After 40 years of an inter-partisan tougher-on-crime-than-you arms race, sentencing reform (and a desire to reduce prison costs) is one issue that now brings Republicans and Democrats together. No other advanced democracy has locked up its citizens at the rate and resulting breadth of brutalizing negligence that we commonly see in the United States. In this moment, essays and articles comparing ours with benign and truly rehabilitative Nordic prisons regularly pose the question, Why can’t Americans become more humane in dealing with people who have offended? But even the will to reduce prison populations and DOC budgets by shortening sentences, diverting people away from lockup, or supporting reentry doesn’t suggest a will to make life inside a whit less degrading. Current conditions make that obvious.

Northern European and U.S. prisons stand not only geographically but philosophically continents apart. After 13 years of teaching inside U.S. prisons, 11 years of collecting and archiving non-fiction essays by incarcerated people, and after walking through nearly identical hallways and laundry rooms, kitchens and work places inside 18 Swedish and Danish, Norwegian and Finnish prisons, I can attest to the difference in atmospheres: U.S. lockups are walled villages under military occupation; Nordic prisons are supervised communities—a contrast shaped by disparate histories, cultures and politics, and tangible again on a gray day here in Iceland.

Officer Birgisson asks if we’d like to see the surveillance center. Close to retirement, years line his eyes as he exhales vape against a sky the color of granite. My wife Jennifer and I nod yes as we tramp across a wet gravel yard. Behind a double layer of green chain link, southern shore break meets volcanic rock.

So far, we have toured the mess hall where staff and the confined eat together. We’ve spoken to an amiable thief who has racked up 23 years in short stints and now paints license plates for a nation boasting fewer citizens than Wichita. Under the glare of a man with a two-inch FUCK tattooed above a Guns N’ Roses collar, we walked through an echoing shop where men build picnic benches or wash the cars of the 569 surrounding citizens. Later today we will visit an open prison: Winding up through lush pastures, we’ll meet a road bar without adjoining fences and rouse a rooster and a flock of panicked hens as we park beside two men repainting the white rim around a small fountain. We will see this day nothing out of the norm for prisons throughout the Nordic countries, other than a scale so small as to make comparisons with the U.S. all the more laughable. With a clientele of 65, Litla Hraun (Little Lava) high-security prison houses half of all incarcerated Icelanders.

Mounting pressures from immigration and violent gang activities threaten to bring ugly changes in Nordic penal practice. Non-natives who break the law in these countries are already being subjected to harsher treatment. For now, though, as political economist Nicola Lacey documents, consensus-based social democracies remain qualitatively less punitive than those whose criminal justice polices are driven by sensational headlines and mob-pleasing, winner-take-all politics. Some American professionals are now studying these differences and gleaning what lessons they can apply to incarceration in the U.S. But if we hope to use Northern European models not only to reform but fundamentally to transform American criminal justice, we need detailed measurement of the yawning gaps between continental practices.
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Christopher Zoukis
ISBN: 978-0-9819385-3-0 • Paperback, 269 pages

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**Icelandic Justice (cont.)**

landing as tightly as our shuffling bodies. In a U.S. prison, these men would be ordered to grab a wall.

Sheer scale is the first factor that separates American and Nordic models. Rikers Island at its height held over three times the prison population of Sweden. All incarcerated Danes would fit comfortably inside San Quentin. Kansas confines more people than all five Nordic countries combined. (A large prison in these countries might reach up to 400 incarcerated people.) Nordic countries incarcerate at one-tenth the rate of Americans; and that rate operates on a five-nation population smaller than that of Texas. And the fewer people you incarcerate, the more you can afford to spend on each (if you have the collective wisdom to do so): nearly three times more ($90,000 v. $33,000), resulting in staff to incarcerated ratios commonly as low as 1/1.

Officer Birgisson addresses men, who are wearing their own clothing, by their first names. He deals with individuals rather than a defaced mass of identically uniformed threats. U.S. prisons run both at mass scale and on the cheap. Violence flourishes where outnumbered staff operate under siege, meting out swift retaliation for the smallest infractions. “How else,” George Jackson asked in 1970, “could a small group of men be expected to hold and rule another much larger group except through fear?” Those incarcerated in the U.S. must negotiate the arbitrary and often ad lib rules set by officers who both wield power without accountability and are understandably afraid of losing control. One result is that American prison guards die a decade and a half younger than other Americans. Officers are stabbed. They are beaten. But such victims are rare, and they at least earn outraged sympathy, unlike the silent body counts of officers killed by stress-induced hypertension, the effects of PTSD, alcoholism, and an epidemic of suicides among men and women charged only to discipline and punish—work that earns them none of the social capital granted to police outside.

In the name of public safety (with outrage, homogeneity, and a rhetorical ad hominem against “criminals”). Immigration has placed daunting pressures on social welfare and criminal care systems across Europe, but divisions of class and race have not yet created the kinds of gaping social distances that give comfortable white Americans voting power over punishments meted out largely against poor people of color. Homogeneity of race, class, and religion have produced sentencing practices that assume that law abiding and law-breaking people are different in circumstance, not in kind. Across the EU, even collecting data on ethnicity is difficult or barred—a lesson taken from the Holocaust, when ethnic identification and detention led to extermination. The U.S., born from documents written to protect against legal encroachment on the freedom to make property of human beings, has social distance incorporated into the very marrow of its bones.

Equally foreign to U.S. carceral thinking as the accelerant of a viral epidemic, mass incarceration’s slow-motion killing machines are exposed as what they have always been: manufacturers of legalized mass death. Given the racial makeup of U.S. prisons, these deaths under state control are analogous to the collective white attitudes represented by a white police officer kneeling not just on one Black man’s neck for more than eight minutes but on hundreds of thousands of necks for cumulative centuries.

While maintaining order, Officer Birgisson also fills rehabilitative roles. He’s a professional respected both by the public and by his wards. If the vape doesn’t kill him, he’ll live as long as anyone, as will the men he watches over. Across Europe, while there have been several riots and hunger strikes protesting health conditions threatened by the virus, the most common response has been the release of pre-trial or “remand” prisoners, stoppage of prison admissions, and making phone calls free to men and women denied family visits.

Immigration has placed daunting pressures on social welfare and criminal care systems across Europe, but divisions of class and race have not yet created the kinds of gaping social distances that give comfortable white Americans voting power over punishments meted out largely against poor people of color. Homogeneity of race, class, and religion have produced sentencing practices that assume that law abiding and law-breaking people are different in circumstance, not in kind. Across the EU, even collecting data on ethnicity is difficult or barred—a lesson taken from the Holocaust, when ethnic identification and detention led to extermination. The U.S., born from documents written to protect against legal encroachment on the freedom to make property of human beings, has social distance incorporated into the very marrow of its bones.

Equally foreign to U.S. carceral thinking as racial indifference, the political histories of Nordic nations since WWII have been based in consensus. Social democratic programs that join small populations into a sense of shared community have created trust in government as a material aid to the quality of collective life. Populations without extreme inequalities of income are bound together by high levels of common-culture education, leading to shared confidence in research and expertise.
Icelandic Justice (cont.)

place of the anti-government, anti-intellectual, anti-science defaults that undergird U.S. politics (never so apparent or perilous as at this moment), public servants commonly consult with academic researchers, whose recommendations are regularly put into practice, rather than allowing mobrousing, research-immune politicians, prison-staff unions, and the prison industry to shape judicial and penal policy.

Together these differences render Nordic professionals capable of distinguishing pain from justice.

This is a distinction that American penal professionals understood and sought to maintain until it collapsed in the early seventies. After WWII, with the public convinced that—as it had been through the Depression and war—government could improve the daily lives of Americans when evidence-based research was applied to social issues, states and the federal government sought out sociologists and other professionals to inform public policy, including prison practice; they tried to create prison regimes that, as Jonathan Simon writes, “would seem distinctly modern and progressive.”12 This new, therapeutic prison certainly hosted serious abuses, including lobotomy, electroshock, make-work programming by jaded practitioners, as well as the malign negligence that has plagued U.S. lockups since walls first went up to keep public scrutiny out and lawbreakers in. Yet as David Garland observes, these were years in which the term punishment became taboo among penal professionals; as in Nordic criminal confinement today, the prison was seen as a site of public aid rather than of public vengeance.13

This benign professional ethos waned in the same years that Nixon’s infamous Southern strategy invited white Dixie Democrats into a decades-long backlash against the Civil Rights movement: his law-and-order platform lumped urban rioters, Black Power activists, and all civil rights movements into one ugly smear against (Black) urban unrest. Confirmed by the rise and murder of George Jackson, the Attica Rebellion, and other acts of prison resistance, the Black radical became the new public image of the incarcerated: men and women who deployed historically conscious critiques of every dimension of U.S. criminal justice. Why waste rehabilitative efforts on people who rejected American legal order itself? These years also coincided with a string of high-profile serial killers, such as Charles Manson, David Berkowitz, and Ted Bundy. What else could one do but lock such people up for life?14

Democrats quickly joined in as crime rates rose and politicians learned they could win votes by promising longer sentences and harsher conditions.15 Black communities and Black voters, who felt the actual damaging effects of rising street-level crime and became desperate to escape daily violence, pushed along with their White counterparts, though they also sought jobs programs, addiction treatment and other proactive supports that never materialized.16

These years also saw the end of Warren Court decisions that had offered legal backing for the constitutional rights of criminal suspects and incarcerated people. In response, politicians and a quickly growing prison industry and its unions championed the rights of (white) crime victims, using their pain to present voters a sympathetic

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face. As Marie Gottschalk notes, capital-case courtrooms in particular became "morality plays" where the role of the state was minimized: Victims’ pain became the measure of pain due to perpetrators and thus the measure of justice. Judges, marked as soft on crime, saw their discretion stripped away by legislatures that instituted mandatory sentences, ending human assessment of the complex social situations of lawbreakers, victims, and communities. Prosecutors, now in the power seat, brought felony charges and sought mandatory prison terms at unprecedented numbers. Economics met politics to accelerate this growth. Overseas flight of unionized factory work created urban employment vacuums that sucked in drugs, guns, and police forces militarized by wars on crime and drugs.

The resulting “punishment wave” lengthened prison life far beyond American and international norms; the Rehnquist Supreme Court then stepped in to insist that what rights imprisoned people could enjoy were best decided by prison administrators. “When the purpose of prison shifted explicitly to the infliction of pain,” writes psychologist Craig Haney, “then doing hurtful things to prisoners appeared less questionable or problematic. Indeed, pain had become the raison d’être of the experience.” Recidivism rates pushing 75% became the measure of this system’s power of planned failure and self-perpetuation.

Little wonder that visiting Nordic prisons can seem like visiting another planet.

... Inside a small surveillance center, we meet two round officers leaning back in spring chairs. Around a picture window onto the gravel yard, security screens show men talking in a dorm-like hallway, men washing cars, the kitchen crew and an officer eating a late breakfast, and two men in aprons at a workbench. As his colleagues swivel toward us, Birgisson jokes that the Americans have come to see all the “hot action” at Lítla Háraun. One laughs. The other points and chuckles at a wallet-sized caricature of Donald Trump taped to a white wall. The joke is on us as we spiral up a metal staircase onto the observation platform.

The platform deck is no longer used, Birgisson explains, since the fences went up. (Men kept walking away. Attempting to escape from prison is not a crime in Iceland.) We can see the whole of the prison grounds and beyond: surrounding pastures, a few gardens, more patches of volcanic rock, scattered houses and seashore. Plump horses with ZZ-Top manes graze between fences and homes. Birgisson points to a modest one-story house.

“I grew up there,” he says with a mix of satisfaction and chagrin. “I didn’t move far.”

Jennifer asks, “What do you think is the greatest problem in the system?”

He glances toward the sea, then back: “Politicians should think in the long term. Ex-prisoners should get more support. You can’t expect people will suddenly survive on their own.”

I ask, “No matter the crime?”

He shrugs, “Giving no support only leads to more offense.”

His words locate us a universe away from staff that commit half of all prison sexual assault, and parole officers who send people back to prison for arriving late for appointments.

“What about escapes?” I ask.

“They don’t try often. If they do, we...
Icelandic Justice (cont.)

talk, to find out what made them leave.”

We offer a pained laugh.

Birgisson asks what’s funny.

Nordic prisons simply are not prisons in any sense that Americans can understand. If institutional equivalency is the question, it would make as much sense to ask why Nordic prisons cannot match the cure rates of American hospitals (or their own); both are restrictive, rule-bound institutions committed to the betterment of their wards. Confusing pain with justice, race with criminality, and incarceration with crime fighting for nearly half a century, has driven the U.S. into a lethal moral underworld beneath the penal continuum of other developed democracies.

Back on the gravel yard, our final stop is a low-ceilinged workshop where dumpsters hold bouquets of vacuum-tube monitors, motherboards, and keyboards. Two men in canvas aprons work over a greasy workbench. One uses pliers to extract parts from a circuit board, the other hammers green plastic from a metal plate. Both turn, eyeing us briefly, before Birgisson says, “They are Americans.”

“Phew!” the taller man says. “Thank you for not locking me up!”

Then, with a mix of outrage and the relief of a close escape, he recounts scenes from a National Geographic series on U.S. prisons. Then the shorter man, in frameless round glasses, turns to me: “How long for twenty grams of meth?”

“Twenty in state systems. Maybe life for a federal offense.”

He pokes his glasses higher on his nose and says to Birgisson, “I got two. Maybe I don’t feel so bad,” and we all laugh.

Many Americans accept our carceral state as natural, inevitable, and somehow informed by evidence-based notions of what works to change lives. But as criminologist Michael Tonry explains, “American imprisonment rates did not rise because crime rose. They rose because American politicians wanted them to rise.”

As late at the early 1970s people sentenced to “life” could apply for parole after as few as ten years (as is commonly the case in Nordic countries today). Any human being, it was believed, could change for the better. “Americans saw the essential nature of the criminal as separable from the criminal act,” Anne-Marie Cusac reminds us. “Now the crime is the essence of the criminal.” Few saw it coming, but “The punishment wave...hit with such force,” Haney writes, “that it has ripped us from the ethical moorings that once held this punitive system in check, kept us from straying beyond the moral outer limits of state-inflicted pain, and ensured that the course we set as a society for our crime control policy was guided, among many other things, by some minimal humanitar-

ian considerations.”

Over nearly a half century, we have forgotten the rationale that once stood behind humane responses to crime—a rationale that brought curious Europeans to study our prisons in the nineteenth century. What we have lost is the thinking that inspired the nation’s founders and Philadelphia Quakers to conceive of the penitentiary, and that Officer Birgisson assumes without question: The past cannot be changed for the better, but the future can be better than the past.

Throughout the five Nordic nations, what we call (hypocritically) departments of correction are called departments of criminal care. If these systems offer one lesson that a nation unable to uncouple justice from pain might aspire to, it is to get our prisons out of the business of justice.

Officer Tryggvason is a large, lightly bearded man. He struggles with his English. So when he says, “This is a friendly prison,” I wonder if he intends the apparent oxymoron. We’re standing behind glass, looking down a sweeping green hill running to the village and sea. Litla Hraun is a set of boxes in the distance. The twenty-two men and women housed in Sogn Open Prison work in the stables halfway down the slope or at jobs in the village. They return at night if they are not on home furlough. The staff here also number twenty-two.

A little over two hours ago we were
shaking Officer Birgisson’s hand. He noted that they don’t get many visitors but “It’s good to see things in new eyes.” Just outside Litla Hraun’s gates, we stood boxed in by the windows of the small lobby-reception. Surrounded by panels of glass, a ghostly infinity effect stretched our three silhouettes across a patch of volcanic rock to the west, and a neat summer garden to the east. Our bodies appeared mere points of density between what where we had been and where we might be going.

“Everything in the place felt so sadly optimistic,” Jennifer said over lunch. That idea hung in the air as we walked past more decently appointed rooms featuring TVs, cellphones and sound systems, then through an even smaller mess hall.

In 1893, French scholar and social scientist Emile Durkheim observed that legal punishments bind a society by exclusion: We confirm who we are by those we condemn and confine.25 A society that most values affluent white lives will inevitably lock up poor people of color. At its most primitive and disingenuous, justice is the name we apply to the confinement or execution of those who threaten in-group identity.

Nordic countries have tried to purge criminal sanctions of such moral panics through policies and practices that inoculate state agents from populist demands for vengeance. Penal policy has traditionally been separated from politics and left to professionals, who in turn share a cultural conviction that imprisonment is the most socially costly and undesirable way to address unlawful behavior. Police and prison offices are better educated and trained than in the U.S. Judges are not elected and so do not make decisions to please the voting public. The daily work of Nordic prosecutors looks much like that of a social worker—gathering information not to win a conviction, but in order to determine what will best serve the interests of all parties concerned. What Nordic criminal practice recognizes is that, although we know when we feel we have witnessed justice or injustice (a chill across the scalp, a pounding heart), as in opposing fans at any sporting match, such feelings can be raised or crushed by a single outcome. At its lowest level, the seat of what one calls justice can lie in whether one was the bully or the bullied on the playground, or whether one identifies with a group that feels embattled.

To echo Tina Turner, What’s justice got to do with it? What is justice but a second-hand emotion?

And like many actions taken out of emotion (including many crimes) we’re often not prepared for what we thought we wanted. When laws are created on the basis of temporary public outrage—often in the wake of headline crimes—they tend to yield harsher results than people expect. California, for example, helped lead the way.
to life sentences for a third felony; it also led the retreat when that third strike was a crime as trivial as stealing Christmas videos for the perpetrator’s children.

European nations living in the aftermath of WWII and the death camps have seen what can happen when fact-defying and emotionally grounded belief moves a people and government to action. (Children end up in cages.) In Nordic penal thinking, an ethical separation is required even if you can’t document that benign sanctions yield less crime. The late and legendary Norwegian criminologist Nils Christie claimed that, in all cases, we should either punish as little as possible, or not at all. Christies does not suggest bracketing the goal of justice. Rather, as Gottschalk and Bruce Western agree, criminal justice can truly be called just only once we achieve lasting social justice; that is, when everyone has as much to lose by committing criminal acts, and as much to protect and maintain by refraining. What many Americans call criminal justice today is simply giving everyone a shot at a kind of immaculate retribution: politicians and prosecutors claiming to impose the will of the people, police simply ‘doing their jobs,’ elected judges ruling by mandatory sentences, prison guards meting out the pain they insist the condemned have asked for, and TV viewers thrilling over others’ blood and pain. “Everyone in the process,” Robert Ferguson writes, “has someone else’s convictions to fall back on.” Everyone gets to punish. No one bears responsibility. Except, of course, lawbreakers, whom we’ve convinced ourselves make informed, rational, and calculated decisions to commit crimes: decisions conveniently made disproportionately by the poor, people of color, the mentally ill, and addicts.

Mass incarceration evolved to bolster political careers and to patch over failures of political imagination in addressing rising crime from the 1960s to the early-1990s. That patch did little to improve public safety, and it widened inequality. Reducing prison populations is essential but will not alone solve the problems that prisons were used to mask.

As Angela Davis insists, the means for such change will emerge only from a transformation in our goals: We have to discover what we might mean by justice in a world without prisons. In the meantime, practical steps needed to improve the lives of incarcerated people are not a mystery: reduce prison numbers not simply to reduce costs but to free up resources for better screening and professionalization of staff, for real oversight of staff behavior (ideally with promotion linked to the success of those released), for widespread programming that involves input from incarcerated people on design and implementation (including drug treatment and higher education), and for responsible, effective, and accountable medical and mental health treatment. The kind of comprehensive change that will lead to a world without prisons will require a paradigm shift, redirecting prison practice toward better futures rather than to meting out pain for acts that can never be undone.

U.S. prisons wall people into their criminal pasts, but Nordic prisons do not. The past out. It is instead that, given a cold stone field or a garden, not many will choose stone. A few will stack up decades in short stretches. Others will continue as belligerent as an obscenity tattooed above a collar line. For the great majority, the key is the offer, and the support provided to those who take it.

But if we want to learn from Nordic methods, we need to act fast. Political tensions are rising; the press of immigration is already creating unequal treatment of immigrants convicted of crime and may well creep further into prison practice. In Denmark, so-called “ghetto children” are being removed from their homes for tens of hours each week to be re-educated in Danish culture. Harsher policies may be on the way. Mimicking American practices, longer sentences may be imposed for selected crimes when committed in specific neighborhoods, by specified people. “Right now, facts don’t matter so much,” Danish Social Democrat Yldiz Akdogan observes. “It’s only feelings. This is the dangerous part of it.”

