



# MI-CURE NEWS

A QUARTERLY PUBLICATION OF  
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November 2016

## MI-CURE's ANNUAL MEETING

This year's meeting focused on the work of the Michigan Collaborative to End Mass Incarceration, with panelists discussing different aspects of the Collaborative's work.

Natalie Holbrook began by describing what mass incarceration looks like. There are 2.3 million people in U.S. jails and prisons, 820,000 on parole, and 3 million on probation. The United States has 25% of the world's prison population and just 5% of the world's population.

Michigan currently has approximately 41,500 people in prison, with 2,250 being women. Of those incarcerated in Michigan, 70.2% are serving time for assaultive offenses and 11.8% are lifers. The Department of Corrections employs 14,000 people and consumes 21.6% of the general fund budget.

In this state, 14% of the total population is African American; the MDOC reports that 56% of all incarcerated persons are non-white. Of all adults incarcerated in Michigan, 54% have dependents and 20% are under treatment for mental illness. Two-thirds have a history of substance abuse. Youth of any age can be sent to prison in Michigan. In the last decade, more than 20,000 individuals were sent to prison for a crime committed when they were under the age of 18.

Jason Smith reported on the activities of the work group working to reduce admissions to prison. The group is at the exploratory phase of its work, focusing on three issues.

The group is researching the status of crisis intervention training for police officers and first responders. The goal of the training is to enable individuals to identify mental health issues, practice de-escalation techniques, and make appropriate referrals to community resources. Michigan State University has released an implementation report and several counties have received grants to implement the training. Participants have reported more confidence in dealing with these situations. A more formal evaluation is being done on the process to determine the best way to handle the training.

Community Corrections Advisory Boards (CCABs) throughout the state are charged with developing appropriate community-based alternatives for low-risk offenders as alternatives to incarceration. It is currently unclear whether the CCABs have access to pre-sentence risk evaluations performed by the Department of Corrections. Those evaluations could be very helpful in determining the type of programming needed in each community. The work group is

trying to determine the degree of CCAB access to these evaluations.

The work group is also evaluating how we might expand options to traditional court process through restorative justice practices.

Kay Perry explained that the work group dealing with conditions of confinement is also in an exploratory phase. The focus of the group at this stage is to promote more programming in the system. The group has attempted research in two areas. They attempted to determine the status or programming at each institution and they attempted to determine the degree to which institutions were using closed-circuit television to deliver educational and enrichment programming. The group did not find helpful data to answer either question.

The work group also spoke with MDOC administrators about the possibility of using Community Liaison Committee (CLCs)s to promote programming that might involve local volunteers. The department is comfortable with the current role of the CLCs and does not want to expand that role.

Prior to the creation of MI-CEMI, the American Friends Service Committee (AFSC) began working with a small group of individuals at Kinross to develop the "Personal Enrichment and Parole Readiness" program. The participants at KCF are serving life or long indeterminate sentences. The 16-week program explores issues such as insight, trauma, internal conflict, shame, fear, rejection, anger, patience, personal responsibility, accountability, empathy, communication skills, networking social influence, family ties and institutionalization. The course is designed to examine each concept, discuss how it affects people in general (with examples), and then explore what it means to each individual taking the course. The program is led by incarcerated individuals who have been trained to be facilitators. Natalie Holbrook of AFSC worked with the facilitators to evaluate the results and explore ways to improve the program before additional sessions were offered. The program has now been introduced at the Muskegon Correctional Facility, and AFSC is working to offer the program at other facilities.

In response to a question from an incarcerated member of MI-CURE, we began exploring programming designed specifically for elderly incarcerated persons. In the process of that investigation, we discovered the True Grit program developed by the Nevada prison system. The program began largely to provide appropriate activities for elderly individuals. It has since evolved into a program that prepares elderly

individuals for eventual release. It uses volunteers from the community for some aspects of the program. We have shared this information with MDOC in the hope that the program, or something similar, could be developed in Michigan.

The Conditions group also met with a group of individuals who volunteer in the MDOC. We wanted to learn more about their experiences and determine if there was any way we could improve or expand those efforts. We have yet to complete our evaluation of that meeting.

