

The State of Prison Food in New England

A Survey of Federal and State Policy

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Farm to Institution New England (FINE) is the backbone organization for a six-state network of nonprofit, public, and private entities working together to mobilize the power of institutions to transform the food system. FINE works with partners to increase the amount of values-based, local food served in our region's schools, hospitals, colleges, and correctional facilities and to foster positive food system impacts created by institutions in their role as educators, employers, neighbors, and investors. The FINE network consists of non-profit organizations, government agencies, policymakers, institutions, foundations, farms, seafood operations, food distributors and processors, food service operators, and consumers. Visit farmtoinstitution.org to learn more.

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Introduction

Preparing trays in the cafeteria at Northeast Regional Correctional Facility, Vermont

HANNAH PALMER EGAN, SEVEN DAYS

Approximately 2 million people are incarcerated in the United States.¹ While law- and policymakers have focused some attention on improving conditions for individuals who are incarcerated, the issue of food in prisons has not been at the forefront of prison policy reform. In recent years, there has been increased attention focused on this issue in New England—a region marked by some successful efforts that reduced costs, increased access to fresh local foods, and provided skills and training. Many correctional officials and food service managers in the New England region and beyond are working hard with limited means in a policy landscape that often makes it difficult to increase the quality of prison food. This report is intended to assist policymakers, correctional facility administrators, food service managers, food justice advocates, and the public in understanding the complex set of constitutional, federal, and state laws and policies impacting the prison food system to identify opportunities for reform in the New England region.

People of color are disproportionately represented in the prison population; incarceration rates are 1.3 to 6 times higher for people of color than for white people.² Notably, Black Americans comprise 38 percent of the prison population despite constituting 13 percent of the US population.³ In some New England states these disparities are even more stark. Both Connecticut and Maine maintain a disparity of 9:1 between Black and white individuals who are incarcerated, and Massachusetts leads the country in ethnic disparities.⁴ While poverty represents both a substantial cause and effect of incarceration, many individuals who are incarcerated also demonstrate additional factors of socioeconomic marginalization, including food and nutrition insecurity, low educational attainment, and high unemployment rates, as compared to the general population.⁵ In the US, rates of food insecurity and very low food

security are “significantly higher than the national average” for non-Hispanic Black and Hispanic households.⁶ Consequently, for Black individuals who are incarcerated, food insecurity may present a challenge prior to, during, and after incarceration. Additionally, since many individuals continue to experience food and nutrition insecurity upon release due to difficulty securing employment, the health impacts can be ongoing.

Much public attention focuses on privately owned prisons, yet less than eight percent of the prison population is housed in them.⁷ In fact, most individuals who are incarcerated are held in publicly operated federal or state prisons,⁸ facilities which are often required to follow procurement policies and guidelines for purchasing food. This provides an opportunity for states to consider developing procurement policies directed at the same goals as other institutional procurement policies: economic development through local preference and improved health outcomes.

“Food insecurity means that households were, at times, unable to acquire adequate food for one or more household members because they had insufficient money and other resources for food.”

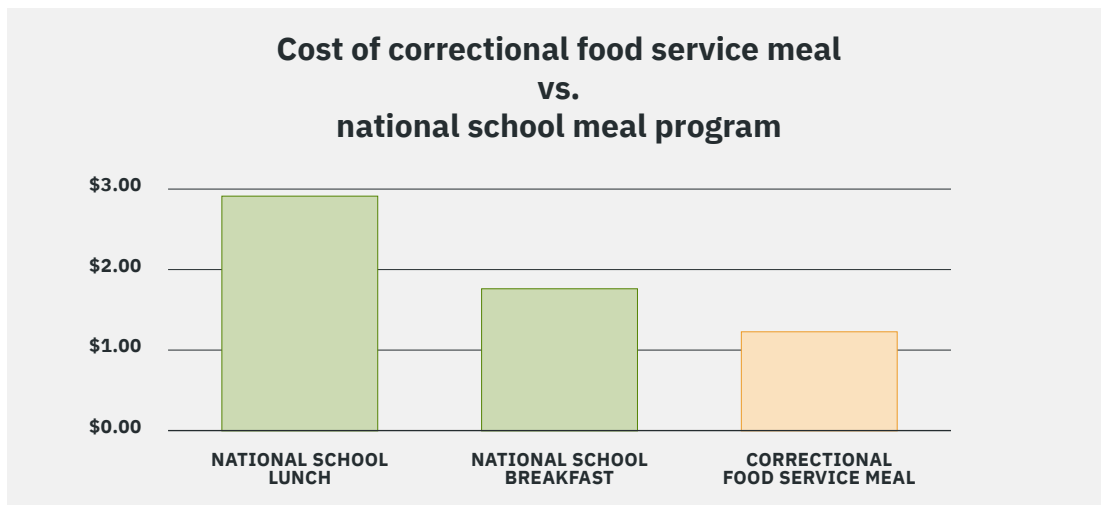
United States Department of Agriculture, *Household Food Insecurity in the United States in 2021* 7
<https://www.ers.usda.gov/webdocs/publications/104656/err-309.pdf?v=9154.3>

Nutritional inadequacy negatively impacts the health and well-being of incarcerated individuals during their incarceration and after release. Nutritionally deficient meals, often containing high amounts of processed carbohydrates, contribute to diet-related illnesses such as diabetes and cardiovascular disease and unsanitary meals frequently lead to foodborne illness outbreaks. Indeed, a study conducted by the Centers for Disease Control and Prevention (CDC) found that incarcerated people were six times more likely to contract a foodborne illness than individuals outside the correctional system. Moreover, a greater proportion of the population that is incarcerated experiences chronic illness than the general population—44 percent versus 31 percent, according to the Bureau of Justice Statistics.

Reports have shown that prison food can be undesirable and unsafe, lacking in nutritional quality, flavor, variety, and sanitation.⁹ From sourcing, quality, and safety to the environments where food is served and eaten, the correctional food system often fails to provide people who are incarcerated with health, safety, and dignity. Prison halls can be crowded, loud, lacking natural light, heavily monitored by armed guards, and uncomfortably hot or cold.¹⁰ These conditions can exacerbate a negative relationship with food and negative mental health outcomes, as well as create hostile eating environments.¹¹ In some instances, poor food quality has fueled riots and hunger strikes demanding healthier and safer meals.¹²

The COVID-19 pandemic presented additional challenges after some states were bound by regulations or directives that required lockdowns or closures of dining halls. Reports indicated that some incarcerated individuals were confined up to 23.5 hours per day in their cells during this period and could not access the commissary.¹³

These challenges can be attributed, in part, to correctional budget allocations and competitive bidding processes that pressure administrators and food service operators to prioritize cost savings above other considerations.¹⁴ Predictably, however, these austerity measures can result in poor quality and nutritionally inadequate food offerings.¹⁵ Cost reductions that result in nutritionally inadequate food may ultimately cost taxpayers more as healthcare in public prisons constitutes their largest expenditure—estimates suggest these costs amount to over \$12 billion per year.¹⁶ Across the country, states have responded to budget shortfalls by reducing expenditures on corrections,¹⁷ impacting correctional food system funding (an already small portion of corrections' overall budgets).¹⁸ A few states in New England—Connecticut, Massachusetts, and Rhode Island—reduced their corrections budgets over the past few years while Vermont, Maine, and New Hampshire have increased theirs.¹⁹ As discussed in [Part III](#) of this report, New England states allocate \$3.70 on average per incarcerated individual per day for correctional food service.²⁰ This equates to roughly \$1.23 per meal. By way of comparison, the average cost per meal provided through the National School Lunch Program and the School Breakfast Program²¹ in school year 2016-2017 were \$2.92 and \$1.76, respectively.²²



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Terminology

The language used to describe identities changes over time and differs by context and personal preference. While there are many terms used to describe people who are or have been incarcerated throughout history and across industries—inmate, prisoner, offender, felon, convict—the authors have chosen to use people-first language throughout this report. People-first or person-first language aims to describe what a person “has” or what situation a person may be in (for example, person experiencing houselessness) as opposed to describing what a person “is” (for example, homeless). In this report, authors use the term “individual who is incarcerated” to describe people who are or have experienced confinement within a correctional facility. The authors recognize, however, that this language is not necessarily accepted or desired by all people familiar with correctional systems. Further, while the language of incarceration may have changed socially or culturally, federal and state laws and policies still commonly use terms such as “inmate” to describe persons in custody of federal and state correctional systems. When directly quoting a law or policy, authors will use the term provided by the legal language.

For more about the history and impact of people-first language in incarceration, see Alexandra Cox’s article, [*The Language of Incarceration*](#).

New England states could take a cue from their other strong local procurement initiatives to meet multiple state goals and priorities, including improved health outcomes and support for locally and sustainably produced food. At least one Maine correctional facility has been lauded for its efforts to grow produce for meals at the facility while providing training and some degree of respite from the danger and boredom of prison.²³ However, programs like these



BANGOR DAILY NEWS

The farm at Maine State Prison

are rare and for those that do exist, most must give the produce away due to restrictions in contracts with food service companies,²⁴ food safety regulations that require the produce to be inspected, or because the program does not yield enough produce to feed the facility’s entire population. Additionally, the success of these programs relies on consistent labor and some correctional systems have long exploited individuals who are incarcerated for cheap agricultural and food service labor; while wages vary across the United States, they are typically very low, ranging from \$0.30 to \$7.00 per hour.²⁵ In New England, individuals who are incarcerated are often compensated less than \$1.50 per hour for agricultural and food service work.²⁶

Efforts are underway, many at the state and local level, to address some of these problems and their consequences.²⁷ However, the legal landscape governing prison food is complex—for advocates seeking to advance law and policy reform to address these issues, it is useful to understand both the relationship between and the application of constitutional, federal, and state law. Since over half of all people incarcerated in the US are currently held in state prisons,²⁸ state law and policy reform is a strategic and impactful leverage point to improve meals for millions of incarcerated individuals. While the issue of food in correctional facilities only scratches the surface of the many structural problems within the US criminal justice system, it does address a fundamental human need for individuals in prisons.²⁹

This report identifies relevant federal and state laws to contextualize the governance of state prisons within the broader United States correctional system and details the laws and regulations that govern food production, procurement, preparation, and consumption in New England state prisons. Additionally, this report includes examples from state correctional manuals and policies in New England and provides a comparative analysis of relevant laws, regulations, and policies alongside correctional industry standards. There may be variations in how these laws, regulations, and policies are interpreted and implemented by the responsible entities.

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While some of the policies included here may appear to address existing concerns, they can only do so if implemented and enforced. To maintain a focus on state laws and regulations, this report does not analyze privately run correctional facilities or county jails. Though the analysis focuses on the New England region, practitioners in other states can use these examples to identify and evaluate the legal frameworks that govern correctional food systems in other states. This report concludes with a set of recommendations for advocates and policymakers to consider as they address these issues that can carry long-term impacts for individuals who are incarcerated.

The remaining sections of the report are as follows:

1 Correctional System Legal Landscape

This section provides a broad overview of the administrators and other regulatory actors who affect the laws, policies, and guidelines related to correctional facility food safety, food procurement, labor, and standards for consumption environments. This section also reviews federal and state constitutional law related to food in correctional institutions.

2 Food Quality and Safety

This section compares how food establishment regulations in the New England states apply to the correctional food system.

3 Food Procurement

This section reviews the process prison administrators use to contract and procure provisions for state correctional facilities. Specifically, this section analyzes laws that govern purchasing decisions with an emphasis on local purchasing policies.

4 Correctional Employment and Compensation

This section examines laws and policies regarding employment of incarcerated individuals within the correctional food system by analyzing access to employment, average wage rates, and related issues affecting individuals working while incarcerated.

5 Dining Environment

This section reviews laws and policies addressing physical dining spaces and the social environment within which incarcerated individuals dine. Specifically, this section reviews laws or regulations that establish standards for the size and sanitary conditions of the dining facility, the amount of time individuals are provided to dine, and whether group dining is permitted.

6 Policy Recommendations

This section includes a set of policy recommendations to address the barriers and gaps in the correctional food system.



Part I

Correctional System Legal Landscape

A. State Departments of Corrections

Nearly 2 million people are held in correctional facilities in the United States.³⁰ Over half of this population—1,042,000 people—is housed in state prisons.³¹ There are 53 state-run prison facilities in New England.³² According to the 2019 Census of State and Federal Adult Correctional Facilities, currently 25,885 people from New England states are held in correctional facilities operated by state authorities (for the total number of individuals incarcerated in all correctional facilities, including those beyond state and federal authorities, and an explanation of the data see Table 1-A).³³ Notably, the United States has by far a greater percentage of people who are incarcerated than any other country, and even states that have relatively low incarceration rates in the US, such as Massachusetts, still have rates higher than most other countries.³⁴

Table 1-A details the total number of individuals incarcerated, according to the Sentencing Project. This includes the number of people in prison at one point in time in 2020, typically convicted of a felony offense and sentenced to one year or longer, and includes people held in federal, state, and local prisons within each New England state, though the data reported by each state varies.³⁵ Some states operate on a unified correctional system whereas others operate on a non-unified prison/jail correctional system. Unified systems combine all county jail and state correctional facilities under one state department of corrections while a non-unified prison/jail correctional system separates county and local detention centers from state prisons. As such, the data representing the number of individuals who are incarcerated over a given period of time may vary based on different measurements and different institutional and reporting structures.

STATE	TOTAL PRISON POPULATIONS ^a	IMPRISONMENT RATE (PER 100,000 RESIDENTS)
CT	5,607	155
ME	3,093	107
MA	14,803	96
NH	3,527	152
RI	1,297	118
VT	867	134
TOTAL	29,194	

^aThe number of people in prison at one point in time in 2020, typically convicted of a felony offense and sentenced to one year or longer. Table 1-A. Incarcerated Populations in New England states³⁶

Each state has an agency or department responsible for operating the state’s correctional system. In some states, the department of corrections (DOC) is located within the state agency for public safety, or in another agency or department similarly focused on community safety and criminal punishment. Other states have established independent DOCs within the executive branch. The latter approach may give the department more autonomy, authority, and flexibility to explore innovative food-related programs. A less traditional structure exists in Vermont, where the DOC is located within the Agency of Human Services.³⁷

STATE	DOC LOCATION WITHIN STATE GOVERNMENT ³⁸
MAINE	Independent department of corrections
MASSACHUSETTS	Housed within Executive Office of Public Safety and Security
VERMONT	Housed within Agency of Human Services
NEW HAMPSHIRE	Independent department of corrections
RHODE ISLAND	Independent department of corrections
CONNECTICUT	Independent department of corrections

B. Correctional Directives and Facility Policy Handbooks

The daily operations of an individual state correctional facility are guided by the state department of corrections' (DOC) published **correctional directives**³⁹ and individual **correctional facilities' policy handbooks**.⁴⁰ Covering topics from safety and security to medical and mental health services to food service, these resources—the correctional directives⁴¹ and the facility handbooks⁴²—are dictated and influenced by a combination of federal and state constitutional standards, case law, administrative regulations, and third-party guidance. The confluence and impact of these law and policy mechanisms are discussed in the next section (Part 1, Section C).