On this day, however, down the hill from where we stand behind glass, a tawny horse lifts a pale mane from a pompom of green. A thin man in a white T-shirt and blue jeans descends the slope. The horse nudges his hand. The man scratches under its chin before returning up the hill to resume digging a hole near a faucet. We were talking about what incarcerated Icelanders earn (the going wage outside). A lantern-jawed captain looked away from our conversation. He saw the man walking away from the prison, then turned back to us without comment or apparent second thought.

At Litla Hraun and Sogn, the opportunity for self-transformation is still the air breathed as naturally as Americans inhale crime and exhale suffering. Reports from the American archipelago, meanwhile, continue to come from minds and hearts like India Porter’s, struggling to rise above one of 6,000 U.S. citadels of pain.

“I am a woman who believes that she has made some bad decisions. Learned everything I could from my bad decisions and willing to do everything I can to never make decisions like the ones that caused me to come here. Am I wrong for wanting a second chance at life as a free woman while I am still young? Am I wrong for believing my life matters enough to deserve a second chance? And that I am capable of returning back to society, living a normal life … to use my experiences and lessons learned to do good in my community?”

After the officers scoff at my report that imprisoned people in America earn nothing, or pennies per hour, I summarize India Porter’s question for Officer Tryggvason and the others. Tryggvason’s brow rises in confusion. He speaks to the others in Icelandic. Jennifer tries to clarify.

A young female officer smirks. Another asks a question we cannot understand. Tryggvason’s bearded face twists up, like a tablecloth tugged from a spot above his left eyebrow, searching for a way to translate. [1]

Doran Larson is the editor of Fourth City: Essays from the Prison in America (2014) and director of The American Prison Writing Archive (APWA), at Hamilton College, where he teaches courses on global and U.S. prison writing. His most recent book is Witness in the Era of Mass Incarceration (2017). For information about posting essays in the APWA about life inside, write to: APWA, 198 College Hill Road, Clinton, NY 13323. Or visit: https://apw.dhinitiative.org/collection-description

Endnotes

1. I use Nordic to designate practices in Sweden, Denmark, Norway, Finland, and Iceland. Prisons in virtually all Northern European countries operate on similar principles.

2. See, for example, Ingvild Knævelsrud Rabe and Per Jørgen Ystehede, “They don’t treat Norwegian
prisoners like that,” sciencenorway, November 13, 2016, https://partner.scienconorway.no/

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My Mom Marni

Two Lake County Major Crimes Task Force Officers entered the room. They introduced themselves, and then the first thing they asked each of us was the most shocking question we could ever imagine.

“DO YOU BELIEVE YOUR MOTHER IS CAPABLE OF MURDER?”

In just a short time, we all realized that the answer was irrelevant. The Task Force had already decided that our mom, Marni Yang, a hard-working single mother of three, was their target, and they would do whatever it took to make her appear guilty, but first, they had to turn us against our mother.

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From the Editor

by Paul Wright

COVID-19 has not gone away; indeed, it seems to be worsening in prisons and jails around the country. But this month’s cover story on prisons in Iceland serves as a reminder that not all countries have, or want, a police state that cages one percent of its adult population on any given day. Reporting on prisons or jails in almost any industrialized country and comparing its practices to those of the United States is not an apples to oranges comparison so much as an apples to laundry detergent comparison: there simply isn’t one.

It is no surprise that we do not hear of anyone wanting to emulate the U.S. criminal justice system. When I speak with people from other countries, especially in Europe, there tends to be a mixture of disgust and amazement when it comes to the U.S. police state. With the rise of the internet, news indeed travels faster than ever before. Between 2010 and 2019, a total of 25 people were killed by police in England. The U.S., by contrast, does not value the lives of its citizens enough to even bother counting them. Recently, media outlets have taken to tallying up police killings that make it into the media and those numbers are running around 1,600 or more a year. Then there are places like Iceland, which take an entirely different approach, as you’ll see from this issue’s cover story.

While COVID-19 continues pushing a surging body count of prisoners around the U.S., we don’t want to lose sight of all the other bad things that occur on a daily basis in the American criminal justice system, like the rapes, beatings, murders, taking of money, etc., have stopped or abated just because there is a pandemic going on. They have not. News coverage has, but that is another matter. If anything, COVID-19 has accentuated the shortcomings of the American gulag, like inadequate health care and overcrowding, and shown that what was already a brutal, deadly and incompetent mess has become even deadlier and more brutal once COVID-19 was added to the mix.

I would like to thank readers for continuing to send us COVID-19 updates for our reporting on what is happening throughout the U.S. prison and jail system. When readers settle or win lawsuits, please send us the complaint and the settlement or verdict sheet so we can report them.

We still have a few hundred of the special COVID-19 PLN subscriptions available at the rate of $1 for six issues. Once the six issues expire, I hope readers will want to continue their subscriptions at the regular rate. Renew as soon as possible to avoid missing any issues. PLN subscribers who had an active subscription of the July PLN should have also received a free sample copy of Criminal Legal News, the other magazine published by the Human Rights Defense Center. I hope you will consider subscribing to CLN as well.

Between PLN and CLN we have total coverage of the American police state from criminal law and procedure, policing, prison and jail conditions, parole, probation and collateral consequences of criminal convictions.

In addition to our print magazines, HRDC publishes a free daily e-newsletter. You can sign up for it on either the PLN or the CLN website. We also publish a lot of news on Facebook and Twitter, so follow us on these platforms and you will receive additional police- and prison-related news.

Enjoy this issue of PLN and please encourage others to subscribe. If you are receiving a COVID-19 discount subscription, go ahead and subscribe so you don’t miss important news you can use.

Can the Pandemic Undermine Mass Incarceration?

by Jayson Hawkins

The direction of public policy in massive bureaucratic states tends to create an almost inexorable momentum all on its own, and that momentum often overwhelms not only the conditions that created the policy but also the public welfare it purportedly serves. It is extraordinarily difficult to break this type of momentum, and public figures and political movements have both been known to dash themselves to pieces against the faceless wall of longstanding policy. American mass incarceration is this type of policy. What began as a response to public concerns about violent crime has grown over the decades into a complex web of entrenched interests that seem immune to all attempts at reform.

Historically speaking, established bureaucracies tend to be more vulnerable to sudden shocks than gradual change, with war, natural disasters, or financial crises often providing the impetus for reform. Activists who have been pushing for criminal justice reform believe that the systemic stress caused by the COVID-19 pandemic might provide a sufficiently large shock to generate change, and there is growing evidence that their hopes might not be in vain, as discussed in an article by Sarah Stillman in the May 25, 2020 issue of The New Yorker. (Note: This article summarizes some key arguments from The New Yorker story.)

Prisons and jails present intractable difficulties when faced with infectious disease. Jails tend to be crowded and poorly sanitized, and as prisoners cycle in and out of custody, any attempt to contain a contagious disease in almost impossible. Prisons tend to be less crowded and cleaner, but even though prisoner populations are more stable, staff come and go daily and chronically underfunded health services are easily overwhelmed.

Though social justice advocates have shown that mass incarceration imposes heavy costs on society’s failure to solve the causes of crime, heavy fiscal burdens,
and the worsening of racial inequity, their protests have been largely ignored by policymakers.

The onset of COVID-19 has brought to light anew and more insistent concerns linked to mass incarceration and public health. An April 2020 study by epidemiologists and statisticians on behalf of the American Civil Liberties Union showed that without extreme measures, including rapid reductions in prisoner populations, jails and prisons could become infection hotbeds that might lead to the deaths of an additional hundred thousand Americans.

Mobilized by this threat, national legal organizations, community activists, faith leaders, and prisoners’ families began to agitate for mass releases across the country. They are focused on prisoners incarcerated for non-violent offenses, those nearing the end of their sentences, and the medically vulnerable. The COVID-19 Behind Bars Data Project at UCLA School of Law began to track these actions, and by mid-May they had noted over 500 legal filings and court orders as well as dozens of protests.

Remarkably, many of these efforts met with astounding success. San Francisco reduced its jail population by over a third, and California prisons have announced plans to release thousands. In Santa Clara County, California, the jail had released almost a thousand prisoners since March. Carson White, an attorney in the Santa Clara public defender’s office is hopeful these releases are the beginning of a trend. “This moment has flipped the script on mass incarceration,” he told The New Yorker. “It’s laid bare that caging huge swaths of our society isn’t necessary—it’s just convenient.”

There have been successes outside California as well. The New Jersey State Supreme Court authorized the release of up to a thousand prisoners from county jails. Federal prisons released thousands in April and by May had reached their lowest population in 20 years. In dozens of jurisdictions, minor charges have been dropped and warrants vacated for fines and other minor offenses. Patrisse Cullors, co-founder of Black Lives Matter, thinks this could be a pivotal moment “when we can collectively transform how our country relates to the most vulnerable,” The New Yorker reported.

Activists’ efforts have not met with universal success, and delays by prison officials proved costly as outbreaks in jails and prisons raged. When New York City finally relented and released 600 people from Riker’s Island jail, the infection rate there was already seven times higher than that of the general public. In Chicago’s Cook County Jail, which is fighting a judge’s order to socially distance, there had been 900 COVID-19 cases and 10 deaths by mid-May. At the same time, seven of the top 10 case clusters across America were in prisons and jails, including 2,439 cases at Marion Correctional Institution in Ohio alone.

Activists are hopeful that they can both build on their successes and use the consequences of inaction to drive for change. Thomas Frampton, a public interest lawyer and lecturer at Harvard Law School, hopes the shock of the pandemic can fundamentally remake criminal justice policy. He calls this moment “a chance to build on the growing consensus that our current model for criminal justice needs to be entirely rethought, since it isn’t making our communities any safer or healthier,” according to The New Yorker.

Source: thenewyorker.com

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Animal Shelters Provide Cooler Temperatures Than Florida Prisons in Summer

by David M. Reutter

With the heat of summer’s arrival, Florida prisoners endure living in outdated infrastructure. The Florida Department of Corrections (FDC), in a July 14, 2020 email to prisoners, said it “is making efforts to ease the negative impact of extreme heat in the coming months.” That email was sent shortly after Gov. Ron DeSantis eliminated funding for a prison modernization plan.

To assure prisons can endure hurricanes and heavy use, they are made of concrete and steel, which makes them heat sinks. “Prisons are mostly built from heat-retaining materials, which can increase internal prison temperatures. Because of this, temperatures inside prisons often exceed outdoor temperatures,” said Alexi Jones, a policy analyst with Prison Policy Initiative. “Moreover, people in prison do not have the same cooling options that people on the outside do.”

Summer is the hardest time of year for Florida prisoners. With temperatures regularly in the low to upper 90s and heat indexes that well exceed 100 degrees, living and sleeping in a Florida prison tests one’s mettle to extremes that not even domesticated animals must endure.

Florida law provides that the purpose of prison is punishment, so amenities such as air conditioning are not politically correct. Units that have cooling systems are reserved for geriatric prisoners or those with mental or physical illnesses. Ironically, Florida law makes it illegal to operate an animal shelter unless it is air conditioned.

Former FDC Secretary Julie Jones vowed to install air conditioning in all prisons upon her appointment, but fiscal realities and a lack of political will halted further action.

“Renovations would require significant funding as these renovations are prohibitively expensive in older buildings not designed for modern cooling systems,” said FDC spokesman Rob Klepper. Most Florida prisons “were built prior to air-conditioning being commonplace but were designed to facilitate airflow that provides natural cooling.” In dorms without air conditioning, multiple fans and air conditioning are available, he said.

The reality is much different. What little relief is afforded prisoners are fans that often only cover a small portion of the dorm. Exhaust fans pull in hot air through the windows. Budget crunches of the past have resulted in some prisons replacing broken water coolers with “bubblers” that issue tap water. The water cooler in my Florida dorm has been broken for two summers now, so a cold drink of water has been out of the question.

As plumbing mixing valves regulate the water temperature, showers remain at 120 degrees year round. Thus, not even a cold shower is an option to temporarily escape the suffocating summer heat.

Klepper said prisoners have access to AC in the buildings such as the chapel, medical, classification, and buildings designed for classification. What he did not mention is that accessing those buildings without an appointment or proper authorization will result in disciplinary action. Even when allowed in such buildings, the visit is restricted to the time needed for being there.

Florida legislators are aware of the conditions and long-deferred maintenance issues. “It’s really crisis to crisis,” said Sen. Jeff Brandes, who chairs the Senate sub-committee on criminal justice issues. To address the crisis, Florida legislators included $2 million to create a modernization master plan. DeSantis vetoed that line item, along with $28 million to provide infectious disease drug treatment for prisoners.

“The governor has tough choices to make,” Brandes said. DeSantis, however, approved a much needed pay raise for guards and a $17.3 million pilot program to transition some guards from 12 hour shifts to 8.5 hour shifts.

Meanwhile, FDC said in its email to prisoners that it would focus on increasing ventilation in dorms by cleaning the existing structures, implement a seasonal menu to reduce radiant heat, provide “cool water,” post instructions to guard against heat stroke, and act to protect working prisoners from the heat.

For prisoners, relief from the summer heat is done the old fashioned way: pray for rain. “Animals get air conditioning in a shelter, but people can’t?” asked Cynthia Cooper, whose husband is serving time at Lake Correctional Institution. “I would challenge any lawmaker to spend one 24-hour period in a dorm during the month of July.”

Sources: tampabay.com, miaminewtimes.com
On June 16, 2020, North Carolina’s Wake County Superior Court ordered the state Department of Public Safety (DPS) temporarily to cease the majority of prisoner transfers. Except for medical emergencies or cases of life endangerment, ordered Judge Vinston Rozier, Jr., DPS may not move prisoners unless they have first been tested for the COVID-19 or held in medical quarantine for 14 days.

The decision granted a request filed in a suit mounted by the state chapters of the NAACP and the American Civil Liberties Union, which were concerned with DPS prisoner movements during the pandemic.

On April 1, 2020, DPS reported the first active cases in its prison population of COVID-19, the disease caused by the novel coronavirus. By the next day, there were two infected prisoners at the state’s Neuse Correctional Institute (NCI).

That same day, April 2, 2020, some 200 prisoners at the Goldsboro facility staged a protest, refusing to leave the recreation yard and return to their cells until officials promised stricter measures in response to the pandemic. Instead, 36 of the protesters were transferred to the Pasquotank Correctional Institution (PCI). Shortly afterward, the maximum-security prison near Elizabeth City—which previously had no COVID-19 prisoners at the Goldsboro facility staged a protest, refusing to leave the recreation yard and return to their cells until officials promised stricter measures in response to the pandemic. Instead, 36 of the protesters were transferred to the Pasquotank Correctional Institution (PCI). Shortly afterward, the maximum-security prison near Elizabeth City—which previously had no COVID-19 cases—suffered an outbreak, with 19 of the new arrivals testing positive for the disease.

Meanwhile, by mid-April, 2020, another 2,600 prisoners were sent to different facilities by June 12, 2020.

On June 6, 2020, DPS reported the first active cases in its prison population of COVID-19, the disease caused by the novel coronavirus. By the next day, there were two infected prisoners at the state’s Neuse Correctional Institute (NCI).

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Meanwhile, by mid-April, 2020, some 460 of the remaining prisoners at NCI were infected. It was DPS’s worst outbreak and also one of the worst in the nation at the time.

Later that same month, the state started testing prisoners at the Correctional Institute for Women (CIW) near Raleigh. Over 90 positive results came back, making it the second-largest outbreak in North Carolina prisons.

In an effort to limit the spread of the disease, DPS announced on April 6, 2020, that it would curtail prisoner transfers between facilities. Soon after, it suspended the intake of prisoners from county jails. But between April 12 and May 25, 2020, there were still over 1,100 prisoner transfers. After DPS announced it would resume normal transfers on May 26, 2020, another 2,600 prisoners were sent to different facilities by June 12, 2020.

On June 6, 2020, 35 female prisoners were transferred from CIW to the Canary Unit a block away. One of them had symptoms of COVID-19, her fellow prisoners reported—fever, nausea, coughing and loss of taste and smell.

Prisoner Jordan Hillenbrand, who also was moved, said she had been requesting a test for the coronavirus since April, but despite suffering some disease symptoms herself, she had not been tested as of June 18, 2020. DPS spokesman John Bull said that since the transfer, DPS officials “aren’t aware of any confirmed, active cases of COVID-19” at CIW.

“Moving people means you’re moving COVID-19,” said New York-based public health consultant Alison O. Jordan. “And you’re exposing more people in more communities every time you do it. It’s just the math.”

Judge Rozier agreed. “Defendants are transferring incarcerated individuals between facilities without properly protecting those individuals, or preventing the spread of COVID-19,” he opined, resulting in prison conditions that “are likely unconstitutional.

On August 11, 2020, DPS announced the results of a six-week, $3.3 million program that tested every one of the state’s prisoners. Out of a total 29,062 tests, 619 came back positive—2.1 percent rate lower than the 7-to-9 percent rate in the state’s general population and drastically lower than the positivity rate in other state prison systems such as New Jersey (16.3 percent), Tennessee (13.6 percent), Michigan (10.8 percent) and Texas (9.8 percent).

DPS had previously reported 1,459 positive prisoner cases, of which 1,210 had met the criteria to be released from medical isolation, an 83 percent recovery rate that officials believe reflective of the state’s entire prisoner population to explain its current low positivity rate. See: NC NAACP v. Cooper, Wake County Superior Court, Case No. 20-cvs-500110.

Additional sources: wbtv.com, springhopeenterprise.com

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

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

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

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In late April 2020, prisoners at Arkansas’ Cummins Unit knew that the novel coronavirus, which causes COVID-19, was spreading among not only the prison’s inmates but also its staff. But a prisoner identified as Marco was shocked to learn that the state Department of Corrections (DOC) was telling infected guards to report to work, according to a story in Mother Jones.

Despite offering median pay for guards that is higher than at least 12 other states – including every neighboring state except Texas – Arkansas reported 651 unfilled guard positions in March 2020, a vacancy rate of nearly 14 percent. That was at the beginning of the coronavirus pandemic, before the number of infected guards began climbing. As of August 7, 2020, it stood at 303, with 42 of those not yet recovered.

As he lay sick with the disease, Marco overheard a guard tell other prisoners that many of his coworkers had tested positive. The guard, who was passing out toilet paper and soap, said, “All of us got it, but they’re telling us to work anyway if we’re not showing symptoms.”

DOC spokesperson Solomon Graves confirmed the policy to Mother Jones, saying it was based on guidance for “critical infrastructure workers” issued by the Centers for Disease Control (CDC). According to Graves, the guidelines provide that they may continue working after “potential exposure to COVID-19” so long as they remain asymptomatic.

But the CDC says its guidelines state that “if staff tested positive, they should self-isolate at home until they have met CDC criteria for release from isolation in consultation with their physician,” according to spokesperson Bert Kelly. The guidelines also recommend that asymptomatic people should stay at home for at least 10 days after testing positive or until they test negative twice in a row.

On May 19, 2020, Judge Kristine G. Baker of the U.S. District Court for the Eastern District of Arkansas declined to issue an injunction request filed by attorneys for the American Civil Liberties Union (ACLU), the Legal Defense Fund of the National Association for the Advancement of Colored People (NAACP) and Disability Rights Arkansas. Their lawsuit – Frazier v. Kelly, filed April 21, 2020 – asks that guards be prohibited from working while infected.

While Baker expressed concern about reports that some DOC guards were not wearing masks, she said it was not proven there was a violation of prisoners’ rights sufficient to enjoin the DOC policy before she heard the case.

According to an April 24, 2020, memo from the state Health Department, which was filed as part of the lawsuit, contagious guards must take certain precautions: They may only enter areas that house prisoners who have also tested positive, maintaining 6 feet of distance and abstaining from mingling with other guards in the break room.

“You are to travel directly from home to work with no excursions, detours, or stops,” read the memo, signed by state epidemiologist Dr. Jennifer Dillaha. “If you begin to have symptoms such as fever, cough, or trouble breathing, or otherwise if you feel sick, you must immediately notify your supervisor and immediately leave.”

DOC’s policy worried at least one legislator. State Sen. Joyce Elliott said she didn’t know of “any other employers who are asking their workers to come to work if they are positive — it’s only in our prison system.”

“It sends a message about how we value certain lives more than others,” she added.

An amended complaint filed on July 13, 2020, highlights the explosive growth in DOC’s number of COVID-19 cases over the 12 weeks since Frazier v. Kelly was first filed. As of July 30, 2020, Arkansas ranked sixth in the country for COVID-19 cases among its prisoners and eighth for deaths. The state’s DOC reported on August 7, 2020, that of its nearly 14,800 prisoners, 9,525 had been tested with 4,985 positive results. A total of 32 prisoners had died from the disease, with another 637 yet to recover.

