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FCC NO LONGER SUPPORTS RATE CAPS ON INTRASTATE CALLS

The Federal Communications Commission (FCC) has told the U.S. Court of Appeals for the D.C. Circuit that it will no longer defend its proposed rules to place caps on the per minute charges of intrastate phone calls from prisons and jails. Last year, the court temporarily blocked the new rates. Following his election, President Trump altered the configuration of the FCC. The new commission chair, Ajit Pai, and other Republican members of the commission do not support the rate caps. On February 16, 2017, twenty-six members of Congress wrote to Chairman Pai, expressing their "disappointment with the decision made by the FCC to end the defense of intrastate rate caps for incarcerated individuals." They concluded by pointing out that, "Affordable phone calls are important for keeping our families strong and our communities safer."

The address of the Federal Communications Commission is 445 12th Street, SW, Washington, DC 20554. The address of the White House is 1600 Pennsylvania Avenue NW, Washington, DC 20500-0001.

VIEWPOINTS: PROSECUTORS

To Stop Bad Prosecutors, Call the Feds: In a June 6, 2016, editorial, the *New York Times* noted that, "Prosecutors are the most powerful players in the American criminal justice system. Their decisions – like whom to charge with a crime, and what sentence to seek – have profound consequences." At the same time, prosecutors "are almost never held accountable for misconduct, even when it results in wrongful convictions." One of the more troubling violations is failing to disclose evidence that could help to prove innocence or reduce a sentence. The 1963 Supreme Court case *Brady v Maryland* requires disclosure of such evidence. The editorial concluded with the following suggestion:

> This maddening situation has long resisted a solution. What would make good sense is to have the federal government step in to monitor some of the worst actors, increasing the chance of catching misconduct before it ruins peoples' lives. The Justice Department is already authorized to do this by a 1994 federal law prohibiting any "pattern or practice of conduct by law enforcement officers" that deprives a person of legal or constitutional rights.
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> The department has used this power to monitor police departments in Los Angeles, New Orleans, Detroit and Seattle, among other municipalities with a history of brutality, wrongful arrests, shootings of unarmed civilians and other illegal or unconstitutional practices. For the most part, the results have been positive. Since prosecutors are also "law enforcement officers," there is no reason they and their offices should be immune from federal oversight.
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> Of course, many district attorneys' offices will balk at being put under a federal microscope. But nothing else has worked to prevent misconduct by prosecutors, and the Justice Department is uniquely equipped to ferret out the worst actors and expose their repeated disregard for the law and the Constitution.

Trial by Jury, a Hallowed American Right is Vanishing: Benjamin Weiseraug recently wrote about our criminal justice system that has so few trials. In more than four years on the bench in the Federal District Court in Manhattan, Judge Jesse M. Furman has presided over only one criminal jury trial. In 1997, 3,200 of 63,000 federal defendants were convicted in jury trials; in 2015, there were only 1,650 jury convictions, out of 81,000 defendants. "Legal experts attribute the decline primarily to the advent of the congressional sentencing guidelines and the increased use of mandatory minimum sentences, which transferred power to prosecutors, and discouraged defendants from going to trial, where, if convicted, they might face harsher sentences." The article quoted several individuals, including the following:

Judge Jed S. Rakoff, a 20-year veteran of the Manhattan federal bench: "It's hugely disappointing. A trial is the one place where the system really gets tested. Everything else is done behind closed doors."

Frederick P. Hafetz, a defense lawyer and a former chief of the criminal division of the U.S. attorney's office in Manhattan: "This is what jury trials were supposed to check against – the potential abuse of prosecutorial power."

Judge John Gleeson who stepped down from the federal bench in Brooklyn last year to enter private practice. He noted that the "thin presentation" of evidence needed for an indictment "is hardly ever subjected to closer scrutiny by prosecutors, defense counsel, judges or juries. The entire system loses an edge, and I have no doubt that the quality of justice in our courthouses has suffered as a result."

A call for prosecutorial oversight: Pat Nolan and Kevin Ring suggested another approach to prosecutorial oversight in

an opinion piece published on April 19, 2017. They quoted late Supreme Court Justice Robert Jackson who had noted that a federal prosecutor "has more control over life, liberty, and reputation than any other person in America." Yet, Nolan and Ring noted, "(I)f the past is any guide, none of the president's nominees (for federal prosecutor) will be asked a single question about their prosecutorial philosophy, approach to the law, or their temperament."

