These Sheriffs Release Sick Inmates to Avoid Paying Their Hospital Bills

Prisoners suffering heart attacks, on the verge of diabetic comas and brutalized in jail beatings have been released so sheriffs wouldn’t have to pay for their medical care. Some were rearrested once they had recovered.

by Connor Sheets, AL.com, with ProPublica

Michael Tidwell's blood sugar reading was at least 15 times his normal level when sheriff's deputies took him to the hospital. But before they loaded the inmate into the back of a car, deputies propped up his slumping body and handed him a pen so he could sign a release from the Washington County Jail.

"I could barely stand up or keep my eyes open," he recalled.

Tidwell said that he didn't know what he was signing at the time, and that he lost consciousness a short time later. The consequences of his signature only became clear in the weeks that followed the 2013 medical emergency.

By signing the document, which freed him on bond from the small jail in south Alabama, Tidwell had in essence agreed that the Washington County Sheriff’s Office would not be responsible for his medical costs, which included the two days he spent in a diabetic coma in intensive care at Springhill Medical Center in Mobile.

It's unclear whether Tidwell, who was uninsured at the time and in poor health afterward, was billed for his care or if the medical providers wrote it off. Neither Tidwell's attorneys nor the hospital was able to say, and Tidwell was unable to get answers when he and a reporter called the hospital's billing department.

What is clear is that the sheriff's office avoided paying Tidwell's hospital bills. Tidwell had been on the receiving end of a practice referred to by many in law enforcement as a "medical bond." Sheriffs across Alabama are increasingly deploying the tactic to avoid having to pay when inmates face medical emergencies or require expensive procedures — even ones that are necessary only because an inmate received inadequate care while incarcerated.

What's more, once they recover, some inmates are quickly rearrested and booked back into the jail from which they were released.

Local jails across the country have long been faulted for providing substandard medical care. In Alabama, for instance, a mentally ill man died from flesh-eating bacteria 15 days after being booked into the Mobile County Metro Jail in 2000. And in 2013, a 19-year-old man died of gangrene less than a month after he was booked into the Madison County Jail. In both cases, officials denied wrongdoing and surviving relatives settled lawsuits alleging that poor jail health care contributed to their loved ones' deaths.

But the use of medical bonds isn't about inferior care. It's about who pays for care.

While medical bonds have been a last resort in many states for more than 20 years, experts say they are employed in Alabama more often than elsewhere. Their use in some counties but not in others illustrates the vast power and latitude that sheriffs have in Alabama, which is the subject of a yearlong examination by AL.com and ProPublica.

Several Alabama sheriffs, including Washington County Sheriff Richard Stringer, said in interviews that they often
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Christopher Zoukis
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Sick Released to Avoid Bills (cont.)

find ways to release inmates with sudden health problems to avoid responsibility for their medical costs. Stringer denied any wrongdoing in his office’s handling of Tidwell’s emergency.

“We had a guy a couple of weeks ago with congestive heart failure. … The judge let him make bond so the county didn’t get stuck with that bill,” Lamar County Sheriff Hal Allred said in a March telephone interview. “We don’t have any medical staff in the jail. I wish we did, that would be great, but the way the county finances are, I won’t live long enough to see it.”

Typically the process works like this: When an inmate awaiting trial is in a medical crisis, a sheriff or jail staffer requests that a judge allow him or her to be released on bond just before, or shortly after, the inmate is taken to a hospital. If the request is granted, the inmate typically signs the document granting the release.

Michael Jackson, district attorney for Alabama’s 4th Judicial Circuit, said he is aware of multiple recent cases in which sheriffs released inmates on bond without first obtaining a judge’s approval. Jackson said he also worries about the risk of inmates reoffending after they receive medical treatment.

“I’m not saying there should be no situation where an inmate can get released early, but it shouldn’t be about money,” Jackson said in a phone interview this month. “No one’s watching them when they get out, and people might get robbed or their houses might get broken into.”

While judges usually sign off on bonds, lawyers who represent inmates and other experts say sheriffs are often the key decision-makers and can be held legally responsible for what happens after they release inmates via such methods.

If an inmate is already sick or injured when he or she is released, sheriffs are “not going to be able to avoid the liability just by opening the trap door and letting them go,” said Henry Brewster, one of Tidwell’s attorneys.

“They Have to Do Something”

Shortly after Tidwell was locked up for a probation violation in 2013, his sister Michelle Alford, a nurse at a Mobile hospital, said she brought his diabetes medications to the Washington County Jail and gave them to the guard on duty.

She says she explained to the staff that her brother is a “brittle” diabetic, meaning he needs frequent monitoring. She provided the jail with a two-page document that explained how often his blood sugar needed to be checked, what symptoms to watch for and the purpose of each medication.

The jail’s employees, none of whom had any formal medical training, did not follow those instructions, according to Tidwell’s jailhouse medical records, a copy of which Alford provided to AL.com and ProPublica.

On his fourth day in the aging jailhouse, Tidwell became ill and vomited off and on for the ensuing 48 hours. He was unconscious for most of his final two days there, according to court and medical records.

Before he was taken to Washington County Hospital, Tidwell’s blood sugar reading was 1,500 mg/dl; a normal reading for him is 80 to 100 mg/dl. Over the less than seven full days he was incarcerated, he had lost at least 17 pounds, records show.

Tidwell’s release form bears his signature scrawled incomprehensibly inside the signature box, overlapping the typed prompt for “Signature of Defendant.” It does not match other examples of his signature on court documents reviewed by AL.com and ProPublica.

“If you’re in there and you get sick, they have to do something and get some medical attention,” he said. “But if you’re in so bad of shape that they’re trying to hold you up and get you to sign something, that’s wrong.”

Tidwell, who was 42 at the time, was assessed at the local hospital and taken to Springhill, a larger and better-equipped hospital, where he lay in a coma in the intensive care unit. He was suffering from renal failure and other complications related to his diabetes, according to the records.

During a conversation in his office in downtown Chatom, Stringer, the Washington County sheriff, said that he and his jail staffers are not medically trained. Instead, they “listen to what [inmates are] complaining about and examine them to determine if they need medical bond, because people will do anything to get out of jail.”

If they decide an inmate has a serious and potentially costly medical issue — and doesn’t pose a threat to the public — Stringer said he or the jail’s administrator will call a judge and request that the inmate be released.
Sick Released to Avoid Bills (cont.)

Asked last week whether he believes Tidwell was legally able to provide consent to being bonded out, Stringer said: “They’ve got to be physically able to sign the bond. I’m sure he was [conscious] or he wouldn’t have been able to be bonded out. … It’s been so long ago it’s hard to remember all these things. I’m sure we did what needed to be done.”

But in an earlier interview, the sheriff provided an alternate explanation for Tidwell’s hospitalization.

“When someone comes in and says he’s a diabetic, we try to prepare a meal that will accommodate his diabetes,” Stringer said. “But now on commissary, they’re on their own there. I mean, you know he’s diabetic. Don’t order — he actually ordered 12 honey buns.”

Tidwell, who denies eating a dozen honey buns in the jail, recovered and was sent home from the hospital.

He filed a lawsuit against Stringer and several sheriff’s office employees in 2014; it was settled the following year. Stringer said he believes he and his employees would have been exonerated had the suit gone to trial, but because he said the settlement was for “something like $20,000 … it’s not worth fighting it.”

But Tidwell’s problems didn’t end there. Exactly three months after Tidwell was released on bond, a judge issued a bench warrant for his arrest on another probation violation.

“[He] Then They’ll Lower the Bond”

AL.com and ProPublica have reviewed the cases or media reports of inmates in 15 of Alabama’s 67 counties who were issued last-minute bonds or released on their own recognition just before they were hospitalized for emergencies.

In September 2018, for instance, a 38-year-old inmate at the Lauderdale County Jail was taken to a nearby hospital after he suffered a stroke that left him partially paralyzed and unable to communicate verbally, stand or perform daily tasks, state court records show. The inmate, Scottie Davis, was released from sheriff’s office custody on bond the following day, though he couldn’t sign the release document. Someone instead wrote the words “Unable to sign due to medical cond.” in the space for the inmate’s signature. Davis was responsible for the medical costs after he was bonded out.

Lauderdale County Sheriff Rick Singleton said when inmates are too ill to sign their names, sheriff’s officials notify a judge who decides whether to allow them to be released on bond.

And earlier last year, in Randolph County, an inmate was released on a medical bond before going to the hospital for surgery, according to The Randolph Leader, a local newspaper. When he wasn’t able to immediately get the procedure, he was rearrested on a new misdemeanor charge and booked back into the Randolph County Jail.

The county ended up on the hook for the over $10,000 the procedure was expected to cost. Some county officials view the turn of events as an unfortunate financial setback.

Randolph County Commissioner La-thonia Wright said in a phone interview this month that paying inmates’ hospital bills is “really rough” on the county’s budget, but it sometimes can’t be avoided.

“I hate that we have to pay for it out of taxpayer money, but the law demands that we take care of people that are incarcerated in the jail,” he said. “If we get a bill, we pay for our medical bills. They come straight from the hospital.”

In urban counties with larger populations, the majority of inmates’ medical problems are dealt with in the jails, usually by private companies that provide infirmaries, round-the-clock nurses and doctors who make regular visits.

But in some rural counties, sheriffs do not have any staff members with medical training or the budget to absorb significant hospital costs.

Jim Underwood, who was sheriff of Walker County from 2015 until January, said the county budgeted about $350,000 per year for jail health care while he was in office. The sheriff’s office did everything it could to keep costs down, Underwood said, adding that before he was sheriff, one inmate’s medical care cost about $300,000.

“I think that a lot of it does depend on what they’re charged with … but there are people released because of medical bills,” he said. “You have to go through the judge; they’ll lower the bond.”

Underwood said he believes the practice “happens everywhere” in Alabama, though it takes different forms in different counties. One sheriff’s office has paid for inmates to wear ankle monitors while out on bond for unexpected medical care; another waited for an inmate’s relatives to secure a private bond before allowing him...
Sheriff’s officials in Washington County, where Tidwell was in custody, have faced other lawsuits alleging improper use of medical bonds, including in the case of a woman who died of a stroke one day after being released from the county’s jail in 2016. In that case, which was settled this year, an audio recording captured a top sheriff’s office official asking jail staff to ensure the woman was released on a medical furlough, a method of release similar to a medical bond, before taking her to the hospital.

Nora Demleitner, a law professor at Washington and Lee University in Virginia who specializes in criminal sentencing, said medical bonds may violate inmates’ rights and the way some sheriffs use them is “totally flawed.”

“It’s a stunning problem,” she said. “When [inmates] file lawsuits, and rightly so, they should get civil compensation.” Demleitner added via email that the phenomenon is prevalent in a number of counties and entirely absent in others. AL.com and ProPublica have reviewed media reports of sheriffs pursuing medical bonds for inmates with medical crises in 25 states.

Alan Lasseter, a Birmingham-based attorney who has filed lawsuits over alleged police misconduct and jail health care issues, said sheriffs’ reliance on medical bonds appears to be on the rise.

“It’s only something I’ve been hearing about for about two years, maybe longer, but it’s becoming more common and it’s really starting to resonate with me that it’s been happening more and more in Alabama,” Lasseter said.

“They Are Responsible”

Marcus Echols said his daughter was 9 years old when he first learned that she was his child. Until then, the girl’s mother had been collecting child support from another man who was eventually determined not to be her father, according to court records and Echols.

In 1998, a judge in Morgan County ordered Echols to pay more than $9,000 worth of back child support and interest in monthly payments of $500.

Over the ensuing years, Echols, who pays support on other children and has had trouble keeping a job, repeatedly failed to make the required payments. By November 2015, when he was arrested for contempt of court for failure to make child support payments, his debt totaled more than $50,000. He was booked into the Morgan County Jail in Decatur, a city in north Alabama.

Two months later, on Jan. 16, 2016, Echols suffered a heart attack inside his painted cinder-block cell.

For over half an hour, guards argued over whether he needed to be taken to the hospital, Echols, now 49, said.

They eventually took him to Huntsville Hospital. Several hours later, Echols said, he awoke from a procedure and was told by a doctor that he had needed three stents inserted because his heart had suffered extensive damage over the extended period of time between when he went into cardiac arrest and his arrival at the hospital. Medical records reviewed by AL.com and ProPublica confirm Echols’ account of his condition and treatment.

The doctor also informed him that he had been officially released from Morgan County Sheriff’s Office custody, Echols said.

Echols said he was glad to find out that he would be allowed to go home instead
of back to jail, but when he received a bill less than two weeks later from Huntsville Hospital for the costs of his medical care, he learned that he was personally responsible for more than $80,000.

“I didn’t get the bill until about a week after I got out of the hospital,” Echols said. “It just showed up in the mail.”

Echols said he never learned what mechanism the sheriff’s office had used to release him from its custody, and none of the court records associated with his lawsuit provide any clarity.

“I didn’t sign nothing…. When I woke up,” he said, “the doctor told me that the sheriff’s office had told him to tell me that I had been released from jail.”

A local charitable foundation ultimately paid Echols’ bills. But he still feels that he was taken advantage of.

“It seems like a scam that they’re running. They’re running the jail at the lowest possible cost at the expense of everyone else.”

Ana Franklin, who was sheriff at the time of Echols’ incarceration and hospitalization, declined to comment on Echols’ experience. But she said her “first consideration in whether or not to release someone on a medical release was never the budget.” She said the primary factors that drove such determinations when she was sheriff included criminal history, risk of reoffense and whether the jail was equipped to provide adequate medical care.

“It’s great to just say the sheriffs cut them loose because it saves them money on their medical,” said Franklin, who pleaded guilty last year to a federal charge of failing to file an income tax return. “But it’s just as big a liability issue that an inmate is going to say that we didn’t provide adequate treatment for them in the jail as it is that he’s going to sue us and say we cut him loose and they had to pay their medical bills.”

In March 2016, just a few weeks after Echols’ heart attack, the sheriff’s office attempted to obtain a new warrant to arrest him for contempt of court for his continued failure to pay the thousands of dollars worth of back child support he still owed.

Morgan County District Judge Charles B. Langham issued an order stating that Echols “is still under medical care”— he was attending cardiac rehab sessions at the time — and denied the sheriff’s office’s request. A year later, Langham issued an order for a new warrant for Echols’ arrest. At the time, Echols was unable to work, had applied for federal disability and was living with relatives.

Echols’ sister, Lashundra Craig, said she takes issue with the sheriff’s office’s persistent attempts to arrest her brother despite his continuing health issues.

“They are responsible for whatever happens to the inmates. … If they don’t want to be responsible for the medical costs but they want to put you back in jail to face your responsibility, to me it’s showing they just still want their money,” she said.

“They Said They Would Release Me”

IT HAS HISTORICALLY BEEN DIFFICULT FOR inmates to prevail in lawsuits alleging that sheriffs violated their rights by releasing them while they required medical attention.

On July 3, 1996, four inmates beat Leroy Owens with a metal pipe; stabbed him with a screwdriver; kicked, stomped and punched him; and left him in a pool of blood in a common room on the second floor of the Butler County Jail in Alabama’s Black Belt.

Owens described the events of that evening in a recent interview, and they are laid out in detail in the records of the federal court case he and a fellow inmate who was also beaten would later file against then-sheriff Diane Harris, the county and the county commission in Alabama’s Middle District in Montgomery.

For nearly an hour, no one answered Owens’ cries for help or those of other inmates who banged on the jail’s walls, one of whom yelled, “They’re killing him up here,” according to the court records.

Finally, Harris’ chief deputy, Philip Hartley, was called to the jail. Twenty minutes after the attack ended, Owens was taken downstairs and then driven to a nearby hospital, where he was treated for his injuries.

The hospital released Owens into the custody of two sheriff’s deputies, who were given a discharge document detailing “specific procedures to care for Owens’ head wounds and other injuries. It instructed them to monitor his level of consciousness, pupils, vision, and coordination, and to call the hospital immediately if any change occurred,” according to a summary of Owens’ allegations included in the U.S. Court of Appeals for the 11th Circuit’s ruling on the appeal of his federal case.

Instead, after they arrived at the jail, Hartley insisted that the bloodied inmate sign a bond granting his release, according to Owens and the court records.

“I signed out of the jail. All I know is it was a piece of paper I signed. I was bleeding and I was coming in and out of consciousness,” Owens, who is now 56, said last month. “They said they would release me if I signed it.”

After Owens signed the bond, Hartley drove him almost to the county line and...
dropped him off at about 3:30 a.m. on July 4, 1996, on the side of a desolate stretch of highway, without shoes, according to Owens and the court records.

“When he released me from the jail, he took me to the edge of the county and he said, ‘Your best bet is to leave town,’” Owens recalled.

After spending the night in a hotel, Owens awoke “in terrible pain” and was taken by ambulance back to the emergency room, according to the court records. He returned to the hospital again on July 8 for further treatment, the court records show.

Medicaid ultimately paid the hospital bills Owens incurred after he was bonded out from the jail.

Danny Bond, the current sheriff of Butler County, did not respond to repeated requests for comment.

In 2001, the 11th Circuit reinstated Owens’ case against the county, the sheriff and others after a lower court had dismissed it. The court ruled that though Owens and the other inmate did not prove that Harris or the county were deliberately indifferent to their medical needs, they “sufficiently stated a claim against the County and the Sheriff for the conditions at the Butler County Jail.”

The court, however, also found that Harris was “entitled to immunity for her policy of releasing sick and injured inmates.”

Judge Rosemary Barkett, writing for a four-judge minority, disagreed, saying that the allegations of deliberate indifference against Harris should not be dismissed. Barkett wrote that Harris and her staff should have known that releasing Owens and leaving him on the side of the road after 3 a.m. could be a constitutional violation.

Harris and the county denied wrongdoing; Owens and the other inmate plaintiff ultimately settled the suit.

Meanwhile, legal experts who reviewed relevant portions of Alabama’s state code said they were able to find only two vague references to the issue: a statement that certain fees shall not be assessed “if a person is released on judicial public bail or on personal recognizance for a documented medical reason” and a stipulation that “the sheriff or jailer, at the expense of the county,” must provide “necessary medicines and medical attention to those who are sick and injured, when they are unable to provide them for themselves.”

Despite that, some lawyers and experts say inmates often have a hard time winning cases against sheriffs on those grounds.

“If a county sheriff threw someone out of the jail who’s unconscious and said ‘good luck,’ you could possibly make a civil rights violation or negligence claim,” said Paul Saputo, a Dallas-based criminal defense attorney who has represented multiple clients who have been bonded out of jail for medical reasons.

“If you have a heart attack and are taken to a hospital, and the question at the end of the day is who’s gonna pay for it, that’s a little bit closer of a call.”

“They’re Technically Still in Custody”

Lauderdale County, in Alabama’s northwest corner, has taken official action...
to expand the use of medical bonds.

During its April 25, 2017, meeting, the Lauderdale County Commission agreed to enter into a contract with a Tennessee company to provide ankle monitors and monitoring services for inmates who are permitted to leave the county’s jail to obtain expensive medical treatments.

Lauderdale County District Attorney Chris Connolly explained the concept during a discussion of the ankle monitor plan earlier that month, as Florence’s Times Daily newspaper reported at the time.

“Putting them on an ankle monitor and then releasing them on medical furlough or a recognizance bond would still allow us to have control of them, but also it would make them responsible for any medical treatment or expense,” Connolly said.

The new approach to reducing the jail’s medical costs has been used 12 to 15 times since the contract was signed, Singleton, the Lauderdale County sheriff, said in a telephone interview last month.

“I guess you’d consider it like house arrest,” he said. “They’re technically still in custody and must immediately return to the jail once they are deemed healthy enough to do so. But instead of adding to the $500,000 of medical care the jail averaged annually as of 2017, the inmates must pay the bill. That means the program has been a success, according to Singleton.

“It’s accomplished what we wanted to accomplish,” he said. “It’s saved us some money.”

Singleton also emphasized that the program does not affect public safety because ankle monitors are only used in cases involving nonviolent inmates who are not considered threats to the community.

Lauderdale County District Judge Carole Medley, who rules on small-time criminal cases nearly every day in her courtroom, said she often grants bonds so inmates can obtain medical care, which they must then pay for themselves. She said that she is “very pro-ankle monitor,” and that she considers the program “a win-win” for inmates and for the jail and the county’s finances.

“I release people on [own recognizance] bonds every other week for medical issues. Do I take into consideration the charge? Of course. And there are times where we release them on an ankle monitor to get their medical needs addressed, and then some of them do return to jail.”

Critics of the practice say it raises important questions about the very purpose of incarceration. For instance, if sheriffs and other officials claim that these inmates must be jailed to prevent them from harming others, punish them for wrongdoing and deter would-be criminals, why are those officials so quick to abandon those goals in order to avoid paying their medical bills?

Jasmine Heiss, a campaign director at the Vera Institute of Justice in New York, said if such inmates can in fact be safely released when doing so saves tax dollars, perhaps they shouldn’t have been incarcerated in the first place.

“Broadly, what we would like to see is people who can be safely released on their own recognizance being released earlier in the process rather than waiting until people have these severe medical crises,” Heiss said. Help us investigate. ProPublica and AL.com will be investigating the extraordinary power of Alabama sheriffs all year. Are you from Alabama? Do you have reason to believe we should be looking into your sheriff or sheriff’s office? Get in touch. Email us at alabamasherrifs@propublica.org. Here's how to confidentially leak to us: www.propublica.org/leak-to-us/

Research reporter Claire Perlman contributed to this report.

This article was published September 30, 2019, by ProPublica (propublica.org); reprinted with permission. Copyright, 2019 ProPublica Inc.
North Carolina Prisoner Escapes to Flee Coronavirus Death Sentence

by David M. Reutter

Feathering his existing medical condition could transform his sentence to death if he caught COVID-19, federal prisoner Richard Cephas elected to escape. After nearly a month on the run, Cephas turned himself in on April 20, 2020, resulting in a new charge for the escape.

Cephas was a prisoner at the Federal Prison Complex in Butner, North Carolina. He worked as an orderly, so he was aware the prison lacked soap for prisoners to wash their hands frequently. Prisoners were told they should use soap they purchased. Gloves and masks were not issued until five days after Cephas escaped. The prison's layout makes social distancing virtually impossible.

Cephas says he suffers from neutropenia, a medical condition that makes him more susceptible to COVID-19 because his body struggles to create sufficient white blood cells to combat infections. Butner officials reported the prison's first positive coronavirus case on March 26, 2020. As the numbers grew and Cephas received no reply to requests to be released on home confinement, he became more fearful for his life.

“I take ownership of having to serve my time,” said Cephas, who had 18 months to serve on a 66-month sentence on a drug conviction when he escaped. “I signed up for a jail sentence, not a death sentence.”

Part of Cephas' duties as an orderly was to take the trash out. Around 9:30 p.m. April 2, Cephas included some of his belongings in the bag. He removed his items, put the trash in the bin, tossed his stuff over a fence, and climbed over. It took him six hours to get to Durham. He said he was staying in an abandoned house, which kept him from receiving the bi-weekly shot to counteract the neutropenia.

“I’m running a risk both ways, but I’d rather risk a run away from there than sitting in the middle of a petri dish knowing I’d be the first to perish,” Cephas said. “I want to turn myself in; that was my intent from day one, to make public awareness of what’s going on the inside and so some of these guys can get out and not die in there.”

After Cephas fled Butner, coronavirus ran rampant through the prison. As of April 20, 2020, Butner had reported that 65 prisoners and 27 staff members tested positive for COVID-19. Five prisoners died. All but one had preexisting medical issues, prison officials said.

Cephas, 54, turned himself in at a Delaware courthouse. He was to be returned to North Carolina to face the escape charge.

“I have to be honest, I don’t feel I should get time for escaping from prison,” said Cephas. “If it wasn’t for COVID, I would have never left.”

Source: newsobserver.com
From the Editor
by Paul Wright

I t seems like an eternity since the COVID-19 pandemic arrived in the U.S. in January of this year and the first deaths began occurring in March. Now, each day brings grim news for American prisoners. Everyone I know in the prisoner rights community is working long, hard hours to get prisoners released or ensure some measure of safety to them at every level: state, local, federal, immigration and juvenile.

PLN is providing coverage about what is happening at each level. There is such a huge amount of news and information on COVID-19 and detention facilities that simply reviewing it is a major challenge.

I have been reporting on prison and jail news for a little over 30 years now. Ken Silverstein, PLN’s managing editor, brings around 35 years of news reporting experience to the table. Neither one of us can recall the media so relentlessly focused on a single topic as with COVID-19. We’re simply not finding much as we scour news wires for criminal justice stories that are unrelated to COVID-19.

We are publishing stories that were in our article pipeline before the pandemic hit as we think it is important to remember that pandemic or not, the beatings, medical neglect, censorship and other injustices of the modern American gulag haven’t stopped.

Much of the news coverage about COVID-19 and detention facilities is poorly sourced and speculative. We are trying to bring PLN readers the most accurate and best news we can. We are running individual articles about statewide prison release orders as they affect broader numbers of prisoners. Individual release orders and denials of statewide release motions will be discussed in broader round-up articles. Likewise, we will report on the use of prison slave labor during the pandemic, lies and cover ups by prison officials, and the grim toll the pandemic is taking.

I would like to thank the prisoners who are writing to us with comments about how COVID-19 is affecting you and your prison. We are reporting some in PLN as part of Ken’s Postcards from Prison series but most are going onto PLN’s website, which more than 100,000 people a month visit. If things are especially bad in your prison or jail, write PLN and tell us about it. Pictures are great as well. Be brief, clear and concise. Let us know if you are okay being named or just wish your initials to be used. If necessary, we can just name your facility.

Thanks to Dr. Michael Cohen for providing ongoing medical coverage of the pandemic to PLN readers. While Ken and I are very knowledgeable about prison issues in general, having a medical professional familiar with the grim reality of treatment in prisons and jails lets us focus on the other elements of the news cycle.

As readers know, we are continuing to publish, print and mail both PLN and Criminal Legal News, and we are continuing to ship book orders within 24 hours of receiving them. Our staff is working tirelessly to ensure readers get the latest news in a timely manner. Likewise, our litigation team continues working hard to ensure prisoners in particular can receive our publications. In addition, we are fielding many media inquiries on COVID-19 in detention facilities, and I am doing two to five radio and TV interviews a week with both national and international media. Hearing from our readers about what is happening to you puts us in a better position to tell the world what is happening inside prisons and jails.

By now, subscribers should have received a fundraiser mailing from me and HRDC. If you can donate to help support our work during this crisis, it will be deeply appreciated. The COVID-19 pandemic has our staff working harder than ever, a situation made more difficult because most are now forced to work remotely.

We know that times are tough financially for everyone these days, and nonprofits doing prisoner rights advocacy are no exception. If you can donate, please do so. If you can’t, but know someone who can, please encourage them to donate. All donations, no matter how large or small, go a long way with HRDC. We are a lean and efficient operation. We rely on individual supporters like you to do our critical advocacy work, in addition to our book and magazine publishing.

As last month’s issue was going to press, we ran an ad announcing that a donor was sponsoring 1,700 six-month trial subscriptions to PLN for prisoners to better inform them about COVID-19 and measures they can take to protect themselves. If you would like a trial subscription, please send $1. This offer does not apply to current or former subscribers (and you must have at least nine months remaining on your sentence) as its goal is to further grow PLN’s reader and subscriber base.

Enjoy this issue of PLN, and please let us know what is happening in your facility.
Company Hawking Prison Phone Monitoring Technology as Way to Discover Coronavirus Infections

by Matt Clarke

A Los Angeles-based company has been selling to jails and prison systems phone-monitoring technology that searches for keywords, touting it as a way to discover COVID-19 infections early.

LEO Technologies developed the Verus system, which has already been deployed in at least 26 facilities in 11 states, including the Georgia prison system, at least seven Alabama county jails, and at least one facility in California. Some use LEO for non-COVID-19-related purposes.

The prisons implement Verus by asking their prison phone service provider to share call data with LEO, which routes the data though Amazon Web Services (AWS), the cloud-computing division of Amazon. AWS sends LEO transcripts and the transcripts are read for keywords such as “coughing,” “sick,” “sneezing” or “COVID-19” by LEO staff. Could anything go wrong?

“Obviously, people talking about COVID-19 on the phone does not necessarily mean they are infected with COVID-19. The whole world is talking about the virus right now,” said Shilpi Agarwal, a senior attorney with the American Civil Liberties Union of Northern California. “It’s not at all clear that any of the monitoring and analysis would be accurate; we know that voice recognition technology is deeply biased. Moreover, we also know that this kind of recording technology has been misused in the past to financially exploit inmates and to spy on their conversations with attorneys.”

LEO Technologies CEO Scott Ker-
nan is a former California Department of Corrections and Rehabilitation secretary who sits on the board of GEO Group, one of the largest private prison companies in the world. LEO Technologies is funded by Elliott Broidy, a former national deputy finance chairman of the Republican National Committee whose office was raided by the FBI in 2018 in conjunction with an investigation of money laundering and influence peddling. In 2009, Broidy pleaded guilty to New York felony bribery charges, admitting to providing payments to staffers in the state’s comptroller’s office.

