MI-CURE NEWS

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MI-CURE'S PLANS FOR 25th ANNUAL MEETING

For individuals in the Michigan prison system who are not eligible for parole, a commutation from the governor is the only way to be released. In the past thirty years, Michigan governors have been stingy about granting commutations. MI-CURE has been working with the American Friends Service Committee and other members of the Michigan Collaborative to End Mass Incarceration to change that story.

At our annual meeting this year, several individuals who have served ten or more years in the Michigan prison system and are now free and doing well in their communities will help us to understand why it is important that the power of commutation be used more often.

The panel discussion will be followed with a question and answer period.

The meeting will be held on **Saturday, October 21, 2017.** We will meet and greet at 9 am; the meeting will begin at 9:30 am. Lunch will be served at approximately noon.

The event will be held at St. Katherine's Episcopal Church, 4650 Meridian Road, Williamston, MI 48895. **All interested parties are welcome.** The facility is accessible for individuals with disabilities.

We hope to see you and/or your family and friends there!

CAUTIONARY UPDATE ON *DOES V SNYDER*

We have previously reported on *Does v Snyder*, litigation that is challenging Michigan's sex offender registry legislation. The Sixth Circuit Court of Appeals has ruled that portions of that law are unconstitutional. However, that ruling is not final. Michigan's Attorney General has appealed the ruling to the U.S. Supreme Court. The court has not decided whether to hear the case or not.

According to the American Civil Liberties Union of Michigan:

> "The case was brought only on behalf of the six named plaintiffs. However, if the Court of Appeals' decision is not modified during further appeals, the court's reasoning that the current version of SORA is punishment will apply to everyone whose offense was committed before July 1, 2011. The court's reasoning that the geographic exclusion zones are punishment will apply to everyone whose offense was committed before January 1, 2006. In addition, the legislature will need to make changes to SORA to address the constitutional problems in the statute. Depending on what changes are made, those amendments could affect everyone on the registry."

Until there is a final decision, ACLU of Michigan recommends that all registrants remain SORA-compliant.

There is an individual who has been contacting registrants by email and postal mail in an effort to make money from the situation by selling information and encouraging them to file cases to get off the registry.

Again, from the ACLU of Michigan: "We STRONGLY advise people not to file these motions. They will only end up hurting what we are trying to do in *Does v, Snyder*, and hurt themselves. Once *Does* is final – either because the Supreme Court denies review or after a decision there – we will work on next steps for everyone. People who act before then can undermine our efforts." "In addition we are unaware of anyone who has used the form pleadings they bought to get themselves off the registry, even temporarily. So you can let folks know this is a scam and that the only wise course is to stay compliant in all respects until *Does* is final – at which point either we will have lost, or we will have won and will seek to represent everyone affected by the changes to Michigan's law."

Source:
http://www.aclumich.org/sites/default/files/DoesvsSnyder_FAQ%20and%20Fact%20Sheet%202016.pdf

COURT ISSUES RULING ON FCC PRISON PHONE RATE CAPS

In our last newsletter, we reported that the Federal Communications Commission (FCC) was no longer defending its proposed rate caps on intrastate (within a state) prison phone calls. Those rate caps had been challenged in the U.S. Court of Appeals for the D.C. Circuit. In June, the Circuit Court issued its ruling in the matter. Among the findings of the court were the following:

- The FCC does not have the authority to cap intrastate phone rates.
- The FCC does not have the statutory authority to impose reporting requirements on video visitation.
- The FCC's proposed wholesale exclusion of site commission payments from the cost computations is not reasonable.

- The FCC needs to determine whether it can segregate proposed caps on the ancillary charges for interstate calls (which it can regulate) from the ancillary charges on intrastate calls (which it cannot regulate.)

This means that, unless state regulatory agencies step in or unless jail and prison administrators demand lower rates, there is no limit on what phone companies can charge. Rates vary widely. According to Victoria Law in *The Intercept*, in West Virginia a 15-minute call costs 48 cents; in Texas the same call costs $3.90.

Kat Brady, coordinator of Hawaii's Community Alliance on Prisons summed up the frustration of many. "The responsibility of the state is not only to incarcerate but to make sure that, when people come out, they have a chance of actually making it. One of the ways to do that is by maintaining connections, so it makes no sense for us to keep the calls unaffordable."

