

Legal Advocates Challenge Pennsylvania Department of Corrections' New Procedures for Legal Mail

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HARRISBURG— The ACLU of Pennsylvania, the Pennsylvania Institutional Law Project, the Abolitionist Law Center, Amistad Law Project, and Schnader Harrison Segal & Lewis LLP filed two federal civil rights lawsuits today challenging the Pennsylvania Department of Corrections' (DOC) new policy of copying and retaining confidential mail from attorneys to their prisoner clients. The lawsuits, one on behalf of the four organizations and a related one for a DOC prisoner, claim that the practice violates the First Amendment rights of the organizations' attorneys and DOC prisoners to confidential legal communications.

The new policy follows a 12-day lockdown of all state prisons last month, which the DOC alleges was necessary to protect guards from "unknown substances" that have entered the facilities.

In an attempt to prevent these "unknown substances" from entering state prisons through the mail, DOC officials have been confiscating all incoming legal mail and holding it for 45 days, only allowing prisoners a photocopy of their correspondence. This policy interferes with the ability of prisoners and lawyers to discuss legal matters confidentially.

"No other corrections institution in the nation screens and duplicates legal mail in this way," said Reggie Shuford, executive director of the ACLU of Pennsylvania. "Attorney-client privilege is a cornerstone of legal representation. The Department of Corrections' new mail policy undermines that privilege in violation of First Amendment protections for both the prisoners and their attorneys."

The two lawsuits, which are separate but are likely to be consolidated, allege that DOC's changes to processing legal mail are unwarranted and unnecessary because there's no evidence that legal mail is a major source of illegal drugs. The suits claim DOC's new legal mail policy is an "exaggerated, irrational response to a non-problem that deprives Plaintiff legal organizations of an indispensable – and often the only viable -- means of communicating with their imprisoned clients, thereby seriously undermining the lawyers' ability to provide zealous and effective legal representation."

"The DOC concocted an emergency and rolled out all of these policies at once while completely lacking any examples of drugs getting into PA prisons through attorneys and the mail we send to our imprisoned clients," said Kris Henderson, legal director of Amistad Law Project.

The challenged policy is part of a number of new restrictions imposed by DOC on prisoners' access to mail, visitors, and books and publications. Prisoners are not permitted to receive original copies of any mail and are currently prohibited from ordering books or publications.

“These post lockdown policies represent a devastating shift in Pennsylvania’s prisons,” said Alexandra Morgan-Kurtz, staff attorney at Pennsylvania Institutional Law Project. “By interfering with legal mail, preventing people from holding onto cards and letters from loved ones and limiting their access to reading materials, the DOC has entered a new regime of isolation, further separating incarcerated people from meaningful access to the outside world.”

“These new policies, as well as the shock and awe manner in which they were implemented, now place the Pennsylvania DOC as the national vanguard when it comes to repressing the First Amendment rights of the incarcerated and their families, communities, and correspondents,” said Bret Grote, legal director of the Abolitionist Law Center.

“Attorneys are ethically required to keep communications with their clients confidential, and when that is threatened, they must act to prevent unauthorized access to those communications. Because of these requirements, and the new Pennsylvania policy on legal mail, public defenders, other attorneys and legal organizations have ceased communicating by mail with their incarcerated clients,” said Keith E. Whitson of Schnader Harrison Segal & Lewis LLP. “This is a tremendous hardship and interferes with the attorney-client relationship.”

The lawsuits, *Pennsylvania Institutional Law Project v. Wetzel* and *Hayes v. Wetzel*, were filed in the United States District Court for the Middle District of Pennsylvania in Harrisburg. The plaintiffs are represented by Sara Rose and Witold Walczak of the ACLU of Pennsylvania; Bret Grote of the Abolitionist Law Center; Deneekie Grant and Kris Henderson of the Amistad Law Project; Angus Love and Alexandra Morgan-Kurtz of the Pennsylvania Institutional Law Project; and Danielle Bruno, Stephanie Short, Paul Titus, and Keith E. Whitson of Schnader Harrison Segal & Lewis LLP.

The complaints are available at aclupa.org/PILP.

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