

(continued)

Title of Dietary Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Williams v. Morton</i> 343 F.3d 212 (3d Cir. 2003)	Third Circuit	Offender's request for kosher meals was denied because: *the offender "already had adequate alternative from the regular, vegetarian, and no pork daily menus"; *the prison "doubted the sincerity of [the offender's] religious beliefs"; *of the offender's disciplinary history.	Is the failure to provide halal meat for the practice of offenders' Islamic beliefs unconstitutional? NO	The court held the regulation furthered the legitimate penological interests of simplified food service, security, and costs.
<i>Kind v. Frank</i> 329 F.3d 979 (2003)	Eighth Circuit	The Muslim offender requested a vegetarian diet. The state offered him a pork-free diet in convention with Islamic practices.	Is denial of vegetarian diet a violation of the offender's sincerely held religious beliefs? NO	The court affirmed the granting of summary judgment.

(continued)

Title of Dietary Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Resnick v. Adams</i> 317 F.3d 1056 (2003)	Ninth Circuit	Offender was an Orthodox Jew who required a kosher diet. Offenders were required to submit a "written statement articulating the religious motivation for participation" in the diet (p. 1059).	Is the requirement to fill out a form so as to receive kosher food a violation of RFRA? NO	The offender had not shown sufficient cause to constitute a RFRA violation and the court affirmed summary judgment for the BOP officials.

U.S. Courts of Appeals cases regarding religious grooming accommodations since passage of RLUIPA (2000)

Title of Grooming Case	U.S. Court of Appeals	Facts	Issue	Ruling
<i>Ware v. Louisiana Dep't of Corrections</i> 866 F.3d 263 (2017)	Fifth Circuit	Rastafarian offender sued under RLUIPA against policy that prohibited his dreadlocks.	Is a policy prohibiting the wearing of dreadlocks for religious purposes unconstitutional? YES	The state did not show that the policy was the least restrictive means of meeting a compelling gov't interest.
<i>Smith v. Owens</i> 848 F.3d 975 (2017)	Eleventh Circuit	Islamic offender claimed that policy required he shave his beard in violation of his religious beliefs.	Is requiring an offender to shave a violation of his free exercise? YES	The district court's ruling was vacated and remanded in light of the decision in <i>Holt v. Hobbs</i> .
<i>Davis v. Davis</i> 826 F.3d 258 (2016)	Fifth Circuit	Offender alleged prohibition against growing a kouplock was a violation of his RLUIPA and First Amendment rights because female offenders were allowed to grow their hair long.	Does the policy against growing a kouplock violate RLUIPA and the First Amendment? MAYBE	Summary judgment was vacated because of <i>Holt v. Hobbs</i> (2015) and need to reassess the security risk.

(continued)

Title of Grooming Case	U.S. Court of Appeals	Facts	Issue	Ruling
<i>Ali v. Stephens</i> 822 F.3d 776 (2016)	Fifth Circuit	Muslim offender claimed his free exercise was burdened by prohibition against wearing kufi and 4" beard.	Does the policy prohibiting a 4" beard and wearing a kufi at all times violate RLUIPA? YES	The prison did not show that the policies were in the government's compelling interest or that they were the least restrictive means.
<i>Knight v. Thompson</i> 797 F.3d 934 (2013) 723 F.3d 275 (2013) 796 F.3d 1289 (2015)	Eleventh Circuit	Policy requiring short hair was challenged as a violation of practicing their Native American religious freedom.	Is the DOC's policy requiring short hair the least restrictive means of furthering a compelling governmental interest? YES	The case was different from <i>Holt</i> due to the "detailed record developed" showing the policy was necessary to mitigate "actual security, discipline, hygiene, and safety risks" (<i>Knight v. Thompson</i> , 2015, p. 1293).
<i>Garner v. Kennedy</i> 713 F.3d 237 (2013)	Fifth Circuit	Offender claimed policy prohibiting facial hair violated his exercise of religious freedom.	Is the DOC's policy requiring short hair the least restrictive means of furthering a compelling governmental interest? NO	TDCJ did not show the actual cost of changing the policy. The argument of offender identification was negated because shaving their heads would cause similar identification issues.