Needless to say, the Conditions group is very interested in the development of the Vocational Village at the Handlon facility and, soon to be, at Parnall. We are also anxious to see the expansion of the Pell grant programs.

Barb Levine represented the work group that focuses on reducing the length of stay in prison. Before addressing that issue, Barb noted that the department plans to set up Learning Villages to house Pell Grant students together. The plan is to use persons serving life or long indeterminate sentences to tutor the students.

Barb noted that the population of Michigan's prison system peaked at approximately 51,500 a number of years ago. The current population is 41,500. We are seeing more legislative activity this year than we have in years. Below are the highlights.

HB 5273 would eliminate the veto power of successor judges in the lifer parole process. The bill has passed the House and is waiting on Senate action. If passed, it could affect 40-50 people whose paroles were vetoed.

HB 5078 would permit the parole of someone who is mentally or physically frail to a nursing home, even if he or she had not reached the ERD. The bill has passed the House and is in the Senate. The bill is being held up because of questions regarding Medicaid eligibility.

HB 4138 would require the release of persons with a high probability of parole at their earliest release date unless there is a substantial reason not to do so. The bill attempts to define "substantial." The bill would not be applied retroactively, does not apply to lifers, and includes no appeal process. There is a reporting requirement that would hopefully help to identify gross problems. The bill has passed the House and is awaiting Senate action. The Governor is backing it.

Boiler plate language in the appropriations bill requires the MDOC to report annually on any parolable lifers who have been in the system 25 years or more. In addition to basic demographic information, the department is to report the individual's age at the time of the offense and now, when and how s/he was last reviewed, his/her parole guideline score, and the reason for the decision. The information is expected to be helpful in advocating for lifers.

SB 932 is part of a large package of bills introduced in the Senate. This bill deals with technical parole violations (TVs)

and may serve as a basis for setting standards for TVs. Technical violators would be subject to an escalating set of sanctions, not to exceed 30 days in detention. No one could be returned to prison unless he or she posed a substantial risk to the community. As written, the process would be implemented only in the five counties that currently return the most violators to prison. The bill has passed the Senate and is awaiting action in the House.

Dennis Schrantz talked about the success of the Michigan Prisoner Reentry Initiative (MPRI) that was developed under the administration of Governor Jennifer Granholm. Two years in planning, the program engaged local human service networks in developing reentry programs and supports. Eighty percent of those leaving prisons had strong reentry plans and returns to prison were reduced from one out of two to one out of three parolees. Emphasis was placed on high risk individuals to ensure they had strong reentry plans.

Under the Snyder administration, most of the authority and money for reentry was removed from local units and given to the Department of Corrections. Funding for reentry was slashed by 50%. Now, to reduce the number of persons returning to prison, the work group wants to rejuvenate the prisoner reentry program and codify it in law so it cannot be changed by any administration. The reentry group is working to establish a Michigan Prisoner Reentry Association with representatives from around the state. To do that they are arranging focus groups in communities throughout the state to talk about the issues and generate support. The group also hopes to see a program audit for the reentry program.

Sandra Girard explained that the new organization Nation Outside hopes to become a voice for persons who were previously incarcerated. The group hopes to return some balance to a system that has been dominated by the voices of the powerful – prosecutors and law enforcement. Recognizing that anyone can vote in Michigan who is not serving time for a conviction, the group is currently focusing on voter activation. They are also engaged in public education and membership growth. The formerly incarcerated will always play a leadership role in the organization, but they are looking for support and members among other allies.

In response to questions, we discussed a number of issues. The following is a summary of those.

It is important that we not forget about the importance of bail reform in Michigan. We should not be keeping people in jail simply because they are unable to pay a relatively small bail. This issue is a huge contributor to jail overcrowding. In addition, people kept in jail are likely to lose their jobs and are more likely to be sentenced to prison than someone who is not incarcerated awaiting trial. There are effective alternatives to holding someone on bail. Those include phoning someone to remind him or her of a court date or providing transportation to the court proceeding.

Related to bail reform is the issue sometimes called "pay or stay." This refers to judges who jail someone because he or

she is unable to pay a fine. This practice is unconstitutional, but still occurs from time to time. The American Civil Liberties Union of Michigan has challenged this process and the Supreme Court of Michigan has reminded courts that the practice must cease.

