Coronavirus: A Nationwide Survey of the Push for Early Release as Pandemic Fears Grow

by Christopher Zoukis

“Mother Nature is a serial killer. No one’s better. More creative. . . . She’s a bitch.”
— World War Z

Between January and August of 2019, the Department of Health and Human Services played a game, a simulation of sorts. The exercise was called Crimson Contagion, and it was designed to help the U.S. prepare for a viral pandemic.

During the simulation, as reported by The New York Times, a group of 35 tourists from the United States, Australia, Kuwait, Malaysia, Thailand, Britain and Spain visited China. While there, they became infected with an unknown virus, flew home, and became their respective countries’ Patient Zeros. The World Health Organization declared a pandemic seven weeks later. In the United States, the Centers for Disease Control and Prevention (CDC) issued guidelines for social distancing and state governments directed the workforce to stay home. Nonetheless, the simulation predicted, the pandemic would ultimately infect 110 million Americans and kill 586,000.

Coronavirus: The Origins

On December 31, 2019, the Chinese government acknowledged the treatment of citizens in Wuhan, China, for pneumonia. Within a few days, Chinese researchers identified a new virus that had sickened dozens of people in Asia.

On January 11, 2020, Chinese media reported the death of a 61-year-old man who frequented a seafood and poultry market in Wuhan. This was to become known as the first known death from what came to be known as COVID-19, the disease caused by the novel coronavirus.

By January 23, 2020, the Chinese government cut off Wuhan, isolating a city of over 11 million people. This was to become known as the first known death from what came to be known as COVID-19, the disease caused by the novel coronavirus.

By January 23, 2020, the Chinese government cut off Wuhan, isolating a city of over 11 million people. By this point, “17 people had died, and more than 570 others had been infected,” reports The New York Times. A week later, the World Health Organization declared a global health emergency. And by March 13, 2020, President Trump declared a national state of emergency.

Within a few short months, the worldwide death toll would rise to over 188,000. And the number is rising. As of April 23, 2020, the virus has infected close to 2.7 million people.

Prisons: “Amplifiers of Infectious Diseases”

As the nation reels in response to waves of infections and deaths and the public adopts a new way of living – 6 feet apart – one group is left to fend for themselves: America’s incarcerated class.

The CDC has promulgated guidelines for all Americans. These include social distancing (keeping 6 feet apart), remaining home as much as possible, washing hands often, and using face masks as a barrier to disease. The most important factor remains social distancing because if people can isolate themselves, and thereby not come into contact with others who are infected, they can remain safe.

On March 11, 2020, California Governor Gavin Newsom recommended the cancellation of gatherings of more than 250 people to slow the spread of the coronavirus. By March 15, the CDC recommended that gatherings of 50 or more be canceled. The following day, the White House recommended gatherings of more than 10 be canceled.

Even local and state governments have issued their own guidelines. As reported by the New York Times, by April 7, 2020, every state except for North Dakota, South Dakota, Nebraska, Iowa, Arkansas, Wyoming, Oklahoma, and Utah had issued state-wide stay-at-home decrees, correctly viewing social distancing as the best manner of remaining safe.
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May 2020
Coronavirus Early Release (cont.)

But for those in American jails and prisons – people typically subjected to substandard nutrition, health care, and access to clean living environments – there is virtually no protection. Cramped in overcrowded dormitories with limited access to vital health-care information and care, many fear illness and death are inevitable.

As stated by Kelsey Kauffman in The Appeal, jails and prisons are “incubators and amplifiers of infectious diseases.” With nowhere to run, American prisoners can do little but hope and pray.

The State of COVID-19 in American Prisons

To combat the iron curtain of information in American jails and prisons, we at Prison Legal News have compiled an exhaustive accounting of the state of COVID-19 in every prison system across the country as we went to press. We are also reporting litigation over conditions of confinement and, where applicable, large-scale prison releases and guidelines to seek such release.

What follows is our analysis of the impact COVID-19 has had on every prison system and the movement to protect America’s incarcerated class through the mechanism of early release.

Federal Bureau of Prisons

On April 22, 2020, the federal Bureau of Prisons (BOP) reported 566 prisoners and 342 staff members had tested positive for coronavirus. Additionally, 24 prisoners had died because of the coronavirus.

The hardest-hit prisons include USP Atlanta (106 inmate positives, 26 staff positives); FCI Danbury in Connecticut (44 inmate positives, 39 staff positives); FCI Oakdale in California (73 inmate positives, 26 staff positives, four inmate deaths); and FCI Elkmont in Ohio (36 inmate positives, 26 staff positives, four inmate deaths).

On March 26, 2020, Attorney General William Barr issued a memorandum directing the BOP to use the tool of home confinement as a mechanism for reducing the federal prison population. This memorandum presented several factors the BOP should use in determining which prisoners should be considered. These factors include:

• The age and vulnerability of the prisoner to COVID-19, in accordance with the CDC guidelines;
• The security level of the facility currently holding the prisoner, with priority given to prisoners residing in low- and minimum-security facilities;
• The inmate’s conduct in prison, with prisoners who have engaged in violent or gang-related activity or who have incurred a BOP violation within the last year not receiving priority treatment;
• The prisoner’s score under PATTERN, a risk assessment tool for people in BOP prisons, with those who have anything above a minimum score not receiving priority treatment;
• Whether the prisoner has a demonstrated and verifiable re-entry plan that will prevent recidivism and maximize public safety, including verification that the conditions under which the prisoner would be confined upon release would present a lower risk of contracting COVID-19 than the inmate would face in his or her BOP facility;
• The prisoner’s crime of conviction, and assessment of the danger posed by the prisoner to the community. Some offenses, such as sex offenses, render an inmate ineligible for home detention. Other serious offenses weigh more heavily against consideration for home detention.

On April 3, 2020, AG Barr issued a second memorandum, specifically directing the BOP to “immediately maximize appropriate transfers to home confinement of all appropriate inmates … [at] BOP facilities where COVID-19 is materially affecting operations.”

What follows is a compilation of federal cases, and then a state-by-state roundup, including information about how many prisoners have been released and due to what legal developments.

As of mid-April, the BOP had released 1,022 prisoners on home confinement because of these directives.

• United States v. Michaels, 8:16-cr-76-JVS, (C.D. Cal. Mar. 26, 2020). The Court granted temporary release for 90 days, pursuant to 18 U.S.C. § 3142 (i), which authorizes discretionary temporary release when necessary for a person’s defense or another compelling reason. Judge James Selna held the defendant’s age and medical conditions, which place him in the population most susceptible to COVID-19,
Coronavirus Early Release (cont.)

and in light of the pandemic, to constitute “another compelling reason” and granted his temporary release.

• United States v. Colvin, No. 3:19-cr-179 (JBA), 2020 WL 1613943 (D. Conn. Apr. 2, 2020). Judge Janet Bond Arterton waived defendant’s exhaustion requirements and concluded “[i]n light of the expectation that the COVID-19 pandemic will continue to grow and spread over the next several weeks, the Court concludes that the risks faced by Defendant will be minimized by her immediate release to home” under a compassionate release, 18 U.S.C. § 3582(c)(1)(A)(i).


• From Edmund H. Mahony, “Courts ponder the release of low risk inmates in an effort to block the spread of COVID-19 to the prison system,” Hartford Courant (Mar. 24, 2020): Judge Jeffrey Meyer ordered the release of defendant stating that “the conditions of confinement at Wyatt Detention Facility are not compatible” with current COVID-19 public health guidance concerning social distancing and avoiding congregating in large groups. Meyer is one of four federal judges in Connecticut who has released prisoners in connection with the COVID-19 pandemic.

• In Re: Court Operations Under the Exigent Circumstances Created by COVID-19, (D. Conn. April 7, 2020). Judge Stefan Underhill held, “[p]ursuant to the provisions of the Criminal Justice Act, 18 U.S.C. § 3006A(a)(l), and (c), the Office of the Federal Public Defender for the District of Connecticut is hereby appointed to represent any then-unrepresented defendant previously determined to have been entitled to appointment of counsel, or who was previously represented by retained counsel and is presently indigent, for purposes of issues relating to requests for early release. The Federal Public Defender, in consultation with the client, shall determine whether


• United States v. Jaffee, No. 19-cr-88 (RDM) (D.D.C. Mar. 26, 2020). Judge Moss released defendant, despite acknowledging offense charged — marijuana distribution and felon in possession — “is serious” because among other factors mitigating public safety concerns “incarcerating the defendant while the current COVID-19 crisis continues to expand poses a greater risk to community safety than posed by Defendant’s release to home confinement.”

• United States v. Mclean, No. 19-cr-380, (D.D.C. Mar. 28, 2020). Judge Moss declared “[a]s counsel for the Defendant candidly concedes, the facts and evidence that the Court previously weighed in concluding that Defendant posed a danger to


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the community have not changed—with one exception. That one exception—COVID-19—however, not only rebuts the statutory presumption of dangerousness, see 18 U.S.C. § 3142(e), but tilts the balance in favor of release.


* United States v. Underwood, No. 8:18-cr-201-TDC (D. Md. Mar. 31, 2020) “In the Court’s view … Underwood should receive strong consideration for a furlough under the present circumstances. Even though no inmate at FCI-Cumberland has tested positive for the coronavirus to date, there is significant potential for it to enter the prison in the near future… Underwood is a non-violent offender, has no significant prior criminal record, and poses no danger to the community at all. It would therefore be in the public interest to have someone in Underwood’s condition outside of FCI-Cumberland at the present time because of the public resources necessarily required to protect him from the virus and to treat him were he to become infected.”

* United States v. Barkma, No. 19-cr-0052 (RCJ-WGC), 2020 U.S. Dist. LEXIS 45628, (D. Nev. Mar. 17, 2020). Judge Jones delayed defendant’s date to surrender to begin his intermittent confinement by a minimum of 30 days because “[i]n considering the total harm and benefits to prisoner and society . . . temporarily suspending [defendant’s] intermittent confinement would appear to satisfy the interests of everyone during this rapidly encroaching pandemic.” In coming to this conclusion, the court placed weight on the fact that “incarcerated individuals are at special risk of infection, given their living situations, and may also be less able to participate in proactive measures to keep themselves safe; because infection control is challenging in these settings.

* United States v. Claudio-Montes, No. 3:10-cr-212-JAG-MDM, Dkt. No. 3374 (D.P.R. Apr. 1, 2020). “[G]iven the COVID-19 pandemic afflicting the world, rather than issue an arrest warrant at this time, the Court will instead issue a summons.”

* United States v. Copeland, No. 2:05-cr-135-DCN, at 7 (D.S.C. Mar. 24, 2020). Judge Norton granted compassionate release for a 73-year-old with severe health conditions under the First Step Act, “[g]iven defendant’s tenuous health condition and age, remaining incarcerated during the current global pandemic puts him at even higher risk for severe illness and possible
Coronavirus Early Release (cont.)

death, and Congress has expressed its desire for courts to [release federal prisoners who are vulnerable to COVID-19].”


- United States v. Kennedy, 18-cr-20315 (JEL) (Mar. 27, 2020 E.D. Mich.) Judge Levey ordered release under 18 U.S.C. § 3142(i)(4), both due to the risk of COVID-19 and the difficulty preparing defense while detained due to limits facility placed in response to COVID-19. The Court also noted that “waiting for either Defendant to have a confirmed case of COVID-19, or for there to be a major outbreak in Defendant’s facility, would render meaningless this request for release. Such a failure to act could have devastating consequences for Defendant and would create serious medical and security challenges to the existing prison population and the wider community.”

- United States v. Marin, No. 15-cr-252, Dkt. No. 1326 (E.D.N.Y. Mar. 30, 2020) “The Court grants Defendant Jose Maria Marin’s motion for compassionate release, pursuant to 18 U.S.C. § 3582(c)(1)(A), for … his advanced age, significantly deteriorating health, elevated risk of dire health consequences due to the current COVID-19 outbreak, status as a non-violent offender, and service of 80% of his original sentence. Although Defendant has not exhausted his administrative remedies in the manner prescribed by Section 3582(c), because the government is consenting to the requested sentencing reduction, the Court deems Section 3582(c)’s exhaustion requirement as having been met.”


- United States v. Garlock, No. 18-CR-00418-VC-1, 2020 WL 1439980, (N.D. Cal. Mar. 25, 2020). Judge Chhabria issued a sua sponte decision extending defendant’s surrender date from June 12, 2020 to September 1, 2020, stating: “By now it almost goes without saying that we should not be adding to the prison population during the COVID-19 pandemic if it can be avoided… To avoid adding to the chaos and creating unnecessary health risks, offenders who are on release and scheduled to surrender to the Bureau of Prisons in the coming months should, absent truly extraordinary circumstances, have their surrender dates extended until this public health crisis has passed.”

- In the Matter of The Extradition of Alejandro Toledo Manrique, No. 19-mj-71055-MAG, 2020 WL 1307109, (N.D. Mar. 19, 2020). Judge Hixon released a 74-year-old in light of COVID-19 holding “[t]he risk that this vulnerable person will contract COVID-19 while in jail is a special circumstance that warrants bail. Release under the current circumstances also serves the United States’ treaty obligation to Peru, which – if there is probable cause to believe Toledo committed the alleged crimes – is to deliver him to Peru alive.”


- Mays v. Dart, No. 20 C 2134 (April 7, 2020). Plaintiffs sought certification of a class and the temporary restraining order based, in part, “that the Sheriff has violated their Fourteenth Amendment right to constitutionally adequate living conditions by failing to implement appropriate measures to control the spread of the virus.” In issuing a temporary restraining order, Judge Kennedy found “plaintiffs have demonstrated that certain of the conditions created by the intentional actions of the Sheriff enable the spread of coronavirus and significantly heighten detainees’ risk of contracting the virus.”


- United States v. Grobman, No. 18-cr-20989 (S.D. Fla. Mar. 29, 2020) Magistrate Judge Goodman released an incarcerated individual due to the “extraordinary situation of a medically-compromised detainee being housed at a detention center where it is difficult, if not impossible, for [the defendant] and others to practice the social distancing measures which government, public health and medical officials all advocate.”


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on the unique confluence of serious health issues and other risk factors facing this defendant, including but not limited to the defendant’s serious progressive lung disease and other significant health issues, which place him at a substantially heightened risk of dangerous complications should be contract COVID-19 as compared to most other individuals.

- United States v. Resnik, No. 14-cr-910 (CM), 2020 WL 1651508 (S.D.N.Y. Apr. 2, 2020). Chief Judge Colleen held “Releasing a prisoner who is for all practical purposes serving his sentence. When the Court sentenced him to a heightened and substantial risk of his term in federal prison would expose him to a heightened and substantial risk presented by the COVID-19 pandemic."

- United States v. Stephens, No. 15-cr-95-AJN, 2020 WL 1295155, (S.D.N.Y. Mar. 19, 2020). Judge Nathan ordered the Defendant released subject to the additional conditions of 24-hour home incarceration and electronic location monitoring as directed by the Probation Department based in part on “the unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic” which may place “at a heightened risk of contracting COVID-19 should an outbreak develop [in a prison].”

- United States v. Zukerman, No. 1:16-cr-194-AT, (S.D.N.Y Apr. 3, 2020). Judge Torres waived exhaustion requirements and granted immediate compassionate release in light of COVID-19 to defendant convicted in a multi-million dollar fraud scheme motivated by greed. “The severity of Zukerman’s conduct remains unchanged. What has changed, however, is the environment where Zukerman is serving his sentence. When the Court sentenced Zukerman, the Court did not intend for that sentence to ‘include a great and unforeseen risk of severe illness or death’ brought on by a global pandemic.”


- United States v. Muniz, No. 4:09-cr-199 (S.D.Tex. Mar. 30, 2020). Judge Ellison released a defendant serving a 188-month sentence for drug conspiracy in light of vulnerability to COVID-19 stating, “while the Court is aware of the measures taken by the Federal Bureau of Prisons, news reports of the virus’s spread in detention centers within the United States and beyond our borders in China and Iran demonstrate that individuals housed within our prison systems nonetheless remain particularly vulnerable to infection.”


- United States v. Edwards, No. 6:17-cr-00003 (W.D. Va. Apr. 2, 2020). Judge Moon granted compassionate release; remarking “[h]ad the Court known when it sentenced Defendant in 2018 that the final 18 months of his term in federal prison would expose him to a heightened and substantial risk presented by the COVID-19 pandemic on account of Defendant’s compromised state cases

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immune system, the Court would not have sentenced him to the latter 18 months.”

• Xochihua-Jaimes v. Barr, No. 18-cv-71460 (9th Cir. Mar. 23, 2020). The panel held “[i]n light of the rapidly escalating public health crisis, which public health authorities predict will especially impact immigration detention centers, the court sua sponte orders that Petitioner be immediately released from detention and that removal of Petitioner be stayed pending final disposition by this court.”

• Castillo v. Barr, No.20-cv-605 (TJH) (AFM), at 10 (C.D. Cal. Mar. 27, 2020). Judge Halter ordered the release of two ICE detainees. The court found that in detention “petitioners have not been protected against risks associated with COVID-19. They are not kept at least 6 feet apart from others at all times. They have been put into a situation where they are forced to touch surfaces touched by other detainees, such as common sinks, toilets and showers. Moreover, the Government cannot deny the fact that the risk of infection in immigration detention facilities – and jails – is particularly high if an asymptomatic guard, or other employee, enters a facility. While social visits have been discontinued at Adelanto, the rotation of guards and other staff continues.”


• Jovel v. Decker, No. 20-cv-308 (GBD), at 2 (S.D.N.Y. Mar. 26, 2020). Judge Daniels ordered the release, under Mapp v. Reno, 241 F.3d 221 (2d Cir. 2001), of an individual as there was likelihood of success on the merits and COVID-19 risks and individual’s own medical issues constituted “extraordinary circumstances warranting release.”

• Coronel v. Decker, No. 20-cv-2472 (AJN), at 10 (S.D.N.Y. Mar. 27, 2020). Judge Nathan ordered the immediate release of four detainees, finding “no evidence that the government took any specific action to prevent the spread of COVID-19 to high-risk individuals…held in civil detention.”

• Basank v. Decker, No. 20-cv-2518 (AT), at 7, 10 (S.D.N.Y. Mar. 26, 2020). Judge Torres granted immediate release on recognizance for 10 individuals in immigration detention who have a variety of chronic health conditions that put them at high risk for COVID-19. These conditions include obesity, asthma, diabetes, pulmonary disease, history of congestive heart failure, respiratory problems, gastrointestinal problems, and colorectal bleeding. The court held detainees face serious risks to their health in confinement and “if they remain in immigration detention constitutes irreparable harm warranting a temporary restraining order.”

• Thakker v. Doll, No. 20-cv-480 (JEJ), at 8 (M.D. Pa. Mar. 31, 2020). Judge Jones III ruled that federal immigration authorities must immediately release the 10 individuals in immigration detention who are at high risk for contracting COVID-19 due to their age or medical conditions or both. In his decision, Judge Jones III noted, “At this point, it is not a matter of if COVID-19 will enter Pennsylvania prisons, but when it is finally detected therein. It is not unlikely that COVID-19 is already present in some county prisons.”

Alabama

On April 13, 2020, the Alabama Department of Corrections (ADOC) reported 46 prisoners had been tested for COVID-19. Of these, no prisoners have tested positive. Ten tests remain pending.

As of April 6, 2020, Alabama has released no prisoners in response to COVID-19. At the local level, several counties have elected to release prisoners.

Administrative Order, No. 2020-00010, Ala. Ct. App. (Mar. 18, 2020). Judge Fuller ordered “all prisoners currently held on appearance bonds of $5,000.00 or less be immediately released on recognizance with instructions to personally appear at their next scheduled court appearance.”
Alaska
As of April 14, 2020, 31 prisoners in the Alaska Department of Corrections (ADOC) had been tested for coronavirus. Twenty-six of these prisoners were negative, and five test results had been pending. Four staff members at Lemon Creek Correctional Center in Juneau have tested positive.

As of April 15, 2020, Alaska had released no prisoners in response to COVID-19.


Arizona
On April 15, 2020, the Arizona Department of Corrections (ADOC) reported it had tested 88 prisoners for coronavirus. Of these, 66 prisoners were negative, 10 were positive, and 12 results were still pending.

As of April 15, 2020, Arizona has released no prisoners because of COVID-19. At the local level, both Coconino and Pima Counties have elected to release prisoners in response to the pandemic.

From Scott Buffon, “Coconino County jail releases nonviolent inmates in light of coronavirus concerns,” Arizona Daily Sun: As of March 25, 2020, Judge Dan Slayton and other county judges have released around 50 people who were held in the county jail on nonviolent charges.

Arkansas
On April 14, 2020, the Arkansas Department of Corrections (ADOC) reported 35 staff members and 61 prisoners had tested positive for COVID-19. At least 44 of the prisoners who tested positive were housed at the ADOC’s Cummins Unit.

As of April 15, Arkansas had released no prisoners because of COVID-19. At the local level, several counties have granted early release.

California
On April 15, 2020, the California Department of Corrections and Rehabilitation (CDCR) reported that 590 prisoners had been tested for coronavirus, with 69 prisoners testing positive. Additionally, 78 staff members have tested positive.

The CDCR has also announced an expedited parole release plan for eligible prisoners. Sex offenders, violent offenders, and domestic violence offenders are not eligible. CDCR reports that as of April 13, 2020, approximately 3,500 eligible prisoners will be released.

According to the CDCR’s website, prisoners within 60 days of their earliest parole eligibility date are eligible for early release. The CDCR will also implement “on-site strike teams” to determine expedited parole eligibility. Prisoners within 30 days of their earliest parole eligibility date will receive priority, followed by those within 60 days of their earliest parole eligibility date.

Effective March 24, 2020, CDCR implemented a 30-day suspension of admissions to adult and juvenile prison facilities.

On March 30, 2020, Los Angeles County Sheriff Alex Villanueva released 1,700 prisoners. These prisoners were convicted of nonviolent misdemeanors. They are scheduled to be released within 30 days.

Advisory from California Chief Justice Tani Cantil-Sakauye to Presiding Judges and Court Executive Officers of the
Coronavirus Early Release (cont.)

California Courts (March 20, 2020): The Chief Justice issued guidance encouraging the state’s superior courts to, among other things: 1) “Lower bail amounts significantly for the duration of the coronavirus emergency, including lowering the bail amount to $0 for many lower level offenses.” 2) “Consider a defendant’s existing health conditions, and conditions existing at the anticipated place of confinement, in setting conditions of custody for adult or juvenile defendants.” 3) “Identify detainees with less than 60 days in custody to permit early release, with or without supervision or community-based treatment.”

Standing Order of the Sacramento Superior Court, No. SSC-20-PA5 (Mar. 17, 2020). The Court entered a standing order authorizing their sheriff to release those within 30 days of release, regardless of crime.

Colorado

On April 8, 2020, the Colorado Department of Corrections (CDOC) reported that the first prisoner had tested positive for coronavirus.

On March 25, 2020, Colorado Governor Jared Polis issued Executive Order D 2020 016, suspending the transfer of jail detainees to the state’s prisons. This sweeping order expanded the CDOC’s and Parole Board’s ability to release prisoners early by suspending three provisions of the Colorado statutory code:
- C.R.S. § 17-22.5-405: This suspends the caps and criteria awards of earned time credits allowing the CDOC to make additional awards of earned time credits as it “deems necessary and appropriate to safely facilitate the reduction of the population of incarcerated persons and parolees to prevent an outbreak in prisons.”
- C.R.S. §§ 17-22.5-403.5 and 17-1-102(7.5)(a): This suspends the criteria for release to Special Needs Parole, permitting the CDOC to have “the discretion to identify interim criteria for Special Needs Parole and refer persons who meet those criteria to the Parole Board.”
- C.R.S. § 17-27.5-101(1)(a): This suspends the requirement for prisoners to complete a regimented inmate disciplinary program before the CDOC having the “authority to establish and directly operate an intensive supervision program.”

On April 9, 2020, CDOC Executive Director Dean Williams issued a memorandum specifying the changes the state’s prison system is making to facilitate early releases. In qualifying for Special Needs or Medically Necessary Parole, the CDOC is now considering these factors:
- If the inmate is at a higher risk of mortality from COVID-19 due to underlying medical conditions;
- If the inmate is a low public safety risk to the community;
- Whether the inmate can obtain medical services in their community.

This memorandum also provided new guidelines for placement on Intensive Supervision Parole. These include permitting both prisoners not yet paroled to becoming eligible for program placement and prisoners within 180 days of their parole eligibility date becoming eligible. Preference is given to prisoners with no recent disciplinary history, prisoners who have participated in programming, and otherwise good institutional conduct (e.g., documentation of Security Threat Group validation or placement on Management Control Group status within two years weighing against release). Sex offenders, homeless offenders, and prisoners with detainers are not eligible for release.

The final provision discussed in this memorandum concerns earned time credits. The CDOC is now authorized to award an additional 180 days of earned time. Sex offenders, prisoners who have refused programming, those who have served less than one year in prison, those who have community or parole violations in the past 12 months, prisoners placed on any Management Control Unit status within two years, prisoners with a disciplinary record within the past 12 months, and those who have detainers are not eligible. Additionally, only prisoners serving Class 4, 5, and 6 felonies and drug offenses at felony Class 3 and 4 are considered for additional good conduct time. All prisoners must have a projected release date prior to August 2021.

On April 13, 2020, the CDOC announced the agency had released 52 prisoners early because of these expanded early-release provisions.

Connecticut

On April 15, 2020, the Connecticut Department of Corrections (CDOC) reported 199 prisoners and 139 staff members have tested positive for COVID-19. One inmate has died.

In an unusual decision, on April 8, 2020, the CDOC announced that all prisoners who test positive for COVID-19 will be transferred to the Northern Correctional Institution. As of April 15, 2020, the CDOC reported 117 prisoners confined in the isolation unit at Northern Correctional Institution.

On April 6, 2020, the CDOC announced it had released 727 prisoners in response to the pandemic.

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Delaware

On April 15, 2020, the Delaware Department of Corrections (DDOC) reported 13 prisoners and 18 staff members have tested positive for coronavirus.

As of April 15, 2020, Delaware has not planned to release any prisoners early because of COVID-19.

Florida

On April 15, 2020, the Florida Department of Corrections (FDOC) reported that 56 staff members and 35 prisoners have tested positive for COVID-19.

Also, as of that date, Florida has made no plans to release prisoners early. At the local level, several counties have elected to release prisoners early.

Florida Governor Ron DeSantis, in resisting pressure to release prisoners, stated that he was concerned about “society fraying” and whether releasing prisoners would actually support the CDC’s recommendation of social distancing.

Georgia

On April 15, 2020, the Georgia Department of Corrections (GADOC) reported 59 staff members and 60 prisoners have tested positive. Six staff members and 22 prisoners have recovered. Three prisoners and one staff member have died from the virus. Additionally, seven prisoners at county and private prisons have contracted COVID-19, with three recovering.

The GADOC has suspended all new prison admissions from county jails due to the pandemic.

The Georgia Board of Pardons and Paroles had begun to review about 200 prisoners for early release. They are considering people serving time for nonviolent offenses who are within 180 days of completing their prison sentences (or of their tentative parole date). The process is expected to take 30 days.

“The State Board of Pardons and Paroles understands the concerns and fully supports our state’s efforts to combat COVID-19, including safety protocols implemented by the Department of Corrections,” Terry Barnard, State Board of Pardons and Paroles chair, said. “The Parole Board is operating normally and will continue to use its constitutional authority to make clemency release decisions in the interest of public safety.”

Hawaii

As of April 2, 2020, the Hawaii Department of Public Safety (HDPS) has reported no cases of coronavirus.

As of April 11, 2020, Hawaii had not planned to release prisoners early because of the pandemic. When asked by Honolulu’s Public Defender James Tabe, Acting Prosecuting Attorney General Dwight Nadamoto said that he was not willing to agree to a “wholesale release” of prisoners.

Officials announced that starting April 13, 2020, HDPS will engage in “population relief efforts” consisting of transferring state prisoners to the federal Metropolitan Detention Center Honolulu. These efforts are being made to combat the potential impact of COVID-19 on the HDPS’ inmate population.

Order of Consolidation and for Appointment of Special Master, SCPW-20-0000200, SCPW-20-0000213 at 6 (Haw. Apr. 1, 2020). The court appointed a Special Master who will “work with the parties in a collaborative and expeditious manner to address the issues raised in the two petitions and to facilitate a resolution while protecting public health and public safety.”
Coronavirus Early Release (cont.)

Idaho
As of April 14, 2020, the Idaho Department of Corrections (IDOC) reported testing 22 prisoners. All test results were negative for coronavirus.

As of April 6, 2020, Idaho had not announced plans to release prisoners early because of COVID-19.

Illinois
As of April 15, 2020, the Illinois Department of Corrections (IDOC) reported 124 staff members and 146 prisoners have tested positive for COVID-19. To date, five prisoners have died due to the coronavirus.

On March 23, 2020, Governor J. B. Pritzker issued COVID-19 Executive Order 9, permitting prisoners to be released early for clear conduct in prison.

Three days later, Pritzker issued COVID-19 Executive Order 11 barring the transfer of detainees and prisoners from Illinois county jails to the state’s prison facilities.

On March 27, 2020, the Illinois Department of Corrections announced plans to reduce the prison population by approximately 700 prisoners ahead of their scheduled release dates. The Governor announced plans to release prisoners early to mitigate the potential damage of COVID-19 in Illinois prisons.

On April 6, 2020, Governor Pritzker signed COVID-19 Executive Order 19, permitting the temporary release of “medically vulnerable” prisoners. This temporary release is only extended to the period in which Illinois is in a state of emergency.


Indiana
As of April 15, 2020, the Indiana Department of Corrections (IDOC) reported that 55 staff members and 34 prisoners have tested positive for coronavirus. One prisoner has died.

As of April 6, 2020, the IDOC had not yet disclosed plans to release prisoners early but did acknowledge that a list of prisoners who could potentially be released had been submitted to the courts. At the local level, several counties have elected to release prisoners early.

Iowa
As of April 15, 2020, the Iowa Department of Corrections (IDOC) reported that 59 prisoners had been tested. While no prisoners have tested positive, one staff member has tested positive for the virus.

On April 10, 2020, the IDOC, in conjunction with the Iowa legislature, announced plans to reduce the prison population by approximately 700 prisoners. According to this report, “The DOC continues to work with the Iowa Parole Board (BOP) and the eight CBC Districts to safety transition as many prisoners as possible to community supervision. As part of the DOC’s submission of candidates to the BOP, priority is being given to those nearing discharge, are lower risk, and/or have a suitable living arrangement upon reentry.” The report continues, “Currently, the prisons are approximately 20.0% over designed capacity...In the last week, prison population has decreased by 26.”

Kansas
As of April 15, 2020, the Kansas Department of Corrections (KDOC) reported 24 staff members and 21 prisoners have tested positive for COVID-19.