(continued)

Title of Grooming Case	U.S. Court of Appeals	Facts	Issue	Ruling
<i>Lewis v. Sternes</i> 712 F.3d 1083 (2013)	Seventh Circuit	Nazirite vow required offender to commit to not cutting his hair. The DOC's policy allowed long hair if it did not create a security risk. Offender was not allowed to have visitors until he consented to have his hair cut. His hair was in dreadlocks. Prior to court hearing, offender was given choice of cutting hair or segregation. He cut his hair.	Does the ad hoc policy of removing dreadlocks in some cases violated RLUIPA? NO	The Illinois prison had a different policy from another similar Illinois prison. However, their visitation policies were different. The offender's dreadlocks were too difficult to search. The offender's vow was not mandatory.

(continued)

Title of Grooming Case	U.S. Court of Appeals	Facts	Issue	Ruling
<i>Stewart v. Beach</i> 701 F.3d 1322 (2012)	Tenth Circuit	Rastafarian offender was required to cut his dreadlocks or forfeit a transfer to be closer to his ill mother. Officers were warned policy may violate First Amend.	Does warning of potential First Amend. violation negate officer's qualified immunity? NO Does RLUIPA allow individual-capacity claims? NO	Warden was properly granted summary judgment as denying a grievance appeal did not create personal violation of rights. Plaintiff did not clearly establish that enforcement of policy violated his rights. RLUIPA only allowed cause of action against government, not individuals.
<i>Couch v. Jabe</i> 679 F.3d 197 (2012)	Fourth Circuit	Sunni Muslim offender denied permit to grow 1/8" beard.	Does failure to consider offender's proposed alternative negate the state's claim of least restrictive means? YES	Offender showed his free exercise was substantially burdened. State did not show policy was the least restrictive means.

(continued)

Title of Grooming Case	U.S. Court of Appeals	Facts	Issue	Ruling
<i>Grayson v. Schuler</i> 666 F.3d 450 (2012)	Seventh Circuit	African Hebrew Israelites of Jerusalem offender claimed ban of his dreadlocks was a violation of his First Amendment rights. Prison officials claimed they were a security risk, but allowed Rastafarians to have them.	Is it constitutional to allow one religious group to have an accommodation that is not allowed to another group? NO	Despite the chaplain's opinion that the African Hebrew Israelites of Jerusalem did not require dreadlocks, the policy was discriminatory.
<i>Kuperman v. Wrenn</i> 645 F.3d 69 (2011)	First Circuit	New Hampshire DOC allowed a religious waiver to inmates, allowing a ¼” beard. Offender sued to allow a full, untrimmed beard in accordance with his faith.	Is a beard length restriction reasonably related to a legitimate penological interest? YES	Prison administration granted summary judgment as offender did not show evidence repudiating prison’s claim that policy was reasonable related to security.
<i>DeMoss v. Crain</i> 636 F.3d 145 (2011)	Fifth Circuit	The offender claimed the policy requiring offenders to be clean-shaven was a violation of RLUIPA.	Is the clean-shaven grooming policy the least restrictive means of serving compelling gov’t interests? YES	The policy aids in identification of offenders, searching for contraband, and saves money by limiting required grooming equipment.

(continued)

Title of Grooming Case	U.S. Court of Appeals	Facts	Issue	Ruling
<i>Kimbrough v. California</i> 609 F.3d 1027 (2010)	Ninth Circuit	Offender sued over hair length. Before reaching the appeals court, he had been released and the DOC had changed the hair policy.	If the case becomes moot, and no actual violation of the offender's rights is thus found, should attorney's fees be awarded? NO	The district court never actually ruled on the offender's claims.
<i>Holley v. Cal. Dep't of Corr.</i> 599 F.3d 1108 (2010)	Ninth Circuit	The offender claimed the grooming policy imposed a substantial burden on his free exercise. He sought monetary damages.	Does acceptance of federal funds require the state to waive sovereign immunity regarding RLUIPA? NO	The policy was changed during the course of the lawsuit, and the offender was allowed to have long hair. RLUIPA does not require the state to waive sovereign immunity.
<i>Smith v. Ozmint</i> 578 F.3d 246 (2009)	Fourth Circuit	The offender's head was forcibly shaved in accordance with the maximum security unit use policy. The offender claimed it violated his rights under RLUIPA.	Is forcibly shaving an offender's head the least restrictive means of furthering a compelling gov't interest? NO	The state did not prove that the policy furthered its interests in hygiene and security.