Along with several other advocates, they have asked the Senate Judiciary Committee to ask some basic questions during the confirmation process. They included the following examples:

Over the past 50 years, the number of federal laws has been expanded dramatically and many of those laws are vague and broad. There is growing concern that someone could violate a law without knowing it. Therefore, nominees for federal prosecutor should be asked how they will handle such situations and resist the temptation to simply accumulate successful prosecutions.

Nominees should be asked about their commitment to ensure that defendants receive a fair trial. That includes divulging exculpatory evidence when it exists.

The Senate Judiciary Committee should ask how a nominee will promote fairness in sentencing, given the expansion of federal mandatory sentences over the past 30 years. Ninety-seven percent of all federal indictments result in guilty pleas, because the risk of fighting for one's innocence is a much longer prison sentence and prosecutors use those potential sentences so they don't have to prove anything in court. "Senators should seek to elicit nominees' understanding of the appropriate use of such considerable authority over personal liberty as well as the constitutional limits which restrain them."

Could 'actual innocence' save the broken U.S. justice system? The prosecutor in St. Clair County, Illinois has taken a unique approach to promoting fairness. County State's Attorney Brendan Kelly calls the program the Actual Innocence Claim Policy and Protocol, and it is triggered if a defendant, his or her counsel, or anyone else associated with the case brings forward compelling reasons to believe that the defendant is innocent. The defendant is then given the opportunity to take a polygraph or voice-stress test. The test results are not admissible in court, but can filter out disingenuous defendants. Regardless of the results of the test, the assistant state's attorney (ASA) in charge of the case performs a review of all evidence from the beginning. "The ASA shall confirm that no other probative forensic testing can be conducted and that no other witnesses can be identified and interviewed. At the end of this review, if both the ASA and supervising ASA(s) either no longer believe there exists a moral certainty of the defendant's guilt or believe there no longer exists a reasonable likelihood of conviction, then the case shall be dismissed without prejudice."

So far, nine cases that had been filed were ultimately dropped. Circumstances were different in each of those cases. Eyewitnesses identified the wrong perpetrators. Co-defendants implicated friends or acquaintances who were never there. A defendant falsely confessed after he says he was pressured by investigators. Just one case led to more evidence of the defendant's guilt.

The program is still considered experimental and will be evaluated every year. Defendants' lives are still disrupted during the investigation, some being held in jail and some paying for electronic monitoring. But at least they are avoiding long-term incarceration.

Marco Antonio Rodriguez v. State of Florida: A recent ruling by the Fifth District Court of Appeal in Florida outlines an egregious case of prosecutorial misconduct. The case involved a man who was charged with lewd or lascivious molestation, and the problems occurred during the prosecutor's rebuttal closing.

Seven times, the prosecutor referred to the defendant as a "pedophile." "Inflammatory labels used by a prosecutor to describe the defendant are improper invitations for the jury to return its verdict based on something other than the evidence and applicable law." The prosecutor also made a plea for "justice for the victim." "A prosecutor's request that the jury show sympathy for the victim… is clearly improper." "The prosecutor misstated, misrepresented, and/or inaccurately recounted certain evidence, including repeatedly saying that Appellant had admitted to several specific inappropriate sexually-related activities with the victim when in fact Appellant had consistently, repeatedly denied them." "There are more examples of the prosecutor approaching or crossing the line of proper closing argument by: (i) repeatedly calling Appellant a liar; (ii) making nationalistic appeals to what sexual information the people of the United States do not want five year olds to have; (iii) ridiculing Appellant's position with sarcastic remarks and comments; (iv) and stating that Appellant violated one of the most sacred duties of our society by his conduct. Each of these comments invited the jury to return a verdict for any number of reasons other than proof of guilt beyond a reasonable doubt." "The flood of improper prosecutorial comments in closing argument in this case was deep, wide, and unrelenting; it made a mockery of the constitutional guarantee of a fair trial."