As he recovered from COVID-19, Marco said he feared being reinfected.

“We’re starting to see people die around here,” said the 41-year-old, who has served 21 years of a life sentence. “I don’t have a death sentence. I don’t want my life to end in prison from COVID-19.” See Frazier v. Kelley, 2020 U.S. Dist. LEXIS 90821.

A $550,000 settlement was reached in a civil rights lawsuit alleging 19-year-old Jimmy Lucero laid in a catatonic state at Augusta State Medical Prison (ASMP) as he starved to death with little to no medical care in 2015.

Lucero entered the Georgia Department of Corrections (GDOC) weighing 250 pounds on November 4, 2015. His imprisonment put him into depression and on January 27, 2016, he weighed 203 pounds. His mental health continued to deteriorate, and in March 14, 2016, he requested care because he was hearing voices. Psychologist Victor Stevenson determined “mental health services” were “not warranted.”

At an April 28, 2016, “sick call,” Lucero weighed 180 pounds. He was finally sent to ASMP on May 19, 2016, and weighed 172 pounds. From that point on, until his death, medical providers recorded that Lucero was not eating, but they did nothing more.

Even as he lay in a catatonic state on June 19, 2016, nurses wrote that Lucero “refuses all interventions and meds.” The next day his weight was recorded as 145 pounds. He was placed, inexplicably, in solitary confinement on June 23 and no longer received daily medical checks.

Lucero collapsed into unconsciousness on June 27 and taken to the Augusta Medical Center.

Despite the fact it was noted he was suffering multiple life-threatening conditions due to dehydration and malnutrition, he was recommended to be discharged and returned to ASMP.

While the paperwork was being processed, Lucero suffered a deadly massive pulmonary embolism.

Represented by Atlanta attorney Matthew S. Harman, Lucero’s estate sued on July 2, 2018. The $550,000 settlement was reached on May 18, 2019.

Yet chronic problems persist at ASMP, according to an October 5, 2019 report in The Augusta Chronicle. “The medical prison’s capacity is 1,326 inmates,” the newspaper reported. “There are 95 hospital beds for acute care, 40 beds for other patients in need of nursing care, 20 beds for long-term care, 15 beds for pre- and post-operation patients, and 20 beds for accommodating living.”

PLN has previously reported on the conditions at ASMP, which is run by Georgia Correctional Healthcare. Described were unsanitary conditions where trash piled up in hallways spilling from portable Dumpsters. (See PLN, September 2018, p.38)

More recently, PLN reported on serious concerns about staff shortages, which were impacting the provision of care to prisoners as expressed by Dr. Timothy Young and other former staff members. (See PLN, February 2020, p.32) Those staffers warned that “lives are at stake,” creating “significant liability risks.” See: Madrid v. Bryson, USDC (M.D. Ga.), Case No. 5:18-cv-00228.

Additional source: The Augusta Chronicle

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PLN
COVID-19 in Hawaii’s Lockups: Still a Success Story but Cracks Starting to Show

by Ed Lyon

On August 7, 2020, Hawaii’s Department of Public Safety (DPS) announced that a prisoner at the Oahu Community Correctional Center (OCCC) had tested positive for the novel coronavirus that causes COVID-19. Until then, Hawaii’s state prison system had been the country’s only one to claim complete success in denying the coronavirus entry into its jails and prisons, according to The Marshall Project, which had counted 78,000 positive tests and 766 deaths among prisoners around the country as of July 28, 2020.

Four DPS guards also tested positive, one at OCCC, another at the medium-security Halawa Correctional Facility—the state’s largest prison—and two more at the minimum-security Waiawa Correctional Facility. The federal Bureau of Prisons (BOP) also announced that a staff member had tested positive at Honolulu’s Federal Detention Center (FDC).

BOP previously announced in July 2020 that two FDC Honolulu detainees had received positive test results, though one set of results did not come back before the female detainee had been released. BOP said the infected individuals were in isolation and their contacts were being traced and tested.

None of those who tested positive had died. The infected DPS staff members have been quarantined, and the prisoner at OCCC was placed in isolation for at least 14 days pending a doctor’s review before being released, according to state Public Safety Director Nolan Espinda. BOP follows a similar protocol. The OCCC prisoner’s test followed possible exposure before arriving at the jail, Espinda added.

At the beginning of March 2020, the state was still six weeks away from its peak of coronavirus infections in the general population, and DPS was at risk of an outbreak due to its crowded facilities, then operating at 187 percent of capacity with three and four prisoners sharing single occupant cells. As a preventative measure, the state Supreme Court ordered the release of many low-level, nonviolent pretrial detainees being held because they could not afford bail.

But State Public Defender James Tabe took a further step. Along with defense and prosecuting attorneys, as well as prison and parole officials, he formed an unlikely coalition to promote additional releases. After the group’s discussions, retired appeals court Judge Daniel R. Foley assembled a list of its recommendations for the state Supreme Court to consider. The court in turn put together a procedure for trial court judges to expedite release decisions.

These “mini-trials” began in April 2020, with prosecuting and defense attorneys arguing before state court judges who then made release decisions. Most turned out well, but a few did not, leading state Attorney General Clare Connors and three county prosecutors to warn that the program was a danger to public safety.

In some cases, there was recidivism, but it often occurred among people who were so near the end of their sentences that release was inevitable in any case. In other cases, pretrial detainees who could afford bail went on to commit violence. One case receiving negative press involved a detainee charged with attempted murder, but that early release was recommended by the prison’s intake center, not a “mini-trial” judge.

Releases for probation and parole violators were mainly granted to those who missed a phone or appointment due to problems associated with COVID-19, such as an inability to obtain transportation, and pretrial releases were overwhelmingly successful. In all, about 800 prisoners were released between March and June 2020, when the state Supreme Court lifted its order and ended “mini-trials” to expedite early release decisions.

But there is still crowding. DPS said OCCC, with 938 male and female prisoners as of August 3, 2020, was operating at over 149 percent of its design capacity of 628. Even before DPS announced its first cases, Honolulu prosecutor candidate Jacqueline Esser said that “Hawaii was lucky.” Now its luck may have run out.

With 219 total cases of COVID-19 per 100,000 residents on August 9, 2020, Hawaii had the lowest overall infection rate of any state, according to a database maintained by The Washington Post. However, its 61 new cases reported that same week represented an increase of 69 percent, which was the nation’s highest rate.

Source: staradvertiser.com, civilbeat.org, washingtonpost.com, hawaiinewsnow.com

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- Costly fees to use pre-paid debit cards upon release from custody
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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.

Disabled Detainee at Cook County Jail Wins Class Certification in Lawsuit

by David M. Reutter

On April 9, 2020, Preston Bennett, a disabled prisoner at the Cook County Jail (CCJ) in Chicago, won class-action certification to represent all of the jail’s disabled prisoners housed in its Division 10 as he proceeds with a lawsuit alleging violations of federal laws protecting the disabled.

The ruling by Judge John Robert Blakey of the U.S. District Court for the Northern District of Illinois allows Bennett to proceed with a 2018 suit filed against Cook County Sheriff Thomas Dart, alleging that CCJ’s Division 10 failed to provide accessibility for disabled persons.

Bennett, an amputee, was housed with inmates in Division 10, all of whom need canes, crutches or walkers. His lawsuit alleges that Division 10 lacks grab bars and other fixtures needed for safe use of showers and bathrooms, resulting in a fall he took. The missing fixtures also constitute violations of the Americans with Disabilities Act and the Rehabilitation Act, the suit said.

Bennett initially sought to represent a class consisting of all detainees who need canes, crutches or walkers, but Judge Blakey denied that motion, ruling that the diverse types of apparatuses would prevent the formation of a class. Bennett then proposed an alternative class consisting of all detainees in Division 10, contending that the 1992 facility must comply with the Uniform Federal Accessibility Standards.

But Blakey denied that motion, too, in a September 2019 ruling that said the court “would need to rule on the merits of Plaintiff’s case” in order to grant the class-action certification – effectively putting the legal cart before the horse. Bennett was granted an interlocutory appeal, and in March 2020 the Seventh Circuit Court of Appeals vacated Judge Blakey’s order denying certification of a class.

Noting that Rule 23(a) and (b) of the Federal Rules of Civil Procedure list the requirements for class certification, the court said that “surety of prevailing on the merits is not one of them,” since classes can lose as well as win. The district court’s order was a formula for one-way intervention rather than avoiding it, the court continued, and Bennett’s proposed class would win only if the Standards apply to Division 10’s facility.

“That’s how class actions should proceed,” the Seventh Circuit wrote. It vacated the district court’s order and remanded the case to Judge Blakey, who determined the Rule 23 standards had been met and granted the class certification. See: Bennett v. Dart, 2020 U.S. Dist. LEXIS 62454.

Other sources: chicagolawbulletin.com
The Latest News on How to Protect Yourself From Infection

by Michael D. Cohen, M.D.

Recommendations for Behaviors

To reduce exposure to coronavirus and infection are changing as more knowledge is gained about the virus and the disease. Of course, implementing these behaviors in a prison setting is often impossible, but it’s worth passing on newer information so prisoners can do their best to stay safe.

Initial recommendations were based on our best knowledge at the time. We knew very little about this new coronavirus, so recommendations were based on experience with other viruses.

We know that influenza (the “flu”) spreads through direct contact with droplets or mucus from the nose and lungs. This is very important for spread of flu, but recent observations suggest it is less important for spread of COVID-19. You need to protect yourself from seasonal flu, so all the habits to avoid direct contact with secretions are still very important for your health:

• No shaking hands.
• Avoid touching your face especially eyes, nose and mouth.
• Proper handwashing techniques.
• Hand sanitizer after contact with any surfaces frequently touched by others.
• Routine sanitizing of surfaces in your cell and especially in common areas like dayrooms, toilets, showers, cafeterias, etc.

These hygiene practices are still important even after you get the seasonal flu vaccine.

We knew that large respiratory droplets expelled by cough, sneeze, yell, or singing carry the virus and can infect people. The idea that 6 feet apart is a “safe” distance was based on how far droplets can be expected to travel before they settle out of the air onto floors, tables or other surfaces. Now we understand that coronavirus can also spread via airborne virus or microdroplets that stay floating in the air and may never settle out. So, 6 feet may not be as “safe” as we were told initially. In fact, a closed room may stay infectious due to the airborne virus, even after the infected person has left the room.

Here are some current “safer” distancing recommendations:

• Always wear a face mask covering the nose and mouth when you are in the presence of other people.
• Outdoors is safer than indoors.
• Further apart is safer than closer together.
• Less time with other people is safer than more time.
• Face-to-face encounters close together are very unsafe, especially indoors without masks.
• Fewer people together is safer than large groups.
• Larger rooms with high ceilings and effective ventilation systems are safer than smaller rooms with still air.
• Rooms with open windows and rapid air exchanges are safer than closed rooms with still air.

In other words: keep apart; limit face-to-face time; avoid crowds; masks do make a difference, and ventilation matters, too.

Testing

So far, most of the COVID-19 tests have looked for genetic sequences (viral RNA) that are unique to this particular coronavirus. It proves that the person is or was infected. Those tests use specimens from the swab up the nose, are more expensive, more complicated to run in a lab, and results are not available for one day or more (sometimes a week or more). Viral RNA may be present when live or dead viruses are present in the specimen. Some people who have recovered from COVID-19 still test positive because RNA fragments are still present in their secretions. In that situation, they are not infectious to others any longer because the viruses are all dead.

Another type of test is about to become widely available. These tests look for proteins on the surface of the virus (“spike proteins”). It can be done using spit (saliva), is cheaper to produce, and easier to run. Results can be available in as little as 15 minutes. Some companies may eventually produce tests that can be done at home like a home pregnancy test (but using a saliva specimen, not urine).

Antibody tests show the presence of intact virus particles. This means the person is not only infected but also infectious to others. Mass availability of antibody tests will provide critical information about who is infectious to others on a timely basis. Isolation, contact tracing and quarantine of contacts can then be accomplished before the person has spread the disease to many other people.

Immunity and the Risk of Re-infection

Research on how long antibodies and activated immune cells against COVID-19 last in the body is advancing. There is now better evidence that immunity persists longer than a few months, probably much longer.

There is no good evidence that people can get COVID-19 twice. However, there is no good evidence yet that they cannot either. It does appear that immunity persists and re-infection, if it does occur at all, is uncommon. With so many millions of people infected worldwide, many documented cases of re-infection would be expected if it does occur.

But consider two other factors that could affect the likelihood of re-infection. A person whose immune system is damaged may not be able to mount a persistent immune response that prevents re-infection. Also, the virus itself may change (mutate) with the result that the immune system no longer recognizes it and new infection occurs. The virus has not mutated in that way yet, but could in the future.

There have been a few case reports that suggested re-infection had occurred. A
patient recovered from COVID-19, tested negative on the viral RNA test repeatedly, and then later tested positive again. Rather than re-infection, these cases were probably examples of dead viral RNA fragments persisting in the secretions and causing repeat positive tests. But there was no new infection and no new disease symptoms.

**Isolation and Emotional Distress**

Isolation to prevent the spread of COVID-19 has been stressful for people in the free world. It is even more so for incarcerated people who are restricted to their cells. Isolation imposes emotional burdens and can make pre-existing PTSD, depression or serious mental illness worse. Restrictions on family visits also impose a burden, as does worry about family and loved ones' well-being.

An opinion article in the August American Journal of Public Health points out the importance of increasing the use of web-based virtual family visits, telepsychiatry and virtual individual or group counseling sessions. The article recommends that corrections programs set a high priority on expanding systems to provide these services in prisons and jails. Such services can reduce anxiety, irritability, fear and anger. Scaling up mental health programs in corrections may help prevent increases in suicides and assaults.

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, N.Y. For 10 years, he participated in a support group for people with diabetes at Great Meadow CF in Comstock, N.Y. 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.

**Prisons Banning Black Culture and History Books**

by Ed Lyon

There is one word that rarely, if ever, is used to describe anything that occurs in prisons. That word is fair. For example, study after study of prison demographics all conclude that although Black citizens are the minority of the U.S. population, they comprise the majority of the nation's prison population. Just how fair is that?

Once in prison, a person has a lot of time to read. Many prefer to read, read about their culture, their histories, their present circumstances and possible futures. A Black prisoner in Texas found that classic Black-centered books like The Color Purple had been banned — but Adolph Hitler's Mein Kampf and two books authored by former Ku Klux Klansman David Duke were available.

In Wisconsin, Black prisoners are not allowed to read 100 Years of Lynching by Ralph Ginzburg but — once again — Mein Kampf is freely available.

The Illinois Department of Corrections' Danville prison unit confiscated and banned over 200 Black-centered culture and history books being used in a humanities-based, accredited college program. [PLN, October 2019, p. 59] The reason given was “racial stuff.” No kidding. A good many of the books were eventually returned, but not all of them. This was mainly due to intense public backlash that reached the ears of sympathetic state legislators and the prison-reform minded and proactive lieutenant governor.

Had it been a court-ordered return, such a decision would be on appeal for years. Not that it would be likely any pro se prisoner could gain enough traction to sue over the issue. An act of law, introduced into the Congress by former Republican House Speaker Tom DeLay that was signed into law in 1995 by then-Democratic President Bill Clinton called the Prison Litigation Reform Act, has made it nearly impossible for prisoners to sue over the violation of their constitutional rights.

From border to border and coast to coast, Black prison populations are deprived of the ability to learn about their unique place in history and culture. And this is just not fair at all.

Sources: dailykos.com, eji.org
ICE Deportations Fueling Spread of COVID-19 to Latin American Countries

by Dale Chappell

The push to deport as many foreign nationals as possible under the Trump administration has helped to spread the coronavirus across Latin America, thanks to increased flights from overcrowded immigration detention centers across the country under an Immigration and Customs Enforcement (“ICE”) program designed to speed up deportations and a lack of testing.

After being detained by ICE in the Krome Detention Center in Florida for three weeks, “Carlos,” a Colombian national who flew to Indianapolis under a travel visa to go shopping with his aunt for toys and clothes for his newborn son, was put on a plane and sent back to Colombia by ICE. What nobody knew was that Carlos was infected with COVID-19 and brought it back to his country, along with several other detainees to places known to be hot spots for COVID-19.

For example, the deportees mentioned here bound for Colombia stopped in Georgia, Texas, Indiana, New Jersey, New Hampshire, and Tennessee to pick up more deportees. Nobody wore masks, they said. In fact, they weren't given masks by ICE until after they were in Colombia.

The American Civil Liberties Union (ACLU) investigated immigration detention centers that opened during the Trump era and found prolonged detentions and unsanitary conditions that led to the spread of COVID-19 among detainees. It was estimated that seven out of 10 detainees in ICE custody may become infected with COVID-19.

Courts have also stepped in and ordered the detention center populations thinned out. On April 30, 2020, U.S. District Court Judge Marcia Cooke ordered the three detention centers in Florida mentioned here to reduce their populations nearly five-fold. On May 12, 2020, U.S. District Court Judge William Young ordered the release of dozens of ICE detainees from the Bristol Detention Center, after a class action lawsuit filed by 148 detainees about the conditions there. The ACLU also noted that the Winn Correctional Center in Louisiana before being flown back to Colombia.

The rush to get these supposed illegal immigrants out of the U.S. happened under a program called ICE Air Operations (IAO), which flew out 70,000 deportees to 19 Latin American countries during 2020, according to ICE data. Some of this happened during the coronavirus pandemic. But they don't go straight back home. First, they stop around the country at immigration camps while ICE collects enough deportees before loading up the planes, exposing deportees to thousands of staff and other detainees at places known to be hot spots for COVID-19.

Karen Rivera traveled to Tampa to visit her daughter, and when her plane stopped in Miami she was targeted for a random drug test. She was clean. But she was then accused by ICE of entering the U.S. to find work, which violated her tourist visa. She was held at the Broward Transitional Center (BTC) in Pompano, Florida, and then flown back to Colombia. Upon arrival, she tested positive for COVID-19.

Julian Mesa chose to be deported rather than stay at the Bristol County House of Corrections in Massachusetts, after illegally crossing the border in Texas to escape threats in Colombia. “The conditions inside Bristol were scary,” he told Jenny Manrique at Palabra. Despite guards and prisoners testing positive, “we still were sharing bunk beds with more than 60 people per housing unit. We protested. Demanded tests. But that never happened.” Instead, detainees were threatened with solitary confinement if they asked for a test or complained about the conditions.

Gonzalo Botero, another deportee, said “the most irresponsible thing [the government did] was to send me home after the positive result, because I then infected my wife and her nephew.” He spent two weeks at the Winn Correctional Center in Louisiana before being flown back to Colombia.

The ACLU also noted that the Winn Correctional Center has had problems with unsanitary conditions that led to the spread of COVID-19 among detainees. It was estimated that seven out of 10 detainees in ICE custody may become infected with COVID-19.

Deportees returning home to Latin America have faced threats from the locals. In Guatemala, where most of the detainees were returned, villagers threatened tolynch an infected detainee if he returned there, and another town set up roadblocks to keep officials from moving infected former detainees to centers there.

Source: palabranahj.org
Dear Compassion Ambassador,

Compassion Prison Project is a grassroots nonprofit dedicated to transforming prisons and communities with compassionate action. We envision a world where... **All prisons become healing and education centers**  ❄️ **All people are ACE aware and trauma-informed**  ❄️ **Mass incarceration ends**  ❄️ **All people heal from personal and collective trauma**  ❄️ **Everyone adheres to the principles of nonviolence**  ❄️ **Everyone gives back**

In alignment with our vision, we are spreading awareness about the devastating effects of childhood trauma and its impact upon our brains, bodies and spirits. It’s been scientifically proven that trauma affects our brain development and causes us to react, rather than respond, to stress throughout our lives.

Below is the Adverse Childhood Experiences (ACEs) quiz. We are asking that you take the quiz and return your results to us at: Compassion Prison Project  8726 S. Sepulveda Blvd. Suite D #4201 Los Angeles, CA 90045.  If you really want to bring change quickly, please have every person in your Block, your Yard, your Dorm and even your Prison also take this test and send us the results.

The higher your ACEs score, the more childhood trauma you’ve experienced. As a result, the more adverse health challenges you may face later in life. Some of the symptoms of trauma include depression, hypervigilance, anxiety, violent outbursts and emotional regulation issues. These regulatory processes are often difficult to control until the body finally knows that it is safe. When we’ve endured a lifetime of trauma, especially during our critical developmental years, we come to believe that our behavior is who we are. But much of your seemingly chaotic or hurtful behavior is actually a result of being traumatized and living in an unstable environment. However, trauma is not a life sentence... healing is possible.