(continued)

Title of Grooming Case	U.S. Court of Appeals	Facts	Issue	Ruling
<i>Fowler v. Crawford</i> 534 F.3d 931 (2008)	Eighth Circuit	The offender brought suit over refusal to allow access to a sweat lodge. The state refused on the basis that the ceremony would include access to property such as rocks, willow poles, shovels, deer antlers, and split wood, which could be used as weapons.	Does an offender have a right under RLUIPA to exercise his Native American religious beliefs through sweat lodge ceremonies with other offenders at the maximum security prison? NO	Prohibition of sweat lodge met a compelling governmental interest and was the least restrictive means to obtain safety and security.
<i>Rasul v. Myers</i> 512 F.3d 644 (2008) 555 U.S. 1083 (2008) 563 F.3d 527 (2009)	District of Columbia Circuit	British nationals detained at Guantanamo Bay alleged “forced shaving of their beards, banning or interrupting their prayers, denying them copies of the Koran and prayer mats and throwing a copy of the Koran in a toilet bucket” (512 F.3d 644, p. 650).	Are non-citizen detainees protected by RFRA? NO	SCOTUS vacated and remanded in light to decision in <i>Boumediene v. Bush</i> , 553 U.S. 723 (2008). D.C. Circuit held that non-citizen detainees were not subject to protections of RFRA.

(continued)

Title of Grooming Case	U.S. Court of Appeals	Facts	Issue	Ruling
<i>Fegans v. Norris</i> 537 F.3d 897 (2008)	Eighth Circuit	Offender claimed grooming policy was a violation of his free exercise. He claimed the policy violated equal protection rights as women offenders had a different policy. He also noted the medical exemption policy.	Is the policy requiring clean-shaven offenders and short hair a violation of RLUIPA? NO	Female offenders are historically less violent than male offenders and different policies do not violate the offender's Equal Protection rights. The offender did not argue that he wanted the same length as those granted in medical exemptions. The policy was reasonably related to the gov't interests in safety and security.
<i>Longoria v. Dretke</i> 507 F.3d 898 (2007)	Fifth Circuit	Native-American offender claimed denial of his request to grow his hair violated his free exercise rights.	Does the policy regarding hair length violate the offender's free exercise rights? NO	The offender, in his <i>pro se</i> complaint, did not name RLUIPA. The court had decided the same issue under RFRA and ruled that the test was "sufficiently the same" (p. 901).

(continued)

Title of Grooming Case	U.S. Court of Appeals	Facts	Issue	Ruling
<i>Hoevenaar v. Lazaroff</i> 422 F.3d 366 (2005)	Sixth Circuit	The offender brought suit over policy requiring he cut his hair in violation of his Native American beliefs. An injunction allowed him to keep a “kouplock.” The offender had a long history of institutional misconduct regarding contraband.	Is the district court required to give deference to the expertise of prison officials? YES	RLUIPA and RFRA required that suitable deference be given to prison officials in creating policy. The injunction allowing the kouplock should not have been given.
<i>Warsoldier v. Woodford</i> 418 F.3d 989 (2005)	Ninth Circuit	Native American offender appealed hair length policy for male offenders. He was housed at a minimum security prison, and the policy for female prisoners was different.	Is a higher standard of proof required to show compelling gov’t interests over legitimate penological interests? YES	The state did not show that the security level of the offender was considered, or that they had considered less restrictive means, or show why the females’ policy differed.

(continued)

Title of Grooming Case	U.S. Court of Appeals	Facts	Issue	Ruling
<i>Adkins v. Kaspar</i> 393 F.3d 559 (2004)	Fifth Circuit	Offender claimed his Yahweh Evangelical Assembly free exercise was hindered because officials would not let followers observe holy days or allow assembly without a trained volunteer.	Does prohibition of assembly without a trained volunteer substantially burden the offenders' religious exercise? NO	The state allowed sufficient alternative means for the followers to practice their religious beliefs.
<i>Henderson v. Terhune</i> 379 F.3d 709 (2004)	Ninth Circuit	Offender stated the CDOC's policy regarding hair length violated his free exercise.	Does the policy meet the <i>Turner</i> test? YES Can an offender obtain recourse under AIRFA? NO	The policy is in keeping with prison goals, and would unduly burden administrators if removed. AIRFA did not provide for legal recourse.

