

POLITICS

ACLU sues Indiana Department of Correction over ban on transgender surgeries

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Indianapolis Star

Published 11:12 a.m. ET Aug. 28, 2023 | Updated 12:59 p.m. ET Aug. 28, 2023

The ACLU of Indiana is suing the Indiana Department of Correction for denying gender-affirming surgery to a transgender woman, challenging a new state law that prohibits the department from providing this kind of care to incarcerated people.

House Bill 1569, authored by Rep. Peggy Mayfield, R-Martinsville, and signed into law this year, says the department may not use its own resources to facilitate gender-affirming surgeries. It was one of two dozen bills introduced this legislative session affecting transgender people, of which a handful have become law.

More: Indiana lawmakers move bill banning state-provided gender-affirming surgery in prison

The organization argues the new law violates both the Eighth Amendment's prohibition on cruel and unusual punishment and the Equal Protection Clause of the Fourteenth Amendment, arguing that singling out transgender inmates is a form of discrimination.

"Gender-affirming care is life-saving care," said Ken Falk, ACLU of Indiana's legal director. "If the legislature can deny a form of health care arbitrarily, they could just as easily deny other lifesaving treatments to people who are incarcerated."

A spokesperson for Department of Correction said the department would not comment on pending litigation.

This is the ACLU's fifth lawsuit against legislation passed this year. Most recently, a federal judge denied the organization's request to temporarily block House Bill 1608, a law outlawing "human sexuality" instruction in schools and requiring staff to report to parents when kids request a name or pronoun change. The case is now before a federal appeals court.

"It is not uncommon for us to file a lawsuit or two at the end of each legislative session, but the number of lawsuits we have had to file as a result of harmful legislation passed during the 2023 legislative session is particularly alarming," said Katie Blair, ACLU of Indiana director of advocacy and public policy.

In the latest lawsuit, the ACLU is filing on behalf of Autumn Cordellioné, a transgender woman being held in a male state prison. In 2020, while imprisoned, she was diagnosed with gender dysphoria and prescribed hormones to block testosterone. While the hormones helped, the lawsuit says, they weren't enough to alleviate her "serious depression and anxiety." She was placed on a list to be evaluated for surgery, but then the new law passed.

The ACLU claims the surgery is a "medical necessity" to alleviate her debilitating symptoms. That's where the Eighth Amendment argument hinges: The U.S. Supreme Court has ruled in the 1976 case *Estelle v. Gamble* that denying a prisoner adequate care for serious illness or injury violates the prohibition on cruel and unusual punishment.

Major medical associations like the American Medical Association and the American Psychological Association recognize transition-related care as medically necessary, including hormone treatment and surgeries. Arguing for the legislation, Mayfield believes there is not enough consensus on that, citing the fact that the Centers for Medicare & Medicaid Service doesn't believe there's enough evidence to say so, and therefore doesn't mandate insurance coverage of these procedures.

During testimony over the bill, Blair warned that the ACLU believed it was "wildly unconstitutional." A representative from the attorney general's office acknowledged that an Eighth Amendment challenge was likely, but said the office believes it's defensible.

Their defense, said Aaron Craft, the office's section chief of civil appeals, would be that gender hormone therapy still exists for these patients, and they'd cite the three federal appeals courts who have rejected such challenges, while just one has agreed with the challenge.

Constitutional arguments aside, there was debate over the need for such a law when, according to testimony and the bill's fiscal note, the Department of Correction has not actually provided such care. But inmates can make requests, and denials have led to lawsuits — Mayfield argued that as more people are diagnosed with gender dysphoria, there may be more requests and therefore more lawsuits the attorney general's office has to litigate.

There's only one case in which the Department of Correction has agreed to provide gender-affirming surgery to an inmate, Tonie Loveday, and that was in response to another lawsuit. Another federal case, *Stillwell v. Dwenger*, is still being litigated.

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