STATE CORRECTIONAL DIRECTIVES

States' **enabling legislation** generally grants authority to the commissioners of the department of corrections (or their delegates) to establish directives, regulations, or policies with which all state correctional facilities must comply. These correctional directives vary in scope and level of detail, but most lay out general procedural guidelines for correctional facility administrators to follow. Correctional directives may also incorporate directives, regulations, or policies from other state agencies. For example, a correctional directive on food safety might require that correctional administrators provide food in a safe environment that conforms with state health department directives.⁴³ And, while some New England states voluntarily provide correctional directives on their DOC website, they are not legislatively required to either post the directives or keep the publicly disclosed documents updated. This lack of transparency makes it difficult to hold state DOCs accountable for upholding the laws and regulations by which they are bound.

As is generally the case when an agency develops regulations or correctional directives, sometimes referred to as **correctional administrative rules** or **correctional rules**, those rules must be developed in compliance with the state's administrative procedure act, which requires certain procedures before the rule becomes final and can take effect.⁴⁴ In each New England state, the legislature authorizes the commissioner of the department of corrections to adopt rules for the management and operation of the state's correctional facilities.⁴⁵

Correctional rules allow for any interested person to petition the department requesting an adoption, amendment, or repeal of a rule.⁴⁶ The department is then required to act within a specific period of time.⁴⁷ Correctional rules also require public hearings with comments from the general public on the adoption, amendment, or repeal of departmental rules pursuant to the state's administrative procedure act.⁴⁸

Notably, in New Hampshire, the corrections department’s “internal practices and procedures” are explicitly exempt from the requirements of the New Hampshire Administrative Procedure Act.⁴⁹ Therefore, if the commissioner of the department of corrections determines that a policy under consideration is related to “internal practices and procedures,” they may be developed without the same level of process and public participation as other types of regulations.

CORRECTIONAL FACILITY POLICY HANDBOOKS

Correctional facility policy handbooks are written by the superintendents or wardens of specific correctional facilities. Practically, these handbooks serve to make individuals who are incarcerated aware of the “house rules” of the correctional facility.⁵⁰ Generally, handbook rules must comply with state correctional directives and administrative rules, and therefore must also be compliant with state enabling legislation and constitutional requirements.

Like correctional directives, no New England state requires public disclosure of correctional facility policy handbooks. Consequently, it is difficult to understand the full scope of policies that incarcerated populations are subject to. Additionally, without the policy handbooks, it can be difficult for advocates to hold facilities accountable for upholding what is required of them by law. This report uses sample correctional facility policy handbooks to illustrate important areas where handbooks have more specific guidelines than state enabling legislation or correctional directives.

C. State Correctional System Legal Framework

Correctional directives must comply with any mandates and goals laid out in a state’s enabling legislation and policy handbooks must comply with both enabling legislation and correctional directives or regulations. In addition to a state’s enabling legislation, correctional directives also rely on a combination of federal, state, and third-party requirements or guidance, as shown in Table 1-B.

FEDERAL	STATE	THIRD-PARTY ACCREDITOR
Constitutional standards Case law Federal Bureau of Prison’s Food Service Manual	State enabling legislation Constitutional standards Case law	American Correctional Association

Table 1-B: Legal Framework for State Correctional Policies

This section will describe how each identified law and regulation at the federal, state, and private levels plays a role in defining how correctional facilities implement their food service operations.

FEDERAL AND STATE CONSTITUTIONAL STANDARDS

State correctional administrators must comply with constitutional protections found in the United States and state constitutions. The US Constitution prohibits “cruel and unusual punishments.” Many states have similar constitutional prohibitions. Additionally, some court decisions from the US Supreme Court, federal courts, and various states have specifically addressed complaints over food quality and quantity as a condition of confinement, the use of food as a punishment, and the autonomy of an individual who is incarcerated over their food consumption decisions. This section analyzes relevant correctional food system case law from the US Supreme Court and New England state courts. At the end of this section, there is a list of relevant case law for each New England state.

The Eighth Amendment Prohibition of Cruel and Unusual Punishments

The Eighth Amendment to the United States Constitution prohibits “cruel and unusual punishments”⁵¹ and is applicable to the states through the Fourteenth Amendment.⁵² As discussed in the [Federal Case Law Analysis](#) section below, the cruel and unusual standard applies not only to physical punishment, but also to the conditions of confinement, which include food.

The Massachusetts, New Hampshire, Maine, and Rhode Island state constitutions also prohibit cruel and unusual punishment.⁵³

1. “No magistrate or court of law, shall demand excessive bail or sureties, impose excessive fines, or **inflict cruel or unusual punishments.**” (New Hampshire and Massachusetts)
1. “Sanguinary laws shall not be passed; all penalties and punishments shall be proportioned to the offense; excessive bail shall not be required, nor excessive fines imposed, **nor cruel nor unusual punishments inflicted.**” (Maine)
1. “Excessive bail shall not be required, nor excessive fines imposed, **nor cruel punishments inflicted;** and all punishments ought to be proportioned to the offense.” (Rhode Island)

Vermont and Connecticut’s constitutions do not include the cruel and unusual standard; however, both include language mirroring the Eighth Amendment’s prohibition on excessive bail.⁵⁴

STATE ENABLING LEGISLATION

Each New England state has enacted enabling legislation to establish the administrative agency responsible (often the state's department of corrections) for regulating the supervision of state correctional facilities, as well as the scope of their power to administer correctional facilities.⁵⁵ Most enabling legislation is broadly written and often includes a general statement of purpose to guide the agency's actions. For example, Vermont's enabling legislation states that the purpose of the Vermont Department of Corrections is to “protect persons and property against offenders of the criminal law and to render treatment to offenders with the goal of achieving their successful return and participation as citizens of the State[.]”⁵⁶ Consequently, any directives or policies created by the Vermont Department of Corrections, including those about food service, should be guided by this purpose.

Additionally, enabling legislation often mandates a set of duties and responsibilities for the department of corrections or its commissioner to follow when administering a correctional facility. Commonly, these duties include:

1. supervision and direction of all correctional facilities and community-based service programs
2. delegation of commissioner powers to deputy commissioners and correctional administrators
3. establishment and management of correctional industries
4. maintenance of safety and order
5. establishment and maintenance of academic and vocational training programs
6. creation and execution of contracts on behalf of the state for correctional purposes
7. creation of policies and directives for correctional facility management⁵⁷

As with other types of state legislation, state correctional enabling legislation must conform with the rights established under the US Constitution to be free from “cruel and unusual punishment”⁵⁸ and any other applicable state constitutional provisions.

FEDERAL CASE LAW ANALYSIS

Federal case law has extended the cruel and unusual standard beyond physical punishment to conditions of confinement that “involve the unnecessary and wanton infliction of pain”⁵⁹ or “are grossly disproportionate to the severity of the crime.”⁶⁰ Such inflictions of pain include those that are “totally without penological justification.”⁶¹ In *Estelle v. Gamble*, the Supreme Court ruled that only deliberate indifference to the serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment.⁶² As illustrated below, the US Supreme Court and other federal circuit courts extend this cruel and unusual standard interpretation to food served in correctional facilities, which remains at the low bar of meeting “basic needs for nutrition” and for “adequate” food.

Wilson v. Seiter: Deliberate Indifference and the Deprivation of an Identifiable Human Need

Federal case law establishes that “deliberate indifference” by prison staff must be proven when an individual who is incarcerated files a lawsuit against a prison, regardless of whether the issue is a singular incident or a repeated occurrence.⁶³ In *Wilson v. Seiter*, an individual in prison brought several complaints addressing conditions of confinement at the facility, including “unsanitary dining facilities and food preparation.”⁶⁴ The US Supreme Court held that negligence or accident is insufficient as a basis for a challenge under the Eighth Amendment.⁶⁵ The court also emphasized that multiple factors that alone may not constitute a violation of the cruel and unusual punishments standard may be combined to prove a constitutional violation.⁶⁶ However, the court required that these factors must “have a mutually enforcing effect that produces the deprivation of a single, identifiable human need such as food, warmth, or exercise.”⁶⁷

Young v. Quinlan: Adequate Food, Clothing, Shelter, Sanitation, Medical Care, Personal Safety

In *Young v. Quinlan*, the Third Circuit Court of Appeals interpreted the Eighth Amendment prohibition on cruel and unusual punishments to require adequate food.⁶⁸ In this case, an individual sued federal correctional system officials for not protecting them from attacks by other individuals in the facility and confining the individual in unsanitary living conditions. Citing to the *Estelle* case, the court stated that violations of the Eighth Amendment during incarceration require proof of two things: (1) the alleged deprivations were sufficiently serious; and (2) the prison officials in question acted with deliberate indifference or “a sufficiently culpable state of mind.”⁶⁹ Acknowledging that other federal courts considering the second issue have decided inconsistently about what “quantum of knowledge” is necessary, the court determined that the individual must prove that a correctional official knew or should have known of a sufficiently serious danger to the individual.⁷⁰ In the opinion, the court stated that “a correctional institution satisfies its obligations under the Eighth Amendment when it furnishes prisoners with adequate food, clothing, shelter, sanitation, medical care, and personal safety.”⁷¹

Constitutional Due Process Clause

For decades, the courts understood prison regulations, including correctional directives, to provide additional, affirmative rights under the Due Process Clause of the Constitution.⁷² This provision explicitly prohibits deprivation of “life, liberty, or property, without due process of law.”⁷³ However, in 1995, the US Supreme Court ruled in *Sandin v. Conner* that prison regulations do not provide any positive rights to incarcerated individuals under the US Constitution’s Due Process Clause.⁷⁴ Consequently, individuals who are incarcerated can only challenge the quality of prison food under the US Constitution’s Fourteenth Amendment if it imposes an “atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.”⁷⁵

Notably, prison reform scholarship has criticized using Eighth Amendment lawsuits as an effective accountability measure to ensure individuals that are incarcerated are served adequate food, in both quantity and quality.⁷⁶ Among other reasons, the “high requirement of proof”

for an Eighth Amendment claim is often prohibitive for those seeking justice for insufficient and unsafe meals while in prison,⁷⁷ as illustrated in *Wilson and Young*. Additionally, the Prison Litigation Reform Act (PLRA) of 1996 further weakened the Eighth Amendment as a tool for individuals who are incarcerated to maintain control over the conditions of their confinement and, instead, created “more flexible [boundaries] for prison officials” overseeing correctional facility operations.⁷⁸

The Role of Prisoner Litigation

In 1996, the Prison Litigation Reform Act (PLRA) was signed into law by President Bill Clinton, limiting prisoners’ ability to enforce their Eighth Amendment rights.⁷⁹ Out of fear that prisoners were abusing litigation as a tool to hold correctional facilities accountable for meeting their basic rights—including access to enough nutritionally dense food—Congress pushed through the PLRA with support from the American Correctional Association and other players within the prison industry.⁸⁰

Since the PLRA was passed, prisoner litigation has dropped by about 60 percent.⁸¹ Advocates calling for the repeal of the PLRA note that the legislation is extraordinarily unique, as no other country has a “separate and unequal system of court access that applies only to prisoners.”⁸² Without access to the courts, prisoners are unable to seek enforcement of the “minimal standards of health, safety, and human dignity,” including dietary standards.⁸³

NOTE: New England states are in the First and Second Circuit Court of Appeals jurisdiction, and therefore cases from outside these jurisdictions are not binding authority on New England states. However, state courts may choose to use case law from outside their jurisdiction as persuasive authority.

STATE CASE LAW ANALYSIS

Most state cases that address food in correctional institutions stem from complaints over food quality or quantity as a condition of confinement, the use of food as a punishment, and the autonomy an incarcerated individual has over their choice to eat. There is not an extensive array of relevant state case law in New England. Some issues have been considered in the supreme courts of several states, while the supreme courts in other states have not addressed prison food issues in any manner.

CONNECTICUT: Connecticut has not adopted the prohibition against cruel and unusual punishment in its constitution; however, the federal standard has still been applied to conditions of confinement in Eighth Amendment cases.⁸⁴ In one case, the Connecticut Supreme Court applied this standard to food-related situations, holding that the “consumption of meals in the same cell where other bodily functions were performed” did not constitute cruel and unusual punishment.⁸⁵ In another case, a court found that when a facility is under lockdown, the Department of Corrections (DOC) has more leeway in adhering to food service standards.⁸⁶ The Connecticut Supreme Court also ruled that the DOC was authorized to forcibly restrain and feed an individual on a hunger strike to preserve his life.⁸⁷

While some state laws include the words “adequate” and/or “nutritious,” these terms are often undefined leaving courts to interpret their meaning on a case by case basis.

MAINE: The Maine state constitution includes a prohibition of cruel and unusual punishment.⁸⁸ Maine is also the only state in New England with a law establishing that individuals who are incarcerated have the right to “nutritious food in adequate quantities.”⁸⁹ An individual in Maine brought suit under this provision, alleging that he was denied hot and nutritious food while serving time in a correctional facility.⁹⁰ The DOC responded with a motion to

dismiss due to procedural issues and the plaintiff’s “failure to plead facts sufficient to allege a violation of the Eighth Amendment.”⁹¹ The court denied the motion to dismiss, and the case was remanded,⁹² but no further details about its resolution are available.

MASSACHUSETTS: In 1983, the Massachusetts Supreme Court held that Massachusetts Department of Health regulations related to conditions of confinement reflected the current standards of decency against which to measure alleged violations of the right to be free from cruel and unusual punishment.⁹³ In this case, an individual included a complaint regarding food but focused primarily on the cleanliness of the entire facility. The Massachusetts law at issue specifically addresses minimum plumbing facilities in state correctional facilities, but the ruling creates precedent for other cases that apply sanitation standards to other conditions of confinement.⁹⁴

NEW HAMPSHIRE: In addition to addressing rights to food for individuals who are incarcerated, some state cases address an individual’s right to abstain from food. In New Hampshire, an individual who was incarcerated was found to not have the right to starve himself to death under either the state or federal constitution.⁹⁵

RHODE ISLAND: The Rhode Island Supreme Court has yet to hear and decide on cases regarding food or nutrition in prisons.⁹⁶

VERMONT: The Vermont Constitution does not contain a prohibition on cruel and unusual punishments. The Vermont Supreme Court has held that individuals who are incarcerated and fed the food loaf diet (called the “Nutraloaf diet”) as a response to their abuse of food, utensils, or bodily waste was a “punishment” within the meaning of Vermont state law governing discipline and control of incarcerated individuals.⁹⁷ Under Vermont law, an inmate receiving “punishment” must be “supplied with a sufficient quantity of wholesome and nutritious food.”⁹⁸ Additionally, the procedure for applying a special diet in response to incarcerated individuals’ behavior requires a fact-finding hearing before the diet is enforced.⁹⁹ This decision considered the DOC’s intent for implementing the diet to determine whether it was a punishment that required a hearing.¹⁰⁰ The court ultimately held that the DOC must adhere to the notice and hearing requirements before implementing the Nutraloaf diet.¹⁰¹ However, soon after that decision, Vermont law changed to specifically exclude this diet from the punishment procedure.¹⁰²

In a non-binding decision issued by a three justice panel, the Vermont Supreme Court also held that individuals who are incarcerated have limited rights to bring complaints under Vermont’s state laws when they are imprisoned in a different state, even if they are residents of the state in which they filed the suit.¹⁰³ An individual who was a Vermont resident filed a claim in Vermont court alleging that the food provided to him at a Michigan correctional facility was “of low quality, ... frequently processed in nature, and ... not accurately described in the menus.”¹⁰⁴ The individual did not claim a medical or religious need for an alternative diet and failed to attest that the food did not meet any established nutritional standards.¹⁰⁵ The court determined that it did not have subject matter jurisdiction to review the complaints, and the case was dismissed.¹⁰⁶