(continued)

Title of Grooming Case	U.S. Court of Appeals	Facts	Issue	Ruling
<i>Wyatt v. Terhune</i> 305 F.3d 1033 (2002) 280 F.3d 1238 (2002) 315 F.3d 1108 (2003)	Ninth Circuit	Rastafarian offender brought suit against policy that required him to cut his dreadlocks in violation of his religious beliefs	Is CDOC policy unconstitutional? NO	Offender filed using RFRA, which was declared unconstitutional. The court reversed. The equal protection claim was dismissed because the offender's administrative remedies had not been exhausted. A rehearing was denied at 305 F.3d 1033 (2003) and this opinion vacated.

(continued)

Title of Grooming Case	U.S. Court of Appeals	Facts	Issue	Ruling
<i>Taylor v. Johnson</i> 257 F.3d 470 (2001)	Fifth Circuit	Muslim offender sued over policy which did not allow beards, claiming it violated his First Amendment rights.	Is a policy prohibiting the wearing of facial hair unconstitutional? NO	*In a previous case, the court had found the policy reasonably related to legitimate penological practices. *The Equal Protection claim was vacated and remanded. In <i>Taylor v. Groom</i> , 74 Fed. Appx. 369 (2003), claim of disparate treatment was vacated as offender had been released from prison.
<i>Jackson v. District of Columbia</i> 254 F.3d 262 (2001)	District of Columbia Circuit	Rastafarian and Muslim offenders filed suit citing RFRA against prison policy requiring short hair and prohibiting beards. District court ruled they had not exhausted their administrative remedies.	Does the PLRA apply to RFRA actions? YES Was the “irreparable injury” argument sufficient to find PLRA did not apply in this case (p. 267)? NO	Remanded with order to dismiss without prejudice so that administrative remedies could be exhausted.

(continued)

Title of Grooming Case	U.S. Court of Appeals	Facts	Issue	Ruling
<i>Flagner v. Wilkinson</i> 241 F.3d 475 (2001)	Ninth Circuit	Orthodox Hasidic Jewish offender requested damages after prison officials forcibly cut his beard and sidelocks.	Did defendants' actions violate a clear constitutional right? NO Was policy constitutional? NOT DECIDED	Reversed denial of summary judgment and remanded to consider constitutionality of policy.
<i>Green v. Polunsky</i> 229 F.3d 486 (2000)	Fifth Circuit	Muslim offender filed suit regarding policy that required him to be clean shaven. He claimed it violated the First Amendment Free Exercise Clause.	Does grooming policy violate Free Exercise Clause? NO	Policy is "reasonably related to legitimate penological interests" and "did not deprive plaintiff of all means of expressing his religious beliefs" (p. 391) Affirmed.

U.S. Courts of Appeals cases regarding religious accommodations for pat and strip searches since passage of RLUIPA (2000)

Title of Searches Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Kaemmerling v. Lappin</i> 553 F.3d 669 (2008)	D.C. Circuit	Offender claimed extracting DNA from any type sample from his body was a violation of his religious free exercise.	Does the DNA Analysis Backlog Elimination Act of 2000 violate free exercise? NO	Offender did not show any specific free exercise that was substantially burdened. He did not argue the collecting of the sample was problematic; only the extraction of DNA from the sample.

U.S. Courts of Appeals cases regarding religious accommodations for general exercise of religious freedom since passage of RLUIPA (2000)

Title of General Exercise Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Mack v. Warden Loretto FCI</i> 839 F.3d 286 (2016)	Third Circuit	Offender brought suit under RFRA for harassment due to his Muslim faith, and its effects on his ability to pray at work.	Does RFRA prohibit individual conduct that substantially burdens religious exercise? YES	The offender's failure "to challenge a prison policy or regulation does not defeat his RFRA claim" (p. 302).