U.S. Senator Tammy Duckworth (IL) has introduced the Video Visitation and Inmate Calling in Prison Act. The act will solve the problems of inmate calls and video visits by doing the following:

- Remove any doubt about the FCC's authority to regulate video visits and inmate calling services.
- Require the FCC to establish rules governing video visitation and inmate calling services to make sure rates are reasonable, fair and just in Federal and State prisons.
- Require the Federal Bureau of Prisons to establish guidelines to govern the agency's purchase and use of video visitation services as a supplement to in-person visits.

It is also time that the Michigan Department of Corrections cease capturing phone revenues to pay for special equipment – and more! According to the Department's most recent report to the legislature, from fiscal year 2013 through fiscal year 2016, the MDOC has spent the following amounts from money confiscated from prisoner phone calls:

Camera/Perimeter Lighting	7,040,758
Personal Protection Systems	5,362,259
Security Equipment	2,331,012
Prisoner Programming	2,000,000
TOTAL	$16,734,029

It is difficult to understand how Prisoner Programming can be defined as "Special Equipment." More importantly, security costs are part of running a prison system. If the state wants to operate as many prisons as it is currently operating, all taxpayers should contribute to the cost of running those facilities.

Contact your U.S. Senator if you wish to comment on the Video Visitation and Inmate Calling in Prison Act. Contact your Michigan Representative and Michigan Senator if you wish to comment on the Special Equipment Fund payments that are part of the cost of your phone calls. Contact the Michigan Public Service Commission if you wish to comment on their potential to regulate the cost of intrastate prison calls. Their address is PO Box 30221, Lansing, MI 48909.

Sources: "DC Circuit strikes down FCC rules placing caps on payphone rates in prisons," Sentencing Law and Policy, June 15, 2017; "$114 for 15 Minutes: How Courts are Letting Prison Phone Companies Gouge Incarcerated People," by Victoria Law, The Intercept, June 16, 2017; "No Relief in Sight for High Cost of Prison Phone Calls," by Rui Kaneya, Hawaii Behind Bars, July 14, 2017; "Video Visitation and Inmate Calling in Prisons Act," Tammy Duckworth website; "Report to the Legislature Pursuant to P.A. 68 of 2016, Program and Special Equipment Fund Revenues and Expenditures." MDOC

DEFINING CRIMES BY THE VICTIM

In April, the Trump administration established an office dedicated to assisting victims of crimes committed by undocumented immigrants. There will be a hotline with operators who can provide support. Victims will receive information on the criminal and immigration history of the accused and will be able to track the custody status of the accused.

In announcing the development, the Secretary of Homeland Security John Kelly explained, "They are casualties of crimes that should never have taken place because the people who victimized them should never have been here in our country." There are, it seems to us, two major flaws with that logic. 1) No one deserves to be a casualty of a crime, regardless of the perpetrator. 2) Statistical data indicates that our foreign-born population is far less likely than our native-born population to commit crimes.

In similar developments, Michigan legislators have introduced bills that will enhance penalties for assaults on court officers (HB 4302), prosecuting attorneys (HB 4303), and sports officials (SB 200 and SB 201).

As noted earlier, in an ideal world, no one would be a victim of crime. Unless or until we achieve that state of utopia, it seems to us that no life is any more important than another. Assault is a crime, regardless of the victim. There is no justification for enhanced penalties or special victim services just because of the immigration status of the offender or the victim's occupation.

Source: "The Trump Administration Launched An Office To Highlight Crimes Committed By Undocumented Immigrants," by Adolfo Flores, www.buzzfeed.com, April 26, 2017

BAIL REFORMS LONG OVERDUE

According to the National Review, every day in America, 400,000 people are held in local jails who have not been convicted of any crime. Under the law, they are innocent, but they are deprived of their liberty because they cannot afford

the cost of bail. Holding someone prior to trial can be justified if the individual is a threat to pubic safety or a risk to flee before trial. But most of the people being held are low-risk and non-violent. They would not be a risk to the community if released.

The practice raises constitutional issues. People who may be dangerous but have money, can buy their freedom. Others who may be less dangerous but have no money remain in jail. Slate and the Fair Punishment Project reported on observations by Harris County District Attorney Kim Ogg. As a defense attorney, Ogg saw defendants forced to make a choice between pleading guilty to a minor crime or spending weeks or months in jail waiting for a trial. Many times they pled guilty just to get out of jail.