Kernan admits Verus is not subject to any outside auditing for accuracy and there is no “hard and fast rule” about who handles prisoners’ call data and for how long. He said Verus has already transcribed over 84 million minutes of calls at a cost of 6 to 8 cents a minute.

But who is going to pay those 6 to 8 cents per minute? It will not be the prisons and jails, and LEO certainly is not going to provide the service for free. That leaves prisoners—or rather their families—who will be stuck with a bill just to be able to spend a few minutes on the line with their loved ones.

“While this may be well intentioned, it’s absurd to rely on eavesdropping on prisoners’ phone calls to identify those who may have COVID-19,” said David Fathi, director of the ACLU’s National Prison Project.

“If prisons and jails want sick prisoners to self-identify, they should stop charging them for medical care, and eliminate the many other barriers and disincentives to seeking care that currently exist.”

“To be clear, the way we can actually protect folks from COVID-19 is to decarcerate the prisons and jails,” said Agarwal.

Source: theintercept.com


By the co-author of the Prisoners’ Self-Help Litigation Manual, this book provides detailed information about prisoners’ rights in disciplinary hearings and how to enforce those rights in court.

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Thinking in a Pandemic: Let the People Go

States should release from prison far more than the very small percentage of low-level, nonviolent offenders they hold.

by Joseph Margulies, Boston Review, April 20, 2020

COVID-19 spreads where people congregate. With rare exception, it preys on the weakest among us—the elderly, the sick, the infirm—which is why it is so dangerous in prisons. A disproportionate number of inmates are elderly, unwell, or both, and places of detention are often overcrowded and always unsanitary. Several of the largest outbreaks in the country are in prisons.

The public health threat is not unique to these facilities; those in nursing homes, for instance, face a similar risk. But prisons and jails are unique in one respect: the state forcibly brings people to these sites, holds them against their will, and deprives them of the ability to take the precautions recommended by public health officials. This obligates the state, morally and legally, to mitigate the risk. As the Supreme Court has warned, “having stripped [prisoners] of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course.”

Yet the official response to the virus in prisons has been positively anemic. While many states have developed guidelines intended to limit the spread of the disease in their prisons, most have thus far resisted the most morally urgent solution: let people go. Not by the hundreds. Not by the thousands. Hundreds of thousands of inmates should be released from prison.

... We stumble as soon as we ask the question, “Who is, but should not be, in prison?” Even before COVID-19, we had only one widely available narrative that gave us a ready answer to this question—the one supplied by Michelle Alexander’s *The New Jim Crow* (2010), the most influential book on criminal justice in the twenty-first century. By Alexander’s reasoning, the bulk of those who shouldn’t be in prison are the victims of the war on drugs, most of whom were black and brown, low-level, non-violent offenders. If we could only release these people, the problem of mass incarceration would be solved—and the crisis of COVID-19 averted.

Yet as many have observed, Alexander’s core contention is simply mistaken. We have over 1.5 million people in our prisons alone, and another 630,000 in jails, which together yields the highest per capita rate of imprisonment in the world. (One of the primary drivers of that rate is the inordinately long sentences we impose.) But the great majority of prisoners in this country—17 of every 20—are held by the states, and most state prisoners have been convicted of a violent crime. Only about 15 percent are there for a drug crime, and most of those were convicted of trafficking or possession with intent to distribute. It’s hard to know exactly how many people in prison are low-level, non-violent drug offenders, but one oft-cited study from 2004 put the number somewhere between 1 percent and 2 percent of the imprisoned population, or somewhere between 15,000 and 30,000 people.

The number has almost certainly gone down in the years since those estimates were made, partly as a result of lower crime rates overall, and partly as a result of prior efforts over the past decade to release the few prison...
inmates fall into one of these other categories, they are not eligible for release under Wolf’s order.

Because of these carve-outs, the order will do practically nothing. The state estimates that 1,500 to 1,800 inmates come within the literal terms of the order, though it projects that fewer will ultimately be released. Pennsylvania incarcerates a little more than 44,000 inmates, meaning Wolf’s plan will reduce Pennsylvania’s prison population by about 3 to 4 percent. According to the Pennsylvania Department of Corrections, Pennsylvania’s prisons at the end of March 2020 were operating at 94.5 percent of capacity, and 10 of the 25 facilities in the state were at or above 100 percent of capacity. Wolf’s order will not make a dent in the COVID-19 crisis in Pennsylvania prisons, though it at least improves over the plan proposed by the Republican-controlled state legislature, which wanted to cap releases at 450.

The response in Pennsylvania is typical. In Georgia, for instance, the Board of Pardons and Paroles will consider releasing “individuals currently serving for a non-violent offense(s) who are within 180 days of completing their prison sentence.” The state estimates this may lead to the release of up to 200 inmates. Georgia incarcerates roughly 50,000 people, which means its response to the COVID crisis will reduce the prison population by less than half of 1 percent. New York has said it will release about 1,100 “low-level technical parole violators,” many of whom are held in county jails. As of April 1, 2020, New York had a prison population of nearly 43,000 inmates, meaning its response will reduce the incarcerated population by about 3 percent. (A technical violation means the person ran afoul of one or more conditions of his parole, but did not commit a new crime. Missing a scheduled meeting with a parole officer, for instance, is a technical violation, but not a crime.)

Reducing prison populations by a couple percentage points is like asking a couple people in the back row of an overcrowded theater to leave, and then telling everyone left behind to spread out.

The problem with the prevailing narrative is not simply that it directs our attention to a population that doesn’t exist. Far more importantly, it reinforces a prejudice that prevents us from finding real solutions. When it comes to prisoners, many people inexplicably deny what all of us know to be true: people change. It is the lesson of universal experience, shared and recognized by all who have entered at least their fourth decade. Yet for some reason, we persist in believing it is not true for a person who has committed a serious offense. Instead, we imagine that a person in prison is, irrevocably, the crime they committed.

Even the language we use conditions us to think in these terms. We say a person who committed a robbery is a robber, a person who committed a murder is a murderer. We do not, in other words, say what is true—that a person who committed a robbery is … a person who committed a robbery. Note that my contention is somewhat different from the one expressed by advocates like Sister Helen Prejean and Bryan Stevenson, who are friends, and who caution us to remember that a person is more than the worst thing they have done. Though that is true, my point is that,
Let the People Go (cont.)

whoever a person may have been years ago, they are almost certainly an entirely different person now.

To be sure, officials are apt to avoid this mistake in carefully crafted remarks. In his executive order, Wolf excluded people who had been “committed for” a crime of violence. But this just makes the unofficial remarks that much more telling. In a press release announcing the move, Wolf said, “I am pleased to direct the Department of Corrections to begin ... to release ... non-violent inmates,” as though a person convicted of a violent crime could never be nonviolent, regardless of the time that has passed or the changes he has made in his life. Our current narrative reinforces this bizarre way of thinking. It chains a person to the offense he committed, however long ago. He is and will always be the crime he committed. If it was a crime of violence, he is violent; if it was not, he is not.

Yet we know this is simply not true. Violence is a young man’s game. In the modern era, the likelihood of involvement in violence is at its highest around age twenty-five. The likelihood of involvement in a homicide, for instance, peaks in the mid-twenties and then declines dramatically. As of 2010, about 90 percent of participants in a homicide were under thirty-five, and 95 percent were under forty-five. Other violent crime, including aggravated assault, follows a comparable pattern. For crimes such as burglary and robbery, the age of greatest involvement is even earlier, peaking in mid to late adolescence and then declining very rapidly. There are things we know not because they can be proven with the certainty of a mathematical theorem, but because we have seen them happen over and over again since the memory of man runneth naught. With the same certainty, we know that, as a rule, people age out of violent crime.

Older offenders are also much less likely to recidivate. A study by the Osborne Association found that nationwide, more than 43 percent of all released individuals recidivate within three years, though only seven percent of those aged 50–64, and only 4 percent of those over 65, return to prison for new convictions—the lowest rates among all incarcerated age demographics.

If we want to provide for social distancing in prison, the surest, safest way is to release everyone over the age of fifty. Seven years ago, that amounted to nearly a quarter million inmates. Because older inmates are the fastest growing segment of the prison population, the total is probably closer to 300,000 now. No carve-outs, no exceptions, no excuses.

But I wouldn’t stop there. I’d also release anyone who has made the turn. This is the expression I use to describe the people who have thoroughly abandoned their prior way of navigating the world. In the course of a long career as a criminal defense and civil rights lawyer, and as someone who teaches college classes in prison, I have spent thousands of hours in state and federal prisons and met hundreds of men and women who look back on their past with a mixture of astonishment, revulsion, and regret. Many of them committed very serious crimes, but they will never run afoul of the law again. The person who entered prison simply no longer exists.

Prison officials understand this reality, just as they know who has and who hasn’t made the turn. I have often quizzed prison officials, asking how many of the inmates in their facilities could be immediately released without risk to public safety. The answer varies between a third and a half. As a former senior official at a maximum security prison in New York put it, “It’s not what you can say politically, but it’s the lifers, the long-timers.” And I’d release anyone who has served twenty years or more, regardless of their current age or crime of conviction, which would bring incarceration in line with historic and international norms.

The evidence that inmates change, like everyone else, has been recognized for centuries. Indeed, the close relationship between crime and age is well known that it has been called “one of the brute facts of criminology.” Academics have studied it, advocates have written about it, and policymakers have ignored it. The crisis of COVID-19 brings their ignorance into stark relief, but so far, policymakers have persisted, preferring to hinge their response to the virus on the imaginary low-level, nonviolent offender. Why? To say the public demands it merely begs the question. Why is it so hard for so many to accept that people in prison, like people everywhere, change over time? Here, we leap from evidence to conjecture, but I think the answer helps explain why people find the narrative of The New Jim Crow so attractive.

It is the perennially irresistible allure of an easy solution, a quick fix. It is the little pill that promises to shed unwanted pounds while you sleep. The New Jim Crow offered a painless prescription: stop sending young black and brown men to prison for minor drug crimes. This simple step would end mass incarceration and reverse decades of racial injustice. And the step would be easy, since the crack epidemic had ended by the time the book appeared. Even more importantly, if we took this step, we could double down on everything else.

We could increase sentences for violent crimes, because that was not part of the problem. We could sentence more people to life in prison, because that was not part of the problem. We could keep hundreds of thousands of people in prison until they die, because that too was not part of the problem. The problem was the low-level, nonviolent offender. And best of all, since we were not in fact sending those people to prison—at least, not in any numbers—focusing our attention on them did not require that we actually do anything differently. Most importantly, we did not have to release a lot of people. In short, we can gaze sympathetically at the mental image of a young black or brown man languishing in prison for a trivial drug crime precisely because it is not real.

By contrast, those convicted of a violent crime are very real. They represent something precious to us. We are safe because they are gone. We are free because they are not. Their exile is our salvation. We invest their detention with a deep moral and psychological purpose, freighting it with meaning far beyond what is necessary to keep society safe. To question this arrangement is to challenge something profound in American life. To accept that they change like we change, that they regret as we regret, that they grieve as we grieve is to realize that there is no space between them and us but for the walls we built to shut them away. They are us, and we are them. That is the Rubicon we dare not cross.
NOTING a “significant level of infection” of the coronavirus that causes COVID-19 in the Federal Correctional Institution (FCI) at Elkton, Ohio, U.S. Attorney General William Barr directed federal Bureau of Prisons (BOP) Director Michael Carvajal on April 3, 2020 to “move with dispatch” to save vulnerable prisoners at the low-security prison just outside Cleveland, using “appropriate transfers to home confinement.”

But BOP failed to comply, according to a class-action habeas corpus petition filed April 13, 2020, by the state chapter of the American Civil Liberties Union (ACLU) in U.S. District Court for the Northern District of Ohio.

BOP fought back, citing a “danger to the community” if the ACLU’s petition was granted by arguing that the releases would “over-burden police” on the street because the ex-prisoners would be “mingling with their former criminal associates” and “return to their former ways.”

In a hearing on the case April 22, 2020, Federal Judge James Gwin rejected the argument, saying that BOP “might as well be arguing against the release of any inmate, at any time, for any reason, because even in the best of circumstances the country’s criminal justice system has no way, short of life imprisonment, of ensuring former prisoners do not recidivate. The COVID–19 pandemic has not suddenly raised this issue.”

Judge Gwin also called the prison a “hotspot for the virus” that causes COVID–19 – for which there is no cure or thus far no vaccine – and he determined that officials at FCI Elkton had been fighting a “losing battle for staff” and a “losing battle for inmates.”

“The only truly effective remedy to stop the spread (of the virus) is to separate individuals,” Gwin concluded, something he said was “impossible” without releasing some prisoners.

In a ruling issued the same day, April 23, 2020, Judge Gwin granted the ACLU’s petition for “emergency habeas action,” and he gave BOP one day to turn over a list of all prisoners who are part of the class he certified, which includes:

• any prisoner at the facility 65 years old.
• any prisoner with “documented, preexisting medical conditions” of numerous kinds.

On April 24, 2020, BOP complied with the 24-hour deadline and provided the judge a list of 837 qualified prisoners — nearly one-third of FCI Elkton’s population. The Court gave BOP two weeks then to use “compassionate release, parole or community supervision, transfer furlough, or non-transfer furlough” to remove the vulnerable prisoners from the facility. See: Wilson v. Williams, 4:20-cv-000794 (N.D. Ohio Apr. 22, 2020).

FCI Elkton does not lead BOP facilities in COVID–19 deaths; FCI Oakdale in Louisiana had the most, with a total of 23 prisoner deaths. But the ACLU noted that BOP dragged its feet at FCI Elkton: By April 24, 2020 – three weeks after Barr’s directive – just 80 tests had been administered in the prison, which holds 2,400.

As of April 27, 2020, FCI Elkton had seven deaths to the disease. That was the same date on which U.S. Attorney James Bennett filed an appeal and asked for a stay of Judge Gwin’s emergency order against BOP.

In a press release, U.S. Sen. Dick Durbin (D-IL) noted bipartisan criticism and “worry” over the BOP’s response to the coronavirus pandemic, expressing a fear “that BOP is not fully and expeditiously implementing relevant statutory and directives from the Attorney General.”

“We also worry that BOP is significantly underestimating the rate of COVID–19 infection in BOP facilities because (the agency) has not yet conducted the number of tests on staff or inmates appropriate for facilities where a highly contagious virus can easily spread,” the statement concluded.

On May 5, 2020, the U.S. Sixth Circuit Court of Appeals voted unanimously to deny Bennett’s petition on BOP’s behalf. Agreeing with Judge Gwin that FCI Elkton’s “dorm-style structure rendered it unable to implement or enforce social distancing,” the three-judge panel also determined the virus had apparently run “rampant among inmates and staff,” but that the prison lacks “adequate tests” even to determine that much about the prevalence of the disease.

By the time of the appeals court ruling, the ACLU said that 52 prisoners and 46 staff members at FCI Elkton had been infected with COVID–19, the fifth–highest totals in any BOP facility. In addition to the seven deaths at FCI Elkton, the disease had so sickened 12 prisoners and two staff members that they had been left on ventilators. See: Wilson v. Williams, 2020 U.S. App. Lexis 14049.

On May 26, an unsigned Supreme Court brief upheld the Sixth Circuit. The Trump administration had asked the Court to block Judge Gwin’s ruling. As PLN went to press, the BOP had not complied with the court ruling.

Additional source: theappeal.org

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Prison Legal News
June 2020
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Staying Alive: A Doctor’s Guide for Prisoners on Staying Safe During COVID-19 Pandemic

by Michael D. Cohen, M.D.

We are entering a new phase of the COVID-19 pandemic in the United States. Efforts to prevent infection by closing all but essential businesses, staying at home, physical distancing, wearing face masks, frequent hand washing, no face touching, and disinfecting frequently touched surfaces have begun to be effective where they have been seriously implemented by states and citizens. Hospitalizations and deaths have declined substantially in hard hit states with strong prevention orders like New York, New Jersey, Massachusetts, Illinois and California.

Meanwhile, the pandemic is spreading unevenly across the nation. In some states, nursing homes, meat processing plants and prisons have had large clusters of cases. Such clusters are even occurring in regions that have not yet seen widespread community transmission.

COVID-19 disease is continuing to spread to additional urban, suburban, and rural areas across the country. It is not as aggressive as the initial outbreaks in New York and New Jersey, but geographic spread, numbers of cases, and deaths are continuing to rise. The World Health Organization is predicting that it will be with us for a long time to come.

Now that more virus testing for diagnosis is finally becoming available, there is an opportunity to get disease spread under control, especially in areas that have been little affected so far. This includes prisons and jails that have not had many cases yet. Some state agencies are beginning to take control of the disease transmission. The idea is to anticipate and control disease transmission. People with positive virus tests are infected but have no symptoms of disease. Diagnosis is the most significant gap in the CDC guidance (see below).

The CDC guidance for correctional facilities and jails only recommends screening for fever and symptoms to find cases and exclude the virus. This is clearly inadequate and is the most significant gap in the CDC guidance. They excuse their omission of more widespread testing and case finding by explaining that when more tests are available they will issue new guidelines for testing in prisons and jails.

Some prison systems are beginning to take a better approach in spite of the CDC’s inadequate testing recommendations. Tennessee is testing all staff and prisoners in its correctional system. Remarkably, the vast majority of their positives, more than 80%, were without symptoms. Another important step would be to test all incoming prisoners and quarantine them for two weeks prior to placing them in the general population. Periodic retesting of staff and the population is also needed. One time is not enough to gain control of the virus.

2. Isolate the cases and “suspect cases”: People with positive virus tests are infected cases. They should be isolated so they don’t spread the disease to others while they are infectious. People with symptoms are “suspect cases” and should also be isolated while waiting for the results of their virus tests. According to CDC, the best form of isolation is single cell with a solid door kept closed. This is not always possible. The CDC guidance also suggests placing cases together (in “cohorts”) as an acceptable alternative. In fact, it gives seven different options for housing cases, listed from most effective to least effective. This allows for agencies to adapt to their specific facility architecture and space limitations.

3. Contact tracing: The idea is to identify all the people who had close contact with an infected person during the two weeks before their positive test. These are people who were likely exposed to the virus and may be infected or incubating infection.

Close contact means close enough and for a long enough period of time to get infected OR contact with infectious secretions. Sharing closed indoor space for a long time is close contact whether it be a double or quadruple cell or a dormitory or a workplace. Touching surfaces that an infected person touched can be close contact. Contact with a person who is coughing or sneezing is definitely close contact. Caring for a person with COVID-19 disease is close contact. Close contact can be more narrowly or loosely defined depending on circumstances. In some situations, such as overcrowded housing with poor air circulation, everyone living on the same unit could be considered a close contact.

4. Quarantine close contacts: Close...
contacts need to be tested for the virus and quarantined for 14 days so they do not infect others if they turn out to be infected. Quarantining close contacts is a critical step needed to interrupt transmission of the virus in the population. Close contacts can be housed together (cohorted) but if one of them tests positive for the virus the 14-day clock restarts for the rest of the group. This is because they have all had a new close contact with the new positive case. The new positive from among the close contacts must be moved to isolation.

CDC has also developed a tool for assessing the adequacy of a jail or prison’s implementation of their Guidance for Management in Correctional and Detention Facilities. That tool is available at https://stacks.cdc.gov/view/cdc/87561.

More Updates

Additional symptoms: CDC has expanded the list of symptoms used to characterize a case of COVID-19. In addition to fever, cough and shortness of breath, they now include chills, repeated shaking chills, muscle pain, sore throat, headache, and loss of sense of taste or smell.

“COVID Toe” Clinicians caring for COVID-19 patients have noticed another new symptom: purple, painful toes.

No cutting, No sewing T-shirt mask: Pull a T-shirt over your head, do not put your arms through the sleeves, stop when the neck hole is at the bridge of the nose so that the nose and mouth are still covered, pull the sleeves back around to the back of your head and tie off. Easy. The only problem is that T-shirt material is very porous and doesn’t block droplets very well. Improve the filtering performance by adding layers of material in front of the nose and mouth. This can be done by folding up some of the rest of the T-shirt and tucking it into the neck hole; inserting folded up boxer shorts; insert a handkerchief, or any other material. Anything added is held in place by the tied sleeves.

Types of Tests: There are now two types of tests being discussed in the news: virus tests and antibody tests.

Virus tests are used to diagnose infection by finding evidence of virus particles in a specimen from the back of the nose. Spit tests for virus are being used in a few locations now, too.

Antibody tests are used to determine if a person was previously infected with the virus by finding specific proteins in the blood that the body produced to fight this virus. These tests are not readily available yet and many of the commercial antibody test products appear to give inaccurate results. The New York State Department of Health is using a reliable antibody test to try to determine how widespread coronavirus infection has been in different regions of the state and among different demographic groups: by age, gender, race/ethnicity, and geographical location for example. These studies have shown that up to 20% of New York City residents have been infected, whereas so far only around 3% of upstate New York populations outside the New York City metropolitan region have been infected.

Re-Opening the States: The White House issued guidance for a phased re-opening. A more detailed guidance from the CDC has so far been suppressed by the Trump administration, but may be released before this article goes to print.

According to the White House guidance, disease criteria to be achieved before states begin to re-open include downward trends for 14 days for symptomatic illnesses and positive tests. Some states are re-opening without achieving such downward trends.

Recommended state preparedness criteria to be achieved before states begin to re-open include various aspects of their capacity for diagnostic virus testing and contact tracing. Some states are re-opening without such capacity in place.

The White House guideline included a phased approach to reopening that starts slowly and expands only when no significant rebound in case numbers is found to be occurring. Some states are re-opening widely without a closely monitored phased approach.

There is every indication that re-openings without meeting the disease criteria, preparedness criteria, phased approach and close monitoring of new cases is going to cause a significant increase in new cases, hospitalizations, and deaths. We can expect to see such unfortunate results by mid-June, about four weeks after the impulsive re-opening of some states. In early reopening states, the only protection against a surge in new cases will be the unwillingness of citizens and businesses to participate. To protect their families and communities, citizens and businesses may choose to stay in and stay closed. We can only hope that such common sense will prevail.

Michael Cohen was the Medical Director for the New York state juvenile justice system for 20 years and previously provided medical care for incarcerated adults at the New York City Rikers Island jail and at Greene CF in Coxsackie NY. For 10 years he participated in a support group for people with diabetes at Great Meadow CF in Comstock NY. With the group, he co-authored the Prisoner Diabetes Handbook published by Southern Poverty Law Center and distributed by Prison Legal News. Heal the sick. Raise the fallen. Free the prisoners.
Theresa is currently isolating alone in her Harlem apartment. Because Theresa has asthma and chronic obstructive pulmonary disease (COPD), thus making her more vulnerable to Covid-19, her adult daughters bring her groceries and other necessities from the outside world.

Theresa’s 65-year-old husband Morris is serving his 15th year of a 40-year prison sentence at Green Haven Correctional Facility, one of New York’s 52 state prisons. He too has underlying health issues — asthma, diabetes, and kidney problems. There are 18 people at Green Haven who have tested positive for the coronavirus. Unlike Theresa, Morris cannot self-isolate or practice social distancing. (Theresa asked that the couple only be identified by their first names to protect their privacy and prevent staff retaliation.)

Every day, Morris must leave his cell and walk to the prison’s medical unit where a nurse dispenses his medications. Sometimes medical staff wear masks and gloves; sometimes they do not. For two weeks, Morris chose to forego his medications rather than risk the coronavirus exposure until Theresa convinced him to take that risk.

But that’s not the only possible exposure. Each time he calls, Morris must stand in the unit’s common area to use one of the communal phones. Each phone is used by several dozen other men before and after him. The phones are not disinfected after each use.

Some days Theresa worries that her husband won’t make it home alive. But she’s refusing to give up — and she’s fighting to change the laws so that he, and many others, have the chance to come home.

As Covid-19 spreads throughout prisons nationwide, those like Theresa have been advocating for their loved ones’ releases. Some are working to pass laws to allow their loved ones the opportunity to be released early. Others are demanding that governors exercise their powers of clemency, or a lessening of a prison sentence, and let their loved ones go. The rest are fighting in courts.

As of April 20, 211 people incarcerated in New York’s state prisons have tested positive for Covid-19. Five have died. There are 794 staff members who have also tested positive; one has died. Governor Andrew Cuomo will not use his clemency pen to decrease prison populations and, with it, possible exposure. Instead, he has directed the prison to identify and release older people with less than three months on their sentence, a plan which advocates with the Release Aging People in Prison campaign charge will “have no impact on reducing density and stopping the spread of the virus in a state prison system that currently holds 43,000.”

Theresa’s not waiting on Cuomo. Instead, she’s working with Release Aging People in Prison (RAPP) to push two laws to help her husband — and thousands of others — return home sooner. The first is the Elder Parole Act, which requires the parole board to schedule an immediate interview for people ages 55 and older who have served at least 15 years of their sentence. The act does not require the parole board to approve that person’s release. If the act passes, Morris, who just passed his 15th year in prison, could appear before parole commissioners and demonstrate that he’s no longer the same man who, 15 years earlier, participated in a group robbery ending in an assault. The second bill, the Fair and Timely Parole Act, requires that commissioners evaluate an applicant based on their rehabilitative efforts rather than their crime.

Theresa has traveled to Albany to rally on the capitol’s Million Dollar Staircase and to lobby legislators, including her own assembly member Inez Dickens. Dickens signed onto both bills after speaking with Theresa.

In Boston, Tomasina Baker had been fighting for her daughter’s freedom for over 10 years. In 2008, Baker’s daughter Kimya Foust was sentenced to 20 years in prison after fatally stabbing a man who tried to rape her. She’s in her 13th year at Framingham, Massachusetts’ only women’s prison, which has 37 confirmed cases of the coronavirus.

Stacey Borden was Foust’s cellmate and became her best friend. Both entered Framingham in 2008; Foust was so highly medicated that she was drooling. Borden helped advocate for Foust to be taken off these medications. Once her head cleared, Foust began advocating for Borden, fighting for her cellmate to be able to enroll in the college prison program despite the relative brevity of her sentence.

When Borden left prison in 2010, she promised to fight for Foust — and the other women who had helped her through her
incarceration. It was a promise that changed her life. “I could never let it go,” she said. She connected with Families for Justice as Healing (FJAH), a Boston-based organization fighting to end female incarceration, and the National Council for Incarcerated and Formerly Incarcerated Women and Girls, a nationwide network. Through FJAH, Borden helped those facing charges and their family members to come together to strategize legal defenses. She connected with a constellation of women, many of whom had been incarcerated and/or had loved ones who were incarcerated. These women knew how to fight the system and they welcomed her.

That was how Borden met her best friend’s mother. In 2019, Foust told Baker about an organization that wanted to help her get out of prison. That organization was Families for Justice as Healing.

Covid-19 makes Foust’s release all the more urgent. As of March 1, Framingham held 288 women. Built in 1877, the prison has deteriorated beyond repair. In 2016, Framingham closed some of its housing units after high levels of PCBs (carcinogenic chemicals that have been banned in the U.S. since 1979) were found, shuffling women into the remaining housing units. Even before Covid-19, lawmakers were planning to shutter Framingham and were seeking bids to build a new women’s prison.

Women incarcerated at Framingham have no masks, are ordered to stay three feet apart, and are told to sleep head to foot. The only way to keep abreast of the pandemic is to apply for a pass to the prison law library, where newspapers are kept. But the women are currently locked into their cells for more than 23 hours each day. During their 30 minutes out, women can shower, make phone calls, or check their prison “email” on a communal kiosk. This leaves no time for perusing the paper.

Covid-19 has also changed advocates’ ability to come together and protest. Before the pandemic, Theresa took the hour-long subway ride from her Harlem home to Chinatown for monthly RAPP meetings. Now, she does everything online — the meetings, the press conferences, and even the rallies. Other advocates are taking to their cars to protest. In Massachusetts, advocates are organizing weekly #FreeHerFriday caravans. Every Friday afternoon, 60 to 80 cars, many covered in signs proclaiming “Prisons Are No Place for Pandemic” and “Free Her,” drive to Framingham. At the prison, they pause, honk their horns and chant, loudly enough that women inside can hear them, “Free her! Free her!” They then return to Boston, repeating their honks and chants outside the South Bay House of Correction, the local jail which holds 165 women awaiting trial or serving short sentences.

On April 21, nearly 50 advocates drove to Cuomo’s gubernatorial mansion while another 10 to 20 people drove to two prisons. There, they rallied to demand that Cuomo grant clemencies to aging and otherwise vulnerable people in prisons. Theresa followed the rallies online. “It feels good to know that there are people out there advocating for and with us,” she said. “It feels good to know that it’s not just us.”

About the author: Victoria Law is a freelance journalist who focuses on the intersections of incarceration, gender and resistance and the author of Resistance Behind Bars.

This story first appeared in ZORA by Medium on April 29, 2020; reprinted with permission. Copyright, Medium
GEO Jail in New York City Sees Rapid Spread of Coronavirus

A GEO Group-run jail in Queens, New York City, saw coronavirus cases surge in the facility in May 2020.