(continued)

Title of General Exercise Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Walker v. Beard</i> 789 F.3d 1125 (2015)	Ninth Circuit	Odinist offender claimed that housing policy would interfere with his religious beliefs by potential housing him with a non-white cellmate. He also claimed he could not perform an Odinist ritual in front of any non-white person -- therefore, he would be precluded from performing the ritual due to the housing policy.	"Is the housing policy a substantial burden on the offender's Free Exercise rights? YES	Odinist offender claimed that housing policy would interfere with his religious beliefs by potential housing him with a non-white cellmate. He also claimed he could not perform an Odinist ritual in front of any non-white person -- therefore, he would be precluded from performing the ritual due to the housing policy.
<i>Padilla v. Yoo</i> 678 F.3d 748 (2012)	Ninth Circuit	Plaintiff was arrested and detained after 9/11, and designated as an enemy combatant. He alleged, among other issues, that he was not freely able to exercise his religion – in violation of RFRA.	Was it clearly established at the time in question that RFRA was applicable to enemy combatants in military detention? NO	The defendant was entitled to qualified immunity as it was not clearly established that RFRA was applicable to enemy combatants.

(continued)

Title of General Exercise Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>DeMoss v. Crain</i> 636 F.3d 145 (2011)	Fifth Circuit	The offender claimed the policy requiring offenders to sit in the dayroom so that officers could have an unobstructed view was a violation of RLUIPA because he had to leave the dayroom to pray.	Is the dayroom policy a substantial burden on the offender's religious freedom? NO	The offender's religious exercise is not substantially burdened as he is allowed to decide whether to stay in dayroom or go to his cell to pray.
<i>Maddox v. Love</i> 655 F.3d 709 (2011)	Seventh Circuit	During grievance process about loss of religious services, offender was "never informed that grievance was incomplete or procedurally deficient" (p. 712).	Was the cancellation of services due to budget cuts a violation of the offender's religious rights? YES	The failure to "provide reasonable access to religious materials" was not administratively exhausted, so the court affirmed (p. 712). The two counts regarding budget allocations were reversed due to preliminary dismissal during the grievance screening. The claim regarding the fellowship was vacated.

(continued)

Title of General Exercise Case	U.S. Court of Appeals	Facts	Issue	Holding
<p><i>Rasul v. Myers</i> 563 F.3d 527 (2009) 512 F.3d 644 (2008) 555 U.S. 1083 (2008)</p>	<p>District of Columbia Circuit</p>	<p>British nationals detained at Guantanamo Bay alleged “forced shaving of their beards, banning or interrupting their prayers, denying them copies of the Koran and prayer mats and throwing a copy of the Koran in a toilet bucket” (512 F.3d 644, p. 650).</p>	<p>Are non-citizen detainees protected by RFRA? NO</p>	<p>SCOTUS vacated and remanded in light to decision in <i>Boumediene v. Bush</i>, 553 U.S. 723 (2008). D.C. Circuit held that non-citizen detainees were not subject to protections of RFRA.</p>
<p><i>Jova v. Smith</i> 582 F.3d 410 (2009)</p>	<p>Second Circuit</p>	<p>Offenders claimed they must fight and spar as part of their religious practice.</p>	<p>Does the prohibition of potentially violent physical activities provide the least restrictive means of fulfilling a compelling government interest? YES</p>	<p>The prohibition against sparring has obvious security benefits.</p>

(continued)

Title of General Exercise Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Johnson v. Rowley</i> 569 F.3d 40 (2009)	Second Circuit	Offender claimed his termination from prison job was due to supervisor's prejudice towards the Islamic faith, in violation of RFRA.	Does the failure to submit RFRA allegation until last step of grievance constitute exhaustion of administrative remedies? NO	The BOP policy did not allow offenders to amend their grievances with other issues not raised in lower levels of the grievance process.
<i>Fowler v. Crawford</i> 534 F.3d 931 (2008)	Eighth Circuit	The offender brought suit over refusal to allow access to a sweat lodge. The state refused on the basis that the ceremony would include access to property such as rocks, willow poles, shovels, deer antlers, and split wood, which could be used as weapons.	Does an offender have a right under RLUIPA to exercise his Native American religious beliefs through sweat lodge ceremonies with other offenders at the maximum security prison? NO	Prohibition of sweat lodge met a compelling governmental interest and was the least restrictive means to obtain safety and security.
<i>Alvarez v. Hill</i> 518 F.3d 1152 (2008)	Ninth Circuit	Native American offender sued for the right to practice religion without discrimination or harassment.	Does the failure of the inmate to invoke RLUIPA vanquish its use in this suit?	No. The facts of the case establish "a plausible entitlement to relief under RLUIPA" (p. 1157).