It is costing the country nearly $14 billion annually to hold people in jail before their trial. It does not make us safer to hold low-risk people in jail and it makes them 40 percent more likely to commit a crime after release. Holding someone in jail destabilizes him, stripping him of his job and connections to family and community. In other words, "that $14 billion doesn't make us safer; it makes us more endangered as citizens and weaker as a nation."

The good news is that there are several solutions to the problem and they are being implemented throughout the country.

District attorney Ogg has directed her prosecutors to recommend that defendants in most misdemeanor cases be released on their own recognizance, unless there is a clear public safety risk. (The office handles 65,000 misdemeanor cases each year.) Slate and The Fair Punishment Project report that the newly elected state's attorney in Cook County, Illinois, Kim Foxx has announced that her office will support the release of defendants who are being held because they cannot pay bonds of $1,000 or less. (In Cook County, which includes Chicago, 250 to 300 people are jailed per day with bonds of less than $1,000.)

Community groups are also playing a role. In more than a dozen cities, including New York, Chicago, Seattle, and Nashville, groups are bailing out strangers who simply cannot afford bail. "So far, the overwhelming majority of defendants still show up for court even when they have no money on the line, according to the groups. Once free, the defendants are better able to fight their case, often leading to charges being dropped or reduced." The Connecticut Bail Fund has posted bail for approximately 20 defendants. Black Lives Matter conducted a Mother's Day bailout to free at least 30 women in Atlanta, Houston, Minneapolis, Los Angeles and other cities.

Legislators are addressing the problem in some states. **California** bill SB 10 would allow trial judges to consider a pre-trial report that evaluates each felony detainee's level of public safety or flight risk. The judge could then either release the individual on his or her own recognizance, or set bail "at the least restrictive level necessary to assure the appearance of the defendant in court as required." Studies show that currently one-third of detainees in California are being held because they cannot afford bail.

The **Connecticut** legislature has passed a package that includes a number of changes to the bail system and is expected to save the state $30 million over the next two fiscal years. The changes include the following:

- Barring judges from setting cash-only bails
- Restricting judges from setting bail for misdemeanors in most circumstances. They retain discretion to impose bail for defendants with a record of not appearing in court or who are judged to be flight risks.
- Accelerating bail redetermination hearings in misdemeanor cases.
- Authorizing a study sought by the bail industry on the practicality of imposing a surcharge on bond agent's clients to help indigent defendants.

New Jersey has passed legislation that, in six months, has all but eliminated the use of cash bail. The cash bail system was replaced with a system based entirely on data and risk. If someone receives a high score, they can be detained until trial. Otherwise, they are likely to be released, perhaps with some monitoring by the courts. The first statistics showed that the jail population had been reduced by almost 30 percent.

Texas Governor Greg Abbot recently signed Senate Bill 1913, which should substantially reduce the number of people being jailed for failure to pay fines and fees for misdemeanor offenses. The law which will take effect on September 1, requires judges to offer options other than jail, including community service, waivers, or an installment plan. The nonprofit group Texas Appleseed reported that, in 2015, just 10 municipal courts sentenced nearly 14,000 people to jail for fines-only offenses.

Courts are also forcing changes. The **Maryland** Court of Appeals, the State's highest court, recently issued rules that require courts to take into account the individual circumstances of each defendant rather than set bail based solely on the nature of the charge. The ruling is consistent with Maryland Attorney General Brian Frosh's argument that it is more appropriate to hold someone without bail than to require a high bail if that individual poses a risk to the community or is a flight risk.

In April, Chief U.S. District Judge Lee Rosenthal in **Houston** ruled that the Harris County bail system was unconstitutional. He ordered the release of indigent misdemeanor defendants using personal bonds. In June, the 5th U.S. Circuit Court of Appeals rejected the county's request for an injunction while they appealed the ruling. The county then filed for emergency consideration before the U.S. Supreme Court. On behalf of the Supreme Court, Justice Clarence Thomas denied that request. The Sheriff began releasing indigent inmates charged with misdemeanors. Harris County District Attorney Kim Ogg praised the court's decision.

