

Incarceration Law – 3 credits

Professor Reena Parikh – Boston College Law School

Spring 2022 - Syllabus

Course Meetings: Tuesdays 2:30-4:30pm (Stuart 408)

Office Hours: Wednesdays 3:00-5:00pm or by appt. (sign-up sheet outside my office; F341 in CEL)

Class Description

The United States has the highest incarceration rate in the world. In 1980, approximately 500,000 people were behind bars in this country. In 2019, this figure topped 2.1 million (nearly two-thirds of whom are people of color), incarcerated in jails, state prisons, and federal prisons. This course will examine the constitutional law, and some statutory law, relevant to incarceration and prisoners' rights, including an examination of these laws through a critical contextual lens. Topics will include the history of mass incarceration in the U.S., conditions of confinement, solitary confinement, sexual abuse of incarcerated individuals, and race, gender, LGBTQ & disability discrimination in prison. Throughout the course, we will explore litigation strategies as well as constitutional and statutory remedies available to incarcerated individuals. We'll also look at Congress's efforts to regulate both prison and litigation brought by prisoners, examining the Prison Litigation Reform Act. Lastly, we will investigate different approaches to challenging mass incarceration, including reform strategies and abolitionist movements. (The course will not cover criminal procedure, habeas corpus, or sentencing.)

Learning Outcomes

Students in this course will:

- 1) Understand major aspects of the constitutional jurisprudence and statutory landscape related to prisoners' rights in the U.S.;
- 2) Explore litigation strategies and remedies available to incarcerated individuals;
- 3) Examine legal cases and statutes through a critical contextual lens;
- 4) Work in groups to offer short and clear presentations to their classmates;
- 5) Investigate the ways in which movement actors are challenging mass incarceration today.

Attendance

Class meets for 13 weeks and attendance is mandatory. Students must follow BC's policies on COVID-related required absences. If you are required to miss class, it is your responsibility to "make-up" the class, i.e. complete the readings, watch the class recording on Canvas, and email me your exit ticket within 48 hours of the missed class. See below for additional information about Exit Tickets.

Grading/Assignments

Class Participation: The classes will be composed of a combination of lecture and discussion. I welcome and expect robust volunteer participation. I hope that everyone will participate, but I reserve the right to resort to "cold-calling" to stimulate the discussion where necessary. Class Participation comprises 10% of your grade.

Exit Tickets: During the last five minutes of each class, you will receive an exit ticket where you will reflect in writing on the topic discussed in class. This is an opportunity for you to further the class

discussion and share an additional point, question, or feeling, related to the reading or discussion. I expect your exit ticket to be relevant and thoughtful. Exit Tickets comprise 5% of your grade.

Student Presentation: Starting week 3, we will begin each class with a brief student presentation relevant to the topic for that class. Each student will work in teams of 2-3 to prepare one presentation during the semester. The team will research and identify a short thought-provoking piece, e.g. a news/magazine article or video clip, related to the topic for that class. The team will clear that piece with me, and I will email it to the class by Thursday before the relevant class as supplemental required reading or viewing. In class, the team will have approximately 10-15 min. to present on and lead a discussion about the supplemental material; all members of the team are expected to speak during the presentation. The Student Presentation comprises 15% of your grade.

Final Exam: There will be a take-home final exam involving multiple hypotheticals or questions, requiring written responses. The exam will be open-book/open-note (but no internet or other sources). The final exam is worth 70% of your grade.

Accommodation

If you are a student with a documented disability seeking reasonable accommodations in this course, please contact the law school's Office of Academic & Student Services at lawADAservices@bc.edu.

Laptop Use

I allow the use of laptops/tablets in the classroom, but I ask one thing of you. Please respect those sitting near you and only use your computer to type class notes or pull up an assigned supplemental reading. Web browsing, checking email or other computer activities are distracting to others, so please refrain from that. We will take a short break in the middle of each class, so please refrain from checking your email or phone until the break.

Materials

Textbook: *Incarceration and the Law, Cases and Materials*, 10th Edition (Schlanger, Bedi, Shapiro, Branham), West Academic Publishing.

The readings for the course will be available in your textbook and the required supplemental materials (including those assigned by student presenters) will be posted online on Canvas each week (on module pages organized by class) and emailed to you on the Thursday before each class. The assignments listed below are ***tentative*** and I reserve the right to change or move readings (with due notice) as the semester progresses. I will post any updates, amendments, or subtractions to the assignments on Canvas and by email.

Readings (the pages referred to below are from the textbook).

Class 1: Introduction & History of Mass Incarceration in the U.S., pp. 1-40

Class 2: Conditions of Confinement – Cruel and Unusual Punishment: Prisoners with Conviction, pp. 57-101

Class 3: Conditions of Confinement – Cruel and Unusual Punishment; Continued, pp. 101-138 (Supplemental Materials will be posted on Canvas)

Class 4: Conditions of Confinement – Due Process: Pretrial Detainees and Immigration Detainees, pp. 138-185 (Supplemental Materials will be posted on Canvas)

Week 5: Solitary Confinement, pp. 187-251 (Supplemental Materials will be posted on Canvas)

Week 6: Programming, Work, Reentry, pp. 253-281 (Supplemental Materials will be posted on Canvas)

Week 7: Injunctive Relief Litigation, pp. 705-747 (Supplemental Materials will be posted on Canvas)

Week 8: The Prison Litigation Reform Act, pp. 747-757, 760-771, 811-824 (Supplemental Materials will be posted on Canvas)

Week 9: Race and National Origin Discrimination, pp. 541-574 (includes excerpts from James Forman Jr.'s article, Racial Critiques of Mass Incarceration: Beyond the New Jim Crow); Excerpt from Michelle Alexander's "The New Jim Crow" (pp. 1-19 from her book will be posted on Canvas along with other supplemental materials)

Week 10: Women Prisoners, pp. 575-592, 614-622; Prison Rape Elimination Act, pp. 283-314 (Supplemental Materials will be posted on Canvas)

Week 11: LGBTQ Prisoners, pp. 623-669 (Supplemental Materials will be posted on Canvas)

Week 12: Disability Rights in Prison, pp. 671-701; Damages Actions, pp. 825-834, 846-855, 870-885 (Supplemental Materials will be posted on Canvas)

Week 13: Challenging Mass Incarceration: Reform and Abolitionist Movements (Reading Materials will be posted on Canvas)