Key Federal and State Cases

STATE	CASE CITATION
FEDERAL	<i>Coker v. Georgia</i> , 433 U.S. 584 (1977) <i>Estelle v. Gamble</i> , 429 U.S. 97 (1976) <i>Gregg v. Georgia</i> , 428 U.S. 153 (1976) <i>Robinson v. California</i> , 370 U.S. 660 (1962) <i>Weems v. United States</i> , 217 U.S. 349 (1910)
CONNECTICUT	<i>Arey v. Warden, Connecticut Corr. Inst.</i> , 187 Conn. 324, 445 A.2d 916 (1982) <i>Comm’r of Correction v. Coleman</i> , 303 Conn. 800, 38 A.3d 84 (2012) <i>Miles v. Bell</i> , 621 F. Supp. 51 (D. Conn. 1985) <i>Waring v. Meachum</i> , 175 F. Supp. 2d 230 (D. Conn. 2001)
MAINE	<i>Fleming v. Comm’r, Dep’t of Corr.</i> , 2002 ME 74, 795 A.2d 692 (2002)
MASSACHUSETTS	<i>Michaud v. Sheriff of Essex Cty.</i> , 390 Mass. 523, 458 N.E.2d 702 (1983)
NEW HAMPSHIRE	<i>In re Caulk</i> , 125 N.H. 226, 480 A.2d 93 (1984)
RHODE ISLAND	Not applicable
VERMONT	<i>Borden v. Hofmann</i> , 2009 VT 30, 185 Vt. 486, 974 A.2d 1249 (2009) <i>Fellows v. Pallito</i> , No. 2016-088, 2016 WL 5344042 (Vt. Sept. 16, 2016)

FEDERAL BUREAU OF PRISONS’ FOOD SERVICE MANUAL

Federal prisons in the United States are required to follow the guidelines in the Food Service Manual, written and implemented by the Federal Bureau of Prisons (BOP), under the supervision of the Department of Justice (DOJ).¹⁰⁷ While state and local prisons are not required to follow the FSM, many create their own directives and rules based on it.¹⁰⁸ The FSM’s stated purpose and scope are “[t]o standardize management of Food Service operations within the Bureau of Prisons,” and the outlined expected outcomes include:¹⁰⁹

- Inmates will be provided with nutritionally adequate meals, prepared and served in a manner that meets established government health and safety codes.
- Essential resources will be planned, developed, and managed to meet the operational needs of the Food Service Program.
- Inmates assigned to the Food Service Department will be given opportunities to acquire skills and abilities that may assist in obtaining employment after release.
- Inmates will be provided with nutritional information that enables them to determine and establish healthy eating habits that may enhance their quality of life.

In 63 pages, the FSM outlines requirements for food service administration, menu planning, use of technology for food service management, religious and medical diets, food safety, and “institution garden operations.”¹¹⁰ Many of these requirements are similar to those found in state correctional directives. For example, the FSM includes guidance on nutritional analysis of menus by a registered dietitian,¹¹¹ a requirement incorporated in all New England states except Vermont.¹¹² Importantly, this guidance addresses nutritional analyses of menus and not the meals actually served, which can create a significant gap between policy and implementation.

Despite its role in setting prison standards in the US, the BOP relied on guidelines published by the American Correctional Association, a private entity and accreditor of correctional facilities, when creating the FSM.¹¹³ Like many state correctional directives, the FSM includes food service standards adapted from ACA.¹¹⁴ Additionally, the Bureau of Prisons designed a national menu,¹¹⁵ which is intended to be served across the agency and is reviewed annually to address eating preferences, cost, impact to operations, and nutrition.¹¹⁶ Before implementation, the national menu undergoes a “nutritional analysis” by a registered dietician “to ensure the menus consider the Dietary Reference Intakes” published in the Dietary Guidelines for Americans.¹¹⁷ It is unclear whether states use this national menu as a model.

AMERICAN CORRECTIONAL ASSOCIATION GUIDELINES

Since the 1950s, the American Correctional Association (ACA) has published standards for prisons.¹¹⁸ In the 1960s and 70s, in response to judicial scrutiny of prison conditions, the ACA broadened its work to include national correctional standards and to begin evaluating correctional facilities for compliance through the Commission on Accreditation for Corrections.¹¹⁹ ACA standards are broad in scope, and cover areas including correctional administration, operation of training academies, food service, and vocational education.¹²⁰

Notably, in the fourth edition of their guidelines, the ACA stated that following its guidelines and undergoing their accreditation process can provide “a defense against lawsuits through documentation and the demonstration of a ‘good faith’ effort to improve conditions of confinement.”¹²¹ In fact, during the 1970s, when individuals who were incarcerated were experiencing a wave of victories in the courts, the ACA began creating standards that were “directly derived from court judgements.”¹²² In 1978, over 20 percent of the 465 standards were derived from court decisions.¹²³ In that same year, the first correctional facility was accredited by ACA.¹²⁴ As discussed earlier, however, ACA guidelines are not legally binding—and thus bringing suit to require enforcement is not available to individuals who are incarcerated. Nonetheless, they may be used by courts to provide context as to what is understood to be “industry standard” for correctional facility operations.¹²⁵

The Law Enforcement Assistance Administration (LEAA) was a federal agency in operation from 1968 to 1982 and played a major role in promoting ACA guidelines as the standard for state correctional directives.¹²⁶ The LEAA was created by the Omnibus Crime Control and Safe Streets Act of 1968 and had initial goals of reducing crime by partnering with state and local governments and providing block grant funding to states with identified “crime and justice problems.”¹²⁷ In 1978, the LEAA gave one million dollars to 12 states to determine what compliance with ACA standards would cost.¹²⁸ The LEAA also gave substantial sums of money to the ACA—over two million dollars by 1982—sustaining ACA’s role as the primary arbiter of state correctional standards.¹²⁹

State correctional facilities are not required to conform to ACA standards, but many states choose to apply certain ACA standards or voluntarily seek ACA accreditation. For example, some states incorporate ACA performance standards into correctional directives.¹³⁰ Other states may use language that is the same as or similar to the ACA standards when drafting correctional directives or facility handbooks.

As illustrated in Table 1-C, only 14 of the 52 state-run adult correctional facilities in New England are accredited by the ACA, with the majority in Massachusetts.¹³¹

STATE	STATE FACILITIES ACCREDITED	TOTAL STATE FACILITIES	PERCENT OF STATE FACILITIES ACCREDITED
CONNECTICUT	0	13	0
MAINE	3	7	42.9
MASSACHUSETTS	10	16	62.5
NEW HAMPSHIRE	0	4	0
RHODE ISLAND	0	7	0
VERMONT	0	6	0

Table 1-C: ACA-Accredited State Facilities in New England

This report compares relevant ACA guidelines with state laws, directives, and policy handbooks. As discussed in [Part VI: Policy Recommendations](#), the ACA guidelines present opportunities for reform. In [Part VI](#), this report discusses areas for improvement in the key sources of and influences on department of corrections’ authority, including state enabling legislation, correctional directives, and the ACA guidelines.

Part II

Food Quality, Safety, and Nutrition

PHOTO COURTESY OF MARK MCBRINE

Local carrots used for salads, roasting, and other meals at the Mountain View Correctional Facility in Maine

A major concern regarding food service in prisons and correctional facilities is whether the food served is safe, nutritionally adequate, and accommodates medical or religious concerns. The American Correctional Association (ACA) guidelines provide standards for food quality and safety. Each state also maintains a department of corrections directive which guides correctional facility administrators in administering food service within correctional facilities. This section first analyzes the ACA guidelines related to food quality and safety standards and then compares them with department of corrections food service directives for each New England state. A list of the state corrections directives or policies regarding food quality and safety for each state is included at the end of this section.

A. ACA Food Quality and Safety Guidelines

The ACA Food Service Performance Standard explicitly calls for meals to be “nutritionally balanced, well-planned, and prepared and served in a manner that meets established governmental health and safety codes.”¹³² The guidelines then include specific standards for the number of meals per day, amount and type of meals served, food safe temperatures of meals served, nutritional quality and content, food service operation inspection requirements, and medical and religious dietary considerations.¹³³ Specifically, ACA guidelines require

- three meals to be served daily to incarcerated individuals; two of which must be hot meals;¹³⁴
- consideration of food flavor, texture, temperature, appearance, and palatability when menu planning and maintenance of temperature-controlled facilities for food storage;¹³⁵
- review of correctional facility menus (but not meals) by a qualified nutritionist or dietician at least annually, and that food service supervisory staff conduct a quarterly review for compliance with nationally recommended allowances for basic nutrition published by the National Academy of Sciences;¹³⁶
- inspection of dining and food preparation facilities and equipment on a regular basis;¹³⁷
- accommodations for religious¹³⁸ and medically necessary¹³⁹ diets; and
- preclusion of the use of food as a disciplinary measure.¹⁴⁰

As defined by the National Institutes of Health, a recommended dietary allowance is the “average daily level of intake sufficient to meet the nutrient requirements of nearly all (97–98%) healthy individuals; often used to plan nutritionally adequate diets for individuals.” Because these are nutrient adequacy goals, they are necessary to prevent deficiencies, but do not ensure diet quality. Consequently, nutrient adequacy goals are insufficient to ensure that the meals provided are generally consistent with the Dietary Guidelines for Americans (DGA), which provide food-based recommendations that consider health promotion and chronic disease prevention in addition to nutrient adequacy.

As discussed above, state correctional facilities are not explicitly required to adhere to ACA guidelines; however, facilities may choose to be accredited by the ACA. Federal correctional facilities and accredited facilities are generally required to implement policies and procedures consistent with the ACA guidelines. Failure to comply with these ACA guidelines could result in the loss of a facility’s accreditation but does not generally lead to legal recourse for noncompliance.

Reaccreditation visits are scheduled to occur every three years and include a compliance audit and accreditation hearing.

However, because these are scheduled so far in advance, there is concern that out-of-compliance facilities have ample time to become audit ready before the visits and may revert to noncompliance afterward.

https://aca.org/ACA_Member/ACA/ACA_Member/Standards_and_Accreditation/Standards_FAQ.aspx?hkey=b1d-baa4b-91ef-4922-8e7d-281f012963ce

B. State Department of Corrections Food Quality and Safety Directives

All New England states, except Vermont, maintain administrative directives consistent with the ACA food quality and safety guidelines.¹⁴¹ For example, each New England state has developed department of corrections directives addressing the nutritional content and quality standards for correctional facility meals, as well as requirements for accommodations for medical and religious diets.¹⁴² Vermont does not maintain a publicly available directive that affirmatively requires a quantity of meals, the temperature of those meals, temperature requirements for food safety, or the inspection of food service operations.¹⁴³ However, Vermont maintains an internal guidance document for food service operations that requires daily safety and sanitation inspections by the Food Service Supervisor in addition to monthly unannounced inspections performed by a contracted consultant.¹⁴⁴ Vermont and New Hampshire also do not explicitly preclude the use of food as a disciplinary measure in their directives while Connecticut, Maine, Rhode Island, and Massachusetts do.¹⁴⁵

NUMBER OF MEALS SERVED

All New England states, except for Vermont, have a directive explicitly requiring service of three meals daily to all individuals who are incarcerated.¹⁴⁶ Some states additionally require that at least one or two of those meals be served as hot meals.¹⁴⁷ While Vermont's directive does not explicitly require that three meals be served per day, it does require that the meals be nutritious, well-presented, and prepared in a sanitary manner.¹⁴⁸ Additionally, the directive does not prevent individual facilities from requiring something more protective. For example, the Northeast Regional Correctional Facility's *Inmate Handbook* requires that individuals incarcerated at the facility be afforded three nutritionally balanced meals per day as "basic inmate rights."¹⁴⁹

NUTRITIONAL CONTENT AND MEAL QUALITY

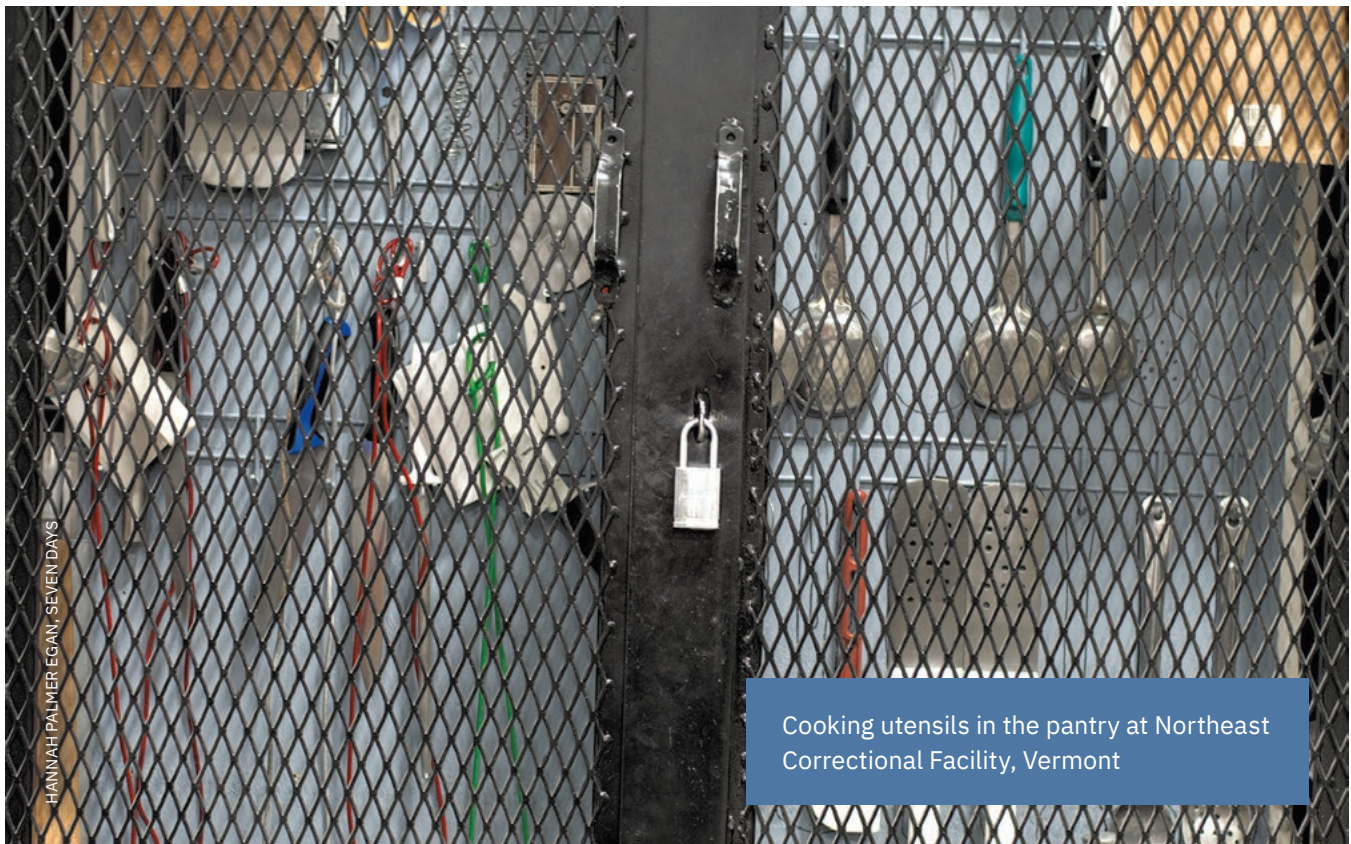
All states maintain a directive from the department of corrections which requires consideration of nutrition content and quality.¹⁵⁰ Additionally, by executive order, Massachusetts requires all state agencies to ensure they "purchase[] and provide[] food that meets defined nutrition standards" created by the state's Department of Public Health.¹⁵¹ The Massachusetts directive

focuses on “nutritionally adequate meals that are of appropriate quantity and quality” with menus based on the season.¹⁵² The Connecticut directive emphasizes the importance of variety, flavor, texture, temperature, appearance, and palatability.¹⁵³ Maine’s directive requires spoilage-free food for consumption.¹⁵⁴