The court also criticized the defense attorney and the judge for not objecting to the comments of the prosecutor. The opinion concludes, "Accordingly, the action we take is to order the clerk of this court to provide the Florida Bar with a copy of this opinion, a copy of the trial transcript, and a letter identifying the attorney who prosecuted this case on behalf of the State at the trial court level, so that the Bar or on its referral, the Ninth Circuit's Local Professionalism Panel, can decide how best to address this lawyer and the unfortunate conduct."

Sources: "To Stop Bad Prosecutors, Call the Feds," by the Editorial Board, New York Times, June 6, 2016; "Trial by

Jury, a Hallowed American Right Is Vanishing," by Benjamin Weiseraug, New York Times, August 7, 2016; "A call for prosecutorial oversight," by Pat Nolan & Kevin Ring, Washington Examiner, April 21 2017; "Could 'actual innocence' save the broken US justice system?" by Jessica Lussenhop, BBC News Magazine, April 12, 2016; Marco Antonio Rodriguez v. State of Florida, District Court of Appeal of the State of Florida, Case No. 5D15-3622

VIEWPOINTS: SOLITARY CONFINEMENT

Solitary Confinement Is Broken, and Prison Guards Are Trying to Fix It: Lance Lowry is a sergeant at a prison intake facility and president of the local chapter of the American Federation of State, County and Municipal Employees (AFSCME). He used to work at a high-security prison that housed part of its population in solitary confinement. He argues that the practice is bad for prisoners and for guards. He believes that isolating fewer prisoners would go a long way toward creating better, safer working conditions. "When you cut out social interaction, you're dealing with a person who has nothing to lose, and that's extremely dangerous." "Assaults on staff have more than doubled in the last decade. Part of it is the increased use of administrative segregation." Lowry and other colleagues at AFSCME wrote to the Texas Department of Criminal Justice in 2014 asking for more training for prison staff assigned to death row, salary incentives to seek alternatives to solitary for misbehavior, and access to television and tablets to increase audio and visual stimulation for those in segregation.

When Rick Raemisch, executive director of the Colorado Department of Corrections began reducing the administrative segregation population, he reports that segregated individuals were "scared, dehumanized, and desocialized; they couldn't see themselves mixing with the general population." While most staff members supported his efforts to reduce isolation, they did encounter resistance from inmates. Staff eventually coaxed them to come out.

When Bernard Warner, the former secretary of the Washington State Department of Corrections, began his corrections career, he was assigned to an administrative segregation unit at Washington State Penitentiary. "I saw firsthand the conditions and environment in those housing units. It was pretty horrific." When he became Secretary, he invited the Vera Institute of Justice to assess the solitary population. That led to a series of new programs. The mentally ill were removed from isolation. Staff began addressing aggression issues with those who remained. They created a classroom where 8 to 10 individuals, restrained to their desks were able to interact with one another in classes led by officers. Over a three-year period the solitary confinement population was reduced by 50%. There were no assaults in the classrooms. They reached people who had had no programming in years and many returned to general population. The corrections union shared the desire for a safe working environment and were open to the possibility that solitary confinement was hampering that goal.

The effort to reduce the solitary population has been more challenging for New Mexico Secretary of Corrections Gregg Marcentel, in large part because there is no support from the guards.

Prison officials change tactics as research points to failures of seclusion: For a long time, corrections officials in North Dakota viewed people who went in and out of segregation as "the worst of the worst." Now some are beginning to wonder if they are not partly to blame. Based upon research that showed that solitary confinement harmed people and does not make the prison safer, prison officials reduced the solitary population by approximately 70 percent. They have limited the offenses that can be punished with solitary confinement to the most serious. If a repeat violator is punished with isolation, it is normally limited to 10 days. Staff provide individualized treatment to inmates and a path to get out of segregation. Officers have more contact with those who are isolated, making it easier to release them to general population.