Meanwhile, in **Michigan**, Robert Ficano, criminal justice professor at Wayne County Community College and former Wayne County Sheriff and Executive, is arguing that Michigan should be pursuing these improvements. He points out that the Wayne County Jail houses almost exclusively pretrial detainees, most of whom are indigent and cannot afford cash bonds. He reports that funding is available from the Laura and John Arnold Foundation to study data-driven formulas for determining release of pretrial detainees. An alternative would be litigation to challenge the cash bond system. Nine states are involved in such litigation. It costs $80 per day to house someone in the Wayne County jail. As the county plans for a new jail, he argues that the bail system will have a significant impact on the size of the jail required.

U.S. Senators Kamala Harris and Rand Paul see a role for the federal government in pressing for bail reform. They have introduced the Pretrial Integrity and Safety Act, which is designed to promote state-level reforms through a grant program. States would be empowered to build on existing best practices. In announcing the legislation, they cited several of those practices. One is to use personalize risk factors instead of bail (as was noted previously). Colorado and West Virginia use telephone reminders so that defendants are less likely to miss court dates. States who receive grants would be required to produce data that demonstrates that the program is effective and not discriminatory. In their announcement, Harris and Paul noted that the Pretrial Justice Institute estimates that bail reform could save American taxpayers roughly $78 billion per year.

Sources: "Conservatives Have a Stake in Bail Reform," by Marc A. Levin, National Review, July 6, 2017; "The nation's district attorneys have the power to end the cash bail system. Some of them have started using it," by Casey Tolan, Slate and the Fair Punishment Project, March 9, 2017; "Groups being bailing out strangers to free poor from jail," by Tribune News Service, January 30, 2017; "Connecticut Bail Fund Sets Sights on Wealth Based Jailing," by Michael Lee Murphy, Connecticut Magazine, May 24, 2017; "This Mother's Day, Black Lives Matter Activists Will Give More Than 30 Women their Freedom," by Dan McClain, The Nation, May 9, 2017; "California Pushes Major Reform of Bail System," by Maria Dizeo, Courthousenews.com, April 5, 2017; "Bail reform wins final passage in Senate," by Mark Pazniokas and Keith M. Phaneuf, The CT Mirror, June 7, 2017; "In New Jersey, Sweeping Reforms Deliver Existential Threat to Bail Bonds Industry," npr.org, July 6, 2017; "Let's hope new law puts an end to debtors' prisons in Texas," Opinion by Columnist James Ragland, The Dallas Morning News, June 17, 2017; "Maryland Court of Appeals: Defendants can't be held in jail because they can't afford bail," by Michael Dresser, The Baltimore Sun, February 8, 2017; "U.S. Supreme Court justice denies Harris County request in bail case," by Mihir Zaveri and Gabrielle Banks, Houston Chronicle, June 7, 2017; "The cash-bond system has served the counry since 1835. It's finally time for a change," Guest Commentary by Robert Ficano, Bridge Magazine, June 9, 2017; "Kamala D. Harris and Rand Paul: To Shrink Jails, Let's Reform Bail," by Kamala D. Harris and Rand Paul, New York Times OP-ED, July 20, 2017.

IMPLEMENTING WHAT WE KNOW ABOUT EVIDENCE

Examining Forensic Evidence

In 2013, The Obama administration established a 30-member advisory panel of scientists, judges, crime lab leaders, prosecutors, and defense attorneys to examine the state of forensic evidence and set standards for its use. The results were significant. They concluded that there were problems with the analysis of bite marks, firearms, shoe prints, hair fiber, blood spatter, fingerprints, and samples containing DNA from more than one person. (The Atlantic)

Erin Murphy reported, "In its brief two years of existence, (the panel) drafted 43 standards that actually changed forensic science, on the ground, for the better." Among the issues covered were the following:

- Certification requirements for forensic examiners (who still do not need to pass any basic competency exams)
- Discovery rules to ensure that criminal defendants are aware of the evidence to be used
- Reporting standards to discourage the use of the phrase "reasonable degree of scientific certainty" that has "no scientific meaning and may mislead fact finders"

They were preparing to release a number of best practices for digital forensics.

In April, Attorney General Jeff Sessions announced he is ending the work of the commission. He plans to continue the work with an in-house team at the Department of Justice. A number of commentators have expressed concern over the move. Rush D. Holt and Jed S. Rakoff cited a 2009 report by the National Academy of Sciences that concluded that too few forensic disciplines, other than DNA analysis, have adequate scientific basis. Experts often overstate their claims in testimony, invoking unscientific terms like "scientific certainty" and claiming 100 percent accuracy. The two men concluded, "The Justice Department is the responsible agency for prosecuting federal crimes and, in this role, makes frequent use of forensic techniques. It is therefore not appropriate for the Justice Department to be the evaluator of forensic practices.