For persons serving life without parole, a commutation is the only chance at release. Except for serious health situations, Governor Snyder has yet to commute any sentences. MI-CEMI has called on the Governor to exercise that responsibility more often. (We shared the letter with attendees and have printed it in the article below.) It is not uncommon for governors to wait until the end of their term to grant commutations. Therefore, it is important for individuals to file the paperwork to request a commutation.

There is no effective method for getting someone transferred closer to home. Most prisons have been built far away from population centers. The system has established some prisons as treatment hubs; individuals with a recommendation for therapy will spend time at one of those hubs. Individuals approaching release are often housed at facilities closer to their homes. If there are extenuating circumstances, a state representative or state legislator may be willing to advocate for a transfer.

None of the panelists knew the details related to the transfer of individuals at Lakeland who were providing college prep tutoring.

In response to concerns about the treatment of individuals at a specific facility, the panel acknowledged that harassment does occur. The prison environment is not always positive and that takes a toll on staff as well as incarcerated persons. As with any profession, some people are suited to be corrections officers and some are not.

There are some guidelines for probation officers, including guidelines for sanctioning. But they are broad and leave room for a wide range of supervision.

One of the challenges is to have good data about prison misconducts and parole violations. That data is not currently available.

We discussed discrimination against persons convicted of a sex offense. Despite low recidivism rates, these people are subjected to oppressive parole conditions and registry (SORA) requirements. Electronic monitoring is expensive and extremely oppressive. Residency requirements do nothing to reduce recidivism and make the lives of individuals and their families unnecessarily challenging. All of this ignores the fact that the vast majority of these offenses are committed by a relative or friend of the victim. MI-CEMI will be focusing on this issue at its plenary session on November 15.

All of us have some political clout and can work to keep issues related to mass incarceration in the public eye. We can attend candidate forums and ask questions about the topic. If there are no candidate forums, call a candidate and ask where

he or she stands on an issue. Work on someone's campaign and take the opportunity to have a private conversation with a candidate about the subject. Visit, call, or email an office holder to let him or her know how you feel about a bill, local ordinance, or policy. Don't forget aides. They are often very knowledgeable about issues and have the ear of their boss. Educate your family members, friends, and acquaintances about this subject. Many of them know little about criminal justice issues and you have first-hand experience.

We all know that there are not enough jobs for everyone incarcerated in Michigan. That is due to a number of factors. The legislature insisted that the MDOC close any industry that did not make a profit. The previous administration of the MDOC did not have a background in corrections and did not understand the importance of programming. Overcrowding exacerbates the problem. We are encouraged by the recent creation of Vocational Villages and the fact that Michigan received the second highest number of pilot Pell grants of any state. We are excited that lifers and persons serving long indeterminate sentences will be used as tutors in the Learning Villages. There is much work to do to establish the level of programming that is needed.

### **MI-CEMI CALLS ON GOVERNOR SNYDER TO ISSUE MORE COMMUTATIONS**

The Michigan Collaborative to End Mass Incarceration recently sent a letter to Governor Snyder calling on him to issue more commutations. The text of the letter follows.

The Michigan Collaborative to End Mass Incarceration is writing to you today to ask that you do all you can, as Governor, to reduce Michigan's prison population. You, and you alone, have the power to commute sentences, and we are asking you to exercise that power more often and more generously.

The Collaborative represents more than 40 member/supporting organizations as well as hundreds of individuals. Our goal is to promote policy and program changes that will substantially reduce Michigan's prison population by (1) reducing the number of people admitted to prison, (2) reducing the length of stay for those sentenced to prison, (3) improving conditions of confinement for those who are incarcerated, and (4) reducing the number of people who return to prison. We recognize that in order to achieve these goals, many people must play a role.

We share your desire for a safer, stronger Michigan. We commend you for your strong support of services to victims of crime, rehabilitative programming within our prisons, changes that will keep more of our young people out of prison, improvements in Michigan's indigent defense system, support for exonerees, and reform of probation violation sanctions. We are pleased that Director Heidi

Washington, the legislature, and the Indigent Defense Commission are responding to those challenges and enacting positive changes.