“Currently, there are no plans to free any prisoners ahead of their scheduled release dates,” said Rebecca Witte, KDOC public information officer. “Governor Kelly and the KDOC are in the exploratory phase of examining potential options to minimize the impact of COVID-19 in Kansas prisons.”

At the local level, several counties have elected to release prisoners early to mitigate the potential damage of COVID-19 in their jails.

Kentucky
As of April 7, 2020, nine prisoners and five staff in the Kentucky Department of Corrections have tested positive.

On April 2, 2020, Kentucky Governor Andy Beshear signed an executive order commuting the sentences of 186 prisoners convicted of felonies. This came in response to the state suffering 11 more deaths due to COVID-19. The state also plans to release 743 people who are within six months of completing their sentences. The Governor

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clarified that all of the prisoners were convicted of Class C and D felonies, the two lowest level felonies in the state’s criminal justice system. Those convicted of violent and sexual crimes were not granted relief.

* From Kyle C. Barry, “Some Supreme Courts Are Helping Shrink Jails to Stop Outbreaks. Others Are Lagging Behind,” The Appeal (Mar. 25, 2020), and John Cheves, “Chief Justice Pleads for Kentucky Inmate Release Ahead of COVID-19 but Progress Slow,” Lexington Herald Leader (Mar. 23, 2020). Kentucky Chief Justice John Minton Jr. told state’s judges and court clerks to release jail prisoners “as quickly as we can” noting “jails are susceptible to worse-case scenarios due to the close proximity of people and the number of pre-existing conditions.” and that courts have the responsibility “to work with jailers and other county officials to safely release as many defendants as we can as quickly as we can.”

Louisiana

As of April 15, 2020, the Louisiana Department of Public Safety and Corrections (LDPSC) announced 65 inmates and 55 staff cases testing positive. Of these, some individuals had recovered. While there have been no prisoner deaths, there has been one staff death.

The LDPSC has also proposed changes to parole and probation operations. These include recommendations to judges and the parole board to release qualifying nonviolent and non-sex offenders if confined for technical violations. As of April 9, 2020, these recommendations resulted in the removal of approximately 2,000 detainee holds.

On March 26, 2020, New Orleans district court judges ordered the release of detainees charged with misdemeanors, failure to appear, contempt of court, and pretrial defendants remanded to custody due to failing drug tests.

Letter from Louisiana Chief Justice Bernette J. Johnson to Louisiana District Judges Johnson recognized that “it is important to safely minimize the number of people detained in jails where possible.”

Justice Johnson instructed all District Judges to “conduct a comprehensive and heightened risk-based assessment of all detainees.” Among other things: 1) For pretrial detainees charged with a misdemeanor and violent, judges should consider nominal or reduced bail or release on personal recognizance. 2) For those convicted of misdemeanors, judges should “consider modification to a release and supervised probation or simply time-served.” 3) For probation revocations, judges should “confer with Probation and Parole to determine whether there is an alternative to detention, especially with technical violations.” 4) Judges should “suggest to law enforcement that, whenever practicable, they issue summonses and citations on misdemeanor crimes and non-violent offenses in lieu of arrest.”

Maine

As of April 13, 2020, the Maine Department of Corrections (MDOC) announced that it had tested 17 prisoners. Of these, 16 tests were negative, and one was pending. One prisoner was currently in medical isolation, and one staff member was pending. One prisoner was currently in medical isolation, and one staff member who worked at the Bolduc Correctional Facility tested positive for COVID-19.

The MDOC has also announced the expanded use of Supervised Community Confinement (for adults) and Community Reintegration (for juveniles). These
programs permit prisoners to be transferred to their communities to serve out the remainder of their sentences.

For adults to qualify for Supervised Community Confinement, they must 1) have less than a year remaining on their sentence; 2) not be serving time for a crime against another person; 3) no criminal history including a crime against a person, fugitive from justice, or multiple prior revocations of probation; 4) be classified as community custody; and 5) have a release plan which includes stable housing, medical services, and treatment services (as applicable). Additionally, the inmate’s medical history and current conditions, history on probation with an emphasis on positive compliance, and treatment and programming progress while incarcerated are considered.

When determining if a juvenile qualifies for Community Reintegration, these factors are considered: 1) severity of offense history; 2) availability and stability of the residential placement and environment; 3) length of time incarcerated; 4) progress in facility treatment and programming; 4) community and family support available in the community; 5) treatment and programming availability in the community; and 6) length of time left until the juvenile’s maximum release date.

As of March 27, 2020, 57 adult prisoners had their cases considered for Supervised Community Confinement. Of these 57, 29 had been released. In the same report, the MDOC stated that they anticipated approving additional 15 adult prisoners by April 3 and 12 more adult prisoners by April 10. Also, as of March 27, 2020, the MDOC announced that it had released 12 detained youths and five committed youth under the Juvenile Reintegration protocol. They anticipated releasing four additional committed youth by April 1.

On April 13, 2020, the MDOC confirmed that six adult males and three adult females would be released on Supervised Community Confinement within the next 14 days, with an additional 22 males and six females requests pending. Two juveniles were scheduled to be released on Juvenile Reintegration within the next 14 days.

Emergency Order Vacating Warrants for Unpaid Fines, Unpaid Restitution, Unpaid Court-Appointed Counsel Fees, and Other Criminal Fees (Mar. 17, 2020). The Superior Court and District Court ordered all trial courts to immediately vacate all outstanding warrants for unpaid fines, restitution, fees, and failures to appear.

Maryland

As of April 12, 2020, the Maryland Department of Public Safety and Correctional Services (DPSCS) announced that 18 prisoners and 47 staff members had tested positive, with one fatality.

As of April 15, 2020, Maryland has made no plans to release prisoners early due to COVID-19.

Massachusetts

As of April 2, 2020, the Massachusetts Department of Corrections announced that 23 prisoners and three staff members had tested positive. In addition, one prisoner has died from COVID-19.

In the March 31 to April 3, 2020 session, the Massachusetts Supreme Judicial Court ruled that people held pretrial for non-violent offenses and those held for technical probation/parole violations are eligible for hearings to determine if they can be released. Defendants charged with assault and battery, domestic violence, and certain sex offenses are not eligible for relief.

In response to the above order, by April 14, 2020, 367 detainees have been released from county jails.

Op. and Order, Committee for Public Counsel Services v. Chief Justice of the Trial Court, SJC 12926 (Mass. Apr. 3, 2020). The Supreme Judicial Court held that people who are held pretrial on bail and have not been found dangerous or charged with a violent or otherwise excluded offense are entitled to a hearing within two business days of filing their motions, where they will be entitled to a rebuttable presumption of release.

Michigan

As of April 11, 2020, the Michigan Department of Corrections had 364 confirmed cases of coronavirus with eight dead. Jackson County’s Parnall Correctional Facility had the highest number of positive cases, with 144 positives. Out of these, 151 positives were a result of staff members, with two staff members amongst the fatalities.

On March 30, 2020, Michigan Governor Gretchen Whitmer issued an executive order which suspended portions of the Jail Overcrowding Emergency Act. This permitted local jails to release vulnerable prisoners if their release would not pose a danger to the public.

ment, Chief Justice McCormack urged judges to “use the statutory authority they have to reduce and suspend jail sentences for people who do not pose a public safety risk,” to “release far more people on their own recognizance while they await their day in court” and to “use probation and treatment programs as jail alternatives.”

**Minnesota**

As of April 15, 2020, the Minnesota Department of Corrections (MDOC) announced it had tested 56 prisoners. Of these, 15 were confirmed positive and 26 were presumed positive due to exhibiting symptoms and having close contact with affected individuals. To date, seven prisoners have recovered from COVID-19.

On April 9, 2020, MDOC Commissioner Paul Schnell said he was considering releasing prisoners up to six months early. He advised that releases could start as soon as the following week. When discussing eligibility, Schnell remarked that prisoners would need to have served over half of their sentence, and that sex offenders, those with court-ordered in-prison therapy, and prisoners with out-of-state warrants would not be eligible.

At the local level, Hennepin County had released detainees early to mitigate the risk of COVID-19.

**Mississippi**

On April 13, 2020, the Mississippi Department of Corrections (MDOC) reported that four staff members and one inmate, who has since died, have tested positive for coronavirus.

As of March 30, 2020, Mississippi had not planned to release prisoners early in response to COVID-19.

According to *The Clarion Ledger*, “At least 30 inmates have died in MDOC custody since Dec. 29, when riots erupted at prisons across Mississippi.”

**Missouri**

On April 15, 2020, the Missouri Department of Corrections announced that 11 staff members and one prisoner have tested positive for coronavirus. One inmate has also died. In total, 49 prisoners have been tested.

On March 30, 2020, Missouri Supreme Court Chief Justice George Draper sent a letter to trial-level judges clarifying the state’s criminal provisions and pointing out courts’ authority to release both prisoners and jail detainees early.

**Montana**

On April 13, 2020, the Montana Department of Corrections (MDOC) acknowledged four cases of coronavirus. Two staff members and two prisoners have tested positive for the virus.

On April 1, 2020, Montana Governor

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Steve Bullock issued a memorandum in which he directed the Montana Board of Pardon and Parole to “consider early release” for four categories of prisoners: those age 65 or older; those with medical conditions that place them at high risk during the pandemic or who are otherwise medically frail; those pregnant inmates; and prisoners nearing their release date. This memorandum was made in accordance with Executive Orders 2-2020 and 3-2020, which declared a state of emergency in Montana due to COVID-19.

Letter from Chief Justice Mike McGrath, Mont. Sup. Ct., to Mont. Ct. of Ltd. Jurisdiction Judges (Mar. 20, 2020). Chief Justice of the Montana Supreme Court urged judges to “review your jail rosters and release, without bond, as many prisoners as you are able, especially those being held for nonviolent offenses.”

Nebraska

On April 4, 2020, the Nebraska Department of Corrections (NDOC) announced that one staff member died after contracting coronavirus. The staff member was working at the Nebraska State Penitentiary.

As of April 5, 2020, Nebraska had not planned to release prisoners early in response to the pandemic. When asked, Nebraska Governor Pete Ricketts explained, “You don’t get sent to prison on your first offense … These are all folks who are there for a reason, and they need to serve out their sentence.”

Nevada

On April 13, 2020, the Nevada Department of Corrections (NDOC) announced that five staff members had tested positive for coronavirus. They worked at Casa Grande Transitional Housing, High Desert State Prison, and Ely State Prison.

On April 13, 2020, the Nevada Sentencing Commission voted 10 to 8 to ask the state’s pardon board to consider releasing prisoners early to combat COVID-19 infections.

“… I don’t see the urgency as of right now, our situation may be somewhat different but we should consider it. I don’t think the guys we’re doing it for are going to be some societal harm,” NDOC Director Charles Daniels, who opposed such a move, explained. “There are some other people doing it. Great for them. But our situation may be somewhat different … I don’t see the urgency as of right now, although it may arrive.”

New Hampshire

On April 15, 2020, the New Hampshire Department of Corrections (NHDOC) announced that three staff members had tested positive for coronavirus.

Helen Hanks, commissioner of the NHDOC, said that she is considering the early release of prisoners, stating, “I have a team reviewing cases and looking at the use of home confinement.”

New Jersey

On April 15, 2020, the New Jersey Department of Corrections (NJDOC) reported 230 staff members, and 41 prisoners had tested positive for coronavirus. Four prisoners have died to date. Additionally, four prisoners in halfway houses have also tested positive for coronavirus.

On March 24, 2020, the New Jersey Supreme Court ordered that qualifying low-risk county jail detainees and prisoners be released.

On April 10, 2020, New Jersey Governor Philip Murphy signed Executive Order 124. This order called for the temporary emergency home medical confinement for certain at-risk individuals. To qualify, prisoners must not have committed a serious offense, be age 60 or older, have high-risk medical conditions as designated by the CDC, and will complete their sentence within the next three months or have been denied parole within the past year.

The NJDOC is to prepare lists of prisoners who fall into each category to be reviewed for potential home confinement placement during the remainder of the pandemic. Prisoners prohibited from participating in the furlough program (N.J.S.A. 30:4-91.3b) and those who are subject to a sentence for which the No Early Release Act applies (N.J.S.A. 2C:43-7.2) are not eligible for medical home confinement. The State Parole Board is to make final recommendations to the Emergency Medical Review Committee. The NJDOC Commissioner then makes a final determination in line with statutory authority provided in
N.J.S.A. 30:4-91.3. Consent Order, In the Matter of the Request to Commute or Suspend County Jail Sentences, No. 084230 (N.J. March 22, 2020): In New Jersey, after the Supreme Court ordered briefing and argument on why it should not order the immediate release of individuals serving county jail sentences, the Attorney General and County Prosecutors agreed to create an immediate presumption of release for every person serving a county jail sentence in New Jersey.

New Mexico
As of April 13, 2020, the New Mexico Corrections Department (NMCD) had tested three prisoners and five staff members for coronavirus. All test results were negative.

On April 6, 2020, New Mexico Governor Michelle Lujan Grisham issued Executive Order 2020-021, which directed the New Mexico Corrections Department to compile a list of prisoners eligible for early release. These prisoners will receive a commutation of the remainder of their prison sentence. To be eligible, prisoners must have less than 30 days remaining on their sentence and have a parole plan in place. In addition, sex offenders, DUI offenders, domestic abusers, those convicted of assault on a police officer, and those serving time for a firearm enhancement are not eligible.

“These measures are not taken lightly. Public safety, the safety of our staff, our inmate charges, and of our institutions is of primary concern,” said Cabinet Secretary Alisha Tafoya Lucero. “In these unprecedented times we must take action while safeguarding our communities.”

According to an NMCD official, as of April 13, eight prisoners have been released as a result of commutations.

In response to the fears New Mexico prisoners have about the COVID-19 pandemic, 22 prisoners at the Northwest New Mexico Correctional Center rioted on March 23, 2020. According to the NMCD, “The participants covered cameras and caused minor damage to a fire door and broke some pod windows.” Emergency teams responded with “less than lethal force” to subdue the riots. Both state and federal law enforcement agencies responded to the disturbance.

It should be highlighted that the Associated Press reported there were 300 prisoners involved in the riot, which included throwing rocks at law enforcement over a perimeter fence. The ABQ Journal report indicated that one prisoner was sent to the hospital because of injuries.

New York
On April 15, 2020, the New York Department of Corrections and Community Supervision (NYDCCS) reported 664 staff, 160 prisoners and 26 parolees testing positive for coronavirus. To that date, one staff member, five prisoners, and four parolees had died.

On March 27, 2020, NYDCCS was ordered to release low-level technical parole violators from local jails. Following a case review, those in jail for parole violations were released upon verification of a residence and the determination that their release would not threaten public safety. NYDCCS projections indicate this will affect 1,100 people, including 400 detainees from New York City and 700 others throughout the rest of the state.

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New York City Mayor Bill de Blasio has made several announcements about the early release of prisoners from local jails. On March 29, 2020, he announced the release of 650 nonviolent prisoners at Rikers Island. These prisoners were serving sentences of less than 12 months. On March 31, 2020, he announced the release of 900 prisoners. And on April 10, 2020, he declared that over 1,500 in total had been released.

People of the State of New York, ex rel., v. Cynthia Brann, No. 260154/2020 (Sup. Ct. NY Mar. 25, 2020); see also Frank G. Runyeon, “NY Judges Release 122 Inmates Ct. NY Mar. 25, 2020); see also Frank G. Runyeon, “NY Judges Release 122 Inmates as Virus Cases Spike in Jails,” Law360 (March 27, 2020). In a habeas petition brought by the Legal Aid Society, a Justice Doris M. Gonzales ordered the release of 106 individuals currently held at Rikers Island on a non-criminal technical parole violation. These individuals were selected in the petition by virtue of their age and/or underlying medical condition.

Jeffrey v. Bran, (Sup. Ct. NY Mar. 26, 2020). See Press Release, Redmond Haskins, Legal Aid Wins Release of 16 Incarcerated New Yorkers at a High Risk of COVID-19 from City Jails (Mar. 26, 2020): In a habeas petition brought by the Legal Aid Society, a Justice Mark Dwyer ordered the release of 16 individuals currently held at Rikers Island on pretrial detention or parole violation. These individuals were selected in the petition by virtue of their age and/or underlying medical condition.

North Carolina

On April 15, 2020, the North Carolina Department of Public Safety (NCDPS) announced it had tested 183 prisoners. Of these, 46 had tested positive for coronavirus and 137 had tested negative.

On April 13, 2020, the NCDPS announced—as an “extraordinary measure”–it would be releasing eligible prisoners early to mitigate the risk of COVID-19 in the state’s prisons. NCDPS was evaluating approximately 500 prisoners for early release. It was considering these categories of prisoners:

- Pregnant offenders;
- Offenders age 65 and older with underlying health conditions;
- Female offenders age 50 and older with health conditions and a release date in 2020;
- Offenders age 65 and older with a release date in 2020;
- Offenders already on home leave with a release date in 2020; and
- Offenders on work release with a release date in 2020.

In addition, the NCDPS has been awarding additional good conduct time credits to reduce its prison population. Prison officials said that on March 2, 2020 prisoners were released. Reports were not clear if these numbers included only early releases or if they also included prisoners who were already scheduled for release.

North Dakota

On April 9, 2020, the North Dakota Department of Corrections and Rehabilitation (NDDOCR) reported that 273 prisoners have tested positive for coronavirus. Additionally, 159 staff members have also tested positive, with three dying from the virus.

On April 3, 2020, Ohio Governor Mike DeWine announced he had recommended the release of 38 prisoners. All prisoners were convicted of nonviolent offenses.

On April 14, 2020, the Correctional Institution Inspection Committee approved 141 prisoners for early release. All prisoners were within 90 days of their projected release dates, and none were convicted of sexual or violent offenses.

Press Conference, Ohio Chief Justice Maureen O’Connor and Gov. Mike DeWine (March 19, 2020); see also WLWT5, “Release Ohio jail inmates vulnerable to coronavirus, chief justice urges” (March 19, 2020): O’Connor urged “judges to use their discretion and release people held in jail and incarcerated individuals who are

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Prison Legal News

In a high-risk category for being infected with the virus."

Oklahoma

On April 15, 2020, the Oklahoma Department of Corrections (ODOC) announced that one prisoner and eight staff members had tested positive for coronavirus. Additionally, 124 prisoners are in quarantine and one inmate is in isolation (in hospital).

On April 13, 2020, Oklahoma Governor Kevin Stitt commuted the prison sentences of 404 prisoners currently incarcerated in the state's prisons. While it was initially announced these releases were expected to take place on April 16, the Pardon and Parole Board said the governor was mistaken. As it turns out, some prisoners who received commutations were also serving time for additional offenses, which will keep them in prison.

Following this erroneous announcement, Stitt’s office announced 48 additional prisoners will have their sentences reduced.

“In these unprecedented times, we must take action while safeguarding our Department of Corrections staff, inmate population and the public,” Stitt said in a written statement.

The Oklahoma legislature has several proposed bills pending, but they are on hold.

Oregon

On April 15, 2020, the Oregon Department of Corrections (ODOC) announced that 13 prisoners and staff have tested positive for coronavirus. Ten of those who tested positive were staff members.

In Oregon state prison, there are two primary mechanisms for early release: compassionate release and clemency. To be considered for compassionate release, prisoners must either be 1) suffering from a terminal illness or 2) elderly and permanently incapacitated in such a manner that the individual cannot move from place to place without the assistance of another person.

Executive clemency is at the pleasure of Oregon Governor Kate Brown. To date, neither Brown nor the ODOC has stated that they are considering mass early releases.

On March 27, 2020, the Oregon Supreme Court ordered trial-level judges to collaborate with law enforcement and community corrections agencies to determine which prisoners could be released early.

On April 13, 2020, Governor Brown received information about 2,836 prisoners the ODOC determined met the criteria for early release. Specifically, prisoners with approved residences, who are older, and those at high risk for coronavirus infection. A day later, she held a press conference at which she told reporters she had no plans to release prisoners early.

“The question was, do I plan to early release adults in custody as a result of the COVID-19 crisis? The answer is no,” said Governor Brown.

Pennsylvania

On April 15, 2020, the Pennsylvania Department of Corrections (PADOC) reported 24 staff members and 17 prisoners tested positive for coronavirus. One inmate has died. Additionally, 105 staff members and 53 prisoners have tested negative for the coronavirus. To mitigate the spread, the PADOC has implemented a system-wide lockdown.

In response to the April 10, 2020, announcement by Pennsylvania Governor

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Prison Legal News 19 May 2020
Tom Wolf in which he announced that certain prisoners would be released early for a limited period, the PA DOC announced efforts at reducing its prison population. These steps include:

- Furloughing paroled individuals from centers to home confinement;
- Working with the parole board to maximize parole releases;
- Reviewing parole detainers for those in county jails and state prisons;
- Expediting the release process for anyone with a pending home plan; and
- Reviewing prisoners within the state prison system who are beyond their minimum sentence.

According to Governor Wolf, eligible prisoners include those scheduled for release within the next nine months and vulnerable prisoners who are already within 12 months of release.

Rhode Island

On April 15, 2020, the Rhode Island Department of Corrections (RIDOC) reported five staff members testing positive for coronavirus. No prisoners have tested positive, according to the RIDOC.

The Director of the Rhode Island Department of Corrections is submitting weekly lists of people being held on low bail amounts to the public defender’s and attorney general’s offices for assessment in efforts to have them released. (Rhode Island is one of a handful of states that do not have jails, meaning pretrial detainees are held in prisons.) The RIDOC is also evaluating prisoners with less than four years remaining on their sentences to see if they can award extra good time and release them early.

On April 3, 2020, the Rhode Island Supreme Court approved the release of 52 prisoners who had less than 90 days remaining on their sentences. The Rhode Island Public Defender’s Office had filed an emergency petition seeking review. Those released included prisoners convicted of crimes such as larceny, shoplifting, and drug possession.

South Carolina

On April 12, 2020, the South Carolina Department of Corrections (SCDC) reported 29 staff members testing positive for coronavirus. No prisoners have tested positive, according to the SCDOC.

As of April 15, 2020, neither South Carolina Governor Henry McMaster nor the SCDC have made any announcement concerning the early release of prisoners.

Memorandum from Chief Justice Beatty, Sup. Ct of S.C to Magistrates, Mun. Judges, and Summary Ct. Staff (March 16, 2020): (The Chief Justice instructed that “any person charged with a non-capital crime shall be ordered released pending trial on his own recognizance without surety, unless an unreasonable danger to the community will result or the accused is an extreme flight risk.”)

South Dakota

On April 15, 2020, the South Dakota Department of Corrections (SDDOC) reported that two prisoners have tested positive for coronavirus. One inmate was housed at the Women’s Prison in Pierre, while the other was housed at the Jameson Annex to the South Dakota State Prison. In response to the first positive test (on April 9), nine women escaped from custody. There are also reports of numerous jail detainees escaping from custody due to COVID-19 concerns.

On April 9, 2020, Governor Kristi Noem signed Executive Order 2020-14, suspending the requirement that individuals on parole who test positive for drug use be remanded to custody. While parolees can still be returned to custody, parole officers are now directed to seek lesser sanctions which can keep parolees in the community.

Tennessee

On April 11, 2020, the Tennessee Department of Corrections (TDOC) reported two prisoners and 19 staff members have tested positive for coronavirus. The prisoners are housed at the Turney Center Industrial Complex, and the staff members are located at the Northwest Correctional Complex and the Bledsoe County Correctional Complex.

As of April 15, 2020, Tennessee has not announced plans to release prisoners early. According to the TDOC website, “There are no plans for early release from TDOC prisons at this time because of the coronavirus.”


Texas

On April 15, 2020, the Texas Department of Criminal Justice (TDCJ) reported that 138 staff members and 284 prisoners...
Prison Legal News had tested positive for coronavirus. Additionally, 11,111 prisoners have been placed on medical restriction due to potentially coming into contact with either a staff member or inmate who is positive or pending a coronavirus test. An additional 326 prisoners have been placed in medical isolation due to being “sick or contagious,” according to the TDCJ’s website.

On March 29, 2020, Texas Governor Greg Abbott issued Executive Order GA 13, prohibiting the early release of jail detainees indicted or convicted for violent crimes. To be released, these detainees must pay their bonds.

On April 10, 2020, state District Court Judge Lora Livingston issued a ruling temporarily blocking Governor Abbott’s executive order. The lawsuit was brought by the NAACP of Texas, various criminal defense organizations, and several Harris County misdemeanor judges.

From Ryan Autullo, “Travis County judges releasing inmates to limit coronavirus spread,” Statesman (Mar. 16, 2020): Travis County has begun releasing some defendants in custody with underlying health conditions, to reduce the potential spread of COVID-19 in the county’s jails. After Austin saw its first positive cases of COVID-19, judges in the county nearly doubled its release of people from local jails on personal bonds, with one judge alone reversing four bond decisions after “balancing this pandemic and public health safety of prisoners against what they’re charged with.”

Utah

On April 15, 2020, the Utah Department of Corrections (UDOC) reported nine prisoners have tested positive for coronavirus.

The Utah Board of Pardons and Parole (BOPP) has announced that they are considering early releases to mitigate the spread of coronavirus. To be considered, the UDOC must refer a prisoner to the BOPP. Initially, these referrals were being made for those within 90 days of their release, but because of the ongoing spread of COVID-19, this timeline has been increased to 180 days. As of March 26, 2020, the UDOC had referred approximately 80 prisoners to the BOPP for case reviews. The UDOC clarified that these prisoners were within several weeks of their release and had already received their parole release dates.

Order, Administrative Order for Court Operations During Pandemic (Utah Mar. 21, 2020): The Chief Justice of the Utah Supreme Court ordered that for defendants in-custody on certain misdemeanor offenses, “the assigned judge must reconsider the defendant’s custody status and is encouraged to release the defendant subject to appropriate conditions.”

Vermont

On April 14, 2020, the Vermont Department of Corrections (VTDOC) reported 206 completed tests for coronavirus. Out of these, 174 tests were negative, and 33 tests positive. A total of 43 prisoners are currently in medical isolation, while an additional nine prisoners have been released from medical isolation. Additionally, 18 staff members have tested positive for coronavirus.

On March 26, 2020, the VTDOC announced it had released about 200 prisoners since late February in response to the pandemic.

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Coronavirus Early Release (cont.)

Virginia
On April 15, 2020, the Virginia Department of Corrections (VADOC) reported 53 inmate and 34 staff positives for coronavirus. One inmate had died. Forty of the prisoners remained housed in VADOC custody, while six are in hospitals.

While Virginia abolished parole in 1995, on April 8, 2020, VADOC officials said that Virginia Parole Board members are “working overtime” to review parole applications for geriatric and longer-term prisoners who still qualify in light of the COVID-19 pandemic. Only prisoners who have served at least five years and are 65 or older or prisoners who are at least 60 and have served at least ten years qualify for geriatric parole. In total, 2,351 Virginia state prisoners are eligible. Still, Brian Moran, Virginia’s secretary of public safety, said that 90 percent to 95 percent of those are incarcerated for violent offenses and are disfavored for parole.

In March and April 2020, Norfolk jail officials announced they had released about 250 jail prisoners in response to the pandemic.

Washington
On April 15, 2020, the Washington Department of Corrections (WDOC) reported 202 prisoners tested negative for coronavirus, 11 prisoners tested positive, and 44 lab results remained pending. A total of 257 tests had been completed to date. Of these, 144 prisoners had been isolated (separation of prisoners due to being symptomatic), and 1,099 prisoners had been quarantined (separation of prisoners due to possible exposure).

Additionally, 14 staff members had self-reported to have been infected, and 11 prisoners had self-reported. Details were murky due to how the WDOC reports this data.

In response to the pandemic, a prison disturbance was reported by the WDOC. According to a press release, on April 8, 2020, approximately 100 prisoners — one-fourth of the inmate population — at the minimum-security Monroe Correctional Complex “demonstrated in the recreation yard.” Prisoners in two housing units also set off fire extinguishers, giving the appearance of smoke. The Emergency Response Team (ERT) was activated. Due to only half of the prisoners following ERT directives, sting balls were fired into the area. WDOC reports no injuries.

On April 13, 2020, Washington State Governor Jay Inslee announced that the state plans to release up to 950 prisoners early in the effort to combat coronavirus spread in his state’s prisons. Prisoners who have little time remaining on their sentences will be granted commutations, while others will be released through a specialized reentry program.

Am. Order, In the Matter of Statewide Response by Washington State Courts to the Covid–19 Public Health Emergency, No. 25700–B–607 (Wash. Mar. 20, 2020): Chief Justice Stephens ordered judges not to issue bench warrants for failure to appear, “unless necessary for the immediate preservation of public or individual safety” and “to hear motions for pretrial release on an expedited basis without requiring a motion to shorten time.” Additionally, for populations designated as at-risk or vulnerable by the Centers for Disease Control, the COVID-19 crisis is presumed to be a material change in circumstances to permit amendment of a previous bail order or to modify conditions of pretrial release.

West Virginia
As of April 15, 2020, the West Virginia Division of Corrections and Rehabilitation (WVDCR) reported no cases of staff or prisoners being infected with coronavirus.

In March, the WVDCR reduced its prison population by over 100 people. The releases included 70 people who were serving short prison terms for “parole-related sanctions.” Additionally, about 70 prisoners who were eligible for weekend furloughs have had their furloughs extended to two weeks. Lawrence Messina, WVDCR spokesperson, said that officials are considering expanding furloughs for other work–release prisoners.

Wisconsin
On April 15, 2020, the Wisconsin Department of Corrections (WDOC) reported tested 96 prisoners. Of these, 10 prisoners tested positive, 80 negative, and six tests are pending. Of the five positive inmate tests, eight were from Oshkosh Correctional Institution, and two were
Inmates within 12 months of their release from the confinement portion of a bifurcated sentence imposed between 2009 and 2011 may be eligible for early release. This is termed Certain Earned Release and is limited to nonviolent inmates.

Wis. Admin. Code DOC § 302.65:

Three additional staff positives occurred at the Community Corrections Region 3 (Milwaukee) facility.

On March 20, 2020, Governor Tony Evers issued Emergency Order #9. This order implemented a moratorium on new admissions to state prisons and juvenile facilities. This moratorium took effect March 23, 2020, and can be rescinded either by the governor or by an order from the Secretary of the Department of Corrections.

The WDOC has relatively limited authority to release prisoners prior to their mandatory release date. The WDOC has announced three possible mechanisms for the early release of prisoners:

Wis. Admin. Code DOC § 304.02: Inmates convicted of offenses prior to December 31, 1999, may be released to reduce overcrowding. This is a parole mechanism which is termed Special Action Parole.

Wis. Admin. Code DOC § 302.113(9g): Elderly inmates and those who suffer from extraordinary health conditions may petition for early release. This requires the WDOC’s initial approval, then the approval of the sentencing court.

