

Hawaii ACLU Files Suit on Behalf of Women Who Want to Marry Prisoners

by Alex Friedmann

On May 15, 2012, the ACLU of Hawaii filed a lawsuit in federal court accusing the state Department of Public Safety (DPS) of unlawful discrimination by prohibiting four women from marrying Hawaii prisoners housed at a mainland facility.

According to the complaint, the women submitted multiple applications to wed their fiancés, who were incarcerated at the CCA-operated Saguro Correctional Facility in Eloy, Arizona. Their applications were denied. State officials sent form letters to the prisoners, informing them that “[a]s a Ward of the State incarcerated in a correctional facility, you are incapable of providing the necessary emotional, financial and physical support that every marriage needs in order to succeed.”

The letters also stated, “We believe that a healthy relationship effort (marriage) established at this time while you are in prison and unable to work and communicate effectively face-to-face with your fiancée will be detrimental to any future re-integrative efforts.” Which is fairly ironic: First the DPS ships Hawaii prisoners to a distant mainland prison, then denies them the right to marry because they cannot “communicate effectively face-to-face” with their would-be spouse who remains in Hawaii.

The U.S. Supreme Court held 25 years ago that prison officials may not prohibit prisoners from marrying absent a legitimate penological reason. In that case, prisoners wanting to marry had to obtain permission from the warden, which was rarely granted. The Supreme Court found there is “a constitutionally protected marital relationship in the prison context,” and that “where the inmate wishes to marry a civilian, the decision to marry (apart from the logistics of the wedding ceremony) is a completely private one.” See: *Turner v. Safley*, 482 U.S. 78, 96-98 (1987).

“We just want to get married because we love each other. We’ve been trying for years. We gave up on the system, but we never gave up on each other,” said Lenora Santos, one of the plaintiffs in the ACLU suit. The other plaintiffs include Junell Faith Aliviado, Jamiqia Glass and Margaret Amina.

The ACLU had previously communicated with DPS officials regarding denials of marriage applications, and DPS agreed to make changes. The department issued

a revised policy on marriage applications in June 2011 that stated prisoners’ right to marry could be restricted when “the proposed marriage presents a threat to the security or the good government of the institution or to the protection of the public.” However, prison officials reportedly continued to deny marriage applications using the same form letter, plus other contrived justifications for the denials.

“The Constitution prohibits government officials from imposing their morals and judgment on others,” said ACLU senior staff attorney Daniel Gluck. “DPS’s practices are not only illegal – they hinder prisoners from developing committed relationships that can help their rehabilitation and improve their chances of being productive when they complete their

sentences and re-enter society.”

The ACLU is seeking a preliminary injunction to “compel Defendants to cease interfering with Plaintiffs’ fundamental right to marry ...,” because the “Defendants’ ongoing and persistent violations of Plaintiffs’ constitutional rights have caused, and continue to cause, irreparable injury to Plaintiffs.”

The lawsuit seeks declaratory and injunctive relief, attorney fees and costs, and monetary damages for emotional distress, psychological harm, humiliation, and pain and suffering. See: *Santos v. Kimoto*, U.S.D.C. (D. Hawaii), Case No. 1:12-cv-00259-SOM-BMK. ■

Additional sources: *ACLU of Hawaii press release, Star Advertiser*

Class-Action Settlement Cures Constitutional Violations at Pennsylvania Prison

A settlement has been reached in a class-action lawsuit challenging conditions at Pennsylvania’s Northumberland County Prison (NCP). Since the suit was filed in February 2008 on behalf of 12 prisoners by the Lewisburg Prison Project, NCP officials had disputed claims that the 134-year-old facility was unsafe and failed to provide adequate medical care.

The parties concluded that a settlement would be the best result and the County Commissioners approved a settlement agreement, arrived at following adversarial negotiations, in October 2010. The class received notice of the proposed settlement in February 2011, which was approved by the district court on April 29, 2011.

The first issue addressed in the 37-page settlement is the provision of medical and dental care. Under the agreement, a physician, physician assistant or certified nurse practitioner must be on site at NCP at least six hours per week when the average daily population is below 200 prisoners, and seven hours a week when the population exceeds 201 prisoners for six consecutive months. Medical personnel must also be on call seven days a week, 24 hours a day for emergencies.

A full-time registered nurse is to be on duty 40 hours per week, as well as a licensed practical nurse seven days a week for the first two work shifts. Newly

admitted prisoners are to receive an intake medical screening within 24 hours of admission. A mental health screening and suicide risk assessment must be conducted at the time of the medical screening, and a physical health assessment and mental health evaluation will be conducted within 14 days of arrival at NCP.