If your prison or institution is interested in trauma-informed materials and video content, please mention that when you return your ACE survey. By sending us your ACE score you are agreeing for Compassion Prison Project to use your anonymous ACE information. Also, if you want to write about your trauma and send it to us, we are compiling stories to educate the public (and it can also be kept anonymous if you want).

Please join us. With immense gratitude from the entire team at Compassion Prison Project.

**Prior to your 18th birthday:**

<p>| | | |</p>
<table>
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<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>1</strong></td>
<td>Did a parent or other adult in the household often or very often... Swear at you, insult you, put you down, or humiliate you? or Act in a way that made you afraid that you might be physically hurt?</td>
<td>No__ If Yes, enter 1 __</td>
</tr>
<tr>
<td><strong>2</strong></td>
<td>Did a parent or other adult in the household often or very often... Push, grab, slap, or throw something at you? or Ever hit you so hard that you had marks or were injured?</td>
<td>No__ If Yes, enter 1 __</td>
</tr>
<tr>
<td><strong>3</strong></td>
<td>Did an adult or person at least 5 years older than you ever... Touch or fondle you or have you touch their body in a sexual way? or Attempt or actually have oral, anal, or vaginal intercourse with you?</td>
<td>No__ If Yes, enter 1 __</td>
</tr>
<tr>
<td><strong>4</strong></td>
<td>Did you often or very often feel that ... No one in your family loved you or thought you were important or special? or Your family didn’t look out for each other, feel close to each other, or support each other?</td>
<td>No__ If Yes, enter 1 __</td>
</tr>
<tr>
<td><strong>5</strong></td>
<td>Did you often or very often feel that ... You didn’t have enough to eat, had to wear dirty clothes, and had no one to protect you? or Your parents were too drunk or high to take care of you or take you to the doctor if you needed it?</td>
<td>No__ If Yes, enter 1 __</td>
</tr>
<tr>
<td><strong>6</strong></td>
<td>Were your parents ever separated or divorced?</td>
<td>No__ If Yes, enter 1 __</td>
</tr>
<tr>
<td><strong>7</strong></td>
<td>Was your mother or stepmother: Often or very often pushed, grabbed, slapped, or had something thrown at her? or Sometimes, often, or very often kicked, bitten, hit with a fist, or hit with something hard? or Ever repeatedly hit over at least a few minutes or threatened with a gun or knife?</td>
<td>No__ If Yes, enter 1 __</td>
</tr>
<tr>
<td><strong>8</strong></td>
<td>Did you live with anyone who was a problem drinker or alcoholic, or who used street drugs?</td>
<td>No__ If Yes, enter 1 __</td>
</tr>
<tr>
<td><strong>9</strong></td>
<td>Was a household member depressed or mentally ill, or did a household member attempt suicide?</td>
<td>No__ If Yes, enter 1 __</td>
</tr>
<tr>
<td><strong>10</strong></td>
<td>Did a household member go to prison?</td>
<td>No__ If Yes, enter 1 __</td>
</tr>
</tbody>
</table>

Now add up your “Yes” answers:  This is your **ACE SCORE:**

www.compassionprisonproject.org
Jails and Prisons Have Reduced Their Populations in the Face of the Pandemic, but Not Enough To Save Lives

Our updated analysis finds that the initial efforts to reduce jail populations have slowed, while the small drops in state prison populations are still too little to save lives.

by Emily Widra and Peter Wagner, Prison Policy Initiative,
originally published August 5, 2020

At a time when more new cases of the coronavirus are being reported each day, state and local governments should be redoubling their efforts to reduce the number of people in prisons and jails, where social distancing is impossible and the cycle of people in and out of the facility is constant. But our most recent analysis of data from hundreds of counties across the country shows that efforts to reduce jail populations have actually slowed — and even reversed in some places.

Even as the pandemic has spiked in many parts of the country, 71% of the 668 jails we’ve been tracking saw population increases from May 1st to July 22nd, and 84 jails had more people incarcerated on July 22nd than they did in March. This trend is particularly alarming since we know it’s possible to further reduce these populations: in our previous analysis, we found that local governments initially took swift action to minimize jail populations, resulting in a median drop of more than 30% between March and May.

Meanwhile, state prisons — where social distancing is just as impossible as in jails, and correctional staff still come and go every day — have been much slower to release incarcerated people. Since January, the typical prison system had reduced its population by only 5% in May and about 13% as of July 27th. (And note, our use of the term “reduction” is different from “release,” as we have found that there are multiple mechanisms impacting populations, and releases are but one part.)

The strategies jails used to reduce their populations in March and April varied by location, but they added up to big changes. In some counties, police issued citations in lieu of arrests, prosecutors declined to charge people for some low-level offenses, courts reduced the amounts of cash bail, and jail administrators released people detained pretrial or those serving short sentences for nonviolent offenses.

Just a few months later, many local jurisdictions have slowed — and in some cases, completely reversed — their efforts to reduce jail populations. Of the 668 jails we analyzed population data for, 71% of jails had population increases from May 1st to July 22nd, and 84 jails had more people incarcerated on July 22nd than they did in March.

For example, in Philadelphia, judges released “certain nonviolent detainees” held in jails for unspecified “low-level charges” and the Philadelphia police suspended low-level arrests reducing the city’s jail population by more than 17% by mid-April. But on May 1st, the Philadelphia police force announced that they would resume arrests for property crimes, effectively reversing the earlier reduction efforts.

Meanwhile, in the spring, state Departments of Correction began announcing plans to reduce their prison populations — by halting new admissions from county jails, increasing commutations, and releasing people who are medically fragile, elderly, or nearing the end of their sentences. But these population reductions were small, amounting to only about 5% in the first two months and now about 13%, still significantly less than what jails accomplished in just the first few weeks. However, prisons may be seeing more “slow and steady” progress than jails are: while many jails have reversed course and are increasing their populations again, prison populations have continued on a downward trend since May. Unfortunately, that’s about as optimistic as we can be with these numbers. The drops aren’t significant enough to make social distancing possible inside prisons nor to ensure that all of the most vulnerable people have been released to safer conditions.

Some states’ prison population cuts are even less significant than they initially appear, because the states achieved those cuts partially by refusing to admit people from county jails. (At least two states, California and Oklahoma, did this.)

While refusing to admit people from jails does reduce prison density, it means that the people who would normally be admitted are still incarcerated, but in different correctional facilities that have more population turnover and therefore more chances for the virus to spread.

Other states are indeed transferring people in prison to outside the system, either to parole or to home confinement, but these releases are not enough to protect vulnerable incarcerated populations from COVID-19. For example, in California, thousands of people have been released weeks and months early, but the state’s prison population has only decreased by about 11% since January, leaving too many people behind bars in the face of a deadly disease. In fact, as of July 29, California’s state prisons were still holding more people than they were designed for, at 117% of their design capacity.

Of the states with available data, the smaller systems have reduced their populations the most drastically. North Dakota’s prison population had already dropped by 19% in May. (North Dakota was also the state that we found to have the most comprehensive and realistic COVID-19 mitigation plan in our April 2020 survey.) Two months later, North Dakota has continued these efforts, reducing its prison population by a total of 25% since January, a greater percent change than any other state.

State and local governments clearly need to do more to reduce the density of state prisons and county jails. For the most part, states are not even taking the simplest and least controversial steps, like refusing admissions for technical violations of probation and parole rules, or releasing people that are already in confinement for those same technical violations. (In 2016, 60,000 people were returned to state prison for behaviors that, for someone not on probation or parole, would not be a crime.) Other obvious places to start: releasing people nearing the end of their sentence, those who are in minimum security facilities and on
work-release, and those who are medically fragile or older.

Decision- and policy-makers need to recognize the dangers of resuming unnecessary jail incarceration during the pandemic, which is exactly what is indicated by the slowing and reversing of population reductions. Just as many states are seeing the tragic effects of “reopening” too soon, counties and cities that allow jail populations to return to pre-pandemic levels will undoubtedly regret it. If the leadership and success of local jails in reducing their populations early in the pandemic isn’t enough of an example for continuing these efforts at the state and local levels, officials may find some inspiration in the comparative success of other countries. [See Table 3]

Prisons and jails are notoriously dangerous places during a viral outbreak, and public health professionals, corrections officials, and criminal justice reform advocates agree that decarceration will help protect both incarcerated people and the larger communities in which they live. It’s past time for U.S. prison and jail systems to meaningfully address the crisis at hand and reduce the number of people behind bars.

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentage reduction</th>
<th>Pre-COVID-19 prison population</th>
<th>Number released due to COVID-19</th>
<th>Pre-COVID-19 date</th>
<th>Date of releases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>33%</td>
<td>30,748</td>
<td>10,000</td>
<td>2018</td>
<td>Mar 25</td>
</tr>
<tr>
<td>Turkey</td>
<td>31%</td>
<td>286,000</td>
<td>90,000</td>
<td>2019</td>
<td>Apr 14</td>
</tr>
<tr>
<td>Iran</td>
<td>29%</td>
<td>240,000</td>
<td>70,000</td>
<td>2018</td>
<td>Mar 17</td>
</tr>
<tr>
<td>Myanmar</td>
<td>26%</td>
<td>92,000</td>
<td>24,000</td>
<td>2018</td>
<td>Apr 17</td>
</tr>
<tr>
<td>South Sudan</td>
<td>20%</td>
<td>7,000</td>
<td>1,400</td>
<td>2019</td>
<td>Apr 20</td>
</tr>
<tr>
<td>The Gambia</td>
<td>17%</td>
<td>691</td>
<td>115</td>
<td>2019</td>
<td>Apr 26</td>
</tr>
<tr>
<td>Indonesia</td>
<td>14%</td>
<td>270,387</td>
<td>38,000</td>
<td>2018</td>
<td>Apr 20</td>
</tr>
<tr>
<td>France</td>
<td>14%</td>
<td>72,000</td>
<td>10,000</td>
<td>Mar 2020</td>
<td>Apr 15</td>
</tr>
<tr>
<td>Ireland</td>
<td>13%</td>
<td>3,893</td>
<td>503</td>
<td>2018</td>
<td>Apr 22</td>
</tr>
<tr>
<td>Italy</td>
<td>11%</td>
<td>61,230</td>
<td>6,500</td>
<td>Feb 29</td>
<td>Apr 26</td>
</tr>
<tr>
<td>Kenya</td>
<td>9%</td>
<td>51,130</td>
<td>4,500</td>
<td>2018</td>
<td>Apr 17</td>
</tr>
<tr>
<td>Colombia</td>
<td>8%</td>
<td>122,085</td>
<td>10,000</td>
<td>Feb 29</td>
<td>Mar 31</td>
</tr>
<tr>
<td>Britain</td>
<td>5%</td>
<td>83,189</td>
<td>4,000</td>
<td>Mar 27</td>
<td>Apr 4</td>
</tr>
</tbody>
</table>

Table 3: Countries that immediately reduced their incarcerated populations in the face of the pandemic (showing 13 countries where current population data was readily available)

Emily Widra is a Research Analyst at the Prison Policy Initiative; Peter Wagner is Executive Director of the Prison Policy Initiative.

This article was published by the Prison Policy Initiative (www.prisonpolicy.org) on August 5, 2020; it is reprinted with permission.
Prison overcrowding has been quietly tolerated for decades.

But the pandemic is forcing a reckoning.

by Dara Lind, ProPublica

This article was originally published June 18, 2020, by ProPublica, a nonprofit newsroom that investigates abuses of power. Sign up to receive our biggest stories as soon as they're published.

Jason Thompson lay awake in his dormitory bed in the Marion Correctional Institution in central Ohio, immobilized by pain, listening to the sounds of “hacking and gurgling” as the novel coronavirus passed from bunk to bunk like a game of “sick hot potato,” he wrote in a Facebook post.

Thompson lives in Marion’s dorm for disabled and older prisoners — a place he described to ProPublica in a phone call as the prison’s “old folks home” — where 199 inmates, many frail and some in wheelchairs, were isolated in a space designed for 170. As the disease spread among bunks spaced 3 or 4 feet apart, Thompson said he could see bedridden inmates with full-blown symptoms and others “in varying stages of recovery. While the rest of us are rarely 6 feet away from anyone else, sick or not.”

“Prison is not designed for social distancing,” said Thompson, who is serving a de facto life sentence (his first parole hearing will come in 2087) for aggravated murder and kidnapping. “That’s not the system’s fault. That’s not the prison’s fault. It couldn’t have been designed with the vision of one day having to social distance in confined spaces, where inmates are unable to do the only thing that has proven effective in stopping the viral spread.

States and the federal government responded to the initial onset of the coronavirus by releasing some individual prisoners who were particularly vulnerable, although ProPublica found the federal directive was undermined by secretive Bureau of Prisons guidance limiting early release. But even when it looked like the first wave of the coronavirus was subsiding outside prison walls, cases in prisons and jails kept climbing. A Times analysis found a 68% increase in prison and jail cases in May.

In light of this, experts are going further than calling for case-by-case releases, acknowledging that prisons simply have to hold fewer people overall. Pennsylvania Corrections Secretary John Wetzel told ProPublica that he expects his state to incorporate the need for social distancing into its definition of what a facility’s acceptable operating capacity is. Staying under the new capacity limits will require prison populations to be reduced.

“When you look at this objectively, you have to reduce population,” Wetzel said. “Because it’s not realistic to say, for the next 12 months, the whole system in Pennsylvania is going to be locked down so we can mitigate the spread.”

Reducing populations has proven challenging in states like Ohio, where the overall prison population has declined while the inmate count at Marion has increased. When Ohio addressed overcrowding of female inmates by converting a minimum-security men’s prison into a second women’s prison, some of the displaced men were sent to Marion instead; the same thing happened when the state closed a minimum-security prison for cost reasons in 2018. Looming fiscal crises in states across the country are ratcheting up pressure to further cut prison budgets, and efforts to build more prisons are on hold.

Ohio has shelved plans to rebuild the overcrowded Pickaway Correctional Institution (site of the second-largest recorded coronavirus outbreak in the Times analysis) and has no current plans to permanently address overcrowding at Marion.

The Ohio Department of Rehabilitation and Correction has defended its approach to the coronavirus outbreak and answered several questions from ProPublica about specific allegations from inmates. On the issue of overcrowding in general, spokeswoman JoEllen Smith said: “The challenge of any correctional agency is to keep up with the demands of the courts and the criminal justice system. Space allocation has been and will always be a challenge for any correctional system across the country.”

Overcrowded prisons are nothing new. But while Ohio’s overall prison population is the lowest it has been since 2006 because of modest criminal justice and sentencing reforms, Marion’s numbers have grown over the last decade, from 2,300 in March 2010 to 2,538 at the end of March 2020, according to official reports.

Ohio stopped reporting the capacity estimates of its prisons to the U.S. Department of Justice in 2015, but an inspection that year showed Marion approaching twice its official capacity. More recent figures show Marion was at 153% of that capacity at the end of March, on the eve of the coronavirus’s arrival. The ODRC’s Smith told ProPublica that Ohio no longer used that capacity measure, because “the design of a facility 60 years ago is not meaningful today due to the changing nature of the populations.”

The same dynamic has played out in other states. Thirty-two states reduced their prison capacity from 2011 to 2018, according to a ProPublica analysis of federal data. Prisons in 21 of those states became, on net, more crowded as a result. Eighteen states that had closed prisons were at or above 100% of their remaining facilities’ official capacity estimates. (Ohio is not counted in this analysis. It is one of two states, along
with Connecticut, that do not report any capacity numbers to the federal government. The ODRC’s Smith told ProPublica that Ohio stopped calculating capacity because “there is no longer a national standard.”

The inmates in those overstuffed prisons became kindling in the coronavirus fire. “The only thing that we have found that works right now, while we don’t have appropriate therapeutics and we don’t have a vaccine, is social distancing,” said Brie Williams, director of the Criminal Justice & Health Program at the University of California, San Francisco. “And in order to do that, you have to be able to get the physical distance between people to make it happen.”

By the time Marion conducted mass testing in late April, the state reported that over 2,000 prisoners — about 80% of the population — had contracted the virus. Prison authorities concluded that it was easier to isolate infected prisoners by keeping them in their assigned dorms and cellblocks and moving the few healthy prisoners into the gym.

Marion’s high infection rate outraged inmate Jonathan White, a self-described “news junkie” who took advantage of the prison’s temporary addition of CNN and Fox News to the TV options to educate himself about the virus, even as he recovered from it.

Ohio recorded 76 prison coronavirus deaths as of June 12, including 35 at Pickaway and 13 at Marion. Both facilities are overcrowded. Pickaway, like Marion, was over 50% above the last-recorded capacity estimate as of the end of March.

Thompson said he had only a vague sense of what was happening around him as the sickest were carted out and prisoners were moved around as test results came back.

When a Marion guard died of the coronavirus — the first fatality of any guard or inmate in the state — on April 8, he heard the news from his girlfriend in a phone call. “A week or so later,” he said, “they had a moment of silence for his passing.”

Thompson himself was initially told he’d tested negative; he spent two nights in the gym, where, he said, cots were actually spaced 6 feet apart. Then he and a few other inmates were told there had been a mistake — they were infected and had to move back to their original dorms and cellblocks.

The reversal devastated Thompson, who told ProPublica he had spent years trying to get over a reflexive distrust of prison or medical authorities. “I am not ashamed,” he wrote in a May Facebook post, “to admit to having had thoughts of suicide.”

In most states, there’s officially no such thing as an overcrowded prison, since

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The federal Bureau of Justice Statistics, the DOJ arm that collects state criminal justice data, has three metrics for measuring prison capacity. In practice, all of these are subjective assessments made by a state’s prison officials. Even so, many prison systems are at or over 100% of reported capacity.

When state budget crunches hit, as they did during the 2008-09 Great Recession, they can close prisons whether or not their prison population is actually declining. And closing a prison is quicker, and less controversial, than passing a bill to shorten future prison sentences (or offer good-time credits for current prisoners) in the hopes of reducing incarceration down the road. A 2016 RAND study found that 31 states had closed prisons between 2007 and 2012 because of budget constraints.

The most common response to budget crunches, RAND found, was closing facilities and then cramming more inmates into the remaining ones. Since 2004, Michigan, for example, has closed prisons that held more than 15,000 beds while adding about 5,000 beds to the facilities it kept open. (Chris Gautz, a spokesperson for the Michigan Department of Corrections, told ProPublica that since 2010, all prison closures have been offset by reductions in inmate population.)

In states like Ohio, where incarceration rates were still growing in the late 2000s, adding beds stalled the need for new prisons but came at a cost. "Crowding gives the state a perverse bargain," the then-director of the Ohio Sentencing Commission wrote in a 2011 report. "Extra inmates add relatively little to total costs. Adding inmates in an over-capacity system only costs about $16/day in food, clothing, and medical care." Adjusting for inflation, ODRC reports analyzed by ProPublica show that the per-day cost to house an inmate in an Ohio prison dropped from $90.55 (2019 dollars) in 2005 to $80.68 in 2019.

A Supreme Court ruling in 2011 — the same year that Ohio’s Legislature passed a criminal justice reform package — was supposed to mark a turning point for prison overcrowding. That June, the court upheld a lower court ruling that overcrowded prisons in California violated the constitutional ban on “cruel and unusual punishment.” Advocates hoped the ruling would push other states to reduce their own prison populations or embolden judges to release prisoners if conditions got too egregious.

But legislative reforms didn’t always significantly reduce prison populations. In Ohio, it took four years for incarceration numbers to decline. As prisons approached 130% of capacity in 2016 — the level at which experts agree overcrowding becomes an urgent problem — Ohio still declined to build new prisons or release prisoners. In 2018, once incarceration had edged downward, it closed an 800-bed minimum security prison in southeast Ohio and forced other minimum-security prisons like Marion to absorb more inmates.

During the prison-building boom of the 1980s and 1990s, many states shifted credits for current prisoners) in the hopes of reducing incarceration down the road. A 2016 RAND study found that 31 states had closed prisons between 2007 and 2012 because of budget constraints.

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lost phone privileges. Others said that they did not report virus symptoms to prison staff because they didn’t want to spend time in solitary.

In March, the Centers for Disease Control and Prevention warned prisons that inmates’ fear of medical isolation could encourage the virus’s spread.

When Marion ran out of cells in “the hole,” it packed potentially infected inmates into classrooms, 20 to a room, to sleep. (In many other overcrowded prisons and jails, that wouldn’t be possible — spaces like classrooms and recreational areas have already been turned into bed space.) Finally, the prison grouped all inmates into clusters of 100 to 120 men, based on the dorms or cellblocks they were already living in, and then tried to keep the “households” isolated from each other.