Wis. Admin. Code DOC § 304.06(1m): If an inmate was sentenced before December 31, 1999, they may be eligible for parole release based on extraordinary circumstances. The Wisconsin Parole Commission makes this decision.

Wyoming

As of April 15, 2020, the Wyoming Department of Corrections reported one staff member at the Wyoming Women's Center tested positive for coronavirus.

As of April 2020, Wyoming had not planned to release any prisoners early from the state’s prison system due to COVID-19.


Conclusion: The Death March Continues as The Plague Ravages Prisons Nationwide

In the last four months, the world has reeled from the onset of the novel coronavirus. As we go to press, over 188,000 people worldwide have died from COVID-19. And the number keeps growing.

This pandemic has spurred new ways of thinking and doing.

Two short months ago, I attended a reception at the United States District Court for the Eastern District of California. The event was for University of California, Davis School of Law students to greet federal judges and explore judicial externship opportunities.

One event, in particular, struck me. As
I was speaking to a federal judge, a more senior federal judge walked up and reached to shake the hand of the other. He stopped himself and instead greeted his long-time colleague by tapping the instep of each foot with his friend. This was the time before people had to be wary of whom they passed in the grocery store, or many started simply refusing to leave their homes.

While preparing this article over a mere four days, the situation inside American prisons continued to deteriorate rapidly. There were riots, misinformation, and deaths. As soon as I write the death totals, a new wave has hit. On April 15, Ohio state prisons experienced a 406 percent increase in reported prisoner infections over a four-day period. The Bureau of Prisons’ death toll has climbed virtually every day. The ink can’t dry fast enough for me to update the data on this plague.

Are these staggering increases the result of the virus spreading? Sure. But what is hidden in this calculation is that as prison officials test prisoners for the virus, more positives are known. The rate at which prisoners are being tested is very low. The actual infection rate is almost certainly drastically higher than what is reported in their official reports.

As the situation inside American prisons deteriorates, and the pervasive fear seeps inside the minds of America’s incarcerated class, prisoners feel as though they are left to fend for themselves. Riots have broken out in Kansas, Washington and Texas. In one disturbance, eight prisoners seeking medical attention – merely trying to get their temperatures checked – were pepper-sprayed by Rikers Island guards. Others have viewed escape as their only path to safety.

What has struck me most forcefully is America’s willingness to forget about those inside prisons, and politicians’ and departments of corrections’ almost uniform mantra of fake, forced competence and control.

How can it be that corrections departments have the situation under control and can manage the outbreak when both staff and prisoners are laying dead in hospitals? And while the federal Bureau of Prisons, in its recently published bulletin, “Correcting Myths and Misinformation About BOP and COVID-19,” states that prisoners’ erroneous beliefs have led to “reactions that are not grounded in science or fact,” one is left to question why prisoners’ belief systems are incorrect. Are prisoners not dying and testing positive for coronavirus at an alarming rate? And when the BOP explains, “To counter these efforts, BOP has educated as to CDC best practices regarding disease transmission and prevention,” should our fears really be assuaged? After all, even following the CDC’s guidance, the death march continues.

The only correct path forward is to release as many prisoners from custody as possible to limit the possibility of infection. Social distancing is critical. Whether a prisoner is housed in a cell or a dormitory, the threat is real and ever-present. Merely locking down prisoners to force social distancing is not enough. Who prepares the food? Who passes it out? Who passes out the mail and unlocks the doors? If we, as free Americans, can’t even protect ourselves in our homes and communities, how can prisoners hope to fare better?

In the words of Kim Kelly in the Appeal, “The entire situation is a ticking time bomb and the only sane way to halt the virus’s death march and protect the vulnerable is to release as many people as possible.”

But I’ll go one step further. While there have always been calls to release first-time, violent offenders, perhaps we should also release everyone who need not be in prison? Why is it those in minimum- and low-security prisons need to be released to protect them from COVID-19, but those in medium-security prisons don’t require the same attention? Is it right, moral, or ethical to have broad categories of prisoners excluded from protection in the form of returning home to their families (e.g., those convicted of sexual or violent offenses) regardless of how long ago or the characteristics of the crime?

In times like these, I’m reminded of 9/11. I was a freshman in high school. Upon getting off the school bus, my mom was crying as she hugged me. While we lived in Atlanta, far from the Twin Towers, Americans everywhere feared for the present and the future. The same is true now, and nowhere more so than with prisoners and their families.

In times of national crisis – or, here, global disaster – we all want the same thing: to protect ourselves and our families. While many Americans are able to hug their loved ones and try to protect themselves, prisoners and their families are left outside in the cold. The best they can hope for is to check the Department of Corrections’ websites, praying this plague doesn’t come to a prison holding their loved ones.

About the Author: Christopher Zoukis, MBA, is the author of the Federal Prison Handbook, Directory of Federal Prisons, and Prison Education Guide. He is also a law student at the University of California, Davis, School of Law, where he is on the board of Students Against Mass Incarceration. He can be found online at www.prisonerresource.com.

Early Prison Release for Gangsta Rapper Sped Up by Coronavirus

by Ed Lyon

Daniel Hernandez was a Brooklyn rap artist who managed to achieve no small measure of fame. To his fans he was Tekashi 6ix9ine. He decided to live the gangsta life and rapped about his time as a member of New York City’s Nine Trey Gangsta Bloods. He also became known to the feds as a co-conspirator, amongst a few unpleasant legal monikers.

Hernandez was 23 years old when the feds arrested him in November 2018. Seeing the error of his ways (not to mention a probable 47 years to life sentence), Hernandez quickly decided to cooperate against his former fellow gang members as a government witness.

In September 2019, Hernandez’s rap turned into a canary’s song. His testimony was instrumental in securing racketeering conspiracy convictions against two fellow gang members, Anthony Ellison and Aljermiah Mack, during a three-day trial.

While testifying, Hernandez pegged fellow rappers Jim Jones and Cardi B as Nine Trey Gangsta Blood members. Jones’ spokesperson declined to answer questions on the matter while Cardi B denied she had been a member of Nine Trey Gangsta Bloods. However, in a 2018 interview with Gentleman’s Quarterly magazine, Cardi B admitted to prior gang involvement, stating, “I used to pop off with my homies and they’d say, ‘Yo, you really got it poppin. You should come home. You should turn Blood’. And I did. Yes I did.”

In exchange for the cooperation and testimony, Hernandez ultimately was sentenced to two years in prison with credit for 13 months in pre-trial confinement.

Because he allegedly spent all of his pre-and post-trial imprisonment being a “perfect model prisoner” in the words of his spokesperson, Hernandez was to be released from the federal Bureau of Prisons three months early, on August 2, 2020. However, after the coronavirus pandemic erupted, a judge ordered that Hernandez be allowed to serve the rest of his sentence at home. The rapper has a serious asthma problem, which puts him at high risk if he gets the virus.

Because of his testimony for the government, Hernandez is also eligible for placement in the witness protection program. He will have to pay a $35,000 fine, complete 300 hours of community service and serve five years of supervised probation.

Sources: buzzfeednews.com, variety.com

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Our lead reporters on the topic are Dr. Michael Cohen, who wrote the diabetes manual distributed by PLN, the former Chief Medical Officer of the New York state juvenile prison system and someone with extensive experience with prison medical systems. We feel it best for our readers to get medical information from an actual doctor who knows the realities of prison life and is a top national expert in the field. Our other lead writer is Chris Zoukis, a long time PLN writer and a former federal prisoner. Chris has authored a number of books, including the Prison Education Guide. He is currently attending law school and is a top expert in the world of prisons and jails.

If you or your family members are being impacted by COVID-19, please contact us and let us know about it. If you have pictures or video, they can be sent to info@prisonlegalnews.org or find us on Twitter or Facebook as well.

COVID-19 has impacted the Human Rights Defense Center, which publishes Prison Legal News and Criminal Legal News. Most of our staff are working remotely with a core group processing subscriptions and shipping book orders. Fortunately, all of our staff are healthy and safe. All book orders are being shipped within 24 hours of receipt as are subscriptions. We will continue publishing and informing prisoners and the world of what is happening. Our litigation team continues filing, fighting and winning lawsuits.

Our history from the beginning in 1990 to the present, along with a summary of our First Amendment and public records litigation. That is what we were planning to do for this issue. And then COVID-19 erupted. We will be reporting on COVID-19 for the duration of the pandemic, which we expect, tragically, to get much, much worse for prisoners. Hopefully, by the end of the year we can run that PLN 30th anniversary story.

One of the challenges of running a monthly magazine is timeliness. In our 30-year history our focus has always been on getting the story right. We have seen that most of the time when disasters strike, whatever initial news coverage that comes out turns out to be not just wrong but flat-out wrong. Remember the snipers in New Orleans after Hurricane Katrina? But when disasters hit prisons and jails they tend to be local or regionalized events and they are soon over with while the effects linger. Our reporting then covers the overall story with a depth and detail few other outlets provide and that becomes the definitive story. This, however, is the first time we have had a national story that is still ongoing week after week and will be for the foreseeable future.

We are updating many articles almost to the minute they go to press during the production cycle. The issue starts production the 15th of the month with the goal of going to printer on the 30th and being mailed shortly thereafter. Readers receive copies around the middle of the month, while online subscribers have access within hours of it going to press. By the time you receive this issue of PLN, some of the numbers concerning the spread of the virus will surely be outdated as they continue growing exponentially. As we learn more about COVID-19 and its impact on prisoners we will report it.

At this time, we think it is more important than ever that prisoners be able to receive news and information about their concerns and realities.

If you are looking for books to buy about your legal rights to medical treatment in prison, Protect Your Health and Safety gives a good overview. The Prisoners Self Help Litigation Manual remains the bible of prisoner rights. Both are available from HRDC. They predate COVID-19 but explain the legal principles that apply.

As much as COVID-19 is on everyone’s mind, in prison or out, it’s important to remember that just because we have a mass pandemic going on, all the other things wrong with the American police state and its prisons and jails did not go away or get better. We will continue reporting on those issues as well.

Now more than ever we need your financial support and donations. For 30 years we have brought prisoners and the American public the very best and most detailed news coverage of prison and jails in PLN, and on criminal law and procedure in CLN since it was launched 3 years ago. Reading someone else’s copy? Buy your own subscription as it helps build our reader base. Encourage your friends and family to donate to support our work. Every little bit helps. For 30 years, every month, we have brought you timely, reliable news that advocates for the fundamental rights of prisoners. If you don’t support us, who will?

Prioritizing Jails Over Hospitals Has Made Rural US More Vulnerable to COVID-19

by Jasmine Heiss and Jack Norton, reprinted from Truthout

Infrastructure development is a matter of life and death: This has always been true, and we are now in a clarifying moment.

In the midst of a mounting public health crisis in the United States, state, local and federal governments are struggling to address a lack of hospital capacity, manage the production of personal protective equipment, and even repurpose college campuses and convention centers to respond to the rapid spread of COVID-19.

The nation’s smallest communities are meeting the outbreak clinging to a woefully inadequate or virtually nonexistent public health safety net. Rather than hospitals or health clinics, much of the rural U.S. is dotted with jails and prisons; places where vulnerable people live in inescapably close proximity, and the novel coronavirus can be a death sentence.

For decades, every level of government in the United States invested in the creation of a sprawling and decentralized infrastruc-
tate of premature death: jails, detention centers and prisons. Since the turn of the millennium, the number of people jailed and sent to prison from major cities has declined. But in the rural U.S., more and more poor and sick people have been locked up, and rural counties have continued to build bigger jails. Simultaneously, state and federal prisons have remained nearly the only employment on offer for many rural communities, though they’ve failed to produce the economic salvation that prison promoters promised.

But as carceral infrastructure was expanded over the past two decades, health infrastructure was systematically abandoned. Last year was the worst on record for rural hospitals: 19 closed and another 453 were deemed “vulnerable” by the Chartis Center for Rural Health. Rural hospitals serve older, sicker and poorer people than most of their urban counterparts, and the most fragile rural institutions serve a larger proportion of Black people, unemployed people and people who have not graduated high school. In this time of acute need for life-saving and life-enhancing development, a scan of the landscape reveals that, instead, we are in the midst of an ongoing jail construction boom.

The callous and casual frequency with which counties across the country detain and incarcerate poor people is immoral. In the face of a quickly spreading virus, it will be increasingly fatal. The population that cycles in and out of our nation’s jails is sicker and more likely to have underlying conditions than the general population. Social distancing and careful use of hand sanitizer are impossibilities for those who live within arm’s reach of one another, often sleeping on mats or plastic “boats” on the floor in overcrowded jails.

For decades, the response to these conditions has been to build bigger jails, a public spending priority that cut off investment in other forms of life-saving care.

In some rural places, jails and prisons have quite literally supplanted health infrastructure. At Ray Brook, New York, for example, in advance of the 1980 Winter Olympics, the Federal Bureau of Prisons worked with local officials to convert a closed tuberculosis hospital into housing for visiting athletes. At the close of the games, it was immediately converted to Ray Brook Federal Prison.

One can read class-action complaints challenging the criminalization of poverty to see the politics of disposability that animate investments in county jails. Karen McNeil is the named plaintiff in a lawsuit challenging privatized probation in Giles County, Tennessee. She suffers from chronic obstructive pulmonary disorder, cancer and fibromyalgia, and spent years in a cycle of probation and incarceration after pleading guilty to driving on a suspended license, locked up after she violated her probation or was unable to pay supervision fees. According to the lawsuit filed by Civil Rights Corps, she was denied pain medication while incarcerated and ridiculed for being unable to complete a nurse request form.

Every level of government must release people from incarceration and detention immediately, and without dehumanizing — which is to say lethal — equivocation about who is relatively more or less deserving of life. State, local and federal governments will need to urgently prioritize public health across the urban to rural spectrum to stave off complete collapse.

The contradictions of our age are coming into sharp relief. The rapid spread of COVID-19 in New York City and New Orleans has arrived in rural communities, and both the people confined in jails and prison and the staff who work there will turn to health systems that are already on the brink of disaster.

Mass incarceration and criminalization was and is a racist project, and Ruth Wilson Gilmore’s definition of racism appears particularly prescient in this moment. “Racism, specifically,” she writes, “is the state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death.” Gilmore has also written about the era of mass incarceration as “the age of human sacrifice,” showing how prisons and jails are, by design, meant to waste resources and lives for the continued functioning of capitalism. Decades of investment in carceral infrastructure — and disinvestment in public health — have laid the track for the unfolding disaster.

If we are to emerge from this crisis with a functioning and fair society, public safety will need to mean safety for everyone. The time has come to definitively end mass incarceration and to build for a just future.

About the authors: Jasmine Heiss is the campaign director for the In Our Backyards project, an initiative exploring the shifting geography of mass incarceration, at the Vera Institute of Justice. Jack Norton is a geographer, and is a researcher at the Center on Sentencing and Corrections at the Vera Institute of Justice.

This op-ed was originally published April 12, 2020 by Truthout (truthout.org); reprinted with permission. Copyright, 2020 Truthout.
May Update: Protect Yourself and Your Facility from COVID-19

by Michael D. Cohen, M.D.

In the April issue of Prison Legal News, I discussed the nature of the disease called COVID-19 (Corona Virus Disease - 2019) and ways to protect yourself and your facility through personal cleanliness, social distancing and environmental cleanliness. This month I will continue those themes and also give suggestions about how to take care of yourself if you get sick.

Higher Risk for Severe Disease

The most common risk factors for severe disease have been older age, hypertension, diabetes, and heart disease. But anyone, at any age, even without existing chronic illness, can get very sick. Be extra careful to protect yourself from infection if you have any chronic medical condition. Here is some more information about HIV infection and heart disease.

- **Adequately treated HIV infection:** All HIV patients should be tested for viral load (counts of viruses in the blood) and CD4 lymphocyte count (a special type of white blood cell). Viral load tells whether the person with HIV is infectious to others. CD4 count is a measure of the immune system's ability to fight infections. The normal CD4 count is above 500 cells per cubic millimeter. It appears that people with HIV taking effective treatment who have no viruses in their blood and normal CD4 counts are not at greater risk for severe COVID-19 disease. However, if the CD4 lymphocytes count is less than 200 the immune system is weakened and there is very high risk for severe COVID-19 disease.

- **Heart disease:** Experience treating COVID-19 has shown that even people with stable heart disease are at higher risk for severe disease. For example, people who have no heart pain or other symptoms after having stents inserted to open up partially blocked heart arteries are still at higher risk.

Personal Cleanliness

- **Hand washing:** Public health programs have encouraged people to use a particular approach to hand washing that is most effective. Wash with soap and warm water for at least 20 seconds (the alphabet song takes about 20 seconds). Wash the palm and the back of the hand. Wash the thumb and each finger one at a time so all 10 are well washed all over. Wash wrists, too. If you don't have hot water, use the water you have. If you have push button taps on your sink you may need a buddy to hold the water on for you while you wash.

- **Protect your lungs:** Smokers are at higher risk for severe disease. Stop smoking if you can. Avoid second hand smoke as much as possible. Avoid dust and fumes that irritate the lungs.

- **Strengthen your resistance:** Eat well. Do aerobic exercise to strengthen the heart and lungs. Try to sleep and rest before you are tired out. Reduce stress if you can by doing the things that help you relax like listening to music, thoughts of loved ones, or meditation. Don't drink bootleg alcohol. Exercise regularly. Take vitamin D supplements if you can get them (2000 units per day is a good maintenance dose). Go out in the sunshine daily if you can. Sunshine makes vitamin D in the skin. Stay normally hydrated by drinking 2 to 3 quarts of water or other clear fluids a day.

Social Distancing (perhaps better named Physical Distancing)

- **Head-to-foot sleeping in dorms:** In crowded dormitories it may be helpful to increase the distance between your face and the faces of the people sleeping next to you or above and below you in bunk beds. This is because some of the infectious droplets that are expelled from one person settle out of the air over a distance of six feet. Rather than sleeping with everyone's heads lined up at the same end of the bed, rearrange yourselves so your head is next to your neighbor's feet. This increased separation may reduce disease transmission.

Environmental Cleanliness

- **Ventilation of public spaces:** One way to reduce disease transmission is to move old air out of a room and bring in new fresh air from outside. This is particularly effective at removing infectious droplets that are so small they stay floating in the air instead of settling out onto the floor. Proper ventilation requires an inlet for new air and an outlet for old air. Open two windows on opposite ends of the room. Use two fans if you can: one blows new air in, one blows old air out. If there are no windows to open, at least make sure nothing is blocking the supply and return vents of the HVAC system. The returns are taking the old air out while the supply vents are blowing new air in.

- Be aware that a single fan blowing air around in the room may actually make it worse. That is just air circulation, not ventilation. You may feel cooler, but it is just moving the infectious droplets around the room more vigorously, not clearing the air. It moves the larger droplets and prevents them from settling out of the air. It moves the smaller droplets more widely around the room putting more people at risk because it defeats the beneficial effects of social distancing in that room.

Take care of yourself if you get sick

- **Symptoms:** The U.S Centers for Disease Control (CDC) defines typical COVID-19 symptoms of fever, dry cough and shortness of breath. But some people have none of these at first and other initial symptoms may occur, including headache, nausea, abdominal pain or diarrhea. In an epidemic like this, any new illness, especially with fever, could be COVID-19.

- **Testing for infection:** People with symptoms should be tested for the presence of the virus in their nose or saliva. These tests are not widely available in the free world yet except for people who are hospitalized, so incarcerated people probably will not get tested. If you have symptoms, assume you have it.

- **Isolate yourself:** If you are sick, isolate yourself as much as possible. Some correctional systems have started quarantine units where sick people are gathered together to separate them from the rest of the population. Other systems want sick people to stay in their cell. Stay isolated if possible to protect others from exposure to your disease. Wear a mask all the time if you can.

- **Rest:** Get as much rest as possible when you are sick. Do not undertake vigorous activities.

- **Hydration:** Maintain normal hydration while you are sick, that is 2 to 3 quarts of water or clear fluids a day. More fluid intake is needed if you have fever or sweats.

- **Symptom control:** While it is not necessary to treat symptoms, control of symptoms helps you feel better while

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you are ill. Use acetaminophen (Tylenol brand, for example) for control of fever, body aches, and headache. The usual dose is 650 milligrams (mg) every 4 hours, but never more than 3000 mg per 24 hours. In general, people with active liver disease should not take acetaminophen at all. If you have active liver disease and cannot take acetaminophen, then aspirin, ibuprofen (Motrin brand, for example), or naproxen (Alleve brand, for example) also provide symptom relief.

Breathing exercises: Shortness of breath and cough are common symptoms of COVID-19 disease. These symptoms may not occur at first and sometimes show up late in the course of the illness after it seems to be getting better. The most severe COVID-19 lung disease occurs when the lungs fill up with fluid (mucus).

The following breathing exercises were adapted from the website of the Cystic Fibrosis Foundation. Don’t do these breathing exercises in a public place. The exercises can expel infectious droplets into the air. Wear a mask to limit this if you can.

Cystic fibrosis (CF) is the most common inherited disease of European Americans, but it is uncommon among other ethnic groups. Excess fluid in the lung is a common symptom of CF. Breathing exercises are used by CF patients to clear fluid out of their lungs. Similar breathing exercises are used by people with other chronic lung diseases like emphysema, chronic bronchitis or severe asthma.

The exercises use “abdominal” breathing. This is breathing that makes the belly swell up rather than the chest. If you relax and let your belly swell as you breath in (inhale) you are doing abdominal breathing. On the other hand, if the chest expands more when inhale you are not doing abdominal breathing.

The exercises use “pursed lip” breathing. The easiest way to understand this is to breath out (exhale) in such a way that your cheeks puff out. When you do this the mouth is partially closed with the lips fairly close together so that pressure builds up in the mouth and air passages in the lungs as you exhale. This increased pressure in the air passages helps keep them open.

Everyone knows what a cough is. In these breathing exercises “huff” means expelling air forcefully with the mouth open, as you might do when trying to fog up eyeglasses to clean them, but stronger.

Cystic Fibrosis Foundation Airway Clearance Technique:

a. Controlled Breathing: Slowly breath in through the nose using abdominal breathing and breath out slowly through your mouth with minimal force through pursed lips. **Do this six times.**

b. Chest Expansion: Breath in deeply expanding the chest this time, hold your breath for three seconds, let the breath out slowly without forcing it.

c. Repeat Controlled Breathing for another cycle of six breaths

d. Forced Expiration: Sit up. Breath in until not quite fully inflated. Hold breath for two or three seconds. Breath out with mouth open (huff) forcefully but slowly and continuously. **Do this two more times.**

e. Cough: Take a deep breath and cough to move fluids out of the airways into the mouth. Spit it out into a tissue and dispose of it safely in the toilet.

Repeat the whole cycle (a. to e.) again to make sure you removed as much lung fluid as you could. After successful breathing exercises you may feel less short of breath.
When to seek medical care: You need health professional assessment when you feel short of breath, are breathing too fast, have trouble catching your breath, or get winded easily with minimal activity. If your finger nails look gray instead of pink, you have waited too long and need care urgently. Normal, relaxed adults breath 12 to 16 times per minute. Count your breaths for a full minute by a clock or watch. If the count is 20 or more that is too fast. Take notice if you are panting or breathing heavily without doing any physically strenuous activity. Stopping to catch your breath after walking a short distance or climbing one flight of stairs is not normal for an otherwise healthy adult.

Other symptoms that may indicate the need for medical care include persistent pain or pressure in the chest and confusion or difficulty waking up.

At the clinic, medical staff will assess your condition. They should take a complete set of vital signs (temperature, heart rate, breathing rate and blood pressure). They also should assess your lung function with a pulse oximeter. This device clips onto the end of a finger and shines a bright red light on the fingertip to measure how much oxygen is being carried in the blood. In a healthy person breathing room air the blood is over 95% saturated. Extra oxygen is needed if it is 90% or less. People with chest pain or confusion need additional assessments too such as an electrocardiogram (EKG) to assess the heart and assessment of level of consciousness and awareness of your surroundings.

Many prison infirmaries can give extra oxygen by face mask or through plastic tubes that fit into the nose. Sometimes they can give oxygen under low pressure with a tighter fitting face mask. Improvement of the pulse oximeter reading into the normal range above 95% indicates that the oxygen treatment is working. However, the patient must be closely monitored while on oxygen treatment because COVID-19 patients can get much worse very fast. When the pulse oximeter starts going down in spite of oxygen treatment, the patient’s lungs are failing. Patients should be transferred to a hospital for more advanced care before there is a life-threatening breathing crisis.

Please continue to practice personal cleanliness, social distancing, and environmental cleanliness to the best of your ability. Try to enlist the cooperation of the correctional officers to make a safer facility for everyone. Watch out for each other to make sure people who get sick and have trouble breathing get the medical attention they need. Hospital transfers are necessary for adequate treatment of more severe COVID-19 disease. Working together we can get through this. 

Recently Exonerees Give the Public Advice on Being Locked Down: You Have No Idea

by Dale Chappell

Now the whole country is incarcerated,” Theophalis “Binky Bilal” Wilson said after being released in January 2020, exonerated after 28 years wrongfully in prison, only to find himself locked in at home. “This is a microcosm of what a person experiences when he is incarcerated,” he said. “This is nothing.”

He’s of course talking about the “lockdown” of the entire world due to the coronavirus pandemic that has city streets deserted across the nation. Wilson was exonerated this year after it was found that the prosecutor used false evidence, false accusations, and committed “official misconduct” in securing a murder conviction against Wilson when he was 17.

While the stay-at-home orders have prevented him from restarting his life going to work for a law firm helping others still stuck in prison, he’s happy to give advice to those who have never experienced being locked down. He’s also hopeful the “incarceration” of the country will create some empathy for prisoners stuck in prisons being ravaged by the coronavirus.

Another recent exoneree, Mark Whitaker, also has some advice to the newbies on “lockdown” at home: “You have to be creative. You better have something to do with you.”

Whitaker was released back to his hometown Philadelphia in 2019, after 17 wrongful years in prison for murder when it was uncovered that the prosecutor used false witness identification, false accusations, and committed “official misconduct,” as well.

“When you been through what I been through, being here [stuck at home] is not a problem,” he said. “There’s much I can do.”

When he was stuck in prison, he relied on his cheap radio purchased on commissary to listen to the 76ers games. “We escaped for a little bit, and we all went to the game” using our radios, he said.

Terrance Lewis, another exoneree after 21 years of wrongful imprisonment, agrees that the public complaining about this “lockdown” has no idea. “You got to cherish that which you do have. It allows you to cope with that which has been taken away.”

Now he can look out a window and open it without seeing fences and razor wire. It’s the little stuff.

When he saw the shelves at the store empty of toilet paper, it didn’t faze him. “I already know how valuable toilet paper is, trust me.” But Lewis can’t wait to get to work. He can’t afford to stay home, because Pennsylvania is one of the few states that doesn’t provide compensation for those wrongly imprisoned.

Ex-prisoner John Berry bristles against using the term “lockdown” for the coronavirus. “Lock down means having your liberties taken from you, being in a place you don’t want to be 24/7, feeling horrible,” he said. “Out here the beauty of it is, we have all these different distractions — so many wonderful things to get our attention.”

Unlike a life sentence, Berry reminds the public that the stay-at-home order will end. “I’ve been through the most frustrating situation on Earth almost,” he said. “Now, I’m enjoying life. I’m free after 28 years. How can I be frustrated?”

Source: inquirer.com
A non-violent federal drug offender who pleaded for early release in the months prior to the COVID-19 pandemic hitting America died of the disease. Patrick Jones, 49, was the first federal prisoner to die of COVID-19, the disease caused by the novel coronavirus.

Jones was serving a 27-year sentence at Federal Correctional Institution Oakdale in Louisiana.

The American Civil Liberties Union said in a letter to a federal court that the prison, which houses about 1,800 prisoners, is a virus tinderbox “ready to explode.” The court is overseeing a lawsuit the ACLU filed in early April that alleged the conditions at FCI Oakdale violate prisoners’ Eighth Amendment rights. On April 22, a federal judge dismissed the lawsuit.

As of April 11, 2020, FCI Oakdale reported that 38 prisoners and 17 staff had tested positive for coronavirus. Since March 21, six of those prisoners died. The ACLU urged a federal judge to release hundreds of FCI Oakdale prisoners to home confinement.

Attorney General William Barr instructed the Bureau of Prisons (BOP) on April 3, 2020, to increase home confinement releases. “We have to move with dispatch in using home confinement, where appropriate, to move vulnerable inmates out of these institutions,” Barr wrote the BOP in a memo.

BOP officials identified only 70 prisoners who may be suitable for early release. The ACLU said the BOP is only reviewing 100 FCI Oakdale prisoners’ cases. The civil rights organization told the court that the prison “has apparently succeeded in releasing no one except to hospitals and mortuaries.”

Home confinement increased 40%, the BOP said, noting that an additional 566 prisoners had been released since March. The ACLU called BOP’s efforts at FCI Oakdale “too little, too late.”

“Men are sleeping three, four, five to a cell, less than six feet, and many are reporting that cellmates are coughing through the night,” said Somil Trivedi, a senior staff attorney at the ACLU’s Criminal Law Reform Project.

Jones’ death is “exactly the type of case we’ll need to grapple with” in the criminal justice reform movement, said Kevin Ring, president of Families Against Mandatory Minimums. He noted that Jones was not a first-time drug offender, but he also wasn’t the “repeat violent offender who will never change.”

Jones was arrested after police in Temple, Texas, found 19 grams of crack and 21 grams of powder cocaine in the apartment he shared with his wife of two months. Federal prosecutors held him responsible for 425 grams of crack after his wife testified against him, saying they sold half an ounce every day from Thanksgiving 2006 until their arrest in January 2007.

The amount of the drugs, the fact the apartment was near Temple College, Jones’s role as an “organizer” for soliciting a woman’s help in selling the drugs, his decision to take his case to trial, and offenses he committed between the ages of 17 and 21 drove up the sentencing guideline range. He was originally sentenced to the minimum of 30 years, which was reduced to 27 years after sentencing guidelines were amended to reduce the disparity in treatment of crack and powder cocaine.

In an October 15, 2019, letter to U.S. District Judge Alan Albright, Jones pleaded, was remorseful and asked to be released so he could be there for his teenage son. Albright denied that request on February 26, 2020, finding that “Jones is a career offender with multiple prior offenses and a history of recidivating each time he is placed on parole.” The court noted the bulk of those offenses occurred when Jones was 17.

Just 22 days later, Jones died from coronavirus. “He spent the last 12 years contesting a sentence that ultimately killed him,” said Alison Looman, a New York attorney who represented Jones on a clemency request. See: Brandon Livas et al. v. Rodney Meyers, warden of Oakdale Federal Correctional Institutions; and Michael Carvajal, Federal Bureau of Prisons, Director, U.S.D.C. (W.D. La.), Case No. 2:20-CV-00422.