Peter S. Neufeld, co-founder of the Innocence Project was quoted, "The department has literally decided to suspend the search for the truth."

Commission members wrote to Sessions asking to be able to continue their work. In the letter, they made the following points:

- The inclusion of an array of research scientists is necessary to further improve the foundation and practice of forensic science

- The representation of these fields has been one of the strengths of this Commission and has been critical to its success
- Any forum for forensic science issues must include significant numbers of independent scientists and researchers. Forensic science as an academic discipline is very young, and we are committed to guiding and cultivating a robust research culture

The Impact of Inaccurate Forensic Evidence

Establishing clear standards for forensic evidence is not just an academic exercise. In 2015, the FBI reported that in 96 percent of cases reviewed, analysts provided erroneous testimony regarding microscopic matching of hair samples. At least 490 people have been exonerated since 1989 after being convicted on the basis of false or misleading forensic techniques. In 2005, the FBI lab stopped tracing bullets to a specific manufacturer's batch through chemical analyses after its methods were scientifically debunked. At least 21 known wrongful convictions are attributable to bite-mark evidence that is known to be unreliable.

Correcting Bad Forensic Evidence is a Slow Process

Unfortunately, when forensic evidence is wrong, corrective action is often slow. An estimated 3,000 cases involving questionable hair or fiber analysis were to be slated for review. As of April 2017, 1,600 of the cases had been reviewed. There were problems in more than 90 percent of the cases. The Office of Inspector General (OIG) criticized the FBI in 2014 for failing to ensure that defendants were notified of inaccurate forensic reports. The OIG found evidence in only 15 of 402 cases that defense was notified of a problem. In 2016, FBI Director James Comey urged governors to prod prosecutors to notify defendants of the bad FBI hair analysis, warning that it "could have misled a jury or judge."

U.S. District Judge Jed S. Rakoff had been quoted, "I think too many courts have been too quick to leave unchallenged – and even unthought about – certain kinds of evidence that historically have been produced in criminal cases and that should have been subjected to greater scrutiny." "Before and even after (the National Academy of Science report questioning the validity of much forensic evidence) very few judges critically analyzed the forensic science that was being presented to them."

In 2012 officials discovered that a drug lab chemist in Massachusetts was tampering with drug samples and fabricating results. The analyst was responsible for testing drugs in approximately 40,000 cases from 2003 to 2012. Prosecutors dropped fewer that 2,000 cases on their own initiative. But it wasn't until January of this year that the Massachusetts Supreme Judicial Court gave district attorneys 90 days to produce a list of cases that should be dismissed because the cases could not hold up without the tainted evidence. In April 2017, prosecutors collectively produced a list of 20,000 cases that will be thrown out. Apparently no one is still incarcerated based on tainted evidence from the analyst, but the convictions remain on their records.

Other Types of Evidence Can Be Problematic

Forensic evidence is not the only kind we can get wrong. According to a 2005 survey by the Center on Wrongful Convictions, false testimony from jailhouse informants has been the single biggest reason for death-row exonerations in the modern death penalty era. In 2005, 50 of these 111 exonerations were attributable to jailhouse informants, with 48 more exonerations since then. Texas recently passed a law to reduce the problem. "The new law requires prosecutors to keep thorough records of all jailhouse informants they use – the nature of their testimony, the benefits they received and their criminal history. This information must be disclosed to defense lawyers, who may use it in court to challenge the informant's reliability or honesty, particularly if the informant has testified in other cases."

The new law will not solve all of the problems. If a person enters a plea agreement, he or she will never go to trial and will likely never know that someone was compensated to testify against them. If the defendant goes to trial, the defense attorney may not be able to discredit the informant. Another bill would have prevented the use of compensated informants completely – at least in capital cases. Some argue that it makes little sense for prosecutors to use the testimony of people they would not trust under other circumstances.

Other states have taken a different approach, requiring judges to conduct hearings to determine an informant's reliability – before the informant testifies in front of a jury.