All states, except Vermont, delegate menu planning review authority to a registered dietitian or nutritionist who is responsible for ensuring menus meet specific state standards.¹⁵⁵ While registered dietitians ensure menus meet state standards, they are not ensuring the actual meals served meet these standards. The standards vary by state but are generally based on Recommended Dietary Allowances provided by the Food and Nutrition Board of the National Academy of Sciences, Engineering, and Medicine.¹⁵⁶ In Massachusetts, menus are reviewed by a registered dietitian “on at least a bi-annual basis to ensure that food allowances required for basic nutrition are met” and at least quarterly to verify menus reflect established basic daily servings.¹⁵⁷ Vermont makes no mention of menu planning in its publicly available food service directive.¹⁵⁸ However, Vermont maintains an internal guidance document for food service operations that requires a contracted consultant to base all menus on the nutritional requirements included in the most current version of the Dietary Guidelines for Americans.¹⁵⁹ Therefore, while each state may have slight variation in the specific language used, all align with ACA guidelines requiring food service operations to consider food flavor, texture, temperature, appearance, and palatability.¹⁶⁰

ACCOMMODATION OF MEDICAL AND RELIGIOUS DIETS

All New England states have a correctional directive which requires accommodation of medical and religious diets.¹⁶¹ Procedurally, most states require submission of a request to the warden, medical personnel, or facility chaplain to accommodate religious or medical (sometimes referred to as therapeutic) meal requests.¹⁶² For example, Connecticut’s directive requires that regular meals “reasonably accommodate recognized religious dietary restrictions”¹⁶³ and therapeutic diets be prescribed by the facility physician.¹⁶⁴ Most states delegate authority to the department’s dietitian to determine a nutritionally adequate substitute which is similar to the meals provided to the general population and require kitchen employees be trained in the handling and preparation of¹⁶⁵ The Vermont directive permits individuals to refuse prescribed therapeutic diets.¹⁶⁶ Vermont’s internal guidance for foodservice operations outlines a detailed process for medical and dental diets, as well as religious and alternative diets.¹⁶⁷



HANNAH PALMER EGAN, SEVEN DAYS

Cooking utensils in the pantry at Northeast Correctional Facility, Vermont

FOOD SERVICE VENUE AND EQUIPMENT INSPECTION

All New England states require routine inspection of food service equipment and venues in correctional facilities.¹⁶⁸ Connecticut requires that district foodservice managers perform an annual food service audit, as well as three quarterly “Focused Food Service Inspections” at each facility under their authority.¹⁶⁹ Massachusetts and New Hampshire require an inspection at least once annually for all correctional food service facilities by the respective state department of public health.¹⁷⁰ Maine’s Food Service Inspections Procedure requires that food service managers of correctional facilities maintain daily monitoring of food service worker hygiene and equipment temperature, document weekly inspections of food service areas, perform monthly inspections for rodents or other pests, and schedule an annual food service operation inspection by the state health department.¹⁷¹ Rhode Island requires that the associate director of Food Services conduct informal weekly inspections and formal monthly inspections, while Correctional Officer Stewards conduct daily inspections of food service areas, including documenting equipment temperatures.¹⁷² Vermont maintains an internal guidance document that requires daily safety and sanitation inspections by the Food Service Manager in addition to monthly unannounced inspections conducted by a contracted consultant that require inspection of all “sanitizing solutions and food service areas,” examination of records and any recent inspection reports from other agencies, and a written report detailing “sanitary conditions and safety practices observed, and recommendations for improvement.”¹⁷³

FOOD QUALITY AND SAFETY POLICIES	ACA ¹⁷⁴	CT	ME	MA	NH	RI	VT
NUMBER OF MEALS PER DAY	YES	YES	YES	YES	YES	YES	NO
NUMBER OF MEALS SERVED; HOT/COLD	YES	YES	YES	YES	YES	YES	NO
TEMPERATURE OF MEALS FOR FOOD SAFETY	YES	YES	YES	YES	YES	YES	NO
NUTRITIONAL CONTENT OF MEALS	YES	YES	YES	YES	YES	YES	YES
QUALITY OF MEALS	YES	YES	YES	YES	YES	YES	YES
INSPECTIONS OF FOOD OPERATIONS ¹⁷⁵	YES	YES	YES	YES	YES	YES	NO
MEDICAL (THERAPEUTIC) DIETS	YES	YES	YES	YES	YES	YES	YES
RELIGIOUS DIETS	YES	YES	YES	YES	YES	YES	YES
PRECLUDES USE OF FOOD AS A DISCIPLINARY MEASURE	YES	YES	YES	YES	NO	YES	NO
DIRECTIVE/POLICY NUMBER(S)	N/A	<u>10.18</u>	<u>16.1, 18.14, 24.3, STANDARD L.4</u>	<u>760</u>	<u>704</u>	<u>16.05-4</u>	<u>354</u>

Table 2-A: Correctional Facility Food Quality Analysis



Part III Food Procurement

A resident-cook trims beets sourced from Harvest Hill Farm in the kitchen at Northeast Correctional Facility in St. Johnsbury, Vermont.

Another major issue regarding food service in correctional facilities is how procurement decisions are made and what types of food are purchased to prepare correctional meals. State laws and policies that govern purchasing are primarily focused on rules state agencies must follow when entering into a purchase agreement or contract.

This section reviews general state purchasing and contract laws, state-level local food purchasing laws, and the purchasing policies of correctional departments in each of the six New England states. Additionally, this section considers the food cost expenditures for meals prepared in state prisons. Unlike the issues addressed in the preceding section, there are no corresponding ACA guidelines related to food procurement.

FOOD PURCHASING AND CONTRACTING POLICIES

Under state law, each New England state maintains guidelines that state agencies like the department of corrections (DOC) must follow when purchasing goods or services.¹⁷⁶ Common among all states is a competitive bidding process for food purchasing and contracting, which requires institutional purchases to be made with the greatest economic value for the required grade of goods or services needed by the agency.¹⁷⁷ By executive order, Massachusetts requires that state agencies ensure they “purchase[] and provide[] food that meets defined nutrition standards” created by the state’s department of public health.¹⁷⁸ Additionally, the Massachusetts DOC requires that the purchases should be considered “in the best interest or best value,” a requirement that could allow potential budgetary flexibility for local products.¹⁷⁹ The Vermont DOC allows contracts for predictable expenditures but requires those contracts be “efficient and cost effective; promote fair and open competition; guard against favoritism, fraud and corruption; and protect the interests of the State and its taxpayers.”¹⁸⁰ New Hampshire goes further to require preferential treatment during the procurement process for a vendor who has a principal place of businesses in the state, if the bid price is equal.¹⁸¹

STATE FOOD PURCHASING AND/OR CONTRACTING POLICIES	CT	ME	MA	NH	RI	VT
COMPETITIVE BIDDING PROCUREMENT/PURCHASING ¹⁸²	YES	YES	YES	YES	YES	YES
GENERAL INSTITUTIONAL CONTRACT POLICY ¹⁸³ (SEPARATE FROM PURCHASING POLICY)	YES	YES	YES	NO	YES	NO
DOC MANUAL FOOD-SPECIFIC PURCHASING POLICY ¹⁸⁴	YES	YES	YES	YES	NO	NO
OTHER RELEVANT FARM-TO-FACILITY POLICY ¹⁸⁵	YES	YES	YES	YES	YES	YES

Table 3-A: New England Food Procurement Analysis

LOCAL FOOD PROCUREMENT INCENTIVES

State policy initiatives to encourage institutional purchasing of local foods can also impact food procurement in correctional facilities. The Center for Agriculture and Food Systems at Vermont Law and Graduate School and Farm to Institution New England compiled a report in 2019 of New England state policies that incentivize local procurement.¹⁸⁶ All of the New England states have policies that establish some type of local purchasing preference.¹⁸⁷ These laws do not explicitly include correctional facilities but generally apply to all state facilities, and thus would apply to state-run prisons and correctional facilities.¹⁸⁸ Currently, however, application of these policies to correctional facilities remains limited and individuals who are incarcerated continue to report minimal access to fresh fruits and vegetables.¹⁸⁹

CORRECTIONAL FACILITY FOOD COST

Standardized state and facility data reflecting itemized food and foodservice labor expenditures is largely unavailable due to a lack of consistent collection and reporting. Therefore, it is difficult to estimate the cost of meals per individual per day or compare that spending data over time. For example, the publicly available state correctional budgets for Massachusetts, New Hampshire, and Rhode Island for fiscal year 2020 do not include separate line items for food or food services.¹⁹⁰

For states that do include some food itemization in their correctional budgets, the items are either undefined or not standardized across states. For example, Connecticut's 2018 correctional budget includes an estimated budget for fiscal year 2019 and budget requests for fiscal years 2020 and 2021—each with a line item for “Food and Beverages.”¹⁹¹ However, it is unclear what is included in that category (for example, food, foodservice labor, foodservice materials such as utensils, cups, and plates). The more recent 2022–2023 Connecticut governor's budget includes a general corrections budget without any line item for food and beverages.¹⁹² In Maine, the 2020–2021 correctional budget includes a line item for “Corrections Food,” a program aimed at centralizing the purchase of food to better take advantage of “opportunity” buying, meet dietary requirements, and create healthier menus throughout the state's prison system.¹⁹³ In Vermont, the 2023 corrections budget accounts for inflation impacts by including an item for “Facility food” under “Facility Inflationary Pressures at [Consumer Price Index].”¹⁹⁴ However, no other food-related line items exist in the budget.

The Bureau of Justice Statistics 2001 state prison expenditure report—the most recent report available—indicates that correctional food costs were at or less than \$5.00 per incarcerated individual per day over 20 years ago.¹⁹⁵ Lack of accurate and timely data has created a substantial information gap, limiting effective policy opportunities and budget allocation processes that could improve the quality of meals served in prison and the wages provided for foodservice labor.

Part IV

Correctional Employment and Compensation



PHOTO COURTESY OF MARK MCBRINE

Incarcerated individuals participate in the bakery program at Mountain View Correctional Facility in Charleston, Maine.

EMPLOYMENT AND COMPENSATION POLICIES

The ACA guidelines include broad standards for regulating the employment and compensation of individuals who are incarcerated.¹⁹⁶ Generally, individuals can work in a correctional industry or in non-industry correctional work.¹⁹⁷ A **correctional industry** provides a good or service for sale to a state or the public, while **non-industry correctional work** provides service to the correctional facility or community projects.¹⁹⁸ These issues are pertinent to food in correctional facilities as many individuals who are incarcerated use their wages to purchase food from the commissary as a means of supplementing their diet.

Specifically, ACA guidelines require that when individuals perform work for private industries on facility grounds they should be compensated at the “prevailing wage rate.”¹⁹⁹ However, according to an ACA standard revised in January 2020, when individuals are employed in the community by public or private organizations in positions normally occupied by private citizens, they need not be compensated at the prevailing wage rate unless the product they are producing is sold in interstate commerce.²⁰⁰ Additionally, ACA guidelines allow correctional facilities to reimburse themselves for room and board out of the individual’s compensation.²⁰¹

All New England states maintain policies or directives regulating the employment of individuals who are incarcerated.²⁰² Some states require that individuals must work,²⁰³ while others offer voluntary work opportunities.²⁰⁴ In New England, each state DOC compensates individuals who are incarcerated differently, though most have general pay scales with wages based on the job classification and for the number of hours worked. Most New England states pay a flat daily or weekly rate for non-industrial workers, with Vermont paying all work by the hour (see Table 4-A).²⁰⁵ All state directives allow for administrators to classify job types by two or three job classifications or grades. Often, this means that **non-industrial correctional work** is paid at a lower grade than **correctional industry** jobs. However, most states also provide pay scales which advance the rate of pay based upon the number of hours of experience in a position or for completing additional training.²⁰⁶ Therefore, an individual who works for a significant number of hours may be able to attain a comparable wage to a correctional industry worker.

All states also authorize their DOC administrators to deduct room and board, restitution, and other related expenses from wages.²⁰⁷ Some states also require that individuals submit some of their earnings to non-interest-earning savings accounts, to be reclaimed upon release from incarceration.²⁰⁸ Deductions can total 80 percent or more of an individual’s wage,²⁰⁹ leaving compensation for those who are incarcerated at well below minimum wage. This loss of wages reduces the amount of money incarcerated individuals have available to supplement their diets from the commissary.²¹⁰

STATE	NON-INDUSTRIAL WAGE	INDUSTRIAL WAGE
CONNECTICUT	\$0.75–\$1.75/day \$0.30–\$1.00/hour for commissary assignments	\$0.30–\$1.50/hour
MAINE	Determined by correctional facility	\$1,000–6,000/year – 50% of workers \$1,000–\$2,500/year – 25% of workers \$2,500–\$4,000/year – 25% of workers 3 positions may earn up to \$6,000/year
MASSACHUSETTS	\$5–\$35/week Pre-release: prevailing rate	Established by commissioner
NEW HAMPSHIRE	\$1.00–\$4.00/day	\$2.00–\$4.00/day
RHODE ISLAND	\$1.00–\$3.00/day Exception by warden to establish \$0.50/day jobs	N/A
VERMONT	\$0.25–0.40/hour	\$0.25-1.25/hour

Table 4-A: Average wages for non-industrial and industrial correctional work ²¹¹

Correctional Industries: Includes work (often authorized by state law) that involves the manufacture of articles or provision of services for sale to a state or to the public.

Non-Industry or Non-industrial Correctional Work: Includes correctional facility maintenance, operations (including food service), public works, or community projects.

Part V

Dining Environment



JOHN CLARKE RUSS, BANGOR DAILY NEWS

The cafeteria at Maine State Prison in Warren, Maine

The final issue this report addresses is how individuals are permitted to enjoy the meals they are served in correctional facilities. The environment and parameters in which one eats, including the amount of time allotted to eat a meal, cleanliness, meal supervision, and dining facility size, can affect one's physical, emotional, and mental well-being.²¹²

The American Correctional Association (ACA) guidelines provide standards for the time allotted for meals, group dining requirements, meal supervision, cleanliness, and the size of food service facilities. Each state maintains its own policies regarding correctional food consumption environments in their respective state legislation and correctional directives. Additionally, many facilities implement their own rules via "inmate handbooks" regarding consumption environments which can exceed state legislation and directives.

This section first analyzes the ACA guidelines related to dining environment, and then compares them with the department of corrections (DOC) and individual facility policies for each New England state. A listing of the relevant state corrections policies for each state is provided at the end of the section.

