



MI-CURE NEWS

A QUARTERLY PUBLICATION OF
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ABOUT THIS AND FUTURE EDITIONS

In the February edition of *MI-CURE NEWS*, we identified a number of ways that Michigan could reduce its rate of incarceration. In each case, we attempted to define a problem and identify the associated opportunities. In this and future editions, we plan to look at some of those issues in more depth.

We also want to ask for your ideas about some of the issues we will be discussing. (See the sections marked "To Our Readers.") We are convinced that our readers, whether they are incarcerated, were incarcerated, and/or care about someone who is incarcerated, have important perspectives. These are not intended to be scientific surveys, but rather a chance for policy makers and members of the public to hear voices and perspectives they might not normally hear.

Thanks to a generous grant from the First Unitarian Universalist Congregation of Ann Arbor's George L. Jackson and Bessie Florence Hazelton Jackson Social Welfare Fund, beginning with the August edition, we plan to publish an 8-page newsletter, so we can include as many of the suggestions as possible. We may, of course, have to summarize some. We will not identify the writers. Since our newsletter is sent to all legislators and some policy makers, your suggestions may just inspire some policy changes. We look forward to reading your ideas!

SENTENCING GUIDELINES

Over-criminalization

Michael Reitz and Miriam Auckerman recently highlighted one set of problems with Michigan's sentencing guidelines: the issue of over-criminalization. There are three features of over-criminalization. One feature is the number of criminal laws on the books and the rapid addition of new laws. Michigan now has more than 3,100 criminal laws and is adding an average of 45 new crimes to the books every year. This phenomenon makes it difficult for the average state resident to keep track of what is or is not legal.

The second aspect of over-criminalization is that too often, the punishments attached to the crimes far outweigh the significance of the crime.

Third, over-criminalization leads to the creation of criminal laws that prohibit and punish conduct that most people don't think is wrong.

The impact of these problems is made worse by the fact that many Michigan laws do not include the criminal intent standard. That means that a person can be prosecuted and convicted even if he did not mean to commit a crime.

Reitz and Auckerman suggest several fixes, including the following:

- The state should pass a law that clearly defines the intent necessary for the commission of a crime. Senator Mike Shirkey has introduced SB 20 that would accomplish this.
- The state should assess crimes already on the books and eliminate those that make no sense or that are obsolete. Representative Chris Afendoulis and Representative Kurt Heise are working to review current laws and the sentences associated with them.
- The state should also make certain that for the crimes that remain on the books, the punishment fits the crime. The State's new Criminal Justice Policy Commission is charged with reviewing current sentencing guidelines and exploring alternatives to incarceration
- The legislature should establish a set of principles to guide the creation of new criminal laws to aid in determining whether the conduct should be criminalized at all.

20-Year Cap

According to Marc Mauer, 160,000 people (one of every nine people in U.S. prisons) are serving a life sentence; many more are serving sentences of 50 years or more. In 2013, the European Court of Human Rights ruled in a U.K. case that life sentences without the possibility of parole (LWOP) violate human rights standards. At that time there were 49 people serving LWOP in the U.K. compared with 49,000 serving LWOP in the U.S. In Belgium persons sentence to life receive a parole review after 10 year; in Germany the review occurs at 15 years. The Vatican recently abolished life sentences, with Pope Francis calling them "a hidden death sentence."

Mauer suggests that we should limit the maximum sentence to 20 years, except in unusual circumstances. He argues that long sentences produce diminishing returns for public safety, because individuals generally age out of crime. By the time an individual reaches the age of 30 or 40, there is little likelihood of him committing a crime. Long sentences are also costly, mainly because health-care costs increase with age. The money we are spending on incarcerating this population could be better spent on education, substance abuse treatment, and services for at-risk youth.

Editor's Note: Placing a 20-year cap on the maximum sentence would also reduce the clout that prosecutors exercise when offering plea bargains.