Another notoriously unreliable form of evidence is the eye witness. The Innocence Project has reported that 71 percent of the wrongful convictions in its DNA cases involved mistaken eyewitness identification. Of that 71 percent, more than half involved an incorrect in-court identification. The group contends that first-time in-court identification increases the risk of wrongful conviction. They believe that the drama associated with pointing to a defendant in court may overcome the problems with a weak case. It is also incredibly easy to identify the defendant in court, which means the witness need not rely on his or her memory of events.

In 2016, the Connecticut Supreme Court ruled that a witness cannot be asked to identify an individual in court unless the witness knew the accused prior to witnessing the crime, had already identified the accused prior to the trial, or the accused person's identity is not contested. Massachusetts's top court banned in-court identifications except when the witness had been unequivocal in identifying the defendant prior to trial. Litigation underway in Colorado may lead to that state adopting similar rules.

Impact of Scientific Evidence on Sex Offender Registration Rulings

Perhaps the first serious legal challenge to a Sex Offender Registration Act (SORA) was *Smith v. Doe,* which involved the Alaska SORA. The U.S. Supreme Court upheld that law in 2003 because recidivism rates for people who committed sex offenses were reportedly "frightening and high." It appears that that conclusion was based upon very little evidence. The opinion in *Smith* cited just one earlier Supreme Court ruling to support the conclusion that recidivism rates were high. That 2002 case was *McKune v. Lile* which involved the Civil Commitment program in Kansas. The only support for the high recidivism rate in *McKune* was an article about sex offender treatment by the National Institute of Corrections (NIC). The NIC article provided no statistical analysis, referring only to a 1988 article in the magazine *Psychology Today*. The authors of the *Psychology Today* article were therapists in a sex offender treatment program with no apparent academic research credentials or statistical training. Their statement was as follows: "Most untreated sex offenders released from prison go on to commit more offenses – indeed, as many as 80% do." It appears that the "statistic" was based upon personal observations from their treatment program. They offered no empirical evidence, and therefore it has no application beyond their own program.

When the Sixth Circuit Court of Appeals reviewed Michigan's SORA law in *Doe v. Snyder* in 2016, it looked at a statistical study with a wide application. That study demonstrates that people who have committed sex offenses are actually less likely to recidivate than people who have committed other crimes. They also reviewed a study that suggests that SORA laws might actually increase the risk of recidivism because they create barriers to rentry, safe housing and decent jobs. *Does v. Snyder* has now been cited by several other courts, including the Eleventh Circuit (Florida) and a district court (Indiana). The Fourth Circuit has looked for scientific evidence that North Carolina's SORA law serves public safety. The Pennsylvania Supreme Court has ruled that its SORA law is punishment and cannot be applied retroactively.

Melissa Hamilton concludes, "*Snyder* is a shining example of a court actually engaging with scientific evidence that refutes moralized judgments about a particularly disfavored group. Equally important, a reasonable interpretation of the Sixth Circuit's opinion by many is that more of Michigan's civil sex offender law, and other state laws like it, are now subject to a broader invalidation. Time will soon tell whether this specific case attracts the attention of the Supreme Court and its willingness to revisit its mistaken assumptions about the dangerousness of sex offenders collectively. Yet, whether or not the Supreme Court does so in the near future, the effect of the *Snyder* decision on the engagement of scientific data in constitutional analysis has already been influential."

Mining technology for evidence

The fact that the national forensic science review panel was preparing to release a number of best practices for digital forensics becomes more significant when one considers recent cases in which technological devices have been used to uncover evidence of crimes.

An Ohio man is facing charges of arson and insurance fraud because of evidence downloaded from his pacemaker. Aside from the fact that the property smelled of gasoline, the accused man's heart rate and cardiac rhythms were not consistent with his explanation of the fire. His defense attorney argued that the pacemaker data was an unreasonable seizure of the defendant's private information. The judge did not agree.

Police have built a murder case against a Connecticut man using, in part, the man's Fibit data (which counted his steps). An Arkansas man was charged with murdering a co-worker after investigators found incriminating evidence on his Amazon Echo robot.