The End of Solitary Confinement: On June 23, 2016, the U.S. Department of Justice entered into an agreement with the Hinds County Detention Center and sheriff's office in Mississippi to make sweeping changes to the county's jail system. The agreement contains many stipulations, but the most noteworthy may be those related to segregated housing. The agreement contains the following statement: "Segregation must be presumed contraindicated for prisoners with serious mental illness." "Contraindicated" is a term that doctors use to prohibit use of a medication that they know will worsen a person's health. The new court-enforced rules include the following:

- All decisions to place a prisoner with serious mental illness in segregation must include the input of a Qualified Mental Health Professional who has conducted a face-to-face evaluation of the prisoner in a confidential setting, the health professional must be familiar with the prisoner's clinical history and must consider that when making recommendations about whether or not to place the inmate in solitary.
- If an inmate with a mental heath history is placed in isolation, they must be screened by a qualified mental-health professional within 24 hours to determine if they have serious mental illness. If that determination is made – or if any "other acute mental health contraindications to segregation" are found – the inmate must be removed from solitary confinement, except in a few emergency circumstances, such as a riot.
- Any exceptional circumstances found to override the removal from solitary confinement must be documented and include a "comprehensive interdisciplinary review" before signing off.
- Inmates with serious mental illness who are placed in segregated cells must be offered "a heightened level of care" that includes daily visits from a health professional and weekly face-to-face, out-of-cell therapy sessions.

Youth inmates can no longer be disciplined with long-term isolation.

Sources: "Solitary Confinement Is Broken, and Prison Guards Are Trying to Fix It," by Rebecca McCray, www.TakePart.com, April 29, 2016; "Prison officials change tactics as research points to failures of seclusion," by Caroline Grueskin, Bismarck Tribune, June 4, 2016; "The End of Solitary Confinement," by Brentin Mock, The Atlantic City Lab, June 24, 2016

VIEWPOINTS: CONDITIONS OF CONFINEMENT

Food for thought: Prison food is a public health problem: Wendy Sawyer recently suggested that prison food is a public health problem. She argues that corrections departments that have embraced private food services have exchanged fresh, healthy food service for highly processed, hastily prepared foods, with the following results:

- Three-quarters of the people incarcerated in state and federal prisons are overweight or obese. Menu analyses have found that these facilities serve highly processed, unwholesome food, and offer primarily high-fat and sugary options for purchase in commissaries. Even when the menu fits nutritional guidelines on paper, it is often prepared in ways that make it less healthy.
- Incarcerated people suffer disproportionately from chronic diseases such as hypertension (30%), heart problems (10%), and diabetes (9%). These conditions can be prevented or reversed to some extent by a nutritious diet.
- Racial health disparities, some argue, are caused by the fact that African American men spend more time in prison. Each year of incarceration reduces life expectancy by two years, and this is especially true for black men.

Cost cutting measures directed at food service are short-sighted in several ways. Poor food service has caused unrest in prisons. The cost of food service is much less than the cost of healthcare. When people are released from prison, their health problems become a health problem for the community.

Prisons and Jails Forcing Inmates to Pay a Small Fortune Just To See A Doctor: Nick Wing has written about a report that shows how copays can restrict access to healthcare for incarcerated people. Forty-two states (including Michigan) require copay for non-emergency, patient-initiated visits with jail or prison medical staff. In most states, the fees range between $2 and $8 for an appointment, but in Texas, there is annual $100 copay. Because of a 1976 Supreme Court ruling, facilities cannot deny health care to indigent individuals. Fees are typically waived for the treatment of chronic conditions.

To make matters worse, at least seven states (all in the South) do not guarantee prisoners any pay for their work. Many other states pay pennies per hour for work. In West Virginia, for example, the $5 copay would cost an incarcerated person nearly a month's wages.

Making it even more senseless, the copays provide very little money to correctional systems. In 2014, Michigan collected less than $200,000 from copayments.

Some corrections officials argue that the copays save money, because they discourage people from making frivolous health care requests. But, the copays may actually increase costs if individuals delay getting preventive care and develop serious health problems. The National Commission on Correctional Health Care has argued that copayments compound existing inequities in prisons and jails. Incarcerated individuals who receive support from the family or friends can access health care more readily than those who must rely on meager prison wages.

J. Wesley Boyd, associate professor of psychiatry at Harvard University and a member of the school's Center for Bioethics is quoted in the article. "The health of the prison population is worse on average – if not much worse – than the general public, so to have (co-pays) in place in any prison is unethical. There's a lot of sentiment in this country that there are undeserving people who are getting stuff for free that I have to pay for. That applies to poor people in this country who are not imprisoned and it no doubt applies to people who are imprisoned. It's just another way of stripping away rights."

