



MI-CURE NEWS

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MASS INCARCERATION AND WHAT TO DO ABOUT IT

According to the New York Times, since the early 1970s, the U.S. prison population has quadrupled to 2.2 million. It is the largest prison population in the world and is 5 to 10 times the incarceration rate of other democracies. More than half of state prisoners in this country are serving time for nonviolent offenses; one incarcerated person in nine is serving a life sentence.

Work is underway in a number of states to end what is now called “mass incarceration.” There are also many organizations throughout the country that are now working on this issue. Among them are the American Civil Liberties Union, the American Friends Service Committee, the Brennan Center, Justice Strategies, the National Lawyers Guild, and the Sentencing Project. On November 7, 2014, the Open Society Foundation awarded the American Civil Liberties Union a grant of \$50 million to support its campaign to end mass incarceration. Even conservative politicians (including Newt Gingrich, Ed Meese, Jeb Bush, and Grover Norquist), have argued that we must do something about the high rate of incarceration in the country.

On November 3, 2014, California voters overwhelmingly passed ballot proposal 47 that reduces penalties for a number of offenses and makes the reductions retroactive in some cases. By one estimate, 40,000 offenders will be affected by the changes annually. A legislative analysis estimated that the net savings to the state’s criminal justice system will reach the low hundreds of millions of dollars annually. The savings will be spent on school truancy and dropout prevention, mental health and substance abuse treatment, and victim services.

Efforts to reduce mass incarceration are often viewed in three major categories: reducing the number of people entering prison, reducing the length of time persons remain in prison, and reducing the number of people who return to prison. Under each category, there are many ways to approach the problem. Depending upon the jurisdiction, some initiatives are more promising than others. The following is a list of the initiatives that we believe would be most helpful in Michigan.

Reduce prison admissions

- Change sentencing guidelines to stress restorative justice, alternatives to incarceration, and racial justice
- Improve defense services
- Ensure that all eligible persons have access to problem-solving courts (drug, mental health, and veterans)
- Reduce wrongful convictions

Reduce the length of stay in prison

- Initiate presumptive parole
- End truth in sentencing and implement good time.
- Review cases of individuals sentenced to mandatory life without parole as juveniles
- Promote the active and appropriate use of commutations
- Implement a robust system for considering medical releases
- Ensure timely access to therapy

Reduce the number of people returning to prison

- Stress rehabilitation in prisons
- Eliminate non-productive demands on persons released from prison

The following is a more complete description of the opportunities we see in each area.

SENTENCING GUIDELINES:

Problems: According to Neil Rockind, “the Michigan Penal Code contains about 918 sections, which is eight times the number of the Model Penal Code.... (The state has) 3,100 identified criminal offenses, far more than nearby Ohio, Illinois, and Wisconsin.” More than 50% of the persons incarcerated in Michigan prisons are non-white, while only 21% of the state’s total population is non-white. In 2013, the latest year for which data is available, 44.6% of the prison admissions were for non-assaultive offenses and 13.4% were for drug offenses.

Other Models:

At least three states (Iowa, Connecticut, and Oregon) have implemented laws that require analysts to identify the racial impact of any proposal to create a new crime or set tougher penalties. According to the Drug Policy Alliance, thirteen states, as well as Washington, DC, and the federal government, already treat personal drug possession as a misdemeanor. As noted earlier, California voters overwhelmingly approved a ballot proposal to reduce penalties for a number of offenses.

Opportunity: The Governor has signed legislation that will establish a criminal justice policy commission to look at sentencing guidelines. The commission should look at the racial impact of current sentencing guidelines and any proposed changes. They should also be looking at whether any offenses should be removed from the books or classified as misdemeanors rather than felonies. The Governor also

signed legislation that should expand the use of community sanctions instead of prison sentences. That should serve as an opportunity to reduce the number of persons entering prison.

DEFENSE SERVICES:

Problems:

Michigan indigent defense system has been ranked one of the worst in the country. As is true throughout the country, prosecutors have far more resources than do defense attorneys, which makes no sense in a system that is designed to be adversarial. Attorneys providing defense for the indigent often have crushing caseloads that make it impossible for them to adequately serve all clients.

Other Models:

Holistic defense systems work to address both the collateral consequences of the criminal justice system as well as the underlying issues that were a factor in a person's offending. By doing so, defendants are often able to stabilize their lives and make more informed decisions; attorneys are more effective advocates. We are not aware of the model being used anywhere in Michigan.