Sources: "Jeff Sessions and the Odds of Imprisoning Innocents," by Lawrence Bryan/Reuters, The Atlantic.com, April 11, 2017; "Sessions Is Wrong to Take Science Out of Forensic Science," by Erin F. Murphy, New York Times, April 11, 2017; "The Justice Department is squandering progress in forensic science," by Rush D. Holt and Jed S. Rakoff, Opinions, The Washington Post, July 2, 2017; "Sessions orders Justice Dept. to end forensic science commission, suspend review policy," by Spencer S. Hsu, The Washington Post, April 10, 2017; "Wisconsin, U.S. used flawed hair evidence to convict innocent people," by Dee J. Hall, Wisconsin Center for Investigative Journalism, April 30, 2017; "Do judges contribute to injustices? A conversation with Judge Jed Rakoff," www.abajournal.com, April 13, 2017; "Prosecutors will drop thousands of cases in Dookhan scandal," by Shawn Musgrave, Boston Globe, April 19, 2017; "Texas Cracks Down on the Market for Jailhouse Snitches," by the Editorial Board, New York Times, July 15, 2017; "When a Witness Confronts the Accused: Is a Courtroom I.D. Fair?" by Marella Gayla, The Marshall Project, July 13, 2017; "Constitutional Law and the Role of Scientific Evidence: The Transformative Potential of Doe v. Snyder," by Melissa Hamilton, Boston College Law Review, Vol. 58:E. Supp.; "Your Own Pacemaker Can Now Testify Against You in Court," by Deanna Paul, wired.com, July 29,2017

NEW APPROACHES TO HELPING PEOPLE LEAVING JAILS AND PRISONS

Justice-involved Supportive Housing: In New York, the Mayor's Office of Criminal Justice and the Department of Health and Mental Hygiene are working to provide supportive housing for a relatively small number of people who consume a disproportionate share of shelter, jail, and emergency room resources. This is a population that…

- Generally face low-level criminal charges
- Cycle through jail repeatedly for short periods of time
- Have significant behavioral health needs
- Struggle with homelessness
- Are generally older than the average jail population

Studies have shown that providing supportive housing for these individuals can, in two years, lead to the following:

- 40 percent reduction in days spent in jail

- 38 percent reduction in jail admissions
- 90 percent reduction in shelter admissions and days in shelter
- 55 percent reduction in days in a psychiatric hospital

Program participants are assigned a case manager who helps them connect with crisis interventions, financial management assistance, public benefits, substance use counseling and treatment, medication management, and other services.

As of March 15, 2017, 97 individuals were participating in the program. That represents 80 percent of the program's capacity. One of the organizations participating in the program is CAMBA/CAMBA Housing Ventures. Its President and CEO, Joanne M. Oplustil was quoted, "In just one year, CAMBA has successfully housed 32 individuals with histories of homelessness that date back 20-30 years. We are proud that 94% have been able to maintain housing with our support, despite mental illness, substance abuse histories and very little experience with independent living."

The city expects the program to save $16,000 per person per year.

Similar programs, often called "housing first" operate in other cities, including Santa Clara, CA, Salt Lake City, and Dallas. In 2016, Dallas opened a community of 50 tiny houses for chronically homeless. Many of those people were referred by the justice diversion program. On-site social workers and medical and mental health providers help the residents make the transition. These programs have proven to reduce jail overcrowding.

The Canadian government is planning to provide nearly $7.5 million over five years to support **Circles of Support and Accountability** (CoSA) programs. The programs are designed to help people who have been convicted of serious sex offenses reintegrate into the community.

There are two circles of support for each person returning to the community. The inner circle includes several trained volunteers who help the individual address practical needs and to provide emotional support. The outer circle consists of professionals who offer training and support to the volunteers.

The programs began as an experiment by a group of Mennonites in 1994. A 2014 report by the Mennonite Church Council on Justice and Corrections claimed that only 2 percent of CoSA-involved individuals reoffended with a sexual offense within three years of returning to the community.

Connecticut has the first facility in the country that is housing individuals on parole and has been approved by the Centers for Medicare and Medicaid Services for federal **nursing home** funding. Medicaid covers half the cost of their care, saving the state about $5 million annually. In addition to the cost savings, individuals are receiving better care than they would in a prison where infirmaries are not designed for chronic or hospice care.

Some individuals in Michigan are benefiting from specific **employment training** at the Detroit Reentry Center. The City of Detroit is using a $4.5 million grant from the U.S. Department of Labor to prepare inmates for jobs in environmental work, culinary arts, and fork-lift operation.

The environmental training includes asbestos abatement, lead inspection, cardiopulmonary resuscitation, and hazardous materials handling. Program participants can earn state certifications for asbestos abatement and lead abatement.

The city studied which jobs were in demand before deciding on the curriculum. All of these jobs should earn more than the minimum wage.