There are hundreds of men and women who have been incarcerated in Michigan's prisons for decades. In some cases, they were incarcerated as teenagers or very young adults, and we all know that an immature mind is not a permanent condition. Many have completed a host of programs and some have even managed to earn postsecondary degrees. These are notable accomplishments since the department denies lifers and long termers access to most programs. There may have been mitigating circumstances related to some of these crimes, which were never given adequate consideration. In some cases, the convicted person may have been present when a crime was committed, but never participated in a violent act. People can and do change; it is unlikely that many of these men and women resemble who they were decades ago.

All of us have done things that we seriously regret. None of us deserves to have our entire life measured by the worst thing we have ever done.

We know that people convicted of serious crimes such as homicide and sex offenses have the lowest recidivism rates of any released prisoners. Someone whose sentence is commuted would automatically receive the support and supervision of a parole agent.

We see no reason to wait until someone is terminally ill to consider his or her release.

Since the Parole Board plays a key role in the commutation process, it may be necessary to add members to the board, as has been done in the past, in order to handle the workload associated with a more robust commutation program. That would be a worthwhile investment.

As with all serious decisions, there is some risk associated with releasing a person from prison. We believe many of our long-incarcerated citizens are worth that risk and deserve a second chance. Leadership demands courage. We are asking you to demonstrate courage by giving these people a chance to become contributing members of their families and communities.

The letter was signed by the MI-CEMI Steering Team which includes Mark Fancher of the American Civil Liberties Union of Michigan, Natalie Holbrook of the American Friends Service Committee, Gilda Jacobs of the Michigan League for Public Policy, Christine Lewis of Michigan United, Kay Perry of MI-CURE, Laura Sager of Citizens Alliance on Prisons and Public Spending, Dennis Schrantz of the Michigan Council on Crime and Delinquency, Ronald Simpson-Bey of Nation Outside, and Lynda Sweigert.

## MI-CEMI URGES SENATE TO PASS RAISE-THE-AGE BILLS

The Michigan Collaborative to End Mass Incarceration recently sent a letter to the Senate Judiciary Committee, urging them to approve House Bills 4947-4966 to raise the age of juvenile court jurisdiction to 18. The text of the letter follows.

The Michigan Collaborative to End Mass Incarceration (MI-CEMI), representing fifty-six (56) organizations and over 300 individuals, strongly supports legislation to raise the age of juvenile court jurisdiction to 18 and to remove youth from adult facilities. Michigan is **one of only 7 remaining states** automatically prosecuting 17-year-olds as adults for any offense. Most 17-year-olds in the adult system are there for non-violent offenses and never had a juvenile record. This antiquated practice is contrary to research, exceptionally harmful to youth and directly threatens public safety. In order to reduce reoffending rates, reduce corrections costs, and align with national standards, it is imperative that Michigan raise the age of juvenile court jurisdiction to 18.

In nearly all aspects of law, Michigan recognizes 18 as the age of adulthood. Seventeen-year-olds cannot vote, legally sign a contract, drop out of school, rent a hotel room or car, or purchase tobacco, fireworks or lottery tickets and are still considered children whom the state's child welfare system must protect from abuse and neglect. Yet, if caught in the legal system for any reason, 17-year-olds must be prosecuted, convicted, and sentenced as adults in Michigan's criminal courts.

Research confirms that 17-year-olds are not adults. As part of normal development, they are more likely to take risks, act impulsively, and are highly susceptible to the negative influences of peers. Though these age-related factors may contribute to youthful mistakes, 17-year-olds are much more amenable to rehabilitative programs and behavior modification than older adult offenders. Nonetheless, Michigan prohibits 17-year-olds from accessing youth-focused treatment found only in the juvenile system.

Prosecuting youth in the adult system is harmful and threatens public safety. Most 17-year-olds in the court system are held in adult jails and prisons where they are at imminent risk of physical and sexual violence, restraints, solitary confinement and suicide. Without access to age-appropriate services, young people exiting adult prison are 34% more likely to reoffend and do so more violently compared with their peers in the juvenile justice system. An adult conviction also has lifelong consequences, including barriers to education, employment, and housing. A young person convicted in Michigan's adult system

can expect to earn 40% less over their lifetime, which translates to a loss of state tax revenue, and an increased risk of future incarceration.