Opportunity:

As a result of legislation passed in 2013, the Michigan Indigent Defense Commission has begun meeting to design a new indigent defense system for the state. Hopefully, they will succeed in providing more resources and better systems for Michigan citizens who must utilize the indigent defense system.

PROBLEM-SOLVING COURTS:

Problem-solving courts are designed to address the underlying problems that contribute to criminal behavior. The courts help defendants to address problematic behaviors while keeping the individual in the community, rather than incarcerating him or her. The most common of these courts are drug courts, mental health courts, and veterans' courts.

Problem:

Drug courts are the most prevalent of the problem-solving courts in Michigan, with 57 counties (69%) having a drug court. Only 24 counties (29%) have mental health courts. Only 16 counties (19%) have veteran's courts.

Opportunity:

Given the potential of these courts to help people gain control over their lives and avoid criminal behavior, we should make the services available to individuals in every county of the state.

WRONGFUL CONVICTIONS:

Problems:

According to The National Registry of Exonerations, 2014 was a record-breaking year for exonerations in the U.S. Of the 27 states that produced exonerations in 2014, Michigan ranked fourth highest. Most exonerations occur in the case of serious

crimes with long sentences. There is no cheap, reliable way to challenge the guilt or innocence in comparatively light felonies, though false convictions certainly occur in such cases. In Wayne County there are a very large number of sexual assault kits that have yet to be tested. As a result, some innocent people may be in prison and guilty people not yet identified.

Opportunities:

Conviction Integrity Units have been established in a number of large prosecutors' offices throughout the country to investigate claims of innocence. The only such unit in Michigan, in the Wayne County Prosecutor's office, has resulted in 6 exonerations. It may be beneficial to create Conviction Integrity Units in other large prosecutors' offices in Michigan.

The Innocence Project suggests several measures to reduce wrongful convictions, some of which Michigan has enacted. For example, Michigan has a law explicitly granting post-conviction DNA testing when it can prove innocence. The State requires retention of biological evidence for the length of incarceration in cases where a defendant was convicted. And Michigan police must produce a time-stamped audio-visual recording of interrogations related to major felonies that occur in custodial detention.

Michigan does not have a statewide policy covering procedures to reduce errors related to eyewitness identification. A policy is needed to require the careful selection of the "fillers" who are put in lineups, to give witnesses clear and consistent instructions before lineups and to make sure that the officer administering the lineup does not know who the suspect is and who the fillers are. Michigan does not provide appropriate financial compensation or critical services (like healthcare, education and job training), for people who are wrongfully convicted.

PRESUMPTIVE PAROLE:

Problems:

Michigan's Parole Board often ignores its own parole guidelines, refusing to release individuals with a high probability of success on parole. The rationale for denying paroles is very often unclear, which means that the incarcerated individual has no idea what he or she must do to earn parole. At MI-CURE's annual meeting in October 2014, Parole Board Chair Michael Eagen reported that individual parole board members weigh factors differently. The parole denials are even more frustrating in view of the fact that a number of studies have demonstrated that longer prison sentences do not reduce recidivism.

Opportunities:

A presumptive parole system would require the release of an incarcerated person at his or her earliest release date, unless there were valid, objective reasons not to do so. Those reasons might include poor institutional behavior or refusal to participate in programming. The nature of the crime or poor interviewing techniques would not be valid reasons.

In the past legislative session, a bill was introduced that would have moved us closer to a presumptive parole system. That bill did not get through the legislature. Such a system is sorely needed.

GOOD TIME:

Problem:

When Michigan's truth in sentencing law was enacted, it went further than nearly every other state in the country. Instead of requiring persons to serve 75% of the minimum sentence in a prison, Michigan requires someone to serve 100% of the minimum sentence in a secure facility.

Opportunity:

During Governor Granholm's administration, a bill was introduced that would have reinstated good time, allowing someone to be paroled prior to the earliest release date, and making Michigan consistent with most other states. The bill, which was supported by the Department of Corrections and opposed by prosecutors, did not get through the legislature. It is time to reconsider reinstating good time.

JUVENILE LIFE WITHOUT PAROLE:

Problem:

The U.S. Supreme Court has ruled that mandatory sentences of life without parole for juvenile offenders are unconstitutional. Bills were introduced to apply that decision retroactively to individuals already in Michigan's prison system. Those bills were not enacted. The Michigan Supreme Court was asked to rule on the issue, and refused apply the ruling retroactively.

Opportunity:

The legislature needs to try again to get this right. Mandatory sentences of life without parole for juveniles are unconstitutional – regardless of when the sentence was issued.