Why Prisoners Deserve the Right to Vote: Corey Brettschneider has made an argument for giving incarcerated persons the right to vote. Only two states, Maine and Vermont, allow prisoners to vote today. That represents a backward trend. Massachusetts and Utah revoked inmate voting in the past two decades. In Massachusetts, the change came after some inmates organized a political action committee (PAC). That led to a state referendum to strip incarcerated people of the right to vote.

Mr. Brettschneider raises several arguments.

- In 2005, the European Court of Human Rights ruled that Britain's blanket ban on prisoner voting violated the democratic rights of incarcerated people.
- If incarcerated people could vote, they would be able to defend their own interests, and, in doing so, they would be able to improve the prison systems.
- Incarcerated people would be granted the right to speak freely and receive information – rights that are often limited now.
- We cannot expect people who have been deprived of all rights to emerge from prison prepared to use them well. Prisoners who could vote would learn how important the vote is in making change.

Brettschneider believes that we should count prisoners as part of their home district. And, he argues, we should affirm, and if necessary, litigate the right of prisoners to form PACs on the model of the Massachusetts group.

Face-to-Face Family Visits Return to Some Jails: Mindy Fetterman reports that face-to-face visits are starting to make a comeback. It appears that several factors are involved. There

is growing criticism of the high cost of video visits, along with poor quality video connections. There is also growing evidence that in-person visits help to reduce recidivism.

A 2015 Prison Policy Initiative study found that 74 percent of jails dropped in-person visits when they implemented video visits. Often the private companies that offer video visits insist that in-person visits cease. The cost of a video call can be as high as $1 a minute, which includes a kickback to the government.

The Ella Baker Center, a nonprofit that advocates against mass incarceration conducted a survey that demonstrated the impact of incarceration. More than one in three families go into debt to cover the costs of staying in touch with people who are incarcerated, including paying for video calls, telephone calls and travel expenses for trips to jails and especially prisons, which can be hundreds of miles away.

Dallas County Judge Clay Jenkins (who is the chief executive officer of the county and its top elected official) was quoted in the article: "Psychology and common sense tells you that it's better for the prisoners and families to sit across from each other and see each other, rather than talking through an iPad." "People are paying exorbitant costs. It's a kickback to local governments."

Sources: "Food for thought: Prison food is a public health problem," by Wendy Sawyer, Prison Policy Initiative, March 3, 2017; "Prisons and Jails Forcing Inmates To Pay A Small Fortune Just To See A Doctor," by Nick Wing, Huffingtonpost.com, April 19, 2017; "Why Prisoners Deserve the Right to Vote," by Corey Brettschneider, Politico Magazine, June 21,2016; "Face-to-Face Family Visits Return to Some Jails," by Mindy Fetterman, The Pew Charitable Trust, February 15, 2017

VIEWPOINTS: HOW MEDICAL SYSTEMS COULD IMPROVE CRIMINAL JUSTICE SYSTEMS

How hospitals could help cut prison recidivism: Stuart M. Butler has suggested that we might improve prison systems by adopting a relatively new Medicare practice. In 2015, Medicare began charging a "readmission penalty" to a hospital that discharged a patient who was then readmitted to any hospital for the same diagnosis within a 30-day period. In response, hospitals began taking steps to ensure that patients made a full recovery after discharge. Some hired staff to help patients move into safer apartments, provided follow-up visits, or provided support services.

"Imagine if prisons faced a readmission penalty…. Prisons would get serious not only about training inmates but also about working with potential employers to help line up jobs. Instead of dumping released prisoners on the street, prison managers, like today's hospital managers, would become more interested in arranging stable housing for their ex-customers."

What Medicine Could Teach Our Flawed Justice System: James M. Doyle suggests there are other lessons to learn from medicine. Following the death of a 39-year-old woman due to a medication error and the media firestorm that followed, the Dana-Farber Cancer Institute shifted its entire organization. Instead of focusing on the "who?" behind the medication errors, it began focusing on the "why?" Safety became a core property of its system of care.

"It gave senior clinical leaders safety responsibility. It recognized a need for a relentless focus on risk, error and harm, and nourished its error-reporting system. The institute involved front-line practitioners in the design of protective systems: in all-ranks, all-stakeholders, teams that included the community and the families of patients. It recognized safety as something 'co-produced' by medical staff and patients. It made transparency a central goal and, most importantly, it recognized that safety work is never finished; that nothing is permanently 'fixed' and that continuous work on quality improvement is the only route to true safety."