Michigan's juvenile justice system is highly effective at delivering developmentally appropriate services and sanctions that hold youth accountable, engage the whole family in treatment, keep kids in school, and reduce reoffending. As a result of declining youth arrests rate and increased use of diversion, Michigan's juvenile courts have seen dramatic reductions in their caseloads. Likewise, many juvenile detentions and residential treatment centers are well below capacity, many with bed usage falling under 50% capacity. More than any time in recent history, Michigan's juvenile justice system has the ability to absorb and provide far better treatment to most, if not all, 17-year-olds in the adult justice system.

Several states have recently increased their age of juvenile jurisdiction, citing research, public safety and cost-savings as the reason for the change. Those states reported little to no cost impact, mostly due to supporting effective diversion and community-based treatment options. In fact, they expect a long-term cost-savings, estimating that by including 17-year-olds in the juvenile justice system \$3 will be saved for every \$1 spent.

Now is the time for Michigan to join the 43 other states already recognizing that 17-year-olds who come in contact with the justice system are still children. For the reasons stated above, we support the proposed legislation to raise the age of juvenile court jurisdiction to 18, and passage of the House Bills 4947-4966. Thank you.

### **PRISON PHONE UPDATE**

A number of our readers have asked for an update on the Federal Communication Commission's efforts to regulate prison telephone rates. We are including the recent history here.

On August 4, 2016, the Federal Communications Commission adopted the following rates in its Order on Reconsideration:

#### **Debit and Prepaid:**

State or federal prisons: 13 cents/minute  
Jails with 1,000 or more inmates: 19 cents/minute  
Jails with 350-999 inmates: 21 cents/minute  
Jails of up to 349 inmates: 31 cents/minute

#### **Collect:**

State or Federal prisons:  
(1) \$0.16 after the effective date of the Order;  
(2) \$0.15 after July 1, 2017; and  
(3) \$0.13 after July 1, 2018, and going forward.  
Jails with 1,000 or more inmates:

(1) \$0.54 after the effective date of the Order;  
(2) \$0.37 after July 1, 2017; and  
(3) \$0.19 after July 1, 2018, and going forward.

Jails with 350-999 inmates:

(1) \$0.54 after the effective date of the Order;  
(2) \$0.38 after July 1, 2017; and  
(3) \$0.21 after July 1, 2018, and going forward.

Jails of up to 349 inmates:

(1) \$0.58 after the effective date of the Order;  
(2) \$0.45 after July 1, 2017; and  
(3) \$0.31 after July 1, 2018, and going forward.

The rates for Prisons were scheduled to go into effect on December 12, 2016, and Jail rates on March 13, 2017.

The ICS providers and several state and county governments requested that the FCC stay the order, which the Commission denied. The parties then filed to stay the new rates in the Court of Appeals, and the pleading cycle ended on October 31, 2016.

**Unfortunately**, on November 2, 2016, the **Court of Appeals issued a stay** until oral arguments are conducted. No date has been set for those arguments.

### **FEDERAL BUREAU OF PRISONS TO PHASE OUT USE OF PRIVATE PRISONS**

On August 18, 2016, Sally Q. Yates, the Deputy Attorney General, announced that the Federal Bureau of Prisons would begin "the process of reducing – and ultimately ending – our use of privately operated prisons." She acknowledged that private prisons played an important role when the population of the federal prisons was growing rapidly.

In her memorandum, Ms. Yates noted that, "time has shown that (private prisons) compare poorly to our own Bureau facilities. They simply do not provide the same level of correctional services, programs, and resources; they do not save substantially on costs; and as noted in a recent report by the Department's Office of Inspector General, they do not maintain the same level of safety and security. The rehabilitative services that the Bureau provides, such as educational programs and job training, have proved difficult to replicate and outsource – and these services are essential to reducing recidivism and improving public safety."

In July, the Bureau declined to renew a contract for 1,200 beds. On the date of the announcement, the Bureau amended an existing contract solicitation to reduce it from a maximum of 10,800 beds to a maximum of 3,600 beds. By May 2017, the number of federal prisoners in private beds will have been reduced more than 50% from the 2013 count.