COMMUTATIONS:

Problem:

Governor Snyder has granted few commutations; most, if not all, involved individuals with serious health problems. Former Michigan Republican Governor William Milliken has said, "It's an extraordinary power that a governor has. It's something a governor has got to do...." Milliken was also quoted, "I granted a lot of commutations as governor. The one regret I have is that I didn't grant more." Former Maryland Republican Governor Robert Ehrlich has said, "There's a lot of justice that can get accomplished pretty efficiently to great benefit if you take (the commutation) process seriously."

Opportunity:

Commutations are a constitutional duty that should be exercised. Former Governor Ehrlich has worked with the Catholic University of America's Columbus School of Law to establish a clinic to focus on clemency issues. One unique

component of the clinic is a workshop for interested governors and their staff. We do hope that Governor Snyder will consider participating in the workshop.

MEDICAL RELEASES:

Problem:

The high cost of health care is a major factor in the high cost of corrections. With longer sentences, including more life sentences, those costs show no signs of leveling off. Someone with serious health issues is not likely to commit new crimes.

Opportunity:

The Parole Board needs to give more serious consideration to persons with serious health issues.

TIMELY ACCESS TO THERAPY:

Problem:

The MDOC appears to have made substantial progress in reducing the waiting lists for Violence Prevention Programming (VOP) and Sex Offender Programming (SOP). However, individuals are still approaching or reaching the earliest release date without being enrolled in the required programming. The National Institute on Drug Abuse (NIDA) reports that an estimated one-half of the country's state and federal prisoners abuse or are addicted to drugs. In Michigan, as in many states, few of these individuals are provided treatment while incarcerated.

Opportunity:

Continuing to improve on the timely delivery of VPP and SOP is certainly a major contribution to reducing the prison population. NIDA reports that individuals who enter substance abuse treatment under legal pressure have outcomes as favorable as those who enter treatment voluntarily. They also note, "successful treatment outcomes often depend on a person's staying in treatment long enough to reap its full benefits." We are missing a significant opportunity to reduce recidivism by failing to provide meaningful long-term treatment for persons with substance abuse issues who are incarcerated.

REHABILITATION IN PRISONS:

Problem:

Numerous studies have demonstrated the importance of education in reducing recidivism. Based upon the latest information available from the MDOC (Fiscal Year 2013), the waiting lists for GED, Pre-Release, and Vocational Training remain high. Since the Federal government eliminated Pell Grants for prisoners, the only higher education occurring in the system is one small pilot program and individual self-funded efforts. Based upon our understanding of data published by the MDOC, fewer than 3% of its 12,682 employees are providing educational and/or vocational programming.

Opportunity:

If the Department is serious about reentry programming, it needs to invest more in educational and vocational programs. We need to hire more instructors and support them with qualified inmate tutors. If program space is a problem, why not operate educational and vocational programs on first and second shifts? The administration of the MDOC should be working with the administrators of other state prison systems and the State's colleges and universities to advocate for reinstatement of Pell Grants for prisoners. A more robust program may require more programming space. Construction of such space would be a cost-effective investment.

ELIMINATE NON-PRODUCTIVE DEMANDS ON RELEASED PERSONS:

Problem:

Transitioning to the community is very challenging. All Michigan parolees are charged a fee for supervision. A significant number of persons on parole are subject to electronic tether or GPS monitoring, and are charged a daily fee. Burdening individuals with unnecessary fees simply complicates the challenges.

Most of those being monitored electronically are persons who have served time for a sex offense, and, as a group, have the second lowest recidivism rate of any group of offenders. Persons whose names appear on the sex offender registry are subject to residency restrictions that make it extremely difficult to find housing in most Michigan cities. The Department of Corrections touts the fact that they are implementing evidence-based solutions. We could find no studies that provide evidence that electronic monitoring is effective. There are studies that demonstrate that residency restrictions are ineffective, i.e. they do not prevent recidivism. They do make life difficult for persons on the registry and their loved ones, which is counter-productive.

Opportunity:

A successful transition is much more important and cost-effective than burdening people who are struggling to restart their lives with oversight fees. If the oversight is needed, it should be a taxpayer responsibility. Unless there is evidence of the effectiveness of electronic monitoring and/or residency restrictions, those should be eliminated.