There are now similar initiatives in criminal justice that include the following:

- The National Institute of Justice's Sentinel Events Initiative has promoted an exploration of all-stakeholders (and all-ranks) non-blaming reviews of adverse events and "near-misses" and "good catches" where only last-minute luck or exceptional skill avoided a tragedy.
- The Police Foundation has launched a Law Enforcement Officers Near Miss utility that tracks the lessons of safety incidents.
- The National Commission on Forensic Science has called for routine "root cause analysis" of forensic science errors.
- The City of Tulsa now recommends that police conduct non-disciplinary peer reviews of critical incidents.

Mr. Doyle recommends that criminal justice should emulate another product of the medical tragedy: The Betsy Lehman Center is a small Massachusetts state government agency (with a budget of about $1.5 million) that is devoted to patient safety. Its goals are the following:

- Identify and disseminate information about evidence-based best practices to reduce medical errors and enhance patient safety;
- Develop a process for determining which evidence-based best practices should be considered for adoption;
- Serve as a central clearinghouse for the collection and analysis of existing information on the causes of medical errors and strategies for prevention; and
- Increase awareness of error prevention strategies through pubic and professional education.

"And strikingly, the Lehman Center's enabling legislation not only provides a place where practitioners and community stakeholders can focus on safety, it provides a safe place. Information, accounts, and data collected by or reported to the

Lehman Center are not public records, and accordingly not subject to FOIA requests. They are confidential: not subject to subpoena or discovery or being introduced into evidence in any judicial or administrative proceeding, except as otherwise specifically provided by law."

Mr. Doyle asks, "What if we had these in criminal justice? Modest state (or city, or county, or regional) agencies devoted not to punishing the last criminal justice disaster, but to learning how to prevent the next one."

Doyle also suggests, "No system can survive without punishing its conscious rule-breakers and compensating their victims. Those things shouldn't stop…. But explicitly disentangling the forward-looking safety functions from disciplinary and punitive processes by giving it a specific place can be an important step in the right direction. The investment isn't huge. The pay-off in terms of avoiding death, trauma, public alienation, (and, yes, multiplied liability payments for future repetitive failures) – might be enormous.

He concludes, "If anything is clear from the struggle for safety in industry, aviation and medicine it is that we can't improve things while acting within our silo. Cops, lawyers, corrections and mental health practitioners, crime survivors, and their communities need a place to work on these things together: to make criminal justice something done with, not 'for' or (as it often seems) 'to' the communities. They all know this."
Sources: "How hospitals could help cut prison recidivism," by Stuart M. Butler, Brookngs Opinion, August 18, 2015; "What Medicine Could Teach Our Flawed Justice System," by James M. Doyle, thecrimereport.org, April 11, 2017

VIEWPOINTS: MENTAL HEALTH AND CRIMINAL JUSTICE

What if Mental Health First Aid Were as Widespread as CPR?: One in every four Americans experiences mental illness. When behaviors associated with mental health are misunderstood by police, it can sometimes lead to tragedy.

New York City is partnering with the National Council for Behavioral Health to train entire communities to recognize the manifestations of mental illness and take more appropriate action. A key element will be to provide mental health first aid training to 25,000 people, beginning with first responders, like police officers and firefighters. The goal is to make mental health first aid as ubiquitous as regular first aid, such as CPR. Experienced bystanders can help prevent deaths, assess harmful situations, and seek appropriate medical treatment.

By May 2016, the National Council of Behavioral Health had trained about 500,000 people nationwide in mental health first aid. It expects to train 5 million more people, focusing on both city employees and community members.