The 222-bed medium/minimum-security federal Queens Detention Facility, New York City’s only privately run jail, reported 25 prisoners and 10 staff members tested positive for the virus, according to the Queens Daily Eagle in an April 15, 2020 report. It cited a “court-ordered report” issued April 15 by GEO Group.

Meanwhile, at the nearby state-run Queensboro Correctional Facility, Leonard Carter, 60, died on April 14 of complications of COVID-19 just six weeks from his scheduled release date. His passing renewed calls to release more prisoners from the jail.

“It is a horrifying and preventable tragedy that Leonard Carter passed away from COVID-19 a mere six weeks from his release date and having been already granted parole,” said Katie Schaffer, director of advocacy and organizing at the Center for Community Alternatives. “For those within a year of release and those — like Mr. Carter — who have already been granted parole, there is no legitimate argument for making people complete these sentences, only a hunger for maximum punishment that will increase the death toll of this pandemic.”

GEO Group, which reported $2.48 billion in revenue last year, contracts with the U.S. Marshals Service to detain adults before their federal sentencing dates. Five cooperating witnesses at the Queens facility alleged that the “feds have abandoned them as the private lockup has become overrun with coronavirus,” the New York Daily News reported.

“I did a deal with the government and the government is giving me a slap in the face, saying I don’t deserve to go home,” one detainee told the newspaper from a quarantined unit of around 40 people. “I’m risking my life and giving them the convictions they want. If I’m working on your side you should be trying to get me out instead of keeping me in an environment that is dangerous.”

Speaking to the Queens Eagle, one prisoner told the newspaper: “I feel scared that I’m in a f------ jail that’s disgusting and people are getting quarantined for the COVID virus. Everyone’s coughing, sneezing on top of each other.”

“The sickest inmates in the jail have been isolated in the jail’s eight-cell restrictive housing unit, known as the ‘SHU,’ inmates and attorneys say,” the Queens Daily Eagle reported. “The rest sleep in open dormitories in seven housing units.”

Fewer staff are working because they ill or they are simply not coming in, the Eagle reports.

“They leave us by ourselves for an hour or so because there’s not enough officers,” a prisoner told the newspaper. “Nobody’s watching. It makes it unsafe. If we were to get into a fight in here, nobody could stop it, nobody would press the alarm button to call for back up.”

Sources: queensaagle.com, nydailynews.com

Former Missouri Jail Prisoner Ordered to Repay $1.3 Million Settlement for Faking Injuries But Whereabouts Unknown

by Jayson Hawkins

On October 17, 2019 a former Missouri prisoner accused of faking injuries while in Boone County Jail was ordered to repay almost $1.3 million from a settlement in which he had accused deputies of using excessive force.

In October 2015, after an altercation in the dinner line at the jail, Derrick Houston was restrained by four deputies and placed in solitary. When Houston felt neck pain and tingling discomfort throughout his body, his requests for medical attention were repeatedly denied by the jailers. Five days later, after his condition worsened, he was finally taken to the hospital where doctors discovered that Houston had a fractured vertebra in his neck.

Houston filed suit in July 2016, claiming that the lack of medical attention caused permanent paralysis from the waist down. While confined to a wheelchair, Houston testified at a deposition in March 2017 that he wanted to stand up and walk, saying, “I wish I could. I really wish I could man.”

Boone County Sheriff Dewayne Casey denied that his deputies were responsible. Carey stated that jailers reported Houston fell down in solitary; he also noted that Houston...
had a history of resisting commands and had spent time in prison for violent offenses. Nevertheless, in exchange for a $2 million settlement from the Missouri Public Entity Risk Management Fund (MOPERM), the county’s insurer, Houston agreed to drop the lawsuit and not divulge particulars of the case.

Five days after Houston collected his settlement money, the Columbia Police Department was called to a disturbance at a hotel involving Houston. Officers’ body cameras caught Houston carrying his possessions and walking away completely unassisted. The body-cam footage prompted Boone County officials to petition the district court to reopen Houston’s case, alleging both Houston and his lawyers, from the Kansas City law firm Edelman & Thompson, defrauded the county. After considering the county’s claims, Judge Willie Epps, granted the motion to set the judgment aside.

“Plaintiff lied while under oath and provided false or misleading information ... [and] misrepresented the facts to the opposing party and to the Court,” Epps concluded.

Boone County and MOPERM requested an order from the court to hold Edelman & Thompson liable for the entire settlement amount, as well as the county’s court costs and expenses. The law firm responded by filing suit against MOPERM in April 2018, alleging defamation, abuse of process and malicious prosecution.

In August 2019, as both parties were preparing to present evidence at a bench trial, MOPERM withdrew its claim against Edelman and Thompson. In the settlement agreement, MOPERM Executive Director Larry Weber stated the law firm “acted as ethical and vigorous advocates ... [and were] not participants in, or complicit in any misrepresentation” and that MOPERM would only pursue relief from Derrick Houston.

For their part, Edelman and Thompson agreed to dismiss their suit against MOPERM and repay $100,000 of the $730,000 they received in attorney’s fees.

Coronavirus Kills Michigan Prisoner Days Before His Release After Serving 44 Years

by Chad Marks

William Garrison was 16 years old when he was arrested and eventually convicted of first-degree murder. He would spend the next 44 years of his life behind bars.

On April 13, 2020, Garrison’s cellmate called for help after Garrison was gasping for air. Macomb Correctional Facility staff had him transferred to the hospital where he died.

Chris Gautz, a spokesman for the Michigan Department of Corrections, stated that a post-mortem autopsy confirmed Garrison was infected with COVID-19.

Garrison was originally sentenced to life in prison. In 2012, the Supreme Court issued a decision striking down mandatory life sentences for juveniles. Later, in 2016, that law was ruled to be retroactive, paving the way for Garrison to be resentenced.

Due to the resentencing, Garrison was eligible for parole in February but rejected it. He opted to serve seven more months, which would eliminate parole.

Garrison changed his mind when COVID-19 hit the prison system. Prison officials issued Garrison immediate parole, but he was not released due to a Michigan law.

The law states prisons must notify prosecutors and any registered victims in order to release prisoners. The law requires prison officials to wait 28 days before releasing prisoners, allowing prosecutors time to appeal if they so choose.

Due to the coronavirus pandemic, Michigan prison staff had been requesting a waiver on the 28-day waiting period. The Wayne County Prosecutors Office did not respond to the letter concerning Garrison, nor hundreds of others.

Instead, Garrison would never leave prison a free man. His sister, Yolanda Peterson, said, “My brother shouldn’t have died in there like that.”

Over 15 prisoners had died in Michigan prisons due to COVID-19, with hundreds testing positive. The Macomb prison where Garrison was housed had one of the highest numbers of those infected in the State of Michigan.

Sources: mlive.com, nypost.com

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Source: columbiaatribune.com


Prison Legal News 21 June 2020
Ever since the coronavirus epidemic exploded in the United States earlier this year, government officials have reassured the public that they had things tightly under control. On February 26, before anyone in the country had died from COVID-19, President Donald Trump confidently stated that only 15 Americans had tested positive and “within a couple of days [that number] is going to be down to close to zero.”

Here we are – on May 18, as PLN is nearing its press date – and we have more than 1.5 million confirmed cases and over 90,000 dead. We don’t know if those numbers are entirely accurate, but the media is able to cover the pandemic and the public is generally well informed about the total number of cases, and where they are rising and falling.

Inside prisons and jails, the situation is quite different. Prisons, along with nursing homes and meatpacking plants, have emerged as the primary epicenters of the disease. A study by the ACLU has estimated that prisons and jails don’t get the situation under control, the death toll in the United States could double. Even during normal times, press access to prisoners is limited and, as we document elsewhere in this issue, the media is able to cover the pandemic and the public is generally well informed about the total number of cases, and where they are rising and falling.

What we do know is that the generally positive accounts of prison officials are impossible to verify, and that the gap between what they say and the infrequent accounts we receive from prisoners is enormous. A May 12 account in California’s Berkeley-side, “How safe is Santa Rita Jail under COVID-19? Inmates and the sheriff paint very different pictures,” is typical.

Alameda County Sheriff’s Sergeant Ray Kelly told the newspaper that the county’s efforts were “among the best in the nation among jails and prisons. that inmates have been given adequate supplies of soap, PPE, and cleaning supplies, and the jail’s common areas are constantly cleaned and sanitized.” Kelly said in an email, “We provide and continue to provide, masks, soap, hand sanitizer, disinfectant spray bottles, showers, linen exchange etc.”

Meanwhile, Berkeley-side was able to speak to a few prisoners, who painted a very different picture. They said very few prisoners had been tested and that they believed that the number infected was far higher than what sheriff’s office claimed on its website. “We ain’t given no cleaning supplies, the showers smell like piss, and they keep submitting all this false information to the public.” Eric Wayne told the newspaper. He said virtually no masks had been distributed and prisoners were expected to wear the same one for days or even weeks.

PLN has asked prisoners to send us letters describing what’s going on at their institutions and the overwhelming majority have been critical of authorities’ response to the pandemic. This month, as we’ll do throughout the pandemic, we’re publishing excerpts from letters we received. They have in some cases been minorly edited for length and clarity.

California

A prisoner at USP Lompoc wrote in late-April:

We have been lockdown ever since March 27. Get out for a ten-minute shower one day and the next day for a 20-minute phone call. They allow us around 9 am to go pick up our morning meal at the end of the tier. At 11 am we get out of our cell to pick up our lunch and dinner at the same time. So with two [outings] we pick up all three meals, which none are hot. We stay in cells 23½ a day. On March 4, 2020 the unit managers made us give up our single cells. I believe around a week after that they started cleaning up at least one or maybe two units that were closed. One unit was set up to house the guys who were sick with the coronavirus.

The inmates at USP Lompoc did not receive face masks until April 6 or get our temperatures checked daily until that day. What good getting temperature checks does we do not know because guys are falling out here all the time after temperature was checked. The staff were getting temperature checks weeks before we got lockdown. Every day before coming to work and we still ended up with it here.

Starting April 20, we are lockdown 24 hours a day. No showers no phone calls no nothing. It’s like we are being punished for what they brought us COVID-19. They should have to stay here 24/7 lockdown. Nope, they get to leave every day. So we are not allowed church, hot meals, sunshine, programs or exercise. How many ways do we have to be punished for what they brought us?
creased dramatically. All inmates were given masks to wear. SHU [Solitary] inmates got theirs yesterday finally after numerous complaints and requests to staff. The first case of COVID-19 was introduced by an officer who had 7 inmates who work for him. On April 5, 2020, these 7 inmates were initially brought to the second floor of the SHU to be placed in quarantine because they were exposed, but the Administration changed their minds and took them somewhere else. Shortly after, E unit was cleaned out and turned into a Quarantine Unit. Within a few days it was full, and the overflow of inmates on Quarantine began to be placed in the SHU again. At this point we still had no masks in the SHU. Quarantined inmates include inmates past their release dates who have to wait 14 days without symptoms before they can be released, I was told by staff.

Medical must be so overwhelmed. They have allowed my medications to run out despite putting in my refill requests. The few staff left must be tending to sick and quarantined inmates.

Every two weeks there is “Cell Rotation” here in the SHU. They switch everyone around and they will not allow us to use disinfectant to clean after the moves. This has not been suspended, which increases our chance of exposure to potentially contaminated surfaces in the cells. Not everyone is clean. I’ve been moved into some nasty cells during this procedure and when I ask staff for disinfectant they often sarcastically say yes and never provide it no matter how many times you ask. There’s a lack of concern and lack of oversight.

On April 17, 2020 Medical and the Administration erected 20 military tents on the compound because E Unit and the hospital over-filled with sick inmates. Medical is too overwhelmed to see inmates for sick call. I’ve put in 3 requests in two weeks and was ignored.

We finally received our first big box dinner and when we opened them we found that the manufacturer forgot to enclose the meat in them, so we got a bun and mustard and a slice of cheese. There is no manufacture information on these sealed boxes. Perhaps they were made at Unicor or they got a good deal on them because there was no meat.

Delaware

A prisoner at James T. Vaughn Correctional Center wrote on April 26:

Our facility has been mass producing masks for first responders for the better part of 3 weeks or more. The commissioner was hell-bent on inmates not being allowed to have/ wear them with such flimsy excuses as security, because the officer has to be able to see our faces, and also she said that we could hide contraband behind them, as if we’re walking around naked. If we wanted to hide contraband, I’m pretty sure we could find a better place then behind a mask. She’s also not going to release any inmates because she claims we’re not overcrowded. This is the same place where we had a “deadly riot” three years ago and the officials claimed the root cause was overcrowding.

Florida

In late-April, a 60-year-old man at the Federal Detention Center in Miami wrote:

The medical within the whole BOP is a big joke and when on the street I would not let any medical staff I have seen so far even examine my dog. I do not know if anyone at FDC Miami has the COVID-19 and I’m not sure we would be told.

I myself came down sick around mid-March but thinking the sore throat and severe headache would go away, I waited until
Prison Postcards (cont.)

March 25 before I put a sick call request in. We were on lockdown and have been since around mid-March and, as expected, I saw no one. I put another request in April 6 and was told I was given an appointment. On April 13 I still had not seen anyone so I put in a written report (cop out) and finally on April 15 I advised the CO I was not feeling well and he contacted medical. I was seen on April 16 and given something to gargle with, some nose spray and Ibuprofen. None of which have helped, and I’m still sick with a terrible headache that will not go away, body aches and persistent sore throat along with other problems. I feel that if COVID-19 does strike within the BOP there will be a lot of dead inmates before they are ever examined for the problem.

There are no visits from family members, and sometimes one cannot get through on the phone, and 5 minutes is not long to talk. Temper rise and morale is low. There is no fresh air and the inside air is stale. We are given masks to wear and a few wear them but most do not. I feel it is only a matter of time until the prison population will decrease but by mass sickness or death and nothing can be done. But in the end the BOP will be rid of the burden of older and sick inmates so they do not care.

Iowa

In late-April, a prisoner at the Iowa State Penitentiary wrote:

Staff was apparently told that they had to start wearing masks; you could probably hear them crying about it down there in Florida. Some wear the masks properly and some wear them around their necks. They do not seem to understand the concept of social distancing and neither do the prisoners. No one polices the staff. They also put yellow tape on the floor six feet away from the guards’ desks in the pods, and the prisoners are supposed to stay behind the tape line. Most of the guards who sit at the desk do not wear a mask. They do not wear the masks when they do count and the 3rd shift guards do not wear masks. As they walk by our cells without a mask, they are coughing and spreading any virus they may have, throughout the prison.

The prisoners were given homemade sneeze guards, and we had the option of whether or not to wear them. A week after some of the staff started wearing masks the prisoners were ordered to wear the homemade masks pretty much everywhere but in the chow hall and our cells. The guards immediately started enforcing this mandate. But a lot of them still do not wear their masks.

We prisoners are quarantined within the prison. The only ones to leave and go out into public are the staff. So common sense tells me that if the COVID-19 virus enters the prison it’s going to be brought through the staff and not the prisoners. But those who operate this shit-hole do not seem to want to recognize this fact and they choose to screw with the prisoners while they choose to screw with the prisoners while making their own people comply with any procedures that will help prevent this virus from entering the prison.

Kentucky

A prisoner at the Federal Medical Center in Lexington wrote in mid-May:

Just so people know, one person died here yesterday. Sad, and others next door were yelling from their windows that they need help. They have over 10 cases in their unit and cannot use the phone, computer or e-mail. They want others to call their families, but we are only allowed 20 minutes per week to use the phone now and can only use the computer two times per week for 10 minutes, so no one can help these people. In two weeks, we went from 1 person [infected] on the 27th to over 150 people and 6 staff and one dead. Many more are on ventilators. I said this was going to happen to everyone about 40 days ago, and it is happening. People need help here. Just want people to know that we need help.

Texas

A state prisoner in Rosharon wrote in mid-May:

We continue to be in a sort-of lockdown, not as severe as the one that ended last week, 14 days after they confirmed COVID-19 among prisoners they transferred here from [another] unit. Those guys were being kept in another area, so they had no interaction with the prisoners actually assigned to this unit.

As soon as there was a COVID-19 case confirmed on the unit, they told us to stay in the cubicle and fed us sack meals (consisting of pancakes with peanut butter and a sandwich three times a day), depriving us of the very exercise and balanced nutrition needed to keep up the immune system. Further, they stopped allowing the captain’s crew to come around with disinfectant and spray the wings (they were still spraying the halls, where the guards are).

They are inept in many aspects of the quarantine. For instance, they would call out “showers” and 90% of the wing would crowd together at the front of the wing. Then they would be led out in groups of ten, only to be crowded into the bathhouse three or four groups at a time. On the lesser limited-movement lockdown now in effect, the same thing happens when they call out “chow,” “rec,” or “commissary.”

Another interesting aspect during the full lockdown was the interference with commu-

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Communications with our families. Outbound mail was delayed in excess of a week and there was a prohibition on the use of the telephone. Now you might think that it makes sense to prohibit the use of a common surface device like the phone, but it can be easily sanitized between use. Further, we all use the same water fountain, water cooler, sinks, urinals, and toilets without any objection and not much in the way of sanitizing. I strongly suspect that the real reason there was prohibition on phone use was because the administration did not want us to be able to tell our families what was going on. It had the, perhaps unintended, effect of preventing us from knowing what was going on with our families—cruel indeed during a pandemic.

West Virginia
A female prisoner at FPC Alderson sent along a series of diary entries on April 21, 2020:

4/5/20: We had our first real fight on the unit in 8 months that I have been here. Too hot and too crowded. I was surprised the girls drew blood. One was put in another unit, and one came back to this unit later that day. It would normally have caused both ladies/inmates to be sent to the county jail. I credit the unstable schedule, the unknown about COVID-19 and being bored!

4/7/20: Inmates were given masks and told to wear them when within 6 feet from another inmate. Well that will be 24/7; our cubes are small/open/and side by side. The warden did a walk thru to tell us this. Out temperatures were taken. Our unit manager told inmates that anyone who had no shots, minimum security, low pattern score, 12 months or less to serve, had served 50% of their sentence could be released to Home Confinement [as early as May 5]. Many got excited.

4/10 to 4/12: A few people signed to be released in May. Other inmates who feel they qualify for Home Confinement are getting upset when they have not been called in by a counselor to sign papers. Inmates a bit upset our counselors are our daily baby sitters – why are they not doing paperwork to get us out!

4/19/20 I received an email from my sister who said my Home Confinement/halfway house date is [in] May. She had called my probation officer. My counselors at Alderson have told me my date is [in] August. I'm cautious. From my 8 months here, I've come to realize that they almost never seem to follow policy and procedure.

4/21/20 Wow just wow. Several of those including my ex-military friend had her May 5th date taken away and was given an August 2020 date. They said she has a “medical hold.” She is white collar, non-violent, pattern score the lowest! She needs a follow up mammogram. That's it. To me, it seems Alderson is using a technicality to circumvent the release of inmates. We all know the inmate population needs to be lower to prevent a terrible situation if COVID-19 comes here. M

Is someone skimming money or otherwise charging you and your loved ones high fees to deposit money into your account?

Prison Legal News (PLN) is collecting information about the ways that family members of incarcerated people get cheated by the high cost of sending money to fund inmate accounts.

Please write to PLN, and have your people on the outside contact us as well, to let us know specific details about the way that the system is ripping them off, including:

- Fees to deposit money on prisoners’ accounts or delays in receiving no-fee money orders
- Costly fees to use pre-paid debit cards upon release from custody
- Fees charged to submit payment for parole supervision, etc.

This effort is part of the Human Rights Defense Center’s Stop Prison Profiteering campaign, aimed at exposing business practices that result in money being diverted away from the friends and family members of prisoners.
D avid Fathi is Director of the American Civil Liberties Union National Prison Project, which brings challenges to conditions of confinement in prisons, jails, and other detention facilities, and works to end the policies that have given the United States the highest incarceration rate in the world. He worked as a staff lawyer at the Project for more than ten years before becoming director in 2010, and has special expertise in challenging “supermax” prisons.

What are the main goals of the ACLU’s National Prison Project?

We have three principal goals. First, to roll back the laws and policies that have given the United States the highest incarceration rate in the world. Second, to ensure that incarcerated people are held in conditions that comply with domestic and international law, and meet minimal standards of health, safety, and human dignity. And finally, to combat the extreme racial inequities that infect every level of the criminal legal system.

What are the main barriers you face in seeking to reduce the country’s high level of incarceration? Has public opinion moved in your favor over the past decade or so?

What about political opinion? Everyone seems to recognize that we have too many people in prisons and jails, but we keep locking people up in large numbers?

One of the greatest barriers is the extreme decentralization of the U.S. incarceration system. We have 51 separate prison systems, and literally thousands of local jails, each of which operates independently. Even if we successfully challenge a policy or practice in Arizona, that victory doesn’t invalidate the same practice in New Mexico or Colorado. So we have to fight the same battles over and over again.

There’s no question that public opinion and the political climate are much more favorable now than in the 1990s, when I started doing this work. At that time, politicians were locked in an insane bidding war over who could be more punitive. Three strikes laws weren’t good enough; we had to have two strikes laws. Now there’s a growing consensus that the United States locks up far too many people, for far too long. That consensus has yet to translate into significant reductions in the nationwide incarcerated population, but in some states the population reduction has been quite significant. And at least the incarcerated population has stopped growing, which is an achievement in itself.

What about prison and jail conditions? Have they been improving at all? Are there any serious efforts at political oversight you can point to, or do prison officials operate with impunity?

The story on conditions is complicated. On the one hand we have established the principle that prisoners are entitled to the same standard of medical, mental health, and dental care as people on the outside. Obviously, there are huge gaps between that legal principle and the quality of care on the ground in many places, but establishing that principle is an achievement not to be underestimated. And in the last few years there has been a sea change on solitary confinement, with the mainstream of the corrections profession recognizing that it has been overused and inappropriately used, and some states placing significant restrictions on its use.

At the same time, due to the brutally long sentences we have in this country, the prison population is aging, and that has created enormous suffering. I’ve seen prison units that resemble nursing homes with razor wire, filled with frail, sick, elderly people, many of them suffering from dementia. It’s hard to understand a society that insists on incarcerating such people, who obviously pose no risk whatsoever to anybody.

I’m convinced that a major reason for the often appalling conditions in U.S. prisons and jails is the lack of independent oversight. Most other democracies have an independent body whose function is to monitor and report on prison conditions. These bodies have “golden key” access — they can show up unannounced at any time, go anywhere in the prison, and talk...
to anybody. There's no such oversight in the U.S. Prisons are closed environments that house disempowered, politically unpopular people. When you combine that with a lack of oversight, it's a recipe for neglect, mistreatment, and abuse.

**How much has your work been changed by the coronavirus pandemic? What are some of the top initiatives you've taken to try to help prisoners get released or to improve conditions inside?**

The coronavirus pandemic has changed our work fundamentally. We've urged politicians to cut the incarcerated population significantly in order to protect medically vulnerable people and slow the spread of the virus. Some jurisdictions have made significant population cuts, but most have not. So in the last two months we've filed something like 40 new lawsuits, seeking to free people from prisons, jails, and immigration detention centers before the virus hits with full force. We've had some success, although the Prison Litigation Reform Act has been a significant barrier.

One of the hardest parts of our COVID-19 work has recognizing the limits of our capacity. Although the ACLU is a large organization and our resources are significant, they are not limitless. We simply can't sue every jail and prison in the country. So much like the doctors deciding who gets a ventilator and who doesn’t, we have to make agonizing decisions every day about who gets our potentially life-saving interventions, and who does not.

**It seems inevitable that we are going to see a surge of cases at prisons and jails given the generally poor sanitary conditions, the lack of proper medical care, and the impossibility of social distancing. Can coronavirus be controlled inside prisons and jails without mass releases?**

Public health experts are virtually unanimous that the most urgent priority is to release significant numbers of prisoners, for two main reasons. First, to protect medically vulnerable people, who are at especially high risk of serious illness or death if they contract the virus. And second, to reduce the population density in the prisons, so that those who remain incarcerated can practice social distancing and enhanced sanitation, as we are all being urged to do. It remains to be seen whether other measures will make much of a difference in the absence of significant population reductions. I must say I'm relieved that there haven't been more staff and prisoner deaths so far, but I'm also very concerned that this is just the tip of the iceberg.

**Looking ahead, do you see grounds for optimism in terms of the NPP’s work and goals? If so, what are the most significant?**

There are many reasons to be hopeful. The political climate is infinitely less hostile to the rights of incarcerated people than it was 10, 20, or 30 years ago. More and more people recognize that our criminal legal system is broken in fundamental ways. Young people in particular are rejecting mass incarceration and brutal practices like solitary confinement and the death penalty.

I think the COVID-19 pandemic will change U.S. society in many ways. I’m optimistic enough to think that it may lead to greater social solidarity and less obsession with punishment. There’s nothing like a global pandemic of a deadly and highly contagious disease to make you realize that we’re all in this together.

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_by Brandon Sample and Alissa Hull_

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Coronavirus Pandemic Could Vastly Reduce Prison Voting

by David M. Reutter

In the months prior to the COVID-19 pandemic being declared, voting rights activists were gaining momentum in helping those in jail register and arrange to cast ballots. In the aftermath of the pandemic’s outbreak, activists now worry that eligible voters in prisons and jails will be prevented from voting.

The United States Supreme Court has declared that persons in jail have a right to vote so long as they are not convicted felons or otherwise ineligible to vote under state law. There are about 470,000 people detained in America’s jails, making them a large bloc of voters.

Jailed voters “have the most direct vantage of how elected officials — judges, prosecutors, sheriffs — are actually doing their jobs,” said Dana Paikowsky, a jail voting expert at the Campaign Legal Center. “From the perspective of democratic accountability, this is one of the most important segments of our electorate.”

Several jurisdictions recognize this and have acted to assure jailed voters are able to have their vote counted. Typically, such voters cast absentee ballots. Jurisdictions like Chicago have taken a more direct approach.

A law that became effective in January 2020 requires Cook County to set up a polling location in its jail. Before the COVID-19 pandemic hit, election workers and volunteers brought about 40 voting machines into the jail. Civics classes were being taught to pre-trial detainees, and they were being registered to vote. As the Illinois primary was approaching in March, the plan was to run a voting precinct in the jail for two weekends. The first weekend went off as planned, but then the pandemic hit.

Cook County Jail officials switched gears. The jail started “devoting every available resource to the critical task of protecting our staff, detainees, and the public from the spread of this global pandemic,” said spokesman Matt Walberg.

Since the 2016 election, voting rights groups in places such as Ohio, Pennsylvania, Texas, and Arizona have registered detainees to vote. Their efforts, however, require close contact not allowed under social distancing or in jails closed to non-essential staff. With a paradigm looking inevitable in the post-pandemic world, voting rights activists fear a regression to the past.

“We could end up back where we were before 2016, when few to no people in jail had a practical right to vote,” Mike Brickner, the Ohio state director of All Voting Is Local, told The Marshall Project.

Some advocates are looking for alternatives to assure jailed persons can vote. “We may have to ask defense lawyers to get information into the jail to their clients,” said Alex Gulotta, the Arizona state director of the same group.

There is no doubt that voting from jail is a right some pre-trial detainees are unaware they possess. Even when they know they have a right to vote, getting registered or obtaining an absentee ballot can be difficult. This is especially so in jails where only postcards can be received.

Eleventh Circuit Says COVID-19-Wracked Miami Jail Can’t Be Forced to Give Prisoners Soap, Masks

by David M. Reutter

On May 5, 2020, the Eleventh Circuit Court of Appeals stayed a Florida district court’s preliminary injunction that required officials at Miami’s Metro West Detention Center (Metro West) to employ numerous safety measures to prevent the spread of COVID-19 and imposed extensive reporting requirements.

Metro West is one of three jails run by the Miami-Dade Corrections and Rehabilitation Department (MDCR). It is also the largest jail in Florida.

In early March 2020, MDCR took precautions against COVID-19. It canceled visits, screened arrestees, detainees and staff, and advised staff on protective equipment use and sanitation practices. Social distancing efforts included staggering dorm bunks by requiring detainees to sleep head-to-toe and instructing staff to encourage detainees to practice social distancing.

Seven detainees at Metro West filed a class-action lawsuit on April 5, 2020. They challenged their confinement conditions and sought habeas corpus relief for the named plaintiffs and a “medically vulnerable” subclass of detainees. The suit alleged Metro West did not have enough soap or towels to wash their hands properly, waited days for medical attention, were “denied basic hygiene supplies” like laundry detergent and cleaning materials, and were forced to sleep only 2 feet apart.

The district court on April 29, 2020, granted a preliminary injunction. That order required, in part, that Metro West provide detainees with masks, an individual supply of soap, enforce 6 feet of spacing amongst detainees, test all detainees for COVID-19, waive medical co-pays and medical grievance charges, and provide disinfecting supplies.

