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# **Incarcerated Man Denied Kitchen Job Because of HIV**

The 24-year-old man was not in prison long, but it was long enough for him to face HIV discrimination and suffer a grievous breach of his privacy.

The man sued the Delaware County prison where he was held from February through July 2020 after he was denied a kitchen job because he has HIV. He recently reached a settlement that will award him financial compensation and will result in changes to prison policies.

Incarcerated in the George W. Hill Correctional Facility in Thornton, the man also alleged the prison impermissibly disclosed his HIV status by handing a note to another incarcerated person to give him that read: "You are not cleared to work in the kitchen because you have HIV (HIV triple-underlined)."

In the lawsuit brought by the AIDS Law Project of Pennsylvania, Lambda Legal, and Langer, Grogan & Diver, the man alleged that Delaware County and the Florida-based GEO Group, which then ran the prison, denied him a kitchen job because he has HIV.

"This type of unlawful HIV discrimination and HIV disclosure happens all too often in the corrections context and goes largely unaddressed," said Adrian M. Lowe, a senior staff attor-

**Continued on Page 7** 

### Removing HIV From the Pa. Criminal Code

Three state legislators have introduced bills that would remove Pennsylvania's felony penalty for HIV-related prostitution.

State Sen. Vincent Hughes, State Rep. Ben Waxman, and State Rep. Malcom Kenyatta, known for their advocacy on behalf of people living with HIV, intend to remove the stigmatizing penalty from the criminal code. HIV criminalization does

not make anyone safer, but reinforces stigma and undermines public health goals.

The AIDS Law Project and our partners at the PA HIV Justice Alliance and the Sero Project are grateful to Senator Hughes and Representatives Waxman and Kenvatta for introducing these bills that would remove the last reference to HIV in the Pennsylvania criminal code.

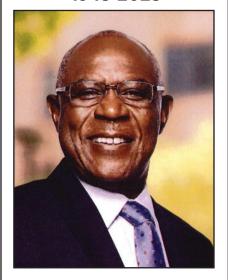
Prostitution is a misdemeanor in Pennsylvania, unless the person charged has HIV, and then it's a felony, even if there was no physical contact. The new bills would remove that felony charge.

Punishing people simply because they have a virus does not make

**Continued on Page 6** 

**LEGAL SERVICES BY THE NUMBERS** We worked on 1,948 cases for 1.212 clients in 2023. Here's a statistical look at our work last year. Page 4

### Frank McClellan 1945-2023



## A Wise Adviser

The AIDS Law Project lost a great friend and a trusted, wise adviser with the passing Dec. 2 of Frank McClellan in his Philadelphia home after a battle with cancer and heart disease. He was 78 vears old.

Frank was a professor for more than three decades at Temple University Beasley School of Law, where he taught courses on torts, remedies, and medical malpractice. He also enjoyed a distinguished joint appointment at the

#### **Continued on Page 7**



### NAVIGATING THE SYSTEM Recognizing that

you need help is one thing. Proving it to the authorities can be quite another. Page 3





**POZ Magazine** has named the **AIDS Law Project** to its list of the top advocates fighting HIV.



### FROM THE EXECUTIVE DIRECTOR

Dear friends,

More than three decades ago, when little was known about HIV transmission and effective treatment didn't exist, many states passed laws imposing harsh criminal penalties on people living with HIV in misguided attempts to prevent the spread of the virus.

One of those laws is still on the books: In Pennsylvania, prostitution is a misdemeanor unless the person charged has HIV, in which case it's a felony – even without physical contact. In fact, the law is the last remaining reference to HIV in the commonwealth's criminal code.

On March 20 in Harrisburg, I joined colleagues from the AIDS Law Project of Pennsylvania, the PA HIV Justice Alliance, and the Sero Project to support **Sen**. **Vincent Hughes** and **Reps. Ben Waxman** and **Malcolm Kenyatta**, who introduced bills to remove that felony charge.

Punishing people simply because they have a virus doesn't make anyone safe. Criminal penalties based on fear and misinformation only contribute to the stigma facing people living with HIV. And stigma fuels the HIV epidemic. It keeps people from getting tested and treated for fear of what will happen to them.

Call your Pennsylvania legislators to seek their support for Senate Bill 1122 and House Bill 2171, which are now in the judiciary committees.