Marion officials made fruitless attempts to create space. Hallways were marked off with spots 6 feet apart as a guide for inmates walking outside of their cells. “We’ve all just gotten up from being in bed areas that were 2 feet apart from each other all day,” inmate Jonathan White recalled.

The ODRC insists that while the whole facility was under isolation, every inmate got a daily temperature and symptoms check. “The only individuals who were not symptom screened during this time period were those who were recovered patients,” Smith told ProPublica. But all 10 inmates interviewed by ProPublica described infrequent temperature checks and said they were not routinely asked about other symptoms. One inmate, who asked to remain anonymous to protect his future chances of parole, told ProPublica he had never been asked about symptoms beyond fever.

Chris Mabe, the head of the Ohio Civil Service Employees Association, which represents Ohio prison guards, told ProPublica he believed daily checks were unlikely. “We’ve been understaffed and overpopulated for decades in the state of Ohio,” he said, and the coronavirus exacerbated staffing shortages. “I just can’t believe that every day that there are five or six people for medical walking around having interviews with 2,000 or 3,000 inmates to see if they’re symptomatic.”

By late May, Marion was slowly returning to normal. As of May 21, the ODRC reported that 2,101 of Marion’s inmates had recovered from COVID-19. By June 12, that number had declined slightly to 2,088.

Many areas of the facility have allowed inmates to move around normally at mealtimes, though the Americans with Disabilities Act-compliant dorm, where Thompson lives, is still under restricted movement. In theory, masks are mandatory, but some inmates have stopped using them and say guards do not appear to be enforcing the rule. The ODRC’s Smith told ProPublica that “if an individual is found to not be wearing his mask, he is asked and reminded to put it on.”

Thompson is still wearing a mask everywhere. The coronavirus outbreak, and the emotional roller coaster of believing he’d tested negative and then being told the opposite, has made him “paranoid.” He’s washed his cloth masks so many times that the cotton has begun to fray.

Ohio, like many states, used emergency powers to try to thin out prison populations during the outbreak. The result: From March 24 to May 5, Ohio’s prison population shrank by about 1,582 prisoners — a 3% decline. Although Marion has an older population than most state prisons, inmates there did not hugely benefit from the release policy. The prison’s population dropped by 76 prisoners, or the same 3% as elsewhere.

The reason is simple. Older inmates are often serving long sentences for serious crimes, and governors and state legislatures are still afraid to release violent criminals even if their crimes were committed decades ago. The prisoners most vulnerable to the coronavirus are among the least likely to be released by either emergency clemency or many reform bills.

Meanwhile, building new prisons is almost certainly out of the question. Ohio Gov. Mike DeWine, like most other governors, is looking ahead to drastically reduced tax revenues and already making deep budget cuts.

Before the coronavirus, Ohio was accepting bids to build a new prison to replace Pickaway. “For the planning of the new facility, everybody agreed, give people some living space so that they can self-separate,” Cupples, the architect, told ProPublica.

But in April, because of the expected budget shortfall, the state government rejected all bids for the project.

“The Pickaway project was delayed until further information is provided on Ohio’s capital bill,” Smith confirmed to ProPublica. Ohio will keep making do with what it has.

Do you have access to information about prisons and COVID–19 that should be public? Email dara.lind@propublica.org.

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How Long Can You Hide a Dead Body in a Prison Cell?
Mental-health problems, short staffing plague a Texas lockup in COVID lockdown.

by Keri Blakinger, The Marshall Project, originally published July 13, 2020

If things were a little too quiet in a particular cell in the Texas prison, the guards didn’t notice. If one of the two men locked inside didn’t stand up to be counted—a process that is supposed to happen at least nine times a day—no one reported it. If there was an awful smell, nobody said a word.

It wasn’t until Cornelius Harper asked prison staff to check on his cellmate that they realized the man was dead. Had been dead for at least three days. Had been choked and beaten so badly he had dried blood and bruises all over his face.

Given that the prison was on lockdown, there weren’t many suspects. Harper hasn’t been charged, but officials say he killed his cellie and tried to hide it, covering the body with a sheet that rippled in the breeze from the cracked window, mimicking movement.

Some officials have suggested that Harper may have done more, perhaps positioning and repositioning the body of 26-year-old Silvino Núñez to make it seem as if he were alive in his cell in the Clements Unit in Amarillo. Investigators say Harper has confessed to the murder; he did not respond to letters requesting comment.

Three months later, officials have released few details, but some things are clear: Harper, 33, had a history of fatal violence and severe mental health problems. At the time of the killing, he was already six years into a life sentence for a triple murder that had nearly gotten him the death penalty. Records show he’d been hearing voices for more than a decade and had a pattern of refusing to take his medication.

Despite that, Harper—like thousands of other prisoners during the pandemic—was locked almost 24 hours a day in an 8-by-11 cell with Núñez, who was serving a 10-year sentence for stabbing his mother. Like the rest of the men in Clements Unit, Harper and Núñez had no recreation, visits or phone calls, conditions even more restrictive than usual for a maximum-security prison in Texas. A prison spokesman confirmed some details about the killing but did not comment on the state’s handling of mentally ill prisoners during long-term lockdowns.

To experts and prison-reform advocates, the dire consequences are an “I-told-you-so” moment. “This was entirely predictable that people were going to be having exacerbated mental health symptoms,” said Michele Deitch, a prisons expert and senior lecturer at the University of Texas at Austin’s LBJ School of Public Affairs. “You have people vulnerable with mental health issues and all the stress from the COVID crisis and you’re locking them down and denying them access to their families and support systems.”

To Núñez’s family, it was a painful and unexpected end. “Silvino Núñez was a grandson, son, brother, cousin and nephew,” Estela Núñez wrote on a GoFundMe page seeking to raise money for a funeral. “Let he or her who is innocent cast the first stone.” She did not respond to a request for comment.

As the pandemic spread in the spring, prisons began locking down to try to enforce social distancing and avoid major outbreaks. Early on, experts worried that such responses would be particularly hard on mentally ill people behind bars. How hard can be difficult to quantify unless the result is a dead body; Texas’s tracking of less fatal outcomes—such as assaults, use or force, or suicide attempts—has been unreliable.

In England and Wales, The Guardian reported a rash of prison suicides, five in six days, that sparked alarm among critics there, who attributed the deaths to harsh conditions of indefinite lockdowns.

In the U.S., Oregon’s federal public defender said she worried one prisoner’s suicide and two other reports of serious self-harm could be due to the continuing stress of the restrictive conditions.

“The psychological and physical stress of the 14-day lockdown is becoming overwhelming for some of the inmates and detainees,” the public defender, Lisa Hay, told The Oregonian. One man at FCI Sheridan told Hay’s legal team that a fellow prisoner had “slashed himself” because “he could not stand being locked up this long.”

A few weeks later, Hay’s office filed suit against the prison.

In Texas, Deputy Inspector General Joe Buttitta, whose office investigates all prison deaths, said he’d seen a slight uptick in suicides amid the pandemic. In one instance, a man jumped off the walkway outside a third-floor cell at an East Texas prison and killed himself; several prisoners wrote The Marshall Project to say that he’d leaped to his death just after finding out he’d tested positive for COVID-19. It’s not clear whether he had pre-existing mental health problems.

The same cannot be said for Harper, the man officials believe killed his cellmate; his history of mental health struggles was long and publicly documented. Though he did not respond to a letter requesting comment, extensive court records tell some of his life story.

Born in Abilene, Harper survived a childhood of neglect and abuse, spending his early years with a mother who struggled with drug addiction. His parents lived separately and were never married. At age 7 he
September 2020

moved to Chicago to live with his father. In his teens, Harper began hearing voices, according to court records. He skipped school, and started smoking pot and drinking. Then at 16, he took part in a robbery and was sentenced to 10 years in prison.

After five years he got out on parole, but in early 2011 was arrested near Houston after authorities said he killed his cousin, his cousin’s pregnant girlfriend and her unborn child. Prosecutors alleged the murders all stemmed from a dispute over money and a car, but Harper maintained his innocence and took the case to trial.

While waiting in the county jail for his day in court, Harper tried strangling himself. He sometimes refused to take medication for fear of the side effects and told an expert tasked with evaluating him his day in court, Harper tried strangling himself. He sometimes refused to take medication for fear of the side effects and told an expert tasked with evaluating him that he still heard voices and had tried to kill himself nine times.

Despite questions about his competency, a jury found him guilty of capital murder in 2014. But the jurors decided there were enough mitigating factors that he shouldn’t be put to death, so he was sentenced to life without the possibility of parole.

At the time of the slaying, the 3,800-man prison where he was held was severely understaffed; roughly half of the corrections-officer positions sat vacant at the end of April. The unit was on lock-down by April 8, and five days later Harper told prison staff to check on his cellmate.

They found Núñez dead in his bunk. It’s not clear how his death went unnoticed, but the warden recommended firing four officers. As of early July, three were still employed by the Texas Department of Criminal Justice, state records show.

“Security rounds are a must and all staff should be doing them but at the same time TDCJ needs to make sure they have proper staffing levels,” said Jeff Ormsby, a union leader for state prison employees in Texas. Officials said Wednesday that for the first time in recent memory the agency has more than 5,000 guard vacancies, out of almost 26,000 positions. The agency is short an additional 1,000 correction officers due to quarantine.

“When you’re working people 16 to 20 hours a day, they take shortcuts,” Ormsby continued. “Dealing with any inmates can be difficult, but mentally ill inmates even more so. But dealing with mentally ill inmates when you’re short-staffed and tired is even worse.”

To some prisoners, the incident highlights how serious the unit’s staffing problems are, and how little concern some officers seem to have for the people they’re guarding.

To others, it highlights the recurring nightmare of being locked in a tiny, un-cooled cell with someone in the throes of a mental health crisis.

It’s almost impossible to get your cell changed, one man told me. “You try to explain, ‘Look, man, this guy’s a psych patient. He’s on pills. He’s seeing things. He’s hearing things. He’s a cutter. Whatever the case may be, you’re going to end up having to either have a fight with a guy or he’s going to have to kill you or you’re going to have to kill him.”

This story was published on July 13, 2020, by The Marshall Project (themarshallproject.org), a nonprofit news organization covering the U.S. criminal justice system. Sign up for their newsletter, or follow The Marshall Project on Facebook or Twitter. Reprinted with permission. Copyright, The Marshall Project 2020.
Jodie Sinclair is the co-author of two nationally published non-fiction books and the author of a recently released memoir about her 25-year fight to free her husband from prison after a wrongful conviction, “Love Behind Bars: The True Story of an American Prisoner’s Wife.” She also co-authored her husband’s autobiography, “A Life in the Balance: The Billy Wayne Sinclair Story,” which was written while he was still in prison. She is a former TV news reporter with a master’s degree in journalism from Columbia University. This interview has been lightly edited for length and clarity.

How did you meet your husband?

I lived in upscale neighborhoods growing up. My family belonged to country clubs. I went to an elite private school. But I didn’t meet my husband at a society event. I met him in 1981 at the Death House at the Louisiana State Penitentiary at Angola. When Angola’s warden refused to let us marry a year later, I married Billy by proxy in Texas.

There were no bells or whistles at our wedding. My brother-in-law and I went to the courthouse in downtown Houston with notarized documents Billy had sent to me, swearing he wanted to marry me and designating my brother-in-law as his stand-in. A courthouse official handed me some documents that made me Billy’s wife when I signed them. That afternoon, I called a prison administrator asking her to tell Billy that I had taken care of an important legal matter he had entrusted to me.

A member of Louisiana’s Pardon Board challenged our marriage, asking the state’s Attorney General if Louisiana had to recognize each other’s valid laws.

Did you initially think he was guilty of the murder he was charged with? When and why did you begin to have doubts?

When I first saw Billy in the Death House in 1981, I thought he was a guard on his day off, there to assist the warden. I was a TV news reporter covering an upcoming execution along with a TV crew from another station. Billy had on perfectly pressed denim jeans and a denim jacket. The warden told me he was a national award-winning inmate writer for the prison’s magazine, the first uncensored publication of its kind in the U.S. He was there in case I had questions about Angola’s Death Row. In 1972, he was waiting to be executed when the U.S. Supreme Court struck down the death penalty nationwide, changing his death sentence to life in prison.

I ordered archived articles about him from the New Orleans Times-Picayune. They described a killer who deliberately shot his victim down in cold blood inside a store he tried to rob and calmly walked out to his getaway car. But the Corrections Department considered him so trustworthy that it was sending him with an older, unarmed guard around Louisiana to warn schoolchildren about breaking the law. Some were overnight trips. Billy, and the inmate sent with him, could easily have jumped the guard, and escaped. With the Corrections Department Secretary and numerous top-ranking prison officials vouching for Billy’s rehabilitation to such an extraordinary degree, I decided to trust him.

How did prosecutors and police skew the evidence against Billy?

In 1966, the prosecutor in Billy’s case told the jury that Billy shot the store clerk in the chest inside the convenience store during the robbery attempt. He used perjured testimony to convict him of felony murder, a death penalty crime. To get the death penalty under Louisiana law, the prosecutor had to show Billy shot and killed the clerk with a specific intent to murder him, or that he killed his victim during the commission, or attempted commission, of a robbery.

One of the witnesses who committed perjury was a former state police officer who happened to be in the store. He said Billy shot the clerk in the chest and calmly walked out the door. The second witness was the officer’s wife, who was waiting in a car for her husband. She also said she saw Billy calmly walking to his getaway car. Their accounts convicted him of felony murder.

Four witnesses told a radically different story in sworn statements to the police. They said the clerk rushed Billy and chased him out of the store across the parking lot. One said the clerk was waving a broom above his head. But they never testified because Billy’s defense lawyer was never told about them. Their statements prove Billy had abandoned the robbery attempt and that he fired a wild shot over his shoulder as he was running away. Their testimony would have undercut the prosecutor’s claims. The prosecutor also told the jury the fatal bullet hit the clerk in the chest. It was an outright lie. It hit him under the arm as he was holding the broom in the air. Legal experts told me if the suppressed witnesses were allowed to testify, the jury could have returned a manslaughter verdict or a “guilty without capital punishment” verdict.

In late 1979, when his mother went to the Pardon Board to ask the chairman why Louisiana’s governor denied clemency for Billy even though the board had unanimously recommended it, Billy learned what had happened at his trial in 1966. The Chairman said the Board knew Billy’s crime wasn’t a cold-blooded murder. An official police report with four statements in his file was proof. But the prosecutor had sealed it.

As his mother left, she asked a clerk for copies of all the documents in her son’s file. A pardon board lawyer tried to stop her as she was leaving with them under her arm. But she ran out of the building and jumped into a waiting car. The file also contained scores of letters against Billy’s release, some signed by politically powerful opponents. Shocking illegal acts against Billy over the 25 years I tried to free him were routine.

Was the news coverage about his case fair, or did most reporters go along with the official narrative?

Until Billy became an award-winning writer for The Angolite, there were no favorable reports about him. From 1979 to 1986 as the magazine’s co-editor, he won some of the highest national journalism honors for his articles, including The George Polk Award and the Robert F. Kennedy Award for Special Interest Journalism. In 1986, he was the whistleblower in a pardons for sale scam at Angola. I wore a wire to help the FBI based on his information. When he wasn’t released like inmates who bought pardons, reporters began asking questions about his treatment.
Some reporters in the local media knew the prosecution had used perjured testimony and suppressed favorable witnesses at Billy’s trial. But even when the police Offense Report was uncovered in 1979, revealing the perjured testimony and suppressed witnesses, it got scant media attention. An Associated Press reporter who pointed to unfairness in Billy’s case received threatening telephone messages.

The social status of Billy’s victim, coupled with the perjured testimony at Billy’s trial, influenced the media’s coverage of Billy. His victim was a popular high school football player on a team in the mid-1950s that would later be voted as the “greatest high school football team in Louisiana history.” Team members, or people associated with them, were in powerful positions in Baton Rouge’s education system, police department, state police, the legislature, the district attorney’s office, the religious department, state police, the legislature, and even the local media. One said Billy would have fared better if he had killed the city’s mayor rather than one of those high school football players. This powerful network of people demanded the death penalty for Billy in 1966. They pressured four prominent attorneys to withdraw from his case to ensure he would get a death sentence.

What was the turning point in gaining his freedom?

By 2004, the battle to free Billy was desperate. The muscles in his eyelids were paralyzed. Other inmates taped his eyelids up every morning with Band-Aids so he could see. Trips to Charity Hospital in New Orleans confirmed the seriousness of his condition and the heart murmur he had developed. By then, I had been fighting for his release for 23 years.

I turned to the most powerful African American legislator in Louisiana. Senator Charles Jones was Louisiana Governor Kathleen Blanco’s floor leader. He also had a successful legal practice. He agreed to represent Billy at his 2006 parole board hearing. With Senator Jones, we finally escaped the years-long, behind-the-scenes influence of the victim’s family and friends.

How much money did it cost for attorneys? Is there any way he could have gained his freedom if you didn’t have some financial resources?

Over the 25 years I battled to free Billy, my jobs allowed me to put money in savings and 401K accounts. On average, I paid $4,000 a year to lawyers for the 25 years it took to win Billy’s freedom. Some donated their services to free him. Others charged minimal fees. I paid Senator Jones $25,000 to represent Billy at his parole board hearing in 2006, the hearing that set him free. I never cared about the cost. Bringing Billy home was all that mattered.
Interview: Corene Kendrick on How the Prison Litigation Reform Act Strips Prisoners of Legal Rights

by Ken Silverstein

Corene Kendrick is a staff attorney with the Prison Law Office, a nonprofit public interest law firm based in Berkeley, California that offers legal assistance for people who are in prisons, jails, and juvenile facilities and who are on parole. She is the office’s lead day-to-day attorney in Parsons v. Shinn, a case challenging the adequacy of health care provided to all state prisoners and challenging the conditions in isolation units at Arizona state prisons. She also works on Armstrong v. Newsom, a case brought under the Americans with Disabilities Act on behalf of people with disabilities in California state prisons.

You recently wrote on Twitter that the Prison Litigation Reform Act (PLRA) is one of the primary “horror stories” for your work. The PLRA is not that well known outside of legal circles. Can you briefly describe its origins and consequences?

Congress passed the PLRA and Bill Clinton signed it into law months before his reelection in 1996. The PLRA places onerous burdens and restrictions on incarcerated people who file lawsuits in federal court to enforce their Constitutional rights, including the right to be free of cruel and unusual punishments, freedom of speech, and protection from discrimination based on race. The law covers not only people convicted of crimes, but also pre-trial detainees awaiting trial as well as children in juvenile halls, jails, or prisons. It covers lawsuits involving federal, state, or local facilities.

In the almost quarter-century since its enactment, the PRLA has effectively slammed shut the courthouse doors to incarcerated people, as it places numerous procedural obstacles on their ability to challenge their conditions of confinement or to hold prison systems accountable for injuries they suffer while incarcerated. It flies in the face of our legal system’s ostensible principle of equal protection under the law, to single out one disfavored group of people and categorically deny them equal access to the courts. Such restrictions on the ability to sue in federal court do not apply to any other persons or groups of persons – human or corporate.

One of the original justifications for the PLRA was that it was needed because prisoners frequently file frivolous lawsuits. Is there any truth to that?

The sponsors of the PLRA offered up apocryphal accounts of the federal courts drowning in lawsuits filed by incarcerated people because they got chunky instead of creamy peanut butter in their canteen order. The reality is that most cases filed by incarcerated people both before and after the PLRA raise serious issues. Some people in prison file frivolous lawsuits. Some people not in prison file frivolous lawsuits. But the courts are equipped to handle these things and screen them out.

If there really were thousands of frivolous lawsuits being filed by incarcerated people, one would think that after the passage of the PLRA you would find a higher success rate in the remaining cases brought by prisoners. But a study by Margo Schlanger at the University of Michigan Law School found that there was not any newfound success rate – the only thing that occurred in the late ’90s and through today is that the number of cases filed by incarcerated people plummeted even as the rate of mass incarceration went up.

You said the PLRA has slammed the door shut on prisoner lawsuits. Can you describe one of the specific restrictions that have done that?