(continued)

Title of General Exercise Case	U.S. Court of Appeals	Facts	Issue	Holding
<p><i>Iqbal v. Hasty</i> 490 F.3d 143 (2008) 556 U.S. 662 (2009)</p>	<p>Second Circuit</p>	<p>Detained immediately post 9/11, plaintiff alleged he was not allowed to pray in prison because he was a Muslim.</p>	<p>Were defendants entitled to qualified immunity due to failure to state a claim and because defendants claimed no personal involvement? NO</p>	<p>The Second Circuit held that the defendants were not entitled to qualified immunity, The U.S. Supreme Court held that conclusory allegations that government officials knew of actions taken by subordinates could not be a basis for unlawful discrimination claim. Second Circuit noted, “Hasty’s arguments that the repeated banging on Iqbal’s cell while he prayed shows that he was at least allowed to pray” (p. 85).</p>

(continued)

Title of General Exercise Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Spratt v. Wall</i> 482 F.3d 33 (2007)	First Circuit	For seven years, Universal Life Church offender was allowed to preach in the chapel. New warden prohibited him from continuing preaching with the threat of disciplinary action if he continued to do so.	Did the change in policy which no longer allowed an offender to preach violate his rights under RLUIPA? YES	The State did not show the compelling government interest in prison security was furthered by prohibiting offenders from preaching or even that the prohibition would have been the least restrictive means available.
<i>Madison v. Virginia</i> 474 F.3d 118 (2006)	Fourth Circuit	Offender brought suit over denial of kosher meals and state argued that RLUIPA was unconstitutional.	Is RLUIPA an overreach of Congress's powers and a violation of the Spending and Commerce Clause? NO	RLUIPA does not, however require monetary damages to be paid.
<i>Benning v. GA</i> 391 F.3d 1299 (2004)	Eleventh Circuit	Jewish offender brought suit that he was not allowed to constantly wear a yarmulke, eat only kosher foods, and observe holy days and rituals.	Does RLUIPA violate the Establishment Clause or the Tenth Amendment? NO	Congress did not overstep its powers by predicating receipt of federal funds on adherence to RLUIPA.

(continued)

Title of General Exercise Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Adkins v. Kaspar</i> 393 F.3d 559 (2004)	Fifth Circuit	Offender claimed his Yahweh Evangelical Assembly free exercise was hindered because officials would not let followers observe holy days or allow assembly without a trained volunteer.	Does prohibition of assembly without a trained volunteer substantially burden the offenders' religious exercise? NO	The state allowed sufficient alternative means for the followers to practice their religious beliefs.
<i>Murphy v. MO DOC</i> 372 F.3d 979 (2004)	Eighth Circuit	Offender claimed his Yahweh Evangelical Assembly free exercise was hindered because officials would not let followers observe holy days or allow assembly without a trained volunteer.	Does prohibition of assembly without a trained volunteer substantially burden the offenders' religious exercise? NO	The state allowed sufficient alternative means for the followers to practice their religious beliefs.

(continued)

Title of General Exercise Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Lindell v. McCallum</i> 352 F.3d 1107 (2003)	Seventh Circuit	Wotanist offender alleged he was prevented from free exercise of his religion.	Does failure to recognize a religion violate RLUIPA? NO	The district court denied in forma pauperis proceeding and deemed the suit harassing. The 7 th Cir. noted the claim was appropriate under RLUIPA and the State did not show a compelling interest. The case was remanded and later dismissed for failure to follow Federal Rules of Civil Procedure.
<i>Abdus-Shahid M.S. Ali v. District of Columbia</i> 278 F.3d 1 (2002)	District of Columbia Circuit	Offender sued over transfer to D.C. prison and administrators' decision he had to serve under his birth name rather than his legal name (changed for religious purposes).	Is a policy to use an offender's birth name rather than legal name (for religious reasons) a burden to the offender's free exercise in violation of RFRA? NOT DECIDED	Administrators may use the name under which the offender was convicted for recordkeeping. Affirmed.