Other Initiatives

The Michigan Council on Crime and Delinquency (MCCD) is leading a campaign to raise the age of juvenile court jurisdiction in the State from 17 to 18. The change would impact 95% of the children being convicted and sentenced as adults, and would align Michigan with 41 other states, federal standards, and U.S. Supreme Court rulings.

In our February edition, we noted that Iowa, Connecticut, and Oregon have implemented laws that require an analysis of the racial impact of any proposed laws that would create a new crime or set tougher penalties.

Over the last four years, Georgia has modified mandatory minimum sentences and given the judges more discretion in sentencing. Georgia has also made changes in its juvenile justice system. Children who commit status offenses (e.g., truancy or curfew violations) are provided with services rather than sent to detention. A pilot program in 49 of the state's counties reduced felony commitments and short-term program placements by 62 percent.

The Sentencing Project recently highlighted efforts to reform sentencing structures in a number of states. **Connecticut** Governor Daniel Malloy is leading an effort to reclassify some non-violent offenses as misdemeanors and eliminate mandatory minimum sentences for narcotics possession.

Kentucky has, in the past several years, worked to address structural issues in its criminal code that reinforce excessive sentences. It is now working to reduce the impact of its habitual offender law. **Massachusetts** is working to reclassify some of its low-level felonies to misdemeanors and reinvest the savings from those reforms into job training, youth jobs and other programs aimed at workforce development.

Alabama has worked to reduce penalties for some non-violent property and drug crimes and to expand community corrections programs. **Maryland** is working to repeal mandatory minimums for second non-violent drug convictions. **Missouri** is working to scale back its truth-in-sentencing provisions by reducing the mandatory time served for offenses classified as dangerous from 85% to 50%.

Mississippi legislators authorized a similar measure in 2014.

Nebraska is working to eliminate mandatory minimum sentences for certain higher-level felonies. They are also working to eliminate mandatory minimum sentences for persons sentenced as "habitual criminals" and limit the cases in which people can be classified as "habitual criminals."

To Our Readers:

What changes would you like to see in Michigan's current sentencing guidelines and practices? Do you have any advice for Representatives Chris Afendoulis and Kurt Heise? Is there anything you would like the new Criminal Justice Policy

Commission to consider? Please take the time to share your views with us.

Sources: "Fixing Michigan's overgrown criminal code," by Michael Reitz and Miriam Auckerman, *Lansing State Journal*, February 6, 2015; "Afendoulis, Heise To Clean Up Criminal Law," *Gongwer*, February 19, 2015; "Minimizing the Maximum: Why prison sentences should be capped at 20 years," by Marc Mauer, *The Sentencing Project*, April 16, 2015; <http://www.miccd.org/2015/04/campaign-to-raise-the-age-in-michigan-launched/>; "A Republican Governor Is Leading the Country's Most Successful Prison Reform," by Naomi Shavin, *The New Republic*, March 31, 2015; "State Advocacy Update," *Sentencing Project*, April 17, 2015

WHAT IS A LIVING WAGE?

We have written before about the fact that prison wages have been frozen for 25 years. When these wage rates were established, incarcerated people were not required to purchase over-the-counter medications, coffee, salt and pepper, and (in some cases) toilet paper. There were no medical co-pays. In recent years, the cost of phone calls has increased to support the special equipment fund. Commissary prices have increased and purchases now include sales tax. Some incarcerated persons are paying restitution, court costs, etc.

Making matters worse, incarcerated people who are fortunate enough to work are limited to part-time jobs. There are more limitations on hobbycrafts and there are no longer opportunities to sell the hobbycraft products.

Merriam-Webster's Collegiate Dictionary defines a "living wage" as "a wage sufficient to provide the necessities and comforts essential to an acceptable standard of living." This is NOT the same as a minimum wage. It is a figure that varies based on where a person lives and the size of the family. Measured in a typical community, it would include food, childcare, medical expenses, housing, transportation, and miscellaneous expenses.