A. ACA Dining Environment Guidelines

TIME ALLOTTED FOR MEALS

The ACA guidelines include broad standards regarding the time individuals should be given to enjoy meals served in correctional facilities. ACA guidelines require correctional facilities to provide at least 20 minutes of dining time for each meal.²¹³ However, this requirement is sometimes implemented so that it includes the time an individual waits in line for food. ACA guidelines also require that no more than 14 hours should pass between the evening meal and breakfast.²¹⁴

GROUP DINING, SIZE OF DINING FACILITY, AND MEAL SUPERVISION

The ACA guidelines require group dining facilities be provided unless security or safety considerations require otherwise.²¹⁵ ACA guidelines further require that meals be served “under conditions that minimize regimentation, although there should be direct supervision by staff members.”²¹⁶ Explanatory comments to the ACA guidelines indicate that individuals should be served meals in an open dining period to eliminate waiting lines and forced seating and allowed to converse during dining hours.²¹⁷ While there is no formal dining hall size requirement, ACA guidelines require that food service facilities be large enough to allow for meals to be served.²¹⁸

FOOD SERVICE VENUE SANITATION AND CLEANLINESS

Sanitation standards require (1) monthly and weekly sanitation inspections of all facility areas by qualified individuals²¹⁹ and (2) that toilet and washbasin facilities be available in the vicinity of the food preparation area.²²⁰ However, the ACA guidelines do not identify a specific standard of cleanliness or sanitation for dining halls.

B. State Department of Corrections Dining Environment Policies

TIME ALLOTTED FOR MEALS

Only two states have explicit requirements for the time incarcerated individuals have to enjoy meals served in the correctional facility; some other states have facilities which have implemented the ACA mealtime guidelines. Consistent with ACA guidelines, Maine²²¹ and

Massachusetts²²² require at least 20 minutes for each meal and, in the case of Massachusetts, that there must be no more than 14 hours between the evening meal and breakfast. Connecticut's correctional directive adopts the 14-hour evening/breakfast meal requirement and incorporates several related ACA standards but does not explicitly adopt the 20-minute meal service standard.²²³ However, the Hartford Correctional Center's *Inmate Handbook* does include a 20-minute mealtime allotment.²²⁴ New Hampshire Department of Corrections' administrative rules do not explicitly require either of the ACA mealtime guidelines; however, like Connecticut, their *Manual for the Guidance of Inmates* permits 20 minutes of mealtime.²²⁵ Rhode Island similarly does not incorporate the ACA standards, but a 2011 *Inmate Rule Book* provided an inmate schedule consisting of 15 minutes for breakfast service, 30 minutes for supper, and an undisclosed period for lunch.²²⁶ Vermont's enabling legislation and directives do not adopt either of the ACA guidelines, and an *Inmate Handbook* only states the approximate start time of meals, not the amount of time provided for each meal.²²⁷

GROUP DINING, SIZE OF DINING FACILITY, AND MEAL SUPERVISION

Most states have specific directives or policies requiring or permitting group dining facilities. Maine, Massachusetts, Rhode Island, and Vermont all have correctional directives that require space for group dining and require service in a group setting.²²⁸ New Hampshire's correctional administrative code requires food be served in accordance with the state Department of Health and Human Service's requirements: dining facilities must have eating areas that can provide seating for at least 50 percent of the licensed capacity.²²⁹ Connecticut's correctional directive adopts several related ACA standards but does not explicitly adopt the ACA group dining requirement.²³⁰ The Hartford Correctional Center's *Inmate Handbook* does, however, require that individuals eat with their housing unit.²³¹

Only Maine's directive specifically mentions the required size of the dining facility, adopting the ACA guideline to have "adequate space" for serving meals.²³² Connecticut's correctional directive does not incorporate the ACA guideline for dining facility size.²³³ Most states, however, require as policy that food service conform with established security, safety, and sanitation regulations, which requires adherence to state health department requirements for foodservice establishments. Half of the New England states specifically require supervision of food preparation and dining areas.²³⁴ Connecticut's correctional directive, for example, requires a "high level of security" in food preparation, serving, and dining areas.²³⁵ Massachusetts correctional foodservice policies adopt the ACA guidance language requiring direct supervision by staff members during meal service.²³⁶ New Hampshire Department of Corrections' administrative code requires supervision of food service by a food services supervisor but does not require supervision by security personnel during meal service.²³⁷ Rhode Island's directive mentions supervision of menu planning and food production but does not explicitly mention supervision of meal service.²³⁸ Vermont's directive does not include any language about dining supervision.²³⁹

FOOD SERVICE VENUE SANITATION AND CLEANLINESS

All state directives or policies include some form of cleanliness or sanitation standards for the correctional facility food service area. The Massachusetts correctional policy, for example, requires the correctional facility food service directors to develop a policy that meets minimum standards for food establishments established in the State Sanitary Code.²⁴⁰ The Maine correctional directive specifically adopts the ACA performance standards and includes additional specific requirements for daily cleaning and sanitation.²⁴¹ New Hampshire incorporates a state health department guideline which requires a sanitary environment in food service areas.²⁴² The Rhode Island correctional directive incorporates a number of state Food Code food safety and sanitation guidelines, and includes additional sanitation rules for food workers, food preparation, and food storage.²⁴³ Vermont's food service operations correctional directive requires that meals be served in a sanitary manner, and that correctional facilities maintain sufficient documentation to establish ongoing compliance.²⁴⁴

DINING ENVIRONMENT POLICIES	ACA ²⁴⁵	CT	ME	MA	NH	RI	VT
TIME ALLOTTED FOR MEALS	YES	NO	YES	YES	NO	NO	NO
GROUP DINING	YES	NO	YES	YES	NO	YES	YES
SIZE OF DINING HALL	YES	NO	YES	NO	NO	NO	NO
SUPERVISION OF INCARCERATED PERSONS DURING MEALTIMES	YES	YES	YES	YES	NO	NO	NO
CLEANLINESS OF DINING HALL	NO	YES	YES	YES	YES	YES	YES
DIRECTIVE/POLICY NUMBER(S)	N/A	<u>10.18</u>	<u>16.1</u>	<u>760</u>	<u>704.01</u>	<u>16.05-5,</u> <u>16.12-4</u>	<u>354</u>

Table 5-B: Correctional Facility Consumption Environment Analysis

Part VI

Policy Recommendations

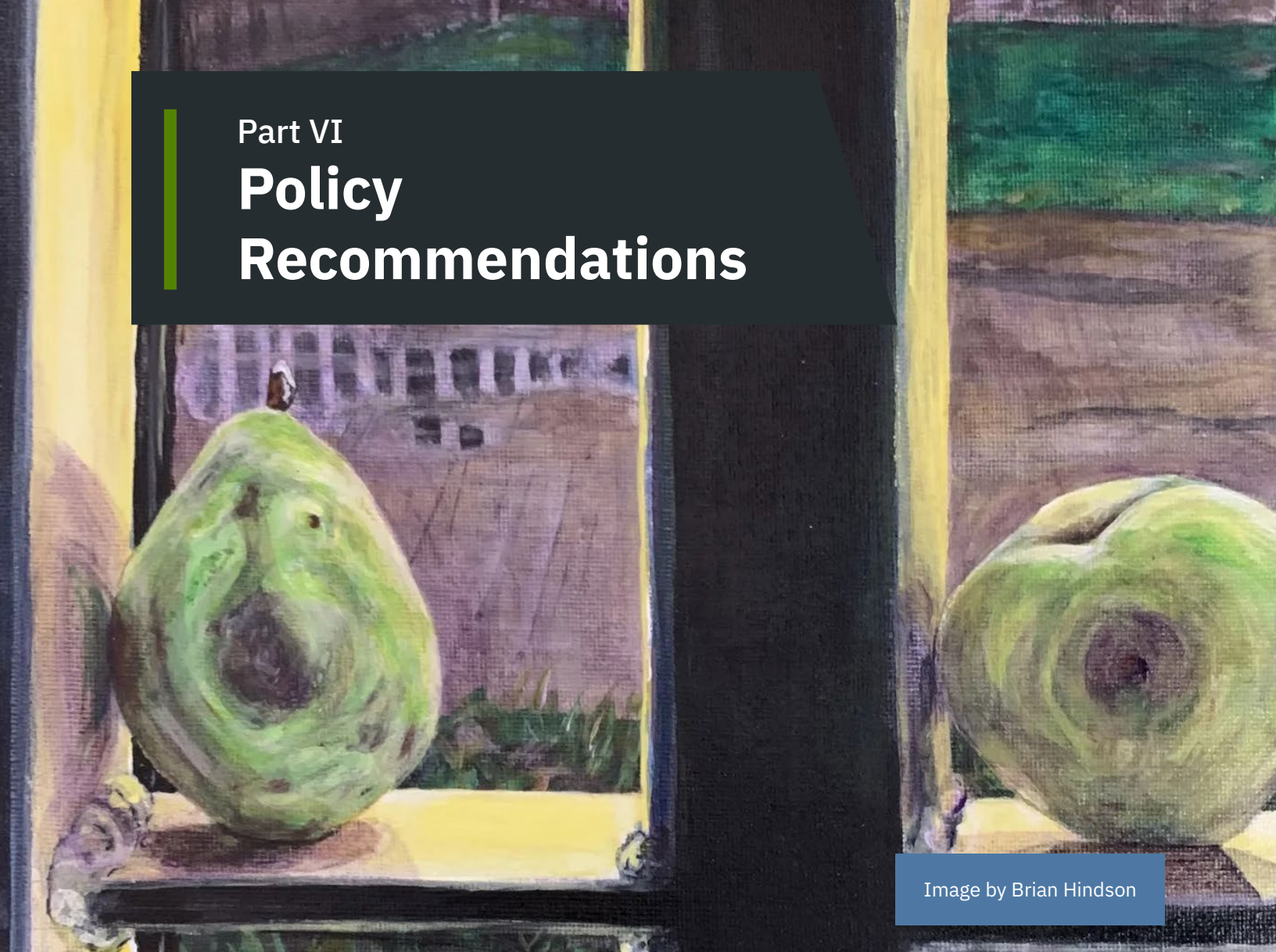


Image by Brian Hindson

The correctional food system is governed by a wide array of federal and state laws, regulations, and correctional directives. Overarching, the existence of laws, regulations, and policies is an important first step. However, implementation and enforcement language in laws, regulations, or binding policies does not translate to full implementation and enforcement in practice. As is the case in this context, agencies may be unable to implement certain provisions due to budget shortfalls or pressure from other state government actors. Consequently, for any recommended changes to be effective, there need to be mechanisms to hold individuals and agencies accountable for noncompliance.

ACA guidelines provide a broadly defined baseline for guiding correctional department administration but are insufficient to address the problems within the correctional food system, as discussed in Part I of this report. To begin to address these issues, state action is required at the legislative and administrative levels. This section provides policy recommendations for changes to (1) state correctional facility reporting and disclosure requirements, (2) food quality and safety guidelines, (3) food procurement, (4) correctional employment and compensation, and (5) dining environments.

State Correctional Facility Reporting and Disclosure Requirements

- **REQUIRE DISCLOSURE OF CORRECTIONAL FACILITY POLICY HANDBOOKS.** No New England state maintains a law or policy requiring public disclosure of correctional facility institution policy handbooks that include policies related to food service and labor. Correctional institution manuals are the primary documents communicating facility rules to the individuals incarcerated there. These manuals also provide insight into whether, and in what form, correctional facilities communicate correctional directives to the incarcerated individuals in their care. Publicly disclosing these handbooks can also provide transparency to the public about how individual correctional facilities interpret authority granted to them under state law and correctional directives. States should consider enacting a law that requires the public disclosure of correctional facility policy handbooks, specify the means for this disclosure, and require that such methods of disclosure are updated on an annual basis (such as updating the correctional facility website). This type of requirement could occur at the administrative level as well, with DOCs creating directives that mandate individual correctional facilities to publicly disclose their policy handbooks.
- **REQUIRE DISCLOSURE OF CORRECTIONAL DEPARTMENT DIRECTIVES.** Like the disclosure of correctional facility policy handbooks, disclosure of correctional directives can provide transparency to the public on the scope of these directives and allow public scrutiny and input regarding what corrections may be needed. States should consider enacting a law that requires the public disclosure of correctional department directives and specifies the means for this disclosure. The law could also require the reconsideration of directives by the department of corrections every few years, with the opportunity for public input at a public hearing. Like the public comment correctional rulemaking process under a state's administrative procedure act described in Part I, this would provide public accountability of state department of corrections decision-making.
- **REQUIRE REPORTING OF SPECIFIC FOOD COST AND LABOR EXPENDITURES.** Many states report total per capita expenditures, but many lack detailed data to determine food cost and labor expenditures for incarcerated individuals. Without this data, DOCs are unable to adequately compare food service costs with other operational expenditures. By improving transparency around reporting food service costs, states may be able to better consider how to reallocate funding across competing budget categories and prioritize purchasing fresh ingredients for nutritious meals.

Food Quality and Safety Guidelines

- **DEFINE NUTRITIONAL REQUIREMENTS IN CORRECTIONAL DIRECTIVES AND POLICIES.** Current nutritional guidelines are broadly defined in New England state correctional directives and policies. Consequently, much of the decision-making process regarding menu planning is done at the individual institution level without a true accountability mechanism. Defining more specific nutritional requirements in correctional directives can bind nutri-

tionists, dietitians, and DOCs to meeting those standards. DOCs may look to USDA guidelines for the National School Lunch and School Breakfast Programs, which are based on the Dietary Guidelines for Americans rather than recommended dietary allowances and require offering fruits and vegetables, whole grains, dairy, and fluid milk.²⁴⁶ Correctional directives can similarly define categorical requirements of food groups, without having to be overly specific. This would ensure nutritionists and dietitians improve the variety and quality of facility meals, while also ensuring the directive is broad enough to afford menu flexibility.

- **REQUIRE ANNUAL INSPECTIONS OF CORRECTIONAL FOOD FACILITIES.** Some New England states require annual inspections of food service establishments, including correctional food facilities, by state health departments. However, other states rely on correctional systems to inspect their own facilities. State legislation or correctional directives should require annual, routine, unannounced inspections of correctional food facilities by independent health department staff and dietitians or nutritionists who can evaluate food safety in addition to the nutritional value of actual meals served, rather than planned menus. This type of legislation or directive can promote food service sanitation equal in standard to other food service facilities serving the public, as well as ensure nutritional value.
- **PRECLUDE THE USE OF FOOD AS A DISCIPLINARY MEASURE.** While ACA guidelines encourage states to develop correctional directives that explicitly preclude the use of food as a disciplinary measure, two New England states do not. No individual should have restricted access to food, be fed a food loaf diet, or have food quality reduced as a punitive measure. State correctional directives should explicitly preclude the use of food as a disciplinary measure.

Food Procurement

- **INCREASE THE PROPORTION OF CORRECTIONAL FOOD BUDGETS SPENT ON FOOD.** By increasing the amount spent on each meal, state correctional facilities could provide better access to fresh produce and nutritious foods to incarcerated individuals and create a proactive measure to reduce healthcare needs and costs during and after incarceration. Increasing state correctional food budgets will ensure that incarcerated individuals are being fed nutritious meals which can lead to better health outcomes. Incarcerated individuals returning to society with better health outcomes can contribute more robustly to the workforce and reduce economic burden on the healthcare system due to poor nutritional intake.
- **ESTABLISH STRONGER GUIDELINES AROUND PURCHASING PREFERENCE.** State purchasing laws generally require that, through a competitive bidding process, state agencies prioritize goods from within their state. Many laws also provide that in addition to cost, one of the considerations used in selecting a bidder is the “best interests” of the state. The states do not clarify an appropriate approach to weighing these factors, and one improvement would be specifying what the priorities are, and what to do when a local purchase is not the least expensive option.