The agreement also requires a psychiatrist to be available four hours per week when the population is under 200 and five hours a week when it exceeds 201 for six consecutive months. This requirement may be satisfied via a telemedicine service. A full-time healthcare professional with at least a bachelor’s degree will be available at NCP for 40 hours per week. Sick call will be held for general population prisoners three times a week and for segregation prisoners weekly.

The intake screening must include a dental component. An “extraction only” policy for dental care is prohibited, nor may multiple cycles of antibiotics and/or pain medications for dental abscesses and other dental problems associated with infections or pain be routinely prescribed by a non-dental professional.

The settlement includes provisions for confidential sick call settings, prescriptions and distribution of medications, maintenance of written policies and protocols related to the provision of

medical care, handling of medical records, and a requirement for a sanitary, well-lit examination room and infirmary at the facility. Dental care can be provided on- or off-site.

To fulfill the provisions for medical and psychiatric services, NCP contracted with Prime Care Medical, Inc. The contract costs \$650,000 annually and NCP added on-site dental services for \$3,756 per month.

The settlement agreement also addresses conditions for prisoners in "Basement cells" and "Cell 3." Prisoners may not be mechanically restrained in those segregation cells for the purpose of punishment. No more than two prisoners may be housed in each cell unless a documented emergency situation exists. Such prisoners must be provided an opportunity to shower three times weekly and shall receive clothing, bedding and a blanket unless they pose a risk of suicide, in which case they will get a smock to wear and suicide-proof blankets. Segregated prisoners are to receive one hour of out-of-cell recreation five times a week.

In addition to provisions concerning care by nurses and mental health staff for prisoners in segregation cells, the agreement requires guards to factually describe the prisoners' behavior every 30 minutes. In the event guards have to physically extract a prisoner from a cell, the incident must be videotaped with the video maintained for two years. Finally, guards must turn the water on in segregation cells or take a prisoner to a working sink or toilet within a reasonable amount of time upon request.

The use of four-point restraints and restraint chairs is also covered by the settlement. Such restraints "may only be used when other control techniques such as officer presence, verbal commands,

and soft hands have not been effective." Prisoners placed in restraint chairs or four-points must be evaluated by a nurse every four hours and by the shift commander every two hours.

As to general conditions at NCP, air temperature units to reduce heat and humidity in warm months and a heater for cold months must be installed. An outside exterminator is to treat the prison, and standpipes for fire safety are to be installed. A maximum of 28 prisoners may be housed in the female dormitory and no more than 12 prisoners in the trustee unit.

The agreement provides for a 15-month monitoring period, which includes inspections and document reviews by class counsel. The Pennsylvania Institutional Law Project was awarded \$300,000 in attorney fees and costs – substantially less than half the amount incurred. "We didn't do it for the fees," said Jennifer Tobin, an attorney with the Law Project. Meanwhile, the county spent about \$500,000 on its own legal fees.

The county attorney acknowledged the settlement was a positive step. "In the beginning there was no real enthusiasm to fix the conditions," said Robert Hamma of Lavery, Faherty, Young & Patterson. But the settlement "brings the county prison up to par. It brings it up to constitutional and state Department of Corrections standards."

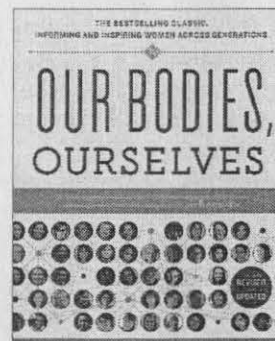
Indeed, when approving the agreement the district court noted, "[T]his settlement will chart a course that resolves myriad substantial problems that have existed for far too long within the Northumberland County Prison." See: *Inmates of the Northumberland County Prison v. Reish*, U.S.D.C. (M.D. Penn.), Case No. 4:08-cv-00345-JEJ.

Additional source: *The Daily Item*



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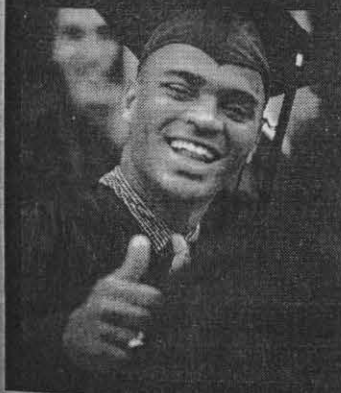
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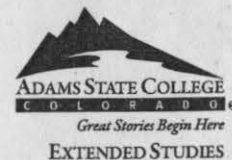
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