

Virginia quietly grants death row inmates new privileges

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RICHMOND, Va. (AP) — Only a few months ago, the condemned men on Virginia's death row left their tiny cells just three days a week for showers, and an hour a day five days a week for recreation in a fenced outdoor cell. A sheet of glass separated them from family during visits.

Now, the seven men awaiting execution get an extra half-hour of recreation each day, and officials are building a new yard with a basketball court and exercise equipment. They can hang out with up to three other death row inmates for an hour daily, and the state is building a room where they can watch TV, make phone calls, play games and send emails. They can hug and hold hands with relatives when they visit.

"Those kinds of things are meaningful when so very little is granted to the inmates," said Victor Glasberg, an attorney who represents several of the condemned men challenging Virginia's restrictions, which for years effectively held the inmates in solitary confinement and were among the most stringent in the U.S.

Those policies were quietly overhauled recently after months of legal challenges, the first of which was filed by a man convicted of three murders who was executed Oct. 1. Alfredo Prieto first won more privileges when a federal judge agreed that Virginia can't automatically place death row inmates in solitary confinement, but an appeals court later overturned that ruling.

The U.S. Supreme Court dismissed Prieto's appeal this week, but another lawsuit filed by other death row inmates before the overhaul is still moving through the courts. They argued they were entitled to the same privileges as Prieto and said their isolation amounted to cruel and unusual punishment.

Michael Bern, Prieto's attorney, declined to comment. A Department of Corrections spokeswoman said Director Harold Clarke was not available for an interview and declined to comment because litigation is pending.

The agency has said in the past that federal courts have ruled that long periods of isolation aren't considered cruel and unusual punishment. But Clarke said in an August affidavit that he authorized the changes "in an effort to explore improvements to the overall environment on Virginia's death row."

Virginia Attorney General Mark Herring said in court documents last month that conditions on death row are now "significantly more progressive," though Glasberg said he's meeting with officials Friday to discuss further changes.

"When your comparators are horrible, it goes just so far to say that you're at the top of the heap," Glasberg said.

The changes bring some comfort to Paul Burns, whose older brother William Joseph Burns has served on Virginia's death row for 15 years. But Paul Burns still doesn't think he can face visiting his brother, who was sentenced to death in 2000 for raping and killing his mother-in-law.

"When you've got a family member on death row, it just hurts to go see them. You know he's living a hell of a life in there," he said.

Conditions among the 31 death penalty states vary widely and are difficult to track because there are no reporting requirements and the policies can change frequently, said Richard Dieter, senior program director at the Death Penalty Information Center, which opposes the death penalty.

Nearly all isolate death row inmates in some way, and most offer more privileges than Virginia had previously, according to a survey conducted by the Association of State Correctional Administrators in 2013 and cited by Virginia officials in court documents.

Most of the states surveyed allow inmates to participate in certain group activities, like religious services and therapy, but fewer than half let inmates touch their family members and friends during visits. The new room in Virginia will be used for religious services, behavioral programming and employment opportunities for the condemned inmates, Clarke said.

Missouri, which has the least stringent policies, is the only state that houses its death row inmates with the general prison population, and they're offered the same programs as other offenders. Meanwhile, in Colorado and other states, inmates can't participate in group activities, get recreation time with other inmates or have contact visits, according to the ASCA survey.

Even the families of some victims don't object to the new privileges in Virginia. Harold McFarland said he believes the man who killed his 32-year-old son deserves to die. But he supports giving William Morva more freedom within prison walls.

"While he's still on the Earth, he should be treated as a human," McFarland said.

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