MDCR appealed and moved the Eleventh Circuit to stay the injunction during the pendency of the appeal. In granting the stay, the court found the district court incorrectly “treated the increase in COVID-19 infections as proof that the defendants deliberately disregarded an intolerable risk. Despite finding that social distancing was “impossible” and could not be achieved absent a population reduction, the district court erroneously found Metro West’s inability to “achieve meaningful social distancing” evinced a reckless state of mind.

The Eleventh Circuit noted an expert’s report concluded that Metro West “should be commended for their commitment to protect staff and inmates in this facility during this COVID-19 pandemic.” Considering the facts, the court found the defendants’ actions likely do not amount to deliberate indifference. Thus, it concluded it was unlikely the class could prevail on the merits.

Further, the injunction transfers the power to administer the Metro West facility in the midst of a pandemic from public officials to the district court. As such, the defendants showed irreparable injury if a stay was not issued.

The Eleventh Circuit noted it appeared the district court failed to require the class to establish municipal liability or address...
the exhaustion requirements of the Prison Litigation Reform Act. The court granted a motion to stay the injunction and set a briefing schedule.

As of May 5, 2020, there were 163 detainees who had tested positive for COVID-19, and about 340 positives in MDRC’s three jails. One detainee, Charles Hobbs, had died. See: Swain v. Junior, 958 F.3d 1081 (11th Cir. 2020).

Additional source: Miami Herald

Ohio Prisoner with Coronavirus Released Without Use of Preventative Measures; Cases Inside Soaring

by Kevin Bliss

The Ohio Department of Rehabilitation and Correction (ODRC) is being criticized for its mishandling of circumstances surrounding a prisoner’s release during the COVID-19 pandemic.

Kevin Cherry was released from Marion Correctional Institution (MCI) April 11, 2020. Three days later, he tested positive for COVID-19. Cherry said guards at MCI did not even wear protective face masks or gloves until just a few days before his release. He said he was denied testing prior to his release. He was afraid of infecting his family and self-quarantined upon release and had himself tested.

Since then, ODRC officials have tested the entire prison population, and MCI now stands as one of the nation’s highest prison hotbeds for COVID-19, with 1,950 prisoners – 78% of the population — and 154 staff members testing positive. As of mid-April, one prisoner and one staffer had died of the virus.

ODRC provides staffers financial means to quarantine themselves within a hotel if they test positive for the virus but do not provide any assistance for prisoners being released who have tested positive.

 Governor Mike DeWine said he was concerned for staff and their families. ODRC spokeswoman JoEllen Smith said prisoners were provided with information concerning COVID-19 and were asked to self-quarantine for a 14-day period after release.

A 90-day early-release program has been provided for prisoners during the pandemic, but it only applies to prisoners who have not committed a violent offense, been previously incarcerated in Ohio or have serious rule infractions.

The ODRC also has yet to institute a briefing schedule.

To help ensure more prisoners are able to access news and information about their rights and staying safe during the COVID-19 pandemic, a generosity funder has donated almost 1,700 six month subscriptions to PLN for prisoners. If you are interested in receiving a six month subscription to PLN please send $1.00 to the address below. This offer does not apply to current or prior subscribers. Please do not respond if you have less than 9 months remaining on your sentence. Subscriptions will be entered on a first come, first served basis until they are exhausted. We will accept new unused stamps as payment.

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Large Scale Releases and Public Safety

*Can governments safely release hundreds or thousands of people from prison?*

*We offer 14 historical examples to show that, in fact, they already have.*

by Peter Wagner, Prison Policy Initiative

To protect the American public from COVID-19, schools have closed, non-essential stores have been shuttered, people with desk jobs have started working from home, and public gatherings have been prohibited. But the criminal justice system continues to hum along as though nothing has changed: Most prisons and many jails have done very little to reduce the population density that puts both incarcerated people and staff at grave risk.

To justify their lack of action, DOC directors, governors, sheriffs, and district attorneys imply that saving the lives of people behind bars is not worth the inevitable public safety cost of releasing them. This talking point is as old as time. It’s also out of step with history.

Large-scale releases have been common throughout U.S. and international history for a variety of legal, political and health reasons. Below is a partial and non-exhaustive summary of some notable examples in U.S. and international history. (These examples were originally collected for a different project with Leah Sakala in 2014.)

If the places where these releases took place became hotbeds of crime, we’d know about it already. But they didn’t. In fact, in many cases, the inverse happened — and the academic literature about these experiences prove it.

### Selected Historical Decarceration Examples — U.S.

#### California (adults, 1968 – 1972)

Between 1968 and 1972, while Ronald Reagan was the tough-on-crime Governor of California, the state’s incarceration rate dropped from 146 to 96 per 100,000. The historical record suggests that the decrease was largely due to a state program to incentivize local probation departments to decrease commitments to state facilities, as well as an increased use of parole.

#### California (youth, 1996 – 2009)

Although California is currently struggling politically with reducing its adult population, that state is a national leader on reducing its incarceration of kids. Previously, the Youth Authority was a “catch-all” for even the lowest-level offenders. Among other reforms, the state has created financial disincentives for counties to send kids to the state system while rewarding them if they kept the kids in local programs.

#### California (currently)

Beginning in 2006 and accelerating in 2009, the California prison population has been dropping. Spurred in part by the Supreme Court’s order in *Plata*, major changes are underway (although far less than most of us hoped and far less than most of our opponents feared.) Some of the drop in the prison population is the illusory result of “Realignment,” a legislative change that sends people who would previously have gone to state prison to local jails. The California prison population drop is still notable because the state’s prison population is dropping faster than the jail population is increasing, but the actual decline in the number of people incarcerated in California is not as large or as quick as the Supreme Court ordered.

#### Florida (1963 – 1965)

On the heels of the Supreme Court’s *Gideon v. Wainwright* decision, Florida had to give thousands of incarcerated people new trials, this time with court-appointed lawyers. For some people, the evidence was too flimsy or dated to withstand a proper legal defense, so over 1,000 people were released in a very short time period.


Concerned that the 1978 legislative switch to “determinate” sentencing would lead to prison overcrowding, the Department of Corrections instituted a special program of the parole board awarding extra good time credits. In sum, over 21,000 people, or 60% of all prison releases, were released an average of 105 days early.

#### Massachusetts (youth, 1969)

Massachusetts, under Republican Governor Frank Sargent and newly-appointed Department of Youth Services Commissioner Jerome Miller, closed its training schools for kids and decarcerated nearly 900 children. The state paroled some children directly home while a new system of community-based alternative programs was developed.

#### New York and New Jersey (1999 – present)

A mix of reforms — including policing, sentencing reform and parole — have allowed these two states to radically reduce both the number of people entering prison and how long they are incarcerated. Governors of both parties implemented these reforms at a time when the prison population was still rising nationally. In fact, much of the national prison drop in recent years is the result of these two states plus California.


Over 1,600 people were released early in six different periods over the course of five years.

#### International examples

##### Czech Republic (2013)

Outgoing President Václav Klaus gave a mass amnesty/pardon to over 6,000 people, approximately one-third of the incarcerated population, as a way to both respond to an overcrowding crisis and to mark the anniversary of Czech Independence. “The president pardoned all convicts with prison terms under one year. The amnesty… also includes people sentenced for non-violent crimes to up to two years in jail, and seniors aged at least 70 whose prison terms do not exceed three years and those aged at least 75 with terms of up to 10 years.”

##### Finland (1976 – present)

Finland used to have one of the highest incarceration rates in Europe. Finland made a long series of policy changes — including decreasing sentence lengths — to radically lower their use of the prison, and that country now has one of the lowest incarceration rates in the entire world.
Israel (1967)

The Israeli Knesset passed an Amnesty Law that released 501 incarcerated people and closed 15,376 criminal investigations.

Italy (2006 and 1990)

In 2006, to respond to prison overcrowding, the Italian government released 22,000 people, generally those serving three years or less, except for those convicted of Mafia-related crimes, terrorism, sexual violence or usury. An earlier mass pardon in 1990 released 8,451 people out of the total incarcerated population of 26,000.

Russia (numerous, late 1990s through present)

Russia has repeatedly issued large-scale amnesties, used both to manage the populations and to celebrate key events like the 20th anniversary of the constitution. Some amnesties also applied to people with pending charges. One notable and major large-scale amnesty was in 1999, when incarcerated people were released to help control a tuberculosis epidemic that was incubating in the prisons and then spreading to the rest of the country.

Peter Wagner is Executive Director of the Prison Policy Initiative.

This article was published by the Prison Policy Initiative (www.prisonpolicy.org) on April 9, 2020; it is reprinted with permission.

Alabama Reopens Ancient Prison to Quarantine COVID-19 Prisoners

by Ed Lyon

Prisons are obvious contagion grounds for COVID-19, and conditions in Alabama are among the worst in the nation. Now, it appears, those conditions could get worse even as the coronavirus problem is rapidly spreading at prisons in Alabama and across the country.

On April 16, 2020 the Montgomery Advertiser reported that prisoners were being used to move beds into the ancient Draper Correctional Facility (DCF). DCF was built in 1938, making it 82 years old this year. It was toured by U.S. Justice Department investigators in 2017, during which the stench of raw sewage and toxic fumes the prisoners endured daily made one of the investigators physically ill.

ADOC announced the DCF’s closure a month later. An engineering study from that year estimated it would take at least $30 million to repair and renovate DCF up to minimum standards.

Prior to publication the newspaper queried ADOC, asking if it was planning to resurrect any of its closed prisons as part of its operational plans relating to the coronavirus. On April 8, 2020 ADOC spokeswoman Samantha Banks denied there were any such plans or intentions by ADOC.

In an abrupt turnabout eight days later, ADOC announced it had, in fact, readied DCF as a quarantine facility for 100 prisoners being transferred from the state’s increasingly overcrowded jails.

“No male intakes will be quarantined in the recently renovated vocational space, in the visitation building, and in a renovated portion on the Draper Correctional Facility campus,” an ADOC spokeswoman said.

Workers at the adjacent Staton Correctional Facility told news media that they had taken 360 cots and several portable toilets to three areas of Draper.

Source: montgomeryadvertiser.com

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CoreCivic Detention Center Demanded Detainees Sign Liability Release to Receive Masks

by David M. Reutter

Detainees at CoreCivic’s Otay Mesa Detention Center (OMDC) in California were enthusiastic when told they would be issued face masks to protect themselves from COVID-19. The mood changed quickly when employees conditioned that issuance on the signing of a contract that held CoreCivic “harmless” from wearing the mask.

OMDC holds immigration detainees for the Immigration and Customs Enforcement (ICE) and criminal defendants for the U.S. Marshals Service. As of April 11, 2020, at least 16 detainees at the facility had tested positive for COVID-19. One of those was a woman in “A” pod, which holds immigration detainees.

The women in that pod had been anxious to protect themselves, and made handmade face masks with rubber bands, panty-liners, and cut-up T-shirts. The detainees complained they lacked personal protective equipment and soap to wash their hands, so when they learned they were being issued facemasks, it was seen as good news.

Then, however, CoreCivic’s profitability took precedence over protecting the detainees from a deadly disease. Prior to passing out the masks, the unit manager handed out contracts written in English, telling the women they must sign before they were issued a mask.

The document included a section saying the detainees agree to “hold harmless” CoreCivic and its agents and employees “from any and all claims that I may have related directly to my wearing the face mask,” the Union-Tribune reported. When translating it into Spanish, the unit manager reportedly omitted the “hold harmless” section. A bilingual detainee pointed out the omission to other detainees, and they became angry.

Most refused to sign, and the unit manager reiterated that masks would not be issued unless they did. “We were upset. We were being loud,” detainee Briseida Salazar said. “But we all were upset because she was not doing her job right. She wasn’t giving us the information we needed.”

Their protest was allegedly met with a threat of pepper spray, a threat that CoreCivic called “patently false.”

Three women, including the one who recognized the translation error, were moved out of the pod. “We all came out and said if they’re going to get punished, we’re all going to get punished,” Salazar said.

The women decided to start a hunger strike that would not end until the three women were returned to the pod. About five hours later, CoreCivic issued the masks, requiring the women to initial that they had received them. The three women removed from the pod were also returned.

“No waiver will be required to receive a mask,” said CoreCivic spokeswoman Amanda Gilchrist. In the face of a deadly global pandemic, that would should have been the default move.

California Senator Kamala Harris called for the Office of the Department of Homeland Security Inspector General to investigate the incident, which should include review of security footage of the facility to confirm the allegations. She also asked for the release of at-risk detainees during the pandemic.

Four detainees particularly vulnerable to the virus have since been released due to the efforts of the ACLU and others. The number of prisoners and detainees testing positive for the virus grew to 217 by May 10, The San-Diego-Union-Tribune reports.

In May, a federal judge denied a request to release medically vulnerable prisoners. [A]

Writer Kevin Bliss contributed to this report.

Sources: latimes.com, kpbs.org, sandiegouniontribune.com

COVID-19 Cases Soar at Federal Prisons in California; Half at Lompoc Have the Coronavirus

by Derek Gilna

As of May 12, 2020, the number of COVID-19 infections had exploded at a trio of federal prisons in southern California, placing one at the top of all 142 facilities operated by the federal Bureau of Prisons (BOP).

Federal Correctional Institution (FCI) Lompoc, located in Santa Barbara County, holds 1,162 low-security prisoners, of whom 911 had tested positive for the novel coronavirus that causes the disease. That was the highest number of cases in any BOP prison. Another 16 positive cases have also been reported among prison staff. So far just 25 prisoners and 3 staff members had developed symptoms and recovered. None had died.

But at the adjacent U.S. Penitentiary (USP) Lompoc, there had been two prisoner deaths. The medium-security facility holds 1,044 prisoners, of which 114 had tested positive for coronavirus, along with 22 staff members.

The virus had also hit FCI Terminal Island in San Pedro in Los Angeles County. Of the 1,042 low-security prisoners there, 702 had tested positive for the virus, along with 15 staff members. There have been seven deaths, all among prisoners.

Los Angeles County Public Health Director Barbara Ferrer, whose staff began testing for the virus at FCI Terminal Island on April 23, said that many of those infected were not showing any symptoms of illness. An infected prisoner who remains asymptomatic cannot immediately be classified as recovered.

There have also been outbreaks of the coronavirus at other BOP facilities, including FCI Elkton in Ohio, where the state’s members of the National Guard were forced to provide testing and medical services when the prison medical staff failed to contain the outbreak, which had so far infected 52 staff members and 148 prisoners, nine of whom have lost their lives.
Another seven prisoners had died of the disease at FCI Oakdale in Louisiana, where 58 of 107 infected prisoners have recovered, along with one of 17 infected staff members. The federal Centers for Disease Control (CDC) has responded to the crisis at the prison, as well as at FCI Forrest City in Arkansas, where a temporary tent hospital had gone up to quarantine and treat 294 prisoners and three staff members. Only 50 prisoners had recovered at FCI Forrest City, along with two members of the staff.

BOP stresses that the high rate of infection in the three southern California prisons – which average 53% — “does not reflect the positive rate” in the entire federal prison system. Among all 139,584 prisoners in facilities it runs, BOP says that 4,106 — just 3% — had tested positive for coronavirus, and all but 2,818 had recovered. Among 36,000 staff members, 262 remain unrecovered out of 541 who tested positive so far.

But advocates are not convinced. The American Civil Liberties Union (ACLU) has called BOP’s statistics into question, accusing the agency’s central office of an apparent undercount of infections. BOP also has not provided sufficient testing supplies to confirm how many prisoners have the disease, the ACLU added.

Since mid-March, in-person visitation has been canceled at all BOP facilities. But at FCI Lompoc, USP Lompoc and FCI Terminal Island prisoners have also been cut off from using phones or email since April 17. Prison officials said that “during this unprecedented response to a pandemic” additional steps were taken “solely to mitigate the spread of the virus from multiple people touching keyboards and handsets.”

“You are strongly encouraged to continue corresponding by mailing letters through the U.S. Postal Service,” the websites for the three prisons advises.

The restrictions have effectively cut off all other means of communication for nearly 3,300 prisoners. Those resorting to letter-writing complain that virus-limited hours in the commissary make it hard to buy postage, too.

Family members and prisoner advocates, already anxious because of the spread of the pandemic in crowded prisons, were critical of the inability to use phones or email, with the director of the ACLU’s National Prison Project, David Fathi, calling it “almost a complete blackout of communication.”

California’s junior U.S. Senator, Kamala Harris, released a statement saying that BOP and the Justice Department “must act immediately to reduce the incarcerated population and to protect those in BOP custody — as well as correctional officers and staff — from this deadly virus.”

See: cbsnews.com, WTXL.com, bop.gov

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Unsealed Documents Expose Treatment Failures at San Diego Jail

by Anthony W. Accurso

In response to a motion filed by the ACLU, a judge in the U.S. District Court for the Southern District of California unsealed documents in June 2019 related to the failures of San Diego County Sheriff’s Department and its mental health provider, Correctional Physicians Medical Group (CPMG).

San Diego County operates seven jails, which regularly hold around 5,200 prisoners, about one-third of whom are on some form of psychotropic medication to manage a serious condition. This makes the jail system the largest provider of mental health services in the region. “There’s something wrong with that,” said Sheriff Bill Gore in a 2017 interview. “That shouldn’t be the case.”

The Sheriff’s Department awarded a five-year contract worth $21 million to CPMG, but canceled it in January 2017 after just 27 months. The company had been formed by Steven Mannis, an emergency room doctor who later admitted in a deposition that he had virtually no experience in psychiatry.

According to court filings, “No one was in charge of training” at CPMG. “The only alleged ‘training’ occurred at ‘Journal Club,’” a voluntary quarterly performance review for CPMG providers.

The unsealed documents relate to the death of Rubin Nunez in late 2015. Nunez was arrested after throwing a rock through a car window and was transferred to Patton State Hospital because he was declared unfit to stand trial. At Patton, the staff documented his schizophrenia and psychogenic polydipsia — a condition where sufferers drink water uncontrollably, sometimes leading to death.

In August 2015, Nunez was transferred to San Diego Central Jail to stand trial. When state hospital patients are transferred to other facilities, a discharge report containing relevant diagnoses is faxed and physically sent with the patient to the receiving facility. Nunez was housed in the psychiatric unit at the jail but, despite his medical records, was given unlimited access to water in his cell.

Five days later, his cell was covered in urine and bloody vomit but staff failed to transfer him to medical or cut off his access to water. He died hours later of swelling in the brain caused by excessive water intake.

Three dozen inmates have died in San Diego County since April 2014. A 2016 email to Mannis from Dr. Alfred Joshua, the sheriff’s medical director, linked CPMG to the death of Nunez as well as two other suicides. “Quite frankly, your lack of administrative and clinical control as well as lack of even knowing the facts that your CPMG providers were directly involved in each of these cases, is disheartening and aggravating,” the email said.

Joshua resigned from the county on June 30, 2018 after the county’s new provider, Liberty Healthcare Corp. of Pennsylvania, failed to stop such deaths.

“California law makes these peer-reviewed records confidential, so physicians can discuss cases without public scrutiny,” Mannis said in a telephone interview in response to the ACLU’s request to make the relevant court documents public.

Judge Roger T. Benitez was not swayed by such concerns. “This court is not persuaded that peer reviews of medical care in county jails will cease to exist or be significantly less productive unless kept confidential, particularly in light of the public’s demands for and interests in accountability within its county jails and state prisons,” he ruled. See: The Estate of Nunez v. County of San Diego, U.S.D.C. (S.D. Cal.), Case No. 3:16-cv-01412.

Additional sources: sandiegotribune.com, chicagotribune.com

Federal Court Slams Michigan Jail for Bungling COVID-19 Pandemic, Demands Names of Vulnerable Prisoners for Release

by Christopher Zoukis

On April 17, 2020, a judge for the U.S. District Court for the Eastern District of Michigan granted a temporary restraining order (TRO) against the Oakland County Jail due to its mishandling of the COVID-19 pandemic. Plaintiffs filed a class action complaint against the Oakland County Jail seeking immediate release of all current and future Oakland County Jail detainees and three distinct subclasses:

• All pre-trial defendants;
• All post-conviction detainees; and
• All medically vulnerable defendants and detainees (i.e., those 50 or older or who otherwise have an underlying medical condition which would place them at particular risk of serious illness or death from COVID-19.)

Plaintiffs also sought an emergency motion requiring Oakland County Jail to undertake specific measures to improve hygiene and safety at the jail.

Judge Linda V. Parker issued the TRO. As PLN was going to press, attorneys for the plaintiffs were pushing for the release of medically vulnerable prisoners and an order guaranteeing that strict safety measures were put in place for all who remained at the jail.

On May 20, Judge Parker ordered the jail to provide a list of medically vulnerable inmates and their criminal histories so she could determine who should be immediately released.

In analyzing the TRO request, the court found that plaintiffs were likely to succeed on the merits of their claim, alleging “that jail conditions violate their Eighth and Fourteenth Amendment rights.”

“Plaintiffs’ allegations reflect that Oakland County has not imposed even the most basic safety measures recommended by health experts...to reduce the spread of COVID-19 in detention facilities,” said Judge Parker. “It cannot be disputed that COVID-19 poses a serious health risk to plaintiffs and the putative class.”

As part of the TRO, the court ordered the Oakland County Jail to comply with 16 specific safety practices. That included the...
provision of hand soap and paper towels “sufficient to allow regular hand washing and drying each day”; disinfectant hand wipes or hand sanitizer; and access to showers and clean laundry.

The court also ordered the jail to provide staff with personal protective equipment, to include masks. Jail officials were also ordered to wash their hands with soap and water or use hand sanitizer both before and after coming into contact with “any person or any surface in cells or common areas.”

The order also put in place a new scheme for addressing COVID-19 outbreaks. For example, inmates are to receive “adequate medical care” while being “properly quarantined in a non-punitive setting.” Furthermore, the jail was ordered to respond to all COVID-19 related emergencies “within an hour.” Judge Parker ordered jail officials to cease and desist “all use of punitive transfers or threats of transfers to areas of the jail that have higher infection rates.”

On April 20, defendants filed a motion for reconsideration with the court. This motion specifically disputed plaintiffs’ representations about the conditions at the jail and argued that plaintiffs lacked credibility, citing their convictions.

Defendants stated that they had implemented the measures outlined in the TRO before commencement of the action and that providing hand sanitizer would pose a security threat.

The court reasoned that Rule 65 of the Federal Rules of Criminal Procedure allowed the court to grant “a TRO ex parte, without briefing or evidentiary submissions by defendant.” According to the opinion, “Defendants were deliberately indifferent to a serious risk of harm to Plaintiffs and putative class members.”

In their motion for reconsideration, defendants challenged the court’s order to prepare a list of Medically-Vulnerable Subclass inmates that should be released, arguing that if the court lacked the authority to release such inmates the jail should not be required to prepare such a list.

On this matter, the court held for the defendants, stating that the court “will require Defendants to provide the list to the Court and/or Plaintiffs’ counsel, but only once the Court determines that it has the power to release inmates in this litigation.”

Lawyers for the plaintiffs were: Alexandria Twinem, Krithika Santhanam, Civil Rights Corps, Washington, DC, Allison L. Kriger, La Rene & Kriger, P.L.C., Daniel S. Korobkin, Philip Edwin Mayor, American Civil Liberties Union Fund of Michigan, Detroit, MI, Kevin M. Carlson, Cary S. McGehee, Pitt McGehee Palmer & Rivers PC, Royal Oak, MI.

Prisoners struggling to deal with the COVID-19 pandemic — often without masks, sufficient cleaning supplies or the ability to social distance — are crying for help to the outside world by any means possible. Some prison authorities have responded by cutting off their access to phones and email.

At the San Diego County Jail, prisoners held up a homemade sign that said, “We Don’t Deserve 2 Die,” during a prisoner’s video chat. Three of those prisoners were sent to solitary confinement shortly thereafter.

In the Pine Prairie, Louisiana ICE detention center, contact between prisoners and members of the media via video chat included inmate complaints about the lack of protective equipment and the possibility of conflict between prisoners and staff. The result? Future video contacts were canceled by the institution.

On the federal level, those suspected of being infected with COVID-19 are often quarantined in special housing or solitary, during which time they are often without access to anything but irregularly delivered mail from the U.S. Post Office.

At the Bureau of Prisons (BOP), California facilities at Terminal Island and Lompoc, where over half of the prisoners tested positive when the Los Angeles County Board of Health stepped in to do extensive testing, staff took the unusual step of preventing prisoners from using phones and email.

According to prison officials, “During this unprecedented response to a pandemic, we have temporarily suspended access to telephone and email services only to mitigate the spread of the virus from multiple people touching keyboards and handsets,” a move strongly condemned by the American Civil Liberties Union (ACLU). Almost all BOP facilities have been on modified lockdown since mid-March, with no visitation, and limited access to email, phones, law libraries and copy machines.

The ACLU and other advocates have noted that the BOP appears to be doing its best to control the flow of negative information to the media, by not only declining to test all prisoners for the virus, despite the likelihood that more than half are infected, but also by deliberately undercounting both the number of known infections and deaths.

Prisoners at many federal facilities scoff at the figures of those infected given them by staff. One female prisoner at the FMC Lexington wrote: “What we all have been living in fear of has taken place. The guards have brought COVID-19 into FMC Lexington... It’s day 37 of our lockdown and I hear sirens for the third time today. A BOP nurse was asked if there were really 30 cases at the men’s facility. She laughed and said there were way more. Triple or quadruple that number. The feeling of numbness is the only way to describe hearing that news.”

She continued, “We are helpless and are forced to sit back and watch the BOP lie to the public and authorities. Death count reports are drastically off.”

Prisoners are aware that complaints to staff can result in incident reports, loss of privileges, and possibly solitary confinement. Another writes, “The BOP doesn’t like media attention, let alone when an inmate’s words make it into a publication. I am hopeful that I don’t get too much backlash from staff, but at this point I don’t care. I speak for incarcerated American citizens nationwide and personally for over 200 women I reside with.”

While prisoners struggle with their well-founded fear of death, as well as their own personal issues, they also grapple with the fact that communication to the outside world detailing their conditions could possibly put them in even more danger. Although the BOP has proven itself incapable of stemming the rising tide of COVID-19 in its facilities, it has proven much more effective at suppressing the flow of information from prisoners to the outside world.

See: staff reports, eff.org/deeplinks, theintercept.com

Rhode Island Corrections’ Union President Fined for Excessive Political Donations

The Rhode Island Board of Elections voted in December 2019 to fine correctional officers’ union president Richard Ferruccio for allowing the union’s Political Action Committee (PAC) to exceed the state’s limit on annual campaign contributions for three successive years. Ferruccio agreed to pay the $1,020 penalty after the board voted to approve the fine.

The PAC exceeded the state’s $25,000 cap by $4,075 in 2017, $1,350 in 2018 and $4,775 through the first three quarters of 2019, according to the board’s findings.

Traditionally, the union has a vocal role in proceedings at the State House, particularly on criminal justice reform issues, including its recent opposition to the plan to close the high-security unit at the Adult Correctional Institution while a new unit is built. The PAC is also known to issue political endorsements during election season.

During 2019, the PAC donated $1,000 to Secretary of State Nellie Gorbea, Congressman James Langevin, Treasurer Seth Magaziner, House Speaker Nicholas Mattiello and Senate President Dominick Ruggerio.

According to Richard Hahn, the PAC’s treasurer, the union has started new policies ensuring that it complies with state law, and he apologized for the past violations.

In other actions, the board fined Christopher Buffery, chairman of a PAC run by the International Brotherhood of Electrical Workers, $350 for going over the state’s cap in 2018; and Raymond Berarducci, a former Providence City Council candidate, agreed to pay a $2,000 fine for accepting a loan from a family member.

Sources: Associated Press, bostonglobe.com, middletownpress.com
Introducing the latest in the Citebook Series from Prison Legal News Publishing

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By Alissa Hull
Edited by Richard Resch

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Silence: The Bureau of Prisons’ Pathetic Response to the COVID-19 Pandemic

by Christopher Zoukis

The silence is deafening. Over a week in mid-May, Prison Legal News tried to contact public information officers at seven federal prisons seeking an answer to a straightforward question: What are you doing to protect prisoners at your facility from COVID-19?

The answer? Nothing.

As of press time, not a single public information officer responded. This includes public information officers from FCI Elkton, FCI Terminal Island, FCI Butner Medium I, FMC Fort Worth, FCI Oakdale I, FCI Milan, and USP Lompoc. These facilities may sound familiar because they were the top seven federal prisons in terms of prisoner deaths due to COVID-19.

To be fair, PLN left voicemails with only three public information officers. No one picked up the phone at the other four. That’s right: At institutions with inmate populations ranging from 660 to 1,955, no one bothered to answer the phone.

Families Fear for their Loved Ones

“It’s as if they are just locking them in their cells and making them fend for themselves,” said the mother of a federal prisoner who asked not to be identified due to potential retaliation against her son. “I’m just so scared. I don’t want him to die.”

The same sentiments are echoed by countless others who view the federal Bureau of Prisons’ (BOP) response as less than satisfactory.

“The BOP has shown their true colors in care and concern of the incarcerated,” said the mother of another federal prisoner housed at FCI Seagoville. “There is no soap. Up until last week, there were no masks.” She continued, “The warden has answered no emails or mail regarding compassionate release and is still earning his paycheck.”