If we want to end the HIV epidemic and ensure that people living with HIV have access to fair and equal opportunities, we must root out stigma, including that which is institutionalized in outdated laws and policies and in misinformation.

Thanks,

Konda

# In Their Fight To Stay At Home, Two Friends Face A Tangle of Obstacles

In November of 2022, James moved to Germantown. He had been unhoused and was in recovery from substance use. He was enrolled in a city-run housing program that offered apartments in a building it leased. His new neighborhood was quiet and conducive to his sobriety. James particularly enjoyed that the building had a lawn and trees.

Unfortunately, only a few months after James and his neighbors moved in, the recovery program told them they would be unable to remain in their apartments. The program wanted to move them to a building it owned, instead of one they leased.

The tenants would be forced to move to a different part of the city. James had lived in that area during his addiction.

James contacted the AIDS Law Project to help him remain in his home. Housing Attorneys Jeni Wright and Shamus Brennan took up his case.

"He was afraid to the move back to his former neighborhood and disrupt the recovery progress he had made," Shamus said.

James's friend and downstairs neighbor Lynn was in the same recovery program. She is raising her granddaughter and didn't want to move to a less secure location. As she is also living with HIV, James referred her to the AIDS Law Project for help.

"James and Lynn were living in a quiet part of Germantown," Shamus said. "It has a reputation for being a family-oriented neighborhood."

Jeni represented James and

negotiated with the city for a reasonable accommodation so he could stay in his current unit for nine more months, until his lease expired. Shamus negotiated the same accommodation for Lynn.

Shamus then sought to have both James and Lynn transferred to the HOPWA (Housing Opportunities for Persons With AIDS) program, which would provide them with vouchers to move to anywhere in the city. Each client was assigned a case worker to help them find an apartment, but James and Lynn wanted to stay exactly where they were.

But getting the vouchers did not solve the problems.

City administration discovered that the building owner owed money to the city for trash collection and was not permitted to rent apartments until the debt was resolved.

And until the landlord could get a rental license, James and Lynn could not sign new leases. Shamus kept fighting for James and Lynn to be allowed to remain in their apartments, while the building owner straightened out his affairs.

Sadly, James died in August amid the stress and uncertainty of whether he would be forced to leave his home. Shamus continued to represent Lynn and her granddaughter.

The landlord finally cleared the debt and was issued a renter's license. Lynn was then able to sign a new lease in December 2023, allowing her and her granddaughter to stay in their home. Even though James didn't find his peace, he helped Lynn find hers.

# **Needing Help To Prove You Need Help**

The severe seizures the 61-yearold man suffers wreaks havoc on his life, putting him on the brink of being institutionalized. His health had deteriorated and he was frequently hospitalized.

Adrian M. Lowe, a senior staff attorney at the AIDS Law Project, started helping him after being contacted by the man's medical case manager.

"He was adamant that he didn't want to be institutionalized," Adrian said. "He was very much in danger of losing his independence."

The only way the man had been able to stay in his home was thanks to a friend who checked on him daily, making sure he had food, and his other needs were met. It was a heavy burden, and the friend was growing exhausted.

The man has been medically approved for a Medicaid program that provided a home health aide. The next hurdle was to provide five years of financial documents to financially qualify for the program. Medicaid provides home health aides for those who need assistance with daily activities of living, but our client was too debilitated to prove he was eligible.

Although the man once had resources, including property, he sold it over the years to support himself. The seizures had so ravaged his memory he was unclear about his financial status.

"He was not able to provide the financial proof he needed," Adrian said.

In the meantime, it was a case of all-hands-on-deck to help the man regain stability.

Yolanda French Lollis, the AIDS Law Project's managing attorney, helped him apply for Social Security, a process that is ongoing. Housing Attorney Shamus Brennan helped with other issues, including when the man's utilities were cut off.

After contacting five banks, Adrian was finally able to reconstruct the man's financial history, which he submitted to the Department of Human Services. The man was approved for a home health aide in January, ensuring he can stay in his home.

"This person had a crisis in every area of his life and was not able to help himself," Adrian said.

# Finding a Solution in New Jersey's Court of Equity

The immigrant couple bought the house in Camden in 2014 hoping it would be a secure home for them and their three sons. It didn't turn out that way.