Additional sources: Associated Press, nbcnews.com, themarshallproject.org
On April 15, President Donald Trump announced that the coronavirus pandemic had peaked in the United States. That same day, nearly 2,300 people in the country died from COVID-19, the disease cause by the virus, which was the highest tally in a single day. The following day the number nearly doubled.

That brought the nationwide death toll to more than 35,000 and the number of cases to about 650,000. The U.S. has slightly more than 4% of the world population but, rather astonishingly, nearly one-third of all global cases and more than one-fifth of all deaths as of April 16.

All this raises serious doubts about whether or not the incidence of coronavirus will decline significantly any time soon, as the president optimistically stated. Predicting how a global pandemic will unfold is a fool's errand, as the coronavirus outbreak has well demonstrated. The media has trotted out "scientific" models that show sharply different outcomes, with some allegedly reputable experts having claimed up to 2 million Americans will die while others say the death count will be around 60,000.

One thing that’s absolutely clear, though, is that the situation is particularly dire in America’s carceral complex, with the country’s prisons and jails having become “petri dishes” for coronavirus, as a CNN headline put it. The New York City Department of Correction found in mid-April that 287 prisoners and 441 employees had tested positive for coronavirus.

With 4,353 total prisoners, that’s an infection rate of 6.6%, seven times higher than in New York City—which had more than 12,000 deaths, a larger number than in all but four countries in the world besides the U.S.: Italy, Spain, France and the United Kingdom.

There were numerous outbreaks at other prisons and jails around the country, including a number of national hot spots, such as Cook County Jail in Illinois and Parnall Correctional Center in Michigan. Nationwide, the percentage increase in infected cases rose by about 4,000% between March 20 and April 15; in prisons and jails it rose by more than 36,000%.

We have received calls and letters from prisoners and families around the country, and are publishing excerpts of their accounts of life inside during the pandemic. Note that some of these letters, received between late-March and mid-April, have been edited for length and clarity.

Arizona

On March 30, a death-row prisoner in Florence wrote that prisoners have been restricted to one bar of hand soap per week, “but we have to request it.” Also, he wrote, “if we exhibit any symptoms that we may be infected, and put in to be seen by medical, the $4 co-pay will be waived.”

California

A Pleasant Valley State prisoner and jailhouse lawyer wrote that the prison library has closed and that he has no access to LexisNexis or a copier. “The librarian must conduct rounds; conducting rounds increases the probability of infection because a once relatively stationary staff must now go to each building...contrary to staying in a dusty room with three people. Life at prison has stayed essentially normal besides cell feeding, which I enjoy. People still go out to the yard, play sports, stay in the dayroom. Coronavirus is not here. Yet.”

Connecticut

A federal inmate at Danbury women’s prison camp expressed concern in late March that no protective gear is provided and social distancing is not taking place. “However, that is nearly impossible,” she writes. “We are housed in dorms that are connected by small hallways and bathrooms that can be accessed by either dorm. Each dorm houses between 32 and 40 women in 8x9 rooms, two women to each room. We have not been given any soap, disinfectant, bleach or any other cleaning supplies. They provide watered down liquid soap that doesn’t lather up. They have stopped all visits until further notice, stopped commissary, and terminate calls when we attempt to expose certain injustices.” She said there are four cases of coronavirus at the adjacent men’s facility. “We were told by medical staff that it’s not if we get it here, it’s when we get it. Considering I am one of the people at high risk, I am terrified. ... I don’t want to leave in a body bag.” She urges people to contact the BOP, to move people who fit the criteria for home confinement. “We are the people the CARE Act was supposed to help; instead the BOP has decided they don’t have to abide by the rules and are going to limit the information received by the outside so the truth isn’t discovered.”

Florida

In Sumter: “Nasty flu here, and one guy had pneumonia. Overall, I think they are doing a good job, especially with the staff shortages. Checking temperatures daily in the dorms. We get outside for 45 minutes each day and a canteen run. Otherwise, everything is brought to the dorm.” (As of April 25, 44 inmates and four employees tested positive for the virus at Sumter.)

Florida

A prisoner at FCI Miami says during the temporary lockdown there are “3 people in a room that is less than 60 square feet. We cannot stand up all at once for count without touching each other. We are out for showers three times per week for 40 minutes and emails.”

Indiana

A prisoner at Wabash Valley says “the 44 door handles are allegedly being cleaned (so officials will claim) by inmate offenders who do only use one rag for all 44 door handles each time. They only use a very watered-down disinfectant (the same used year-round for many years). A lab test would prove how ineffective it is and to point out officials’ false-hoods about it. Bleach, greatly cut with water, is only used once a day to clean showers.”

Maryland

At Eastern Correctional Institution in Westover, a prisoner says the coronavirus has “drastically” affected prisoners. We have “lost visits, all classes, gym [and] recreation and shower time are compromised.” Social distancing is not a reality. “We still eat chow with other 300 people in the cafeteria, pill
call over ten people, etc. We also only get mail three times a week. We have no chapel, social groups or shop.”

**Pennsylvania**

April 19, a prisoner reported that SCI Mahanoy was on lockdown. “We get 45 minutes per day to shower, make calls, use the tablet kiosk, hang out in the day room, six cells at a time,” he says. Everyone gets out to the yard about once every three days. “We have to give the illusion we are utilizing a mask or face covering anytime we are out of our cages,” he says. There are no library visits, but prisoners can order up to four books per week brought to them.

**South Carolina**

A woman at Camille Graham Correctional Center said a guard told her that the prison is quietly quarantining anyone suspected of having coronavirus without disclosing the policy. The guards, she claims, had to sign non-disclosure agreements.

**Tennessee**

At North West Annex, Tiptonville: “Nothing has changed, and I am worried we’re all going to get the virus. The COs and teachers are not practicing social distancing from other staff or inmates. They’re still making us go to school and all of my teachers have been sick…. no staff is wearing masks, not even the nurse that gives me my daily meds.”

**Texas**

“I’m happy to report that there are still no coronavirus cases on Ramsey unit. Every other unit in the area has reported at least one case, but so far we have been fortunate indeed. … This time has been difficult for me as there are several members of my family who are in the highest risk group. Fortunately, they were all prepared and are all practicing social isolation. … The administration has no clue on how to run a quarantine. They banned visits and made us travel in groups of 10, but crowded the showers with 40 or more (that is basically shoulder-to-shoulder) and put eight or nine groups of ten into the mess hall at the same time. Yesterday, they finally told the guards to wear cloth masks (which they provided), but the guards take them off to shout and talk to prisoners, defeating the whole purpose. Since the guards are the only pathway for the virus to get into the prison, I really wish they would use the masks properly.”

At FMC Fort Worth: “The facility is very worn down and unsanitary. The air quality is terrible and ventilation is extremely poor. If an unlucky inmate contracts coronavirus in one of the units, all of the other inmates would be highly susceptible to it; the coronavirus would spread and multiply like wildfire on a dry grassland. It is impossible, due to lack of doors, to control inmates’ movements and to have a lockdown. On top of that, the units do not have cameras.”

On April 1, this person was in solitary (SHU), where “they had been quarantining people if they either just arrived at the facility or if they have corona-like symptoms. SHU is NOT designed and equipped to medically quarantine individuals during pandemic/epidemic. The ventilation system is SHU is all interconnected. SHU also is significantly deficient in both medical manpower and apparatus. SHU is also very unsanitary and frequently the cells contact biohazardous material, such as food waste, fecal matter, etc. … Also, the medically quarantined people...
are usually quarantined two inmates per cell. Even people who are in here for administrative and medical purposes are subjected to same conditions as disciplinary inmates, with only 1 15-minute phone call per month.”

Texas

A news report of two chorale members who died from COVID-19 and 45 out of 60 who were diagnosed with the disease after choir practice in Washington state caught one prisoner’s attention in Seagoville. “This should give an accurate representation of what happens with this highly contagious and deadly bug in crowded settings. Crowded settings ... Hmm. How about prisons? I am housed in a unit [in Seagoville] with over 350 inmates. We share toilets, shower stalls and washbasins, not to mention phones and computers. Undeniably some steps have been taken here by staff but at first glance they seem pointless.

Coronavirus Postcards (cont.)

Rikers Island Prisoners Helped with Preparations to Bury the Coronavirus Dead

Prisoners jailed with a conviction at New York’s Rikers Island were offered $6 an hour to dig mass graves at Hart Island, where more than 1 million mostly indigent city residents are already buried. In a city with decreasing space to bury the dead, Hart Island in the northeast Bronx is in high demand during the coronavirus pandemic. Around 25 bodies are normally buried there per week, but that number had climbed to about 125 by early April.

Avery Cohen, a spokesperson for Mayor Bill de Blasio, confirmed the offer of $6 an hour for prisoners to The Intercept on March 31. He said it was not “COVID-specific,” but the timing and the fact that the offer included provision of personal protection gear such as face masks left clear it was directly related to the pandemic. So did the pay rate, which was exorbitant by the paltry standard of prison labor in general.

New York City is a global center of the coronavirus pandemic. As of April 16, more than 12,000 city residents had died from COVID-19.

Prisoners have historically maintained Hart Island, the city’s public cemetery. In 2018, they were paid 50 cents per hour. Instead of plots, the dead are buried in trenches with more than 100 others.

On April 6, de Blasio told The New York Times that local morgues still had the capacity to accommodate the dead but three days later, news reports revealed that a giant trench was being dug on Hart Island. Rikers prisoners, it was later reported by The Washington Post, had been helping with the work until April 3. City contractors then took over after the negative publicity arising from news accounts about prisoners being used to do the work.

Meanwhile, the situation for prisoners at Rikers was dire. In March, its own chief physician, Ross MacDonald, warned that a “storm is coming” and urged the freeing of vulnerable prisoners. “We have told you who is at risk,” he tweeted. “Please let as many out as you possibly can.”

“City and state officials have badly mishandled the response to the pandemic at the jail,” The Intercept reported.

By April 5, TIME reported that 273 detainees, 321 corrections personnel, and 53 health professionals in the city’s jail system had tested positive for coronavirus, and four corrections officers had died.

The first Rikers prisoner to succumb to COVID-19 was Michael Tyson, who died April 5 at Bellevue Hospital while awaiting a hearing on a non-criminal parole violation. “Tyson’s name was among the 100 detainees from the Bronx held on parole violations for whom the Legal Aid Society has been seeking immediate release, via a lawsuit filed in Bronx Supreme Court on April 3,” thecity.com reported.

The 53-year-old Tyson was named among “the highest risk group” because of unspecified underlying health issues and his age. Media reports said he was locked up Feb. 28 and hospitalized March 26. On April 12, a second prisoner died of COVID-19, 63-year-old Walter Ance.

To combat the spread of the virus, the board of correction had recommended the release of 2,000 prisoners, including parole violators, individuals over 50, medically at risk and those serving short sentences, nytimes.com reports on video. But the releases are not happening quickly enough. “Think of the jails as the world’s worst cruise ship,” said Rachael Bedard, director of the geriatrics and complex care service for Correctional Health Services, the city agency that provides healthcare in the New York City jail system.

Governor Andrew Cuomo had TV. He will be in this ‘quarantine’ for the next two weeks.

“How much more close and intimate is the contact in our prison setting than between those ill-fated choir members? The choir’s rate of infection was 90%. The choir’s rate of death was 4%. There are 1,500-1,600 inmates housed on this compound. Do the math.”

Texas

Policies have been “implemented to keep the coronavirus out of our unit,” says a prisoner in Rosharon. Masks must be worn by prisoners who work in the furniture factory (“or a location off of their living area”); those 65 and older must wear them anytime they leave their cells. “Only five prisoners are allowed at the commissary window at a time to allow for 6-foot spacing.” Securus allows “two free, 15-minute-long phone calls to everyone who is registered to use them...” Phones are now made available 24 hours a day “because of the phenomenal increase in usage.”
announced plans to release those on non-criminal technical parole violations such as Tyson, but the decision came too late.

Tina Luongo, attorney-in-charge of the Criminal Defense Practice at the Legal Aid Society, told the press: “This tragedy would have been entirely avoidable if only Governor Cuomo had directed [the Department of Corrections and Community Supervision (DOCCS)] to act decisively from the outset of this epidemic to release incarcerated New Yorkers who, like Mr. Tyson, were especially vulnerable to the virus.”

The death came on the heels of Rikers being dubbed a “public health disaster.” Soap and sanitizers were reported in short supply even as the DOC said it was increasing both. As with other prisons, social distancing is all but impossible. “[B]eds in jailhouse dorms are 18 to 24 inches apart,” according to The Intercept.

Prisoners “share bathrooms and showers and cafeterias, cramped cells and telephones and pullup bars, allowing the virus to easily spread from person to person. Inmates have described feeling trapped, unable to protect themselves without adequate cleaning supplies, soap, masks or gloves, while guards and staff are equally ‘terrified,’” The Washington Post reported.

Some prisoners over age 70 who are particularly high-risk for COVID-19 were being released, Business Insider reported.

Federal Judge “Troubled” by Arizona Prison Director’s Response to Coronavirus; State Rep Calls it “Reckless”

by Dale Chappell

Court-appointed advocates filed a motion in federal court concerning the Arizona prison director’s response to the coronavirus, which federal Judge Roslyn Silver called “troubling,” writing that it “may reflect a failure to accept what could be a grave threat.”

She wasn’t the only one disturbed by Arizona Department of Corrections, Rehabilitation and Reentry Director David Shinn’s handling of the pandemic. News that at least three Arizona prison guards had tested positive for the coronavirus as of April 1, 2020, did not reach prison staff and the prisoners through the department, but only via TV news.

It wasn’t until the morning after ABC15 broke the news that Winslow prison warden John Mattos sent an all-staff email admitting the details. Still, he criticized the news channel, writing that “they are not our friends” and “are only looking for a big story.”

ABC15 obtained internal emails and documents showing that as of April 1, only 30 percent of symptomatic prisoners had been tested, and that 358 prison employees had been turned away from coming to work because of health screening at the gate.

“I really don’t understand the rationale of DOC’s lack of transparency at all,” said Rep. Diego Rodriguez. “It really frightens us.”

He and other lawmakers sent a letter to the department seeking more information about what it is doing to manage a potential coronavirus outbreak in the prison. “Every second of time that goes by where this information is now shared, it could have catastrophic effects down the line,” he said.

Rodriguez is referring to an email sent March 31 by Director Shinn. Obtained by ABC15, it stated in part, “I am pleased to report we have ZERO positive cases to date.... While I cannot guarantee success forever, it oddly appears the best place to live presently is in one of our institutions.”

Rodriguez called the email “reckless,” saying, “Just the tone, quite frankly, the arrogance of that statement that prison might be the safest place at this moment, it’s mind-boggling that an appointed official in charge of a billion-dollar department facing a pandemic would make that type of statement.”

Shinn was also the subject of a whistleblower complaint filed on March 26 by Lt. Mark Hasz, complaining that the director ordered prison employees to remove masks they brought from home so as not to frighten prisoners. “While the rest of the country is engaged in social distancing, [prison] employees, as part of their job, must come into close personal contact with hundreds of inmates on a daily basis,” Hasz wrote. He warned that once the coronavirus enters the prison system, it will spread swiftly among prisoners, prison staff and their families.

On April 3, Shinn issued an email allowing staff to wear masks. “We have just been notified of the impending direction CDC will be issuing recommendations for people to wear non-medical mask (non-PPE) upon leaving home,” he wrote. “This will further reduce the potential transmission exposure our staff presents to the inmate population.”

If You Write to Prison Legal News

We receive many, many letters from prisoners – around 1,000 a month, every month. If you contact us, please note that we are unable to respond to the vast majority of letters we receive.

In almost all cases we cannot help find an attorney, intervene in criminal or civil cases, contact prison officials regarding grievances or disciplinary issues, etc. We cannot assist with wrongful convictions, and recommend contacting organizations that specialize in such cases – see the resource list on page 68 (though we can help obtain compensation after a wrongful conviction has been reversed based on innocence claims).

Please do not send us documents that you need to have returned. Although we welcome copies of verdicts and settlements, do not send copies of complaints or lawsuits that have not yet resulted in a favorable outcome.

Also, if you contact us, please ensure letters are legible and to the point – we regularly receive 10- to 15-page letters, and do not have the staff time or resources to review lengthy correspondence. If we need more information, we will write back.

While we wish we could respond to everyone who contacts us, we are unable to do so; please do not be disappointed if you do not receive a reply.
In June 2019, California’s Office of the Inspector General (OIG) published its annual report, “Monitoring the Use of Force,” for incidents the previous year at all juvenile and adult facilities operated by the Department of Corrections and Rehabilitation.

The OIG’s office reviewed 6,426 incidents where an allegation of excessive force was made. Inspector General Roy Wesley wrote in an accompanying letter to state lawmakers that “The department’s overall compliance rate remains low, with the Department finding only 55% of incidents in full compliance with its policies and procedures.”

“Use of force is sometimes necessary when dealing with incidents that may pose a safety and security risk for both inmates and staff,” Vicky Waters, department spokeswoman, said in response to the report. “It is a priority for our department that all staff follow policies, protocols and procedures, and we will continue to collaborate with the [OIG] to ensure full compliance.”

“Whatever training they’re using to reinforce the policy isn’t working,” said Don Specter with the Prison Law Office, which stresses that there is very little accountability when violations of policy occur. “The good news is that when they review the use of force they figure out that there were violations of policy. The bad news is, they don’t do anything about it. So there’s no improvement from year-to-year.”

Some notable findings include:
• Approximately a third of the reported incidents occurred at just five of the state’s 33 facilities, all high security facilities like Salinas Valley State Prison.
• Half of all force incidents involved the use of chemical agents such as pepper spray.
• Officers used restraints and holds a third of the time, and rubber bullets, batons, and Tasers in the rest.
• Staff are required to conduct an interview with inmates who allege excessive force within 48 hours of the incident, but prison staff failed 49% of the time to complete timely interviews, record inmate injuries, complete interviews in a confidential setting, and to follow policy requiring officers not involved in the incident to conduct the interview.

• Staff failed to articulate an imminent threat justifying the use of force in 95 incidents, or 1.5%. This was down from 1.8% the previous year, though still deeply troubling because the “negative impact” of such incidents can be quite significant.

The most troubling incidents involve what are known as “controlled use-of-force incidents,” which occurred where a prisoner posed a threat while located in an area that can be controlled or isolated, such as a cell. Out of 100 such reported incidents, the OIG identified 65 incidents where violations of policy occurred, though this was marginally better that the previous year’s non-compliance rate of 75%.

Because of such incidents, the OIG strongly recommended that the department “impose a discipline of increasing severity against supervising and participating staff who violated policy when an inmate was in a controlled space, such as a cell.”

Unfortunately, such recommendations are not binding on the department, which has referred to its current policies and training as “adequate” and continues to resist any changes. It is unclear when or how the state will increase accountability for these shortcomings.

Sources: kqed.org, Cal. OIG Report

Connecticut Prisoners Win Lawsuit After Hepatitis Exposure

In May 2019, a final settlement agreement was approved for 15 prisoners who were exposed to Hepatitis C when a Correctional Managed Health Care (CMHC) nurse at MacDougall-Walker State Prison in Suffield, Connecticut, used the same needle to inject insulin to multiple diabetic patients, refilling the syringe from a common-use vial.

The first prisoner injected was also a Hepatitis C patient, sparking the contagion fears. The incident occurred in summer 2013; settlement payments ranged from $750 to $2,000 per prisoner claimant.

The Connecticut Department of Corrections (CDOC) and UConn Health — the University of Connecticut branch that operates CMHC — sent letters to all possibly effected prisoners, urging them to seek blood tests for possible contagion. The general UConn Health notice stated “The transmission of HIV or Hepatitis B is unlikely. There is still concern for the transmission of Hepatitis C.”

CDOC spokesperson Karen Martucci placed the blame on the negligence of a single UConn Health nurse while denying allegations by the prisoners of system-wide problems with the health care provider. The nurse, who was working a double shift at the time of the incident, has since resigned. An investigation of the incident was jointly conducted by the CDOC, UConn Health and the state Department of Public Health.

Plaintiffs had originally sought as much as $1 million each in damages. Attorney Peter Bowman, who represented four of the plaintiffs, stated the prisoners who filed suit were not just seeking money but positive changes to health care within the CDOC. “This is what litigation is for,” he said. “The health care system has some flaws. We’re hoping this litigation will hopefully bring better health care to everyone.”

A number of other prisoners have filed legal cases about poor care at CDOC facilities. In 2018, one female prisoner gave birth in her cell. CDOC spokespersons blamed this on a failure to communicate between CMHC and CDOC.

In 2017, one soon to be released prisoner died of larynx cancer after CMHC doctors and nurse practitioners had long diagnosed him as having acid reflux. Another prisoner who claimed his cancer was not treated in a timely fashion settled a legal case about poor care at CDOC facilities. In 2018, one female prisoner gave birth in her cell. CDOC spokespersons blamed this on a failure to communicate between CMHC and CDOC.

Sources: legalreader.com, nbconnecticut.com, courant.com, journal-inquirer.com, ctinsider.com
Introducing the latest in the Citebook Series from Prison Legal News Publishing

The Habeas Citebook: Prosecutorial Misconduct

By Alissa Hull
Edited by Richard Resch

The Habeas Citebook: Prosecutorial Misconduct is part of the series of books by Prison Legal News Publishing designed to help pro se prisoner litigants and their attorneys identify, raise and litigate viable claims for potential habeas corpus relief. This easy-to-use book is an essential resource for anyone with a potential claim based upon prosecutorial misconduct. It provides citations to over 1,700 helpful and instructive cases on the topic from the federal courts, all 50 states, and Washington, D.C. It’ll save litigants hundreds of hours of research in identifying relevant issues, targeting potentially successful strategies to challenge their conviction, and locating supporting case law.

The Habeas Citebook: Prosecutorial Misconduct is an excellent resource for anyone seriously interested in making a claim of prosecutorial misconduct to their conviction. The book explains complex procedural and substantive issues concerning prosecutorial misconduct in a way that will enable you to identify and argue potentially meritorious claims. The deck is already stacked against prisoners who represent themselves in habeas. This book will help you level the playing field in your quest for justice.

—Brandon Sample, Esq., Federal criminal defense lawyer, author, and criminal justice reform activist

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ON JUNE 20, 2019, A TWO-JUSTICE majority on a Nevada court of appeals panel reversed and remanded a district court’s dismissal of a state prisoner’s civil rights complaint over the removal of good time credits. The ruling is unpublished.

Darryl E. Gholson sued the Nevada Department of Corrections (NDOC) and certain of its employees, alleging they took 48 days of his statutory good-time extra credits without notice or a hearing. He earned those credits as a work-crew member from January to June of 2015. Those credits were taken from him in October 2015, 30 days before his scheduled release, causing the release to be rescheduled.

NDOC filed a dismissal motion asserting Gholson had not made any personal allegations against NDOC officials while arguing he was not employed during his entire sentence and his release date was readjusted for that reason and also because he did not earn the amount of good time credits he potentially could have.

Thus, since he had no right to good time or employment, no liberty interest was involved.

Gholson did not file an opposition motion.

In the absence of such a motion the district court dismissed the suit holding “there was no Due Process violation regarding [Gholson] not being credited with good time credits, when he failed to obtain employment.” The court concluded Gholson had failed to state a claim relief may be granted on and had no constitutional right to prison employment or classification status.

Gholson appealed. His position was that NDOC’s pleadings referred to his subsequent 2017-2018 imprisonment and not the 2015 period he was suing over.

NDOC replied the lower court was correct in its dismissal of Gholson’s suit, even if the court’s reasoning was wrong. The failure of Gholson to file an opposition motion to NDOC’s dismissal motion was alleged to be an admission that NDOC’s position was correct and nothing was available for appellate review.

Exercising its power of de novo review, the appeal court found the lower court committed plain, unmistakable error with its rulings. The justices reasoned the civil rights platform Gholson used was built on inferred personal involvement by the NDOC’s named employees and his plainly worded complaint set forth facts that entitled him to relief. Also, under federal and Nevada case cites prisoners do have a liberty interest in good time credits if they had already earned them under state law, as Gholson had. Since he was suing for good time he had already earned that was taken from him without prior notice or a hearing to adjudicate it, his liberty interest was present and had been violated.

The court concluded its opinion stating that NDC’s arguments provided no basis for the lower court to dismiss Gholson’s suit, therefore the court’s dismissal was “clearly erroneous.” See: Gholson v. Nevada Department of Corrections, 2019 Nev. App. Unpub. LEXIS 589.

Additional source: nevadaappeal.com

California Three-Judge Court Denies Emergency Motion to Reduce Prison Population During Pandemic

by Christopher Zoukis

ON APRIL 4, 2020, A THREE-JUDGE court in the United States District Court for the Eastern District of California denied a motion seeking an order requiring the California Department of Corrections and Rehabilitation (CDCR) to immediately release specific categories of inmates due to the COVID-19 pandemic.

The decision came 5 days after California Gov. Gavin Newsom announced he would grant early release to 3,500 prisoners to try to check the spread of coronavirus among prisoners and employees at the state’s 35 prisons. Lawyers representing the governor told the court that Newsom was already taking “extraordinary and unprecedented protective measures” to fight COVID-19. “He feels like he’s in a Nazi Germany death camp,” the daughter of one prisoner told the Los Angeles Times. “They basically locked them all in the ‘sick’ dorm and are taking guys out with a high fever…An inmate in his dorm of 150 men just tested positive, so they put his entire dorm on lockdown. He can’t get bandages he needs for open sores from an autoimmune disease. He’s 72 and due out in August.”

The Emergency Motion to Modify Population Reduction Order, filed on March 25, 2020 by attorneys for the Prison Law Office and the law firm Rosen, Bien, Galvan, and Grunfeld, was an extension of two decades old lawsuits, now named Coleman v. Newsom (from 2001).

Coleman concerned CDCR’s failure to provide constitutionally adequate mental health care services to inmates with serious medical disorders. Plata involved CDCR’s failure to provide constitutionally adequate medical care. In response to these cases, a Special Master was appointed to oversee remedial efforts, and a Receiver was appointed to take control of the medical care system. At the time, the CDCR was required to reduce its population to 137.5 percent design capacity within two years, by 2011. Over the next nine years, the CDCR sought termination of the Special Master and Receiver.

With the rise of the COVID-19 pandemic, attorneys filed the emergency motion seeking an order requiring the CDCR to reduce its population density in crowded dorms and living spaces to a level that would “allow social distancing by releasing to parole or post-release community supervision all people who (a) are at low risk as determined by CDCR’s risk assessment instruments, or are serving time for a non-violent offense, or (b) are paroling within the year,” according to the Prison Law Office.

The motion also sought an order that the CDCR release or reallocate all incarcerated people at high risk of COVID-19. Specifically, attorneys sought the release or reallocation of “inmates who, because
of their age or other medical conditions, are at a high risk of developing a severe form of COVID-19,” according to court filings.

In considering this motion, the court highlighted that CDCR had started implementing “protective measures at least as of March 11, 2020.” Specifically, the court cited canceling visitation, distribution of hand sanitizer, and posting institutional educational flyers. The court also noted CDCR’s creation of a command center that can “make decisions and provide guidance quickly.”

In support of the court’s denial of Plaintiff’s motion, it cited California Governor Gavin Newsom’s issuance of an executive order directing “CDCR to suspend admissions of inmates to state custody for an additional 30 days” and CDCR Secretary Ralph Diaz’s announcement that the CDCR was accelerating the release of inmates with less than 60 days remaining on their sentence.

The court focused its analysis on whether the action was proper. First, the court noted that “the Prison Litigation Reform Act places significant restrictions on a federal court’s authority to order the release of prisoners as a remedy for a constitutional violation.” Then, the court stated that the relief sought was “not actually a modification of the 2009 order but rather new relief based on the new threat of harm posed by COVID-19.” Plaintiffs could not satisfy the prior order requirements because “there have not yet been any orders requiring Defendants to take measures short of release to address the threat of the virus; nor have Defendants had a reasonable time in which to comply.”

After a lengthy discussion of whether the court had the authority to alter the 2009 population reduction order, the court said that it did not in the case of the COVID-19 threat. Only modifications based on the “constitutional violations previously found by the Coleman and Plata courts” would be proper. The current pandemic was found to be outside the scope of the original litigation’s subject matter.

“[T]he impetus for the release order Plaintiffs seek is different from the overarching structural violations underlying the 2009 population reduction order,” said the court. “The specific harm Plaintiffs allege is not caused by constitutional shortcomings in Defendant’s ability to provide medical and mental health services.”

The court further explained, “That the harm Plaintiffs face is not dependent on the existence of a constitutionally inadequate health care delivery system is strong evidence that it is rooted in a significantly different underlying cause than what was before us in the prior three-judge court proceedings.”

Citing Federal Rules of Civil Procedure 60(b)(5) and the PLRA, the court held that since Plaintiffs’ motion seeks a release order to redress a different constitutional injury . . . relief cannot be granted through a modification” of the 2009 order.

The court denied the motion without prejudice and said Plaintiffs could bring their request for relief in an appropriate forum. See: Ralph Coleman, et al. v. Gavin Newsom et al., Marciano Plata, et al. v. Gavin Newsom et al., Case No. 01-CV-01351-JST, 2020 WL 1675775 (E.D. Cal.)

Additional Sources: PrisonLaw.com; LATimes.com
Arkansas Supreme Court Denies Prisoner Preliminary Injunction on Religious Issues

by Anthony W. Accurso

On June 6, 2019 the Supreme Court of Arkansas denied a prisoner’s appeal of a circuit court’s refusal to issue a preliminary injunction regarding Arkansas Department of Corrections (ADC) policies as applied to his free exercise claims as a follower of the Nation of Islam (NOI).

Malik Muntaqim filed suit against the ADC for denying him issues of NOI’s periodical, The Final Call, between 2013 and 2015 and because the ADC refuses to allow him to lead services specific to his faith. He brought these claims under the First Amendment to the U.S. Constitution and the Religious Land Use and Institutional Amendment to the U.S. Constitution, 490 US 401 (1989).

Thornburgh v. America West Airlines, 490 US 401 (1989), held that prison security concerns as decided in Thornburgh v. America West Airlines, 490 US 401 (1989), and Murph v. Mo. Dep’t of Corrections, 372 F.3d 979 (8th Cir. 2004). Further, the purposes of the appeal, the Court only addressed the First Amendment claims because Muntaqim failed to ask for findings from the circuit court regarding the RLUIPA claims.

After his first interlocutory appeal, the circuit court held a hearing to determine whether he could meet the two-factor test for a preliminary injunction. Those factors are “(1) whether irreparable harm will result in the absence of an injunction and (2) whether the moving party has demonstrated a likelihood of success on the merits.” See Muntaqim v. Hobbs, 2017 Ark. 97, Under Smith v. Am. Trucking Ass’n, Inc., 300 Ark. 594 (1989), Muntaqim bore the burden of demonstrating both factors.