Prioritizing Treatment Over Punishment: Rachel Gandy and Erin Smith have written to describe the "Sequential Intercept Model" that is used to assist people with mental illness and divert them from Texas jails, where possible. The system includes five elements of the criminal justice system where individuals with mental illness can be diverted or provided with appropriate treatment. Below is a description of each Intercept:
Intercept 1: Law Enforcement and Emergency Services: Crisis Intervention Teams are comprised of specialized uniformed officers trained to de-escalate encounters involving people with mental illness. Mobile Crisis Outreach Teams include medical and mental health professionals who provide on-site assistance to individuals experiencing psychiatric crises. Both teams steer people toward community services, rather than the justice system.
Intercept 2: Initial Hearing and Detention: Pretrial judicially supervised treatment can keep people out of jails, prisons or state hospitals. Individuals may be required to appear at a magistration facility prior to being taken to jail. Facility clinicians and public defenders can inform a defendant of his or her rights to help the defendant navigate the initial hearing phase of the justice system.
Intercept 3: Jails and Courts: Mental health courts use a non-adversarial approach to addressing the needs of people with mental illness.
Intercept 4: Reentry from Jails, Prisons, and Forensic Hospitals: Jail staff and community service providers meet with the individual in the months prior to release to develop a release plan that helps to avoid the challenges that may lead to re-arrest. Those include drug use, homelessness, and medication disruptions. Recovery-oriented peer support may also be arranged.
Intercept 5: Forensic Assertive Community Treatment teams are justice-health partnerships that use around-the-clock resources to address individual and systematic recidivism risk factors. It is important that probation and parole officers be engaged in this effort, since people with mental illness often don't do well with traditional supervision techniques.

Sources: "What If Mental Health First Aid Were as Widespread as CPR? New York City's Planning to Do It," by Jasleena Grewel, Nation of Change, May 29, 2016; "Prioritizing Treatment Over Punishment," by Rachel Gandy and Erin Smith, LBJ School of Public Affairs," June 2016

VIEWPOINTS: INDIGENT DEFENSE

A Defender Office for Supreme Court Advocacy? Legislation seeks to fix problems with public defender system: U.S. Senator Cory Booker (NJ) and Representative Sean Patrick Maloney (NY) have introduced legislation (S. 330 and H.R.969) to establish a federal Defender Office for Supreme Court Advocacy. The office would be dedicated to delivering independent, uniform and quality defense representation in criminal cases before the U.S. Supreme Court and, in some cases, before the highest courts in the states. The office would monitor, file briefs in, and possibly argue on behalf of defendants in criminal cases.

In remarks made last year, Booker noted that the federal government is represented by "a small cadre of lawyers from the Solicitor General's Office dedicated solely to Supreme

Court litigation." But, public defenders lack a similar office. "Without counsel trained and experienced in Supreme Court advocacy, the likelihood that cases are decided against criminal defendants increases." Supreme Court Justice Elena Kagan has commented on the problem: "Case in and case out, the category of litigant who is not getting great representation at the Supreme Court are criminal defendants. Appellate advocacy is hard and it takes a lot of skill and a lot of experience." Getting these cases into the hands of a Supreme Court specialist Kagan believes would be an "enormous help to the system."

The Power of Choice, The Implications of a System Where Indigent Defendants Choose Their Own Counsel: The Texas Indigent Defense Commission and the Comal County, Texas District and County criminal courts recently designed and conducted a one-year pilot of an indigent defense system where defendants had the option to select their lawyer. – a practice that is not available to indigent defendants in this country. The goal was to provide new and stronger incentives for attorneys to provide quality representation by better aligning lawyers' interests with the interests of their indigent clients. Defendants were able to select from a list of lawyers approved to serve as appointed counsel in the courts. The majority of defendants who were offered the option, chose to select their attorney. Key findings are listed below:

- Client choice does improve timeliness of the first meeting between defense lawyer and client and the responsiveness of lawyers to requests for meetings by their clients.
- There was no statistical difference in the perception of how hard the lawyer worked for the client or the overall number and length of meetings.
- Client Choice shows a moderately positive impact on the sense of procedural justice among participants.
- Client Choice participants pled guilty to lesser charges or proceeded to trial more often than their peers.
- There was no significant cost difference with the Client Choice system.

"This report is not a wholesale affirmation that Client Choice will resolve all of the limitations and criticisms of indigent defense systems in the United States, but it does present enough evidence to justify its replication, refinement, and further study as one mechanism to address many of these concerns."