According to the Alliance for a Just Society, on average, each state has 56 occupational licensing laws and 43 business licensing laws that ban applicants with a felony conviction. In some cases the ban is complete; in other cases licenses may be granted if special conditions are met. Some states, including Illinois, Kentucky, and Nebraska are taking steps to lift some, if not all, of these **licensing restrictions**.

Sources: "Mayor's Office of Criminal Justice, Department of Health Announce Successful Rollout of 'Justice-involved Supportive Housing' Program Stabilizing Individuals Who Frequently Cycle Through Jail and Shelter," Press Release, March 15, 2017; "A Fresh Take on Ending the Jail-to-Street-to-Jail Cycle: For troubled repeat offenders, a chance at a supportive place to live," by Christie Thompson, The Marshall Project, May 10, 2017; "Reintegration is possible for people who are often regarded with fear and anger," by Rachel Bergen and Mennonite Central Committee, Mennonite World Review, June 19, 2017; "Connecticut Nursing Home for Elderly and Sick People on Parole is Model for Country," by Adam Wisnieski, Hartford Courant, April 26, 2017; "How Detroit is helping inmates prepare for jobs," by Jennifer Dixon, Detroit Free Press, January 22, 2017; "To Help Ex-Offenders Get Jobs, Some States Reconsider Licenses," by Sophie Quinton, The Pew Charitable Trust, March 8, 2017

ANOTHER LOOK AT PRISON WAGES

The Prison Policy Initiative recently looked at the wages paid to incarcerated individuals throughout the country. They combed through the policies of state correctional agencies and other sources to find information for most states. Compared to other states, Michigan falls close to the middle in terms of wages paid for regular prison jobs.

The author reported one major surprise: "Prisons appear to be paying incarcerated people *less* today than they were in 2001." The average minimum daily wage for workers in non-industry prison jobs is now $0.87, down from $0.93 reported in 2001.

The report cites a number of concerns that we have previously noted. The low wages are not enough to purchase needed personal items, pay fees such as medical co-pays, and save money needed after release from prison. It is impossible to learn any money management skills with such low wages. To

make matters worse, for the most part these jobs do not teach skills that will be helpful when a person goes home.

Source: "How much do incarcerated people earn in each state?" by Wendy Sawyer, Prison Policy Initiative, April 10, 2017

SHORTS

Persons convicted of sex offenses cannot be banned from social media: In a unanimous decision the U.S. Supreme Court (*Packingham v. North Carolina, USC 15-1194)* has ruled that individuals whose names are on a sex offender registry cannot be barred from social media sites such as Facebook, Snapchat, and LinkedIn. Justice Anthony Kennedy wrote, "To foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights. Even convicted criminals – and in some instances, especially convicted criminals – might receive legitimate benefits fro these means for access to the world of ideas, in particular if they seek to reform and to pursue lawful and rewarding lives." Similar laws in other states are now under legal scrutiny.
Sources: ""Supreme Court says sex offenders can access social media," by Richard Wolf, USA Today, June 19, 2017; "Supreme Court Win!" by Bill Dobbs, The Dobbs Wire, June

What's In a Name? David H. Kerr argues that it is "difficult to reform and improve a system with the word 'criminal' in the title.… (W)e are not dealing with criminals but rather people who need to be coached to grow and to develop a sense of self that can convert into self-respect and self-esteem…. With that in mind, I am suggesting that from now on, we call the system, '**The Human Justice System**.' Let's inspire people to change and improve their behavior and attitude by referring to them as 'human beings' rather than 'criminals.'"
Source: "'Criminal Justice System?' How about calling it the 'Human Justice System,'" by David H. Kerr, Blog.nj.com, March 11, 2017

NOTABLE QUOTE

U. S. District Judge Jed S. Rakoff recently discussed the pressure placed on defendants to plead guilty rather than go to trial. He cited the fact that of the 347 individuals proven by the Innocence Project to be factually innocent 10% had pled guilty to the crime. In other words, they were so fearful of going to trial that they pled guilty to something they did not do. The judge concluded, "Our legal system is a lot less perfect than we always thought it was."

WITH SYMPATHY

Since publication of our last newsletter, we have learned of the deaths of MI-CURE members and supporters Marc Janness – 206974, Dendalee "Doc" McBee – 122059, Reginald "Hook-Amin" Johnson – 115613, and Susan Roof.

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