The eldest son eventually began making moves to try to take over the property. One of his brothers was severely disabled and the other was gay and a target of relentless harassment from his older brother. Some of their clashes were so severe they ended up in domestic violence court, said **Charlotte Hollander**, a senior staff attorney for the AIDS Law Project.

"It was truly horrible living with the eldest brother," Charlotte said.

When the father was diagnosed with cancer, the eldest son convinced him to return to Nicaragua. Before the father left, the eldest son convinced his father to sign over a financial power of attorney authorizing the son to make decisions.

The son then moved his mother and disabled brother, along with all their possessions, into a small room attached to the back of the house. With no access to the kitchen, the mother had to use a hot plate to cook. The room was so small

### **GOOD COUNSEL BY E-MAIL**

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she had to share a bed with her disabled son.

The eldest son continued to browbeat his mother, demanding she sign over the deed to him. When his father filed for divorce from Nicaragua, he used it against his mother who was extremely religious and embarrassed by the divorce. He said he would let everyone in their community know about it.

"The mother eventually succumbed and signed over the deed to him," Charlotte said.

The oldest brother moved quickly to use his father's power of attorney to take full control of the property. He filed an ejectment motion in civil court. His mother only speaks Spanish so she didn't know what it was and didn't respond, which led to the court ordering an eviction.

Charlotte filed a motion to vacate the ejectment, but the judge was unsympathetic to the fact that the mother didn't understand English. Charlotte knew she had to get the case to a court where it could get a more thorough vetting, so she filed a complaint in the Chancery division to have the deed invalidated for undue influence, fraud, duress, and other factors. Chancery is New Jersey's court of equity, which allows for remedies beyond awarding money.

The court issued stays and the parties agreed to mediation before it went to a hearing. The house was sold with the proceeds divided between the mother and oldest brother.

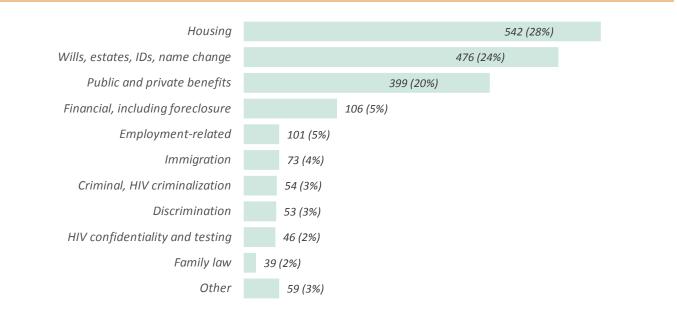
"She's happy with that," Charlotte said. "She bought another house where hopefully she can live in peace."



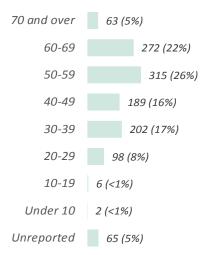
# **LEGAL SERVICES IN 2023**

In 2023, the AIDS Law Project worked on 1,948 cases for 1,212 clients.

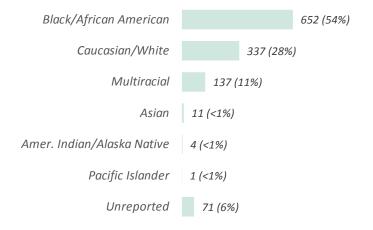
### LEGAL ISSUES WORKED ON BY TYPE



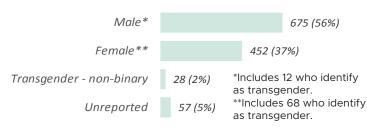
### CLIENTS BY AGE



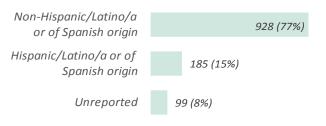
### CLIENTS BY RACE



### CLIENTS BY GENDER



### CLIENTS BY ETHNICITY



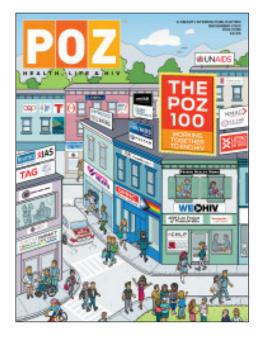
# **INSIDE THE AIDS LAW PROJECT**

### 100 Advocates Making an Impact

POZ Magazine has named the AIDS Law Project of Pennsylvania to its POZ 100 list of the top 100 advocates working to end the HIV epidemic.