The *Washington Post* reported on an interview with Ms. Yates. The Bureau will not terminate existing contracts; each will be reviewed when they are up for renewal. The Bureau currently uses 13 private prisons. All the contracts will come up for renewal in the next five years.

The *Post* cited a recent report by the Justice Department's inspector general that noted that private facilities had higher rates of assaults—both by inmates on other inmates and by inmates on staff—and had eight times as many contraband cellphones confiscated each year on average. Disturbances in these facilities have led, in recent years, to “extensive property damage, bodily injury, and the death of a Correctional Officer.”

Some private prison operators have noted that inmate populations of the private facilities consist largely of noncitizens, resulting in challenges the Bureau does not face.

On August 29, 2016, Secretary of Homeland Security Jeh Johnson reported that he has ordered creation of a committee to review Immigration and Customs Enforcement's (ICE) “current policy and practices concerning the use of private immigration detention and evaluate whether this practice should be eliminated.” That evaluation is to be completed by November 30 of this year. Last year, 62% of ICE's beds were operated by private corporations.

*Source: “Memorandum for the Acting Director Federal Bureau of Prisons, Reducing our Use of Private Prisons,” from Sally Q. Yates, August 18, 2016; “Justice Department says it will end use of private prisons,” by Matt Zapposky, The Washington Post, August 18, 2016; “The Era of Private Prisons May Soon Be Over,” by Kira Lerner, Nation of Change, August 29, 2016.*

### HEP-C TREATMENT IN PRISONS

Within the past two years, researchers from Yale and the Association of State Correctional Administrators sent two surveys to state prison systems to gather information on the prevalence and treatment of hepatitis C. The data is uneven, because states track the virus differently. Some states screen everyone who comes into the prison. Some simply ask inmates whether they have ever been told they have hepatitis C. Some don't keep track at all. Given that, it is not surprising that the reported share of inmates with the disease varies widely. In 2015, New Mexico reported that 40% of their inmates are infected. Mississippi and North Carolina reported only 1%. At that time, Michigan reported a 10% infection rate.

The first drug to successfully treat hepatitis C entered the market in 2013, the second in 2014. Additional drugs have since been introduced, but all are very expensive. While Medicaid, Medicare, and the Veterans Health Administration regulate what the Federal prisons pay for drugs, state prisons are not eligible for those discounts. It is up to each prison system to negotiate the best price possible for them. Though those negotiations are not easy, Michigan has reportedly negotiated discounts of 60% to 65% off the price they originally paid.

The author of the article spoke with MDOC spokesperson Chris Gautz. The MDOC decided to treat people who could, in theory, get the drugs from Medicaid if they were not

incarcerated. That includes anyone with serious liver scarring. To date, the department has treated roughly 400 people at a cost of \$26 million. One-time funding from the legislature has helped with the cost. It is estimated that it will cost about \$7 million a year to treat new and existing incarcerated persons whose condition meets the criteria for treatment.

According to the Centers for Disease Control and Prevention, 75% to 85% of individuals with hepatitis C will develop a chronic infection, only 5% to 20% will develop severe liver damage, and 1% to 4% will ultimately die of liver failure or cancer.

*Source: “Prisoners With Hep C Get Cured In Some States But Not Others,” by Anna Maria Barry-Jester, Five Thirty Eight, October 13, 2016.*

### JUVENILE LIFER UPDATE

In January 2016, in a 6-3 decision, the U.S. Supreme Court in *Montgomery v. Louisiana* directed that courts throughout the country are to reduce life sentences for young offenders, except in “rare” cases. (*Emphasis added.*)

Michigan's prosecutors had until July to identify juvenile lifers from their jurisdiction who are so dangerous that they should remain in prison for life. The result: Prosecutors are seeking to retain life-without-parole sentences for 218 of the 363 men and women in Michigan's prisons for crimes committed as minors. In other words, they are arguing that 60% of these individuals should remain in prison until they die!

In at least nine counties, prosecutors are asking judges to uphold all of the county's life sentences. In Saginaw County, the prosecutor recommended life sentences in 21 of the 21 sentences. In Kalamazoo, the recommendation was 9 of 9. In Muskegon the count is 7 of 7. In Oakland County the recommendation was 44 of 49 cases and in Genesee County it was 23 of 27. Wayne County recommended 61 of 153 cases remain life sentences.