(continued)

Title of General Exercise Case	U.S. Court of Appeals	Facts	Issue	Holding
<i>Fraise v. Terhune</i> 283 F.3d 506 (2002)	Third Circuit	Offenders sued over decision to designate Five Percent Nation as a Security Threat Group.	Does the policy violate the offenders' First Amendment rights? NO	The policy was constitutional under the Turner test.
<i>Clark v. Long</i> 255 F.3d 555 (2001)	Eighth Circuit	Moorish Science Temple of America offender claimed his job as a dishwasher caused him to come into contact with pork products, violating his religious beliefs. Offender had to chose between washing pans or disciplinary action.	Was judgment as a matter of law in favor of the defendant correct? YES.	Offender had sufficient notice to correct his case weaknesses.
<i>Kikumura v. Hurley</i> 242 F.3d 950 (2001)	Tenth Circuit	Buddhist offender was denied pastoral visits from a Methodist minister.	Does RLUIPA require a religious belief to be mandated by the religion? NO	The offender did not have to implicitly state whether his beliefs required pastoral visits. The court held they were a religious exercise protected by RLUIPA.

VITA

Brenda S. Riley

EDUCATION

Doctor of Philosophy (Ph.D.) Student (ABD), Criminal Justice
Sam Houston State University
Huntsville, Texas expected May 2019

Master of Business Administration (M.B.A.), Accounting
Sam Houston State University
Huntsville, Texas 1991-1993

Bachelor of Arts (B.A.), Mass Communications
Minor English
Texas Tech University
Lubbock, Texas 1981-1984

EXPERIENCE

Academic Experience/Teaching:

<p>Assistant Professor Ad Interim College of Arts, Sciences & Education – Criminal Justice Texas A & M University - Texarkana Introduction to Criminal Justice Probation, Parole, & Community Supervision Administration of Criminal Justice Civil Disruption, Terrorism, & Mass Violence Criminal Law & Procedure Institutional Corrections: Theory & Practice Seminar in Criminal Justice Victimology Capital Punishment Criminal Investigation Crises Negotiations</p>	<p>Fall 2015 – Present</p>
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<p>Assistant Professor Department of Criminal Justice Tarleton State University Introduction to Criminal Justice Criminology Penology (Hybrid) Research Methods (Online Graduate Course)</p>	<p>Fall 2013 – August 2015</p>
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Doctoral Teaching Fellow 2011 - 2013**College of Criminal Justice****Sam Houston State University**

Legal Aspects of Corrections

Correctional Systems and Practice

Introduction to Methods of Research (writing enhanced)

Computer Lab Assistant**1992 - 1993****College of Business Administration****Sam Houston State University**

Functions included assisting students with projects as well as tutoring for software applications.

Criminal Justice Experience:**Texas Department of Criminal Justice****1994 - 2013**

Duties included preparing, maintaining, and analyzing data for statistical reports and research. Researched correctional issues and trends in data to identify potential problems in operational practices. In addition to preparing statistical reports, also reviewed and approved statistical reports prepared by other departments. Assisted in coordination of training for Agency staff on selected topics. Prepared division report for Texas Board of Criminal Justice. For seven years, served as lead policy writer for agency. Also reviewed and prepared comments on drafts of Agency policies drafted by others as well as draft national Prison Rape Elimination Act standards. Required to review legislative bills during session and assess impact on TDCJ operations. Coordinated with other departments in obtaining information for leadership reports. Prepared briefings for Division Director to present to Executive Staff, Deputy Executive Director, and Executive Director. Prepared additional reports, written correspondence, and other tasks as assigned.

PUBLICATIONS**Non-Refereed Publications:**

Lewis, R. D., [D. Green & B. Riley]. Shuckers – A Seafood Restaurant." *Proceedings of the North American Case Research Association's Annual Meeting*, eds. Lew G. Brown, Claire R. Sexton, and Joseph M. Bryan, (1994) 18 (Did not present or attend meeting)

Chapter in Edited Volume:

Riley, B. & Mullings, J. (2011). Classification and Correctional Programming. In Ashley Blackburn & Shannon Fowler (eds.), *Prisons: Today & Tomorrow*, Jones & Bartlett.