The magazine honored 100 entities, including organizations, agencies, networks, and initiatives, that are making an impact across the country and around the world in combating HIV and its stigma.

The magazine noted that the AIDS Law Project, which serves residents of Pennsylvania and New Jersey, is the nation's only independent public-interest law firm dedicated to providing free legal services to people living with HIV and those vulnerable to acquiring it.



The AIDS Law Project also educates the public about AIDS-related legal issues, trains case managers to be better advocates and works to achieve fair laws and policies at all levels of government, the magazine said.

### BRIEFLY NOTED

NEW BOARD MEMBER:

The AIDS Law Project is pleased to welcome **Anton M. Robinson** as the newest member of our board of directors. He is a criminal defense and appeals attorney, an adjunct law professor, and a justice reform advocate licensed to practice in Pennsylvania, New York, and Florida. Anton currently serves as an Assistant Public Defender



in the Major Crimes Division of the Defender Association of Philadelphia and conducts research in the fields of restorative justice, racial justice, and trial advocacy. Anton earned a Bachelor of Science in Mass Media from Florida State University in 2003 and a J.D. from the University of Florida, Levin College of Law in 2006. Anton is the son-in-law of long-time AIDS Law Project board member the late **Frank McClellan**.

**CIVIL RIGHTS CO-CHAIR: Yolanda French Lollis**, the AIDS Law Project's managing attorney, has been reappointed to a third term as co-chair of the Civil Rights Committee, part of the Public Interest Section of the Philadelphia Bar Association. She serves alongside **Steve Loney, Jr.** of the ACLU of Pennsylvania.

# Judge Rejects Safehouse Religious Freedom Claim

A federal judge has ruled that Safehouse, which is seeking to open an overdose prevention center in Philadelphia, is not a religious entity, and cannot claim freedom of religion protections as it has argued in court.

The U.S. Attorney's Office in Philadelphia sued Safehouse in 2019 after announcing its plans to open.

Federal Judge Gerald A. McHugh on April 3 rejected the argument from Safehouse that the religious beliefs of its board of directors compelled them to try to save lives.

Safehouse released the following statement in response:

"We are disappointed by the Court's dismissal of Safehouse's religious free-

Advocates for an overdose prevention center argued that saving the lives of people in need is an exercise of religious beliefs.

dom claim. We respectfully disagree with the judge and believe federal law permits Safehouse to exercise its religious beliefs by saving the lives of people in need.

As the Judge wrote in his opinion, the public health crisis continues unabated. Amid this crisis, federal and local government have not taken the steps to provide relief.

In the 5 years, since we were sued, 6,500 people died of overdose in Philadelphia. Meanwhile our colleagues at OnPoint in NYC have reversed more than 1,400 overdoses, served almost 5,000 people and collected 2 million units of hazardous waste. All without one fatality in the overdose prevention center.

They have connected people to treatment for substance use and mental and physical health needs, and housing.

We would be doing the same in Philadelphia. We are reviewing our options for next steps."

# THE AIDS LAW PROJECT AT WORK

# May the Phoenix Still Rise for This Long-Term Survivor

The man wanted to get a tattoo of a phoenix, a mythological bird that symbolizes rebirth, immortality, and renewal. He thought it would represent his status as a long-term survivor of HIV.

In December 2022 he texted a tattoo artist in the small Central Pennsylvania town where he lived. The artist was a relative of a close friend of his, who knew he was living with HIV. He didn't hear anything back until January and when he did he was shocked, said Adrian M. Lowe, a senior staff attorney for the AIDS Law Project.

The tattoo artist responded that he

blood-borne pathogen.

"He was incredulous," Adrian said. "He'd heard stories of HIV discrimination but he'd never experienced it."

That's when he contacted the AIDS Law Project, where Adrian confirmed it was indeed unlawful.

Adrian contacted the business and advised that the law was clear. Tattoo shops across the country have repeatedly been held liable under the Americans with Disabilities Act for refusing services to people with HIV. Adrian explained that universal precautions

didn't work on anyone with a known introduced by the Centers for Disease Control in 1985, mostly in response to HIV, are a standard set of guidelines to prevent the transmission of bloodborne pathogens from exposure to blood.

The AIDS Law Project then filed a complaint with the Pennsylvania Human Relations Commission. In September 2023, the PHRC found probable cause that discrimination occurred and set the matter for a public hearing.