- **SUPPORT INCREASED PROCUREMENT OF LOCALLY SOURCED FOOD, PARTICULARLY FRUITS AND VEGETABLES.** The food provided from farm to corrections programs is seasonal and thus only accessible for the few months that are warm enough for growing. For the remaining months of the year, access to fresh produce is limited. To address this gap, networks between local producers and state correctional facilities are essential to promote and to provide incarcerated persons with nutritious, fresh produce options. Additionally, better utilization of a state’s local procurement incentive for institutions is critical.

Correctional Employment and Compensation

- **PAY INCARCERATED WORKERS THE PREVAILING MINIMUM WAGE.** Incarcerated individuals in New England who work make less than one dollar a day. Correctional directives in New England give institutions discretion on how to determine the percentage of deductions for room and board. In practice, these deductions often total 80 percent or more of an incarcerated individual’s income, substantially reducing the money they have to purchase food from the commissary. Correctional directives should be corrected to ensure that no individual who is incarcerated is compensated below the prevailing minimum wage. State legislation could also extend minimum wage protection without exception.

Dining Environment

- **REDUCE MAXIMUM OCCUPANCY IN CORRECTIONAL FOOD SERVICE VENUES.** The environment in which one eats can affect one’s physical, emotional, and mental well-being. State correctional directives should ensure maximum occupancies of correctional food service venues are well below half of the incarcerated population at any given time. Additionally, increasing natural light, controlling noise levels, and decreasing the use of regimentation in meal service can reduce anxiety and stress during mealtime for people who are incarcerated.²⁴⁷
- **LENGTHEN MEALTIMES.** Four New England state correctional departments do not have explicit policies regarding mealtimes for their incarcerated populations—the two remaining states set the minimum mealtime at 20 minutes. The speed at which food is consumed can affect overall health, and can be associated with increased indigestion, weight gain, diabetes, and more.²⁴⁸ Individuals who are incarcerated are at a higher risk for diet-related diseases such as diabetes and heart disease and have higher rates of chronic health conditions.²⁴⁹ State correctional directives should increase the amount of time individuals are permitted to eat and ensure this does not include the amount of time an individual waits to be served.

Federal Legal Interventions

Legal interventions at the national and federal level are also an important factor for ensuring humane and dignified conditions for incarcerated individuals, including quality and quantity of meals. These interventions include:

■ **REPEAL THE PRISON LITIGATION REFORM ACT AND OVERTURN SANDIN V. CONNER.**

As described by Chan et al. in *“Not for Human Consumption”: Prison Food’s Absent Regulatory Regime*, these two legal constraints—the PLRA and the holding for *Sandin*—have made it effectively impossible for incarcerated individuals to use litigation as a tool to ensure correctional facilities uphold their rights as outlined under the constitution and state correctional directives.²⁵⁰ Prior to *Sandin*, courts’ understanding of correctional rules and regulations was that they provided affirmative rights to individuals under the Due Process Clause of the US Constitution—rights that could be upheld through litigation.²⁵¹ After *Sandin*, however, this was no longer the case and individuals were unable to hold correctional facilities accountable for policy violations.²⁵² Then, in 1996, the PLRA was passed and effectively eliminated individuals’ ability to sue correctional facilities and departments of corrections for not enforcing prison standards.²⁵³ The PLRA drastically reduced litigation by “requiring prisoners to exhaust prisons’ administrative grievance procedures before filing litigation and to pay filing fees even if they are indigent.”²⁵⁴ Repealing PLRA and overturning *Sandin* would reinstate the ability to hold correctional facilities and DOCs accountable for violating prison regulations, including those related to quality and quantity of meals served.

■ **IMPROVE NATIONAL AND FEDERAL CORRECTIONAL FOOD SERVICE STANDARDS.**

While states are not required to adopt or adhere to national or federal correctional food service standards, many states do. As outlined in [Part I](#), the Federal Bureau of Prisons’ Food Service Manual (FSM) standards and the American Correctional Association’s (ACA) guidelines are used by states to build out their own departmental correctional directives and facility policy handbooks. Consequently, an improvement of the FSM and ACA correctional food service standards for food sanitation, meal frequency, nutritional content, and dining environment would directly improve corresponding state correctional standards. For example, federal food service standards could clarify that time allotted for meals should not include time spent in line waiting for food to be served, and develop guidelines related to procurement and meals that follow nutrition standards set in accordance with the Dietary Guidelines for Americans.

GLOSSARY

Commissary	A “store” within a correctional facility that carries food, personal hygiene products, and other items that individuals may purchase using money that they earn while incarcerated or sent by family and friends and held in trust for them.
Correctional directives	Policies and rules for correctional facility administrators to follow. Correctional directives must comply with the state’s enabling legislation and constitutional requirements and must be developed under the state’s administrative procedure act requirements for rulemaking. Some states refer to these types of directives and policies as correctional administrative rules or correctional rules.
Correctional facility	A jail, prison, or other detention facility used to house people who have been arrested, detained, held, or convicted by a criminal justice agency or court. ²⁵⁵
Correctional facility policy handbook	A document written by the superintendents or wardens of specific correctional facilities that outline the guidelines and rules for how the facility will operate including procedures, facility services such as mealtime schedules, library, and recreation, and programs such as education and legal assistance. Facility policy handbooks must be in compliance with the state’s enabling legislation and correctional directives.
Correctional industry work	A type of prison employment in which state-owned businesses employ incarcerated individuals to produce goods and provide services that are sold to government agencies. ²⁵⁶ Examples include woodworking, sign making, printing services, and furniture refinishing and upholstery services.
Non-industry correctional work	A type of prison employment in which incarcerated individuals are paid to do jobs that provide services to the correctional facility (for example, food services, custodial work, facility maintenance, or community projects). ²⁵⁷
Prison	An institution under federal or state jurisdiction whose primary use is for the confinement of individuals convicted of a serious crime or a felony, usually for more than one year in duration. ²⁵⁸
State enabling legislation	Grants authority to the commissioners of a state agency or department (or their delegates) to establish directives, regulations, or policies with which all staff, projects, and processes of that agency or department must comply.

ACRONYMS

ACA	American Correctional Association
BOP	Federal Bureau of Prisons
DOC	Department of Corrections
DOJ	Department of Justice
LEAA	Law Enforcement Assistance Administration
PLRA	Prison Litigation Reform Act

Endnotes

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- 2 *Id.* (noting how Black, Latino, and Native populations are overrepresented in prisons and jails with Black people making up 38 percent of the prison population and only 13 percent of the US population, Latino people at 21 percent of prison population and 18 percent of the US population, and Native people at 2 percent of the prison population and 0.9 percent of the US population); *QuickFacts*, U.S. CENSUS BUR., <https://www.census.gov/quickfacts/fact/table/US/PST045221> (last visited Feb. 5, 2023); Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, THE SENTENCING PROJ. (Oct. 2021), <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf> (The incarceration rate for Black people is 6 times the rate of white people; The incarceration rate for Latinx are incarcerated 1.3 times the rate of white people); Leah Wang, *The U.S. Criminal Justice System Disproportionately Hurts Native People: the Data, Visualized*, PRISON POL'Y INITIATIVE (Oct. 8, 2021), <https://www.prisonpolicy.org/blog/2021/10/08/indigenouspeoplesday/#:~:text=In%20jails%2C%20Native%20people%20had,was%20less%20than%20one%20percent> (nothing how the incarceration rate for Native people is double the rate for white people).
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- 9 *See, e.g.*, Leslie Soble et al., *Eating Behind Bars: Ending the Hidden Punishment of Food in Prison*, IMPACT JUST., <https://www.impactjustice.org/impact/food-in-prison/#report> (last visited Feb. 6, 2023); Alysia Santo & Lisa Iaboni, *What's in a Prison Meal*, THE MARSHAL PROJ. (July, 7, 2015), <https://www.themarshallproject.org/2015/07/07/what-s-in-a-prison-meal>; Baylen Linnekin, *America's Prison Food Is Still Criminally Awful*, REASON (Dec. 12, 2020), <https://reason.com/2020/12/12/americas-prison-food-is-still-criminally-awful/>; Susan Sharon, *The Homegrown Meals in This Prison Stand Out Against Most Unpalatable Jail Food*, NPR (Sept. 10, 2021), <https://www.npr.org/2021/09/10/1036039800/the-homegrown-meals-in-this-prison-stand-out-against-most-unpalatable-jail-food>; Patricia Leigh Brown, *The 'Hidden Punishment' of Prison Food*, THE NY TIMES (Mar. 2, 2021), <https://www.nytimes.com/2021/03/02/opinion/prison-food-farming-health.html>; Mansa Musa, *'I Wouldn't Even Feed This to my Dog': The Inhumane Reality of Prison Food*, THE REAL NEWS NETWORK (May 16, 2022), <https://therealnews.com/i-wouldnt-even-feed-this-to-my-dog-the-inhumane-reality-of-prison-food>; *Bringing the Movement for Food Justice Inside Prisons and Jails*, IMPACT JUST., <https://impactjustice.org/impact/food-in-prison/> (last visited Feb. 6, 2023); Lela Nargi, *Poor Food in Prison and Jails Can Cause or Worsen Eating and Health Problems. And Effects can Linger Long After Release*, THE COUNTER (Feb. 1, 2022), <https://thecounter.org/poor-food-prison-jail-causes-health-problems-trauma/>.
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- 30 Sawyer & Wagner, *supra* note 1 (noting that “correctional facilities” includes prisons, jails, youth and immigration detention centers, and involuntary commitment, and the numbers in the Prison Policy Initiative article reflect those totals).
- 31 *Id.*
- 32 Data collected by Farm to Institution (FINE) staff through the Maine, Massachusetts, and Vermont departments of corrections and through publicly available site-level data for New Hampshire, Connecticut, and Rhode Island. Population and facility numbers from these states generally do not include juvenile centers, detention centers, mental health facilities, or transition units. The state prison data from Massachusetts does include DOC-run mental health facility as well as state prisons and the Maine state prison data includes one state-run youth facility. Connecticut, Vermont, and Rhode Island do not have county jails, but rather they have a unified corrections system whereby the state administers facilities that hold people in both pretrial and sentenced status. *Connecticut 2020*, NAT'L INST. OF CORRECTIONS, <https://nicic.gov/state-statistics/2020/connecticut-2020> (last visited Mar. 15, 2023) (detailing which states have unified systems); see also *Facilities*, R.I. DEPT. OF CORRECTIONS, <https://doc.ri.gov/more-resources/facilities> (last visited Mar. 15, 2023) (noting that Rhode Island does not have county jails, instead a unified correction system); *Facilities*, CONN. DEPT. OF CORRECTIONS, <https://portal.ct.gov/DOC/Miscellaneous/Facilities> (last visited Mar. 15, 2023); *Correctional Facilities*, VT. DEPT. OF CORRECTIONS, <https://doc.vermont.gov/correctional-facilities> (last visited Mar. 15, 2023); see also *Locations*, N.H. DEPT. OF CORRECTIONS, <https://portal.ct.gov/DOC/Miscellaneous/Facilities> (last visited Mar. 15, 2023) (noting how these facilities do not include juvenile centers, detention centers, mental health facilities, nor transition units in their population numbers); *Facilities*, ME. DEPT. OF CORRECTIONS, <https://www.maine.gov/corrections/facilities> (last visited Mar. 15, 2023); *Massachusetts Department of Correction Locations*, MASS.GOV, <https://www.mass.gov/orgs/massachusetts-department-of-correction/locations> (last visited Mar. 15, 2023).
- 33 Laura M. Maruschak & Emily D. Buehler, *Census of State and Federal Adult Correctional Facilities, 2019 – Statistical Tables*, US DOJ 20 (Nov. 2021), <https://bjs.ojp.gov/content/pub/pdf/csfac19st.pdf> (noting Appendix Table 4 on the number of people in prison held in correctional facilities by state authorities).
- 34 *States of Incarceration: The Global Context 2021*, PRISON POL'Y INITIATIVE, <https://www.prisonpolicy.org/global/2021.html> (last visited April 10, 2023).
- 35 U.S. Criminal Justice Data, SENTENCING PROJ., <https://www.sentencingproject.org/research/us-criminal-justice-data/> (last visited Mar. 27, 2023).
- 36 SENTENCING PROJ., *supra* note 35.
- 37 *Home*, VT. DEPT. OF CORRECTIONS, <https://doc.vermont.gov/> (last visited Feb. 11, 2023).
- 38 Three New England states (Maine, New Hampshire, and Massachusetts) also have local or county correctional facilities administered by municipal government separate from the state. Bureau of Justice Statistics, *Census of State and Federal Correctional Facilities, 2005*, U.S. JUST. DEPT. (Oct. 2008), <https://bjs.ojp.gov/content/pub/pdf/csfcf05.pdf> (noting that in 2019, 13,800 incarcerated individuals were held in county-run correctional facilities within New England).
- 39 See, e.g., Ryan Anderson, *Detention and Correctional Standards for Maine Counties and Municipalities*, MN DEPT. OF CORRECTIONS INSPECTIONS Div. (Jan. 20, 2021), https://www.maine.gov/corrections/sites/maine.gov/corrections/files/inline-files/Adopted%20Rule%20DETENTION%20AND%20CORRECTIONAL%20STANDARDS%20FOR%20MAINE%20COUNTIES%20AND%20MUNICIPALITIES_3.pdf.
- 40 See, e.g., Celeste Marie Girrell et al., *Northeast Regional Correctional Facility Inmate Handbook*, NE REGIONAL CORRECTIONAL FACILITY (May 10, 2010), <https://www.law.umich.edu/special/policyclearinghouse/Documents/Vermont%20Inmate%20Handbook-NE%20Regional.pdf>.
- 41 See, e.g., Anderson, *supra* note 39.
- 42 See, e.g., Girrell et al., *supra* note 40.
- 43 See, e.g., *Food Service Policy*, MASS. DEPT. OF CORRECTION (Mar. 1, 2013), <https://www.mass.gov/files/documents/2016/09/wb/760.pdf>.
- 44 CONN. GEN. STAT. § 4-167 (2018); ME. STAT. tit. 5 § 8051 et seq. (1995); MASS. GEN. LAWS ch. 30A § 1A (2010); N.H. REV. STAT ANN. § 541-A:3 (1994); 35 R.I. GEN. LAWS § 42-35-1 et seq. (2016); VT. STAT. ANN. tit. 3, § 800 et seq. (2017).
- 45 CONN. GEN. STAT. § 325-18-81 (2013); ME. STAT. tit. 34-A § 1402(3) (2022); MASS. GEN. LAWS ch. 124 § 1(q) (2015); N.H. REV. STAT. ANN. § 21-H:8(b) (2021); 35 R.I. GEN. LAWS § 42-56-10(22) (2019); VT. STAT. ANN. tit. 28, § 102(c)(1) (2017).
- 46 See, e.g., N.H. CODE ADMIN. R. ANN. Cor. 215.01(a) (2018).
- 47 See, e.g., N.H. CODE ADMIN. R. ANN. Cor. 215.01(C) (3) (2018).
- 48 See, e.g., N.H. CODE ADMIN. R. ANN. Cor. 214 (2018).
- 49 N.H. REV. STAT ANN. § 541-A:21(a) (2021) (exempting ‘internal practices and procedures’ established by the corrections commissioner