If we can all agree that current wages are insufficient, can we agree on what those wages should be? Can we identify a living wage in the Michigan prison system? Obviously, incarcerated persons don't pay for housing, most food, childcare, and transportation. What are the necessities and comforts essential to an acceptable standard of living?

To Our Readers:

Please write to tell us what you believe a prisoner must earn in a month to provide essential necessities and comforts that are not provided by the MDOC. Keep in mind that no one expects an incarcerated person to live in luxury. We are talking about necessities and a minimum level of comfort. Explain how you arrive at that figure. We would also like to know if you are currently working, how many hours you are working, and your current wages.

SHORTS

Forensic Evidence On Trial?

The U.S. Justice Department (DOJ) and the FBI have formally acknowledged that 26 of 28 examiners in the FBI Laboratory's microscopic hair comparison unit gave flawed testimony in almost all trials in which they offered evidence in the two-decade period before 2000. The testimony overstated forensic matches in ways that favored prosecutors in more than 95% of the 268 trials reviewed so far.

That information was provided by the National Association of Criminal Defense Lawyers and the Innocence Project, both of which are assisting the government with the post-conviction review of questioned evidence. Under their agreement with the government, they were to release findings after reviewing the first 200 convictions.

Of the cases reviewed, 33 resulted in death sentences. Nine of those defendants have been executed; five died of other causes while on death row. Four defendants were previously exonerated.

It is important to note that the forensic results may not have been the only evidence leading to a conviction. According to news reports, defendants and federal and state prosecutors in 46 states and the District of Columbia are being notified to determine whether there are grounds for appeal. The Justice Department and FBI stated that they are committed to continue to devote resources to continuing the review of all cases. The DOJ and the FBI also strongly encourage any state to conduct its own independent reviews where its examiners were trained by the FBI,

Since 2000, the lab has used visual hair comparison to rule out someone as a possible source of hair or in combination with more accurate DNA testing. Until 2012 the FBI had no written standards defining scientifically appropriate and erroneous ways to explain results in court. The FBI plans to complete standards for testimony and lab results for 19 forensic disciplines this year.

In its report of the findings, *The Atlantic* highlighted the following problems that have occurred in other labs:

- At a Massachusetts drug lab, a chemist was sent to prison after admitting that she faked the results in perhaps tens of thousands of drug cases.
- In St. Paul, MN, an independent review of the crime lab found major errors in almost every area of the lab's work, including the fingerprint and crime scene evidence processing.
- In Colorado, the Office of the Attorney General documented inadequate training and alarming lapses at a lab that measured the amount of alcohol in blood.
- In Detroit, police shut down their crime laboratory after an audit uncovered serious errors in numerous cases.

- In Philadelphia, three trace-evidence technicians have flunked a routine test administered to uphold the police crime lab's accreditation.
- In North Carolina, agents withheld exculpatory evidence or distorted evidence in more than 230 cases over a 16-year period. Three of those cases resulted in execution.

The article cited the following reforms, suggested by investigative journalist Radley Balko and Roger Koppl, director of the Institute for Forensic Science Administration at Fairleigh Dickinson University, that would likely reduce lab errors:

- Provide forensic counsel for indigent defendants.
- Administer crime labs under a different bureaucracy than district attorneys or police.
- Utilize competing labs to randomly double-check forensic evidence, without notice to the state's lab.
- Analyze lab results for statistical anomalies. Further analyze results that are out of the normal ranges.
- Mask the evidence. Lab personnel should not be told the details of the crime for which they are testing evidence.

Source: "Report: DOJ, FBI acknowledge flawed testimony from unit," Associated Press, April 19, 2015; "CIS Is a Lie, America's shameful system of forensic investigation is overdue for sweeping reform," by Conor Friedersdorf, The Atlantic, April 20, 2015; "Flawed Forensics: The Story behind an Historic FBI Review," by Norman L. Reimer, The Crime Report, April 30, 2015.