Some of these individuals turned down plea bargains that would have led to shorter sentences. Some were as young as 14. Many came from very challenging backgrounds. More than a few have impressive prison records. Yet, the prosecutors seem bent on focusing only on the nature of the crime.

A group of current and former federal prosecutors have criticized state prosecutors for defying the Supreme Court ruling. Michael Dettmer and James Brady, both former U.S. Attorneys for Michigan's Western District, along with Richard Rossman, former U.S. Attorney for the Eastern District wrote in a recent op-ed, “As former U.S. Attorneys, we would have expected Michigan prosecutors to understand Montgomery's central tenet that children are uniquely capable of growth and maturation and must be able to demonstrate their rehabilitation. Instead, too many prosecutors are focusing on the crime committed by a troubled adolescent without

exercising the judgment to recognize whether the adult before them today has rehabilitated himself.”

Former Governor William Milliken cited scientific research, the Supreme Court ruling in *Montgomery v. Louisiana*, the large number of lifers in the Michigan prison system, and a large number of nationwide organizations that oppose juvenile life without parole when he called on the Michigan Legislature and the Governor to abolish juvenile life without parole.

*Sources: “Michigan prosecutors defying U.S. Supreme Court on ‘juvenile lifers,’” The Center for Michigan, Bridge Magazine, August 26, 2016; “Former Gov. Milliken urges Lansing to ban juvenile lifer laws,” Guest Commentary by William Milliken, Bridge Magazine, August 25, 2016*

### **APPEALS COURT RULES THAT SORA CHANGES CANNOT BE APPLIED RETROACTIVELY**

On August 25, 2016, a unanimous panel of the U.S. 6<sup>th</sup> Circuit Court of Appeals (*Does v. Snyder 15-1536*) concluded that changes made to Michigan’s Sex Offender Registry Act (SORA) impose punishment without a corresponding public safety benefit and, therefore, cannot be applied retroactively. The changes made in 2006 and 2011 imposed geographic exclusion zones barring registrants from living, working or spending time with their children in much of the state; imposed extensive reporting requirements; and automatically extended registration to life without due process and without a mechanism for review or appeal for the vast majority of registrants. The case was filed by the ACLU of Michigan and the University of Michigan Clinical Law Program.

The ruling, written by Circuit Judge Alice M. Batchelder, notes that the “three tiers, which ostensibly correlate to current dangerousness... are based, not on individual assessments, but solely on the crime of conviction.”

“The law has had a significant impact on each of (the plaintiffs) that reaches far beyond the stigma of simply being identified as a sex offender on a public registry. As a result of the school zone restrictions, for example, many of the Plaintiffs have had trouble finding a home in which they can legally live or a job where they can legally work. These restrictions have also kept those Plaintiffs who have children (or grandchildren) from watching them participate in school plays or on school sports teams, and they have kept Plaintiffs from visiting public playgrounds with their children for fear of “loitering.” Plaintiffs are also subject to the frequent inconvenience of reporting to law enforcement in person whenever they change residences, change employment, enroll (or un-enroll) as a student, change their name, register a new email address or other “internet identifier,” wish to travel for more than seven days, or buy or begin to use a vehicle (or cease to own or use a vehicle).”

“SORA brands registrants as moral lepers solely on the basis of a prior conviction. It consigns them to years, if not a lifetime, of existence on the margins, not only of society, but often, as the record in this case makes painfully evident, from

their own families, with whom, due to school zone restrictions, they may not even live.”

Judge Batchelder devoted some attention to the Michigan legislature’s claim that recidivism rates of sex offenders are “frightening and high.” She notes, in the ruling, that a number of studies have cast significant doubt on that assertion. “One study suggests that sex offenders... are actually *less* likely to recidivate than other sorts of criminals. “Even more troubling is evidence in the record supporting a finding that offense-based public registration has, at best, no impact on recidivism.... In fact, one statistical analysis in the record concluded that laws such as SORA actually *increase* the risk of recidivism, probably because they exacerbate risk factors for recidivism by making it hard for registrants to get and keep a job, find housing, and reintegrate into their communities. Tellingly, nothing the parties have pointed to in the record suggests that the residential restrictions have any beneficial effect on recidivism rates.”