- pursuant to their authority in N.H. REV. STAT ANN. § 21-H:8(III), which defines the general powers and duties of the corrections commissioner).
- 50 See, e.g., Hartford Correctional Center, *Inmate Handbook*, CONN. DEPT. OF CORRECTION (Mar. 2014), <https://www.law.umich.edu/special/policyclearinghouse/Documents/CT%20-%20HCC%20Handbook.pdf>.
- 51 U.S. CONST., amend. VIII.
- 52 See *Robinson v. California*, 370 U.S. 660 (1962).
- 53 N.H. CONST. art. 33; MASS. CONST. art. XXVI; ME. CONST. § 9; R.I. CONST. § 8.
- 54 VT. CONST. ch. 2, § 40; CONN. CONST. § 8.
- 55 CONN. GEN. STAT. § 325-18-78 et seq. (1967); ME. STAT. tit. 34-A § 1201 et seq. (1991); MASS. GEN. LAWS ch. 124 §§ 1–10 (2015); N.H. REV. STAT ANN. § 622:2 et seq. (1999); 42 R.I. GEN. LAWS § 42-56-1 et seq. (2017); VT. STAT. ANN. tit. 3, § 3081 (1971); VT. STAT. ANN. tit. 28, § 101 et seq. (2000).
- 56 VT. STAT. ANN. tit. 28, § 1 (2005).
- 57 See, e.g., MASS. GEN. LAWS CH. 124, §§ 1–10 (2015).
- 58 U.S. CONST. amend. VIII (“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”).
- 59 See *Gregg v. Georgia*, 428 U.S. 153, 173 (1976).
- 60 See *Coker v. Georgia*, 433 U.S. 584, 592 (1977); *Weems v. United States*, 217 U.S. 349 (1910).
- 61 See *Gregg*, 428 U.S. at 183; *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).
- 62 *Estelle*, 429 U.S. at 104–06.
- 63 *Wilson v. Seiter*, 501 U.S. 294 (1991).
- 64 *Id.*
- 65 *Id.*
- 66 *Id.* (“for example, a low cell temperature at night combined with a failure to issue blankets.”).
- 67 *Id.*
- 68 *Young v. Quinlan*, 960 F.2d 351 (3d Cir. 1992).
- 69 *Id.* at 360.
- 70 *Id.* at 361 (noting that the court also reasoned that “We have expressed that ‘should have known:’ [D]oes not refer to a failure to note a risk that would be perceived with the use of ordinary prudence. It connotes something more than a negligent failure to appreciate the risk ..., though something less than subjective appreciation of that risk. The ‘strong likelihood’ of [harm] must be ‘so obvious that a lay person would easily recognize the necessity for’ preventative action.”).
- 71 *Id.* at 364 (interpreting *Hassine v. Jeffes*, 846 F.2d 169, 174 (3d Cir. 1988) which stated that the Eighth Amendment “require[s] that the inmates’ basic needs for nutrition and shelter are met.”).
- 72 Amanda Chan & Anna Nathanson, “*Not for Human Consumption*”: *Prison Food’s Absent Regulatory Regime*, 29(4) WILLIAM & MARY BILL OF RIGHTS J. 1010, 1025 (2021).
- 73 U.S. CONST. Amend. XIV.
- 74 Chan & Nathanson, *supra* note 72, at 1025.
- 75 *Sandin v. Conner*, 515 U.S. 472 (1995).
- 76 Chan & Nathanson, *supra* note 72, at 1014.
- 77 *Id.*
- 78 *Id.* at 1047.
- 79 *Id.* at 1041, 1045.
- 80 *Id.* at 1044.
- 81 *Id.* at 1045.
- 82 *Id.* at 1047.
- 83 *Id.*
- 84 *Miles v. Bell*, 621 F. Supp. 51 (D. Conn. 1985).
- 85 *Arey v. Warden, Conn. Correctional Inst.*, 187 Conn. 324 (Conn. 1982) (noting how this holding was specific to the evidence provided in this case but remains one of the few examples of state judges considering conditions of confinement related to food and eating practices).
- 86 *Waring v. Meachum*, 175 F. Supp. 2d 230 (D. Conn. 2001).
- 87 *Commissioner of Correction v. Coleman*, 303 Conn. 800 (Conn. 2012).
- 88 ME. CONST. § 9.
- 89 ME. REV. STAT. ANN. tit. 34-A, § 3031(1) (2021).
- 90 *Fleming v. Commissioner, Dept. of Corrections*, 2002 ME 74 (Me. 2022).
- 91 *Id.*
- 92 *Id.*
- 93 *Michaud v. Sheriff of Essex Cnty.*, 390 Mass. 523 (Mass. 1983).
- 94 105 MASS. CODE REGS. 450.113 (1979).
- 95 *In re Caulk*, 125 N.H. 226 (N.H. 1984).
- 96 In determining that no Rhode Island Supreme Court cases ruled on prison food issues, various searches were conducted on WestLaw Edge in February of 2020. Cases that referenced Section 9 of the Rhode Island Constitution (where the state has adopted the prohibition against cruel and unusual punishment) were reviewed, as were cases that resulted from a search within Rhode Island Supreme Court case material for cases that contained discussion of food and/or nutrition as well as the terms “inmate,” “prisoner,” or “prisons.”
- 97 *Borden v. Hofmann*, 185 Vt. 486 (Vt. 2009); VT. STAT. ANN. tit. 28, § 851–53 (1971).
- 98 VT. STAT. ANN. tit. 28, § 853(a)(2)(ii) (1971).
- 99 VT. STAT. ANN. tit. 28, § 856 (2009).
- 100 According to § 852, the Department is required to “conduct a fact-finding hearing prior to punishment” which includes serving notice of the charge to the inmate and allowing them to confront the person bringing the charge, to testify, and to question witnesses. VT. STAT. ANN. tit. 28, § 851 (1971).
- 101 *Borden*, 185 Vt. at 486; VT. STAT. ANN. tit. 28, § 852 (1971).
- 102 *Id.*
- 103 *Fellows v. Pallito*, No. 2016-088, 2016 WL 5344042 (Vt. Sept. 16, 2016) (noting because this decision was issued by a three justice panel it is not binding precedent “before any tribunal.”).
- 104 This incarcerated individual filed suit under Vt. R. Civ. P. 75(a) which reads, “Any action or failure or refusal to act by an agency of the state or a political subdivision thereof, including any

- department, board, commission, or officer, that is not reviewable or appealable under Rule 74 of these rules or Rule 4 or 5 of the Vermont Rules for Environmental Court Proceedings may be reviewed in accordance with this rule if such review is otherwise available by law.” *Id.*
- 105 *Id.* at *1.
- 106 *Id.*
- 107 Chan & Nathanson, *supra* note 72, at 1027.
- 108 *Id.*
- 109 FED. BUREAU OF PRISONS, U.S. DEPT. OF JUST., No. P4700.06, FOOD SERVICE MANUAL (2011).
- 110 *Id.*
- 111 *Id.* at 17.
- 112 *See, e.g., 103 CMR 760.05(1)*, MASS. DEPT. OF CORRECTION, <https://www.mass.gov/doc/cmr-761-access-to-therapeutic-diets-and-medical-care/download> (last visited Feb. 12, 2023).
- 113 Chan & Nathanson, *supra* note 72, at 1037.
- 114 *Id.*
- 115 *National Menu Breakfast FY 2022*, FED. BUREAU OF PRISONS, https://www.bop.gov/foia/docs/FY22_National_Menu.pdf (last visited Feb. 12, 2023).
- 116 *FY 2019 Performance Budget Congressional Submission Salaries and Expenses*, U.S. Dept. of Just. 26, <https://www.justice.gov/jmd/page/file/1034421/download> (last visited Feb. 12, 2023).
- 117 *Id.*
- 118 *Standards*, AM. CORRECTIONAL ASS’N (Aug. 7, 2002), https://www.aca.org/ACA_Member/ACA/ACA_Member/Standards_and_Accreditation/StandardsInfo_Home.aspx.
- 119 *Id.*
- 120 *Id.*
- 121 Chan & Nathanson, *supra* note 72, at 1033.
- 122 *Id.* at 1034.
- 123 *Id.*
- 124 *Id.*
- 125 *Id.* at 1041.
- 126 *Id.* at 1035.
- 127 OFF. OF JUST. PROGS., DEPT. OF JUST., No. 153696, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION: AN ADMINISTRATIVE HISTORY (1982).
- 128 Chan & Nathanson, *supra* note 72, at 1035.
- 129 *Id.*
- 130 *See, e.g., Scott Semple, Administrative Directive 10.18*, CONN. DEPT. OF CORRECTION (June 24, 2015), <https://portal.ct.gov/-/media/DOC/Pdf/Ad/ad1018pdf.pdf>.
- 131 *Accredited Facilities*, AM. CORRECTIONAL ASS’N, https://www.aca.org/ACA/ACA_Member/Standards_and_Accreditation/SAC_AccFacHome.aspx?WebsiteKey=139f6b09-e150-4c56-9c66-284b92f21e51&hkey=f53cf206-2285-490e-98b7-66b5ecf4927a&5940f470ebf4=2#5940f470ebf4 (last visited Feb. 12, 2023).
- 132 AMERICAN CORRECTIONAL ASSOCIATION, PERFORMANCE-BASED STANDARDS AND EXPECTED PRACTICES FOR ADULT CORRECTIONAL INSTITUTIONS 5C (5th ed., 2021).
- 133 *Id.*
- 134 *See Id.* at 5C-16 (“Written policy, procedure, and practice require that at least three meals (including two hot meals) are provided at regular meal times during each 24-hour period, with no more than 14 hours between the evening meal and breakfast. Variations may be allowed based on weekend and holiday food service demands provided basic nutritional goals are met.”).
- 135 *Id.* at 5C-05 (noting manual commentary requiring that “food should be served as soon as possible after preparation and at an appropriate temperature”); *Id.* at 2E-06.
- 136 *Id.* at 5C-04.
- 137 *Id.* at 5C-13; *Id.* at 5C-14 (requiring weekly inspections of food service areas and daily inspections of refrigerator, water, and dry good storage area temperatures).
- 138 *Id.* at 5C-07 (requiring chaplains to approve a religious diet prescription on a monthly basis).
- 139 *Id.* at 5C-06 (requiring therapeutic diets prescribed by appropriate clinicians).
- 140 *Id.* at 5C-08.
- 141 Semple, *supra* note 130; *General Food Service Management Policy Number 16.1*, ME. DEPT. OF CORRECTIONS, https://www.maine.gov/corrections/sites/maine.gov/corrections/files/inline-files/16.1%20FOOD%20SERVICE%20MANAGEMENT%2C%20GENERAL_0.pdf (last updated Aug. 1, 2017); MASS. DEPT. OF CORRECTION, *supra* note 43, at 760.04; Part Cor. 704 Services, N.H. DEPT. OF CORRECTIONS, http://gencourt.state.nh.us/rules/state_agencies/cor100-700.html (last visited Feb. 12, 2023); *Policy Number 16.05-4 Doc*, R.I. DEPT. OF CORRECTIONS (Jan. 11, 2021), <https://doc.ri.gov/sites/g/files/xkgbur681/files/documents/policies/16.05-4-Final-Version.pdf>; *Food Service Operations #354*, VT. DEPT. OF CORRECTIONS (Nov. 8, 2016), <https://doc.vermont.gov/sites/correct/files/documents/policy/correctional/354-food-service-operations.pdf>.
- 142 Semple, *supra* note 130; ME. DEPT. OF CORRECTIONS, *supra* note 141; MASS. DEPT. OF CORRECTION, *supra* note 43, at 760.04; N.H. DEPT. OF CORRECTIONS, *supra* note 141, at 704.01(b); R.I. DEPT. OF CORRECTIONS, *supra* note 141; VT. DEPT. OF CORRECTIONS, *supra* note 141.
- 143 VT. DEPT. OF CORRECTIONS, *supra* note 140.
- 144 Information provided by Vermont Department of Corrections Staff.
- 145 Semple, *supra* note 130 (noting that Connecticut’s policy prohibits using food as a “disciplinary measure or sanction.”); *Detention and Correctional Standards for Maine Counties and Municipalities*, ME. DEPT. OF CORRECTIONS L9 (Jan. 20, 2021), <https://www.maine.gov/sos/cec/rules/03/201/201c001.pdf> (noting that Maine’s L9 policy states that food “shall not be withheld from inmates as punishment.”); MASS. DEPT. OF CORRECTION, *supra* note 73 (noting that Massachusetts’ 760.15 policy states that “each institution shall have a written policy which precludes the use of food as a disciplinary measure.”); R.I. DEPT. OF CORRECTIONS, *supra*