Even the American Federation of Government Employees, the union representing federal workers, has entered the fray. In a May 5, 2020 letter to Michael Carvajal, director of the BOP, Everett Kelley, the union’s president, stated: “The Bureau of Prisons continues to transfer prisoners between prisons, most notably from institutions that have had outbreaks of COVID-19 to ones that have not had any confirmed cases of the virus in either staff or prisoners...The Council of Prison Locals has repeatedly raised concerns with wardens about proper Personal Protective Equipment (PPE) for correctional officers, the lack of adequate testing and screening, and the introduction of COVID-19 into previously unaffected facilities and geographic areas as a result of these continuing inmate transfers.”

Frontline prison guards have rebuffed the BOP’s response as well. On May 11, 2020, the AFGE released a photo of prison guards in West Virginia protesting. Signs read, “We are not lab rats” and “STOP the Bureau of Prisons spreading the virus!” Yet faced with this unified chorus of calls for reform, the phones continue to go unanswered and the death toll continues to mount.

The Current State of COVID-19 in Federal Prison

As of May 16, 2020, the BOP reported that 2,285 federal prisoners and 283 BOP staff had confirmed positives for COVID-19. These positive cases span 54 federal prisons and 22 halfway houses. As of that date, 56 federal prisoners have died from the virus. The BOP has also reported 1,950 prisoners, and 287 staff who had tested positive for the virus have recovered.

These numbers might be deceptive. Over a 12-hour period on May 16, 2020, the number of prisoners infected actually dropped from 2,285 to 2,280, but with no corresponding reduction in the number of prisoners who have recovered (this number remained at 1,950 prisoners).

Likewise, over these 12 hours the number of federal prisons affected stayed constant at 54 but the number of halfway houses dropped from 22 to 18.

The best guess is that the BOP is dropping the number of prisoners and institutions it counts when prisoners are transferred to hospitals or other facilities that they don’t directly manage or supervise. Such a data reporting technique would inherently underreport the true nature and scope of COVID-19 infection rates.

Delving further into this data, an analysis reveals that prisoners have tested positive in at least 60 federal prisons and 26 halfway houses. For example, staff have also tested positive at Central Office, the Designation and Sentence Computation Center in Grand Prairie, Texas, and the Southeast Regional Office.

Another problem is that COVID-19 testing in the BOP is far from comprehensive. Anecdotally, it appears that when one prisoner presents symptoms, prison staff test other prisoners who live in close proximity to the asymptomatic inmate. This results in staggering increases in the number of infections reported.

But on April 30, The Wall Street Journal reported that only 2 percent of prisoners nationwide had been tested. The same day, The Hill reported that about 2,700 prisoners had been tested, with 71 percent of those testing positive for COVID-19.

“Really, this pandemic is challenging us to rethink almost everything we do, while keeping in mind the security requirements of correctional facilities,” said Jeffrey Allen, BOP medical director. Allen also revealed that approximately 130 federal prisoners are held in hospitals due to COVID-19 infections on any given day.

Equally as troublesome is the geographic scope of the crisis.

Survey of COVID-19 Impact on Federal Prisons Nationwide

Here is a sampling to show the scope and geographic diversity of the crisis. As of May 19, official statistics show:

- FCI Lompoc (California)
  881 inmate positives
  14 staff positives
  43 prisoners recovered
  3 staff recovered

- FMC Fort Worth (Texas)
  304 inmate positives
  6 staff positives
  331 prisoners recovered

- FCI Forrest City Low (Arkansas)
  252 inmate positives
  1 staff positive
  48 prisoners recovered
2 staff recovered
• FMC Lexington (Kentucky)
3 inmate deaths
198 inmate positives
6 staff positives
28 prisoners recovered
• FCI Terminal Island (California)
8 inmate deaths
121 inmate positives
15 staff positives
571 prisoners recovered
• FCI Elkton (Ohio)
9 inmate deaths
115 inmate positives
12 staff positives
60 prisoners recovered
40 staff recovered
• USP Lompoc (California)
2 inmate deaths
57 inmate positives
16 staff positives
102 prisoners recovered
6 staff recovered
• FCI Butner Medium I (North Carolina)
8 inmate deaths
56 inmate positives
14 staff positives
168 prisoners recovered
12 staff recovered

Many other federal prisons have also reported positives and fatalities. For example: FCI Oakdale I (LA) had reported seven prisoner deaths; FCI Milan (MI), three prisoner deaths, and Behavioral Systems Southwest, Inc., a halfway house in Phoenix, Arizona, two prisoner deaths. Also, FMC Carswell (TX), FCI Danbury (CT), FMC Devens (MA), GEO Care, Inc. (halfway house in NY), FCI Oakdale II (LA), FTC Oklahoma City (OK), and USP Yazoo City (MS) had all reported one inmate death.

Not included in the above lists: MCC New York had reported 22 staff positives (with 23 additional staff recovering); FDC Miami (FL), 16 staff positives (with two additional staff recovering), and MCC Chicago (IL), 14 staff positives (with 16 additional staff recovering).

The total number of infected prisoners is certainly higher, as there is limited testing and, in some cases, widespread testing only occurring when a prisoner presents as seriously ill. And as previously discussed, the data is misleading in itself, underreporting the pandemic in federal prisons.

“When I hear numbers like that, my thoughts are there is massive under-testing, there are probably thousands of additional people who are infected that they may not have captured yet, and it really feels like a public health crisis in the making,” said Ashish Jha, director of the Harvard Global Health Institute.

What Federal Prisons Are Doing to Mitigate the Crisis

While the Bureau of Prisons has repeatedly failed to respond to any inquiries from PLN, news reports, discussions with federal prisoners and their families, and BOP documents show how the Bureau is attempting to manage the crisis.

According to its “Correcting Myths and Misinformation About BOP and COVID-19” fact sheet, BOP medical staff are “conducting rounds and checking inmate temperatures at least once a day.” At institutions where prisoners are in quarantine, “Health Services staff are conducting rounds and temperature checks twice a day.”

Another part of the FAQ addresses prisoners in dormitory settings. The fact sheet says a common myth is that, “Inmates say correctional officers are ordering them to stay six feet apart, but most of them are living in dormitory-style settings with 1,000 or more men. A handful of sinks, showers and toilets are shared by all.” In response, the fact sheet states, “Social distancing is difficult in certain correctional settings but to counter this limitation, BOP has issued cloth face masks to all inmates and common areas are sanitized multiple times a day. Their cells can be cleaned at least 1x a day.”

This is typical of how the BOP responds to legitimate concerns with political statements. Instead of acknowledging that social distancing is impossible in a prison setting, it suggests that it is merely “difficult” and that prisoners may clean their cells.

The Centers for Disease Control and Prevention (CDC), in their Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, has addressed this issue by recommending bunk beds be arranged “so that individuals sleep head to foot to increase the distance between them.”

The real crisis comes into focus when considering that federal prisons are, on average, 12 percent to 19 percent overcrowded, according to a 2020 Department
of Justice report, and that Health Services departments are 17 percent understaffed, according to a 2016 Office of the Inspector General report.

With limited health-care staff, drastic overcrowding, and an untenable lack of ability to socially distance, federal prisons are a COVID-19 powder keg waiting to explode. The aspect, which should have everyone worried, is that it may have already exploded; we may just not know it, and federal prison officials might not even know themselves.

**Drastically Reduce Federal Prison Populations**

The only answer to mitigating this crisis in federal prisons is, in the words of The New York Times Editorial Board, “in the very short term, while inmates and staff members are dying, prisons need to release people immediately.” Sadly, this just hasn’t been the case.

While Attorney General William Barr released memorandums on March 26 and April 3, 2020, calling for certain low-level, low-risk prisoners to be placed on home detention, this hasn’t turned into a reality.

On May 17, 2020, the BOP reported the total release of 2,785 prisoners to home confinement, categorizing this as a 97.6 percent increase from March 26. However, it must be kept in mind that there are 138,954 prisoners in BOP custody, 16,742 prisoners in privately managed facilities, and 12,107 federal prisoners in other types of facilities. Of these, 5,495 are in home confinement, and 6,022 are in halfway houses. [Note: These numbers include prisoners already placed on home confinement and in halfway houses external of early releases due to COVID-19 concerns.]

What is equally as perplexing is the approach the Bureau of Prisons has taken to early releases in response to Attorney General Barr’s memorandums. These criteria include:

- **Age and COVID-19 vulnerability**
- **Security level, with an emphasis on inmates at low- and minimum-security facilities**
- **Minimum risk score using the PATTERN risk assessment tool**
- **Verifiable reentry plan which would reduce COVID-19 risk.**

Additionally, certain groups of prisoners are to be presumed not appropriate:

- Inmates with a history of violent or gang related activity in prison.
- Inmates who have received an incident report within the past 12 months (not total preclusion, but given less priority).
- Inmates convicted of certain offenses, such as sex offenses, are presumed to be ineligible.

Sources report that the Bureau of Prisons’ Central Office promulgated a list of prisoners who fit Barr’s memorandums. This list was then transmitted to local institutions for review. Unit teams then met with these prisoners to verify release plans and PATTERN scoring. Finally, if the prisoner checked all the right boxes, the warden would review, sign off, and transmit the home detention plan to the applicable Regional Reentry Manager (RRM) for the final phase of the process.

In theory, this process made sense. But in reality it didn’t.

While the above process generally appears to have played out as described, many prisoners on the Central Office list were subsequently excluded due to a review of PATTERN scoring. They were deemed too high a risk. In some cases, even after the warden signed off, the RRM overruled the warden’s decision.

More damning, according to The Intercept, there were even cases where prisoners were told they were going home but informed their releases had been rescinded when their families were driving to pick them up. It’s been a perfect storm of ineptitude, callousness, and abject disregard for human life and safety. Meanwhile, predictably, the death toll keeps rising.

**The Time for Action is Now**

As the last few months have shown us, the BOP cannot manage the threat COVID-19 presents to prisoners and staff. While hiding the ball is nothing new for jail and prison officials, the idea that prison officials would misreport data is abhorrent. This is not a political matter, it’s a matter of life and death.

The only answer is to release prisoners to mitigate the loss of life associated with COVID-19. This doesn’t mean the release of only minimum- and low-security prisoners who are elderly or who have preexisting conditions, which would place them at a higher risk for contraction. This means everyone who the BOP can’t safely manage and protect.

Incarceration’s primary objective is incapacitation, to physically stop offenders from committing crimes. It should only be used when absolutely necessary. Instead, the American criminal justice system views incarceration as the primary mechanism for the punishment of crime. This is misguided at best and serves to destroy lives and communities.

Instead of focusing on who should be released, we should focus on who cannot safely be released. It’s a short list.

Simply because someone has been convicted of a violent or sexual offense, and irrespective of what security level they are housed within, we must view them with an eye toward their rehabilitation, reintegration, and the potential impact of an early release upon public safety. What is missing from the current equation is that people don’t commit crimes when they are at their best. They commit crimes when they are at their worst. And judging a person based on a crime they committed five, 10 or even 20 years ago is folly. Likewise, determining who lives and who dies based on the security level they are housed in fails for the same ethical and moral reasons.

As the death toll continues to rise, the only answer is to release as many federal prisoners as possible — and to do so as quickly as possible. To refuse is to acknowledge the risk to life and welcome it, as to stand on the beach and proffer to the hurricane it should stop, thinking it will listen.


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.

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by Christopher Zoukis

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Stephen Morse, founder of Blueprint for Change Hawaii, estimated that 3,000 to 4,000 children in Hawaii had parents incarcerated in the prison system. Through Blueprint, Morse pushed for legislation to allow him to work with correctional facilities exploring ways to build family-friendly visitation centers to help those children. “We can prevent children in the families from exhibiting delinquent behavior themselves and perhaps becoming incarcerated and continuing that cycle of incarceration,” he said.

Morse said his long-term vision is to establish these centers in every state correctional facility.

Schwartz of DPS stated, “The maintenance of healthy relationships between inmates and family members while maintaining safe, secure, and rehabilitative correctional environments is a delicate balance we always endeavor to achieve.”

Source: civilbeat.org

Hawaii Institutes Non-Contact Visits at Another Prison to Control Contraband

_by Kevin Bliss_

Hawaii’s Department of Public Safety (DPS) has now banned contact visits at three of the state’s correctional institutions: Oahu Correctional Community Center (OCCC), Maui Correctional Community Center (MCCC), and Halawa Correctional Facility (HFC).

The only way families and friends of those incarcerated there can see their loved ones is if they sit behind thick Plexiglass screens and speak by telephone. DPS said the purpose of banning contact visits was to prevent the introduction of contraband into the institutions.

MCCC is the latest of Hawaii’s prisons to ban contact visits, beginning in June 2019. HCF has had them banned since 2014 and OCCC since October 2016.

Contraband has been defined by the DPS as those items not allowed by prison policy, the most common being cellphones, cigarettes, and narcotics. “Contraband is an ongoing battle for correctional facilities across the nation,” stated DPS spokeswoman Toni Schwartz. “Implementation of the non-contact visits resulted in the elimination of a major contraband pathway.”

Schwartz stated that she could not discuss other contraband pathways for safety and security reasons.

Yet studies have shown that contact visits help reinforce family and community ties and reduce recidivism. Minnesota Department of Corrections conducted a study that showed a single visit reduced recidivism by 13 percent for new crimes and 25 percent for technical violations.

The Urban Institute, an economic and social policy research center in Washington, D.C., conducted a study that showed non-contact visits between children and family members can be traumatic. Lindsey Cramer, Urban Institute senior research associate, stated, “Contact visits are preferable to non-contact visits because it does allow for that touch, that attachment. It puts the child more at ease. It reassures the child that the parent is safe, is okay.”

Stephen Morse, founder of Blueprint for Change Hawaii, estimated that 3,000 to 4,000 children in Hawaii had parents incarcerated in the prison system. Through Blueprint, Morse pushed for legislation to allow him to work with correctional facilities exploring ways to build family-friendly visitation centers to help those children. “We can prevent children in the families from exhibiting delinquent behavior themselves and perhaps becoming incarcerated and continuing that cycle of incarceration,” he said.

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Source: civilbeat.org
New York Judge Orders Release of 18 Rikers Island Detainees Due to COVID-19 Risk

by Christopher Zoukis

On April 6, 2020, New York Supreme Court Judge Mark Dwyer ordered the release of 18 pre-trial detainees held at Rikers Island in response to a lawsuit brought by attorneys Lauren Gottesman and Mary Lynne Werlwas of the Legal Aid Society, and Robert Brieier. The lawyers had sought the release of 32 detainees they said were at high risk of contracting COVID-19.

In considering the case, the Court relied upon traditional due process black letter law. Citing among other cases Brown v. Plata, 563 U.S. 493, 508-09 (2011), Farmer v. Brennan, 511 U.S. 825, 832-33 (1994), and Estelle v. Gamble, 429 U.S. 97 (1976), the Court asserted that jail officials are required to “provide effective medical care for inmates.” While these cases concerned convicted prisoners, the Court stated that the “Due Process protections of the 5th and 14th Amendments and ... the New York Constitution provide comparable protections to pretrial inmates.”

The Court held that the COVID-19 pandemic posed a “deadly threat to inmates,” and its presence at the prison equates to an “unsafe, life-threatening condition” endangering detainees “reasonable safety.” Based on this, “and the absence of a viable alternative, a court has no choice but to order release.”

While defendants asserted that they had taken reasonable care to mitigate the risk posed by COVID-19 – including providing soap and cleaning supplies and urging prisoners to engage in social distancing – the Court disagreed. It stated that “communicable diseases could not ask for a better breeding ground than a crowded prison.”

The Court also discussed risks to urban jails like Rikers, stating prisoners are “constantly exposed to additional potential sources of contagion.” It detailed the trend of COVID-19 infections at Rikers. On March 20, only one prisoner had tested positive for the virus. The following day 21 inmates and 17 staff “were reported ill from the virus, and one member of the staff was dead.” On April 2, 231 prisoners and 223 staff were sick.

In further support of the plaintiffs’ claims, the Court discussed a March 21 New York Board of Correction advisory letter to judges and prosecutors “calling for the release of prisoners over 50 years old who have conditions placing them at high risk if they contract COVID-19.”

“Under the best of circumstances, there are far better places to be than Rikers Island. And these are not the best of circumstances,” said the Court.

Turning to the facts, the Court stated, “Certainly no American prison is equipped to deal with a health crisis of the severity of this one.” The Court reasoned that due process “does not excuse prison officials who mean well, but have no effective way to protect inmates from potentially fatal epidemics.”

“Reasonable care to mitigate must include an effort to employ an effective ameliorative measure,” Judge Dwyer said. “The escalating numbers of the infected show that what Rikers has done is not remotely effective ... For some of [the plaintiffs], only release can offer protection.”

The Court ordered the release of 18 plaintiffs and denied release to others whose health conditions it said did not put them at high-risk of contracting COVID-19. Some other plaintiffs had already been released on consent or bail.

Judge Dwyer stated that he did not believe that “release can be denied even to those charged with violent crimes if they are still at substantial risk of death or other serious physical injury.” Reasoning these inmates could have additional restrictions placed on them even in the pre-trial context, he held that “these prisoners cannot be punished with the unnecessary exposure to a highly communicable, and for them potentially deadly, disease.”

Since the ruling, hundreds of prisoners have been released from Rikers and other New York City jails.


Number of California Prisoners Falling; Lifer Population Declines Slightly as Well

by Ed Lyon

As of April 1, 2020, the California Department of Corrections and Rehabilitation (CDCR) counted just over 122,000 prisoners in custody, more than 25 percent lower than its 2006 peak, continuing a downward trend that began after a 2011 U.S. Supreme Court ruling that capped the state prison system’s population at 137.5 percent of capacity. The current population represents 130.6 percent of capacity.

To reduce its prisoner population, the state has made increasing use of diversionary programs for nonviolent offenders and reclassifying other prisoners so they can serve sentences in county jails.

CDCR’s Board of Parole Hearings (BPH) has also revamped its policies and procedures, making the process more transparent as it implements a 2008 state Supreme Court ruling that parole decisions need not be based solely on the seriousness of the crime. “I’m not sure that there are really any other places in life where somebody is scrutinized so much in such a public way by people they don’t know,” observes BPH Executive Officer Jennifer Shaffer.

During the first 11 months of 2019, BPH granted release to 1,074 California prisoners serving an indefinite term. That still left CDCR with over 38,000 “lifers,” a number higher than the next three states – Texas, New York and Florida – combined. Yet it was slightly lower than the 2006 peak in California of 40,000.

Meanwhile, Americans serving life sentences in the rest of the nation combined increased by 15 percent between 2008 and 2016, according to the Sentencing Project.

Sources: nytimes.com, sfchronicle.com, npr.org, themarshallproject.org, thecrimereport.org, cdc.ca.gov
Kansas County Jails People for Unpaid Medical Bills

by Douglas Ankney

A county in rural Kansas is jailing people over unpaid medical debt, CBS News reported in February 2020. The county is Coffeyville, Kansas, which has a poverty rate twice the national average.

It’s also the place where attorneys such as Michael Hassenplug have built a successful law practice assisting medical providers to collect debt owed by their neighbors.

Coffeyville has a policy that requires people with unpaid medical bills to appear in court every three months. In what is termed a “medical exam,” the debtors must swear they are too poor to pay. The policy was put in place through Hassenplug’s recommendation to the local judge. “I’m just doing my job,” Hassenplug insisted. “They want the money collected, and I’m trying to do my job as best I can by following the law.”

But the policy also provides for the arrest of anyone who misses two debtor’s exams. Bail is set at $500, which in most jurisdictions is refunded once the bailee appears in court. But in Coffeyville, it goes to attorneys and to the medical companies.

Tres Biggs’ son has leukemia and his wife suffers from Lyme disease. Working two jobs, he missed two exams. “You wouldn’t think you’d go to jail over medical bills,” Biggs said. “I was scared to death. I’m a country kid. I had to strip down, get hosed, and put a jumpsuit on.”

Lizzie Presser from ProPublica reported that the judge in Coffeyville has no law degree, but in the last year had issued more than 30 warrants against medical defendants, with 11 jailed.

Source: cbsnews.com

$200,000 Awarded to Missouri Prison Guard Over Sexual Harassment, Retaliation

by Matt Clarke

On October 3, 2019, a Missouri jury entered judgment in favor of a former Missouri Department of Corrections (DOC) employee who alleged she had suffered workplace sexual harassment, gender discrimination, and retaliation. The jury awarded her $200,000 in compensatory damages.

Ana Barrios was hired by the DOC as a probation and parole assistant at the Kansas City Community Release Center in September 2014. A year later, she was promoted to corrections officer and the release center was turned into a minimum-security prison to house prisoners nearing parole. At the same time, it was renamed the Kansas City Re-Entry Center.

Within a year of the renaming, workplace abuse she experienced led her to quit her job.

With the assistance of attorneys Mark Eldon Meyer and Cyril Jerome Wrabec, Barrios filed a lawsuit against the DOC in state court. She alleged the sexual harassment, discrimination, and retaliation she suffered was “continuous, ongoing, unbroken [and] adopted as a pattern” by the DOC.

Barrios testified that the sexual harassment began within six months of being hired and often centered around the other DOC employees dislike that she was dating a Black man.

For instance, at a celebration of the prison’s name change, a guard burned some hot dogs, saying that Barrios liked her hot dogs “really burnt.” Barrios did not hear the comment when it was made but, when told about it later, took it as a discriminatory and sexually harassing statement about her dating a Black man.

Barrios also testified that some other guards called her “bitch” and “whore.”

When she filed a complaint with the human resources department, her co-workers retaliated against her. When she met with a human resources representative, he downplayed her concerns, saying she must have misunderstood the other guards’ comments.

Barrios testified that she experienced increased anxiety because of the harassment and this caused her to have a nervous stomach.

Because of the harassment, discrimination, and retaliation, Barrios resigned in February 2016. However, she was rehired in March 2016, after the three guards who were harassing her the most were suspended and not expected to return to work. She resigned again in July 2016, amidst continuing harassment, discrimination, and retaliation.

The harassment continued after she resigned the second time as other guards falsely claimed she had sex with prisoners, smuggled drugs, and was employed by a Hispanic prison gang while she was employed by the DOC.

Following a nine-day trial which began on September 24, 2019, the jury found in her favor on claims of sexual harassment, gender discrimination and retaliation. It found in the DOC’s favor on additional claims of racial discrimination and disability discrimination. The jury awarded her $200,000 in compensatory damages but declined to award punitive damages. See: Barrios v. Missouri Department of Corrections, Cir. Ct. of Jackson Cty., Mo., Case No. 1716-CV16646 Div. 10.

Additional source: kansascity.com
New ACLU Study Says COVID-19 Deaths in Prison Will Soar Without More Releases, Fewer Arrests

by Derek Gilna

According to the ACLU, “Models projecting total U.S. fatalities to be under 100,000 may be underestimating deaths by almost another 100,000 if we continue to operate jails as usual.”

On May 28, 2020, the total U.S. death toll stood at more than 102,000, lower than some original projections, apparently brought about by extensive lock-downs and stay-at-home orders in many states and municipalities. People have been cautioned to “social-distance,” wear masks and avoid unnecessary travel to avoid spreading the virus. However, those who run America’s over-crowded jails and prisons have not gotten the message.

This potential disaster has come about for a variety of reasons, first of which is that the United States continues to lock up individuals at the world’s highest rate. With 5% of the world’s population, it detains approximately 20% of the globe’s prisoners.

These prisoners are still disproportionately low-income people of color.

“Social distancing” is impossible in jails and prison. Medical care is poor, and alcohol-based products needed to sterilize surfaces are banned and considered contraband. Prisoners continue to be transported to different prisons, and guards, who bitterly complain that they lack adequate personal protective equipment, and who are in close daily contact with prisoners, then go home to their families.

The following day, those same guards and prison staff return to the same unsafe work environment. The situation is even more dire in the many county jails, where there is more “churn” and a “revolving door” of individuals being released by ending their sentences or by posting bail to win their freedom, and then returning to their community and their families.

The ACLU study puts the responsibility for reducing the death toll on governors, judges, and law enforcement officials, and recommends that arrests be reduced by 50 percent. The rate of release for the elderly and unwell prisoners should be doubled to “save 12,000 lives in jails, … (and) 47,000 lives in the surrounding communities.” If arrests are limited only to the most violent individuals, “we can save 23,000 lives in jails, and 76,000 lives in communities,” the study concluded.

Deplorable Conditions at South Carolina Prisons Prompt Call for UN Intervention

by Ed Lyon

Despite settling a landmark prisoner civil rights case in 2016, and after a bloody 2018 riot led to a nationwide prisoner work strike that same year, conditions in facilities run by the South Carolina Department of Corrections (SCDOC) remain so bad that prisoner advocates in late-2019 appealed directly to the United Nations (U.N.) to intervene.

The appeal was delivered October 23, 2019, to U.N. offices in New York, London, Washington, D.C., and Kingston, Jamaica, by the Incarcerated Workers Organizing Committee (IWOC). Citing alleged violations by SCDOC of the U.N.’s Mandela Rules – a list of requirements for the ethical treatment of prisoners named after former South African President Nelson Mandela, who spent 27 imprisoned for fighting the country’s Apartheid system of racial segregation and discrimination – the appeal demanded opening sealed cell windows, restoring outdoor recreation and improving nutrition for prisoners, as well as a Special Rapporteur to “investigate the torturous, cruel, and inhumane punishment of prisoners in South Carolina.”

Prisoner rights advocate and writer Jared Ware said the appeal was delivered because IWOC and allied activists groups believed official inaction left “no other path to redress” conditions in SCDOC prisons, which he said “have been specifically repressive” for nearly two years after a bloody riot erupted in April 2018 at Lee Correctional Institution (LCI) near Bishopville, leaving seven prisoners dead and 40 more wounded.

“Sometimes (SCDOC) would leave one ‘privilege’ or ‘character’ dorm off lock-down so that they could deny the whole facility was on lockdown,” Ware said. “But for the majority of prisoners in each facility, they were locked down.”

The LCI riot has spawned three dozen lawsuits against SCDOC. But as of May 2020, no criminal charges had been filed. SCDOC’s investigation, plagued by staff shortages that have been made worse by the global Covid-19 pandemic, has so far found no one liable for the country’s deadliest prison riot since the 1970s.

“This entire event was captured on video inside of a maximum-security prison — yet no indictments,” complained attorney James B. Moore III, who represents the family of Eddie Haskins in one of the wrongful death suits.

The 32-year-old from Berkeley County had been at LCI just two weeks when he was killed in the melee. Now, Moore said, the Haskins family “is losing confidence that justice will prevail through the criminal system.”

Meanwhile SCDOC prisoners say they have “no access to sunlight or the outdoors, and at best weekly access to showers,” Ware reported.

Outdoor recreation has been severely restricted by SCDOC. At LCI and other Level 3 prisons – the highest security level in South Carolina – steel plates were welded over cell windows in 2017 to reduce the size of the window opening continue also to restrict sunlight and ventilation. SCDOC spokesperson Chrysti Shain said in November 2019 that steel plates would be removed from cell windows, but the project remained incomplete as of April 2020.
Prisoners also complain of rancid and rotten food, contaminated water, mold and denial of showers, activists say, adding that some guards withhold from prisoners even the contaminated drinking water.

Unsurprisingly, the suicide rate is up. The rate in 2018 was almost double that of 2017. The average suicide rate now in Level 3 state prisons is 34 percent above what it was 10 years ago. [See: PLN, May 2018, p. 12; July 2018, p. 14]

In response to the LCI riot – and SCDOC’s failure to address either its causes or its consequences – IOWC backed a prison worker strike in September 2018 that was spearheaded by Jailhouse Lawyers Speak, a group of prisoners claiming that “prisons in America are a warzone.”

“Every day prisoners are harmed due to conditions of confinement,” the group said. “For some of us it’s as if we are already dead, so what do we have to lose?”

The strike, which lasted from August 21 through September 9, 2018, included sit-downs, hunger strikes, commissary and telephone boycotts as well as work stoppages and slowdowns.

SCDOC remains under the gun to abide by a 2016 federal court order – issued in a case already then eight years old – which found the state’s treatment of its mentally ill prisoners “inherently flawed and systematically deficient in all major areas.” A large monetary settlement was agreed to by the parties, along with policy changes limiting solitary confinement and requiring appropriate treatment for mentally ill prisoners. The court gave SCDOC a four-year period to comply with the settlement, which expires in June 2020.

Sources: greenvilleonline.com, postandcourier.com, theguardian.com, commondreams.org, shadowproof.com, truthout.org, U.N. demand letter, un.org

Louisiana Governor’s Inaction Prevents Release of Grandmother Hospitalized with COVID-19

Louisiana Governor John Bel Edwards had yet to act on a July 2019 recommendation by the state Board of Pardons and Parole to grant Gloria Williams’ request for commutation.

Williams is Louisiana’s longest incarcerated prisoner, the last of the three people sent to prison for a robbery committed in 1971. As PLN went to press, she was transferred from Our Lady of the Lake Regional Medical Center in Baton Rouge where she was in intensive care battling coronavirus to the Louisiana Correctional Institute for Women at Hunt.