Stay tuned as Adrian, along with AIDS Law Project executive director Ronda B. Goldfein, try the case this summer.

OT

**Right: Members of** the PA HIV Justice Alliance, the Sero **Project and the AIDS** Law Project with Miss Pennsvlvania 2023. Miranda Moore at the State Capitol in Harrisburg.

**Below right: State Senator Vincent** Hughes with Kenva Moussa of PA HIV Justice Alliance and Positive Women's Network-PA Chapter.

> Photos by W.J. Freshwater

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## Criminalization

### **Continued from Page 1**

anyone safe. Criminal penalties based on fear and misinformation only contribute to the stigma facing people living with HIV. And stigma fuels the HIV epidemic. It keeps people from getting tested and treated for HIV for fear of what will happen to them. The bill would remove the last relic of HIV criminalization laws in Pennsylvania. In recent years other states have also modernized or repealed their prostitution laws.

"Criminalizing HIV with a

sentencing enhancement is not a public health solution to ending the HIV epidemic," said Waheedah Shabazz-El, a woman living with HIV and a board member of the AIDS Law Project.

The bill could prevent Pennsylvania from being subjected to costly litigation. The Department of Justice filed suit on Feb. 15 against the state of Tennessee and the Tennessee Bureau of Investigation for violating the Americans with Disabilities Act by enforcing the state's law which similarly enhances penalties for people living with HIV who are charged with prostitution.



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### FROM THE COVER

### Discrimination

### **Continued from Page 1**

ney at the AIDS Law Project. "Discrimination against people living with HIV is illegal. What is illegal on the outside doesn't become legal behind bars."

The lawsuit claimed that denying the man the kitchen job because of his HIV status violated the Americans with Disabilities Act and Section 504

of the Rehabilitation Act. It also alleged that disclosure of his confidential HIV-related information violated Pennsylvania's Confidentiality of HIV-Related Information Act.

"We are proud to have been part "Discrimination against people living with HIV is illegal. What is illegal on the outside doesn't become legal behind

> Adrian M. Lowe Senior staff attorney

> > Schoettes.

The terms of the settlement were not released.

bars."

Richard Saenz, senior attorney and criminal legal system strategist at Lambda Legal, said the settlement sends a strong

### **McClellan**

#### **Continued from Page 1**

Temple School of Medicine as well as at the Center for Urban Bioethics.

Frank was on the AIDS Law Project's board of directors, serving for more than 20 years up until his death.

Frank also taught comparative and healthcare law in Ghana, Greece, Japan, South Africa, China, and Cuba.

An attorney specializing in medical malpractice and product liability, Frank was the managing partner of Eaton & McClellan, a law firm he established with his longtime friend Allen Eaton, from 1989 to 2011.

He represented patients in hundreds of cases, litigating more than 20 complex medical malpractice and product liability cases to verdict.

Adrian M. Lowe of the AIDS Law

Project; Richard Saenz of Lamb-

da Legal; John Grogan and Mary

Catherine Roper of Langer, Gro-

gan & Diver, P.C.; and Scott A.

A prolific writer, in 2019 he released what he believed was his most important work, Healthcare and Human Dignity: Law Matters. He credited his wife Phoebe A. Haddon for her advice and feedback on the book.

Executive Director Ronda Goldfein said Frank consulted with the AIDS Law Project on its challenging cases, always emphasizing the importance of self-determination in healthcare.

"Frank taught us that lack of freedom to make decisions takes a toll on our bodies," Ronda said. "He said we should never lose sight of the challenges our clients face."

## **ABOUT US**

### WHAT WE DO

The AIDS Law Project of Pennsylvania is a nonprofit, public-interest law firm. We publish Good Counsel semiannually for our friends, volunteers and colleagues committed to protecting the rights of people with HIV and those at risk of HIV. Last year, we worked on about 2,000 legal issues, nearly all from people with HIV. We help people navigate the legal system, the welfare system, the housing system, and the worlds of public and private insurance. We provide education and training to professionals who work with people living with HIV.

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### from discrimination." The plaintiff was represented by: Ronda B. Goldfein and

ity," he said.

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son's right to confidentiality in

abilities Act has been clear that

people living with HIV should

not be denied participation in

programs and opportunities

available to other incarcerated

people because of their disabil-

Langer, Grogan & Diver, said

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