There’s an exhaustion of remedies requirement. Before an incarcerated person may file a lawsuit, she must first take her complaints through all levels of the prison’s or jail’s grievance system, complying with all technical requirements and deadlines. If she made any mistakes or missed the deadlines in the prison grievance process, then her case can be thrown out of court, regardless of the merits. This has a perverse incentive of encouraging prisons and jails to create Byzantine grievance processes with tight deadlines and multiple steps. The requirement is even more problematic for juveniles; people with cognitive, learning, or other disabilities; people who are not fluent in English; people in segregation or solitary confinement with limited or no access to writing materials; and people with mental illnesses. The PLRA’s applicability to children has made it extremely difficult to litigate in federal court regarding conditions in juvenile facilities, because courts have held that children’s parents or their public defenders cannot exhaust the youth’s claims for them.

What’s another one of the PLRA’s more restrictive features?

The physical injury requirement. Under normal tort law, a person who suffers intentional mental or emotional injury can sue for money damages for those injuries. For example, someone who is taunted with racist slurs in the workplace can sue his employer for the resulting emotional distress, even if he suffered no physical injury. The PLRA did away with this for cases brought by incarcerated people and states that they cannot sue for money damages for mental or emotional injury “without a prior showing of physical injury.” Therefore, no matter how sadistic or catastrophic the mental or emotional torture that an incarcerated person might endure — whether it be wrongful imprisonment, threats of rape and beatings, racist/misogynist/homophobic taunts,
humiliating and degrading treatment, prolonged solitary confinement, witnessing others get hurt or killed, violations of the right to practice their religion, or forced to live in squalid cells with no cleaning supplies – there is no way to be compensated with money for this experience, unless they can show they suffered a physical injury due to this behavior. Some courts have taken this even further and have held that what they deemed as a “minor” physical injury is not sufficient to satisfy this physical injury requirement. The physical injury requirement is nothing more than a green light for prison officials and staff to psychologically torture incarcerated people.

**Does the PLRA have restrictions that impact prisoners’ rights attorneys such as the Prison Law Office?**

If an incarcerated person files a lawsuit and actually wins, the PLRA limits the amount that their attorneys can be paid. This means that incarcerated people with even the most meritorious cases struggle to find an attorney who is willing and able to assist them. In damages cases (cases seeking money), the fees for the attorneys are capped at 150 percent of the monetary award to the plaintiff. It’s very hard to recover money for many of these violations, and so there are often cases where if a case actually makes it to trial and the incarcerated person wins, they only win a nominal cash award of $1.00. That means the attorney can only get $1.50 for their time, no matter how long they worked on the case.

The Prison Law Office, and other groups like the ACLU National Prison Project in D.C., or the Uptown People’s Law Center in Chicago, normally file cases seeking injunctive relief on behalf of all people in the prison, or all people who fall within a certain category. That means that we aren’t trying to win money for prisoners, but we want the corrections department to change their policies or practices – for example, improve medical care, install air conditioning, or provide more out-of-cell time to people in segregation. Normally in injunctive relief cases brought by civil rights groups against the government – for example, on behalf of foster children against a child welfare system, or Black children in segregated schools – federal law allows what is called “fee shifting.” If they win, the civil rights groups are paid their attorneys’ fees at the rate paid to attorneys in the local community. Perhaps in no small part due to the success of prisoners’ rights groups, the PLRA caps the fees that can be paid to attorneys who win injunctive relief cases to a low hourly rate – less than what attorneys in the community charge paying clients. This makes it that much harder for attorneys to be able to support their groups and take these kinds of cases – because if we lose the case, we get no fees.

**Could you give an example or two of especially egregious cases where prisoners were denied the right to go to court?**

A 2009 report by Human Rights Watch called “No Equal Justice” provides a detailed litany of examples, including people who had their cases thrown out for failure to exhaust properly or for “only” having mental injuries, after being raped, beaten, made to stand in cages naked for half a day, or forced to defecate in their own clothes and sleep in feces. Currently we are seeing the PLRA being cited repeatedly by judges in cases brought by incarcerated people regarding unhygienic conditions, and a failure to properly prevent COVID-19. It’s quite frustrating.

**Is there any significant movement to repeal or significantly overhaul the Act?**

Unfortunately, the chances of the PLRA being fully repealed – even with a Senate, House, and President who are Democrats – are slim to none, because even in this new era of mainstream politicians calling for an end to mass incarceration, this is likely a bridge too far to cross for moderate and conservative Democrats. One beam of light is a bi-partisan bill pending in Congress called the Justice for Juveniles Act, that would exempt children from the exhaustion requirement of the PLRA. I think that as advocates we will have to take a long view and approach this much like the advocates for ending the death penalty, by carving off populations subject to this onerous law – starting with juveniles, and then hopefully moving to people with intellectual and mental health disabilities – before we try to go for the whole enchilada and dismantle the entire PLRA. This will be a long slog, but as seen by the dedication of my organization and numerous other groups across the country, we are determined to surmount the hurdles that the PLRA throws up against incarcerated people.

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Prison Legal News • September 2020
Pay Up or Lockup: Housing Shortage Kept Cash-Poor Parolees Behind Bars
by Ike Swetlitz, Searchlight New Mexico, originally published July 22, 2020

David, 28, was counting the days until January 6, 2012, when his prison sentence would end and he would be released on parole. He had earned his GED diploma inside and lined up some job options in construction and landscaping around Albuquerque. But the date came and went, and still the state kept him locked up.

The problem was housing. There was only one halfway house in the state that would take an inmate like David — a convicted sex offender — and it had a long waiting list. If he wanted to get a bed there anytime soon, David would have to buy his freedom — in cash.

He was lucky — he and his sister were able to come up with the money. A $600 rent payment jumped him to the front of the line.

“I felt that I was being treated unfair,” he said. “I’d already fulfilled my obligation of my sentence. Why were they giving me such a hard time?”

David isn’t the only inmate in New Mexico forced to choose between staying behind bars or paying to parole more quickly. Two other men told Searchlight New Mexico that between 2017 and 2018, they paid $1,200 to get into La Pasada, a halfway house in Albuquerque. Several inmates at the Otero County Prison Facility, which houses many sex offenders, said they, too, were aware of the pay-to-play system.

“It’s outrageous,” said Matthew Coyte, an Albuquerque civil rights lawyer. “Making money the determination of whether you get released goes contrary to all the principles behind a just criminal justice system.”

Officials with the New Mexico Corrections Department (NMCD) and La Pasada acknowledged that the arrangement existed.

“Some people can afford to get out — pay to get out,” said Daryl Agnes, La Pasada’s director. “Some people cannot. Which one is fair?” When asked to answer his own question, Agnes said: “There’s no good answer.”

Limited options
When it comes to releasing sex offenders on parole, New Mexico has few good answers.

The sex offender label is broad and lumps together people who have been convicted of wildly different actions. Under New Mexico law, the term can describe a 19-year-old who had consensual sex with a 15-year-old as well as a person who violently raped a young child. David was sentenced to four years after being convicted of second-degree criminal sexual penetration of a 15-year-old when he was 23 (at the time, he said, he was under the influence of alcohol and cocaine). Searchlight is referring to him only by his first name because of societal stigma.

All sex offenders sent to New Mexico state prisons are required to be on parole, and they can’t get out of prison until the NMCD and the parole board approve their planned residence. While New Mexico’s laws, unlike those of many other states, do not actually restrict where sex offenders can live, state policy does.

Sex offenders on probation or parole are required to sign a contract saying they will only reside in places the state has inspected “for appropriateness” — a vague term that gives the government almost complete power over their residence. NMCD regulations further forbid them from living within 1,000 feet of “an area where children may frequent” — meaning a school, day care, or community center, among other places.

These policies made it difficult for David to find a place to live. He said he wasn’t allowed to live in his trailer because it was near a park, nor was he allowed to live in an apartment on his own. He wasn’t allowed to live with someone who physically resembled the victim of his crime, and he wasn’t permitted to live with his brother, who had a criminal history of his own.

In effect, La Pasada was his only option.

La Pasada remains the only halfway house for sex offenders coming out of state prisons. Normally, the state pays the $1,500 rent for the first month or two. But due to limited funds and beds, the waitlist is lengthy; in early July, 89 people were on the list, according to the NMCD. Many of those people are still serving prison sentences.

Inmates eligible for parole were given the option of paying rent themselves. If they took that path, they moved to the front of the line.

“As you get closer to your due date, then basically they’ll ask you, “Hey, are you paying for this?” said a former inmate, who paid $1,200 in 2017 to get a bed at La Pasada.

This arrangement was part of a larger problem that affects New Mexico inmates convicted of all sorts of crimes. As of July 7, 90 inmates across the state had completed their prison sentences but haven’t been released. They are serving “in-house parole” — chipping away at their parole terms while remaining incarcerated; 20 of them were convicted of sex crimes, said Eric Harrison, an NMCD spokesman.

This is particularly concerning during the novel coronavirus pandemic, which has devastated the Otero County prison, a privately-run facility that houses many of the state’s sex offenders. More than 700 inmates have contracted COVID-19, and five have died.

A nationwide practice
“This is not just a New Mexico problem; this is happening throughout the country,” said Allison Frankel, an attorney with Human Rights Watch and the American Civil Liberties Union. “People with financial means are able to get out of custody, but those who are poor remain locked in a cage.”

In 2015, a report in Nevada found that some inmates — not just sex offenders — were kept behind bars simply because they couldn’t afford the halfway house. An Illinois federal district judge ruled in March 2019 that Illinois’ system was illegal and discriminatory because it kept indigent sex offenders imprisoned after their sentences had been served.

New Mexico’s prison system has come under scrutiny in the past for keeping people incarcerated if they couldn’t afford to rent a room in a halfway house. In 2012, the Albuquerque Journal reported that inmates were required to come up with one month’s rent a room in a halfway house. In 2012, the Albuquerque Journal reported that inmates were required to come up with one month’s rent to be released.
rent to be set free; NMCD removed the requirement after a Journal reporter started asking questions.

But a similar sort of arrangement remained in place for people convicted of sex crimes.

Ruben Chavez, La Pasada’s executive director, explained the rationale: The state was holding people who were eligible for release, so Chavez allowed them to pay their own way and get out of prison in a timely manner. He said he got the same amount of money regardless who paid – the state or parolee.

Chavez said he scrapped the policy shortly after being contacted by Searchlight, adding that the change had nothing to do with this article. “It’s something that we were looking into before,” he said. “It’s such a hassle, in the past, that we decided not to do it.”

54 bites on one foot
La Pasada, founded in the 1970s, has a long and troubled history. In 2014, its former executive director, Robin Cash, was sentenced to federal prison for embezzling the facility’s funds and failing to file tax returns. A 2015 state inspection found a broken air circulation system, dilapidated furniture, and an infestation of bed bugs — pests that residents had complained about for years.

“I had 54 bites on one foot,” said Alex, a 2012 resident, who asked to be identified by his first name only. “Sixty-three bites on the other.”

Subsequent inspections showed improvements, and Chavez poured money into upgrades. In 2019, the facility built a $700,000 kitchen, which serves three meals a day and provide residents the opportunity to learn about food service. On a Friday in March when Searchlight visited, dinner was carne adovada with pinto beans, roasted potatoes, roasted onions, and tortillas on the side. Dessert was chocolate pudding.

Accommodations were spartan; most residents slept in bunkbeds, 10 people to a dorm. Each set of two dorms shared a bathroom. In total, the space can hold 120 people, Chavez said, but he caps it at 110.

Second time around
In 2018, David returned to prison. Once again, money freed him.

It was a convoluted series of events that landed him back in prison. The state claims he violated the terms of his parole by lying about where he lived; he says he wasn’t even supposed to be on parole at the time. He’s suing the parole board over the dispute.

This time, David had to pay $1,200 to get out on time. He was told that if he didn’t come up with the money, he might languish in prison for up to two years.

And just like the first time, he had the benefit of financial resources.

Still, he knew it wasn’t right for his fellow inmates to remain behind bars simply because they couldn’t afford to pay for the get-out-of-jail card.

“If I would have had the money, I would have paid for a lot of people to get out of prison,” David said. “It’s not fair that [the state] can sit here and basically pick and choose when they want to release people.”

About the author: Ike Swetlitz has traveled the world to hold policymakers, businesses, and scientists accountable. At Searchlight, he is focusing on criminal justice. He most recently reported for STAT, the national health and medical science publication, in both Boston and Washington, D.C., where he focused on drug pricing, artificial intelligence, and genetic engineering. He graduated from Yale with a degree in physics and is based in Albuquerque.

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Colorado Explores Ending Private Prisons
by Jayson Hawkins

A s public opinion continues to turn against profiting on punishment, a law signed March 6, 2020, by Governor Jared Polis will study the economic effects of eliminating private prisons in Colorado over the next five years and recommend ways to diversify economics that now rely on private prisons.

“I believe that profit should never be a motive in the prison industry,” said Rep. Leslie Herod, the Denver Democrat who co-sponsored the bill.

Support for the legislation was split along party lines, but the bill was approved in the House and Senate. Resistance from Republicans has been based on the economic impact that closing the state’s three private prisons will have on the small towns where they are located.

“I don’t know why there is a bill here to target rural Colorado in such a detrimental way as this bill does,” said Rep. Rod Pelton, whose eastern district houses a correctional facility owned by CoreCivic that had been scheduled to reopen.

Other counties in the southeastern part of the state reported that their local private prisons accounted for 25 percent to 50 percent of their tax base. Herod said the study funded by her bill would take those losses into account.

“There is definitely a movement across the country to close private prisons,” she remarked, “and it would be irresponsible for us not to have plan in place for those communities once they leave.”

Colorado’s for-profit facilities — two operated by CoreCivic and the other by GEO Group, Inc. — account for 20% of the state’s prison population and are located in areas with few other opportunities for employment. California managed to ban the use of private prisons and never has cut ties with corporations that ran halfway houses in the city, but Colorado has no immediate plans for a divorce. As state lawmakers are discovering, the corrections system’s dependence on private prisons is a virulent infection that will require a lengthy and expensive process of recovery.

Colorado’s initial attraction to the for-profit facilities was as a cost-saving measure — $68 a day per prisoner versus $108 at a state prison. The bargain came with hidden costs, though. For prisoners, the companies’ profit motive meant that funds that should have gone to medical rehabilitation or other essential services were instead diverted to shareholders. Polis noted that national studies had found significantly higher rates of recidivism among people who had been incarcerated in private facilities, which is a likely cause of Colorado’s recidivism rate of 50% exceeding the national average by 11 points.

Herod’s legislation allows for a gradual shift away from the private facilities by reopening the state’s Centennial South prison and requiring that for every individual incarcerated there another must be removed from a private prison. The 948 beds at Centennial South were formerly used for solitary confinement but have since been converted into use as a general population intake center.

At full capacity, Centennial South would account for only a fourth of the population currently housed in the state’s private prisons, but many in Colorado see the move as a step in the right direction. Herod admitted that eliminating for-profit institutions would likely require buying back some of the existing corporate facilities, but at least for the moment the political willpower does exist to enact that sort of criminal justice reform.

Sources: coloradosun.com, KRCC.org, coloradoindependent.com, denverpost.com

Ohio Jails Under Investigation
by Jayson Hawkins

A pattern of deaths, escapes and alleged civil rights abuses statewide have spurred investigations of at least two major county jails and increased oversight of 313 detention facilities in Ohio, local media revealed in January 2020.

Governor Mike DeWine admitted back in June 2019 that the state Department of Rehabilitation and Correction (DRC) standards were outdated and did not reflect societal changes. “Look, running a jail today is very different than it was 50 years ago or 25 years ago. With the massive amount of people that have a mental health problem or who have substance abuse problem in our county jails, they are under tremendous pressure,” he said.

The 2020 reports said the DRC had tripled the staff of jail inspectors from three to nine and would begin top-to-bottom annual inspections of its facilities. Ohio’s administrative code also was altered to include surprise inspections and mandated that critical incidents such as use-of-force and suicides be reported. The period from May to December of 2019 recorded 25 escapes, 21 deaths, 16 suicides (as well as two more attempts considered “serious”), three charges of sexual misconduct and three fires.

The changes in DRC policy followed 15 federal lawsuits in recent years regarding overcrowding and abuses at the Montgomery County Jail in Dayton. The resulting payouts and legal fees have cost the county $13 million so far. After a two-year investigation, the Justice Advisory Committee compiled a list of 90 changes or improvements that need to be made at the facility.

The Cuyahoga County Jail in Cleveland fell under an investigation from the U.S. Marshals Service after seven prisoners died there in 2018 over a stretch of just four months. The resulting report ruled that conditions at the facility were unsafe and inhumane, and a follow-up by the DRC noted a failure to meet almost two-thirds of state requirements. Further investigations by the FBI regarding prisoner mistreatment and by the Ohio Bureau of Criminal Investigation into the possible corruption of county officials were ongoing.

The DRC issued new standards intended to alleviate problems at the state’s jails. These included minimum space and restroom facility requirements; access to exercise, television and reading materials; and the availability of mental, health and dental services.

Sources: daytondailynews.com, usnews.com
Introducing the latest in the Citebook Series from Prison Legal News Publishing

The Habeas Citebook: Prosecutorial Misconduct

By Alissa Hull
Edited by Richard Resch

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

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

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

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September 2020
San Francisco Eliminates Fees on Jail Phone Calls

by Mark Wilson

The state of Maine and medical provider CorrectCare Solutions (now Wellpath) paid a 14-year-old $250,000 after two guards at a juvenile detention center “bashed” his face into a metal bed frame, knocking out two teeth when he was age 11. Parts of the December 9, 2019 settlement, including CorrectCare’s share, were confidential.

According to court records and reporting by The Bangor Daily News, Somali refugee Sadiya Ali arrived in the United States from Kenya, when her son, identified only as A.I., was 6 months old. Her primary language is Somali.

A.I. suffers from severe Attention Deficit Hyperactivity Disorder (ADHD), a brain disorder characterized by hyperactivity and impulsivity. He also suffers from several other “serious mental disorders.”

Maine’s only state-run juvenile detention center, Long Creek Youth Development Center (Long Creek), has a troubled history. In October 2016, Charles Knowles, a 16-year-old mentally ill transgender boy, killed himself while on suicide watch. Staff promised his mother they would protect him but provided no mental health treatment.

In January 2017, the Maine Department of Corrections found that more than 80 percent of Long Creek detainees had been diagnosed with three or more mental health diagnoses and over 75 percent had received treatment. An independent December 2017 report of the Children’s Center for Law and Policy (CCLP Report) found that Long Creek was “not the right place for many of the youth in its care.”

Nevertheless, A.I. was confined at Long Creek on June 24, 2017, after being charged with two offenses. The 11-year-old was arrested when he became upset after being told he could not swim in the deep end of the local pool.

During a court hearing two days later, A.I.’s mother and several community members requested his release to his mother’s custody. Yet the court agreed with the prosecutor that A.I. presented a “risk of harm” and ordered his continued Long Creek detention.

The juvenile court later found that A.I. was not competent to stand trial and would not become competent in the foreseeable future. The criminal charges were then dismissed. A judge approved A.I.’s release on July 20, 2017 but he was not released until August 2, 2017, after being seriously injured on July 26, 2017.

Long Creek officials knew of A.I.’s serious mental health disabilities but vio-
lated policy by failing to prescribe ADHD medication, the report found. A.I. exhibited clear and escalating ADHD symptoms throughout the month before being injured. Yet Long Creek staff never provided medication or other treatment. Rather, he was repeatedly punished with room confinement and other deprivations that aggravated his symptoms.

The CCLP Report found “an overuse of room confinement” which could “worsen” the problems of “youth with mental health problems.” This also deprived youth of “legally required services, such as educational services and recreation,” the report found.

After numerous daily behavioral issues resulting from A.I.’s worsening ADHD symptoms, eight days before A.I. was injured, a nurse practitioner wrote in his medical records that he “certainly would benefit from ADHD medication. He remains impulsive, short fused, and inattentive.” Yet, she did not prescribe ADHD medication or any other treatment.

Six days before the incident, A.I. was injured during a July 20, 2017 altercation. A nurse observed “ineffective impulse control.” He was again punished but not treated.

Three days before the incident, A.I. was again injured during an “altercation in unit.” A nurse again observed “ineffective impulse control.” Instead of treating him, he was punished.

One day before the incident, a nurse refused to examine A.I.’s ear complaint. She claimed he was “unwilling to sit” for the exam. He was again punished rather than treated.

At breakfast on July 26, 2017, A.I. was told he was not allowed to attend a picnic that day. He tossed his tray on the floor and was locked in his cell alone, without a toilet as punishment.

When A.I. needed to use the bathroom, he repeatedly rang his room buzzer to no avail, so he started banging on the door. Three staff responded, telling him that he was not allowed to use the bathroom.

A.I. said he would trigger the sprinkler system if they did not let him use the bathroom.

