

Bar welcomes new procedures for prisoner visits

By: Kris Olson July 1, 2015

Attorneys visiting clients at Department of Correction facilities should be encountering reformed security procedures designed to strike a better balance between prison security and personal privacy, Secretary of Public Safety Daniel Bennett announced Monday.

"The changes we have made to Department of Correction security procedures recognize the critical role that attorneys play in our justice system, the importance of access by attorneys to their clients, and the paramount need to keep correction staff and inmates safe," Bennett said of new regulations, which were made effective immediately.

Patricia A. DeJuneas of Sibbison & DeJuneas in Boston, who shone a light on the issue of invasive "strip searches" of attorneys at MCI Norfolk, said she was pleased to see that Bennett had taken to heart most of the suggestions she, the Massachusetts Bar Association and Committee for Public Counsel Services had offered.

Still, she cautioned, "At this point, it is imperative that DOC staff be trained on the new regulations; otherwise, the changes will be illusory."

According to DeJuneas, the most significant changes are as follows:

1. A "pat down" search is now defined to exclude any showing of undergarments or parts of the body ordinarily considered private.
2. Pat-down searches may only be conducted if (a) the attorney does not clear two metal detector searches (either walk-through or hand-held scanner), and (b) the visitation officer has reasonable suspicion, based on specific and articulable facts, to believe that the attorney is carrying contraband. Pat-down searches also require prior approval from a superior officer, Bennett explained. "Note that the mere presence of metal does not constitute 'contraband' and that 'reasonable suspicion' is now defined," DeJuneas added. Part of her initial complaint was that female attorneys' underwire bras were triggering invasive, demeaning searches.
3. Every time a pat search is requested (not just if it is actually conducted), the requesting officer must submit a detailed report by the end of the shift explaining the factual basis for the request. "Note that these reports are subject to the public records law, and so attorneys who have been asked to consent to a search may obtain the report which purports to justify the request," she said.
4. If the attorney consents to a pat-down search, the officer must give the attorney a "receipt" indicating that a pat search was conducted.
5. If the attorney declines a pat-down search, he or she must still be afforded a non-contact visit upon request.

However, DeJuneas said that she was disappointed to see an additional change in the regulation, which applies specifically to private investigators, who must now seek clearance one week prior to a visit.

"A week's notice is just not feasible in many instances, particularly if there is an upcoming trial or hearing," she said.

She strongly encouraged all attorneys who visit clients at DOC facilities to study the new regulations and to bring a copy when they visit. Violations, she noted, should be reported to the institution's superintendent as well as the Commissioner of Corrections and Executive Office of Public Safety and Security.

According to David M. Solet, chief legal counsel of the EOPSS, a notice of an Aug. 4 public hearing will be sent and published on July 13. Comments on the regulations will be accepted until Aug. 4 as well. DeJuneas encouraged

attorneys to take advantage of the opportunity.

The commissioner of the Department of Corrections will then review the comments and make any necessary changes before filing a Notice of Compliance with the Secretary of State by Sept. 11, making the regulations permanent.

"If the Notice of Compliance is not filed by Sept. 11, 2015, the regulation will expire," Solet explained.

In a press release, Bennett thanked the Massachusetts Bar Association and the Committee for Public Counsel Services for their "thoughtful input."

"The MBA was pleased to lead the bar on this pressing matter," said Martin W. Healy, chief legal counsel to the MBA, calling the treatment of female attorneys "unnecessarily degrading and humiliating."

"The MBA was highly concerned about long-standing DOC policies and the discriminatory treatment of women attorneys," he said. "We are pleased to see that the new regulations will be uniform and hopefully eradicate any future disparate actions against our sister practitioners."

Healy credited Bennett with being "very accessible and transparent to the MBA in reforming DOC practices that long predated his tenure."

Marsha V. Kazarosian, president of the Massachusetts Bar Association, also lauded the new regulations.

"The new policy indicates that the Executive Office of Public Safety and Security has made this issue a priority, and the new procedures ensure the personal privacy of attorneys while also affording DOC staff assurance of their safety," she said.

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