In his commentary on Michigan Radio, Jack Lessenberry commented that Judge Batchelder “hinted that much more of the registry may also be unconstitutional, but indicated the judges couldn’t rule on those portions because they weren’t challenged in this particular lawsuit.” He concluded, “If Michigan lawmakers really wanted to strike a blow for human rights, they’d come back in the lame-duck session and repeal the entire sex offender list. Or replace it with a smaller list of only the most potentially dangerous and violent offenders.”

This is not yet a final judgment. The state may appeal. Experts suggest that individuals remain SORA compliant until there is a final ruling. More detailed information for registrants and their attorneys is available at [aclumich.org/SORAinfo](http://aclumich.org/SORAinfo) and at [www.sado.org/Articles/Article/491](http://www.sado.org/Articles/Article/491).

*Sources: “Federal Appeals Court Calls Michigan Sex Offender Registry ‘A Punishment,’ Bars State from Imposing Draconian Restrictions,” ACLU of Michigan, August 25, 2016; “Michigan’s sex offender law is unfair and probably unconstitutional,” by Jack Lessenberry, Michigan Radio, August 26, 2016;*

### **EX-OFFENDER ENTREPRENEUR PROGRAM TO BE PILOTED IN DETROIT**

Roughly 50 previously incarcerated individuals in each of four cities (Detroit, Chicago, St. Louis, and Louisville, KY) will soon be eligible to receive up to \$50,000 in microloans and entrepreneurship training designed to help them start and grow a business. The pilot project is a result of a partnership between the U.S. Small Business Administration, Battle Creek-based W. K. Kellogg Foundation, and Justine Petersen (a St. Louis-based organization that helps low-income people with credit building and other financial needs). If research demonstrates that it works, the organizations hope to expand it nationally.

Called the Aspire Entrepreneurship Initiative, the three-year program will engage participants who have been in prison and who have children—with emphasis on parents of children from birth to 8 years old.

Project spokesperson Galen Gondolfi was quoted, “This is about life skills as it relates to financial asset-building. The goal of this program is about stabilizing households, raising household income and, to be honest, even impacting neighborhoods and communities at large.”

Training will include classroom instruction, mentoring, and financial coaching. The goal is to have 50 people participate in each of the four cities, with 30 completing entrepreneurship training and 25 closing on a microloan. Training is expected to begin in the spring of 2017.

Sources: “Entrepreneur programs to offer training, microloans to 50 ex-inmates in Detroit,” by Lindsay VanHulle, *Bridge Magazine/Crain’s Detroit Business*, August 28, 2016

**SHORTS**

**Ruling Affects Michigan Prisoners Serving Life and Long Indeterminate Sentences:** A federal court has ruled that a prisoner sentenced to a parolable life sentence and a concurrent term-of-years is eligible for parole after reaching the parole eligibility date on the life sentence, or after serving

the minimum less any applicable credits on the term-of-years sentence, whichever is greater. Judge Stephen J. Murphy, III of the U.S. District Court, Eastern District of Michigan, Southern Division, issued a Stipulated Remedial Order in *Jerome Sweezer v. Daniel Heyns, et. al.*, Case No. 2:13-cv-14382 on August 25, 2016.

**Taser Death in Michigan Prison:** Dustin Allen Szot, 24, died after correctional officers used a Taser to break up a fight at Bellamy Creek. The Michigan State Police and the medical examiner were reportedly investigating the death. *Source: “Prisoner dies after officer uses stun gun to break up fight,” By Stephen Kloosterman, mlive.com, September 28, 2016*

**OUR LATEST SURVEY**

In the August newsletter, we asked for ideas on how to improve the MDOC’s grievance system. Due to lack of space in this edition, we will report on the results of that survey in our February edition.

**WITH SYMPATHY**

Since publication of our last newsletter, we have learned of the deaths of MI-CURE members and supporters Adolphe A. Crisp – 169329, Kim Kulick – 321105, and Vollie Payton – 204520.

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