Criminal Justice Policy Commission Members Named

The newly created 17-member Criminal Justice Policy Commission is responsible for reviewing current sentencing guidelines, exploring alternatives to incarceration, promoting rehabilitation programs, and making recommendations to the Legislature. Five of the members are representatives of the Legislature and the attorney general. The remaining 12 members are appointed by the Governor. On April 2, 2015, the governor announced the following appointees:

- Bruce Caswell will serve as Chair of the Commission. He has served as a state senator, state representative and taught school for more than 30 years. He represents the general public.
- Stacia Buchanan is an attorney who has also served as adjunct professor at the Thomas M. Cooley Law School. She represents criminal defense attorneys
- Kyle Kaminski is the legislative liaison and chief of staff for the Michigan Department of Corrections. He represents the Department of Corrections.
- Raymond Voet is a judge for the 64A District Court in Ionia County. Prior to that, he served as prosecuting attorney in Ionia County. He represents district court judges

- Sheryl Kubiak is a professor at Michigan State University where her specialties include jails and prison, interpersonal violence and sexual assault, and mental health. She represents the Michigan Coalition to End Domestic and Sexual Violence.
- Sarah Lightner is a Jackson County Commissioner and a paralegal with experience in criminal defense, family law, bankruptcy, and civil law. She represents the Michigan Association of Counties.
- Jennifer Strange is a clinical social worker in Kingsley with the Michigan Department of Corrections. She is also a clinical therapist with Northern Lakes Community Mental Health and teaches at Baker College of Cadillac and Grand Valley State University. She represents the mental or behavioral health field.
- Paul Stutesman is chief judge of the 45th Circuit Court in St. Joseph County. He represents circuit court judges.
- D. J. Hilson is the Muskegon County prosecutor. He represents prosecuting attorneys.
- Barbara Levine is executive director of Citizens Alliance on Prisons and Public Spending. She was an attorney in private practice and an administrator in the Michigan Appellate Assigned Counsel System. She represents advocates of alternatives to incarceration.
- Larry Stelma is the Kent County Sheriff. He represents county sheriffs.
- Andrew Verheek is a planner with the Kent County Office of Community Corrections and previously worked as a case manager for Kent County Friend of the Court. He represents the Michigan Association of Community Corrections Advisory Boards.

Source: "Gov. Rick Snyder makes initial appointments to Criminal Justice Policy Commission," Gongwer, April 2, 2015

Prison Phone Rates

Ohio's contract with Global Tel Link (GTL) was recently renegotiated to drastically reduce telephone rates to five cents per minute, plus all applicable government mandated taxes and Federal Universal Service Fund fees for all calls within the United States, with no surcharge or connection fee. The new rate became effective April 1, 2015. In addition to the reduced phone rates, over 2,000 phones currently in Ohio's prisons will be replaced by the end of the year and an additional 500 telephones will be installed before the end of the year.

We have also received information indicating that the rate for calls from New Jersey prisons will soon be reduced to 4.384¢ per minute.

More reasonable rates are possible!

Lawsuit Against MDOC On Behalf of Deaf

Michigan Protection and Advocacy Services has filed suit against the Department of Corrections on behalf of three deaf or hearing-impaired individuals. The lawsuit alleges discrimination in several ways, including the following:

- Failure to provide information in sign language, particularly when accessing medical and mental health care, religious and other programming, and participating in disciplinary hearings.
- Providing antiquated telephone equipment (TDD) instead of videophones for contact with families, which makes communication cost-prohibitive and difficult.
- Failure to provide video notification of oral announcements concerning emergencies and other events.

Source: "Lawsuit Filed Against Corrections On Behalf Of Deaf Inmates," Gongwer, March 31, 2015

Wayne County Rape Kit Backlog

In 2009, 11,000 untested rape kits were found in a police storage facility in Detroit. The state reports that the testing of those kits will be completed by the end of May 2015. The Michigan Women's Foundation helped to raise funds for the testing. At the end of January, a review of 2,000 tested kits identified a presumed DNA match in 670 cases. Officials report that 188 serial rapists have been identified, including 15 who have been convicted.