- note 141, at 16.05-4 (D)(2) (noting that Rhode Island’s policy states that the Associate Director of Food Services and Wardens of all facilities will ensure that “under no circumstance is food used as a disciplinary measure.”).
- 146 See Semple, *supra* note 130, at 10.18; ME. DEPT. OF CORRECTIONS, *supra* note 145, at L4; Anderson, *supra* note 38; MASS. DEPT. OF CORRECTION, *supra* note 43, at 760.14(2); N.H. DEPT. OF CORRECTIONS, *supra* note 141, at 704.01(b); R.I. DEPT. OF CORRECTIONS, *supra* note 141, at 16.05-4(II)(D)(1).
- 147 See ME. DEPT. OF CORRECTIONS, *supra* note 144, at L4; MASS. DEPT. OF CORRECTION, *supra* note 42; N.H. DEPT. OF CORRECTIONS, *supra* note 141, at 704.01(b); R.I. DEPT. OF CORRECTIONS, *supra* note 140, at 16.05-4(II)(D)(1) (requiring at least 2 hot meals); Semple, *supra* note 130, at 10(18) (requiring at least one hot meal).
- 148 VT. DEPT. OF CORRECTIONS, *supra* note 141.
- 149 See Girrell et al., *supra* note 40.
- 150 Semple, *supra* note 130, at 10.18(19); ME. DEPT. OF CORRECTIONS, *supra* note 141; MASS. DEPT. OF CORRECTION, *supra* note 43, at 760.04; N.H. DEPT. OF CORRECTIONS, *supra* note 141, at 704.01; R.I. DEPT. OF CORRECTIONS, *supra* note 141, at 16.05-4; VT. DEPT. OF CORRECTIONS, *supra* note 141.
- 151 Deval L. Patrick, *Executive Order No. 509: Establishing Nutrition Standards for Food Purchased and Served by State Agencies*, Mass. gov (Jan. 7, 2009), <https://www.mass.gov/executive-orders/no-509-establishing-nutrition-standards-for-food-purchased-and-served-by-state-agencies>.
- 152 MASS. DEPT. OF CORRECTION, *supra* note 43, at 760.01.
- 153 Semple, *supra* note 130, at 10.18.
- 154 Me. Dept. of Corrections, *supra* note 141, at 16.01.
- 155 ME. DEPT. OF CORRECTIONS, *supra* note 141, at 16.1(VI)(8); MASS. DEPT. OF CORRECTION, *supra* note 43, at 760.05(1); N.H. DEPT. OF CORRECTIONS, *supra* note 141, at 704.01(i); Semple, *supra* note 130, at 10.18(6)(A); R.I. DEPT. OF CORRECTIONS, *supra* note 141, at 16.05-4(II)(A)(1);
- 156 See, e.g., MASS. DEPT. OF CORRECTION, *supra* note 43, at 760.05(1).
- 157 MASS. DEPT. OF CORRECTION, *supra* note 43, at 760.05.
- 158 VT. DEPT. OF CORRECTIONS, *supra* note 141.
- 159 E-mail from Vt. Dept. of Corrections staff (on file with author).
- 160 See AMERICAN CORRECTIONAL ASSOCIATION, *supra* note 132, at 5C-05 (noting manual commentary requiring that “food should be served as soon as possible after preparation and at an appropriate temperature”); AMERICAN CORRECTIONAL ASSOCIATION, *supra* note 131, at 2E-06.
- 161 Semple, *supra* note 130, at 10.18(11); ME. DEPT. OF CORRECTIONS, *supra* note 145, at L7–L8; ME. DEPT. OF CORRECTIONS, *supra* note 145, at 18.14; ME. DEPT. OF CORRECTIONS, *supra* note 145, at 24.3; MASS. DEPT. OF CORRECTION, *supra* note 43, at 760.08–09; N.H. DEPT. OF CORRECTIONS, *supra* note 141, at 704.01(f); R.I. DEPT. OF CORRECTIONS, *supra* note 141, at 16.05-4(II)(A)(2-3); VT. DEPT. OF CORRECTIONS, *supra* note 141.
- 162 See e.g., ME. DEPT. OF CORRECTIONS, *supra* note 141, at 16.01; ME. DEPT. OF CORRECTIONS, *supra* note 141, at 18.14; MASS. DEPT. OF CORRECTION, *supra* note 43, at 760; R.I. DEPT. OF CORRECTIONS, *supra* note 141, at 24.3.
- 163 Semple, *supra* note 130, at 10.18(3)(A).
- 164 Semple, *supra* note 130, at 10.18(9).
- 165 See e.g. Semple, *supra* note 130, at 10.18(11); N.H. DEPT. OF CORRECTIONS, *supra* note 141, at 704.01(k)–(n).
- 166 VT. DEPT. OF CORRECTIONS, *supra* note 140.
- 167 E-mail from Vt. Dept. of Corrections staff (on file with author).
- 168 Semple, *supra* note 130, at 10.18(1), (13); ME. DEPT. OF CORRECTIONS, *supra* note 144, at 16.1(VI)(F); MASS. DEPT. OF CORRECTION, 145 note 43, at 760.12; N.H. DEPT. OF CORRECTIONS, *supra* note 141, at 704.01(a); R.I. DEPT. OF CORRECTIONS, *supra* note 141, at 16.12-4(II)(B).
- 169 Semple, *supra* note 130, at 10.18.
- 170 MASS. DEPT. OF CORRECTION, *supra* note 43, at 760.12; N.H. Dept. of Corrections, *supra* note 141, at 704.01(a).
- 171 ME. DEPT. OF CORRECTIONS, *supra* note 141, at 16.1(VI)(F).
- 172 R.I. DEPT. OF CORRECTIONS, *supra* note 141, at 16.12-4(III)(A-D).
- 173 E-mail from Vt. Dept. of Corrections staff (on file with author).
- 174 AMERICAN CORRECTIONAL ASSOCIATION, *supra* note 132.
- 175 Importantly, not all inspections are conducted by an external third party—some are conducted internally. E-mail from Vt. Dept. of Corrections staff (on file with author).
- 176 CONN. GEN. STAT. § 4a-57 (2012); ME. REV. STAT. ANN. tit. 5, § 1825-B (1991); 801 MASS. CODE REGS. 21.01 (1993); N.H. CODE ADMIN. R. ANN. NHD0C 600 (2001); 220-30-00 R.I. CODE R. § 1.1. (2018); VT. STAT. ANN. tit 3, § 2222 (2021).
- 177 See e.g., ME. REV. STAT. ANN. tit. 5, § 1812 (2017).
- 178 Patrick, *supra* note 151.
- 179 103 DOC 340 *Documental Purchasing Procedures*, MASS. DEPT. OF CORRECTIONS (Apr. 2, 2022), <https://www.mass.gov/doc/doc-340-department-purchasing-procedures/download>.
- 180 V.T. Dep’t of Corr. Policy No. 202: Purchased Services 4.3.1.2 (1985).
- 181 N.H. REV. STAT. ANN. § 21-I:11-b (2018).
- 182 CONN. GEN. STAT. § 4a-57 (2012); ME. REV. STAT. ANN. tit. 5, § 1825-B (1991); 801 MASS. CODE REGS. 21.01 (1993); N.H. CODE ADMIN. R. ANN. NHD0C 600 (2001); 220-30-00 R.I. CODE R. § 1.1. (2018); VT. STAT. ANN. tit 3, § 2222 (2021).
- 183 CONN. GEN. STAT. § 4a-59; ME. REV. STAT. ANN. tit. 5, § 1825-S; 801 MASS. CODE REGS. 21.07; N.H. CODE ADMIN. R. ANN. NHD0C 600; 37-2 R.I. CODE R. § 31; VT. STAT. ANN. tit 3, § 342 (2015).
- 184 Semple, *supra* note 130, at 3.8; ME. DEPT. OF

- CORRECTIONS, *supra* note 141, at 16.01; MASS. DEPT. OF CORRECTION, *supra* note 43 at 760.18; N.H. DEPT. OF CORRECTIONS, *supra* note 141, at 704.01(i).
- 185 CONN. GEN. STAT. § 4a-57; ME. REV. STAT. ANN. tit. 7c, § 211 (2019); MASS. GEN. LAWS ch. 7, § 23B; MASS. GEN. LAWS ch. 30B, § 4; N.H. REV. STAT. ANN. § 425:2-A (2019); R.I. GEN. LAWS § 37-2-8 (1989); R.I. GEN. LAWS § 37-2-22 (1999); VT. STAT. ANN. tit 10, § 330 (2019); VT. STAT. ANN. tit 29 § 909 (2011).
- 186 Alyssa Hartman, *Regional Trends in New England Farm to Institution Procurement Policy*, FARM TO INST. NEW ENGLAND (Aug. 2019), <https://www.vermontlaw.edu/sites/default/files/2019-08/Regional%20Trends%20in%20New%20England%20Farm%20to%20Institution%20Procurement%20Policy.pdf>.
- 187 *Id.*
- 188 N.H. REV. STAT. ANN. § 425:2-A; VT. STAT. ANN. tit 29, § 909; R.I. GEN. LAWS § 37-2-8; ME. REV. STAT. ANN. tit. 7c, § 211; MASS. GEN. LAWS ch. 7, § 23B; CONN. GEN. STAT. § 4a-51.
- 189 In a national survey on incarcerated and formerly incarcerated individuals conducted by Impact Justice, 62 percent of respondents said they had never or rarely had access to fresh vegetables while incarcerated and 55 percent said they had never or rarely had access to fresh fruits. See Soble et al., *supra* note 9; see also Toch, *supra* note 11.
- 190 Budget Summary, Mass. Dept. of Correction, <https://budget.digital.mass.gov/summary/fy20/enacted/public-safety/dept--of-correction/?tab=budget-summary> (last visited Mar. 24, 2023); Costs Per Offender – FY 2020 Actual, R.I. Dept. of Corrections, <https://doc.ri.gov/sites/g/files/xkgbur681/files/documents/administration/FY2020-Cost-Per-Offender.pdf> (last visited Mar. 24, 2023); Christopher T. Sununu, Governor’s Executive Budget Summary: Budget for Fiscal Year Ending June 30, 2020–2021, N.H. Dept. of Admin. Servs., <https://www.das.nh.gov/budget/Budget2020-2021/Executive%20Summary%20Final.pdf> (last visited Mar. 24, 2023).
- 191 *Agency Program Summary*, CONN. DEPT. OF CORRECTION (Sept. 6, 2018), https://portal.ct.gov/-/media/OPM/Budget/2020_2021_Biennial_Budget/baseline/DOC88000baselinepdf.pdf.
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- 195 BUREAU OF JUST. STATISTICS, U.S. DEPT. OF JUST., NCJ 202949, STATE PRISON EXPENDITURES, 2011, at 6 (2001).
- 196 See AMERICAN CORRECTIONAL ASSOCIATION, *supra* note 132, at 5A et. seq.
- 197 Sawyer, *supra* note 26.
- 198 *Id.*
- 199 Under the Davis-Bacon Act (1931), the *prevailing wage* was established to ensure that individuals contracting with the federal government were paying labor the basic hourly rate of pay for work being performed consistent with the labor classification. Specifically, the act delegated authority to the Secretary of Labor to determine the prevailing minimum wages for “corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is to be performed.” Though the act was initially limited to contracts in excess of \$2,000 made with the federal government, many states have incorporated the Davis-Bacon Act prevailing wage standard into their state statutes. As noted above, the ACA requires that work performed for private industries on institution grounds be compensated at the prevailing wage. AMERICAN CORRECTIONAL ASSOCIATION, *supra* note 132, at 7A-14; see 40 U.S.C. § 3141 et seq. (2006).
- 200 See AMERICAN CORRECTIONAL ASSOCIATION, *supra* note 132, at 7A-15; See also Crime Control Act of 1990, Pub. L. No. 101-647, 104 Stat. 4789 (amending the Justice System Improvement Act of 1979, Pub. L. No. 96-157, 93 Stat. 1167, § 827 and maintaining the Prison Industry Enhancement Certification Program (PIECP) which requires prevailing wage compensation for prisoner-made goods in interstate commerce).
- 201 AMERICAN CORRECTIONAL ASSOCIATION, *supra* note 132, at 7A-14.
- 202 Semple, *supra* note 130, at 10.1; MASS. DEPT. OF CORRECTION, *supra* note 43 at 450.00; ME. DEPT. OF CORRECTIONS, *supra* note 141, at 25.1; N.H. DEPT. OF CORRECTIONS, *supra* note 141, at 302.04(a); R.I. DEPT. OF CORRECTIONS, *supra* note 141, at 12.27(IV) (A); VT. DEPT. OF CORRECTIONS, *supra* note 141, at 392.
- 203 See, e.g., N.H. DEPT. OF CORRECTIONS, *supra* note 141, at 409.01.
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- 210 AMERICAN CORRECTIONAL ASSOCIATION, *supra* note 132, at 11.
- 211 PRISON POL'Y INITIATIVE, *supra* note 205.
- 212 *See* Soble et al., *supra* note 9.
- 213 AMERICAN CORRECTIONAL ASSOCIATION, *supra* note 132, at 2E-05.
- 214 *Id.* at 5C-16.
- 215 *Id.* at 2E-05.
- 216 *Id.* at 5C-15.
- 217 *Id.* at 5C-15.
- 218 *Id.* at 2E-05.
- 219 *Id.* at 5D-01.
- 220 *Id.* at 2E-06.
- 221 ME. DEPT. OF CORRECTIONS, *supra* note 141, at 16.1(III).
- 222 MASS. DEPT. OF CORRECTION, *supra* note 43, at 760.14(1)–(2).
- 223 *See* Semple, *supra* note 130, at 10.18(2)(g) (incorporating by reference ACA standard 4-4328 which requires three meals served in each 24-hour period but does not incorporate 5 ACI-2E-05 (formerly 4-4158) which requires at least 20 minutes of dining time for each meal)
- 224 Hartford Correctional Center, *supra* note 50, at 7.
- 225 N.H. CODE ADMIN. R. ANN. COR. 704.01 (2016); William L. Wrenn, Manual for the Guidance of Inmates, N.H. DEPT. OF CORRECTIONS 20, <https://www.nh.gov/nhd/doc/divisions/publicinformation/documents/manual.pdf> (last visited Feb. 18, 2023).
- 226 Stephen Boyd, *Inmate Rule Book*, R.I. DEPT. OF CORRECTIONS 19–20 (Apr. 2011), <https://www.law.umich.edu/special/policyclearinghouse/Documents/RI%20DOC%20Inmate%20Rule%20Book%20-%20April%202011.pdf>. Note: the inmate schedule includes “lunch feeding” and recreation from 11:15am-1:00pm; it is unclear how much of this time is dedicated to lunch meal service.
- 227 *Inmate Handbook*, NW. STATE CORRECTIONAL FACILITY (Nov. 2011) 11 <https://www.law.umich.edu/special/policyclearinghouse/Documents/Vermont%20Handbook-NW%20State%20Correctional.pdf>.
- 228 ME. DEPT. OF CORRECTIONS, *supra* note 141, at 16.1(III); Mass. Dept. of Correction, *supra* note 43, at 760.14; R.I. DEPT. OF CORRECTIONS, *supra* note 141, at 16.05-4; VT. DEPT. OF CORRECTIONS, *supra* note 141.
- 229 N.H. CODE ADMIN. R. ANN. COR. 704.01(j) (2016) (incorporating He-P 803.20 which includes in part “dining facilities that have eating areas sufficient in size to provide seating for at least 50% of the licensed capacity).
- 230 *See* Semple, *supra* note 130, at 10.18(2)(g) (incorporating by reference ACA standard 4-4328 which requires three meals served in each 24-hour period but does not incorporate 5 ACI-2E-05 (formerly 4-4158) which requires food be provided in a group dining space).
- 231 Hartford Correctional Center, *supra* note 50, at 7.
- 232 ME. DEPT. OF CORRECTIONS, *supra* note 141, at 16.1(III).
- 233 Semple, *supra* note 130, at 10.18.
- 234 *See id.* at 10.18(7); MASS. DEPT. OF CORRECTION, *supra* note 43, at 760.14; ME. DEPT. OF CORRECTIONS, *supra* note 141, at 16.1(4).
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- 242 N.H. CODE ADMIN. R. ANN. COR. 704.01(j) (2016) (incorporating He-P 803.20 which includes in part the “licensee shall maintain a clean, safe, and sanitary environment.”).
- 243 R.I. Dept. of Corrections, *supra* note 141, at 16.12-4.
- 244 Vt. Dept. of Corrections, *supra* note 141.
- 245 American Correctional Association, *supra* note 132.
- 246 Nutrition Standards in the National School Lunch and School Breakfast Programs; Approval of Information Collection Request, 77 Fed. Reg. 4088 et seq. (Jan. 26, 2012) (to be codified at 7 C.F.R. pts. 210, 220).
- 247 *See* Soble et al., *supra* note 9; *see also* Toch, *supra* note 11.
- 248 Lixin Tao et al., *Association Between Self-Reported Eating Speed and Metabolic Syndrome in a Beijing Adult Population: a Cross-Sectional Study*, 18 BMC PUBL. HEALTH 855 (2018).
- 249 Bureau of Just. Statistics, U.S. Dept. of Just., NCJ 248491, *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12* (2015).
- 250 Chan & Nathanson, *supra* note 72.
- 251 *Id.* at 1026.
- 252 *Id.*
- 253 *Id.* at 1042.
- 254 *Id.* at 1041–42.
- 255 34 U.S.C. § 10651(l)(1) (2022).
- 256 *Sawyer*, *supra* note 26.
- 257 *Id.*
- 258 28 C.F.R. § 155.5 (1994).