Muntaqim asked the circuit court to require the ADC to allow him to receive NOI materials regardless of their content. The court found that the ADC had not denied any issues since 2015, and that the issues that had been denied contained language that encouraged readers to “rise up and strike out at their oppressors.”

The court determined that denial of those issues was reasonably related to prison security, which has been recognized as “the most compelling government interest in a prison setting” under Murphy v. Mo. Dept of Corr., 372 F.3d 979 (8th Cir. 2004). Further, prisons may limit incoming publications for security concerns as decided in Thornburgh v. Abbott, 490 US 401 (1989).

Muntaqim also asked the court to require the ADC to allow him to lead NOI-specific services. Muslim prisoners may currently attend weekly Friday Jumu’ah prayer services led by prisoners because it is a prayer-only service that does not include teachings.

The ADC’s chaplain testified that only credentialed volunteers are allowed to teach and lead services in order “to protect prison security and order by preventing the dissemination of unorthodox or heretical views to the respective religion or sect, which could result in violence.”

Muntaqim currently refuses to attend Jumu’ah, stating it is against his faith to worship next to orthodox Muslims who refuse to recognize the NOI. The court found this policy reasonably related to prison security interests under Murphy.

The Supreme Court of Arkansas reviews interlocutory appeals of preliminary injunctions merely for abuse of discretion, which occurs only when the decision is made “thoughtlessly and without due consideration.” The Court determined the circuit court’s refusal considered all the applicable issues and applied the proper precedent regarding the priority of prison security.

Accordingly, the Supreme Court of Arkansas upheld the circuit court’s refusal of a preliminary injunction requested by Malik Muntaqim regarding the ADC’s policies. See: Muntaqim v. Lay, 2019 Ark. 203 (Ark. 2019). [5]

Federal Court Grants Default Summary Judgment in Favor of Indiana Prisoner as Sanction for State’s Lies

by Dale Chappell

In a rare move, the U.S. District Court for the Southern District of Indiana on January 3, 2020 granted default judgment in favor of a prisoner who sued Wabash Valley Correctional Facility, after prison staff and the Indiana Attorney General’s (AG) Office “blatantly” lied to the Court and refused to turn over evidence that exposed their falsities.

The prisoner, Phillip Littler, who acted pro se for much of the lawsuit, sued Wabash Valley guards for the use of excessive force committed on December 27, 2015. On that day, they shot him in the face with a pepper-ball gun and sprayed him with pepper spray when he refused to submit to a strip search, which he said was a ruse to humiliate him. He suffered a head injury, including a possible broken nose.

In response to Littler’s lawsuit, the AG Office represented prison staff and moved for summary judgment, arguing that Littler’s claims had no basis and that there were no material facts in dispute that would warrant further action by the Court. In support of the summary judgment motion, the State offered sworn statements by guards that Littler’s claims were not only baseless, but that the guards had nothing to do with the attack. Furthermore, the State argued that while the use of force was video recorded, it showed nothing but the backside of a guard.

The state gave Littler access to that video, but when he asked for the range video from the overhead cameras that recorded the whole unit — and which showed the pepper-ball gunshot — the state said that video had been recorded over. This was false. Littler proved this by obtaining prison staff emails that said the range video was preserved.

Littler did this through the discovery process, whereby the State must turn over evidence requested and not make any attempts to destroy it, lest it face sanctions. When the video was handed over, the Court denied summary judgment, finding that a factual dispute existed, which precluded summary judgment in favor of the state.

Additional source: phocommercial.com
Several hearings were held on Littler’s motions for sanctions against the state defendants for lying to the Court and covering up the video evidence. What was revealed at those hearings “disturbed” District Judge Jane Magnus-Stinson.

Numerous false statements by prison staff amounted to what Judge Magnus-Stinson called “gross misconduct,” which their lawyer, Amanda Fiorini, of the Indiana Attorney General’s Office had allowed. What bothered her, she said, was that the state did this as an attempt to prevent Littler, a pro se prisoner, from having his claims heard in court. The judge made no reservations in her statements about why she was imposing sanctions:

“In almost every prisoner civil rights case, the State Defendants and their counsel know that the pro se plaintiff will only be able to rebut their evidence with his own lay testimony and whatever evidence they provide during discovery. Prisoners rarely are able to conduct depositions, and untestable or untested defense affidavits are almost always the foundation of a defense motion for summary judgment. Under these circumstances, it is paramount for the Court to be able to trust that the information and sworn statements provided by defendants are truthful. This case has shattered that trust.”

The Judge then proceeded to impose severe sanctions on the State. She noted that the State had asked the Court to ignore the rules and commit an “obvious legal error” by asking for summary judgment when it knew it wasn’t entitled to it. She also noted that State counsel “rarely make such a request when the plaintiff is not a pro se prisoner.” Under the summary judgment rule, there has to be no dispute of a material fact. The Court found that the state had purposely covered up a dispute of the facts to falsely seek summary judgment.

A district court has the power to issue sanctions, which includes the severe and rare sanction of default judgment in favor of a party. This essentially means that the party automatically wins the case, which is what happened for Littler. “Perjury is among the worst kinds of conduct,” the Court said.

In addition to the default sanction, the Court ordered Fiorini to take at least six hours of legal education classes. The Court found that she was not solely at fault: She was a new attorney who had learned her methods by observing other attorneys at the Attorney General’s Office. The Court also ordered that every attorney for the Office attach a discovery certification to their filings in all prisoner civil rights cases for the next two years.

“Unfortunately, Ms. Fiorini’s approach in this case is not unique,” the Court said. “It is an all-too-common path for attorneys litigating against pro se plaintiffs,” filing for summary judgment in hopes that the court will grant it without much thought. “This case has significantly undermined the Court’s confidence that certain defendants and their counsel in pro se prisoner civil rights cases are litigating in good faith,” the Court stated in concluding its 75-page opinion.

Accordingly, the Court ordered the sanctions imposed against the State and submitted the case to a magistrate judge for a settlement conference. The Court declined to refer the case to the U.S. Attorney’s Office for investigation into charges of perjury, but said that Littler’s counsel could. See: Littler v. Martinez, U.S.D.C. (S.D. Ind.), Case no. 2:26-cv-00472.
**Suit: Mississippi Man Sentenced to Two Days Hangs Himself After Jail Kept Him 52 Days Longer**

*by Douglas Ankney*

After he lost work and was unable to pay a fine, Robert Wayne Johnson was sentenced to the Keller Neshoba Regional Correctional Facility (KNRCF) in rural Kemper County, Mississippi, on November 16, 2017. The father of five had struggled with mental health problems, including two suicide attempts. Though his sentence was just two days long, he was still in jail 54 days later, when he hanged himself with his shoelaces and died on January 8, 2018.

On September 30, 2019, his widow, LaToya Johnson, filed suit against Kemper County, the Kemper County Sheriff’s Office (KCSO), and several correctional officers. Her suit alleges that her husband was unlawfully held past his release date, was not provided with mental health care, and was not properly monitored after he became suicidal.

According to his widow, Johnson — a Meridian resident who had worked at the city library, East Mississippi State Hospital and Tower Automotive — had been institutionalized at least twice. The suit alleges that his mental health issues were ignored by KNRCF employees, in spite of his history and repeated warnings from other prisoners that Johnson had been tying shoelaces around his neck in the days prior to his death. They said he had begun to panic when he wasn't released and feared he had been mistakenly sentenced on a felony charge.

Hours before he died, Johnson slit his wrists. He was bandaged, but almost immediately got into an altercation with another prisoner who had reported the suicide attempt. He was then allegedly placed in an unmonitored segregation cell, where he hanged himself 14 minutes later.

“This case demonstrates how too many people who need to be receiving community-based mental health services instead wind up in local jails where officers are not adequately trained to provide the care and protection required by law,” said Cliff Johnson, director of the MacArthur Justice Center at the University of Mississippi School of Law, who filed the suit on behalf of Johnson’s widow.

“Jail is not therapy. It is not where they belong,” agreed Kemper County Sheriff James Moore.

Recent statistics show the suicide rate in local jails is 2.5 times the rate in state prisons and over three times the rate in the general population. According to the federal Bureau of Justice Statistics, suicide is the leading cause of death in local jails.

**How Prepared Are State Prison Systems for a Viral Pandemic?**

*by Emily Widra and Peter Wagner, originally published April 10, 2020 at the Prison Policy Initiative website*

Since the Prison Policy Initiative’s first coronavirus briefing at the beginning of March, the organization has been tracking how federal, state, and local officials have responded to the threat of COVID-19 in the criminal justice system. A number of jurisdictions have taken quick and laudable actions to protect the most vulnerable justice-involved people, including reducing the number of arrests and bookings, releasing people held pretrial, reducing admissions to state prisons, and suspending medical copays in most states. This article assessing the state of preparation in the state prison systems for the pandemic was released on April 10. Some of the details in particular states will have changed by the time it appears in print, but the overall thrust that state prison systems wasted critical time will remain true—Editor.

Many local jails and pretrial systems are taking action to reduce their populations in advance of the COVID-19 pandemic, but state prison systems are not, raising the question: Are state prisons prepared to handle a pandemic within their walls? We set out to survey prison systems on the capacity of their health facilities, their plans for any necessary external hospitalizations, their levels of equipment, their staffing levels and their general priorities.

Unfortunately, our April 3-10 survey shows that state prisons are still largely unprepared for a global pandemic that can reasonably be expected to hit their entire state prison system — and their supporting state government — all at the same time. Most prisons are still aiming to keep the virus out of their facilities, rather than focusing on how to minimize the harm to incarcerated people, to their staff and to society as a whole. Containment might be a reasonable goal when it comes to outbreaks of flu, tuberculosis, or MRSA — diseases that prison systems know how to guard against by vaccinating people, screening, and so on. But COVID-19 is different both in terms of how it spreads and by the fact that it is already spreading in the public hospital system that state prisons historically rely on for back-up support.

Given the number of large number of staff required to run a facility and the apparent ease with which asymptomatic people can infect others, no combination of security restrictions — such as suspending family visitation, checking the temperature of incoming staff, or confining the entire population to their cells — can keep out the virus that causes COVID-19 for long. (To roughly estimate the number of staff that go in and out of a facility each day, one can divide the incarcerated population by 4.6 for jails and 4.7 for prisons.) And once the virus enters a facility, the density and lack of sanitation will allow it to spread quickly to all incarcerated people and staff, and will accelerate the spread to the surrounding community.

Ideally, state prisons’ first response to the pandemic should have been to do like many jails and reduce the number of people incarcerated. But at the very least, we expected to see them developing plans that acknowledged the inevitability of a COV-
expected correctional departments to have a ratio of correctional officers to patients, we expected that they were preparing for the inevitable: a positive COVID-19 outbreak, and thus does not require the usual 2:1 ratio. We hoped prisons could tell us how they would secure sufficient equipment and supplies, and how they will respond when supplies run out or when hospitals refuse to admit. (For example, there is already a shortage of COVID-19 tests, restrictions on who can be tested, and personal protective equipment (PPE) for medical professionals is already in short supply.) This planning, unfortunately, was largely absent.

Given the rate of infection and the length of hospitalization for severe cases of COVID-19, it is reasonable to assume that facilities will encounter staffing shortages and that plans need to be in place for making sure the essential services behind bars continue in the face of staff calling out sick (i.e. food, medical care, telephone access, etc.). Given that most correctional staff are already stretched thin, departments should have begun planning for a staffing shortage weeks ago by reducing the number of people incarcerated and reducing the burden on staff. Most departments did not, but we still expected that they were preparing for the medical challenge created by that inaction.

The responses we received were largely disappointing. Rather than developing plans to mitigate the harm of an inevitable outbreak, most states are still focusing on restricting the movements of incarcerated people within facilities — in other words, attempting to “contain” the virus, which is all but impossible with COVID-19.

ID-19 outbreak and its unique challenges. Their plans should anticipate the need to isolate vulnerable people, work around staffing shortages, and navigate shortages of medical supplies and hospital beds. But except for a few notable exceptions — particularly North Dakota — most states have not even gotten that far.

The good news is that in some states, the spread of the virus is several weeks behind other states, so some of the states that are the least ready still have the potential to learn from other states and improve their planning.

The state of pandemic planning in state prisons

In our survey of state Departments of Corrections, we sought to gather more information about how states are preparing for the pandemic to breach the prison gates. We asked about five major topics of pandemic preparedness:

- the capacity for isolating particularly vulnerable individuals and quarantining people with suspected cases of COVID-19 within facilities,
- protocols for people requiring hospitalization,
- equipment (including ventilators, medical-grade PPE, COVID-19 tests) accessible to facilities,
- anticipated staffing changes and availability of healthcare staff within facilities, and
- what the most immediate priorities are in planning for a COVID-19 outbreak in correctional facilities.

We hoped to hear from each state that steps were being taken to prepare facilities to navigate the inevitable: a positive COVID-19 test among the hundreds of people living in close proximity to one another in prison. We expected each facility to have designated cells, units, or wings that could be easily isolated from the rest of the facility to allow either isolation of people who are particularly vulnerable to complications from COVID-19, or quarantine of people who test positive for COVID-19.

Given the March 23rd recommendation from expert Dr. Homer Venters (published in The Hill) that facilities establish a plan for hospitalizations that recognizes that staff will be in short supply, and thus does not require the usual 2:1 ratio of correctional officers to patients, we expected correctional departments to have established new pathways and protocols for hospitalization.

We also expected that because prisons have finite resources for respiratory support (such as oxygen), facilities would have realistic plans to transfer people to hospitals while protecting staff from exposure. We hoped prisons could tell us how they would secure sufficient equipment and supplies, and how they will respond when supplies run out or when hospitals refuse to admit. (For example, there is already a shortage of COVID-19 tests, restrictions on who can be tested, and personal protective equipment (PPE) for medical professionals is already in short supply.) This planning, unfortunately, was largely absent.

Given the rate of infection and the length of hospitalization for severe cases of COVID-19, it is reasonable to assume that facilities will encounter staffing shortages and that plans need to be in place for making sure the essential services behind bars continue in the face of staff calling out sick (i.e. food, medical care, telephone access, etc.). Given that most correctional staff are already stretched thin, departments should have begun planning for a staffing shortage weeks ago by reducing the number of people incarcerated and reducing the burden on staff. Most departments did not, but we still expected that they were preparing for the medical challenge created by that inaction.

The responses we received were largely disappointing. Rather than developing plans to mitigate the harm of an inevitable outbreak, most states are still focusing on restricting the movements of incarcerated people within facilities — in other words, attempting to “contain” the virus, which is all but impossible with COVID-19.

Even worse, some state departments of corrections informed us that no changes to their existing medical capacity were needed, suggesting that their established medical facilities and staff were sufficient to combat a disease that is overwhelming entire city infrastructures across the nation. Other states notified us that because no positive cases had occurred in their prisons, many changes have not yet been implemented. A number of states referred us back to their websites, which while providing up-to-date information on some aspects of their COVID-19 response, did not answer the specific questions about policy and planning changes in the past few weeks.

The good news is that many states still have time to do a far better job. At this point, on April 10, state Departments of Corrections need to be focused on mitigating the disastrous consequences of the COVID-19 pandemic entering prisons, rather than sticking to the belief that their high prison walls can effectively keep a global virus at bay.

Emily Widra is a Research Analyst at the Prison Policy Initiative.

Peter Wagner is Executive Director of the Prison Policy Initiative.

The original April 10 version of this article — including a link to the (now likely outdated) responses from each state — is at www.prisonpolicy.org/blog/2020/04/10/prepared/.
Emergency Cancellation of Attorney Visits Subject to Court Oversight
by David M. Reutter

On March 20, 2020, the Second Circuit Court of Appeals reversed the dismissal of a lawsuit challenging the cancellation of lawyer-client visits at the Metropolitan Detention Center-Brooklyn (MDC). The court urged a quick resolution in the district court with a mediator to deal with access to counsel during “ongoing and future emergencies, including the COVID-19 outbreak.”

MDC houses more than 1,600 persons, most of whom are pretrial detainees. It is operated by the Bureau of Prisons (BOP). In January 2019, a series of events resulted in limited access to MDC detainees by the Federal Defenders of New York.

First, visitation was canceled for seven days due to a government shutdown. Then, a fire at the facility resulted in visit cancellation from January 28 through February 2. Four hours after visitation was restored on February 3, it was canceled due to a confrontation with BOP officials and persons in MDC’s lobby. BOP “stonewall[ed]” the Federal Defenders’ requests to seek information on conditions within MDC and the reasons for the visitation cancellation.

The Federal Defenders filed suit on February 4, 2019, alleging the suspension of attorney visitation violated the Administrative Procedures Act (APA) and the Sixth Amendment. The district court dismissed the action on March 1, on grounds the Federal Defenders could not state a cause of action under the zone-of-interests inquiry.

The Second Circuit, on appeal, rejected BOP’s argument that the Federal Defenders lacked standing. The court found that the circumstances that disrupted attorney-client visits at MDC “are all too likely to recur” in light of “recent public health-related developments,” in a reference to the coronavirus pandemic. While the Warden has the authority to close a facility in an emergency, a court can “establish the legal boundaries that limit such a closure.”

The BOP’s regulations concerning attorney visits was the determining factor. The Second Circuit noted that agencies are bound to adhere to their own rules. It held that when such rules are at issue, “the applicable zone of interests includes, at a minimum, those protected or regulated by the agency rule that the plaintiff says was violated.”

The Federal Defenders “squarely fell within the zone of interests to be protected and regulated by three BOP regulations on inmate-attorney visits that Defendants allegedly violated.” The court further found the Sixth Amendment claim was a “cause of action in equity.” That claim raised “a host of unfamiliar and thorny legal issues.” The matter was remanded for the district court to resolve all the issues in the first instance.

The Second Circuit noted that neither party exhibited a willingness to participate in mediation. The district court was urged to expedite the process to assure the parties, both of “whose common interest is to serve the public,” achieve a satisfactory resolution. The district court’s order was vacated and “mandate shall issue forthwith.” See: Federal Defenders of NY, Inc. v. Federal Bureau of Prisons, 954 F.3d 118 (2nd Cir. 2020)

Undisclosed Settlement in Kentucky Case a Textbook Case of Negligent Privatized Prison Medical Care
by David M. Reutter

The provision of medical care is an expensive proposition regardless of whether a citizen or prisoner is in need of care. Tight budgets have pushed many jails and prisons to turn to prison profiteers to provide medical and mental health care to detainees and prisoners. When privatization is adopted, it is hailed as a means to save taxpayer dollars by setting a cap on the costs and moving liability to the private vendor.

The human suffering that medical privatization causes is highlighted only when there is a huge settlement or someone dies. As PLN has chronicled over nearly three decades, privatization is wrought with understaffing, a lack of basic treatment, and the avoidance of referrals to specialists or an outside hospital. For private vendors, every dollar saved is another dollar in profits. Lawsuits and the few cases that result in a settlement are just the cost of doing business.

An August 2019 undisclosed settlement in a lawsuit at Kentucky’s Grant County Detention Center (GCDC) is a perfect case study in all that is wrong with privatized prison medical care. In 2009, GCDC entered into an agreement with the Department of Justice (DOJ) to remedy unconstitutional conditions of confinement, including the delivery of medical care. Over the next seven years, DOJ inspected GCDC on several occasions, and each time it found the delivery of medical care was below minimum constitutional standards.

Michelle Kindoll, 43, was arrested for heroin possession and booked into GCDC on May 5, 2015. It was noted at booking that she was a heroin addict and expected to experience withdrawal symptoms. She suffered such symptoms, and on May 18 she began experiencing symptoms of a stroke.

For the next three days, “she suffered numbness in her right leg, difficulty holding her eye open, overall weakness, inability to walk, memory loss, inability to talk, and other symptoms,” Kindoll’s civil rights complaint alleged.

When a guard contacted nurse Debbie Preston, who worked for GCDC’s medical vendor Southern Health Partners, to report that Kindoll could not feel her leg, Preston said “OK” but did not assess Kindoll. For the next three days, “she suffered numbness in her right leg, difficulty holding her eye open, overall weakness, inability to walk, memory loss, inability to talk, and other symptoms,” Kindoll’s civil rights complaint alleged.

When a guard contacted nurse Debbie Preston, who worked for GCDC’s medical vendor Southern Health Partners, to report that Kindoll could not feel her leg, Preston said “OK” but did not assess Kindoll.

The DOJ repeatedly noted the need to appoint a physician medical director at GCDC to ensure medical staff were properly trained and supervised in providing proper care. That was never done, so nurses were allowed to deliver care without a physician’s supervision.

Two days after Kindoll began exhibiting stroke symptoms, Preston allegedly misinterpreted the results of a neurological test and failed to record vitals. Preston cleared Kindoll to be placed in isolation despite the fact Kindoll said she couldn’t...
feel her leg and her arm was curling up at times.

Kindoll’s efforts to obtain medical care by knocking on her cell door was reported by guard Jessica Helton as “hindering jail operations.” The next day, May 20, Kindoll fell on the way to the shower, but was still escorted to it despite dragging her right leg. She was unable to stand, talk or get dressed when guards returned 20 minutes later, but she was merely placed back into her cell 40 minutes later without medical care being summoned.

Finally, on May 21, and after three days of exhibiting stroke symptoms, Kindoll was taken to a hospital, where she “suffered a series of cerebrovascular accidents and a serious stroke.” After her release, she “experienced a difficult rehabilitation period and still suffers memory loss, difficulty speaking, and serious mobility loss.”

Once privatized medical care is implemented into a facility, the private vendor and its staff often become the gatekeepers when detainees present acute medical conditions. At GCDC, Kindoll never saw a doctor and one was never informed of her condition. Companies such as Southern Health Partners can save money by putting nurses in charge, and lawsuits are either paid by an insurance company or billed as a business expense.

For persons like Kindoll, it means a life of disability, and as PLN has reported, it has resulted in death for others in similar situations. Is saving taxpayer dollars when such inhumane treatment is the result the mark of an ever-evolving civilized society? See: Kindoll v. Southern Health Partners Inc., et al., U.S.D.C. (E.D. Kentucky), Case No. 2:17-cv-00084.

Additional source: Cincinnati Enquirer

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**Illinois Supreme Court: Settlements with Private Companies When Contracted for Government Service Are Public Record**

*by Kevin Bliss*

The Illinois Supreme Court on December 19, 2019 held that settlement agreements reached by private contractors, if directly related to the services they provide, are public record. It said the plain language of the Freedom of Information Act (FOIA), when viewed in light of legislative intent, showed that it was created to ensure that governmental entities could not avoid disclosure obligations by contracting services to private companies.

Illinois Times journalist Bruce Rushton filed a FOIA request in August 2015 concerning a wrongful death settlement between the Illinois Department of Corrections (IDOC) and the estate of Alfonso Franco, who died due to the substandard care of his contracted healthcare provider, Wexford Health Sources, Inc. IDOC agreed with Rushton and requested the documents be turned over by Wexford, which refused. Rushton and the Illinois Times filed suit in April 2017.

The lower tribunal granted summary judgment to Wexford, agreeing that the document did not directly relate to the governmental service the company performed, and that section 2.20 of FOIA exempted private contractor settlement agreements. (See PLN, June 2019.)

Rushton and the Times appealed, and the appellate court reversed the summary judgment. Wexford then petitioned the Illinois Supreme Court for review. It held that, foremost, in cross summary judgments both parties agree to the material facts of the case, so the only question remaining is whether the out-of-court settlement agreement concerned a governmental function performed by Wexford in accordance with its contract.

The Court disagreed that Wexford’s arguments were dispositive. Section 2.20 did not distinguish private companies performing contracted services from public bodies. In fact, section 2.20 was written to clarify that settlement agreements of contracted private companies were not included among the exempt documents that do not directly relate to the governmental function for transparency and accountability purposes.

The settlement agreement in question concerned the quality of health care received while in IDOC custody. The Court quoted the opening section of the FOIA, which stated, “Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.” See: Rushton v. Department of Corrections, S. Ct. IL, Case No. 124552 (2019).

Additional source: illinoistimes.com

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**A CARING HAND UP TO RECENTLY PAROLED AND RELEASED INMATES**

**IN BEAUTIFUL SANTA BARBARA COUNTY CALIFORNIA**

Our Rehabilitative Reentry Housing Program (formerly known as Transitional Housing) allows you the client to reside in a comfortable environment with all the amenities of home life: Meals, Entertainment, Recreation, as well as Counseling, Therapy and Educational opportunities! D&J’s Tradesmen® Employment Agency provides training support in Home Renovations, Auto Detailing, Handyman Services, Mobile Mechanics, and Food/Catering Services.

Begin the process of healing with work, D&J’s support and financial independence.
In 1974, the U.S. Supreme Court ruled that jail detainees who are under no voting disability — which essentially means that they have not yet been convicted of a felony and lost their right to vote — must be allowed the opportunity to vote pursuant to the equal protection clause of the Fourteenth Amendment. But Arizona, and in particular Maricopa County, still doesn’t get it. Of the approximately 14,000 people in Arizona jails, about 60% are eligible to vote.

In 2020, a coalition composed of voting advocates, public defenders and people who were previously incarcerated, are trying to ensure that these people are allowed to vote, starting with Maricopa County.

During the 2008 election cycle, Joe Watson was in jail in Maricopa County but had not yet been convicted of a felony. When he asked guards for a ballot, he was laughed at. In a March 16, 2020 story, The Intercept quotes Watson as saying, “They just ignored me. There was nothing I could do. I was just denied my right to vote.”

During the 2018 midterms, Yonas Kahsai was in jail in Maricopa County and still legally able to vote. While in jail, he asked for an absentee ballot. First he was told he couldn’t have one, but then that decision was reversed.

Nevertheless, Kahsai never received his ballot. He later learned that it had arrived in the mail, but he never got it because it was too big, according to the Maricopa jail’s mail-size limitations. The coalition has created a three-page policy of procedures it would like to see adopted, which includes having election-related mail marked as “legal mail,” to eliminate problems like one that disenfranchised Kahsai.

If you can afford bail, you probably won’t be in jail awaiting trial during an election. It’s mostly those who can’t afford bail who will be there. Blacks and Native Americans in Arizona are often unable to pay bail, and so they are overrepresented in jail populations.

The Intercept quotes Dana Paikowsky, a legal fellow at the Campaign Legal Center, as saying, “These are exactly the kinds of voters that our system has excluded through the course of American history. In Arizona and across the country, the vast majority of people in jails are there because they cannot afford to pay bail. Which means that in the case of voting, your bail functions like a poll tax: ‘The only thing preventing you from accessing the ballot is an ability to pay.’”

The Intercept contacted all 15 counties in Arizona and asked about their plans for Election Day. Only eight responded. Of those, only Gila County and Yuma County had some plan for ensuring that inmates were aware of their right to vote. They will be putting up flyers and posters, and will facilitate voting via absentee ballot. Two other counties said they tell prisoners about voting during intake.

Source: theintercept.com

Mass Incarceration, Meet COVID-19

Opportunity to release prisoners with little public safety risk is clear

by Sharon Dolovich

Most of America’s 2.3 million prisoners cannot practice social distancing. They are packed into overcrowded facilities, living, sleeping and bathing within feet—sometimes inches—of each other. What’s more, they often lack sufficient basics, including soap, warm water and clean towels, let alone hand sanitizer. Unless radical action is taken, many thousands of people inside—staff and prisoners alike—will needlessly die.

The radical action required—the only one that can prevent massive unnecessary loss of life—is reducing the population of jails and prisons. Efforts in this direction have begun in many jurisdictions. But the steps taken so far are not nearly enough, not by a long shot. All public officials with release authority—including sheriffs, prosecutors, judges, corrections officials, parole boards, and governors—need to step up and immediately find ways to release as many people as they can before the virus strikes. In doing so, they have the opportunity to save thousands of lives and to begin the long overdue process of ending the costly, inhumane and counterproductive project of mass incarceration.

In the 1970s, the size of the American prisoner population was roughly on par with other Western democracies. Yet starting in the 1980s, the U.S. became the world’s biggest jailer, jamming incarcerated people into dormitories and doubling them up in small cells in open disregard for their health and wellbeing.

There was a time, beginning in the mid-1970s, when federal courts confronting dirty, decrepit and crowded prisons and jails readily found conditions unconstitutional and ordered states and municipalities to reduce their prisoner populations. But when President Clinton joined with Congress to enact the Prison Litigation Reform Act, the power of the federal courts to issue such orders was drastically curtailed.

In the mid-1980s, 43% of the national jail population and 27% of the prison population were housed in facilities with court-ordered population caps. By 2006, these numbers had dropped to 11% and 2% respectively, undermining a key check on overcrowding.

Today, harsh conditions and often grossly inadequate health care leave many prisoners medically compromised. In California prisons alone, an estimated 17,000 people—14% of the state’s prison population—suffer from chronic diseases, including cancer, end-stage liver disease, acute asthma, diabetes, hypertension, and kidney conditions requiring dialysis.

Long before COVID-19 struck, some jurisdictions had made moves toward decarceration. The federal prison population is down 20% from its historic 2014 high of almost 220,000. From 2006 to 2016, New York’s prison system shed 10% of its population. In 2016, the New Jersey Department of Corrections held 37% fewer people than it did at its height in 1999. Some local jurisdictions have gone still further.

Thanks to bail reform and other strate-
gies, the population of Chicago’s Cook County Jail has dropped by more than half since 2005. In Rikers Island, the population is down more than two-thirds from a decade ago. Still, these facilities are outliers, and, as the fast-growing number of confirmed cases in both institutions makes crystal clear, even they remain too crowded and too full of people in the highest risk groups to avoid the devastating effects of the virus.

But crisis is opportunity. As the COVID-19 threat has grown, something is happening that was unthinkable just six weeks ago: government officials are letting people out. UCLA Law School has created a public database to track coronavirus-driven policy changes all over the country, and it shows conscientious officials rediscovering decarceral powers they had forgotten they had.

Officials in Fort Worth, Texas have suspended arrests for minor offenses. The jail in Oakland, California sent home 314 suspended arrests for minor offenses. The New Jersey Supreme Court ordered the release of anyone in jail on a probation violation or for a minor offense.

In West Virginia, prison officials are releasing parole violators and extending weekend furloughs and are actively looking for other levels to pull. Corrections commissioners in Iowa, North Dakota, Rhode Island and other states are seeking to expedite parole releases and to shift people to community placement.

Some officials are driven by fear that prisoners with COVID-19-induced respiratory distress will be sent to local hospitals and monopolize scarce ventilators. But whatever the motive, no one is racing to release anyone dangerous. Nor need they do so to quell this crisis.

For decades, we have incarcerated hundreds of thousands of people who pose little public safety risk. Many people in custody right now committed nonviolent crimes. Many others, although having once committed more serious crimes, are fully ready to be productive, law-abiding citizens. Many more are elderly and sick and need medical or hospice care, not bars and handcuffs.