In 1971, Williams, then 25, along with a 16-year-old girl and an adult man named Philip Harris, entered a grocery store run by Budge Cutrera and his wife in Opelousas. They were armed with a toy gun and intended to rob the place. Cutrera fought back and the teen fatally shot him with a gun Cutrera kept hidden behind the counter. Since then, the woman who shot Cutrera died in prison, Harris was granted commutation in 1987, and Williams at 74 is still serving her sentence.

Williams became involved in prison drama club, Toastmasters, spiritual programs and various self-help programs. She has also counseled many other prisoners into leading more productive, crime-free lives, including Conseula Gaines, who later formed Voice of the Experienced in 2016 to advocate for the right to vote for the formerly incarcerated.

Williams was moved to Elayn Hunt Correctional Center after the women’s prison where she was being held flooded in 2016. The Center houses local jail and prison females who have tested positive for COVID-19. “Mama Glo, (Williams’ nickname), was an older person, elderly at risk, and from what we can tell, no special provisions or efforts to keep her more isolated or provide her with extra care or consideration (were provided),” said Mercedes Montagnes of the Promise of Justice Initiative, who represents Williams.

Williams began having trouble breathing and was taken to the hospital April 19, where she was placed on a respirator. Since she was still under the care of the Department of Public Safety and Corrections, the hospital could not release any information about her condition to her family.

Williams’ daughter, Dean Marie Robertson-Guidry, was devastated by the diagnosis. “We were at the last step, this was the final step,” she said.

Source: theappeal.org

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Louisiana Governor’s Inaction Prevents Release of Grandmother Hospitalized with COVID-19

by Kevin Bliss

June 2020
Report: Oaks of Justice Pitch to Help Prisoners Return Home Appears Shady

by Bill Barton

It’s scarcely news that people incarcerated in federal prison are often desperate for any possible chance to return home. Unfortunately, prisoners aren’t really in a position to verify the legitimacy of assorted offers of shortened sentences, and misinformation is rampant.

On its website, the group Oaks of Justice claims that it can assist federal prisoners in obtaining early release and completing their sentences at home while being monitored by surveillance systems worn on their wrists like a smart watch. According to its website, the wrist monitors track respiration, pulse, and alcohol or drug use.

The company also claims that its program is part of the First Step Act. Oaks of Justice says users of its service must remain within boundaries, a so-called “geo-yard,” set at the time of release.

Company founder Joanne Barefoot Morgan (aka Winnie Joanne Barefoot) has claimed that federal Bureau of Prisons (BOP) officials and President Donald Trump support the program, according to a January 2020 report by The Marshall Project. A spokesperson for the BOP said the Bureau has no such deal with the company.

Dolores Wallace’s sister was serving a 3 ½-year sentence in federal prison. She asked Dolores to look into the company, spurred by talk about it on her cellblock. Wallace’s sister had recently wasted $6,000 on another early-release program based on enrolling in rehab, which ended up being a scam. “At this point, I’m nobody’s fool,” the skeptical Wallace said.

Eventually she received a letter stating that her sister had been accepted. Morgan wrote in the letter that when final confirmation came from the BOP, Wallace would be contacted for a $250 application fee.

Further letters said the program could cost her thousands of dollars, depending on her sister’s conduct and the remaining time on her sentence.

Rebecca Tushnet, a Harvard Law School professor who is an expert on false advertising, said Oaks of Justice could be breaking federal law even with no exchange of money. “If the pitch is, ‘Eventually I’m going to ask you to send me money,’ then definitely that can violate the law,” said Tushnet. “She’s clearly causing damage. Most of that damage is not going to be economic.”

Morgan herself served almost five years in federal prison before her release in December 2016, The Marshall Project reported.

She pleaded to bank fraud for a variety of whitecollar crimes. Oaks of Justice was formed while she was still on probation, nine months after release, and she claims that her probation officer “is fully aware of the company.”

The old cliché, “Let the buyer beware,” may very well apply here.

First Prisoners and Staff, Including a Warden, Dead from COVID-19 in Louisiana; Hundreds Infected

by David M. Reutter

Like most prison systems, the Louisiana Department of Corrections (LDOC) has been battling the COVID-19 pandemic in cramped facilities that make for easy transmission of the highly contagious coronavirus. As a consequence, the number of positive tests for the disease within LDOC facilities continues to grow, and it had resulted in at least 10 deaths as PLN went to press.

LDOC reported its first prisoner death on April 18, 2020. The name of the 69-year-old victim was not released, but officials said he had been at the state penitentiary in Angola since 1978, serving a life sentence for first-degree murder. The man, who reportedly requested and agreed to a do-not-resuscitate order, died just three days after being transferred to an outside hospital.

Two other LDOC prisoners also died from COVID-19 in April 2020, including a woman at the Louisiana Correctional Institute for Women (LCIW), as well as three staff members. Details on the dead prisoners were unavailable from LDOC, but the female prisoner was identified as Dorothy Pierre in a Facebook video posted by other women held at LCIW who are part of a group called Voice of the Experienced (VOTE).

LDOC identified its lost staffers as Raymond Laborde Correctional Center Warden Sandy McCain; Dr. Casey McVea, the prison’s medical director; and an Angola guard, L.t. Timothy Gordon. Their deaths have also altered the LDOC’s objective in response to the virus. As the Times-Picayune reported, “Hundreds of Louisiana inmates and correctional employees have now tested positive for coronavirus, and wardens across the state are entering a new phase of their response: hoping to limit the death toll.”

“For now, the fear is that the number of deaths will increase as more positive tests results are returned. LDOC’s website showed on May 12, 2020, that 368 prisoners had tested positive. The majority of those — 232 — were at the hard-hit LCIW.

While the coronavirus is rare in youths in the free world, the frequency of positive tests in Louisiana’s juvenile facilities speaks to the dangers of their close quarters. There are two branches of the Swanson Center for Youth. Between them, 17 juveniles had tested positive.

Officials are moving infected juveniles to the Monroe branch and healthy juveniles to the Columbia branch. The Louisiana Department of Justice, as of April 20, 2020, was reporting that 28 juveniles in its facilities had tested positive for COVID-19.

The lockdowns being imposed on juveniles has made them unruly. About 40 juveniles at the Bridge City Juvenile facility rioted, juveniles kicked down their doors, a SWAT team swarmed in, kids were pepper sprayed, and a staffer was injured, the As-
June 2020

VOTE has called on Gov. John Bel Edwards to use clemency to cut the state’s prison population. But in a press conference April 27, Edwards said he didn’t consider clemency an appropriate way to deal with COVID-19.

“That’s not just part of the pandemic response as far as I’m concerned,” the governor said.

Instead Edwards has put together a panel that began meeting on April 17, 2020, in order to review the cases of about 1,200 non-violent prisoners, 25 percent to 30 percent of whom the governor expects will be found eligible for furlough. But LDOC said records of just 289 prisoners had been recommended by the end of the month, with only 58 of those released.

“We’re disappointed that they haven’t been more aggressive in trying to reduce the prison population in the state,” commented Kevin Fitzpatrick, Director of the Office of Justice and Peace at Catholic Charities of the Archdiocese of New Orleans (CCANO).

On May 7, 2020, CCANO hosted a virtual meeting online with representatives from the Louisiana Office of Probation and Parole to address the effects of COVID-19 on criminal justice reform.

“We don’t really know when (the pandemic is) going to end, so people are still in this kind of crisis mode,” observed one panelist, Vanessa Spinazola, Executive Director of the Justice and Accountability Center of Louisiana.

She added that she would prefer to see state officials get into “vision mode” to plan structural changes that permanently lower the population in prison.

In addition to cases in the state’s prisons and jails, the panel learned that another 100 cases have cropped up in immigrant detention facilities in the state, according to Homero López, Jr., Executive Director and Managing Attorney at Immigration Services and Legal Advocacy. Most are asylum seekers with “no criminal background,” he said.

“This is a choice by the government to detain folks that they don’t have to detain,” López continued, adding that COVID-19 only draws “attention to the fact that we have a system that detains people for no other reason than that they are undocumented in the United States.”

Sources: wdsu.com, Associated Press, The Times-Picayune, thelensnola.org

Florida Continues to Use Slave Labor During Coronavirus Outbreak

by Kevin Bliss

Florida is one of a handful of states that doesn’t pay prisoners to work, constituting what some consider slave labor. Meanwhile, the Florida Department of Corrections (DOC) continues to use prison labor during the coronavirus pandemic, despite the obvious risk it poses.

The Florida Times-Union reported in May that 3,500 prisoners were being used in work squads that service 67 counties in the state. There were 34 work camps across the state, contracted for everything from grounds maintenance to sewage treatment to moving services. Government agencies paid the DOC $2 per prisoner per hour for their labor. The prisoners work in Florida’s unrelenting heat and do not see any of those wages.

Although representatives from the DOC have stated that labor practices have been limited during the pandemic, they have declined to discuss what preventative measures have been taken.

The prisoners live in close-quarter communities and travel to and from work sites on crowded buses. In late May, the state reported more than 53,000 cases of COVID-19 in early April while the DOC website claims over 1,400 cases among prisoners and 261 among staff.

“I mean, this is not safe for the people in prison — or for the surrounding communities,” stated Alison Wilkey, public policy director at John Jay College of Criminal Justice’s Prisoner Reentry Institute.

“Using people in prison for low-paid labor is a horrific practice in normal circumstances — it really is akin to slave labor. But, there’s a very particular risk in this situation where there’s a highly infectious virus circulating.”

Source: theappeal.org
Don Specter is the executive director of the Berkeley, California-based Prison Law Office, a nonprofit public interest law firm that provides free legal services to adult and juvenile offenders. It has litigated numerous successful institutional reform cases that, among other things, have improved health-care services, guaranteed prisoners with disabilities reasonable accommodations and equal access to prison programs, reduced the use of excessive force, limited racial discrimination and restricted the use of solitary confinement in adult and juvenile correctional systems.

When was the Prison Law Office founded and what is its history?

In 1976, two recent law school graduates started the Prison Law Office in an old shack right outside the gates of San Quentin with a small donation from Catholic Charities. Their focus was to improve the living conditions at San Quentin by providing free legal services to the people confined in that prison. The first cases involved relatively discrete issues on behalf of individuals at San Quentin. As the staff gained more experience and with the pro bono help of large law firms the office began bringing class actions at individual prisons on behalf of people in segregation, on death row and for medical and mental health care. When the California prison system started to “comply” with court orders at individual prisons by shipping people to other prisons, the office began to litigate a series of cases involving medical care, disability rights and mental health care against the entire California state prison system and its 35 prisons. Since that time, we have expanded our reach to county jails, the prison system in Arizona, juvenile facilities and most recently two federal prisons in California that are struggling with COVID-19.

What are the main problems in California’s prisons and jails? Has there been any notable improvements during the past few years?

The main problem in California’s prisons is and has been overcrowding. In the early 2000s, the state’s prison population reached almost double its design capacity. In 2005, along with our colleagues at Rosen, Bien, Galvan and Grunfeld, we brought motions to reduce the prison population, and after a trial before a special three-judge panel the U.S. Supreme Court ruled that California had to dramatically reduce its population because overcrowding was causing unconstitutional conditions. As a result, the prison population has been reduced from about 170,000 people to about 124,000 at the present time. Although greatly reduced, the population still remains substantially above design capacity, which interferes with the prison operations, including its ability to comply with social distancing requirements to reduce the spread of COVID-19.

How would you rate Governor Gavin Newsom when it comes to criminal justice reform?

Generally speaking, Governor Newsom has done a very good job of running the state of California, especially during the pandemic. However, when it comes to criminal justice reform, his actions have not matched his rhetoric. Although in his inaugural address he promised to reduce mass incarceration, his policies have not directly addressed that issue and he has resisted efforts in court and in negotiations to significantly reduce the prison population. For example, there are too few mental health staff to treat the number of mentally ill patients in the prison system, leading to one of the highest suicide rates in the nation. Yet, the governor has not taken any significant steps to reduce the number of mentally ill individuals in prison.

How much has your work been changed by the outbreak of the COVID-19 pandemic? Have you had any success in getting prisoners released to reduce overcrowding?

At the moment, most of our time is being spent trying to protect people in prison from the COVID-19 virus. We have filed several motions to reduce the population density in California’s prisons and another one in a county jail. We filed two lawsuits against two federal prisons in Southern California alleging that COVID-19 was running rampant through those prisons. Although the motions against the state prison system haven’t resulted in any direct relief, the pressure of potential court intervention has caused the department to make various improvements consistent with the CDC guidelines. In response to our motion against a Southern California county, the court ordered system-wide relief but did not order any releases. In general, the jails in California have done a much better job of reducing their populations than the state prison system.

Prisons and jails have become some of the biggest hot spots for coronavirus. What needs to be done to prevent what looks like a full-fledged disaster for prisoners?

The biggest threat to people living in prisons is that they often have no practical way of preventing contact with other people who may be infected and contagious. Prisons and jails are often overcrowded, which exacerbates the potential for contact and therefore infection. The other major threat is that many of the people who are incarcerated are at a high risk of suffering serious injury or death because of their age or health if they become infected. The safest approach is to reduce the density of the population so that individuals can maintain the proper physical distance and transfer or release individuals who are a low public safety risk and a high medical risk.

Has public opinion turned in favor of criminal justice and prison reform? If so, has that moved political leaders in a more progressive direction? What are the primary obstacles to achieving your goals?

I believe public opinion very much favors criminal justice reform. That is why in the last few years the California electorate has voted for several initiatives that have reduced prison sentences and made more people eligible for parole. However, politicians still face the prospect of being called soft on crime if they vote for or sign a bill that reduces sentences. Even in the case of a progressive governor, such as Gavin New-
Incarceration is not the answer to crime, concludes a December 19, 2019 report by the Tennessee Criminal Justice Investment Task Force (CJITF). “Despite incarcerating more people and spending over $1 billion annually on corrections in the state budget, Tennessee has the fourth highest violent crime rate in the nation and a high recidivism,” the report states. “These trends are especially noteworthy in light of 34 States reducing both their imprisonment and crime rate” between 2008 and 2017.

The CJITF was created by a March 2019 executive order by Gov. Bill Lee. It comprised a diverse body of criminal justice stakeholders from all three branches of government and was tasked with carrying out a comprehensive review of Tennessee’s criminal justice system.

From 1978 to 2008, Tennessee’s prison population exploded by 367%, increasing from under 6,000 prisoners to over 27,000. While the prison population nationwide declined by 7% from 2008 to 2017, Tennessee’s prison population grew by 6%. In 2017, Tennessee incarcerated 429 of every 100,000 citizens, which is 10% higher than the national average. Its female prison population grew by 30%, pushing its female incarceration rate 12% over that period, and the number of technical community supervision violations soared.

Prison sentences increased by six months, to an average of 79 months, over the 10-year period of review. Fraud and theft sentences increased by 20%, and drug sentences increased a whopping 30%. As sentences got longer and more crimes were defined as offenses, the number of paroles decreased because the parole board requires “an individual must be within a certain number of months of the average time served for that offense.” The implementation of “pre-parole conditions,” such as in custody substance abuse, impacted the number of paroles issued.

The CJITF also found issues with treatment of the mentally ill. It found more needed to be done to connect people to diversion centers instead of jails as the primary option. The increase in zero tolerance for technical violations of supervision, such as positive drug screens, was a factor in the prison population increase.

Tennessee has 23,234 prison beds, but it has a prison population of 30,799. The 7,000-bed deficit is serviced by county jails. That has had an impact on recidivism, the report found. Persons released from state prison are rearrested at a 41% rate within three years. That rate jumps by 10%, or 51%, when a person was released from a county jail when completing their prison sentence.

The report made 23 specific recommendations to get better results from the criminal justice system. The CJITF said the state needed to strengthen responses to individuals with behavioral health needs, ensure equal opportunities to state individuals housed in local jails, focus resources on violent and high-risk individuals, improve efficiency and effectiveness of community supervision practices, minimize barriers to successful reentry, and ensure sustainability of criminal justice laws.

Source: Criminal Justice Investment Task Force report, State of Tennessee, 2019
Mississippi Jail to Stay Open Despite Massive “Financial Trouble”

by Chad Marks

On December 12, 2019, the Board of Supervisors of Mississippi’s Issaquena County granted an eleventh-hour reprieve to the Issaquena County Regional Jail just five days before it was set to close and over 300 prisoners were to be moved. The Mayersville jail is the county’s largest employer, with a staff of 53, according to Sheriff Richard Jones.

In a meeting December 3, 2019, the Board of Supervisors had decided to cease jail operations effective December 17, 2019, saying the facility was costing the county more money than the government was taking in to house prisoners and pay staff. The Mississippi Department of Corrections (MDOC) has a contract to house some prisoners at the jail. As a regional correctional facility, it also accepts overflow prisoners from the jails in neighboring counties. Made with just two weeks notice, though, the announcement that the jail would close left some local officials stunned.

“We’re the county seat, of course we’re going to feel the impact of it,” said Mayersville Mayor Linda Short, who added that the move would “truly hurt our small community and communities in the surrounding areas, not just Issaquena County but the surrounding Delta.”

She also suggested that if someone came in to audit the books to see where the funding is going, they could rectify the problem. Sheriff Richard Jones was against the shutdown, too, not least because he had no idea what to do with the jail’s prisoners.

“I’m kind of lost,” Jones said after the announcement. “I don’t know the plan. The supervisors made that decision this morning. They didn’t want to hear what I had to say.”

The Issaquena jail is one of 15 regional jails in Mississippi. Most were built with the expectation that MDOC would use about 80 percent of their capacity. But for each of the 4,186 prisoners MDOC currently houses in regional prisons, it pays nearly $20 a day under what it costs, according to the office of State Auditor Suzann M. Bump, which authored the study.

Audit: Massachusetts Department of Corrections Failed to Provide Timely Health Care or Reentry Services

by Douglas Ankney

An audit of the Massachusetts Department of Corrections (MDOC) released January 9, 2020, found that the agency was failing to provide prisoners with timely health care and proper reentry services, including help with needed medical appointments. As a result, prisoner health has been jeopardized, especially after release, exposing MDOC to legal risk, according to the office of State Auditor Suzanne M. Bump, who authored the study.

“Inmates have a right to timely health services while incarcerated, and we all have a vested interest in their successful reentry into society,” Bump said.

She called it “concerning” that MDOC’s “lax oversight” in these two ways “may have negatively affected inmate treatment and rehabilitation.”

Under MDOC policy, each Sick Call Request Form (SCRF) received from a prisoner must be processed within 24 hours on weekdays or 72 hours on weekends. But from July 1, 2016 through June 30, 2018 – the period covered by the audit – MDOC dropped the ball in one out of five cases, with 20% of SCRFs failing to meet that processing time requirement. Of 60 prisoners whose cases were reviewed, there were a total of 297 SCRFs, and 55 of those were processed late from one to 31 days.

Additionally, MDOC policy requires screening by a qualified health care professional (QHP) within seven days after a prisoner submits a sick request form. Yet for nearly one-third of the prisoners whose files were reviewed – 19 out of 60 – there was no evidence that they were ever seen...
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Sources: mass.gov, patriotledger.com, nepr.net
Nebraska Prison Employee Labor Agreement Contains Unusual Provision

by Matt Clarke

On December 27, 2019, Nebraska Governor Pete Ricketts and the Fraternal Order of Police Lodge 88, the union that represents Nebraska Department of Corrections (DOC) workers, announced a “Letter of Agreement” that provides for increased worker pay and creates a new career ladder for DOC guards.

The letter contained an unusual provision — that the union must oppose any bill proposed in the Nebraska Legislature related to the “classification and compensation” of DOC guards. Should any such bill pass the Legislature, the agreement becomes null and void.

Like many prison systems throughout the nation, the DOC has struggled with poor pay for guards, resulting in staffing shortages that lead to extended shifts, mandatory overtime and canceled vacations. The poor working conditions stressed guards, causing more of them to quit, and driving a higher turnover rate.

The agreement between the union and the state increases starting pay for corporals and unit caseworkers from $18.44 per hour to $20. Sergeant starting pay rises from $20.60 per hour to $24. The agreement also allows those three groups of workers to receive raises, based upon experience and contingent upon satisfactory work reviews, adding $1 to their hourly wages each year for up to seven years.

Further, the DOC can give workers employed at high-security prisons annual bonuses of up to 10 percent of base pay, and new hires with sufficient correctional, law enforcement, or military experience can start a step above the usual starting pay.

The agreement also allows the DOC to implement 12-hour shifts at high-security prisons without having to declare an emergency, as was previously required, but only for up to 70 percent of their positions. Other prisons will have eight- or ten-hours shifts.

The reason the union agreed to the unusual provision was the concern that pending legislation could undermine the negotiated agreement.

“We were trying to solve the problem by negotiating in good faith, and the Governor’s Office and his administration didn’t want to cut a deal with us and then have the legislature come back and do something different,” said Lincoln attorney Gary Young, who represents the union.

The DOC has been experiencing a crisis with 30 percent of staff positions vacant and some guards having to work multiple 16-hour shifts each week to fill essential positions. The DOC was having to bus guards from Omaha to Tecumseh, pay large amounts of overtime hours, and declare “staffing emergencies” at some prisons so it could change from eight-hour shifts to 12-hour shifts. Meanwhile, guards were leaving the DOC in droves for better-paying jobs at county jails. Even with the pay increases, the DOC’s salaries will be less than some county jails, which pay up to $3 more per hour than the pre-agreement DOC wages.

A staffing shortage was among the reasons given for increased unrest at the Nebraska State Penitentiary in Lincoln. Doug Koebernick, the Nebraska DOC’s inspector general, said developments there were “alarming” and “disturbing.”

He said the problems at the 1,300-bed facility may exceed those at the Tecumseh State Prison, which has had two disturbances with fatalities since 2015. He noted that the prison was at 180 percent of design capacity, compared to 105 percent at Tecumseh. There were also more problems with contraband cellphones and drugs at Lincoln.

Source: omaha.com

Sandoval County, New Mexico Settles Public Records Lawsuit with Human Rights Defense Center

by Derek Gilna

Sandoval County, New Mexico on February 24, 2020, settled a public records lawsuit with the Human Rights Defense Center (HRDC), the parent corporation of Prison Legal News, which alleged that the county had refused to provide records that were required to be released under the state’s Public Records Act. As part of the settlement, the county provided the requested records and paid HRDC’s $52,500 in legal fees, but was not required to admit wrongdoing.

HRDC had sought records as part of its ongoing mission to investigate and publicize payouts made by the county to settle lawsuits brought against local law enforcement authorities accused of wrongdoing. Although some records had initially been produced, HRDC alleged that $3,784,704.70 had been paid out from public funds without proper disclosure of the details, as required under state law.

New Mexico’s Inspection of Public Records Act provides that it is the “public policy of this state, that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of public officers and employees ... (and) that to provide persons with such information is an essential function of a representative government.”

Nonetheless, despite numerous requests, the county’s production was incomplete, omitting critical details as to the basis for substantial monitory payouts by the county, and it became necessary for HRDC to file suit. It was later determined that the county paid out money for numerous claims alleging negligence, excessive force, inappropriate use of an isolation cell, sexual abuse, lack of adequate medical care, and, in one instance, the death of a prisoner.

HRDC is a nonprofit organization headquartered in Florida, which seeks public records for the purpose of publicizing and exposing abuses at prison and jails, and advocating for the humane treatment of prisoners. See: Human Rights Defense Center v. Board of County Commissioners for the County of Sandoval, et al., Case No. D-1329-CV-2019-01797.
New York Federal Guard Sentenced to 25 Years for Sexually Abusing Prisoners
by David M. Reutter

NEW YORK federal judge Kiyo A. Matsumoto on July 31, 2019, sentenced former Bureau of Prisons Lieutenant Eugenio Perez to 25 years in prison. A jury in May 2018 found Perez guilty of six counts of deprivation of civil rights, four counts of aggravated abuse, five counts of sexual abuse in a federal prison, six counts of sexual abuse of a ward, one count of sexual abuse of a ward, and one count of abusive sexual contact.

The charges stem from incidents that occurred between January 2013 and September 2016 at the Metropolitan Detention Center in Brooklyn. Five prisoners testified that Perez lured them into isolated locations, used physical force and intimidation to force the prisoners to engage in sexual acts with him, and used his authority to assure they did not report the abuse.

The victims all gave corroborating statements describing Perez’s genitals, which he nicknamed “horse.” Four of the prisoners testified Perez forced them to perform oral sex.

At his sentencing, Perez, who faced a life sentence, begged for leniency. “I ask for mercy, not just for me but for my family,” Perez said through tears.

The judge, however, teared up when speaking with the victims and expressed being troubled by Perez’s conduct. “These women were vulnerable and they were told by Mr. Perez more than one time, don’t report this, and if you do, no one will believe you,” Judge Matsumoto said before handing down the sentence.

Perez is required to register as a sex offender upon release.

Source: nypost.com, justice.gov

Coronavirus Crisis: Wisconsin Releases Around 1,600 Prisoners, an ‘Inconsequential’ Number

By May 8, 2020, the Wisconsin Department of Corrections had released almost 1,600 prisoners as the coronavirus spread, Madison.com reports.

“The vast majority — 1,447 individuals released from March 2 to May 4 — are inmates who had been detained because they violated terms of their probation, parole or extended supervision while being monitored in the community, DOC spokeswoman Anna Neal said. The inmates were being held either in a county jail or DOC’s Milwaukee Secure Detention Facility.”

American Civil Liberties Union Wisconsin staff attorney Timothy Muth called the number of releases so far “inconsequential.”

“It did absolutely nothing to reduce the population of the correctional system,” he told the Wisconsin State Journal. State prisons hold 24,000, while 2,200 are housed in federal facilities and 13,000 in local jails, Prison Policy Initiative reports.

Reducing the prison population would prove beneficial, Muth said, because it would allow social distancing to take place.

Added Ben Turk, volunteer for the nonprofit Forum for Understanding Prisons: “It doesn’t feel like they’re really in emergency mode yet.”

The DOC counters that “Certain Earned Release and parole hearings are the only two powers the department has to release prisoners.”

In April, the ACLU Wisconsin sued, “seeking the release of elderly and vulnerable inmates to prevent an outbreak of the COVID-19 coronavirus in the state’s prisons.”

“Right now, Wisconsin’s overcrowded prisons are a ticking time bomb that threatens the health of all Wisconsinites, especially people of color who are disproportionately impacted by mass incarceration,” ACLU of Wisconsin executive director Chris Ott said in a statement.

Forum for Understanding Prisons, which has helped individuals apply for clemency, would like Gov. Tony Evers and the state pardons board to take action.

“They are paying for their crimes, they shouldn’t have to pay with their lives,” says mom Jodi Nelson, whose son Ryan has an auto-immune disorder that was diagnosed after he was incarcerated.

Source: madison.com, wisconsinexaminer.com
California Prison Reform Results in Housing Challenges for Former Prisoners

by Anthony W. Accurso

Over 600,000 people are released from prisons across the U.S. each year, and a growing number of reentry providers are prepping to absorb increasing numbers as states reform their systems.

In California, though, as the state implements long-overdue reforms in the criminal justice system, people are being released so fast that existing services are drastically insufficient to meet the needs of this population.

After California was forced by a federal court to confront the crisis of overcrowding in its prisons after the turn of the millennium, the state’s legislature began implementing reforms that have reduced prison populations 25% over the last decade. The three-strikes laws were amended, lifers were allowed to start applying for reduced sentences, and more individuals were made eligible for parole.

While such a reduction in prison populations is certainly welcome, many parolees face significant challenges in obtaining the housing and services that meet their reentry needs. As a stop-gap measure, many recovery residences — formerly “sober living homes” — have been pressed into service as halfway houses for all kinds of parolees.

Crystal Wheeler served 22 years in prison until her release in 2012. She struggled with PTSD resulting from her husband’s abuse and her prison experiences, but she had no substance abuse history herself. As a condition of release, she was required to serve six months in a reentry housing program in Claremont. However, because the facility was designed around recovery, she was forced to attend classes and groups she didn’t need. “I didn’t need to go to AA meeting at 6 a.m.,” she said. Wheeler “that time could have been better used for teaching us things that our husbands never let us do.”

One former prisoner, who preferred the pseudonym Richard while describing his experiences, served more than two decades after having his life sentence reduced. He was released at age 55 to a facility in West Oakland.

On top of learning about smart phones and the internet, he had to function in an environment not much different from prison. His living space had eight men jammed in one room, and there was often blood and feces on the bathroom floor. He was subject to invasive searches and witnessed fighting, theft, and drug use. “One of the things the parole board told me is to stay away from drugs, and then I’m put in a program where that’s exactly what I’m around,” he said. After filing grievances and speaking to a lawyer, Richard was able to move to a smaller facility geared more toward his needs.

Since 2016, the state has been allocating more money to expand reentry services, including funding innovative program like The Homecoming Project in Alameda County, a program that pairs parolees with homeowners in an Airbnb-like arrangement. Both parolees and hosts are carefully screened to ensure parolees experience a nurturing environment that maximizes success, and hosts are compensated $25 per day after committing to six-month contracts.