Staff threatened to remove everything from his room if he did not leave the sprinkler alone.

Although A.I. did not activate the sprinklers or pose a physical threat to himself or others, guards Michael Mullin and Daniel Ferrante entered his room. They removed A.I.’s pillow and mattress, leaving the bare metal bed frame exposed.

They then forcibly removed A.I.’s shoes after he threatened to use them to trigger the sprinkler. As the guards were leaving his room, A.I. spit near them. The CCLP report found that there was “no question” that A.I.’s “disruptive behavior was closely related to his mental health problems.”

Nevertheless, Mullin and Ferrante re-entered A.I.’s room and forcefully restrained the 120-pound detainee from behind. During the struggle, the guards bashed A.I.’s face into the metal bed frame, knocking out one front tooth and breaking another off at the gum line, causing him to bleed profusely and cry in severe pain.

Guards continued to restrain A.I. and attempted to put a spit mask on his bloody face. The CCLP report found that the guards clearly used excessive force against A.I.

Only one of A.I.’s teeth could be found. That tooth could have been saved if A.I. had received emergency dental care. He did not see a dentist for six days, however, so the tooth could not be saved.

A.I.’s mother was not informed of his injuries. When she saw them during a visit two days later, staff lied to her, claiming that he tripped and fell.

On March 14, 2018, the ACLU of Maine brought a federal excessive force and deliberate indifference suit against Long Creek staff and CorrectCare Solutions, LLC, on behalf of A.I. and his mother. The parties agreed to settle the suit on October 28, 2019. Terms were reached December 9.

A.I.’s detention has sparked public debate about Maine’s juvenile justice system. Some have suggested closing Long Creek and replacing it with residential treatment facilities. See: Ali v. Long Creek Youth Dev. Ctr., 2019 U.S. Dist. LEXIS 10543. [ ]

Additional source: bangordailynews.com

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Wisconsin: Court Dismisses Prisoners’ Suit Over Asbestos, Mold on Procedural Grounds

by Chad Marks

A
n October 8, 2019, order from the U.S. District Court for the Western District of Wisconsin dismissed for procedural violations a lawsuit brought by prisoners at the state’s Prairie Du Chien Correctional Institution.

Filed on July 18, 2019, by Nicasio Cuevas Quiles III and nine fellow prisoners at the medium-security facility, the suit sought $15 million in damages for alleged exposure to asbestos, radium, lead and black mold, as well as contaminated water and unsanitary living conditions, all in violation of prisoners’ Eighth Amendment rights.

The order by Judge William M. Conley dismissed the case without prejudice, giving plaintiffs specific instructions on how they could amend or refile the case to meet procedural deficiencies that killed it.

For example, Conley found that the suit lists claims that broadly fall into three categories alleging (a) discrimination, (b) unlawful confinement conditions or (c) inadequate health care. To avoid running afoul of federal procedural rules that prevent mixing different claims in one suit, he recommended that plaintiffs file three separate lawsuits.

Conley also found that the suit failed to allege sufficient facts to support all of its legal claims. And it failed to allege a set of facts common to all plaintiffs, another procedural requirement necessary for each of the ten prisoners to be included in the same suit.

So, for example, while prisoners allege daily exposure to asbestos — putting them at risk of cancer — they failed to mention how they were exposed, and they also failed to describe methods of exposure common to all 10.

The prisoners’ suit said that asbestos is not the only problem at the lockup west of Madison. They alleged that they were required to drink water piped through lead laterals known to carry radium, gross alpha, and rust, materials that can cause cancer and blindness.

Another issue in the lawsuit related to “Tight Building Syndrome” or “Sick Building Syndrome,” terms coined to describe an occupational health and safety problem for prisoners who live or work indoors with mold that is “caused in part by ... contaminants that may breed in stagnant water accumulated in ducts, humidifiers, and drain pans, or where water has collected on ceiling tiles, carpeting, or insulation.”

Citing the federal Environmental Protection Agency (EPA), the suit noted that such mold has been a concern for the EPA and the subject of class action lawsuits across the nation.

The prisoners also cited Antonelli v. Sheahan, 81 F.3d 1422, (7th Cir 1996) to claim that defendants had committed an act so dangerous that its infliction and their reckless actions were deliberate in the criminal sense, and the prisoners requested a temporary injunction of the application of the policy to them.

However, as Conley noted, it’s more common that a court prevents a change in the status quo and almost unheard of to enjoin the status quo itself. He denied the request for injunction, but he invited plaintiffs to refile their request in accordance with his advice.

In addition to Warden Tim Haines and Deputy Warden Kevin Semanko, the suit names as defendants Security Director Russell Bausch, Program Director Lisa Pettera, a named unit manager, health unit manager and nurse, as well as four “John Doe” staff defendants. See: Quiles v. Haines, 2019 U.S. Dist. LEXIS 174078.

Additional source: greyriversnews.com

Consultants Advising Rich on Prison Life

by Kevin Bliss

E ven before he was found guilty in New York on two counts of rape on February 24, 2020, Hollywood movie producer Harvey Weinstein hired a prison consultant — Craig Rothfeld, CEO of Inside Outside Ltd. — to teach him how to survive incarceration.

Weinstein, 67, joins a number of others with the financial means to hire prison experts prior to serving time, including Bernie Madoff, Martha Stewart, Michael Vick and many of the “Varsties Blues” parents charged in a 2019 college admissions bribery scandal. But unlike them, Weinstein is headed for state prison, which is potentially known to house more violent individuals in less accommodating living conditions than those in federal lockups.

Rothfeld, 45, served two years in prison in 2015 for an $11 million securities fraud. He says he started his firm to help others navigate what he calls “the journey” from living free to incarceration. But his is not the only prison consulting firm.

Others include White Collar Advice, founded by Justin Paperny after his 2009 release from federal prison for securities fraud; Wall Street Prison Consultants, founded by Larry Levine in 2006 after he finished a federal prison sentence for racketeering, securities fraud, obstruction of justice and narcotics trafficking; and the National Center on Institutions and Alternatives, co-founded in 1977 by Herbert J. Hoetler and the late Dr. Jerome G. Miller. With a doctorate in social work, Miller was head of the Massachusetts Department of Youth Services in the early 1970s when he closed the state’s reform schools in favor of community-based alternatives to juvenile rehabilitation. He and Hoetler earned national reputations for their expertise in sentencing and alternatives to incarceration.

Along with other organizations such as Justice Advocacy Group in Virginia and Jail Time Consulting of Florida, these firms help counsel their clients and their clients’ friends and families on the intricacies of prison life, including visitation, mail and phone calls. Levine’s firm offers those headed to federal prison a program called Fedtime 101 that covers “everything from inmate etiquette to suing a Bureau of Prisons employee,” NBC News reports.

For the client, you’re a therapist, a rabbi, a priest, a marriage counselor and a big brother,” Rothfeld said. “All the questions people have, if you can answer them correctly it sheds a little light on the ultimate mystery: the prison system.”

Though he awaited sentencing at New York’s Rikers Island prison complex,
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The consultants added that Weinstein should find a comfortable routine to fall into while also preparing for disruptions – because shakedowns, lockdowns and change are all part of prison life.

“When you go away, you’re entering the Bermuda Triangle,” Rothfeld said. “There’s little information available, and at the lowest point in someone’s life they usually have no idea what’s in front of them.”

Sources: vanityfair.com, nytimes.com, abcnews.go.com, thewrap.com, ncianet.org
Does Increased Guard Violence Mean Texas Prisoners Are at Greater Risk?

by Matt Clarke

Violence perpetrated against prisoners by staff of the Texas Department of Criminal Justice (TDCJ) has risen dramatically over the past decade, according to the prison system’s own statistics. From 6,624 use-of-force incidents by staff against prisoners in 2009 — just over 40 per 1,000 prisoners — the number mushroomed. By 2019, there were 10,990 such uses of force, just under 80 per 1,000 prisoners.

There has been no corresponding spike in serious prisoner-on-staff assaults, which hovered between 72 and 108 per year during the decade. In only two years did the number top 100.

A TDCJ spokesman tried to tie the increased staff use of force to an increase in the number of violent and mentally ill prisoners. But the system’s statistics show an increase of only 4 percent in the number of violent prisoners incarcerated in TDCJ between 2009 and 2019.

What has increased is the number of guards being criminally prosecuted for assaulting — or even murdering — prisoners. Such criminal prosecutions have become more common, with 19 TDCJ guards sentenced for using excessive force against prisoners since 2015. None of the cases involved a death and few in jail time, with most requiring a combination of probation, fines, or community service. But they represent a sea change from the days when guards could prevail in court by invoking the defense that they were protecting the facility from inmates.

Three TDCJ guards have recently been charged in the killing of three prisoners, one each in 2017, 2018, and 2019. Only two were indicted — on charges of assault — and one has already been tried and acquitted.

Greg Ryan, 58, was three months from completing a sentence for drunkenly spitting on a Dallas police officer when, in September 2018, he allegedly spit on guard D’Andre Glasper. A supervisor ordered Glasper to stay away from Ryan after the spitting incident, but a few hours later Glasper slammed Ryan’s head into the floor in the Estelle Unit showers while Ryan’s hands were cuffed behind his back and could not break his fall.

Glasper was arrested for aggravated assault by a public servant about a week later. Ryan died the next week. A Walker County grand jury refused to indict Glasper on assault charges in February 2020 and he was released.

David Witt, 41, sat in a day room at the Darrington Unit on August 16, 2017, refusing orders to return to his cell but still talking to two guards when a third guard, Sgt. Lou Joffrion, 24, entered the day room. Joffrion had just finished a six-month probationary period stemming from a prior use-of-force incident involving Witt.

Witt stood, took off his shirt, and walked across the room, taking prisoner phones off their hooks as he went. He eventually kicked off his shoes and stripped naked, but he made no threatening moves. After talking with the other guards for about a minute, he put his clothes back on and began to leave the day room with them. As he did so, he casually and slowly pulled an ice cooler to the floor by its handle.

Joffrion charged past the other guards and slammed Witt against the wall. Witt initially resisted being handcuffed, but submitted after another guard intervened. He started walking off with a guard then resisted, pulling the other way.

That is when Joffrion bent down behind Witt, wrapped his arms around Witt’s thighs, lifted him straight up, and slammed him into the concrete floor — all of which was video-recorded. Witt was immediately rendered unconscious and died from the blunt force injuries to his head later that day.

Joffrion resigned from TDCJ and was tried for aggravated assault by a public servant, but a jury found him not guilty in October 2019. Jack Choate, head of the Texas Special Prosecution Unit for prison cases, said his team proved its case against Joffrion “beyond all doubt, not just a reasonable doubt.” But cases against prison guards are hard to win given the average juror’s prejudice against prisoners and the need for the jury to differentiate force authorized by law and excessive force.

Frank Digges, 63, was killed about a month after Joffrion’s trial, after a five-man team extracted him from his cell at the Wynne Unit. A TDCJ report said the cause of death was being struck “in the back of the head several times with a closed fist, which caused trauma to the brain.”

“When you’re going in there with a five-man extraction team to pull somebody out … I mean, I think five guys can take him,” said Deputy Inspector General Joe Buttitta, whose office investigates any fatal use of force. “When you look at that … it’s like, ‘OK, so why is there so much blunt force trauma to the head?’

Two ranking guards involved in the death were demoted and guard Yancy Lett, 28, was fired. Lett was indicted on aggravated assault charges by a Walker County grand jury on February 28, 2020.

Doug Smith, a policy analyst with the Texas Criminal Justice Coalition, believes the increased violence by guards is due to understaffing. In December 2019, TDCJ reported it was short about 4,500 guards, representing 18 percent of budgeted staffing levels.

That, in turn, is the result of low guard pay and meager benefits, according to Lance Lowry, vice president of the Correctional Officers Association of Texas. He said the twin problems represent “just an overall philosophy that the officers are expendable,” causing experienced officers to quit their jobs in record numbers and leaving inexperienced, poorly trained guards facing the most difficult tasks.

“You need more experienced officers that have better inmate management skills to handle a lot of these situations,” said Low Deputy Inspector General Joe Buttitta. “Veteran officers know how to de-escalate the situation, where a newer officer may not have the skills to do that.”

In 2015, state lawmakers made a stab at improving guard training for dealing with prisoners suffering mental health disorders. But the bill could not survive a veto by Gov. Greg Abbott, who called its training requirements “rigid and arbitrary.”

The rise in guard-on-prisoner violence in Texas mirrors an increase in deaths while in law enforcement custody in the state. Custodial deaths, including those in jails, climbed from 545 in 2005 to 769 in 2018.

Prisoner advocates say Texas needs to increase pay to improve retention of expe-
A transgender woman who was housed with male prisoners at the Metropolitan Detention Center in Brooklyn, N.Y. (MDC), sued the federal Bureau of Prisons (BOP) on the grounds that staff ignored her requests for safety, resulting in her allegedly being repeatedly beaten and raped in a male housing unit.

The lawsuit was filed in the U.S. District Court for the Eastern District of New York on March 18, 2020. It claimed that staff at the MDC refused to recognize Tavoy Malcolm’s female identity and forced her to house with male prisoners, instead of at the women’s unit or in protective custody. Malcolm, 29, who uses the name Tiana Miller, was placed in the MDC in May 2017 after her arrest for fraud and theft.

The lawsuit says Malcolm was undergoing the physical transformation from male to female at time of her arrest, including hormone therapy and breast augmentation surgery. She had “developed a feminine shape and other female characteristics,” court papers say. At intake, Malcolm told staff that she identified as female and wanted to be placed in female housing or in segregation, not with male prisoners.

She initially refused when she was ordered to go into male housing. It wasn’t until a female lieutenant convinced her she would be safe that she agreed to go in.

In short order, Malcolm’s cellmate beat and raped her, and she was placed in segregation, her suit says. Upon release from segregation, she was placed back in the same male housing unit where she was again beaten and sodomized. She initially refused when she was ordered to go into male housing. It wasn’t until a female lieutenant convinced her she would be safe that she agreed to go in.

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Conflict de-escalation and how to handle individuals with mentally illness,

Sources: texastribune.org, houstonchronicle. com, thecrimeenergy.org

Transgender Woman Who Says She Was Raped, Beaten, Sues Brooklyn Metropolitan Detention Center

A Department of Justice (DOJ) Inspector General report from September 24, 2019, found that an assistant director of the federal Bureau of Prisons (BOP) took part in a sexual and financial relationship with a former president of the prison workers’ union, who at the time was the assistant director. The relationship included the transmission of sexually explicit photographs from the BOP official’s agency phone to the union official.

The officials were not named in the brief public report, but — according to USA Today coverage of the story — officials familiar with the matter identified the BOP official as Judith Garrett and the ex-prison union chief as Eric Young, who served in that capacity through August 2019.

The BOP said “the assistant director had been removed from a management position in July 2018.”

“The BOP will take appropriate actions in response to the (inspector general’s) findings,” the agency’s statement said, but declined prosecution of Garrett.

Young’s successor as union president, Shane Fausey, said the findings were “a surprise,” and “We are convening an emergency meeting of the board right now. We’re going to have to look back at everything to see what related to him (Young) and whether there were conflicts of interest. I want to be clear, he (Young) is the former president.”

The DOJ IG found that Garrett’s alleged relationship with Young was, in addition to being inappropriate, “a conflict of interest in violation of federal regulations and BOP policy.” Both Garrett and Young declined to comment.

The IG also found that Garrett allegedly had an improper relationship with a BOP contractor and lied about it when confronted by federal investigators. Dominic Henry, a former prisoner who served as a bureau consultant for newly released prisoners, alleged that Garrett sought an improper relationship with him.

Sources: usatoday.com, DOJ Inspector General Report

BOP Official Reportedly Had Sexual Relationship With Former Police Union Head

by Bill Barton

The first 100 days of the Biden administration are considered a critical period for setting the tone and direction for an administration. This is particularly true for the Department of Justice (DOJ), which is responsible for enforcing federal laws and ensuring fair and equal treatment of all individuals before the law. The DOJ’s role in maintaining public safety and integrity is crucial in shaping the nation’s future. For the Biden administration, the first 100 days have been marked by a series of initiatives aimed at improving the justice system, addressing systemic racism, and restoring trust in the institution.

One of the key areas of focus during the first 100 days has been the recommitment to the principles of justice and fairness. The DOJ has made efforts to modernize its processes and increase transparency, with a particular emphasis on addressing issues of racial injustice and police reform. The administration has also prioritized the implementation of new policies and legislation aimed at reducing mass incarceration and promoting rehabilitation.

Another significant focus has been on the administration’s approach to immigration and border control. The Biden administration has sought to reverse some of the hard-line policies of the previous administration, emphasizing the importance of humane treatment and due process for those seeking asylum or other legal statuses. This has included a focus on reforming the asylum system and addressing the root causes of migration.

In terms of international relations, the DOJ has continued to engage with other countries to promote justice and human rights standards. The administration has also worked to strengthen diplomatic ties and cooperations, aiming to enhance global security and stability.

Looking ahead, the Biden administration will need to balance the need for swift action with the importance of careful deliberation. The DOJ’s role in this process is crucial, as it is responsible for implementing and enforcing laws that shape the nation’s justice system. As the first 100 days come to a close, it will be important to assess the progress made and determine the next steps for achieving justice, equity, and security for all. It is clear that the DOJ’s commitment to these principles is an essential component of the Biden administration’s agenda, and one that will continue to be a focus as the nation moves forward.
Kentucky State law allows county jails to charge prisoners a daily fee during their stay while fighting their case. But what happens when the person is found not guilty of the charges and gets released? According to a February 14, 2020 ruling by the Kentucky Court of Appeals, even if the state throws an innocent person in jail and later drops the charges or they are found not guilty, that person must still pay the cost of their stay in jail.

That’s what happened to David Jones, who was held for 14 months in the Clark County Detention Center in 2013 before the state conceded that Jones was innocent of the charges. He was released, but not without a departing gift from the jail: a bill for over $4,000 to cover the cost of his incarceration.

After an initial payment, Jones filed a lawsuit in the federal and state courts, claiming that the law was unconstitutional. But the courts disagreed and dismissed his lawsuits. First, the federal court ruled that because Jones was billed for his stay in jail after his release and no money was taken from him out of his control, he had no constitutional claim. The state court then agreed with the federal court. The court also rejected the Supreme Court’s decision in Nelson v. Colorado, 137 S. Ct. 1249 (2017), which held that it’s unconstitutional for the government to keep fines paid by those are found not guilty. The court said that fees for the cost of incarceration are different.

The Kentucky Court of Appeals was divided, however, on the ruling in Jones’ case, with a sharp dissent from Judge Sara Combs, who urged the Supreme Court to take the case. She called it a “glaringly unjust state of affairs.”

This is not how Kentucky’s law is supposed to work, said former Kentucky Senate President David Williams, who wrote the law. He said he doesn’t understand what authority the state has in taking money from prisoners found not guilty. “There is a constitutional issue for charging jail fees to someone who is innocent.” Williams is now a circuit court judge in southern Kentucky. The law, though, has been a windfall for the state’s jails. Over the last two decades since the law was enacted, Kentucky jails have made millions from its prisoners, according to WDRB News. And when someone doesn’t pay, more than half the jails use collection agencies to go after the money.

“I’ve never understood why nobody in charge of a jail, nobody on a fiscal court, has ever stopped and said, ‘Wait a minute, aren’t these people entitled to a presumption of innocence? Can we really do this?’” Greg Belzley, Jones’ lawyer, said. He vowed to keep fighting. “This is fundamental,” he said. “And as long as I’ve got breath, I’m fighting this.” Expect the case to make its way before the Kentucky Supreme Court. See: Jones v. Clark County, 2020 Ky. App. Unpub. LEXIS 98.

Additional source: wdrb.com

Doctor at Florida Detention Center Spread COVID-19 to Prisoners

by David M. Reutter

An unnamed Armor Correctional Health Services doctor was blamed for spreading COVID-19 at the Pre-Trial Detention Center in Jacksonville, Florida. Jacksonville Sheriff Mike Williams said the doctor “had previously shown symptoms of the virus but failed to notify the jail personnel,” according to The Florida Times-Union.

The doctor went to work on June 19, 2020. Within days, the number of detainees testing positive for coronavirus jumped from two to 20 to 178. Another 19 staffers also tested positive.

“We had done a great job up until, you know, we had one employee or contract employee not follow, you know, basic protocol and started this whole chain,” Williams said. “They were, at some point, symptomatic and didn’t report that. It was one of the health care workers in the jail. They, obviously, have since been removed and are no longer an employee of the health care provider.”