COVID-19 is already moving through prisons and jails across the country, and confirmed cases are growing exponentially. As of this writing, in Rikers, 441 staff and 287 residents have now tested positive. At Oakdale, a low-security federal prison in southwest Louisiana, at least six prisoners have already died. These numbers, along with all reported positive cases and COVID-19-induced deaths inside, are almost certainly undercounts. In every facility, once the virus takes hold, it will spread quickly. Untold numbers of people will die, effectively sentencing them to the death penalty, whatever their crime.

Every public official with the power to decarcerate should exercise that power now, to the fullest extent. If they do, they will save countless lives, including those of staff. And in the process, they may show us by example how to begin, finally, to dismantle mass incarceration for good.

Sharon Dolovich is a professor of law and director of the UCLA Prison Law and Policy Program. She is currently spearheading the UCLA Covid-19 Behind Bars Data Project, which is keeping track of developments related to COVID-19 in prisons and jails nationwide. An earlier version of this story appeared in The Appeal.
Multiple Indictments, Prison Sentences, for Guards and Officials at Violence-Plagued Cleveland Jail

by Ed Lyon

The year 2019 was a busy one for a grand jury in Cuyahoga County, Ohio. Indictments were handed down for seven guards, a former associate warden and a former director of the county’s jail, located in Cleveland. They are among 11 current and former jail staffers to face criminal charges following a probe into prisoner mistreatment and corruption by the Ohio Attorney General’s Office, with the aid of agents from the Federal Bureau of Investigation (FBI).

The cases date back to 2018, during which eight prisoners died in the severely overcrowded lockup. An investigation released that year by the U.S. Marshals Service (USMS) found the jail’s conditions inhumane, with a pattern of abusive behavior by guards including:

• withholding food as punishment,
• excessive use of force, and
• threatening those giving interviews to jail investigators.

As a result, one Cleveland judge has refused to sentence any non-violent convicts to serve time there.

Here’s a timeline of events and the main players:

February 2018: Two Guards Charged in Detainee Beating

Former guard John Wilson was charged with felonious assault on detainee Joshua Castleberry, who suffered a broken nose and lost several teeth in an encounter with Wilson after complaining about a sandwich. Wilson was also charged with interfering with Castleberry’s civil rights by refusing to allow jail medical staff to treat him. On September 25, 2019, a jury deadlocked on those charges and acquitted Wilson of unlawful restraint. At the same trial, jurors acquitted guard Jason Jozwiaik of interfering with Castleberry’s civil rights and falsification.

Adam Chaloupka, a lawyer with the Ohio Patrolmen’s Benevolent Association, said that guards have “a dangerous job” and deserve “wide latitude to sometimes use force in pursuit of their duties.”

“Jason’s been defamed,” declared attorney W. Scott Ramsey. “He hopes he can get his job back.”

July 2018: Two More Guards Charged in Another Detainee Assault

After jail surveillance video captured guard Robert Marsh securing detainee Chantelle Glass to a restraint chair and punching her in the face, he was fired and charged with assault. Fellow guard Idris-Farid Clark, who stepped in to discharge a 6-second stream of pepper spray directly into Glass’ eyes from a distance of mere inches, was also fired and indicted on assault charges.

Clark was also charged with evidence tampering and extortion after he allegedly obtained copies of video surveillance capturing a use-of-force incident involving another guard, and an FBI agent recorded a call during which Clark used the tapes to extort favorable testimony for himself. Marsh, who cooperated with investigators, pleaded guilty on November 18, 2019 and was sentenced to 30 days on March 10, 2020. Clark also pleaded guilty, and he was sentenced the same day to 18 months in prison.

August 2018: Warden Demoted, Sacked with Guard After Detainee Overdose Death

After an overdose left 47-year-old detainee Joseph Arquillo dead, warden Eric Ivey ordered a guard to turn off his body camera during the investigation. Ivey, a 28-year jail veteran, was charged with submitting a false report and demoted to associate warden in February 2019. The 2018 USMS report singled him out for special opprobrium. He pleaded guilty on October 3, 2019, and was given a $2,000 fine and a probated sentence in exchange for his ongoing cooperation with investigators and prosecutors.

One of those cases involved guard Martin Devring, who was on duty when Arquillo died. He was captured in surveillance video reading a newspaper while Arquillo writhed in agony nearby for nearly two hours until medical help arrived. Devring pleaded not guilty on October 3, 2019. His trial was set for February 2020 but was postponed until June 8.

November 2018: Jail Director Quits

On November 14, 2018, jail director Ken Mills abruptly quit, just a week before USMS released its report finding jail conditions inhumane. He was indicted on two counts of dereliction of duty, a second-degree misdemeanor.

He is also accused of lying to a Cuyahoga County Council committee in a May 22, 2018, meeting when he tried to block hiring nurses at the jail. Just a few weeks later, the jail recorded the first of that year’s deaths.

Mills, who had no previous corrections experience before he was hired in 2015, was paid $120,000 a year. He pleaded not guilty to the charges on October 24, 2019. His trial date has been delayed by the coronavirus pandemic.

March 2019: Two Guards Beat Mentally Ill Detainee

On March 22, 2019, after securing mentally ill detainee Terrance Debose in a restraint chair, guard Nicholas Evans turned off his body camera. But jail surveillance video kept recording as he and guard Timothy Dugan dragged the chair into a cell. There, Evans, 35, allegedly punched the 47-year-old Debose six times in the face with closed fists. Dugan, 40, reportedly struck Debose twice in the face, also with closed fists. The guards then left the concussed and bleeding Debose restrained in the chair and alone for a two-hour period.

“Inmates do not surrender their human dignity along with their freedom,” said Ohio Attorney General Dave Yost. “These two men abused their authority to pound a prisoner strapped to a chair. We wouldn’t stand for a dog to be treated like that – let alone by someone exercising the authority of the State.”

On October 15, 2019, Evans pleaded guilty to attempted felony assault and evidence tampering charges. He faced a maximum six-year prison term. He refused to cooperate with investigators on other jail-related cases. Dugan pleaded guilty at the same time to lesser charges of attempted abduction and misdemeanor assault. He faced a maximum two-year term. Unlike
Evans, Dugan cooperated with investigators on other jail-related cases.

Debose’s attorney, Paul Cristallo, called it “unfathomable” that neither guard was disciplined. Both were placed on unpaid leave initially, but later resigned. On February 26, 2020, Evans was sentenced to nine months; Dugan got 10 days in jail.

Three Other Guards Charged with Moving Contraband

Guard Brian Price had been on the job six months when video surveillance captured him giving his iWatch to convicted home invader Roderick Gilcrease in November 2018, just a week after the prisoner was acquitted on a murder charge stemming from a gas station shoot-out that left a 26-year-old man dead. Gilcrease was convicted on lesser charges in that incident.

Price denied giving the watch to Gilcrease. He also claimed he removed the watch because it restricted his circulation, and he is diabetic. But he agreed to enter a diversion program that will wipe his record of the charges.

In a more serious case of contraband, guards Stephen Thomas and Marvella Sullivan, along with prisoner Lamar Speights, were indicted in September 2019 on charges they ran a drug ring inside the jail. The guards allegedly smuggled cellphones, vape pens and drugs — including heroin, fentanyl and marijuana — in exchange for cash payments delivered by Speights’ sister and the girlfriend of another jail prisoner.

The investigation that snared the two guards began after the January 2019 overdose of prisoner Kelly Angle, who allegedly received drugs they smuggled. Both guards resigned. No trial date has been set.

Sources: businessinsider.com, cleveland.com, news5cleveland.com, vice.com

Another Prisoner Dies at Tennessee Prison Run By CoreCivic

by Matt Clarke

The September 14, 2019, death of prisoner Albert Dorsey, 60, at the Hardeman County Correctional Facility (HCCF), a private prison operated by Tennessee-based CoreCivic, was initially called a suicide by the medical examiner. The prison’s report said he died alone in his cell that “no one else had access” to.

However, when his autopsy was released in January 2020 it revealed he had been killed. That makes him the fourth prisoner murdered at HCCF since October 2014.

The murders at HCCF, a minimum-to-medium security prison, account for 30% of the prisoner homicides reported in Tennessee over the past five years. Yet HCCF holds only 9% of the state’s prisoner population.

CoreCivic operates three other prisons in the state: Whiteville Correctional Facility, South Central Correctional Facility, and Trousdale-Turner Correctional Center. All are minimum-to-medium security except for South Central, which is minimum-to-close, meaning some prisoners there require “heightened supervision.”

Minimum-security prisoners require the least supervision while medium-security prisoners may have “minor disciplinary issues,” according to the Tennessee Department of Correction.

About 35% of Tennessee’s prisoners are incarcerated at one of the prisons operated by CoreCivic. Yet 63% of the state’s prison homicides occur there. When asked about the disparity by the Jackson Sun, CoreCivic said the statistics were misleading because the company housed a larger proportion of prisoners who were convicted of murder and other violent crimes than the DOC, and none of its prisons housed females, who are less violent than men.

Taking those contentions into account, the Jackson Sun reviewed five years of data and controlled for a similar prisoner population, matching the four CoreCivic prisons with five all-male DOC prisons that had a similar number of prisoners and a slightly higher percentage of prisoners who had been convicted of violent offenses. The homicide rate at the DOC prisons was 0.59 per 1,000 prisoners. At the CoreCivic prisons, it was 1.29 per 1,000 prisoners — more than double the DCC rate.

The truth may be yet worse. As the Jackson Sun noted, a July 2019 report by the No Exceptions Prison Collective and the Human Rights Defense Center, which publishes PLN, used average total prison population counts from March 2014 through June 2019 to show the murder rate in the state’s CoreCivic prisons was over four times the DOC’s rate.

As for Dorsey, his cellmate subsequently confessed to strangling him with a bedsheet. So why did the prison initially report that Dorsey was alone in his cell that no one else had access to? Was it an attempt to cover up the homicide? That would be consistent with a recent state comptroller’s audit that showed both CoreCivic and the DOC were misreporting the causes of prisoner deaths.

“We noted several incidents where information related to incidents was incorrect, incomplete, or not entered at all,” according to the audit. It found eight of 38 prisoner deaths reported by the DOC between 2017 and 2019 were incorrectly labeled as due to natural causes. In fact, five were drug overdose deaths, two were homicides and one was a suicide.

Sources: jacksonsun.com, fox13memphis.com
DOJ to Treat Immigrants Like Criminals by Collecting DNA Samples

by Kevin Bliss

In March 2020, the U.S. Department of Justice (DOJ) announced that federal Customs and Border Patrol (CBP) agents will begin collecting DNA samples for criminal investigation from immigrants designated for detention in Immigration and Customs Enforcement (ICE) facilities, including children and those legally seeking asylum.

During the Obama administration, Attorney General Eric H. Holder, Jr., granted an exemption to the DNA Fingerprint Act of 2005 for immigrant detainees. Under the law, genetic samples are required to be collected from anyone who is arrested, facing charges or convicted for a crime anywhere in the country – including non-citizens detained at the border. But at the time, Janet Napolitano, secretary of the Department of Homeland Security (DHS) – the agency that includes both ICE and CBP – successfully argued that she lacked sufficient manpower to sample the number of detainees, which fluctuated between 337,000 and 556,000 annually during the Obama administration.

Now the Trump administration is reversing that agreement, even though the number of detainees spiked to almost 860,000 last year. Attorney General William P. Barr argues that the exemption is outdated because testing is now faster and cheaper. He also worries that criminals who have had no contact with authorities except through immigration may slip through the cracks, so he wants all detainees genetically identified.

“Subjects accused of violent crimes, including homicide and sexual assault, (have been avoiding) detection even when they have been detained multiple times by CBP or (ICE),” a DOJ spokesman said.

The revised regulation allows the Federal Bureau of Investigation (FBI) access to 40,000 new genetic samples to add to its Combined DNA Index System (CODIS), the database used to scan for matches to genetic evidence found at crime scenes. But privacy advocates are concerned about constitutional violations.

“That kind of mass collection alters the purpose of DNA collection from one of criminal investigation basically to population surveillance, which is basically contrary to our basic notions of a free, trusting, and autonomous society,” said Vera Eidelman, staff attorney for the Speech, Privacy, and Technology Project of the American Civil Liberties Union (ACLU).

CBP began a pilot program this past summer along the Southwestern U.S. border to collect rapid DNA samples for identifying “fraudulent family units” – those using children while crossing the border to gain special protections. But that rapid sampling checked only genetic markers that determined parentage. The new regulation would expand that to a comprehensive DNA profile, the results of which would be shared with other law enforcement agencies.

First-time offenders crossing the border without proper documentation can be charged only with a misdemeanor, even after eluding authorities. The Trump administration is trying to increase the severity of that offense while also making it a crime for non-citizens to present themselves at legal ports of entry for federally protected asylum. Critics say the moves reflect the president’s inclination to link most immigrants to criminal activity.

“(DNA collection) reinforces the xenophobic myth that undocumented immigrants are more likely to commit crimes,” noted Representatives Rashida Tlaib of Michigan and Joaquin Castro of Texas.

“We don’t have a statistical database of how many businesses immigrants create, or the ways they enrich our communities,” says Erin Murphy, professor at New York University’s School of Law. “But if the government has a way to say, ‘This is the number of immigrants we’ve linked to crimes,’ and this is something we already see anecdotally, we might lose sight of all the positive benefits.”

Source: nytimes.com, nbcnews.com, theguardian.com

Texas Prison Health Care Costs at Record High Despite Population Reduction

by Matt Clarke

Despite a reduction in the Texas prisoner population, state prisons are spending record amounts on prisoner health care. The reason is not an improvement in the health care afforded prisoners. Pending lawsuits allege inadequate health care — especially for Texas prisoners infected with the Hepatitis C virus. Instead, the driving factor in rising prisoner health-care costs is an aging prison population that is costing more to care for.

In FY 2019, Texas Department of Criminal Justice (TDCJ) prisoner health care costs exceeded $750 million. That is a 53% increase over FY 2012, when the costs were less than $500 million.

During that period, the TDCJ prisoner population declined by 3%, but the number of prisoners over the age of 54 increased by 65%. The prisoners who are 55 and older make up one-eighth of the prisoner population, but account for almost a half of TDCJ’s hospitalization costs. This increasingly costly older prisoner population swamped cost-saving measures, such as increasing the use of telemedicine and using discounted medications implemented by TDCJ’s health-care providers. The reason the Texas prisoner population is aging is not because more older people are being prosecuted for crimes in Texas. Rather, it is because the Texas parole board refuses to grant parole to many prisoners, even after they have “aged-out” of criminality. In other words, older people — especially those over age 60 — are known to be at very low risk of reoffending.

Nonetheless, the Texas parole board insists on keeping many older prisoners incarcerated long after the age of 55 and sometimes after 65.

The reason for retaining low-risk elderly prisoners in TDCJ may be because, as Texas Prison Health Care Costs at Record High Despite Population Reduction
recently shown by a Texas criminal justice blog, Grits for Breakfast, the parole board adjusts parole rates to keep the huge — nearly 150,000-bed — Texas prison system at full capacity. This means that successful programs Texas implemented to keep certain criminal defendants out of prison have made it more difficult for those already in prison to be granted parole.

Whatever the reason, the bulging population of elderly prisoners is straining TDCJ’s budget. The high cost of treating prisoners infected with the Hepatitis C virus or HIV is causing additional strain.

That is likely to increase as a class-action lawsuit alleging TDCJ denies its 18,000 prisoners known to be infected with the Hepatitis C virus effective medication until their livers are damaged instead of providing them with direct-acting antivirals as soon as they are diagnosed, which is the proper standard of care.

The only practical way to reduce TDCJ’s prisoner health-care costs lies in increasing the rate of parole for elderly parole-eligible prisoners and compassionate medical parole for seriously and terminally ill prisoners.

“Well, nobody’s tougher on crime than me, but once you’ve incarcerated a guy past the point that he’s a threat to anybody, I’d like to save that $500,000 to put him in a nursing home as a condition of parole, take that money, and spend it on either other public safety efforts or prison costs,” said state Sen. John Whitmire, chairman of the Criminal Justice Committee in the Texas Senate. He admits that understaffing makes TDCJ’s provision of health care “very questionable” at times.

An ongoing federal lawsuit alleges that understaffing results in unconstitutionally inadequate health care in TDCJ. The University of Texas Medical Branch (UTMB), the primary provider of health care in TDCJ, admitted in late 2019 that about 300 of its 3,100 full-time positions remain vacant.

Texas has a form of medical release for prisoners who are terminal or have serious physical or mental impairments. According to Dr. Owen Murray, UTMB vice president for Correctional Managed Health Care, all qualified prisoners are referred for medical compassionate parole — over 2,100 in 2018. Of those, only 63 were approved.

“It’s not that we don’t have a lot of people that meet the clinical criteria,” said a TDCJ spokesman. “It’s just that, unfortunately, most of those guys have an offense that won’t let them get considered.”

That statement illuminates the core of the problem. The Texas Board of Pardons and Paroles refuses to grant parole to most TDCJ prisoners who were convicted of violent crimes. Those prisoners remain in TDCJ, often for many decades, driving the aging of the prison population and increases in health care costs.

Prisoners convicted of non-violent offenses are generally diverted from prison or paroled rapidly, making them an ever-smaller portion of the prisoner population. A reduction in the population of aging TDCJ prisoners cannot be achieved without addressing those convicted of violent crimes.

“Most of those gray hairs, if they get out, aren’t going to take their walker and go on a crime spree,” said Scott Henson, executive director for Just Liberty, a criminal justice reform nonprofit, noting that many elderly prisoners have long sentences for serious crimes but no longer pose a public safety risk.

“I think a lot of the low-hanging fruit has already been trimmed,” said Marc Levin, vice president of criminal justice at the Texas Public Policy Foundation. “It’s always good to look for other efficiency options, but I do think to some degree, if we don’t address the prison population and medical parole issues, we’re kind of going to be tinkering around the edges, as far as achieving a cost reduction or even just holding the line.”

Source: texastribune.org

Minnesota Prison Bans “No Touch” Rule
by Ed Lyon

Back in 2011, the United States Department of Justice’s Bureau of Justice Statistics (BJS) performed an anonymous survey at the Minnesota Department of Corrections’ (MDOC) Shakopee women’s prison.

The survey’s results showed that Shakopee was among the worst prisons in the nation for sexual misconduct. Faced with that BJS data, warden Tracy Beltz took the action she considered necessary and appropriate to protect her charges from sexual assault, exploitation and misconduct.

She instituted a strict, zero tolerance, no-touching policy for all prisoners. This ban included such innocent gestures as handshakes, high fives and fist bumps. As a result, prisoners touching one another became disciplinary violations for any contact, even a handshake or pat on the back to comfort someone who has just returned from the chaplain’s office and having been told that a friend or family member has passed away.

When guards allege a disciplinary infraction, prisoners are routinely placed in administrative segregation until the outcome of the case is decided. And at Shakopee, as so often happens in prisons, many guards become overzealous and overstated, inflated and even provoked disciplinary case allegations.

For eight years, MDOC steadfastly denied any such policy existed. But concerted efforts and numerous Freedom of Information Act requests from the Minneapolis Star Tribune and American Civil Liberties Union found otherwise in MDOC’s handbooks and training manuals.

In June 2019, MDOC’s recently installed Commissioner Paul Schnell ordered new protocols on “appropriate touch” to be drafted and implemented at Shakopee. “It wasn’t a healthy policy,” he said. “Over time, those things have become antiquated.”

With the new protocols, handshakes, high fives and fist bumps are approved touches, but hugs are still not allowed. Meanwhile, Beltz was transferred as warden to Faribault prison in August 2019.

Sources: citypages.com, thecrimereport.org, Minneapolis Star Tribune
ICE Diverts Needed Face Masks from Medical Professionals

by Kevin Bliss

Immigration and Customs Enforcement (ICE) placed a request for bids on its website in March 2020 for 45,000 N95 protective face masks for 26 of its enforcement and removal operation field offices. This came at a time that the nation’s frontline healthcare workers are experiencing a mass shortage of such personal protective equipment (PPE).

On March 19, the first day of California Governor Gavin Newsom’s “shelter-in-place” order, ICE agents raided immigrant communities in the Los Angeles area while wearing N95 protective masks. Critics said this placed healthcare officials at risk by depriving them of needed PPE — and also violated state regulations ordering everyone to remain in place except to perform essential activities necessary for survival.

A stay-at-home order is not only to prevent those who do not have COVID-19 from acquiring it, but also to prevent those who do have it from spreading it.

Reporters for The Guardian, Miriam Lopez and Seth Holmes, reported that the raids separated families and other loved ones when support could be critical. They also said the raids increased the potential for spreading the virus in overcrowded detention sites while creating a distrust among the public concerning the necessity to follow official health orders and recommendations.

ICE’s request for face masks completely disregards the Surgeon General’s statement that all N95 face masks be redirected and reserved for medical professionals treating patients with COVID-19.

An article on dailykos.com stated that the PPE shortage is so dire that professionals are resorting to using trash bags and swimming goggles for protection. Doctors and nurses unnecessarily exposed to the virus are landing in intensive care units intubated on ventilators and in critical condition due to the lack of adequate PPE.

Legislators of both parties are condemning the Trump administration’s anti-immigrant policies allowing the government to prioritize ICE raids above the protections of community healthcare workers and thereby weakening the healthcare system.

Oregon Rep. Earl Blumenauer said, “It’s important that we don’t set up a parallel system that competes with critical needs of our responders in order to prop up some of the activities of ICE, which may be inappropriate.”

Lopez’s and Holmes’ article in The Guardian requested an end to all ICE raids. “The ICE raids conducted by the federal government are putting our country at risk, worsening a critical shortage of medical supplies and leading to overcrowding and movement that facilitate the spread of COVID-19,” they wrote. “At this historic moment, we must set our priorities straight. If we want to survive, we must stop ICE raids, detention and deportation. We must provide protective equipment to frontline workers in our health system. Our lives and the future of our society depend on it.”

Sources: dailykos.com, theguardian.com

Alabama Grandma Sentenced to Life on Drug Charge Finally Paroled

by David M. Reutter

In recent years many states have made changes to their criminal codes in an effort to reduce their prison populations. Those amendments, however, are rarely retroactive and leave those already imprisoned to serve lengthy sentences that are no longer imposed.

Alabama is one state that exemplifies the injustice of leaving in place sentences from the “tough on crime” era. In 2018, it eliminated sentences of mandatory life in prison without parole for drug trafficking based on quantities, making life with the possibility of parole the maximum sentence.

There are 1,532 Alabama prisoners serving life without parole. Of those, 534 are for crimes other than murder or capital murder, and 20 more have non-parolable life sentences for drug trafficking. The lowering of the maximum sentences has no effect for those prisoners under the statutes.

That fact has not dissuaded some determined lawyers. “The Eighth Amendment hangs its hat on these evolving standards of what is proportional punishment, and we could say now that understanding has changed,” said attorney Courtney Cross, Director of the Domestic Violence Law Clinic at the University of Alabama.

Cross took on the case of Geneva Cooley, who was serving a non-parolable life sentence for drug trafficking. Cooley was a heroin addict from New York who was offered $1,500 to make a trip to Alabama for the purpose of picking up drugs and delivering them to a friend. When Cooley, then 55, got off the train in Birmingham in 2002, she met two people and was handed a sock full of drugs, which she stuffed into her pants. When she exited the bathroom from where the deal went down, police were waiting for her. The amount of heroin in the sock subjected her to a drug trafficking charge and resulted in a sentence of life without parole.

Activist Susan Burton meet Cooley when she did a reading of her memoir, Becoming Ms. Burton, at Julia Tutwiler Prison for Women. Burton was moved by Cooley’s story. “It just took the breath out of me,” Burton said. “I knew that could be anyone of us.”

Burton connected with Cross, who decided to take on Cooley’s case with six law students. “Geneva is the poster child of a nonviolent drug offender getting an oversized punishment.” While the change in law did not explicitly impact Cooley’s case, Cross and her colleagues saw it as an opening to argue Cooley’s sentence was cruel and unusual punishment. Many attorneys Cross consulted considered it a “fool’s errand.”

In 2018, newly elected District Attorney Danny Carr did not oppose the motion to change Cooley’s sentence to life with the possibility of parole. Jefferson County Judge Stephen Wallace granted the motion, finding that Cooley, 72, was just a drug courier and “is hardly the drug baron envisioned by the law” and that she had no role in the manufacture or sale of drugs. “Her minor role was more the product of her own heroin addiction,” he wrote.
Wallace’s order pointed to the nationwide movement away from life without parole for drug convictions. He cited the First Step Act as an example of reducing sentences for drug offenses.

Cross was thankful for the result, but she took issue with the current injustice others still face from excessive sentences that are now no longer on the books. “What galls me is those of us who are getting any luck are getting it because we just happen to have the right combination of system actors and not because there is a mechanism for making this work,” Cross said.

Paroled New Yorker Wrongfully Confined; Awarded $3,250

By Kevin Bliss

Clarence Delaney, Jr. was granted $40 per day for 88 days of unlawful confinement by the State of New York, receiving a total payment of $3,250. He also was able to recover his 42 USC § 1983 filing fee, in a state Court of Claims ruling on May 22, 2019.

Delaney was sentenced on January 6, 2017 to two to four years of parole supervision after completing a 90-day program at Willard Drug Treatment Center. This judgment was recorded in the remarks section at the bottom of Delaney’s Uniform Sentence and Commitment Order. He was to be transferred to Willard within 10 days of arrival to the Department of Corrections reception center and no more than 30 days after the judgment was entered.

Delaney arrived at Downstate Correctional Facility (Downstate) on February 20, 2017, with a post-sentencing classification form that did not mention Willard or his parole supervision. It stated only that Delaney was sentenced to the two to four years with a conditional release date of January 28, 2019. The box marked “Execute as a sentence of parole supervision” was not checked.

Delaney immediately notified Downstate of the error and continued through the grievance procedure when that letter was ignored. Lastly, he filed a 42 USC § 1983 claiming wrongful confinement.

He was transferred to Marcy Correctional Facility before a ruling could be made and the superintendent there decided there had been an error and transferred Delaney to Willard on March 9, 2017. He was released on May 5, 2017.

After a video trial of the pro se claim, Judge Stephen Mignano determined that Delaney had been wrongfully confined for 88 days from February 11, 2017, and that he should be paid $40 per day. See Delaney v. State, (N.Y. Ct. Cl.), Case No. 2019-029-034.

Source: vertumnus.courts.state.ny.us

Michigan Permits Prisoners to Seek Financial Assistance for College

By Bill Barton

In October 2019, Michigan Governor Gretchen Whitmer signed into law a 2020 budget that allowed prisoners to seek college financial aid through a state program that had long been out-of-bounds to prisoners.

The Tuition Incentive Program (TIP) reimburses tuition expenses for Medicaid-eligible students at participating private and public colleges. The 2020 budget allocates $64.3 million to TIP, administered by the Michigan Department of Treasury (DOT).

“It makes a statement saying that education changes lives,” said Terrell Blount, a program associate for the Vera Institute of Justice. “It reduces recidivism. Everyone agrees people should be held accountable for what they’ve done or committed, but that doesn’t mean that they should be deprived and have their educational opportunity taken away from them.”

Blount said the expansion of eligibility is a “big win” for Michigan, which is now among 18 states that allows aid to imprisoned students.

According to Kyle Kaminski, of the Michigan Department of Corrections, “there are currently four Michigan colleges that offer credit-bearing postsecondary education courses in Michigan prisons: Jackson College, Mott Community College, Delta Community College and Calvin College.

“In the winter semester 2019, Kaminski said, 770 incarcerated students participated in for-credit classes, not including correspondence course participants.”

Virginia Przygocki, dean of career education and learning partnerships at Delta College, said she thinks the TIP financial aid will motivate more incarcerated individuals to complete their GED and pursue a college education. She also noted that Pell grant pilot participants have experienced “life-changing” effects. “Watching them develop through the program, they became much more confident,” she said. “They began to realize the value of the education that they were receiving. They were kind of leaving the life they led behind.”

Sources: wkar.org, michigan.gov, freep.com, bridgemi.com

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Arizona DOC Raids Prisoner-Generated Funds to Pay for Lock Repairs; Whistleblower Says Records Being Falsified

by Matt Clarke

After the Arizona Department of Corrections (DOC) received $17.7 million from the state legislature’s Joint Committee on Capital Review to repair defective cell locks at a maximum-security prison, a whistleblower revealed that paperwork showing the repairs had been made was falsified, The Arizona Republic reported in December 2019.

Now the DOC is planning to use $4.1 million in prisoner welfare funds to pay for the repairs. Those funds are generated by fees charged prisoners when they make phone calls or use a tablet computer or video kiosk. The DOC receives between $8 million and $9 million for the fund annually, of which $500,000 was already being transferred to a “building renewal” fund.

“We’re taking funds that are supposed to go towards furthering inmates’ opportunities and we’re fixing facilities problems with it,” said Joint Committee member Rep. Randy Friese.

As previously reported in PLN (September 2019, p. 24), the DOC has been under increasing pressure to repair faulty locks at the Lewis Prison in Buckeye since April 2019, when leaked surveillance videos showed prisoners who had opened their own cells ambushing guards.

The DOC initially took disciplinary action against Sgt. Gabriela Contreras and four other guards, whom it blamed for leaking the surveillance videos. On May 30, 2019, former-DOC director Charles Ryan rescinded their punishment and had the disciplinary action expunged from their records. The punishments included two 40-hour suspensions, two 16-hour suspensions and a letter of reprimand. The guards were also reimbursed for lost wages.

The leaks triggered media attention and resulted in the $17.7 million allocation to repair the locks. It did not result in the locks actually being repaired, according to a whistleblower complaint signed by Shaun Holland, the assistant deputy warden of the prison’s Bachmann Unit. The complaint alleges employees “go through the units, toy with broken doors, and then designate them as ‘repaired’ in official DOC records.”

In a December 5, 2019, press conference, Holland said Arizona Governor Doug Ducey had “not been told the truth” about the door repairs. Ducey told reporters that he trusted the information he was getting from DOC officials.

Holland has worked at the DOC for 14 years. He said subordinates had reported the issues with broken and damaged cell doors, and he had passed them up the chain of command to no avail. “Instead of identifying and repairing the doors, the prison administration is hiding the problems by ‘closing out’ hundreds of repair orders without completing any repairs,” Holland wrote. “I personally checked the records and confirmed by actually checking the cell doors myself. I raised these issues in my own chain of command, including the warden, several times with no action being taken to address the issue.”

“They were supposed to fix some doors,” said Carlos Garcia, head of the Arizona Correctional Peace Officers Association. “Did they do it? Absolutely not!”

“This situation is a litmus test,” said Donna Hamm of Middle Ground Prison Reform. “The governor says he wants to correct this problem. [New DOC] director [David Shinn] was hired to correct this problem. It’s a mess. It’s not working. It’s not being fixed. In fact, the subterfuge is disgusting.”