Last Mile started with just six men paired with hosts, though it had planned to expand to 25 participants by the end of 2019. It is too early to tell if this program, or others like it, could expand to serve the growing population of parolees. But after decades of tough-on-crime policies, such innovation is a welcome way to move forward.

Sources: motherjones.com, newtimesslo.com, npr.org, pewtrusts.org

Sign the Papers! Alabama Prisoners Get Masks for COVID-19 but With Strings Attached

by Ed Lyon

As the threat of COVID-19 contagion has become tangible to prison populations across the United States, the Alabama Department of Corrections (ADOC) has implemented risk management and mitigation protocols throughout its prison system.

Among these is the cessation of accepting new prisoners from county jails and transfers except in cases of medical necessity and emergency. During the second half of April, masks were made available to prisoners — but with dubious conditions.

To obtain a mask, the prisoner must sign a two-page form. Ominously printed at the top of the first page is the warning, “Use this mask at your own risk. The ability of this mask to protect its user and the effects of its use on health are unknown. The mask is not guaranteed to be effective against the spread of any illnesses or viruses, including COVID-19 virus.”

The second page of the form provides “mandatory” instructions for mask maintenance. This involves daily cleaning in warm water with detergent or alternatively allowing the prison’s laundry to clean it.

Prisoners report that in most dormitory housing there are not enough sinks to meet everyone’s usual needs, much less adding daily mask maintenance cleaning to the regimen. Also, ADOC is not issuing detergents or sanitizing agents. Furthermore, not all prison units are equipped with their own laundry department.
On May 13, 2020, the Human Rights Defense Center (HRDC), the parent organization of Prison Legal News, settled a federal civil rights action concerning California’s Tehama County Jail censorship of prisoner publications like PLN in violation of the First Amendment.

The complaint, filed February 14, 2020 in the Eastern District of California, Sacramento federal court, alleged that Tehama County and its sheriff, Dave Hencratt, had refused to accept books and publications at the jail unless they were mailed “directly from the publisher” or from online services such as Amazon, and banned books “published or distributed by HRDC and other neutral publishers and distributors other than those listed in Defendants’ Mail Policy.”

The lawsuit noted that “HRDC publishes and distributes books, magazines, and other materials containing news and analysis about prisons, jails and other detention facilities, prisoners’ rights, court rulings, management of prison facilities, prison conditions, and other matters pertaining to the rights and/or interests of incarcerated individuals. HRDC’s publications contain political speech and social commentary, which are core First Amendment rights and are entitled to the highest protection afforded by the United States Constitution.”

HRDC further alleged that there was no legitimate reason for the jail to refuse to accept magazines “held together with ordinary staples” or that small staples pose any security threat.

HRDC said it had identified in its complaint at least 93 instances where the jail had denied HRDC materials to 20 incarcerated individuals. These materials included 22 issues of PLN, 23 issues of Criminal Legal News, 14 copies of the Prisoner’s Handbook and ten judicial opinions.

As part of the settlement, the jail agreed to deliver the previously banned materials in the future and to inform prisoners if it rejected any material, and if so on what grounds. It also agreed to provide for an appeal process in such cases.

The jail agreed to pay $143,500 to settle HRDC’s claims for damages and attorney fees. HRDC was represented by the San Francisco law firm of Rosen Bien Galvan & Grunfeld LLP and HRDC General Counsel Dan Marshall. See: Human Rights Defense Center v. County of Tehama, et al., U.S.D.C. (E.D. Cal.), Case No 2:20-at-00165.
More Than 200 Convicted of Corruption at Baltimore Department of Corrections; More Charges Announced

by Kevin Bliss

More than 200 guards, prisoners and civilians have been convicted of corruption at the Baltimore Department of Corrections’ prison system over the last four years. In a major new case revealed in December 2019, then-acting Captain Kevin Hickson and 24 other members of the Baltimore Central Regional Tactical Unit were indicted on 236 criminal charges of violent assault, tampering with and destroying evidence, and falsifying official public documents.

The Unit was investigated in 2016 for a series of incidents involving excessive use of force at several facilities. The Unit was responsible for maintaining order at the Metropolitan Transition Center, the Baltimore Pretrial Facility, the state Corrections Department’s Jail Industries Building, and Baltimore City Booking and Intake Facility.

Prosecutors and prison officials worked together and uncovered a criminal enterprise organized to maintain dominance within the prison system. Prosecutors stated that Hickson and his unit employed “illegal excessive use of force through assaults of inmates, use of threats against inmates, and various retaliatory practices to assure complete compliance with [the tactical team’s] authority, which bolsters [its] overall reputation within the territory and suppresses any dissension and discord among the overall prison population.”

Secretary of Corrections Robert Green said the allegations were “disturbing” and commended Governor Larry Hogan for making the issue a priority during his administration. “This case represents our strong effort to root out people who don’t belong in the field of public safety and rehabilitation,” he stated. “This is a disturbing case, but it does not and should not cast a shadow on the commitment and integrity of the exceptional correctional professionals in this department.”

Represented by the American Federation of State, County, and Municipal Employees (AFSCME), the 25 were charged December 3, 2019, after a year on administrative leave, and some could face up to 150 years in prison. Baltimore City Circuit Court Judge Jennifer Friedman stated that she did not believe members of the Unit posed a risk to the public and released all but one pending trial.

Baltimore has previously seen multiple episodes of corruption within its prison system. In a contraband smuggling scheme, prosecutors stated that the Black Guerrilla Family used guards to gain control of the prison. [PLN, April 2015, p. 30.] In 2018 and 2019, more than three dozen guards were charged with smuggling heroin, cell-phones, and pornography into the state’s medium-security and maximum-security prisons in Jessup. In September 2019, a former sergeant for the Maryland Department of Public Safety and Correctional Services was sentenced to 15 years for helping run the Crips gang inside state prisons and “enrich” it by helping the gang smuggle in contraband.

Green said this string of corruption cases did not show failure as a whole. “Evidence here today is that we investigated this case, we brought this forward,” he said. “It is a committed effort to be excellent.” Hogan stated, “We are again making clear that we have absolutely no tolerance whatsoever for corruption of any kind in our state prison system or anywhere else is state government.”

Sources: baltimoresun.com, cnn.com, baltimore.cbslocal.com

Innocence Project Working to Prove Arkansas Executed Innocent Man

by Ed Lyon

On January 23, 2020, the family of an Arkansas man who was executed three years earlier, filed a lawsuit to obtain evidence from the scene of the murder for which he was convicted, hoping to finally submit it for DNA testing.

“My family has been unable to rest… knowing that my brother was murdered by the state of Arkansas for a crime we believe he did not commit,” said Patricia Young, the surviving sister of the executed convict, Ledell Lee.

If she succeeds in clearing her dead brother’s name, his will be at least the 368th posthumous exoneration in the U.S., according to the Innocence Project.

Lee was put to death for the February 9, 1993, murder of Debra Reese in Jacksonville, Arkansas. Reese was found in her home, strangled, kicked in the face and bludgeoned to death with a small wooden bat called a “tire thumper,” which are used by truck drivers to beat their vehicle’s tires to make sure they are properly pressurized. Based on the accounts of two eyewitnesses, Lee was arrested about two hours after Reese’s body was discovered.

But at trial, Lee’s jury was presented with weaknesses in the eyewitnesses’ accounts: One was using Vicodin, a strong opioid drug, and the other was not only on drugs but also not wearing prescription eyeglasses. Evidence was also presented of a footprint, found next to Reese’s head, which did not match the shoes Lee wore the day of her murder. Four other witnesses also testified to his alibi, placing Lee at other locations during the entire two hour and 10-minute window – from 10:50 a.m. to 1 p.m. – established for Reese’s death by forensic analysis. The trial resulted in a hung jury and a mistrial was declared.

Lee was retried, but his new defense counsel did not put any alibi witnesses on the stand, resulting in his capital murder conviction and death sentence. Post-conviction counsel also missed opportunities to present exonerating evidence. The new lawsuit includes an affidavit from Lee’s appellate attorney, Craig Lambert, admitting he was battling substance abuse at the time.

“I recognize the investigation into Ledell’s innocence was not adequate and he deserved far better than the representation I was able to provide him back then,” Lambert said.
Two weeks before Lee’s scheduled execution, lawyers from the Innocence Project got involved in Lee’s case. Together with counsel from the American Civil Liberties Union (ACLU), they identified evidentiary flaws, including DNA evidence that had never been tested.

But a federal judge declined to intervene, holding instead that Lee had “simply delayed too long.” Arkansas was also rushing through seven other executions before its supply of lethal drugs expired. [See PLN, Feb. 2018, p.24.] Lee was executed on April 20, 2017.

“What we see here is unfortunately too common in death penalty cases, especially when a white person has been killed and there is pressure to convict someone for their death,” said the director of the ACLU’s Capital Punishment Project, Cassandra Stubbs.

On Jan. 23, 2020, the ACLU, Innocence Project attorney John Tull and the law firm of Hogan Lovells filed a lawsuit on behalf of Lee’s family to have DNA and other forensic testing done on the state’s evidence in order to prove Lee’s innocence. They also presented three expert affidavits:

- Forensic pathologist Dr. Michael Baden said that a scrape on Reese’s face did not come from a rug, as prosecutors claimed, but from a shoe, and not Lee’s shoe, the sole of which is “incompatible with the injury pattern to Ms. Reese’s face.”
- The shoe print that prosecutors did present the jury as “slam dunk evidence” incriminating Lee was not the “exact same size” as his shoes, according to Dr. Alicia Wilcox, an expert in examining footwear.
- Eyewitness misidentification expert Dr. Jennifer Dysart said the photo lineup shown to the eyewitnesses who testified against Lee was “shockingly” biased against him.

“All of this evidence should have been presented to the courts while Ledell was still alive,” said the Innocence Project’s senior litigation counsel, Nina Morrison.

“What happened to Debra Reese is horrible,” Young said. “But I was with Ledell the day this murder happened, and I do not see how he could have done this. If Ledell is innocent, then the person who did this has never been caught.”

Jacksonville city attorney Stephanie Freeman has not yet launched a new search for another suspect in Reese’s murder. But she opposes the release of the evidence sought by the lawsuit, based on her interpretation of Arkansas evidence retention laws. If the release is granted by a court, though, she promised “we will certainly comply.” See: Patricia Young v. Jacksonville Police Department et al., Case No. 60CV-20-639 (Pulaski County Circuit Court, 2020). Additional sources: cnn.com, theappeal.org, aclu.org

$500,000 Settlement for Colorado Prisoner Beaten During Seizure

by David M. Reutter

Colorado prison officials agreed to pay $500,000 to settle a lawsuit alleging a guard severely beat a prisoner who was experiencing a seizure.

Prisoner Jayson M. Oslund entered the Colorado Department of Corrections for the second time in September 2010. He had a documented history of epilepsy, for which he was given medication to reduce the possibility of seizures. Despite that history, staff at Sterling Correctional Facility (SCF) refused to provide him medication to treat his epilepsy.

Oslund was sent from his food service job assignment on March 7, 2013, because he was feeling ill. Once he returned to his housing area on the second tier, Oslund experienced a seizure. He fell and split his head open and was knocked unconscious. He required five stitches. Later that day, Oslund had a second seizure.

When guard Mitchell Mullen arrived, he grabbed Oslund while he was convulsing and yelled, “Stop resisting.” Mullen then began to slam Oslund’s head into the ground.

Oslund awoke disoriented and dizzy to find himself in an isolation cell. When he asked a guard why he was in segregation, the guard responded, “I don’t have time for you.” Oslund informed him that he could not walk, and a wheelchair was provided when he was returned to his housing area. He was not provided care for the inability to walk and remains in a wheelchair.

Oslund, acting pro se, sued on March 5, 2015. He was subsequently represented by Zachary Warren of the Highlands Law Firm.

The matter proceeded to trial and a jury awarded Oslund $6 million. That award was rescinded and on December 16, 2019, a settlement that paid Oslund $500,000 was reached.

The settlement also provides that Oslund was to be transferred to a prison closer to his mother and that he receive care from specialists to evaluate his medical condition. See: Oslund v. Mullen, USDC, D. Colorado, Case No. 1:15-cv-00491.

Additional source: denver.cbslocal.com

Are Phone Companies Taking Money from You and Your Loved Ones?

HRDC and PLN are gathering information about the business practices of telephone companies that connect prisoners with their friends and family members on the outside.

Does the phone company at a jail or prison at which you have been incarcerated overcharge by disconnecting calls? Do they charge excessive fees to fund accounts? Do they take money left over in the account if it is not used within a certain period of time?

We want details on the ways in which prison and jail phone companies take money from customers. Please contact us, or have the person whose money was taken contact us, by email or postal mail:

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On December 16, 2019, the Tenth Circuit Court of Appeals reversed the dismissal of Colorado federal prisoner Aaron Sandusky’s petition for a writ of habeas corpus, thereby remanding the case for further proceedings. The writ claimed that a congressional appropriations rider prohibits the Bureau of Prisons (BOP) within the U.S. Department of Justice (DOJ) from using its funds to prevent any state from implementing its own laws regarding the “use, distribution, possession, or cultivation of medical marijuana.” The implications of this ruling include requiring the DOJ to cease using funds to imprison Sandusky on marijuana-related charges, which would result in his release.

Sandusky was the president of G3 Holistic Inc., a California-based medical marijuana cooperative that grew and sold plants and products. In 2012, he was convicted of conspiracy to manufacture and distribute marijuana, and he was convicted under California law of medical marijuana cooperative that grew and sold marijuana. He received two concurrent 120-month federal sentences.

After an unsuccessful appeal in June 2015, Sandusky filed a petition for a writ of habeas corpus in the California sentencing court, seeking to “vacate, set aside, or correct” his sentence, in accordance with 28 U.S.C. § 2255. The petition claimed ineffective assistance of counsel and wrongful imprisonment on the basis of the appropriations rider.

The district court denied the petition in November 2015, holding that, among other things, the claim regarding the appropriations rider could not be raised in a 28 U.S.C. § 2255 petition, seeing that it was a challenge to the execution of the sentence, not to the constitutionality or lawfulness of the conviction or sentence.

Soon thereafter, the Ninth Circuit Court of Appeals ruled in August 2016 on a case involving defendants seeking to avoid federal prosecution for various marijuana offenses. The Court asserted that the DOJ is prohibited “from spending funds from relevant appropriations acts” to prosecute individuals who acted in full compliance with their State Medical Marijuana Laws.

Sandusky then filed an amended petition for a writ of habeas corpus in June 2018, under 28 U.S.C. § 2241 in Colorado’s federal court. In this, he claimed that the appropriations rider prohibited the BOP from spending funds to incarcerate him. He alleged that the conduct for which he was convicted was entirely legal with the then-existing California medical marijuana laws and asserted he was entitled to an evidentiary hearing. If this hearing were to establish his claimed compliance, he would be entitled to immediate release from BOP custody.

The district court concluded that his claim implicated the legality of his sentence and therefore could only be raised in a § 2255 petition. Therefore, it dismissed the petition in early December 2018.

Aided by Colorado federal public defenders Kathleen Shen and Virginia L. Grady, Sandusky appealed. The Tenth Circuit noted that the appropriations rider, originally enacted in 2014, had been enacted multiple times in nearly identical form in appropriations acts passed since then.

The court clarified that § 2241 was the appropriate vehicle to challenge the execution of a sentence, holding that Sandusky’s appropriations act claim was such a challenge. Sandusky was not seeking formal modification of his sentence and would presumably be subject to re-incarceration if, after release, Congress failed to continue enacting new riders.

Further, the previous ruling denying his § 2255 petition did not preclude him from raising the claim in a § 2241 petition. Lastly, the claim was based on a different rider than the one used in the § 2255 claim, a second reason it was not precluded. Therefore, the court reversed the dismissal of the petition and remanded the case to the district court for further proceedings. See: Sandusky v. Goetz, 844 F.3d 1240 (10th Cir. 2019).

$500,000 Settlement From Psychiatrist for Failing to Treat New Mexico Prisoner Who Committed Suicide

In November 2019, the family of a New Mexico prisoner who committed suicide while incarcerated at a privately operated prison agreed to a $500,000 settlement against the psychiatrist, Andrew Kowalkowski, who subcontracted with Corizon. Earlier in 2019, the family entered into confidential settlements with the two other defendants in the lawsuit — GEO Group and Corizon.

Michael Mattis, 24, pleaded no contest to residential burglary and entered the New Mexico Department of Corrections (DOC) in 2014. He had no prior criminal history but a known history of mental illness.

After he arrived at the Northeastern New Mexico Detention Facility near Clayton, he was diagnosed with bipolar disorder, schizophrenia and psychotic disorder. According to court documents, psychiatrist Dr. Andrew Kowalkowski had a single video interaction with Mattis, then directed prison staff to closely monitor him, but prescribed him to be taken off of any form of medication.

Later that month, Mattis was transferred to the Guadalupe County Correctional Facility in Santa Rosa. There, prison staff put Mattis in a cell behind a staircase where he could not be closely monitored. Over the ensuing months, his mental health deteriorated.

Kowalkowski scheduled two additional video sessions, but Mattis refused to attend, according to the family’s complaint. The complaint alleged that the psychiatrist knew Mattis “was experiencing acute symptoms of mental illness” but did not...
Florida Prison Officials Ordered to Not Retaliate Against Prisoner

by David M. Reutter

Florida federal district Judge Mark E. Walker entered a protective order to end retaliation against state prisoner Johnny Hill.

The court’s January 28, 2020, order was entered to protect one of the plaintiffs in the class-action lawsuit challenging the conditions of confinement in Florida’s segregation units. [See PLN, March 2020, p. 47.] Hill is housed in a closed management unit at Santa Rosa Correctional Institution (SRCI). His motion for a protective order alleged that guard Kyle Masters branded him a snitch for suing the prison, physically assaulted him and harassed him.

The alleged retaliation occurred during transport from SRCI to the Northwest Florida Reception Center Annex (NWFRC) for an eye-doctor appointment. Once at NWFRC, “Masters beat Mr. Hill with so much force that Mr. Hill began to urinate blood and experienced pain in his lower back and flank for more than a week after the attack,” the motion for protective order stated. On the way back to SRCI, Masters pulled a gun out of his holster and told Hill in effect, “If you say anything back at Santa Rosa, I can make sure that you have a sudden ‘K2 overdose.’” (K2 overdoses, according to an FDC internal audit, have been the leading cause of in-custody deaths in recent years.) Hill also was deprived of meals, had his property damaged, and was threatened with pepper spray for expressing his right to access the courts.

Hill’s grievance on the matter did not result in action, nor did efforts by his attorneys.

The court found that a “video described by Warden [Michael] Mashburn did not depict Plaintiff Hill.” It also found prison officials “failed to preserve the video that would either substantiate Plaintiff Hill’s claim or refute it.” A deposition of Hill in the class action is scheduled, and Hill feared retaliation if he participated further in the case.

Hill’s grievance on the matter did not result in action, nor did efforts by his attorneys.

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This court finds it prudent to issue a protective order that would prohibit retaliation so that this Court may properly achieve the ends of justice entrusted to it,” Judge Walker wrote in his order.

The defendants, guards, and other Florida prison employees were ordered to “not retaliate against Plaintiff Hill for prosecuting this lawsuit and for communicating with counsel.” See: Harvard v. Ince, USDC, N.D. Florida, Case 4:19-cv-00212.

alert prison staff.

A staff member at the GEO Group-operated prison recommended Mattis be transferred to alternative housing because of his mental illness. Instead, Deputy Warden Phil Aragon, a GEO employee, recommended continued isolation.

The next month, Mattis was scheduled to be transferred to a DOC-run mental health center, but the transfer was canceled at the last minute. The next morning, he was found “hanging by the neck with a strip of his bed sheets,” the complaint said.

Aided by attorney Matt Coyte, the family filed a lawsuit against GEO Group, Corizon, and Kowalkowski. During discovery, Coyte learned that Kowalkowski had been delivering psychiatric services via video conferencing. The records showed that he was billing multiple providers in different states for simultaneous sessions allegedly held with prisoners in different states.

The investigation into Kowalkowski’s questionable billing practices followed a deposition of former DOC Behavioral Health Bureau Chief Bianca McDermott. She stated that she had complained that doctors in Corizon’s telepsychiatry program were not spending enough time with patients.

In 2017, McDermott filed a Whistleblower Protection Act complaint against the DOC, alleging it retaliated against her for raising the issue. An internal report used in McDermott’s case said, “Corizon personnel absolutely knew they were free to do anything without fear of consequences.”

Kowalkowski continued to work with DOC prisoners after the DOC replaced Corizon with Centurion in 2016 because he subcontracted with both companies. In 2019, the DOC awarded its prisoner health-care contract to Wexford Health Sources, which said it would not retain Kowalkowski.

“It’s a practical reality of the way the system is set up,” said Coyte. “The incentive is to have lower medical care bills. The state doesn’t monitor the quality of care. The private company doesn’t monitor the subcontractors it hires ... and everybody ends up happy except for the prisoners who are going without care.” See: Marquez v. GEO Group et al., U.S.D.C. (New Mexico), Case No. 1:2016-cv-01259.

Additional source: santafenewmexican.com

Florida Prison Officials Ordered to Not Retaliate Against Prisoner

by David M. Reutter

Florida federal district Judge Mark E. Walker entered a protective order to end retaliation against state prisoner Johnny Hill.

The court’s January 28, 2020, order was entered to protect one of the plaintiffs in the class-action lawsuit challenging the conditions of confinement in Florida’s segregation units. [See PLN, March 2020, p. 47.] Hill is housed in a closed management unit at Santa Rosa Correctional Institution (SRCI). His motion for a protective order alleged that guard Kyle Masters branded him a snitch for suing the prison, physically assaulted him and harassed him.

The alleged retaliation occurred during transport from SRCI to the Northwest Florida Reception Center Annex (NWFRC) for an eye-doctor appointment. Once at NWFRC, “Masters beat Mr. Hill with so much force that Mr. Hill began to urinate blood and experienced pain in his lower back and flank for more than a week after the attack,” the motion for protective order stated.

On the way back to SRCI, Masters pulled a gun out of his holster and told Hill in effect, “If you say anything back at Santa Rosa, I can make sure that you have a sudden ‘K2 overdose.’” (K2 overdoses, according to an FDC internal audit, have been the leading cause of in-custody deaths in recent years.) Hill also was deprived of meals, had his property damaged, and was threatened with pepper spray for expressing his right to access the courts.

Hill’s grievance on the matter did not result in action, nor did efforts by his attorneys.

The court found that a “video described by Warden [Michael] Mashburn did not depict Plaintiff Hill.” It also found prison officials “failed to preserve the video that would either substantiate Plaintiff Hill’s claim or refute it.” A deposition of Hill in the class action is scheduled, and Hill feared retaliation if he participated further in the case.

“Th...
Nevada Supreme Court Holds Firefighting Prisoner Cannot Challenge Worker’s Compensation Based on Prison Pay

by Matt Clarke

Following his release, a former Nevada Department of Corrections (DOC) prisoner who was injured while working as a firefighter for the Nevada Division of Forestry (NDF) challenged the calculation of his post-release worker’s compensation benefits based on his miniscule prison salary. On December 26, 2019, the Nevada Supreme Court affirmed a lower court’s dismissal of the petition for judicial review challenging the calculation.

While Darrell E. White was participating in a voluntary DOC work program with the NDF fighting fires he fractured a finger stepping off of a “porta potty trailer and hitting his right hand on the bumper of the crew bus.” White filed a worker’s compensation claim, which was accepted by the NDF’s insurance carrier, Cannon Cochran Management Services, Inc. He was released from prison seven months after he was injured.

White notified Cannon Cochran that he had not received adequate medical treatment while incarcerated and wanted to be seen by a medical provider to rehabilitate his finger. The company scheduled an appointment. Following the appointment, White was immediately scheduled for surgery and deemed temporarily disabled for 144 days due to his finger injury.

Cannon Cochran informed White that it had calculated his monthly wages to be $22.93. White filed an administrative appeal alleging that the Minimum Wage Amendment to the Nevada Constitution required his post-release wages to be calculated at the state’s minimum wage of $7.25 an hour. He argued that NRS 616B.028, which established a modified worker’s compensation program for prisoners injured while incarcerated, only controlled the calculation of his worker’s compensation while he was incarcerated. The appeals officer denied his appeal.

White petitioned a district court for judicial review. The court affirmed the appeals officer’s decision, holding that NRS 616C.500(2), which provided for released prisoners to receive worker’s compensation for injuries received while in the DOC, worked with NRS 616C.425(1), which provided that average monthly wages be determined on the date of the accident, to undermine White’s argument that the minimum wage be applied to his claim. Represented by Las Vegas attorney Travis N. Barrick, White appealed to the Supreme Court of Nevada.

Addressing the issue de novo, the Supreme Court noted that a legislative history of NRS 616B.018 shows that the statute was passed because of “a desire to cut costs from the fire preservation programs within the [NDF] and reduce civil litigation arising from injuries sustained by inmates fighting fires.” Thus, the focus was limiting liability, not compensating prisoners for injuries.

The Supreme Court also noted that, under the modified worker’s compensation program for prisoners adopted by the DOC at NAC 616B.096-986, disability compensation begins only after the prisoner is released and the amount of compensation is based on the average monthly wage on the date of the injury. This was dispositive of the issue as, to rule otherwise, would require the court to hold that the wages White received while incarcerated were unconstitutional.

Since White had not raised the issue of whether Nevada prisoners were constitutionally entitled to minimum wage, the court held this “is an open question” and concluded that a worker’s compensation benefits challenge was not the proper vehicle to resolve it. The district court’s decision denying the petition was affirmed.

The court’s ruling highlights the slave labor nature of prison work programs in the U.S., with prisoners risking their lives and physical well being for a pittance. See: White v. State, 454 P.3d 736 (Nev. 2019).

$2,800 Verdict As Jury Finds Pennsylvania Jail Discriminated Against Women Prisoners in Reentry Center

by David M. Reutter

A Pennsylvania state court jury found on November 19, 2019 that the Berks County Jail violated the constitutional rights of women by denying them the same access to reentry privileges as men. The jury awarded $2,800 in compensatory damages to the lead plaintiff in the case, Theresa Victory. The court also entered an injunction ordering an end to the discriminatory exclusion of women prisoners.

The class, represented by the Pennsylvania Institutional Law Project (PILP) and Dechert LLP, challenged Berks County’s practice of housing incarcerated men in the lowest security “trustys” status in the Community Reentry Center. Women in the same status were imprisoned in cells at the Berks County Jail.

The Community Reentry Center provided greater access to privileges, more freedom of movement, better visitation conditions, and more access to furloughs. The Center had also been assisting men with reentry for nine years, resulting in decreased recidivism.

The goal of the suit was simple. “Our clients simply wanted the same access to furloughs as the men — to see their children, care for their loved ones, and prepare for their return home,” said PILP attorney Matthew W. Feldman.

Rather than provide women with equal opportunities for reentry services, Berks County Commissioners on the eve of the November 12, 2019 trial filed a notice with the court that stated it had moved all the men out of the Community Reentry Center. That had no impact on the trial, but it was a sad development.

“Closing the Community Reentry Center is an enormous setback for reentry services to all incarcerated people,” said Su Ming Yeh, deputy director of PILP. “We are disappointed that Berks County would rather empty the Reentry Center than provide robust reentry services equally for both men and women that would assist their successful
June 2020

On March 2, 2020, the plaintiffs filed a motion seeking $541,765.11 in attorney fees and costs for the successful litigation. They were represented by the law firm of Dechert LLP and the Pennsylvania Institutional Law Project. As this issue goes to press the court has not ruled on the fee petition yet.

Additional source: pottsmerc.com.

Tornado Rips Through South Carolina, Displacing Federal Prisoners

by Chad Marks

A deadly tornado ripping through South Carolina on April 13, 2020 has forced the federal Bureau of Prisons to start moving hundreds of prisoners from FCI Estill.

The prison, located west of Charleston in Hampton County, took a direct hit from the tornado, an EF-4 on the Enhanced Fujita scale with wind speeds of 175 mph. As one resident noted on Facebook: “Razor wire was hanging in the trees miles away from the prison.”

Scott Taylor, a BOP spokesman, stated, “As a result of the extensive damage to the facility and infrastructure, we will begin relocating inmates from FCI Estill.” Taylor said no prisoners or staff were injured.

FCI Estill, at the time the tornado hit, housed 956 prisoners. The prisoners were moved to the maximum-security prison in Lewisburg, Pennsylvania. The prisoners are expected to be in Lewisburg 18 to 24 months.

Lewisburg was recently expected to be a northeastern regional quarantine unit during the coronavirus pandemic. Those plans were scrapped when the beds were needed for the Estill prisoners.

Shane Fausey, president of the Council of Prison Locals 33, said staffing will be a serious problem. The prison recently had 30 staff members moved to prisons in New York and Ohio to help deal with problems related to COVID-19.