The Wayne County prosecutor's office is now seeking \$10 million to investigate the crimes. In a recent meeting with some of Michigan's congressional delegates, the prosecutor discussed the possibility of getting federal funds to help with these investigations.

Source: "Funding sought to battle backlog in Michigan rape cases," by Todd Spangler, Detroit Free Press, April 15, 2015

POLICY CHANGE AFFECTS PERSONS ACCUSED OF GANG AFFILIATION

Director's Office Memorandum (DOM) 2015-28, issued February 26, 2015, adds additional restrictions to individuals who have been designated by the Department as members of a Security Threat Group (STG). The DOM states that, in addition to restrictions already in place, persons thought to be members of STGs may no longer...

- Receive a Securepak package
- Send electronic (email) messages
- Participate in Reception and Guidance Center or Parole Board recommendations without approval of the Emergency Management Section Manager or designee
- Be placed on a work assignment
- Participate in incentive programs

- Make more than five phone calls per week (except for calls to an attorney, public official, or the Legislative Corrections Ombudsman).

The DOM begins with the statement, “Efficient monitoring and management of Security Threat Groups (STG) assists in the prevention of violence and helps to ensure the overall security of Michigan Department of Corrections’ facilities. In order to discourage STG membership and activities, the consequences of STG membership have been increased....”

We read a great deal these days about evidence-based practices (EBP). The website of the California Courts (<http://www.courts.ca.gov/5285.htm>) defines evidence-based practices as, “approaches and interventions that have been scientifically tested in controlled studies and proven effective. EBP implies that there is a definable outcome(s); it is measurable; and it is defined according to practical realities (recidivism, victim satisfaction, etc.)”

We were unable to locate a list of evidence-based practices for corrections, but we did find a list of evidence-based principles for community corrections that was developed by the National Institute of Corrections (NIC). After reviewing the list, it is difficult to understand why these principles would not apply in any correctional setting. Below is a list of the eight principles with a brief description of each.

1. Assess Actuarial Risk/Needs: We can effectively reduce recidivism by systematically identifying and intervening in the areas of criminogenic need.
2. Enhance Intrinsic Motivation: Humans respond better when motivated, rather than persuaded, to change their behavior.
3. Target Interventions: There are several requirements here. First, it is important to prioritize supervision and treatment resources for higher risk offenders. Second, services should be provided according to individual deficits, e.g. social skills, thinking errors, vocational training, misuse of leisure time, substance abuse, etc. Third, treatment must be adapted to the individual’s gender, cultural background, learning style, and psychological needs. Fourth, studies have shown that high-risk offenders should spend 40 to 70 percent of their time in highly structured activities for 3 to 9 months prior to release. Fifth, treatment should be centered on present circumstances and risk factors and should be action oriented rather than talk oriented.
4. Skill Train with Directed Practice: Programming should emphasize cognitive-behavior strategies. Staff must be well-trained to coach offenders and engage them in role playing to reinforce positive behaviors.
5. Increase Positive Reinforcement: Researchers have found that optimal behavior change results when the ratio of reinforcements is four positive to every negative one reinforcement. Offenders should know the consequences for inappropriate behavior.

6. Engage Ongoing Support in Natural Communities: It is important for prison administrators to build communities in prison for offenders who struggle to maintain personal change.

7. Measure Relevant Processes/Practices: Accurate and detailed documentation of case information and staff performance, along with formal and valid mechanisms for measuring outcomes, is critical for operating evidence-based programs.

8. Provide Measurement Feedback: Feedback builds accountability and maintains integrity. It is important to reward positive behavior of individuals succeeding in the program and of staff delivering effective programs.