What happened to the $17.7 million if it was not spent on repairs? How can $4 million of prisoner welfare funds prompt the DOC to make the repairs when $17.7 million failed to do so?

Sources: azcentral.com, abc15.com

New Yorker Held Three Years at Rikers Island Before Acquittal

by Matt Clarke

A man from New York City was held three years in a Rikers Island jail before a Brooklyn jury acquitted him October 1, 2019 of a knife-point armed robbery.

Mike Colon, 51, was just eight months out of prison when four police cars slid up beside him as he was walking to a Burger King. With drawn guns, police jumped out of their cars and arrested him.

The victim had been robbed of his cellphone and other items about 20 minutes earlier. Police had used an app to trace the cellphone to Colon. But Colon was not in possession of the cellphone when he was arrested.

His attorney noted that Colon was underneath an elevated train station when he was arrested and theorized that the robber and cellphone were on the platform above him at the time.

Prosecutors countered that stolen credit cards were strewn near the arrest site and that Colon had a distinctive knife in his pocket like the one used in the robbery.

The prosecution’s case fell apart during trial. NYPD Officer Raymond Lewis, a key prosecution witness, contradicted himself several times and admitted to having been previously disciplined for fixing traffic tickets. Then the victim said he could not identify Colon because the robber wore a mask. He gave the robber’s height as three inches taller than Colon, who is 5 feet, 4 inches.

“The reason they snatched me up is because of my criminal history,” Colon said. “They ran my name through the computer and saw that I was on parole for the same crime.”

Colon had steadfastly maintained his innocence and refused a plea bargain offer for a misdemeanor charge. He was emotional when finally vindicated.

“They found me not guilty of all charges,” said Colon. “I was elated. I cried.”

“I lost my apartment, my car, my job, my credit cards. I lost all my property in the apartment,” he added. “If it wasn’t for my sister and my son and my niece, I would have just lost it and just gave myself up to the prison life.”
Further, Colon had to deal with life in the bleak and dangerous Otis Bantum Correctional Center on Rikers for three years awaiting trial. “Every day in this place you’re risking your life,” he said. “You never know when someone’s gonna spaz out.”

Source: nydailynews.com

Kentucky Governor’s Executive Order Restores Voting Rights for Felons

by David M. Reutter

Kentucky Gov. Andy Beshear issued an executive order that restored the voting rights of over 140,000 convicted felons. The order was signed just days after Beshear was sworn in in December 2019, and it upheld a campaign promise. “My faith teaches me to treat others with dignity and respect. My faith also teaches forgiveness,” Beshears said during his inaugural speech. Those reasons are why he signed “an executive order restoring voting rights to over a hundred thousand men and women who have done wrong in the past but are doing right now. They deserve to participate in our great democracy.”

This is not the first time an executive order has been signed to restore Kentuckians' voting rights. Just before he left office in 2015, Beshear's father, former Gov. Steve Beshear, issued an order restoring voting rights to people who had felony convictions that were not classified as “violent offenses,” sexual crimes or election-related bribery. That order lasted only a few days. Just days after succeeding Steve Beshear, Governor Matt Bevin suspended the order. “While I have been a vocal supporter of the restoration of rights, it is an issue that must be addressed through the legislature and by the will of the people,” Bevin said at the time.

The legislature made an effort in 2014 to change the Kentucky Constitution, disenfranchises persons with felony records for life. The Democratic-led House and Republican-led Senate each passed bills, but they could not agree on final language. That leaves felons seeking reinstatement via a reprieve from the governor after completion of their prison sentence, parole, or probation. The success rate for that process varies by governor. Steve Beshear reinstated 9,500 people over his two terms, but Bevin only approved 950 during his term, creating a backlog of 1,459 requests.

The U.S. Sentencing Project estimated in 2016 that about 242,000 Kentuckians are banned from voting, which is more than 9 percent of the voting-age population. That report also found that the proportion of Kentucky African-Americans who were disenfranchised ballooned from 3 percent in 1980 to 26 percent in 2016.

Beshear’s order is a progressive one, but until the Kentucky Constitution is revised, the right of felons to vote hinges on the views and agenda of the person holding the office of governor.

Sources: CNN.com, vox.com, kentucky.com

Women Advocate for the Release of COVID-19 At-Risk Prisoners in Indiana

by Kevin Bliss

A prisoner advocacy group in April began urging residents to call Indiana Governor Eric Holcomb and the state Department of Corrections (DOC) Commissioner Robert Carter to demand the release of nonviolent prisoners, the elderly and those with underlying medical conditions amid the COVID-19 health threat, one of many such groups springing up around the country.

Advocates in the group, IDOCWatch, include Emily Bernard, a healthcare administrator, and her daughter Jasmine Lovelace, a law student at Indiana University. Bernard said the public is under the incorrect perception that medical treatment in prison is free, but the reality is that prisoners must make a payment to the healthcare provider. IDOCWatch is advocating for health care on request without a charged co-pay for the elderly, the vulnerable and all immuno-compromised prisoners.

IDOCWatch co-founder Nick Greven noted that prisoners in other states are already being released due to the virus. California, New York and Ohio are states that have released prisoners to reduce the risk of infection and spreading.

The organization’s Facebook page states that Indiana is the most overcrowded prison system in the nation and a “potential disaster zone for widespread outbreak.”

On April, Indystar.com reported that “five prisoners who tested positive are at the Indiana Women’s Prison in Indianapolis and the Plainfield Correctional Facility in Hendricks County.”

DOC spokeswoman Margaux Auxier told The Journal Gazette that the DOC “has limited authority to release offenders sooner than their sentencing order.” However, the department will prioritize any sentencing modifications the courts may order at this time.

Source: journalgazette.net

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Arizona Court Denies Emergency COVID-19 Motion

by David M. Reutter

The Arizona federal district court overseeing the Stipulation in a class action that challenged the medical care within the Arizona Department of Corrections (ADOC) denied an emergency motion to require ADOC to develop a comprehensive COVID-19 plan. The court also issued an order on performance measure (PM) protocols.

Class counsel made a prison tour on March 11-12, 2020 and found it did not appear ADOC had a plan in place to address the COVID-19 crisis. Their concerns led them to file an emergency motion. It requested the court to require ADOC to develop and implement a plan to address patient education; screening, testing and housing of class members; provision of hygiene and cleaning supplies; and coordination with community hospitals and among ADOC’s 10 prisons.

“Plaintiffs’ concerns are well founded. Defendants’ past performance, coupled with an unprecedented public health crisis, does not inspire confidence in their ability to meet this moment,” the court said.

ADOC was found to be non-compliant and sanctioned by the court “for their contemptuous refusal to meaningfully address” performance measures in the Stipulation. The court, however, found that did not empower it “to exercise general control over matters such as prisoner education or the distribution of hygiene and cleaning supplies.”

As there were no clear provisions of the Stipulation to authorize the type of order the Plaintiffs sought, the court found it was without authority to enter an order as requested. The court noted ADOC had acted in response to the COVID-19 crisis by “suspending visitation, non-emergent movement of prisoners, programming, and religious services.”

The court’s March 23, 2020, order denied Plaintiffs’ emergency motion, but it noted ADOC remains “obligated to treat prisoners who become ill or critically ill.”

In a separate order issued on March 11, 2020, the court resolved issues from a ruling on February 12, 2020 and ordered the parties to submit a joint statement concerning PM At issue was how ADOC’s compliance with several PMs was to be determined.

The main issue concerned the length of time the PMs require prisoners be “seen” by mental health professionals at specified intervals. The parties agreed that for watch-related PMs, there should be a 10-minute minimum. As to non-watch-related PMs, the parties were in disagreement. The court ordered that for those PMs a 30 minute minimum was required, but it did not prohibit shorter visits if the mental health clinician determined “the length was meaningful and appropriate in the context of the patient’s overall care.”

It also ordered that PM 25 requires a “first responder trained in Basic Life Support responds and adequately provides care within three minutes of an emergency.” ADOC wanted that PM retired. The court refused, ordering that the term “emergency” includes every Incident Command System alert where medical attention was provided or should have been provided.” A Qualified Health Care Professional who was not involved in the initial response must determine if the responding staff took medically appropriate actions.

ADOC reported 4 prisoners, out of 41,500 at state facilities, had tested positive as of April 10. However, less than 100 prisoners had been tested as of that date. No information had been released about testing of prison officials and employees.


D.C. Juvenile Offender Finally Released After 26 Years Behind Bars

by Bill Barton

David Bailey was a reckless and violent 17-year-old when he shot and killed two people outside a Washington, D.C. night club. He was convicted of second-degree murder and received a sentence of 35 years to life.

According to The Appeal, “both of Bailey’s parents struggled with heroin dependency, according to court documents, and he was born opioid-dependent, which resulted in long-term symptoms. His father was violent toward his mother and as an infant he was passed between homes. He dropped out of school at age 13 and latched onto older children and adults who spent their days on the streets. He began selling marijuana and crack cocaine.”

During 26 years in prison, Bailey was written up for only one argument and one physical fight. Otherwise, his record was basically clean. He learned to read and write on his own, and obtained his GED. Programs aimed at rehabilitation were part of his day-to-day life while locked up, and he did his best to provide emotional and financial support to his two daughters.

James Zeigler, Bailey’s attorney, said he “had taken anger management courses, reformed his erratic behavior, and turned his life around.”

Citing modern neuroscience, the Supreme Court ruled in 2012 in Miller v. Alabama (567 U.S. 460) and in Montgomery v. Louisiana (577 U.S.___2016) — the latter made the former retroactive — that brains are by no means fully developed until at least age 25. That makes youth offenders less culpable and capable of having greater capacity to change. Those Supreme Court decisions outlawed life without the possibility of parole for juvenile offenders.

The District of Columbia passed a related law in 2016, the Incarceration Reduction Amendment Act (IRAA), giving Bailey and others in similar situations hope. IRAA allows people “who were under 18 when convicted who had served at least 20 years in prison to have their sentences reconsidered.”

However, in June 2018, the office of Jesse K. Liu, then the U.S. Attorney in D.C., opposed Bailey’s sentence reduction, writing that, “When scrutinized, defendant’s conduct while incarcerated is not that much different than that which resulted in the murder.”

Bailey found that characterization of his prison background was false. “They had nothing to support that,” he said. “I only got two shots in 25 years. You’re not talking about two months or two weeks or even a year. We’re talking about 25 years.”

In the first three years after IRAA took
effect, the D.C. Attorney’s office attempted to block the resentencing of all 14 people whose motions were heard in court. Thirteen had their requests granted by Superior Court judges and have been released from prison. The office said in a statement that it “does not subscribe to an approach of unilateral opposition.”

Spokesperson Kadia Koroma said, “We are mindful that in each of these cases, the defendant has committed a serious crime, such as rape or murder. Because of this, we thoroughly review each motion and evaluate the defendant’s request for a sentence reduction knowing that this request could affect the victim, the victim’s family, and the community.”

The D.C. government in February 2019 stated there were nearly 100 eligible individuals who could apply for resentencing based on IRAA. Zeigler said he predicts the U.S. Attorney’s office to oppose resentencing in each case.

“Ordinarily, in most systems where you have the executive branch flatly refusing to apply in good faith a law that the legislative branch has enacted, there would be some sort of consequences for this,” he said. “Here, that is not the case. We have no control over our prosecutor’s office.”

There has been, however, one positive development. Finally, in September 2019, Bailey was released. He was 43 years old.

Source: theappeal.org

Ohio Prisoner’s Facebook Live a Plea for Help During COVID-19 Pandemic

“Hey, you know I don’t even know how to start this,” he begins. “Shit was all good like a couple days ago, right? So all of a sudden, out of the blue, fucking everybody just fucking dying and getting sick and shit. Like, this shit serious as fuck. Like, they literally leaving us in here to die.”

“People shouldn’t have to die like this,” he says.

The prisoner, who VICE News identified as Aaron DeShawn Campbell, reportedly used a contraband cellphone to speak on Facebook Live for about 20 minutes. The account was named “Ace Sanchez.”

“He says a prison nurse recently told him ‘half the unit is about to die,’” VICE News reported on April 5, 2020.

“He also recorded a courtyard in the prison and points out a tent on a basketball court that he claims was set up to store the bodies of men who died from COVID-19,” VICE said.

He is inside the “Federal Correction Institution in Elkton, where Ohio Gov. Mike DeWine on [April 6] authorized the Ohio National Guard to send emergency medical assistance to deal with the outbreak,” correctionsone.com reported.

However, “Bureau of Prisons spokesperson Sue Allison told VICE the video ‘is currently under investigation,’ and denied that Campbell or other men shown in the video are sick.

“We can confirm that after identifying the inmates in the video, none of them were symptomatic of COVID-19,” Allison said in a statement.

The crisis persists, though the precise extent was unknown. FCI Elkton, a low-security prison with a minimum-security camp housing around 2,400 prisoners, has about seven prisoner cases of COVID-19, and 17 staff have the disease, the BOP reports. Rep. Bill Johnson of Ohio said in a statement that at least 25 Elkton prisoners tested positive for the virus. Three had died: 53-year-old Woodrow Taylor, 65-year-old Margarito Garcia-Fragoso and 76-year-old Frank McCoy.

Elkton correctional counselor and union president Joseph Mayle would not “confirm or deny” for VICE that footage was captured in the prison, and he refuted Campbell’s claims. Mayle said “three staff are positive, 15 inmates are in quarantine with symptoms, and 82 are in isolation.”

Several have been transferred to local hospitals. Two guards must escort each prisoner, DeWine said. “The result has left prison short-staffed, and hospitals fearing an influx of patients.”

However, he said, “there will be 32 medical staff at the prison to help set up testing labs and treat prisoners at the facility who fall ill with mild COVID-19 symptoms or other illnesses, and triage patients with serious symptoms to be transferred to hospitals.”

According to correctionsone.com, attorneys at two Cleveland-area law firms have filed emergency reprieve requests asking DeWine to grant temporary releases to thousands of inmates across the state who because of their age or health problems are especially susceptible to serious illness or death if they contract the virus.

If you have videos or photos from inside prisons or jails, please send them to Prison Legal News at info@prisonlegalnews.org or by mail at HRDC, P.O. Box 1151, Lake Worth, FL 33460.

Sources: correctionsone.com, vice.com

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Santa Rita Jail Accused of Slave Labor in California Class Action
by Kevin Bliss

CURRENT AND FORMER PRISONERS AT Santa Rita Jail in Alameda County, California, filed a class action lawsuit on November 18, 2019 against the county, Sheriff Gregory Ahern, and Aramark Correctional Services for violating a California prison labor law, the federal Trafficking Victims Protection Act, and the Thirteenth Amendment of the U.S. Constitution.

Represented by attorney Dan Siegel, eight named plaintiffs contend their unpaid kitchen jobs amounted to slave labor. The county contracts with Aramark, a $16.2 billion private enterprise, to provide meals for the county’s jail populations at $94.5 million a year.

“The work plaintiffs performed was not a part of daily housekeeping duties in the jail’s personal and communal living areas,” reads the complaint. “Rather, it was forced labor for the profit of Aramark.”

The Santa Rita Jail in Dublin, California, uses prisoner labor in its industrial kitchen to prepare meals for Aramark. The kitchen also prepares meals for Aramark’s contracted services with Amador and San Joaquin counties. The suit alleges that the company “receives an economic windfall as a result of the uncompensated labor of prisoners confined in Santa Rita Jail.”

“Santa Rita and therefore the county are stealing the wages that have been earned as a result of the work of the prisoners,” stated Siegel. “We speculate that it’s at least millions.”

California passed a prison labor law in 1990 that allows private companies to use prison labor as long as prisoners are paid comparative wages (and overtime) as non-incarcerated workers. The state is allowed to deduct taxes, room and board, and restitution from wages as long as it does not exceed 80% of the total.

The Thirteenth Amendment prohibits slave labor except “as punishment for crime,” which has consistently been interpreted as meaning that convicted prisoners could be worked free of wages. Only 15% of the Santa Rita Jail population had been sentenced for a crime at the time of June 2019.

The suit alleged that workers were threatened with longer sentences, solitary confinement and transfers for those who refused to work. When male workers went on a hunger strike to protest conditions, female prisoners were threatened with the loss of meals if they did not fill in for them, the suit alleged.

The suit was filed on behalf of all the people held in the jail, which included pre-trial and immigration detainees, as well as those already convicted. It seeks unspecified damages, as well as an injunction against the illegal labor practice. See Armida Ruelas, De’Andre Eugene Cox, Bert Davis, Katish Jones, Joseph Mebratlu, Dabryl Reynolds, Monica Mason, and Luis Nunez-Romero et al. v. County of Alameda, Gregory Ahern, Sheriff, and Aramark Correctional Services, U.S.D.C. (N.D. Cal.), Case No. 3:19-cv-07637. Additional sources: motherjones.com, mercu-rynews.com, theappeal.org

Open Prison: Lessons from the Past
by Michael Fortino, Ph.D.

OPEN PRISON IS UNTHINKABLE TODAY in the United States, though in Scandinavia such institutions are heralded as models of civility and rehabilitation. The U.S. experimented with open prisons back in 1941, which proved there were better ways to rehabilitate and reduce recidivism. Unfortunately, those lessons were short-lived.

In California, then as now, maximum-security institutions like San Quentin and Folsom were dens of tension and violence. In 1935, the California State Legislature wanted to try something different. A veteran penologist named Kenyon J. Scudder was enlisted to open a new prison at Chino. It would become the California Institution for Men, and the only one of its kind.

Scudder laid down some conditions. He wanted control over the selection and training of staff, and over how much freedom the prisoners would be permitted while incarcerated. To avoid punitive mindsets, he refused to hire staff who had previously worked within the system.

Instead, his jailers (“supervisors”) would have college degrees. They would carry no batons or guns, and weapons would only be a means of last resort. Prisoners would be able to choose what to wear, which jobs they preferred and what to study. Numbers identifying prisoners would no longer be assigned, and Scudder adopted a theme that would become the title of his published memoir, Prisoners are People.

Though original plans called for a 25-foot perimeter wall with eight gun towers, Scudder convinced prison directors to erect only a five-strand barbed wire fence. He believed that by treating the men with dignity, they would respect the rules and develop their own productive way back to society.

The idea worked in the early years, and received praise. In 1955, a book written about the Chino experiment was adapted into the movie Unchained. Though the movie has been described as sappy and idealized, it does depict the reality of prisoners working to make Scudder’s idea successful, and it offered an awakening perhaps of the alternative if it failed.

Inevitably, it did fail, or more accurately, and as a result of America’s desire for punitive measures, it morphed into a more recognizable U.S. prison. Scudder, unwilling to play the state’s political games, came under fire and faced severe criticism from politicians. By the time of his death in 1977, Chino had become just another typical correctional complex with three maximum security facilities. Its legacy fell victim to a barrage of draconian laws and now, with 3,766 prisoners, operates at 25 percent over capacity.

It is possible that Scudder’s experiment was just a fluke — until one takes a serious look at the America recidivism rate and compares it to that of Scandinavia or other countries with open prison systems. For now, in the United States, this concept simply remains “locked away.”

Source: TheConversation.com

Dictionary of the Law
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Following a letter from the ACLU of Georgia, the Chatham County sheriff rescinded a jail policy that banned detainees from receiving books and magazines from outside sources. The ACLU still took issue with a revised policy that limits the number of publications detainees can possess.

The sheriff implemented a policy that prohibited detainees from receiving “books, magazines or other publications, by subscription, or directly from the publisher, a family member or any other person.” The policy took effect on March 3, 2019. It made books and magazines available only by means of a book cart, and detainees could only check out one book or magazine each week.

“We have never before encountered a policy that so completely restricts detained persons’ access to books and publications,” the ACLU wrote in an April 10, 2019, letter to Chatham County Sheriff John T. Wilcher. “The U.S. Supreme Court has ruled that the First Amendment encompasses the right of people to receive books in jail. As one federal appeals court has recognized, ‘Freedom of speech is not merely freedom to speak; it is also freedom to read. Forbid a person to read and you shut him out of the marketplace of ideas and opinions that it is the purpose of the free speech clause to protect.’”

The letter sparked a review of the policy, which resulted in the ban on receiving publications from outside sources. A new policy was put in place in June 2019. It allows books and magazines to come directly from publishers and vendors, but it limits the number a detainee can have at one time.

“It still limits possession to just four books, magazines, or newspapers at a time. We find that numerical limit to be arbitrary,” said ACLU of Georgia staff attorney Kosha Tucker. “We don’t know why the number four was chosen to be the limit.”

Issue was also taken on the vagueness of the term “sexually explicit.”

“The new policy has a blanket ban on quote sexually explicit material, and it doesn’t offer any sort of defining principals or guidance of what that means. So, it’s impermissibly vague, and over-broad,” Tucker said.  

Sources: ajc.com, savannahnow.com, wjcl.com, ACLU.org

$25 Million Jury Award to Baltimore City Prisoner For Guards Setting Up Retaliatory Gang Attack

A jury awarded a prisoner brutally beaten at the Baltimore City Detention Center $25 million, after guards allegedly worked in concert with a gang and arranged a beating as retaliation for complaints filed by a detainee awaiting trial.

The beating left Daquan Wallace in a coma for two months, and now he has to use a wheelchair and cannot talk. The incident happened in October 2014, after three Department of Public Safety and Correctional Services (DPSCS) guards cooperated with members of the Black Guerilla Family gang to set up the brutal beating. Wallace’s lawsuit claimed that the beating was in retaliation for complaints by his mother that jailers weren’t protecting her son from the gang.

Wallace’s mother told jail staff numerous times that her son was routinely beaten for refusing to join the gang, the lawsuit said. In response, staff allegedly moved him to a unit with the gang members, with more unmonitored areas to allow the beating.

Wallace claimed that when everyone went to dinner one night, guards allowed gang members to stay back with their cell doors unlocked, against policy. Within minutes, Wallace was beaten by the gang. Wallace’s cellmate returned to find him unconscious with blood on the walls.

A spokesperson for DPSCS, who did not want to be named, said the three guards involved were fired, but would not comment on disciplinary action taken or the outcome of the internal investigation.

However, after the internal investigation concluded, nobody was charged criminally for the attack on Wallace, according to a different spokesman for the department.

In 2013, state and federal officials said the Black Guerilla Family had effectively taken control of the jail. They were running a drug smuggling conspiracy with jail staffers, they said. Dozens of people were charged, and at least 40 were convicted. [PLN, April, 2015]

The century-old jail was finally torn down months after Wallace’s attack. The decrepit conditions at the jail were a “black eye” for the state, the governor said.


Sources: baltimoresun.com, legalreader.com

Stop Prison Profiteering: Seeking Debit Card Plaintiffs

The Human Rights Defense Center is currently suing NUMI in U.S. District Court in Portland, Oregon over its release debit card practices in that state. We are interested in litigating other cases against NUMI and other debit card companies, including JPay, Keefe, EZ Card, Futura Card Services, Access Corrections, Release Pay and TouchPay, that exploit prisoners and arrestees in this manner. If you have been charged fees to access your own funds on a debit card after being released from prison or jail within the last 18 months, we want to hear from you.

Please contact Kathy Moses at kmoses@humanrightsdefensecenter.org, or call (561) 360-2523, or write to: HRDC, SPP Debit Cards, P.O. Box 1151, Lake Worth Beach, FL 33460.
A pilot program started by a nonprofit in Alameda County, California, seeks to meet an acute need for shelter faced by a group that doesn’t get much positive attention: recently released prisoners. Run by former prosecutor Alex Busansky, the nonprofit is called Impact Justice (IJ), and its program, the Homecoming Project (HP), pays people with a spare bedroom $25 a day to let a recently released prisoner call it home.

Due to the stigma of their criminal past, parolees and those fresh out of prison find it especially difficult to obtain shelter. Nationwide, this group is 10 times more likely to become homeless than citizens who have never been imprisoned. Yet a home address is necessary to obtain a driver’s license, and it is also important in obtaining a job—vital components of a successful reintegration into society.

Busansky, whose nonprofit’s mission is affecting justice reforms, studied this problem and wondered if a program like Airbnb might offer a viable solution. From that germ of an idea, HP was born in 2018.

Coordinating the program is former prisoner Terah Lawyer. Her primary job is to pair a prisoner with a compatible person who has a spare bedroom and a willingness to help others. After a prisoner’s release, Lawyer allows the prospective housemates a face-to-face meeting before breaking out a six-month lease agreement for them to sign, with IJ footing the $750 monthly cost for that initial term.

All current and former HP participants maintain steady jobs and the program reports a zero percent recidivism rate. If the resident and former prisoner hit it off, they may enter into another lease between them after the initial six-month term. IJ does not foot any of that bill. But with the pilot program’s success to date, it seems to offer one answer to a newly released prisoner’s need for shelter.

HP was begun with a grant from the Emerson Collective, a social justice nonprofit run by Laurene Powell Jobs, widow of Apple founder Steven Jobs. IJ’s initial request would have covered 50 releases in the program, but that was eventually reduced to 15. Six parolees started and four more were placed by April 2019. By the time all 15 slots had been filled, six had successfully completed their initial six-month lease. Three found housing elsewhere and three renewed their initial leases.

Including host training, case management costs and rent, the total six-month cost per HP participant is about $10,000, compared to a cost of $17,246 for a six-month period in a federal reentry center or halfway house, according to the federal Bureau of Prisons (BOP). However, there may be some fundamental differences between the two programs, a BOP spokeswoman cautioned.

Funding for a second wave of releases has yet to be secured. IJ’s Chief Operating Officer, Maureen Vittoria, believes the newness of HP may explain why funding has been so difficult to find.

As Alex Frank, project director for the Vera Institute of Justice explained, “Any new project that is against the norm carries a lot of risk.”

With over 100 applications from soon-to-be-released California prisoners on their desks now, Lawyer and Vittoria are persisting in their efforts to secure funding to continue HP, petitioning private donors as well as state and federal government agencies. They hope to expand HP throughout California and eventually the rest of the country.

With over 2 million prisoners across the country, almost all of whom will be released from prison someday, Lawyer and Vittoria say they have their work cut out for them.

Sources: theatlantic.com, impactjustice.org, nationswelle.com, motherjones.com, npr.org

Third Circuit Reverses Dismissal of Pennsylvania Prisoners’ Dry Cell Suit

The Third Circuit Court of Appeals reversed the grant of summary judgement alleging prison officials lacked a penological interest in extending a prisoner’s duration in a dry cell. On January 15, 2020, it affirmed the grant of judgment on the claim related to the conditions of that confinement.

Pennsylvania prisoner Briaheen Thomas was receiving a visit on May 31, 2015, at SCI-Rockview when a guard saw his friend hand him a bag of M&Ms. He ate one and quickly took a drink of soda. The guard believed Thomas had ingested contraband, so he handcuffed him and immediately removed him from the visit room.

Thomas was placed in a “dry cell,” which is a cell that has been drained of water and its water sources are turned off. To expedite his release from the dry cell, Thomas was offered and accepted laxatives. Over the next four days, he had 12 bowel movements. No evidence of contraband was found and an X-ray of his abdomen revealed a clear gastrointestinal tract.

On the fourth day in the dry cell, the prison’s Program Review Committee (PRC) decided to continue Thomas’ dry cell confinement for five more days.

After he exhausted his administrative remedies, Thomas filed suit in federal court. The defendants moved for summary judgment, which the magistrate judge recommended denying.

The district court, however, granted the motion. Thomas appealed.

The Third Circuit agreed that as to Thomas’ claims on the conditions of confinement were properly dismissed. While in the dry cell, Thomas was handcuffed to the frame of the bed and forced to wear a paper-thin smock that did not fit him. His mattress was soiled and did not have a slip covering, sheet, or pillow. Thomas also was cold the entire time and not given a blanket. He was given no means to clean himself, including after bowel movements and before meals.

The Third Circuit, however, found there was no evidence that the PRC defendants were personally involved in those deprivations, so the claim was properly dismissed.
As to the duration of Thomas’ stay in the dry cell, the court found material issues of fact in dispute. While the first four days in the dry cell carried a penological interest, once the 12 bowel movements and X-ray revealed Thomas had not ingested contraband, whether there was a penological interest in continuing that confinement was in dispute. As such, summary judgment on that claim was inappropriate. The court further found the defendants were not entitled to qualified immunity.

The district court’s order was affirmed in part and reversed in part. The court later granted a motion to rehear the case and made some language changes in a new opinion. See: *Thomas v. Tice*, 946 F.3d 637 (3rd Circuit 2020).

Health Care Services Killing Women at Virginia Prison

by David M. Reutter

With four deaths in five months at Virginia’s Fluvanna Correctional Center for Women (FCCW), a federal district court began moving its focus from care for individual prisoners to systematic change in July 2019.

The Virginia Department of Corrections (VDOC) was party to a 2016 settlement in a lawsuit alleging the provision of medical care at FCCW violated prisoners’ constitutional rights. (*Scott et al v. Clarke*, U.S.D.C. (W.D. VA), case No. 3:12-cv-00036.) The agreement required VDOC to meet 22 health-care standards.

VDOC failed to fulfill its end of the deal and by January 2019 twelve prisoners had died while in FCCW’s custody since the settlement was approved. “Some women have died along the way,” said federal district Judge Norman K. Moon. VDOC vowed to hire 78 more nurses at that hearing.

That order is significant but not enough, said Shannon Ellis, an attorney with the Legal Aid Justice Center. “The judge’s order did not specify what level of qualifications the nurses need to have, and a historic problem at Fluvanna and at prisons across Virginia is very underqualified medical professionals,” Ellis said.

Margaret Breslau, head of the Coalition for Justice in Blackburg, related a story that illustrates Ellis’ point. “A woman, after trying to get on sick call forever and ever and finally gets to see an OB/GYN, and they discover a mass the size of an eggplant. She has had pain. She’s had bleeding. The doctor tells her — and she has paperwork on this — to eat more vegetables.”

The care provided to prisoner Margie Ryder was brought to the court’s attention. Ryder suffered from pulmonary arterial hypertension, a terminal disease if not treated properly.

“She depends on life-saving medication that has to be administered every two days,” said Ellis. “She's been hospitalized … multiple times because of failures to have her medication available, failures to have the pump necessary to administer it, administration of the medication in incorrect amounts, so at times she has symptoms of toxicity.”

Ryder, 39, died in July 2019, just three months prior to her scheduled release. VDOC issued a statement after her death. “As is public knowledge following her lawsuit, she had a terminal illness.” Left unsaid was that University of Virginia Medical Center staff expressed concern with the care she was receiving at FCCW.

“My conscience says I have to speak out on Ms. Ryder’s behalf,” nurse Lauren Bedard wrote in a court filing. “Every time I see this patient … I wonder if it will be the last time I see her alive.”