Andy Kline, Local 148 president, said he has never seen such a large-scale prisoner movement into one prison. “I’m concerned about the virus,” he added.

Kline is not the only person with concerns. Jodi Renfro, the mother of one of the Estill prisoners, said, “These are medium-low inmates.” She was worried that her son was being transferred to a notorious maximum-security prison known for extreme violence in the past.

Yesenia Sanchez, a girlfriend of one of the Estill prisoners, said she has tried to reach BOP officials at all levels without success. She commented that this is a big deal for families and prisoners, especially with the COVID-19 pandemic. Prisoners at Estill had already had visits canceled at the prison prior to the tornado as a result of COVID-19. Now they are hundreds of miles away from loved ones.

Sources: thestate.com, dailyitem.com, pennlive.com, forbes.com

THE SENATE IS CONSIDERING A BILL THAT WOULD DRAMATICALLY LOWER THE COST OF PRISON AND JAIL CALLS.

You can help — ask your family to SIGN THE PETITION at www.worthrises.org. Want to share your story? Email mgarcia@worthrises.org.
Gallup Poll Shows Growing Opposition to Death Penalty

by Douglas Ankney

A Gallup poll revealed that 60% of Americans believe that life in prison without parole is a better approach for a murder conviction than the death penalty. The poll was cited in the Death Penalty Information Center’s 2019 year-end report. “The death penalty has now disappeared from whole regions of the country and continues to erode in others,” the DPIC report said.

Killing an innocent person remains a crucial concern. In 2019, three men condemned to death were exonerated, all after decades behind bars. Meanwhile, Domineque Ray was executed in Alabama despite the fact that his conviction was based solely on the testimony of a witness who was delusional and hallucinating when he accused Ray. No physical evidence linked Ray to the crime.

In Texas, Larry Swearingen was executed based on what his attorney referred to as forensic quackery. Eight post-conviction forensic experts contradicted trial testimony and concluded that the victim died while Swearingen was in police custody. “Our courts and public officials too frequently flat out ignore potentially deadly mistakes, and often take steps to obstruct the truth,” said DPIC Executive Director Robert Dunham. “That is one of the reasons why public support for the death penalty continues to fall.”

Other reasons include that of the 22 prisoners executed in 2019, 17 suffered from mental illness or brain damage. Thirteen of the 22 had experienced serious childhood trauma, neglect and abuse.

In May 2019, New Hampshire became the 21st state to abolish the death penalty. The death penalty is increasingly geographically isolated, the DPIC report said. “With New Hampshire’s abolition, no New England state has the death penalty, and the only northeastern state with capital punishment — Pennsylvania — has a moratorium on executions,” the DPIC reported. “Indiana had its tenth year without an execution, making it the 32nd state with no death penalty at all or no executions in more than a decade. . . . For the fifth straight year, no state west of Texas conducted an execution.”

Less than 1 percent of all counties in the United States imposed death sentences. Two counties imposed more than one: Cuyahoga, Ohio (5) and Riverside, California (2).

Source: deathpenaltyinfo.org

Federal Judge Keeps Heat on Florida to Implement Amendment 4 Voter Restoration for Ex-Felons

by David M. Reutter

On April 7, 2020, Florida’s Republican Gov. Ron DeSantis and its GOP-dominated legislature lost another round in their battle to limit a voter-approved amendment to the state constitution providing automatic restoration of voting rights to most convicted felons “upon completion of all terms of sentence including parole or probation.”

U.S. District Judge Robert Hinkle ruled that his earlier decision in October 2019 to block the state from making the payment of fines, fees and restitution owed to courts and victims a condition of re-enfranchisement covers all individuals in the state, not merely the 17 named plaintiffs who originally sued the governor. Hinkle said he would grant the suit class-action status to cover all of the state’s former felony prisoners contemplated by the amendment.

Almost 71 percent of state voters approved Amendment 4 in November 2018. But the Republican-dominated state legislature moved quickly to define the amendment’s prerequisite to re-enfranchisement — “completion of all terms of sentence” — to mean “any portion of a sentence that is contained in the four corners of the sentencing document,” including “full payment of LFOs (legal financial obligations) ordered by the sentencing court as part of the sentence.” [See PLN, Oct. 2019, p. 58; Sept. 2018, p. 14.] DeSantis signed that “enabling law,” SB 7066, in June 2019.

Tampa Rep. James Grant, who sponsored SB 7066, said he didn’t “want to know the impact” that it might have before it was passed, adding later that he “intentionally stayed blind to the data of the affected classes.” County election supervisors were blindsided because the state never created a way to track LFO payments. As a result, there is still no simple way to prove they have been satisfied.

A private census of county elections clerks by the nonprofit Florida Rights Restoration Coalition (FRRC) estimated the aggregate total of LFOs at more than $1 billion — nearly $1,500 for each affected released felon. The nonprofit Sentencing Project estimates about 1.4 million released felons were enfranchised by passage of Amendment 4. But a study by University of Florida political science professor Daniel Smith found that over 80% of those had outstanding LFOs.

The Human Rights Defense Center, which publishes PLN, opposed the amendment because it created a separate class of released felons by excluding those convicted of murder or sexual offenses who had nonetheless paid their debt to society.

Records a ‘Mess’

SB 7066 spawned several lawsuits arguing that payment of LFOs amounted to a poll tax. In October 2019, Hinkle ruled in favor of 17 plaintiffs in a combined suit challenging the law, a decision that the U.S. 11th Circuit Court of Appeals in Atlanta upheld in November 2019.

Hinkle also issued a preliminary injunction that prohibited denying voter registration to anyone unable to pay LFOs despite an advisory opinion requested by DeSantis from the Florida Supreme Court. In the governor’s only legal victory so far in this fight, that advisory opinion on January 16, 2020 concluded that court fines, fees and restitution should be paid before voting rights would be restored.

Answering the narrow question De-
Santis presented, the state’s Supreme Court justices concluded that all “terms of sentence” had “one natural reading — one that refers to all obligations, not just duration periods.”

The court rejected the argument that Amendment 4 does not expressly mention LFOs but does mention “parole or probation,” which are forms of release that have a durational term. Because those words came after the word “including,” the court said precedent holds that it is improper to apply the canon of expressio unius est exclusio alterius, meaning that “the mention of one thing implies the exclusion of another.”

The court found that several rules and statutes that include LFOs as part of the criminal sentence or sanction, including restitution orders, must be imposed. But the devil is in the details, and all parties agree that Amendment 4 is vague on those.

Amendment 4, which was backed by the ACLU, was advocated for by former Democratic Speaker of the House and prominent attorney Jon Mills, who argued to the Florida Supreme Court when it was considering placing Amendment 4 on the 2018 ballot that “all terms of sentence” included LFOs. Mills had been a core architect and co-sponsor of a 1998 amendment to the Florida Constitution that resulted in Florida charging high fines and fees to finance the courts.

“His connection with this process of fines and fees really does put what he said before the Supreme Court in a new light,” said Ashley Thomas, the Florida director of the Fines and Fees Justice Center. See: Advisary Opinion to the Governor, So.3d. (Fla. 2020).

But even after the state Supreme Court’s advisory opinion, Florida was still unable to tell Judge Hinkle exactly how a county elections clerk was going to be able to determine whether a released felon had, in fact, satisfied his or her outstanding LFOs.

“The state’s records of financial obligations are a mess,” Hinkle wrote in his decision. With a presidential election looming in November 2020, he added, the state cannot afford to wait to see how he rules before it decides how to track LFOs.

“If the state is not going to fix it, I will,” Hinkle promised.

A full trial on the matter was held on April 27, 2020. As this issue of PLN goes to press, the court issued a ruling holding felons could not be barred from voting due to an inability to pay fines and fees. We will report that ruling in a future issue of PLN.

Additional sources: washingtonpost.com, wbrn.org, tampabay.com, thecentersquare.com

**News in Brief**

**Alabama:** Doctors have warned about the toxicity of K2, a common synthetic marijuana smuggled into prisons. Alabama Department of Corrections narcotics dog Jake, a 5-year-old Belgian Malinois, died after an allergic reaction to the substance found in a July 2019 contraband search at Staton Correctional Facility in Elmore County. Sergeant Quinton Jones, Jake’s handler, said, “After altering on the substance, Jake lost his balance and became unresponsive.” The dorm was evacuated and the Montgomery County Fire and Rescue Hazardous Materials Unit dispatched. Tests confirmed the substance as K2. Juanita Peavy and Leanne Smith from Stanton’s medical team performed CPR and inserted an IV for stabilizing fluids. Jake was transported to the Auburn University Clinic. Jake was expected to recover, but died three days later, after developing pneumonia. He was honored on July 30, 2019 with a 21-gun salute and commendation from Governor Kay Ivey at a memorial service that took place at the Staton Kennel Complex in Elmore.

**Australia:** New South Wales police described a “sudden and unprovoked” riot at the Frank Baxter Juvenile Justice Centre, near Sydney in July 2019. Prisoners overwhelmed guards, secured keys and attacked known sex offenders. The siege lasted 21 hours. Prisoners were seen on the roof with makeshift weapons and garden tools from a maintenance shed, hurling items at police below. Several spent the night on the roofs, with temperatures near freezing. It was widely reported that chainsaws were used to open cells, but police reported that this was “a myth.” The six prisoners who sustained stab wounds and other injuries ranged from 17 to 20 years old. Nine prisoners surrendered peacefully, with the rest surrendering when police accessed the roof. Twenty-six prisoners, ages 11-20, were charged. The center has been plagued by violence since 2017, with self-harm incidents on the rise. In October, an internal review was released announcing a major overhaul of all New South Wales juvenile correction facilities. The riot exposed problems that could no longer be ignored.

**California:** Four prison murders, all unrelated, occurred over two days. At Kern Valley State Prison in Delano, Robert Hargrave, 48, was fatally stabbed by two prisoners on April 30, 2020. Also, at Kern on May 1, Robert Beltran, 50, was knifed to death by three of his peers, as he walked out of his cell. Hargrave and his three suspected attackers are all from Los Angeles. The day Hargrave died, Tue X. Tran, 75, was found unresponsive in his cell with injuries to his head and face at the California Medical Facility in Vacaville. Tran’s cellmate is a suspect. As Robert Beltran was dying, Michael M. Ramadanovic, 65, was being brutally stabbed at High Desert State Prison in Susanville. Prison officials stated that two prisoners repeatedly struck Ramadanovic until the guards fired a warning shot and sprayed them with chemical agents. Both suspects in the slaying are 28 years old.

**Chad:** Poison is suspected after 44 prisoners, believed to be members of the Boko Haram terrorist organization, were found dead in their N’Djamena prison cell on April 16, 2020. The men were part of a group of 58 suspects rounded up in an army operation ordered by President Idriss Deby at the end of March. Forty bodies were buried and four were given autopsies. Chad Attorney General Youssouf Tom reported on television that a substance was found that caused heart attacks and asphyxiation. Chad Justice Minister Djimet Arabi speculated, “Toxic substances were found in their stomachs. Was it collective suicide or something else? We’re still looking for answers.” Sources told Al Jazeera that the prisoners had been locked in a single cell without water or food for three days. Minister Arabi demurred, “There was no ill-treatment.” One surviving prisoner was taken to hospital. Arabi said he “is faring much better and the other 13 prisoners are still alive and are doing very well.”
News In Brief (cont.)

Egypt: Activists had already raised the alarm about Egypt's unsafe and unsanitary mass prison detentions prior to former president Mohamed Morsi collapsing and dying in court in 2019. Shady Habash, 24, had been jailed since March 2018, without trial, in the Tora prison complex, when he died in March 2020. His family cited the cause of death as "health issues not yet specified." Habash was thrown in prison after he worked on a music video mocking Egyptian President Abdel Fattah al-Sisi. The number of young artists in prison without charges for art that is critical of Sisi has grown. Initial concerns arose over the lack of due process, but the rise of COVID-19 ups the ante. Prison visits were suspended in March. Egyptian rock musician Ramy Essam, now in exile in Sweden, was the video's performer. He has stated, "Shady didn't have anything to do with the content of the song," so he should not have been jailed. Essam posted Habash's final letter from Tora, with the heading, "Prison doesn't kill, loneliness does. I need your support not to die."

El Salvador: President Nayib Bukele believes that 77 murders over four days in April were planned by gang members inside prisons. He ordered a lockdown of all prisons on April 25, 2020, declaring a "maximum emergency in every detention facility holding gang members." Photos are dramatic, showing masked prisoners in undershorts, sitting on the floor spread-legged, skin to skin, shoulder to shoulder, row upon row. Gang member cells were sealed, preventing prisoners from seeing out. Opposing gang members were moved in together, increasing the likelihood of more violence. Osiris Luna, prison director and Deputy Justice Minister, said that "not even a single ray of sunlight will enter any of these cells." A March lockdown had supposedly been lifted to reduce COVID-19 spread. The April lockdown violates international human rights standards. Bukele also authorized lethal force "against the terrorists who are carrying out imminent threats against the physical integrity of the population," referring to gang members. Critics of Bukele said he is exploiting the virus crisis to weaken democratic institutions and empower his family.

Florida: Campaign to Fight Toxic Prisons activist Jordan Mazurek, 28, chained his arms inside horizontal PVC pipes that were embedded in two concrete-filled 55-gallon plastic drums placed in front of the governor's mansion in Tallahassee. The drums showed messages, "Stop the massacre" and "Free prisoners now." Mazurek wore a surgical mask. Campaign to Fight Toxic Prisons spokesman Mei Azaad told reporters that the group did not organize the action, but they did know about it. In a press release, activists stated, "This action is not being claimed by any individual or organization, but rather was taken on behalf of free world people in solidarity with incarcerated people during the COVID-19 pandemic. We will continue to escalate until action is taken to stop this preventable disaster from worsening." Mazurek was noticed at 6 a.m. and jackhammered out by 10:30 a.m. The governor was in Fort Lauderdale. Tallahassee police spokesman Kevin Bradshaw said, "He refused to let go so we ended up having to use heavy equipment."

Illinois: It wasn’t until Quintin Henderson, 28, approached the Cook County Jail discharge desk on May 2, 2020, that authorities realized they had released a $50,000 D-bond prisoner using the identity of a personal recognizance I-bond prisoner. Henderson claimed he had fallen asleep and had not heard his name called. Cook County sheriff’s spokeswoman Sophia Ansari disagreed. She told reporters that Jahquez Scott, 21, promised Henderson $1,000 in exchange for his personal information, then traded hoodies with another prisoner, before approaching the discharge desk, wearing a COVID-19 mask and claiming to be Henderson. According to a statement, Scott was arrested for "an unlawful use of a weapon charge and was ordered to electronic monitoring if bond was posted." Henderson now faces an aiding and abetting the escape of a felon charge and $25,000 bond. The FBI offered a $2,000 reward, and Scott was located at a house in Chicago on March 9. He says he offered Henderson $500. Scott is being held without bond.

Japan: In normal times, many Japanese prisoners produce leatherware and carpentry goods. During the coronavirus pandemic, at least 100 prisoners in Aomori, Kyoto, Osaka, Kakogawa, Yamaguchi, Iwakuni and Takamatsu are sewing 66,000 cloth masks per month to fill private-sector orders. Prisoners in Kyoto and Osaka are producing 4,600 sets of protective gear each month. The city of Mine received 1,800 cloth masks made by eight first-time offenders at the Mine Rehabilitation Program Center in Yamaguchi Prefecture, which were given to city children. Mine Rehabilitation is the first public-private cooperation prison in Japan. A senior Justice Ministry official noted, "Production of protective items will raise awareness about social contributions by inmates and have the effect of keeping them from re-offending."

Massachusetts: U.S. District Court Judge William Young ruled on May 7, 2020 that Bristol County Sheriff Thomas Hodgson and U.S. Immigration and Customs Enforcement (ICE) showed deliberate indifference and "likely" violated the constitutional rights of prisoners being exposed to COVID-19 in the immigration unit. Young ordered that all ICE transfers to the North Dartmouth facility be halted and the 82 detainees in custody and staff be tested. The Lawyers Committee initiated the lawsuit. Executive Director Iván Espinoza-Madrigal said, "This is a major victory because we all know based on CDC, medical and public health guidance, that testing is the first step in making sure that we can avoid COVID-19 infection, illness and death." Hodgson disagreed, stating, "Bristol County and ICE strongly believe that this judge's order has far exceeded his authority and that his order directing staff to undergo invasive and unnecessary testing in order to keep their jobs is unconstitutional and plainly not right."

Michigan: Former owner of Michigan Hematology-Oncology in the Metro Detroit area, Farid Fata, 55, was sentenced to 45 years in 2015, after pleading guilty to health-care fraud, conspiracy to pay and receive kickbacks, and money laundering. Fata convinced 553 people to receive chemotherapy treatments they did not need. He was ordered to pay $26.5 million in restitution. Now Fata is concerned with his own health and is seeking a COVID-19 release. "With Fata's medical conditions and age, contracting COVID-19 could very well prove fatal," Jeremy Gordon, his lawyer, wrote in a 13-page brief. Fata tried for "compassionate release" in 2019, too. Warner Bryan Dobbs, at FCI Williamsburg in Salters, South Carolina, rejected the request in February 2020. Attorney Brian McKeen represented dozens of Fata’s victims in a malpractice lawsuit. He commented, “What
a joke! The man got what he deserved. He had no compassion for the lives of his patients. He caused unspeakable suffering and pain, and deserves to be where he is for the rest of his life. People went through living hell because of Dr. Fata.”

**Minnesota:** At least one anonymous letter prompted an internal investigation into now-former Department of Corrections Deputy Commissioner Sarah Walker. Walker resigned before the investigation was made public in July 2019 and denied that the investigation precipitated her resignation. Concerns were raised that she used her state position to advocate for appropriation funds for the Veterans Defense Project, a nonprofit operated by her husband. The fund had received $450,000 in state money since 2017. The charity had applied for $800,000 more. In September 2019, Minnesota legislators asked the Office of the Legislative Auditor to look into the charity’s operations. Walker is also suspected of leaking the name of a sexual assault victim to a reporter. The woman’s lawyer sent a letter to Walker’s attorney advising that a lawsuit would be filed if Walker did not silence herself about the woman’s assault. Walker denies the lobbying allegations and alleges she felt marginalized regarding ethics and allegations and alleges she felt marginalized after raising concerns “regarding ethics and investigative evidence in 2018 derailed at least 52 criminal narcotics investigations of prisoners. During the investigation, numerous plots to kill FBI agents, prosecutors, government witnesses and informants were uncovered. Leroy “Smurf” Lucero, 48, was one such informant. A former gang leader, he had testified in pre-trial hearings and had been a federal trial witness in a May 2018 trial against seven men implicated in the 2001 strangulation deaths of two Southern New Mexico Correctional prisoners. The evening of Lucero’s birthday in July 2019, a car pulled into his driveway, drawing Lucero outside. Shouts were heard and shots fired, waking the neighbors as Lucero bled to death. Local police ignored as “rumors” a possible SNM connection, but a recently unsealed FBI affidavit in September 2019 showed FBI certainty about the motive behind Lucero’s killing. The case has been turned over to the FBI. Witnesses named three men as possible suspects; none have been charged in Lucero’s death, but all three are in federal custody on unrelated charges.

**New York:** Kayleigh M. Tuttle, 24, was hired as a cook at the Niagara County Jail in January 2019, making $30,000 per year. She was a civilian employee. Now Tuttle has been suspended and was arrested in May 2020 after a two-week investigation into drug smuggling by the cook. She was charged with one count of promoting contraband, a Class A misdemeanor. Tuttle was released with a court appearance ticket for July 7, 2020 in Lockport. Acting Sheriff Michael J. Filicetti also expects to charge the prisoners that received the contraband.

**New York:** Former state prison investigator Todd Johnson's sloppy handling of evidence in 2018 derailed at least 52 criminal narcotics investigations of prisoners.
and their visitors in four counties. Concern was piqued in January 2019, after Johnson directed a Washington Correctional subordinate to adjust the date he took possession of prescription drugs and other evidence that had been seized. It was found that Johnson compromised “chain of custody” by storing evidence in his home the previous weekend to postpone the drive from the Office of Special Investigation field office in Dannemora to Albany. The discovery led to an audit of Johnson’s evidence filings from 2017 to 2019, which revealed two other weekend discrepancies. No evidence had been tampered with. Johnson was arrested in July 2019 on charges of forgery and offering a false instrument for filing and misdemeanor charges of petit larceny and official misconduct. Johnson retired during the investigation and pleaded guilty to a single misdemeanor, with a sentence of a conditional discharge, in November 2019.

Northern Ireland: By the end of April, no prisoners in Northern Ireland had tested positive for coronavirus, but five prison guards were positive. Justice Minister Naomi Long said precautionary isolation had been instituted for new committals and personal protective equipment provided to staff. On a grim note, a temporary mortuary had been prepared on Ministry of Defense property in Kinnegar. In March, prison chiefs were considering a “doomsday” coronavirus plan for Northern Ireland’s three prisons, which included isolation quarters for infected staff. At least 200 staff were self-quarantining, placing strain on the system. To cope, Long announced the “Rule 27” release program, which was to begin in April, expecting 200 prisoners to be released. “In the context of the pandemic we are facing, and to ensure as far as possible the safety and well-being of staff and those in our care, it is I believe an appropriate and reasonable step.” Those released would be banned from contacting victims and could be returned to jail at any time.

Oklahoma: District Attorney Allan Grubb says, “We have got a rampant problem statewide with inmates being smuggled drugs and cell phones, which defeats the purpose of having people in DOC custody, or federal custody or state custody.” Former Pottawatomie County Public Safety Center guard Braiden Vaj Hardwick, 22, is accused of being part of the problem. Hardwick was arrested on the Fourth of July 2019 after a few days off. Investigators were waiting, and he had brought along three cellphones, tobacco, meth and other items. In his car, investigators found notes from prisoners. Hardwick is alleged to have had four clients that were federal prisoners housed at the local jail. It is believed Hardwick was paid at least $1,600 in Green Dot cards by the prisoners. Grubb said, “It appears he had his own drug problem, and that was a motivating factor in this instance.” The former guard has three felony charges pending.

Pennsylvania: Mario Matthew Gatti, 30, was on the run, with an outstanding warrant for criminal homicide in Arnold, Pennsylvania. He is suspected of the January 16, 2020 murder of Michael Coover Jr. in Westmoreland County, near Pittsburgh. On April 19, two days after the beaches in Jacksonville, Florida were opened for exercise only, Gatti was spotted by police wearing American flag surfer shorts and lounging by the dunes. An identity check revealed the warrant. Gatti was taken to a Duval County jail, ending a three-month manhunt. Gatti faces other charges: burglary, illegal possession of a firearm and multiple counts of recklessly endangering another person and terrorist threats, according to the Pittsburgh Post-Gazette. Gatti faces charges in Duval County of giving false information to law enforcement and possession of an unscripted legend drug (a drug approved by the FDA, requiring a physician prescription). Gatti will be extradited to Westmoreland County.

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were implicated. The suspect mail was directed to a Pittsburgh attorney. Two prisoners involved, contacted wives or girlfriends to arrange a drop. The return address on the mail was for the jail, with no clients at the jail. Two prisoners were tested positive for synthetic marijuana. Initial arrests were made in April 2020. Another five were arrested in May, bringing the total to 10 arrests. In June 2018, the jail began photocopying prisoner mail, so the plan shifted to legal mail, which is “privileged” and not photocopied. The prisoners involved, contacted wives or girlfriends to arrange a drop. The return address on the mail was for a Pittsburgh attorney, with no clients at the jail. Two prisoners at SCI Greene and one from SCI Albion were implicated.

Scotland: Rudimentary cellphones are being provided to Scottish prisoners during the pandemic, since April 2020. The phones have no text or internet capability and can only call out, not receive calls. Previously, mobile phones were banned in the prisons, over concern that outside criminal activities were being directed from inside the institutions. Justice Secretary Humza Yousaf says the move will aid in protecting the mental health of prisoners, while in-person visitation is suspended. Scottish Prison Service Interim Chief Teresa Medhurst added, “The provision of phones for those in custody is a crucial way in which we can help support and maintain family contact during this time of uncertainty.”

South Carolina: Raymond Wade Whitmire, 50, was arrested in July 2019 and charged with criminal sexual conduct with a minor in the first degree. The former Pickens County Detention Center guard was booked into his former workplace. A records search revealed that Whitmire is still in custody on an “unspecified warrant” with no bond, under the authority of the South Carolina Enforcement Division. His location is unspecified. Whitmire was suspected of raping an 8-year-old child in February 2019. According to the arrest warrant, the victim gave an abuse statement and a medical examination indicated supporting evidence. A witness also gave a statement supporting the sexual abuse claim by the victim. If convicted, Whitmire could face 25 years in prison with no option for parole. In South Carolina, a judge is also allowed to impose a life sentence for this crime.

Texas: Just hours before the onset of this year’s holy month of Ramadan, Dr. Akbar Shabazz, 70, died after battling COVID-19 for three weeks. Shabazz had served as a chaplain for the Texas Department of Criminal Justice Regional Area chaplain for four decades. He began as a volunteer in 1977, helping to implement Islam in the prison system. He served as spiritual adviser to Charles Brooks Jr., the first Texas prisoner executed by lethal injection in December 1982.

Texas: Grisly photos were released after a Harris County crash killed a prisoner and injured two Harris County Sheriff’s deputies in a head-on collision in July 2019. The patrol car was transporting an unnamed 42-year-old male DWI suspect eastbound...
on the Westpark Tollway to the county jail. As the patrol car neared the off-ramp, a Lexus accelerated in the wrong direction up the ramp and crashed head-on into the police vehicle. The prisoner was pronounced dead at the scene. Both deputies sustained fractures. The driver, Patrick M Njogu, 39, was intoxicated and suffered a broken leg. He has five prior DWI arrests with convictions in Illinois and Missouri. Njogu was charged with felony murder and intoxication assault on a police officer. Prosecutors requested $150,000 bond with conditions: no alcohol or drug use, no weapons carrying, and no driving without an ignition interlock.

**Wisconsin:** Warden Susan Novak and several other staff at Columbia Correctional Institution in Portage were on paid leave pending an investigation into how Thomas Deering, 46, and James Newman, 37, escaped on April 16, 2020. Deering and Newman were re-arrested the next day, after they were recognized at Miss Carly’s homeless shelter in Rockford, Illinois. Both are prior absconders. Deering was on the lam for two months in 2002, escaping from Waupun and found in Los Angeles in a stolen Illinois car [See *PLN*, April 2003, p.50]. Newman was at large for nine days in 2012. He was re-arrested in Hollywood, Florida. Two women were arrested as accomplices in the pair’s recent caper. CCI kitchen employee Holly Zim-dahl claims she received threatening notes against herself and her family that directed her to buy tools for the escape. She was on unpaid leave; bond was set at $10,000, with a pre-trial conference set for June. Another 46-year-old woman, unnamed and from Madison, was arrested under suspicion that she picked up the escapers from a Piggly Wiggly in Poynette.

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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 death 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 Herriottown 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 prisoners that deals with criminal justice issues, 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 wrongfully 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

- **Justice Denied**
  Formerly Stop Prison Rape, JDI seeks to end sexual violence against prisoners. Provides resources for imprisoned and released rape survivors and activists for almost every state. Contact: JDI, 3325 Wilshire Blvd. #340, Los Angeles, CA 90010 (213) 384-1400. www.justdetention.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, and families of the incarcerated. Publishes 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 prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, able-ism, 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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The Habeas Citebook: Ineffective Assistance of Counsel, 2nd Ed. (2016) by Brandon Sample, PLN Publishing, 275 pages. $49.95. This is an updated version of PLN’s second book, by former federal prisoner Brandon Sample, which extensively covers ineffective assistance of counsel issues in federal habeas petitions.

Poverty Law Center, 325 pages. $24.95. This concise compilation of the Federal Rules of Civil Procedure and portions of Title 28 of the U.S. Code most pertinent to federal civil litigation provides attorneys and litigants with a handy resource that facilitates quick reference to the Rules.

Beyond Bars, Rejoining Society After Prison, by Jeffrey Ian Ross, Ph.D. and Stephen C. Richards, Ph.D., Alpha, 224 pages. $14.95. Beyond Bars is a practical and comprehensive guide for ex-convicts and their families for managing successful re-entry into the community, and includes information about budgets, job searches, family issues, preparing for release while still incarcerated, and more.

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Criminal Procedure: Constitutional Limitations, 8th ed., by Jerold H. Israel and Wayne R. LaFave, 557 pages. $49.95. This book is intended for use by law students of constitutional criminal procedure, and examines constitutional standards in criminal cases.

Prisoners’ Self-Help Litigation Manual, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 928 pages. $54.95. The premiere, must-have “Bible” of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Includes detailed instructions and thousands of case citations. Highly recommended! 1077


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Advanced Criminal Procedure in a Nutshell, by Mark E. Cammack and Norman M. Garland, 3rd edition, 534 pages. $49.95. This text is designed for supplemental reading in an advanced criminal procedure course on the post-investigation processing of a criminal case, including prosecution and adjudication.

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