Social Worker Sentencing Project: The Michigan Indigent Defense Commission has announce a partnership with the Urban Institute "to examine the impact of social worker involvement in the public defense representation of adults facing criminal charges. The goal of the Social Worker Sentencing Project is to reduce incarceration rates by lowering prison sentences for specified felony defendants in favor of appropriate community alternatives , and decrease recidivism through the increased use of treatment and education programs." The project will run from 2017 through 2019, and will:

1. Embed social workers to act as client advocates in two diverse Michigan indigent defense systems – a non-profit public defender office and a private assigned counsel system.
2. Assess SWSP implementation and effectiveness.
3. Develop a program manual to increase practitioners' knowledge of social workers as a resource and guide replication and enhance sustainability.

Sources: "A Defender Office for Supreme Court Advocacy?" by Kimberly Strawbridge Robinson, Bloomberg BNA, July 118, 2016; "Legislation seeks to fix problems with public defender system," www.americanbar.org, April 28, 2017; "The Power of Choice, The Implications of a System Where Indigent Defendants Choose Their Own Counsel," By M. Elaine Nugent-Borakove & Franklin Cruz with contributions by Norman Lefstiein, The Justice Management Institute, March 2017; "Social Worker Sentencing Project (SWSP)," Michigan Indigent Defense Commission

VIEWPOINTS: EDUCATION IN PRISONS

College Classes In Maximum Security: 'It Gives You Meaning': More than 650,000 prisoners are released in the U.S. every year. According to a 2010 study by the Center for economic and Policy Research, the low employment levels for this group cost between $57 billion and $65 billion annually in lost economic activity.

The Bard Prison Initiative (BPI) is a privately funded college baccalaureate program that has been operating in New York prisons since 1999. Currently more than 300 students in six prisons are involved in the program. BPI is academically rigorous. The syllabus, requirements and professors are no different than they are at Bard College's main campus. Last year, the college began a pilot program to pair graduates with employers to give them yearlong professional internships.

Professor Robert Tynes teaches African politics at BPI and says his students are all highly motivated. "The close reading, the questions they have are so fine and well thought out that the class just takes off by itself…. It's one of the best teaching experiences I've ever had."

"Economically, it doesn't make sense to keep people incarcerated as long as we have with no great results," says Gerard Robinson, a scholar at the American Enterprise Institute. "Also, the right thing to do is not only give them a second chance, but to also admit the fact than many of them didn't receive a first chance at school."

The recidivism rate for BPI graduates is 4 percent.

I took someone's life – now I am giving back: In California prisons inmates teach each other how to start over: In March, California corrections officials unveiled new regulations to expand the credits some incarcerated people earn for good behavior and for completing educational programs. The guidelines could help to shorten prison terms for nearly 2,000 people. The emphasis on rehabilitation

represents a culture shift. Officials said that inmates at facilities with the most opportunities seem less inclined to break the rules. They are showing a greater interest in group sessions, completing college applications, and learning work skills.

Spending on rehabilitation programs in California prisons has increased from approximately $355 million in 2012 to nearly $482 million in 2016. A 2016 report found that the three-year recidivism rate for all California felons dropped from 67.5% in 2010 to 44.6% in 2016.

Officials are waiting for public input on the new credit system. If implemented, individuals could reduce their prison sentences up to six months by earning a high school diploma or college degree, and up to a month for completing a self-help program. They could also earn credits for achieving goals within some programs. Those could reduce a sentence by up to 12 weeks in a 12-month period.

"The ideas for programs can spring from community organizations, prison officials, legislation – even inmates themselves. All adult institutions, for example, offer associate of arts degrees in partnership with community colleges.

Within some prisons, offenders can work on dairy farms, gardens or clothing factories. At the prison in Chino, they learn the physics, medicine and mechanics behind deep sea diving, training with the aim of someday becoming commercial divers, underwater welders or heavy construction riggers."

One of the most innovative milestone credit programs teaches inmates at San Quentin how to write computer code. The class is taught on a closed network, since incarcerated persons are not allowed to use the Internet.

Sources: "College Classes In Maximum Security: 'It Gives You Meaning'," National Public Radio, March 27, 2017; "'I took someone's life – now I am giving back': In California's prisons, inmates teach each other how to start over," by Jasmine Ulloa, latimes.com, April 20, 2017

WITH SYMPATHY

Since publication of our last newsletter, we have learned of the death of Elmer Iron – 096725.

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