Prisoner Shannon Dillon said prisoners often have to practice Civil War medicine. “I had a tooth pulled, and I kept telling them, ‘It still hurts. I think it’s infected.’ They still didn’t have me on the appointment list,” she said. “It’s starting to smell. It is killing me, so I got a bunch of Q-tips and a bunch of salt from the chow hall, and I dug out the infection with the Q-tips and packed it with salt from the chow hall.”

Ellis said FCCW is not the only prison with poor medical care. “At Goochland Women’s Prison, which is about 20 miles down the road from Fluvanna, the same practices that led to our lawsuit at Fluvanna are going on,” she said. “For example, LPNs conducting sick call. Having these underqualified nurses making diagnostic decisions is something the Department of Corrections is clearly aware is an unacceptable practice.”

Ellis, meanwhile, is hopeful that the hiring of FCCW’s new medical director, who practiced at the Mayo Clinic and the University of Virginia, makes things better. “We are very happy that the depart-
$120,000 Settlement for Minnesota Woman Forced to Remove Hijab for Booking

by David M. Reutter

A $120,000 settlement was reached on November 5, 2019, in a lawsuit alleging officials at Minnesota’s Ramsey County Jail applied discriminatory treatment to a Muslim woman. The settlement with the county also provides for a change in policies related to Muslim women’s use of head coverings.

Aida Shyef Al-Kadi turned herself in on an outstanding warrant for missing a traffic court hearing. Her August 12, 2013 arrest resulted in a brief booking into the Hennepin County Adult Detention Center.

When arrested, Al-Kadi was wearing a hijab, which covered her hair, ears and neck, and a long dress. Her attire was in holding with her sincere religious belief in “promoting decency and modesty in interactions between members of the opposite sex.”

Hennepin County officials treated Al-Kadi “with respect and dignity when she removed her hijab and was not forced to do so in front of any male officers or detainees.” The next day, she was transported to the Ramsey County Adult Detention Center (RCADC).

Immediately upon entry, she was singled out from other detainees. A guard pat searched Al-Kadi and requested that she take off her “burka,” which is culturally and physically different from the hijab and abaya Al-Kadi was wearing. When Al-Kadi balked at removing her religious attire in front of male guards, she was placed in a holding room while other detainees were allowed to remain in the open booking room.

Al-Kadi was ultimately forced to remove her attire in front of male guards and was subjected to a booking photo. The photo was subsequently posted on mugshots.com, which charges a fee to remove booking photos.

Because she could not post the $50 bond, Al-Kadi remained in jail and was not allowed to wear her hijab until the court resolved the charges on August 15, 2013.

Seven months after her release, RCADC changed its policy and approved a hijab to females while in custody. Al-Kadi sued, alleging she suffered religious discrimination.

On June 12, 2019, the court denied in part the defendants’ motion for summary judgment. Negotiations ensued, resulting in the November 2019 settlement. In addition to the $120,000 cash payment, the settlement requires RCADC to change its policies to allow prisoners to wear religious head coverings and allow females to reposition their head coverings to reveal the hairline but cover their ears during the booking process.

Al-Kadi was represented by attorneys Caitlinrose H. Fisher and Virginia R. McCalmont. See: Al-Kadi v. Ramsey County, U.S.D.C. (D. Minn.), Case No. 0:16-cv-02642.

News in Brief


China: A human rights defense attorney at the Fengrui Law Firm in Beijing, Wang Quanzhang was arrested in 2015 in a Chinese crackdown aimed at legal workers. Quanzhang’s former cases included defending Falun Gong religious practitioners. At his secret trial in December 2018, which lasted only four hours, Quanzhang was found guilty of “subversion of state power,” a common charge against activists that Chinese authorities believe are organizing challenges to Communist Party rule. In January 2019, he was sentenced to four and a half years in prison and five years’ deprivation of “political rights.” Quanzhang completed his sentence on April 5, 2020 and was released from the Linyi Prison in Shandong province. He was not reunited with his wife, Li Wenzu, and their son in Beijing. Quanzhang was taken to his hometown of Jinan, also in Shandong province, for a 14-day COVID-19 “precautionary quarantine.” Wenzu announced her husband’s release on Twitter.

Connecticut: The Center for Prison Education - Wesleyan University offers courses, taught by Wesleyan faculty in Connecticut prisons. In 2016, the program expanded to include Middlesex Community College courses. Prisoners can take a mix of Wesleyan and Middlesex courses to earn an associate’s degree from Middlesex Community College. December 2019 saw seven York Correctional Institution women graduate with the degrees. WNYC reporter Cindy Rodriguez gave the commencement address. Program manager Allie Cislo said Wesleyan University’s board of trustees voted in 2019 to expand the Center for Prison Education catalogue, enabling them to offer a bachelor’s degree program in fall 2020. Prisoners who finish education programs while doing time are 40 percent less likely to return to prison than their peers. Wesleyan professor of philosophy Lori Gruen said her first prison teaching experience was at FCI Danbury. Now she teaches at York. “The Center for Prison Education has grown so much,” she said. “It’s been exciting. Teaching and motivating is what most of us dreamed about when we went into the field.”

Florida: Columbia County sheriff’s deputies got to the Vegas One Casino in Lake City at 4:50 a.m. after numerous 911 calls on March 3, 2020. Witnesses said three
masked men ordered 10 patrons to the floor and demanded cash from two employees. Shots were fired, felling one employee. As police arrived, a gray Saab sped away with police in pursuit, at speeds up to 135 mph. The car stopped in High Springs, and the robbers jumped out and ran. Inside, police found body armor, a loaded AR-15 rifle, and a semi-automatic handgun. After a search of 1½ hours involving at least seven agencies, a K9 tracked the scent of Caleb Na’shon Bowers, 19, the car’s owner, to a backyard. Despite a SWAT team grid search, the other two suspects remained at large as of April 2020. The shooting victim was airlifted to a Gainesville Hospital. Bowers is held at the Columbia County Jail on a charge of armed robbery. He was on probation for a 2018 gun conviction in Alachua County on the day of the robbery.

Florida: The Jacksonville Sheriff’s Office worked with Crime Stoppers and offered a reward up to $3,000 for information in July 2019, after four teens staged a fight and escaped the Jacksonville Youth Academy program run by contract provider TrueCore Behavioral Solutions, formerly known as G4S Youth Services. When staff moved to break up the fight, the kids turned on them, broke into the control room, released the front door and escaped in an employee’s car after dumping a purse and grabbing the keys and a facility-issued cell phone. Tyjuan Monroe, 16, was turned in by his mother and Marcus Ledbetter, 17, was caught the next morning walking along a road; Davonne Baldwin, 17, surrendered later that night. Tajah Bing, 16, was found two weeks later, on a tip, hiding under blankets in a bedroom in Avon Park. Two additional teens were arrested with Bing, after guns and marijuana were also found in that house. Admissions to the Jacksonville Youth Academy were suspended. The facility is mandated to provide one youth service care worker for every eight youth. An anonymous worker there said that to avoid paying overtime, the facility is often short-staffed.

Florida: A caravan of vehicles headed to Tallahassee April 13, 2020. “We decided that it was time for a more deliberate action to be taken to demand the decarceration of inmates here in the state of Florida who are at a particularly high risk of contracting COVID-19 due to the negligence and essentially the inhumanity of the Department of Corrections,” stated Capital City Mutual Aid spokesperson Pearson Bolt. The group drove a circuit past the old Capitol, the DOC building and the new Capitol, playing music, honking horns and demanding via bullhorn that Governor Ron DeSantis free the DOC prisoners. Placards included: “COVID in jails = mass murder,” “Prisoner lives matter,” and “Detention = Death.” Four prisoners at Blackwater River Correctional Facility, run by GEO Group Inc. in Milton, died after testing positive for COVID-19, the Orlando Sentinel reported April 17, 2020. “A total of 63 FDC staff have tested positive at 24 prisons, including Blackwater, Tokoma and Sumter, as well as in three probation regions, according to the FDC.” Florida’s DOC reported that in two facilities 35 prisoners and 45 employees and contract staff had tested positive for COVID-19; 33 of those prisoners are housed at Blackwater. The other two were at Sumter Correctional in Bushnell. The FL DOC has declined to reveal how many tests have been done or how many prisoners are in medical isolation.

Georgia: Fulton County Solicitor General Keith Gammage, 48, established

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a misdemeanor expungement division in 2017. Expungement means that a person’s arrest or conviction is sealed from public view and is only accessible to law enforcement. To date, Fulton County has expunged the records of more than 3,000 people. Gammage said, “Some of the people whose records we expunged were in their 70s who couldn’t get into senior housing for an arrest 20 years earlier for a $15 bad check or stealing a loaf of bread. People have said it has been removing a yoke from around their necks.” The record of Martin Luther King Jr., which University of Texas professor Peniel E. Joseph says is “a matter of political and legal ethics,” is slated to be expunged. King was arrested for trespassing at an Atlanta department store dining room sit-in in 1960. Bernard LaFayette, another civil rights protestor of the King era, doesn’t want his record expunged, “That is part of my history as a civil rights worker.” Gammage says he will not expunge King’s record without the support of King’s family.

Illinois: In December 2018, Strawberry Hampton, a pre-operative male-to-female transgender prisoner was moved from Dixon Correctional to Logan Correctional Center, a women’s prison. [See: P.L.N., March 2019, p. 42]. Hampton was scheduled for release in February 2019, but her sentence was extended by the Illinois Department of Corrections (IDOC). She petitioned for clemency stating the extension was IDOC retaliation. Hampton was finally released in July 2019, after the IDOC approved her request for good time restoration. In September, three IDOC guards were placed on leave after Injustice Watch reported that John Merck, Joseph Dudek, and Gary Hicks posted offensive posts and memes on their Facebook pages. All three posted Islamophobic content. Merck and Dudek both allegedly posted anti-LGBTQ content. Both are named in a lawsuit by Hampton as having assaulted her at Pinckneyville. IDOC spokesperson Linda Hess said, “The employees are on leave pending active IDOC investigations into these posts.” Hampton, now 28, was arrested in November 2019 on suspicion of residential burglaries in Elmhurst. She was held at the DuPage County Jail on $100,000 bail. Hampton was released in March 2020.

Indiana: Porter Superior Court Judge Jeffrey Clymer heeded a grandmother’s plea in April 2020. Deborah Vivian begged the judge not to release her daughter, Alysha Ramos, 29, from jail for the safety of her unborn grandchild. Vivian told the judge that Ramos’ history of methamphetamine addiction and abuse threatens the baby’s life. Vivian told the court, “That baby will end up dying, I guarantee it.” Vivian further testified that Vivian had custody of Ramos’ other two children, for whom Ramos has shown little interest or concern. Judge Clymer ordered that Ramos stay in jail on a probation violation for testing positive for methamphetamine. Ramos’ lawyer unsuccessfully argued that his client had tested clean on other repeated drug tests. In January 2019, the same judge had drastically reduced Ramos’ bond from $4,500 to $250, even after it was revealed in court that Ramos’ then 6-year old son had tested positive for heroin, cocaine, benzodiazepine and methamphetamine in a hair follicle test.

Japan: The country, with its aging population, is experiencing an unexpected crime wave. Pensioners who have run out of money are committing petty crimes to get put into jail. Toshio Takata, 69, who was in a halfway house in Hiroshima, tells his crime story, “I reached pension age and then I ran out of money. So, it occurred to me — perhaps I could live for free if I lived in jail. So, I took a bicycle and rode it to the police station and told the guy there: ‘Look, I took this.’” Takata was 62-years-old at the time; it was his first offense. He was sentenced to one year. When he was released, he pulled a knife out at a public park — second offence. In 1997, the elderly made up one in 20 convictions; in 2017 it was one in five. Of those, one third have at least five offenses. One woman told a BBC reporter, “Even women in their 80s who can’t properly walk are committing crime. It’s because they can’t find food, money.”

Louisiana: Louisiana State Penitentiary at Angola Warden Darrel Vannoy replaced Burl Cain in 2015, after he abruptly resigned his position after getting caught “in a series of unethical practices.” Cain was never charged. In March 2020, Warden Vannoy reported an incident, concerning “certain Angola staff and department payroll administration rules,” which placed him on leave while officials looked into Angola’s payroll. A week later, Vannoy was cleared of criminal wrongdoing, according to department spokesman Ken Pastorick. Nevertheless, the undefined investigation continues. Vannoy was the only employee placed on leave.

Maine: A panel of judges in Boston were scheduled to hear arguments in April 2020 on the appeals of Malcolm French, 58, and Rodney Russell, 56, the Maine pot farm masterminds convicted by a jury in 2014. Their “pot plantation” was discovered in September 2009 in Township 37. During the police raid, undocumented workers fled, and a supervisor set the cash crop ablaze. Notwithstanding, 2,943 mature marijuana plants were seized. Both men had more than five years left to serve on their original sentences. U.S. District Judge John Woodcock allowed the two to be released on $5,000 unsecured bail on April 1, 2020, citing his belief “that the First Circuit will vacate Mr. French and Mr. Russell’s convictions and order a new trial, and the First Circuit’s delay in deciding the appeal is related to the current COVID-19 crisis; they should not be in prison awaiting the resolution of the COVID-19 crisis.” The two are on home probation, pending a subsequent order from Woodcock.

New York: White-collar guys tried using the COVID-19 crisis as a Get Out of Jail Free card. In March 2020, one of the first to use this gambit was Michael Cohen, President Trump’s former lawyer. Cohen’s attorney, Lanny Davis, argued that the Bureau of Prisons is “demonstrably incapable of safeguarding and treating BOP inmates who are obliged to live in close quarters and are at an enhanced risk of catching the virus.” Cohen was seeking a one year and one day reduced sentence or to complete his term under home confinement. U.S. District Judge William Pauley III rejected Cohen’s bid in March. In April, convicted “Pharma Bro” Martin Skrleti’s attorney that his client wanted out for three months to research treatments for coronavirus. Skrleti said in a research proposal, “I am one of the few executives experienced in ALL aspects of drug development. I do not expect to profit in any way, shape or form from...
coronavirus-related treatments.” Skrip was sentenced in 2018 to seven years for defrauding investors in a drug company.

New York: The REFORM Alliance announced in April 2020 that it had donated surgical face masks to prisons, less than three weeks after unveiling its S.A.F.E.R Plan with the tagline, “In a pandemic safer jails and prisons will make all of us safer.” REFORM, which was co-founded by luminaries such as Jay-Z and Meek Mill, donated 50,000 masks to Rikers Island and 2,500 more to the Rikers medical facility, 40,000 to the Tennessee DOC, and 5,000 to the beleaguered Mississippi State Prison in Parchman. REFORM posted a picture of the mask pallet on its Twitter feed. Two days later they donated 36,000 masks to the South Carolina DOC, after it requested help. Van Jones, CEO of REFORM Alliance, said, “We’re in danger of seeing prisons coast-to-coast turn into morgues. It is important to get medical supplies in, and it is equally important to get more human beings out.”

North Carolina: Former Columbus Correctional Institute guard Ricky Graham was stabbed in the face and neck with a shank while doing paperwork at the prison in August 2017. In a February 2020 plea deal, Keenan Lynard Jones, 27, pleaded guilty to attempted murder and was sentenced to 22 to 28 more years in prison. In his victim impact statement, Graham, 57, said he continues to “struggle with the emotional consequences of the attack” and that he has been unable to go back to work. Jones had been at Columbus on a parole violation. He attacked Graham just two days before his release date.

North Carolina: Former Rivers Federal Correctional Institution guard Arlinda Hendrix Lee, 47, was sentenced to one year and one day in prison, plus one year of supervised release, in March 2019. CI Rivers is a contracted correctional institution in Hertford County operated by GEO Group. Lee pleaded guilty in July 2018 to accepting bribes and helping smuggle contraband to prisoners. Lee was active in the scheme from 2012 to 2016. Investigators uncovered Lee’s involvement through the cellphone records of a prisoner’s contraband cell-phone. She received $7,350 in wire transfers from “known associates of Rivers FCI inmates in exchange for helping to smuggle contraband into the prison,” according to a DOJ Eastern District of North Carolina press release. The FBI and the BOP Office of Inspector General investigated.

Ohio: Billy McFarland, the convicted Fyre Festival scammer, launched a new scheme in April 2020 while serving at FCI Elkton. McFarland promised his new venture is not a scam: “I’m launching an initiative called Project-315 to bring together and connect in-need inmates and their families who are affected by coronavirus. We’re going to pay for calls for as many incarcerated people across the country as possible.” Soon after launching the project, the BOP announced free calls for prisoners and McFarland is taking credit on the project’s website. “The administration has listened to us throughout the past week, and our actions were heard,” the site said. McFarland promised to announce a new “mission” in the coming weeks. His website includes a long apology letter that claims that, through being in prison, he has learned what is important in life while also boasting of his “years building brands.” Now that the BOP is waiving phone fees during the crisis, the Project-315 website promises, “All third-party donations will be returned.”

Oklahoma: Federal prisoner Joe Maldonado, 57, known as “Joe Exotic” and “Tiger King” by most of the world, filed a $94 million federal lawsuit in Oklahoma City in March 2020. The filing coincided with the release of the Netflix documentary miniseries Tiger King: Murder, Mayhem and Madness, which focuses on the former Oklahoma G.W. Zoo owner and became an obsession of Americans trapped at home because of the coronavirus pandemic. Maldonado was sentenced to 22 years in prison in January 2020 on counts of murder-for-hire, falsifying wildlife records and violating the Endangered Species Act. His lawsuit targets the assistant U.S. prosecuting attorney, several witnesses who testified against the South Carolina DOC, after it requested help. Van Jones, CEO of REFORM Alliance, said, “We’re in danger of seeing prisons coast-to-coast turn into morgues. It is important to get medical supplies in, and it is equally important to get more human beings out.”

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him, the U.S. Fish and Wildlife Service, and the U.S. Department of the Interior. Maldonado claims that tigers were placed on the exotic species list by the U.S. Fish and Wildlife Service to target commercial businesses that use tigers. He claims he is discriminated against as “an openly gay male with the largest collection of generic tigers and cross breeds.” Asked at a press briefing about pardoning Maldonado, President Trump said he would “look into it.”

Oregon: The Oregon DOC hired Linda Gruenwald, a full-time nurse practitioner in 2001. The Oregonian, in a report of Oregon government salaries, shows Gruenwald’s 2017 salary as $110,423 base pay and $58,143 miscellaneous pay. In November 2019, the Oregon State Board of Nursing proposed suspending Gruenwald’s license after she was accused of starving Steven Fox, 54, causing him to collapse and sustain a critical spine injury while he was a prisoner at Two Rivers Correctional Institution in Umatilla. In 2018, Oregon settled a 2016 lawsuit filed by Fox, while he was a prisoner at Two Rivers Correctional Institution in West Virginia. In 2015, Gruenwald placed him on a “clear liquid diet” with milk for six months but failed to monitor Fox's weight. He passed out in July 2015 and spent three weeks at OHSU Hospital. He had lost 60 pounds over the year. Gruenwald requested a nursing board hearing, which was held on April 22, 2020. The board suspended her licence for 90 days.

Pennsylvania: Former Fairview Township cop Tyson Baker, 45, who was convicted in 2017 for stealing drug money in 2015, is currently serving his 42-month sentence at FCI Gilmer in West Virginia. Baker’s lawyer Jack McMahon filed an emergency petition in March, claiming Baker is vulnerable to COVID-19 because he has an autoimmune deficiency and high blood pressure. His lawyer states that the pandemic offers an “exceptional reason” to release Baker early. Baker lost his appeal in 2019. In March, Pennsylvania Congressman Fred Keller called for the BOP to stop moving prisoners after a COVID-19 positive prisoner was transferred to FCC Allenwood and two other transfers from FTC Oklahoma City got to Allenwood with elevated temperatures. Brian Hart, president of Local 477 of the American Federation of Government Employees at the Allenwood penitentiary, stated, “There’s a lot of staff concern.”

Pennsylvania: Montgomery County Judge Risa Vetri Ferman sentenced Keenan Jones, 31, to 25 to 62 years in prison in January 2020. Jones was convicted in October 2019 on charges of aggravated assault, attempted murder, recklessly endangering another person, possessing an instrument of crime, carrying a firearm without a license and resisting arrest, stemming from the August 2018 shooting of five people in a Cheltenham Walmart. Judge Ferman said, “This was an active shooter situation…The defendant’s actions terrorized a community and wreaked havoc.” Acknowledging that, “There’s no doubt Mr. Jones has real mental health challenges,” the judge ordered treatment for Jones while in prison. The judge said she did not believe Jones went to the Walmart to kill, but once there his actions were intentional. Jurors did not accept the defense argument that Jones was psychotic at the time and should be acquitted by reason of insanity. Assistant District Attorney Tonya W. Lupinacci told the jury, “Shootings like this rock a community.” At trial, Jones stated, “I have no explanation why this happened or how it happened.”

South Carolina: Former McCormick Correctional Institution guard Breanna Alexandria Rouse, 23, was charged with misconduct in office and providing contraband to a prisoner. South Carolina Correctional Department officials say Rouse gave sexually explicit photos that showed her genitals to the unnamed pris-
oner on a cellphone. She is also accused of giving the prisoner sunflower seeds and Jolly Rancher candies. The offenses occurred between January and March of 2020. The SCDC has a no-tolerance policy that requires the firing of any personnel arrested. It is unclear whether the prisoner will be charged. McCormick is a high security prison in McCormick County that houses “violent offenders” and prisoners with “behavioral issues,” according to the SCDC. If found guilty of providing contraband, Rouse could face a 10-year sentence and a $10,000 fine. The misconduct charge could result in a one-year sentence.

**South Carolina:** Corrections Director Bryan Stirling wants the FCC to change anti-jamming laws, so he can jam cellphone signals. In January 2020, McCormick Correctional Institution guards confiscated 32 smartphones, 33 chargers, 31 USB plugs, 17 sets of earbuds, 5 pounds of marijuana, 27 pounds of tobacco, 47 lighters, and a half-gallon of liquor hidden behind a secret panel in a piece of construction equipment on its way into the prison. The stash was valued at $60,000. The prisons have resorted to high fence netting to discourage toss-over contraband. Stirling says, “I think the people trying to sneak in contraband are looking for other avenues. That’s why we check all vehicles coming in through the facility’s gates thoroughly.” It is unclear who, if anyone, would be charged. Cellphone-detecting devices in South Carolina prisons have increased cellphone seizures by more than a third since 2016, Stirling said, “but the easiest way to stop it is to let us block cellphone signals.”

**South Dakota:** The South Dakota Women’s Prison got a new interim warden on March 24, 2020. Darren Berg took over for Wanda Markland, who resigned after nine prisoners fled the Pierre Community Work Center, the facility’s minimum-security unit. Berg had been deputy warden. Markland had been warden since August 2018. The prisoners walked away after the state announced that a prisoner there had tested positive for COVID-19. Prison staffing has been an ongoing challenge system wide, causing extra-long shifts for the guards that do show up. Three escapees fled to the Crow Creek Reservation. Three more were picked up in Pierre. One was picked up on her own and was booked into the Pennington County Jail, leaving Philomene Boneshirt, 25, and Sylvia Red Leaf, 25, still on the lam as of April 10. South Dakota DOC says the positive COVID-19 case is in isolation and doing well. The DOC Twitter feed shows pictures of prisoners at Durfee State and the State Penitentiary sewing PPE masks, face shields and gowns destined for South Dakota prisons.

**Tennessee:** In February 2020, all federal prisoners were moved out of the troubled Silverdale Detention Facility run by CoreCivic. Eight women were moved to the Bradley County Jail and an unspecified number of male prisoners were moved to the Hamilton County Jail, which does not house women prisoners. Sheriff Jim Hammond said, “In order to allow enough room for the transfer of inmates to occur, an equal number of non-federal male prisoners were moved out of the downtown Hamilton County Jail and transferred to the Silverdale facility.” A CoreCivic spokesman simply said Silverdale is closely monitored to “ensure there is an appropriate standard of living for all inmates.” In July 2019, seven people at Silverdale were charged with smuggling illegal drugs after prisoners Summer Wright and Destiny Mikel overdosed. CoreCivic employee Alixzendra Kesley also went to Erlanger East Hospital for incidental exposure. The three and four others were indicted on charges of possession of contraband in a penal institution, conspiracy to possess contraband in a penal institution and reckless endangerment.

**Thailand:** The crowded Buriram Provincial Prison, 240 miles north of Bangkok, was the site of a riot on March 29, 2020. The prison houses 2,100 inmates. One hundred prisoners, fearing COVID-19 would infect the facility, set fire to the

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furniture workshop, sleeping quarters and canteen. Five prisoners attempted escape. One was immediately caught, but police had to search the neighborhood for the other four. Police shot two prisoners to regain control. By April 15, Thailand had 2,643 coronavirus cases, with 43 deaths. Shut-downs and social distancing efforts have cut Thailand’s sex tourism industry in half. King Maha Vajiralongkorn, 67, also called Rama X, reportedly left his luxury lockdown with a “harem” of concubines and servants at the Grand Hotel Sonnenbichl in Germany following online protests. He then traveled to Bangkok to attend a Chakri Memorial Day banquet marking the birth of his royal dynasty in 1782.

**Vermont:** Now-former Northern State Correctional guard Grant Vance was sentenced by U.S. District Judge William K. Sessions III in August 2019 to three months in federal prison for smuggling buprenorphine into the prison. Gregory Paradis, his prisoner accomplice, was sentenced to 15 months. Vance had pleaded guilty in March 2019. The investigation began in the summer of 2017 after confidential informants tipped off investigators that Vance brought buprenorphine into the prison on Thursdays, inside a hollowed-out marker like the markers used by NSCF staff. Vance received the buprenorphine strips in his personal P.O. Box from former prisoners and prisoner families. A single strip might sell for as much as $600 at NSCF. Over that year, Vance received seven packages at the P.O. Box. Vance would pass the strips to Paradis for distribution. Vance also reportedly smuggled in marijuana and cigarettes. Vance was sentenced to three months, while Paradis was sentenced to a year and three months.

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### Criminal Justice Resources

**Amnesty International**

Campaigns for the worldwide abolition of the death penalty. Publishes information on torture, gun violence, counter-terrorism, refugees’ rights and other human rights issues. No legal services are provided. Reports on the U.S. and other countries are available online at: www.amnesty.org.

**Black and Pink**

Black and Pink is an open family of lesbian, gay, bisexual, transgender and queer prisoners and “free world” allies who support each other. A national organization, Black and Pink reaches thousands of prisoners across the country and provides a free monthly newspaper of prisoner-generated content, a free (non-sexual) pen-pal program and connections with anti-prison movement organizing. Contact: Black and Pink, 6223 Maple St. #4600, Omaha, NE 68104 (531) 600-9089. www.blackandpink.org

**Center for Health Justice**

Formerly CorrectHELP. Provides information related to HIV in prison – contact them if you are not receiving proper HIV medication or are denied access to programs due to your HIV status. Contact: CHJ, 900 Avila Street, Suite 301, Los Angeles, CA 90012 (213) 229-0985; HIV Hotline: (213) 229-0985 (collect calls from prisoners OK). www.centerforhealthjustice.org

**Centurion Ministries**

Centurion is an investigative and advocacy organization that considers cases of factual innocence. Centurion does not take on accidental or self-defense cases or cases where the defendant had any involvement whatsoever in the crime. In cases involving sexual assault, a forensic component is required. Cases that meet this criteria may send a 2-4 page letter outlining the facts of the case, including the crime you were convicted of, the evidence against you and why you were arrested. You will receive a return letter of acknowledgement. Contact: Centurion, 1000 Herrontown Rd., Clock Bldg, 2nd Fl, Princeton, NJ 08540. www.centurion.org

**Critical Resistance**

Seeks to build an international movement to abolish the Prison Industrial Complex, with offices in California, New York, and Portland, Oregon. Publishes The Abolitionist newsletter. Contact: Critical Resistance, 1904 Franklin Street #504, Oakland, CA 94612 (510) 444-0484. www.criticalresistance.org

**FAMM**

FAMM (Families Against Mandatory Minimums) advocates against mandatory minimum sentencing laws with an emphasis on federal laws, and works to “shift resources from excessive incarceration to law enforcement and other programs proven to reduce crime and recidivism.” Contact: FAMM, 1100 H Street, NW #1000, Washington, DC 20005 (202) 822-6700. www.famm.org

**The Fortune Society**

Provides post-release services and programs for prisoners in the New York City area and occasionally publishes Fortune News, a free publication for imprisoned and released rape survivors and supports activists working to expose and end the abuses of the Prison Industrial Complex. PARC produces a free resource directory related to families of prisoners, primarily in New York. Contact: The Fortune Society, 29-76 Northern Blvd., Long Island City, NY 11101 (212) 691-7554. www.fortunesociety.org

**Innocence Project**

Provides advocacy for wrongly convicted prisoners whose cases involve DNA evidence and are at the post-conviction appeal stage. Maintains an online list of state-by-state innocence projects. Contact: Innocence Project, 40 Worth St., Suite 701, New York, NY 10013 (212) 364-5340. www.innocenceproject.org

**Just Detention International**

Provides information on torture, gun violence, counter-terrorism, refugees’ rights and other human rights issues. No legal services are provided. Reports on the U.S. and other countries are available online at: www.justdetention.org

**Justice Denied**

Although no longer publishing a print magazine, Justice Denied continues to provide the most comprehensive coverage of wrongful convictions and how and why they occur. Their content is available online, which includes all back issues of the Justice Denied magazine and a database of more than 4,500 wrongly convicted people. Contact: Justice Denied, P.O. Box 66291, Seattle, WA 98166. www.justicedenied.org

**National CURE**

Citizens United for Rehabilitation of Errants (CURE) is a national organization with state and special interest chapters (such as federal prisoners and sex offenders) that advocates for rehabilitative opportunities for prisoners and less reliance on incarceration. Publishes the CURE Newsletter, $2 annual membership for prisoners. Contact: CURE, P.O. Box 2310, Washington, DC 20013-2310 (202) 789-2126. www.curenational.org

**National Resource Center on Children and Families of the Incarcerated**

Primarily provides research, fact sheets and a program directory related to families of prisoners, parenting, children of prisoners, prison visitation, mothers and fathers in prison, etc. Contact: NRC-CFI at Rutgers-Camden, 405-7 Cooper St. Room 103, Camden, NJ 08102 (856) 225-2718. https://nrccf.camden.rutgers.edu

**November Coalition**

Advocates against the war on drugs and previously published the Razor Wire, a bi-annual newsletter on drug war-related issues, releasing drug war prisoners and restoring civil rights. No longer published, back issues are available online. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 680-4679. www.november.org

**Prison Activist Resource Center**

PARC is a prisoner abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, ableism, heterosexism and classism, specifically within the Prison Industrial Complex. PARC produces a free resource directory for prisoners and supports activists working to expose and end the abuses of the Prison Industrial Complex and mass incarceration. Contact: PARC, P.O. Box 70447, Oakland, CA 94612 (510) 893-4648. www.prisonactivist.org

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