Based upon these evidence-based principles it is difficult for us to understand how anyone can justify the recent changes in the treatment of individuals thought to be associated with STGs. Nothing is being done to positively intervene in criminogenic behavior. There is nothing that is motivating about the recent changes. It ignores the fact that these are individuals who should be prioritized for treatment. Nothing is being done to promote or reward positive behaviors.

We do hope the department will reconsider this policy and implement programs to help these individuals to develop more constructive life styles.

Sources: *Director’s Office Memorandum 2015-28*;
<http://www.courts.ca.gov/5285.htm>;
<https://www.dcjs.virginia.gov/corrections/documents/EvidenceBasedCorrectionalPractices.pdf>

ALL TABLETS ARE NOT CREATED EQUAL

At MI-CURE’s annual meeting in November 2014, Tom Combs, MDOC Administrator for Reentry, was asked why the Department did not provide online courses. In response, Mr. Combs told attendees that the department was looking at tablets to mimic the online experience. He indicated that the Department was deciding on which technology to use.

Aljazeera America has published an article comparing companies that provide technology in correctional settings. Chris Grewe, CEO of America Prison Data Systems (APDS) believes that email is just the tip of the iceberg in terms of prison technology. “We’re looking to provide education, rehabilitation and vocational training. We’ve got Khan Academy (lectures) and other kinds of really robust educational materials. We replace recreational reading libraries... with access to tens of thousands of titles in multiple languages.”

Brian Hill, co-founder of Jail Education Solutions, another provider of tablet-based educational software was quoted, “(Incarcerated persons) are a captive audience with all the time in the world and right now we’re just showing them daytime television. Our focus is how do we take the technology that’s coming into this space and use it to make significant changes in people’s lives.”

According to *Aljazeera America*, companies like APDS and Jail Education Solutions focus exclusively on education and rehabilitation and rely on economies of scale to make a profit. “Inmates pay no fees for the content. And there’s no technical barrier to someday replacing expensive telephone calls with much cheaper tablet-based broadband phone service.”

Aljazeera America goes on to contrast this approach with the fee-based practices of vendors such as JPay, Keefe Group, GTL, and ATG. These companies charge fees for emails received and sent, emails printed, downloading songs to MP3 players. “MP3 players and tablets are sold at prices ranging from \$40 for a small capacity music player to \$200 for a tablet that is several generations behind comparable consumer models. One factor contributing to the high prices is that vendors pay a cut of the revenue back to the prison system or jail. The kickback can be as high as \$0.05 per email and \$12 per tablet. In other caes vendors pay a fixed percentage of total fees collected to the prison system or jail.

Acting director of the Montgomery County Department of Corrections has started a tablet program in his facility using hardware and software purchased from APDS. He argues that keeping individuals doing something productive that interests them will reduce violence. He also argues that he can purchase 15-20 tablets for less than the cost of a teacher, and those tablets can be circulated among a large number of incarcerated people.

Green was quoted, “I think we charge inmates enough already for stuff inside jails. We have a disproportionately poor population in America’s jails. So now I’m going to tie their ability to learn and be educated to whether or not they have money to pay for it? That seems disingenuous.”

Grewe agreed, “It’s inherently unfair to charge an 83-year-old grandmother in Brooklyn to talk to her grandson. We should be paying her... because the more often she stays in touch with him the less likely he is to screw up when we let him out.”

It is certainly not the job of MI-CURE to select vendors for the MDOC. What we can do is urge the department to select vendors whose products provide the most value for the end user. These decisions should be based upon promoting rehabilitation and public safety – not upon the potential revenue for the department or the State.

Source: “With prison tablet, a choice between rehabilitation and profiteering; Proponents say tech devices can help reduce recidivism, but contracts and pricing disenfranchise poor,” Aljazeera America, April 21, 2015

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WITH SYMPATHY

Since publication of our last newsletter, we have learned of the deaths of MI-CURE members and supporters Delandrick Clark – 518017, Ione Norman, and Rhonda Womack.

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