Sources: "End Mass Incarceration Now," by The Editorial Board, The New York Times, May 24, 2014; "Michigan criminal code encroaching on civil liberties," by Neil Rockind, Bridge, January 29, 2015; http://www.abwfct.org/wp-content/uploads/2013/03/DPA_Fact-Sheet_Approaches-to-Decriminalizing-Drug-Use-and-Possession.pdf; "Conviction Integrity Units: Vanguard of Criminal Justice Reform," Center for Prosecutor Integrity, 2014; <http://www.innocenceproject.org>; <http://www.drugabuse.gov/publications/principles-drug-addiction-treatment-research-based-guide-third-edition/frequently-asked-questions/what-role-can-criminal-justice-system-play>; "Active Employees by Department," pay

period ending 12/20/2014; "Academic/Vocational Report," March 1, 2014

INFORMATIONAL SESSIONS FOR FAMILY & FRIENDS OF THE INCARCERATED

The State Appellate Defender Office (SADO) represents indigent criminal defendants on appeal from felony criminal convictions. They periodically offer free informational sessions to help loved ones know what to expect after someone has been sent to prison. They explain the appeals process and give tips on staying connected with someone who is incarcerated. There are three remaining sessions scheduled this year. All sessions run from 5:30 p.m. to 7:00 p.m. They are as follows:

May 7, 2015, Thursday in Lansing
August 6 2015, Thursday in Detroit
November 5, 2015, Thursday in Lansing

The Detroit location is at 645 Griswold, Suite 3300, Penobscot Building. The Lansing location is at 101 North Washington, 14th Floor Comerica Bank Building.

If you plan to attend, you must RSVP at least two days in advance of the session, by calling 313-256-9833.

2014 LEGISLATION

Several laws were passed in the lame duck session of the legislature that may be of interest to some of our readers.

HB 5928 creates a Criminal Justice Policy Commission that will review current sentencing guidelines and recommend changes. The enhanced sentencing of habitual offenders is to be included in the review.

HB 5929 will modify the Community Corrections Act. That act encourages the use of community sanctions rather than jail or prison sentences. One of the changes requires that program standards adopted by the Board reflect evidence-based practices and that program eligibility include moderate- to high-risk offenders.

HB 4186 expands the convictions that can be expunged. A person with no more than one felony conviction and no more than two misdemeanor convictions can petition the court to expunge the felony. Persons with no more than two misdemeanor convictions may petition the court to expunge one or both convictions. The law does prohibit expunctions for some convictions.

SB 105-107 requires the court or the prosecutor to request and oversee the removal of DNA information that was collected at the time of an arrest for which there was no conviction.

SB 1011 requires the state to only suspend, and not terminate, Medicaid coverage for incarcerated individuals with a serious mental illness or emotional disorder who would otherwise qualify for Medicaid either prior to or during incarceration.

LATEST DEVELOPMENTS IN FCC PRISON PHONE CASE

As we reported in a previous edition of MI-CURE News, the US Court of Appeals for the District of Columbia Circuit has been reviewing a challenge to some of the features of the Federal Communications Commission's (FCC) earlier ruling on interstate inmate calling services. The challenge deals with the FCC's rules on the safe-harbor rate caps, that rates must be cost-based, and a requirement of annual reporting and certification. There is a stay on those rules until the court makes a final determination.

On December 10, 2014, the FCC asked the court to place the case in abeyance pending the issuance of final rules in the open proceeding. The rationale for the request was described by the FCC as follows: "the permanent reforms under consideration before the FCC could moot or significantly alter the scope of the petitioners' challenges in this case to the FCC's transitional reforms. But because the pleading cycle in the administrative proceeding will not close until January 20, 2015, the FCC will not be in a position to adopt final rules governing inmate calling rates before the date recently set for oral argument in (The Court of Appeals)." The court granted the FCC request, since there were no objections.

On January 9, 2015, more than 50 former state (and DC) Attorneys General sent a letter to FCC Chairman Tom Wheeler urging "the FCC to act promptly on the Wright petition's alternative rulemaking proposal by establishing reasonable benchmark rates for intrastate phone calls made from prisons, jails and other detention facilities, to reduce the cost of such calls and thereby enhance the ability of prisoners to maintain connections with their families."

The Attorneys General also noted "an additional practice that the FCC should address. In some cases, telecoms are actually taking prepaid monies from prisoner accounts if for whatever reason the account is 'inactive' for a period of time. Any action taken by the FCC should therefore include the elimination of this practice. Additionally, the telecoms should not be allowed to charge refund fees to return consumer funds."

ARAMARK CONTRACT MONITOR HAS LEFT JOB

The individual hired by Governor Snyder less than five months ago to monitor the Aramark contract has left the job. It is not clear whether Ed Buss resigned or was fired. The Department of Technology, Management and Budget is actively working to fill the vacancy left by his departure.