CONFERENCE PRESENTATIONS:

Riley, B. Police Use of Conducted Energy Devices in Two Metropolitan Areas, Dallas, TX, March 21, 2013.

Riley, B. Grooming in prisons: The states' policies v. the circuit courts. American Society of Criminology Annual Meeting, Chicago, IL, November 16, 2012.

Riley, B., & Zhao, J.S. Organizational changes in the Texas Department of Criminal Justice: 1979 – 2009. Academy of Criminal Justice Sciences Conference, New York, NY, March 14, 2012.

Riley, B., & Lee, B. Predicting institutional misconduct that results in uses of force in the Texas Department of Criminal Justice. American Society of Criminology Annual Meeting, Washington, D.C., November 17, 2011.

Riley, B., & del Carmen, R.V. Mentally Ill Offenders in Administrative Segregation: Legal Duties of Prison Administrators. Academy of Criminal Justice Sciences Conference, Toronto, Canada, March 3, 2011.

Riley, B., & Vaughn, M.S. Where There is Smoke, There is Fire: Defining Offenders by their Charges or their Actual Convictions. American Society of Criminology Annual Meeting, San Francisco, CA, November 18, 2010.

Riley, B., & del Carmen, R.V. Legal Issues in Religious Accommodations in Prison. Academy of Criminal Justice Sciences Conference, San Diego, CA, February 27, 2010.

Duffy, Jo Ann, [Bob Barragan and Brenda Riley]. A Study of Employee Empowerment in Small Businesses. Southwestern Small Business Institute Association Proceedings, eds. W. Gaster, and H. L. Saunders, (1994) 94-101.

Workshop Presentations:

Baldo, P.; Day, G.; Riley, B. & Zuniga, E. The New and Challenging World of Social Media: What in the World Does and Can It Mean? – An Introduction to Social Media. American Correctional Association Winter Conference, Tampa, FL, January 26, 2010.

Lampert, B., Reedy, B., & Riley, B. The New and Challenging World of Social Media: What in the World Does and Can It Mean? – Implications in Corrections. American Correctional Association Winter Conference, Tampa, FL, January 26, 2010.

PROFESSIONAL COMPETENCIES:

- Proposal Planning and Development Program, Office of the Governor Budget and Planning State Grants Team, 1995
- Management Development Program, Governor's Center for Management Development, 1996
- Trained in Bill Analysis for State of Texas Legislative Process
- Trained in Classification of Offenders
- Participated in promulgation of Prison Rape Elimination Act National Standards
- Assisted in the revision of TDCJ offender classification system
- Research and legal assistance for *Ruiz v. Johnson*

PROFESSIONAL SERVICE:

Volunteer, Law & Public Policy Section, Award Committee, ACJS	2014 - 2015
Volunteer, Corrections Section, Tour Planning for 2013 Conference, ACJS, Dallas	2012 - 2013
Volunteer, Law & Public Policy Section, Social Media Development & Newsletter	2012
Volunteer, Corrections Section, Section Table, ACJS Conference	2012 - 2015
Volunteer, Division of Corrections & Sentencing, Newsletter Committee, ASC	2011 - 2013
Volunteer, American Correctional Association Fall Conference, Grapevine, Texas	2008

MEMBERSHIP/AFFILIATIONS:

Member, American Society of Criminology	2010 - Present
Member, Division of Corrections & Sentencing	2010 - Present
Member, Academy of Criminal Justice Sciences	2010 - Present
Member, Corrections Section	2010 - Present
Member, Law & Public Policy Section	2010 - Present
Member, Policing Section	2013

HONORS AND AWARDS

Recipient, George G. and Grace D. Killinger Memorial Scholarship,	2011 - 2012
Recipient, Rolando, Josefa, and Jocelyn del Carmen Scholarship,	2010 - 2011
Certificate of Appreciation, Texas Board of Criminal Justice,	

Establishment of Guidelines in compliance with House Bill 2909,
75th Texas State Legislature, State Weapons Committee,
Purchasing Management Graduate Scholarship,

1997
1992