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Lawsuit: Police used inaccurate Breathalyzer rights form

By Lisa Kashinsky lkashinsky@eagletribune.com 9 hrs ago



The night Patricia Pimentel was arrested and charged with operating under the influence in October 2014, she was brought to the Methuen police station and handed a form.

That form, a Spanish translation of the Breathalyzer Advice of Rights Form, advised her that the legal blood alcohol content limit was 0.10. It also told her a jury would be notified if she refused to take the Breathalyzer test. Neither of the statements were accurate, a lawsuit says.

She signed the form, and then another that had the correct information about laws relating to blood alcohol levels, including the legal limit of 0.08, and took the Breathalyzer test, court documents show.

Pimentel, of Lawrence, is now the face of a federal class action lawsuit filed earlier this month against the City of Methuen over the use of that Spanish-language advice form, which her lawyers say was "erroneous and unlawfully coercive."

The lawsuit alleges that the Methuen Police Department had for years used a primarily Spanish-language form with incorrect information about laws and procedures related to blood alcohol levels and testing, denying the defendants due process. The lawsuit is asking for a court-appointed special master to supervise Methuen in identifying all of those potentially affected by the form and notifying them so they have the opportunity to vacate their plea or seek a new trial.

Methuen police Chief Joseph Solomon, who is named in the suit, directed questions to City Solicitor Richard D'Agostino.

"The City of Methuen has received Ms. Pimentel's civil complaint. We are in the process of reviewing and preparing a legal response to her various allegations," D'Agostino said in a statement. "The allegations and claims made by Ms. Pimentel's attorneys are merely that: allegations and claims. The city intends to provide a vigorous defense against those claims in court."

According to the lawsuit, the Methuen Police Department was using a Spanish-language advice of rights form that "contains a litany of errors and outdated information," some of which had not been part of law in the commonwealth since the 1990s.

Among the issues the lawsuit points out is that the form appears to say that a jury would be notified that the person refused a Breathalyzer test. However, the lawsuit says, that wouldn't necessarily be the case, noting that statement is "contrary to longstanding and clearly established law concerning the right against self-incrimination."

The form also lists the legal blood alcohol content limit as 0.10 when it is in fact 0.08, and gives incorrect information about an arrested person being "liberated" from an operating under the influence charge for having a Breathalyzer result of 0.05 or less, the lawsuit says.

According to the lawsuit, the Methuen Police Department knew about the erroneous form since at least 2013, from a case of another Spanish-speaking Hispanic defendant operating under the influence in which Breathalyzer test results were successfully suppressed. At that time, Assistant District Attorney Lindsay Nasson sent an email to her superiors detailing errors in the form, writing: "I just wanted to put everyone on notice that this is a live issue, and something that we will be working with Methuen PD to rectify," according to the lawsuit.

But, the lawsuit says that Pimentel was given that incorrect form on the night of her 2014 arrest. It also says the members of the Methuen Police Department seemed to be "completely unaware that they were using an unlawfully coercive Spanish advice of rights form as recently as November of 2016."

Joseph Cacace, an associate attorney at Todd & Weld LLP, who is working with fellow Todd & Weld attorney Howard Cooper on the class action lawsuit, said, "it's very troubling that the City of Methuen kept using that form," after 2013.

"It is difficult to understand how or why that happened," Cacace continued.

DA reviewing cases

In response to a request from Cooper earlier this year, the district attorney's office is reviewing cases where the erroneous form may have been used. The office said it's unclear how long the Methuen Police Department had been using the form.

Carrie Kimball Monahan, spokeswoman for Essex County District Attorney Jonathan Blodgett, said the office had reviewed superior court cases of individuals charged with operating under the influence by the Methuen Police Department and did not find the incorrect form. The office is in the process of reviewing district court cases as well.

In the ongoing case reviews, she said that "we often find the incorrect form and the correct form together on file."

Pimentel's lawyers say she was given the incorrect form first when she was being booked.

"Regardless, when you give two completely different forms, all that does is create confusion," Cacace said. "The idea that giving the one that says 0.08 somehow corrects the problem, we don't agree with that."

While the origins of the incorrect Spanish-language form are unclear, Kimball Monahan said the correct form is a standard one issued by the Registry of Motor Vehicles.

Upon receiving the records request from Cooper, Kimball Monahan said her office "did send a letter to all of the police chiefs in Essex County notifying them that this had happened and to ask them to please check that they were using the correct forms."

"We didn't hear back from anyone, which leads us to believe that everybody is using the correct form," she said.

A life in balance

As a so-called "Dreamer," smuggled into the country when she was 9 years old, Pimentel's legal status in the United States hangs in the balance as the lawsuit moves forward.

Leading up to her arrest for operating under the influence on Oct. 21, 2014, Pimentel had been watching movies and drinking with two friends. She called a taxi to take her home, but one of the friends offered to drive her in Pimentel's car, the lawsuit says.

According to the lawsuit, they stopped at a friend's home and Pimentel was left alone in the car, where she was approached by an abusive ex-boyfriend. That's when she took the wheel and drove away, hitting two parked cars, the lawsuit says.

After signing the forms at the Methuen police station, she was given the Breathalyzer test, which showed a 0.25 blood alcohol level. She admitted to sufficient facts in the case in January 2015, believing that doing so would not affect the employment authorization she had been granted under the Deferred Action for Childhood Arrivals (DACA) program.

But that notion was based on inaccurate information provided by her court-appointed attorney, the lawsuit says. When Pimentel applied to renew her work authorization later that year, she was denied.

Earlier this year, a judge allowed her motion for a new trial, saying her previous counsel should have informed that her DACA status would have been affected, and that she did not voluntarily submit to the Breathalyzer due to the incorrect form, documents show.

Pimentel is "trying to put on a brave face" while "obviously experiencing anxiety and concern," said Murat Erkan, another one of her attorneys. But the ongoing legal battles are also giving her a "fighting chance to be able to remain here with her family" and be a mother to her child, a toddler, Erkan said.

"Right now she has a hope to be able to plant her feet firmly on the ground again in the country she calls home," he said.

Follow Lisa Kashinsky on Twitter @lisakash23.



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