Source: "Quit or fired? Monitor of prison food contract leaves job," Detroit Free Press, January 30, 2015

REMEMBERING MARTHA WRIGHT

Many of our readers may never have heard of Martha Wright, who passed away on January 18, 2015. Ms. Wright was the lead plaintiff in the litigation that has led the Federal

Communications Commission to begin regulating prison and jail phone calls. CURE is a member of the class in that suit. FCC Commissioner Mignon Clyburn wrote the following about Ms. Wright, "I am saddened to hear of the passing of Mrs. Martha Wright – the grandmother from Washington, D.C. who had the courage to stand up and petition the FCC to change an untenable and unreasonable rate structure for inmate calling services. She showed the power and ability of one person to make a difference. Mrs. Wright will be dearly missed but her memory will live on as we continue to fight for just, reasonable and fair telephone rates for calls made to and from inmate facilities. I pledge to continue the fight in her honor so that all grandmothers, family members and friends can afford to stay connected with loved ones behind prison walls."

SHORTS

MDOC Officer Shortage

In the past year, the Department of Corrections switched from training its officers through a department-run academy to hiring officers trained in community colleges. That method is not providing enough officers. In September, the department reported 500 vacancies and 60 new ones each month.

The problem is due to two factors. Officers hired during the prison expansion in the 1980s are reaching retirement age. The cost of training at community colleges and the fact that only 5 of the state's 28 community colleges offer the courses is resulting in too few individuals enrolling.

The Department is now promoting officer hiring at job fairs and in ads. And, they are offering to refund half of the cost of tuition for individuals who complete the community college course work and are hired by the department.

In the meantime, the MDOC and the officers union have signed a letter of agreement that modifies the union contract by allowing officers in 17 facilities to work up to 160 hours in a pay period instead of the previous 120-hour limit.

Source: "Corrections Officer Shortage Swelling," Gongwer, September 22, 2014

Audit of MDOC Education Programs

An audit of the State's prisoner education programs concluded that the Department failed to identify prisoners who qualify for federal assistance to take classes and failed to make sure that the programs were effective. MDOC spokesperson Russ Marlan said that the MDOC agreed with the findings and is using the observations to improve its educational and vocational programming.

"Audit finds problems with prisoner education programs in Michigan," by Jake Neher, Michigan Public Radio, August 19, 2014.

Efforts to Reduce Jailing of People with Mental Disorders

Congressional leaders and representatives of the National Association of Counties (NACo), and the Council of State Governments (CSG) Justice Center attended a briefing on December 9, 2014, on efforts to reduce the large number of people with mental disorders who are cycling through U.S. jails. The national initiative emphasizes state-local collaboration.

“Jails in this country have replaced in-patient mental health facilities as the largest institutional treatment provider for adults with mental disorders. Each year, more than 2 million people with serious mental disorders are booked into jails, as well as millions more coping with less serious mental disorders that jails are required to address. The majority of these individuals also have co-occurring substance use disorders....”

Among the key partners for this effort are NAMI, the Major County Sheriffs’ Association, National Association of State Alcohol and Drug Abuse Directors, National Association of State Mental Health Program Directors, National Council for Behavioral Health, National Sheriffs’ Association, and Policy Research Associates.

Source: “New Efforts to Reduce the Number of People with Mental Disorders in Jails Set the Stage for Unprecedented Change,” Council of State Governments Press Release, December 9, 2014

Mediation Instead of a Criminal Trial

In 2011, the Idaho Supreme Court established rules for the use of mediation in place of a criminal trial. The system uses

mediators who are sitting or semi-retired senior judges. The judges have been trained as criminal mediators. Prosecutors, defense attorneys or trial judges can request mediation. Both sides must enter the process voluntarily and both can walk away at any time. The system is used with misdemeanor and felony cases, and it has been used with serious crimes, e.g. a fatal shooting. The mediator and trial judge are prohibited from speaking to one another. The judge has the option of accepting or rejecting the agreement

Some counties have embraced the system more than others. In Canyon County, in the past two years, only one case has gone to trial; all others were resolved with mediation. “In 2013, 150 criminal cases were settled through mediation statewide.”

Source: “A growing alternative to criminal trials: Mediation,” by John Sowell, Idaho Statesman, January 18, 2015

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WITH SYMPATHY

Since publication of our last newsletter, we have learned of the death of MI-CURE member and supporter Shirley Russell.

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