The Sheriff’s Office issued a statement that said it was a doctor who exposed detainees and staff to COVID-19. “When you contact trace it back, that seems to be the only point where you know, there was a lapse in following the protocol.”

Prior to that exposure, the Sheriff’s Office had only tested 100 detainees. Health officials tested 2,887 detainees in all three Jacksonville jails since the exposure. Once the first two detainees tested positive, every detainee entering the jail was tested.

The outbreak of COVID-19 caused a push to release detainees and prisoners who were near the end of their sentence or were immuno-compromised. As of June 29, 2020, the Sheriff’s Office had released 128 detainees who had tested positive. Detainees were being segregated as to whether they were negative, positive but asymptomatic, or positive with symptoms. Masks were issued to all detainees. One staffer who tested positive was sent to a hospital, but as of the June report no detainees had been sent to a hospital for COVID-19 related illness.

State Attorney Melissa Nelson said a March 2020 memo issued to reduce the jail population by her office would remain in effect. On June 26, 2020, there were 2,668 people in Duval County Jails.

“Given how the virus has now impacted the Duval County jail and our community, we are working with the Jacksonville Sheriff’s Office, Public Defender’s Office, Regional Conflict Counsel, and private defense bar to expand our previous collective efforts,” said a statement issued by Nelson’s office. “Prosecutors are re-reviewing all misdemeanor and certain nonviolent felony cases to determine if expedited resolution is feasible, or alternatively, whether a release on recognizance is appropriate. These decisions will be made on a case-by-case basis with public health and safety paramount to these decisions.”

Sources: news4jax.com, Private Corrections Working Group
ON March 10, 2020, the District of Columbia Circuit Court of Appeals reversed a grant of summary judgment in a Freedom of Information Act (FOIA) lawsuit that sought video from the Bureau of Prisons. It, however, affirmed as to a request concerning records related to a screwdriver.

While held at FCI Gilmer in West Virginia, Michael Evans was stabbed multiple times with a Phillips-head screwdriver. The May 2, 2013, incident occurred in the dining hall. Evans sued under the Federal Torts Claims Act and 42 U.S.C. § 1983, alleging the screwdriver was FCI Gilmer property and that guards failed to secure it. The Bureau of Prisons (BOP) disclaimed ownership, and the lawsuits were dismissed.

While those suits were pending, Evans submitted an FOIA request seeking records from 2003 to 2013 concerning receipt of tools at the prison and video from his assault. The BOP responded that it would cost around $14,320 to process the request.

Evans narrowed his request by including a picture of the screwdriver and asked to receive information related to it and to provide the video. BOP denied the request on grounds that the screwdriver was never its property and claimed exemptions that disallowed disclosure of the video.

Evans sought to compel production in the federal district court for the District of Columbia. That court granted BOP summary judgment. The D.C. Circuit affirmed as to the screwdriver records because there was no evidence to refute BOP’s claim the screwdriver was never its property.

As to the surveillance video, BOP claimed that the video was exempt because it “could reasonably be expected to constitute an unwarranted invasion of personal property.” The Court found BOP’s affidavit to support that position was lacking, for it lacked specificity, it was conclusory and it recited statutory language without demonstrating its applicability to the information withheld.

The court noted there was no showing the cameras would reveal blind spots or that the location of the cameras was evident to prisoners in the dining hall. It also failed to show that it could not blur out aspects other than the assault. It was noted that this may be the unusual FOIA request that requires a trial.


Prison Art is Rehabilitation

by Kevin Bliss

FINE CELL WORK is a London-based prison art initiative aimed at the possible rehabilitative and therapeutic value of creating works of art by the incarcerated. It works with prisoners throughout the United Kingdom, training them in the art of fine needlepoint.

The charity and social enterprise has worked with around 7,000 prisoners and ex-prisoners worldwide in creating art in all manner of mediums: embroidery, quilting, and furniture and needlepoint wall hangings. It has created pieces that now hang in Kensington Palace and the Victoria and Albert Museum.

Arts patron Agnes Gund of America has collected many of these works made by prisoners to use in her Agnes Gund’s Art For Justice Fund. She is attempting to help fund criminal justice reform organizations by obtaining the works so she can resell them to institutes such as Drawing Center, Aldrich Contemporary Art Museum and the New Museum.

The organization also helps place ex-prisoners with jobs upon release, through its Open the Gate program. Within the last year alone, they have provided experience, training and opportunities and helped to place 25 former prisoners with jobs.

“Fine Cell has helped me get through over twelve years behind a cell door,” said one of the prisoners in the program. “It’s given me a sense of purpose and taught me so many new skills. Showed me that I’m not worthless, not useless, that I can learn, I can be creative, I can make things of beauty that other people appreciate.”

Source: garage.vice.com
Rhode Island Takes Uncommon Steps to Address a Common Problem: Drug Addiction in Prison

by Dale Chappell

The State of Rhode Island has taken the uncommon step of providing opioid-based medication to help its prisoners who battle drug addiction in prison. The bold move has not only saved lives but has also achieved something that has eluded prison officials for decades: keeping drug-addicted prisoners from returning to prison.

Though it’s the smallest state in the country, Rhode Island has the highest rate for drug overdose deaths. This prompted Governor Gina Raimondo to invest $2 million in 2020 into a program that provides prisoners the option of medication-assisted-treatment (MAT) for their drug addiction. The program was implemented in 2016. Within one year, drug overdose deaths of prison releases dropped by 61 percent.

The program is so effective that the American Medical Association’s journal Psychiatry published a report on it in February 2018, suggesting that Rhode Island’s MAT program prevented one overdose for every 11 prisoners it treated.

But Rhode Island is an outlier. While this country imprisons more than 2 million of its residents, at least 60 percent of whom struggle with drug addiction, most prison systems don’t offer MAT — or any drug addiction treatment. Two reasons they cite are lack of money and staffing, and the false belief that simply keeping drugs away from addicted prisoners is enough.

Some have questioned why it’s necessary to give someone who’s been off opioids for years this drug-assisted treatment. After all, they’ve stayed off drugs this long, so they must be over it by now, they assume.

But that assumption is wrong, as Rhode Island prison officials found. “They’re still addicted,” Linda Hurley, president and CEO of Behavioral Healthcare, a state-funded nonprofit that administers the MAT in Rhode Island’s prisons, said. “When they get out they don’t have the same tolerance anymore, but the brain wants the same amount.” So, they end up overdosing.

Prison administrators who object to MAT also fear that bringing opioid-based drugs into prison, like suboxone and methadone, would create a black market in the prison for the drugs. But what Rhode Island prison officials discovered is that the drug market in prison actually dried up — because the people who were seeking the drugs were getting treatment.

“Inmates with untreated addiction struggle to get drugs inside, resulting in violence, extortion, stress, conflict and a strengthening of illegal drug networks and gangs,” said Patricia Coyne-Fague, Rhode Island’s Department of Corrections director. But “once you put the addict on medications, most inmates become fine, perfectly reasonable people and stop causing trouble.”

It begs the question of why we lock them up for the disease of addiction in the first place,” she said.

A 2018 study in North Carolina found that, in the first two weeks of being released from prison, addicted ex-convicts were 40 times more likely to die of an opioid overdose than someone in the general public. “When I saw the number of people not dying after release,” Coyne-Fague said, “that’s all I had to see.”

Sources: columbia.com, politico.com

From Super Villain to Super Man, Tennessee Prisoner Still Executed

by Ed Lyon

Born in 1972, Tennessean Nicholas Sutton suffered a life straight out of a 5-star horror movie. His father was a mentally ill drug abuser and his mother abandoned him to the no-to-tender mercies of daddy dearest. Regularly beaten by his father, the boy’s arm was broken, he suffered concussions resulting in brain injuries, orbital socket injuries caused by being shot in an eye, and being beaten with a lead pipe on another occasion.

When 18, Sutton killed two men in North Carolina and his father’s mother. The year was 1980 when prisons across the country were even more horribly overcrowded than they are now. When severe overcrowding in prisons occurs, violence and survival of the fittest amongst the prison population becomes paramount. At one point, a prisoner struck Sutton on the head so hard that one of his eyes popped out of its socket.

In 1985, prison predator Carl Estep announced his plans to murder Sutton. The situation ballooned into what former warden and corrections commissioner James E. Aiken characterized as a “kill or be killed” situation. Sutton survived — Estep did not. Since Sutton’s co-combatant refused a plea offer for a 30- to 40-year long prison sentence, the state took them both to trial. Sutton was convicted of capital murder and was sentenced to die.

Somewhere along Sutton’s arduous life journey he underwent a deep, profound and fundamental change. In 1985, a major riot occurred at the prison he was housed in.

As five weapon-wielding prisoners surrounded Lieutenant Tony Eden with murderous intent, Sutton and another prisoner rescued Eden. They delivered him safely to another building, thus saving his life. In 1994, he saw death row manager Cheryl Donaldson fall, striking her head on the floor and causing her to lose keys and radio. Sutton helped her up, notified officials she needed help and shielded her from harm by other prisoners until help arrived. As a harbinger of his later self, in 1979 Sutton saved a jailer from being struck from behind by another prisoner armed with a broom handle. Deputy Howard Ferrell credited Sutton with saving his life.

Sutton’s acts of mercy and kindness toward jailers and prison guards were not a manifestation of the Stockholm Syndrome. He was an angel of mercy toward his fellow prisoners as well.

Death row prisoner Paul House contracted multiple sclerosis and lost his ability to walk. House was denied a wheelchair by the prison authorities so Sutton voluntarily carried him around the prison. This included daily showers, where Sutton helped him to wash, and carrying him to meals and to visits.
Forty-three states, along with the District of Columbia and the federal government, passed “consequential legislation” in 2019 aimed at reducing barriers faced by people with criminal records.

The 152 laws significantly or completely eliminated obstacles to societal reintegration in areas of employment, housing, voting, jury duty and other areas of daily life. According to a February 2020 report by the Collateral Consequences Resource Center (CCRC), last year was “an extraordinarily fruitful period of law reform in the United States.”

The CCRC, a Washington, D.C. nonprofit that advocates for the removal of “legal restrictions and societal stigma that burden people with a criminal record long after their criminal case is closed,” has tracked legislative progress in this area since 2013.

Approximately one in three American adults — or 77 million people — had a criminal record, according to the data collected by the National Conference of State Legislatures in 2018. The 152 laws passed in 2019 ranged from facilitating the expungement of criminal records for marijuana possession, the elimination of barriers to occupational licensing, and lifting restrictions on public housing.

The record number of laws passed in 2019 set in place a “reform trajectory [that] makes us optimistic that 2020 will be an even more productive year,” wrote authors Margaret Love and David Schlussel in the introduction to their report. Also, the CCRC included for the first time a report card that measured and compared the progress of individual states. (New Jersey won the title of “Reintegration Champion” for passing the most consequential legislation last year.)

Some highlights of the report include:

-• Colorado, Nevada, and New Jersey passed laws making all convicted individuals eligible to vote except for those currently in prison. Iowa is now the only state that doesn’t automatically re-enfranchise most former convicted felons.

-• 31 states and D.C. passed 67 laws that limited access to criminal records by sealing, expunging, or setting aside.

-• Utah, California, and New Jersey authorized automated relief for a range of conviction and non-conviction records.

-• Alabama, Arizona, Mississippi, Nevada, Texas and West Virginia enacted significant reforms to limit licensing agencies’ ability to reject qualified applicants based solely on a criminal record.

-• Several states enacted or expanded “ban-the-box” legislation, bringing the total states to 35, along with D.C., that prohibit public employers from asking about criminal records on a job application. Thirteen states also prohibit private employers from asking the question while Congress enacted restrictions on pre-employment inquiries by federal agencies and contractors.

-• Several states repealed laws that made suspension of driver’s licenses mandatory for crimes unrelated to driving, and for failure to pay court debt or child support.

Sources: thecrimereport.org, Collateral Consequences Resource Center

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Record Number of Laws Passed Reducing Barriers for People With Criminal Records

by Douglas Ankney

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Magazines are allowed in most State and Federal Prisons
Tioga County, New York Police Informant Paid $50,000 to Settle False Arrest Claims

by Mark Wilson

On November 8, 2019, three New York detectives agreed to pay $50,000 to settle false arrest claims brought by an informant they charged with conspiring to kill an Assistant District Attorney (ADA), the settlement agreement and court records show.

In March 2014, Russell D. Towner was a prisoner at New York’s Tioga County Correctional Facility. Fellow prisoner David Nugent allegedly told Towner that he intended to kill or pay someone to kill ADA Cheryl Mancini. Nugent supposedly solicited Towner and other prisoners to assist him.

On March 26, 2014, Towner wrote Mancini to warn her of Nugent’s threats. Tioga County District Attorney Kirk Martin became aware of Towner’s letter on April 10, 2014. Martin contacted Towner’s attorney, Alan Stone, to arrange for Tioga County Sheriff’s Department investigators Patrick Hogan and Wayne Moulton to interview Towner at the jail.

That day, Towner and Stone met with Hogan and Moulton for a videotaped interview. Martin remained in an adjoining room and learned of the interview results soon after it ended.

“You will be acting as an agent of the police and nothing you say or do can be used against you,” Hogan advised Towner during the interview. “Show us you care about this woman’s life.”

Towner ultimately agreed to assist police in obtaining evidence against Nugent.

Investigators proposed luring Nugent into the jail law library where they could listen to and record their conversations over an intercom.

Moulton told Towner that a jail guard identified in court documents as Shallberger would help him. Moulton said Shallberger would pass Towner notes and Shallberger would help him. Moulton said Towner ultimately agreed to assist police and other investigators knew that Towner did not engage in any criminal conduct.

The criminal charges against Towner were ultimately dismissed on November 5, 2015, due to a lack of probable cause.

Towner brought suit in state court in 2018. The suit was subsequently moved to federal court where claims against Tioga County and several defendants were dismissed.

The remaining defendants, Moulton, Hogan and Alexander, entered into a confidential settlement agreement to pay Towner $50,000 on November 8, 2019. The agreement was reached four hours after jurors began their deliberations in the trial.

Of course, the settlement was “not an admission” that defendants “took any unlawful or wrongful act” or violated the law. See: Towner v. County of Tioga, 2018 U.S. Dist. LEXIS 34228.

New York Prisoner Prevails in Lawsuit, Freed from 23 Years in Solitary Confinement

by Douglas Ankney

On July 21, 2020, attorneys for New York state prisoner Imhotep H’Shaka, 46, announced that he had been released into the general population at Attica Correctional Facility after spending nearly a quarter century in solitary.

The announcement followed a March 12, 2020, ruling by the U.S. District Court for the Northern District of New York which denied, in part, a motion for summary judgment by the state Department of Corrections and Community Supervision (DCCS) in a 2017 suit brought by H’Shaka related to his combined 23 years of solitary confinement – 13 years in a DCCS Special Housing Unit (SHU) and a decade in Administrative Segregation (Ad Seg).

After several arrests as a minor, H’Shaka was committed to DCCS at age 18 in 1991 upon conviction of second-degree murder and second-degree criminal possession of a weapon. In 1996, he used a razor to slash the faces of two guards. He was tried in Greene County Court and received an additional 15-year term for the assaults.

He also received a sentence of 15 years of disciplinary confinement in SHU from a DCCS internal tier hearing. That sentence was later reduced to 10 years.

In 2010, H’Shaka was released from SHU, but he remained in solitary confinement under Ad Seg due to prison officials’ stated concern that his past violent behavior might recur. H’Shaka’s confinement in Ad Seg was reviewed every 60 days by the Facility-Review Committee. Each time, the recommendation came back that he be kept in Ad Seg.

In 2017, the prison’s Central Office Committee noted that H’Shaka had maintained good behavior for the prior two years and was a strong candidate for transition. Other DCCS employees also wrote that his behavior warranted a less-restrictive environment but none made any formal recommendations in his reviews.

H’Shaka’s suit alleged that his right to procedural due process was denied because he wasn’t provided any meaningful review of his continued placement in Ad Seg, and that his Eighth Amendment right to be free from cruel and unusual punishment was denied because of the conditions and duration of his confinement. Several DCCS employees were named as defendants, including Acting Deputy Commissioner for Corrections and Community Supervision.
Corrections Facilities James O’Gorman.

The Court observed that meaningful periodic review of continued placement in Ad Seg is required, citing Proctor v. LeClaire, 846 F.3d 597 (2d Cir. 1997). Such a review requires (1) that officials actually evaluate whether continued confinement is justified; (2) that they make their evaluation based on current inmate behavior, though they may also give significant weight to past events; and (3) that continue confinement in Ad Seg must be based on a valid reason such as institutional security and not to impose punishment.

Because DCCS had recognized H'Shaka’s good behavior for a two-year period, the Court said, a fact-finder could determine he was not being held in Ad Seg for a valid reason. Thus, summary judgment requested by DCCS was precluded on this issue.

Regarding the Eighth Amendment claim related to conditions of confinement, H'Shaka had to satisfy an objective test and a subjective test. Objectively, he had to “demonstrate the conditions of his confinement result in unquestioned and serious deprivations of basic human needs” such that the conditions “pose an unreasonable risk of serious damage to his health;” and subjectively, he had to “demonstrate that the defendants imposed the conditions with deliberate indifference,” citing Walker v. Schult, 717 F.3d 119 (2d Cir. 2013).

When determining whether the conditions of confinement violate the Eighth Amendment, courts are to consider the duration of the confinement. Hutto v. Finney, 437 U.S. 678 (1978). In Reynolds v. Arnone, 402 F.Supp.3d 3 (D. Conn. 2019) it was found that conditions similar to H’Shaka’s, including limited ability for meaningful social interaction, constituted a deprivation of basic needs where the inmate had already spent 23 years in those conditions. In this case, H’Shaka had been in SHU and Ad Seg for 23 years.

Consequently, the Court said a fact-finder could determine he satisfied the objective element of the test. As to the subjective element, it was shown in the procedural due process claim that a fact-finder could conclude the placement in Ad Seg was without penological justification and, in such cases, this satisfies the standard to prevail on Eighth Amendment conditions-of-confinement claims. Hope v. Pelzer, 536 U.S. 730 (2002). Thus, DCCS’s motion for summary judgment was precluded as to this claim as well.

Accordingly, the Court entered an order denying summary judgment as to the procedural due process claim and to the conditions of confinement claim and directed the parties to enter into settlement negotiations, which resulted in H’Shaka’s release from Ad Seg. See: H’Shaka v. O’Gorman, 2020 U.S. Dist. LEXIS 42908.

Additional source: prnewswire.com
Lifers Now Exceed Entire Prison Population of 1970

by Dale Chappell

O ver the last 50 years, the number of prisoners serving life sentences has grown to exceed the entire prison population of 1970. While efforts are being made to “reform” the reforms enacted under the “tough on crime” regime of the 1990s that flooded the prisons, little attention has been given to the large numbers of lifers sitting in prison, a February 2020 study by The Sentencing Project said.

The United States imprisons about 2.3 million of its residents, not counting the millions more in county jails and on probation or parole. It also holds 83 percent of the world’s prisoners serving life sentences without the possibility of parole (LWOP). The U.S. lifer population today stood at 206,268 — which exceeded the entire country’s prison population in 1970 of 197,245.

The study found that in 24 states there were now more people serving life in prison than who were in prison for all crimes back in 1970, and an additional nine states were within 100 people of their 1970 prison population. The highest numbers were found out West, with Nevada and Utah more than quadrupling their 1970 populations (469 percent and 408 percent, respectively), with life sentences in the “deep South” states nearly doubling their 1970 prison population totals.

The study said a false belief that a person’s crime predicts his or her risk of reoffending (loosely termed “recidivism”) has driven these results. Even people serving life for murder, the authors said, desist from criminal conduct by their late 30s and 40s. The study noted that a lower court incorrectly granted guards summary judgment on a prisoner’s failure to protect claim.

The authors noted the failure to re-evaluate the tough-on-crime policies that continue to push the rise of life sentences. Habitual offender laws, mandatory minimums, elimination of parole and the transfer of juveniles to the adult system keep life sentences going, they say.

“As states rethink their regimes on punishment so that public safety is paired with fairness, it is clearly important to adopt reforms for those individuals convicted of low-level and nonviolent crimes. But it would also be wise from a moral and fiscal standpoint, as well as the standpoint of public safety, to give a second look to those serving life sentences as well,” the authors concluded.

Source: sentencingproject.org

Second Circuit Vacates Summary Judgment on Connecticut Prisoner’s Failure to Protect Claim

by Mark Wilson

T he U.S. Court of Appeals for the Second Circuit held on Dec. 6, 2019, that a lower court incorrectly granted guards summary judgment on a prisoner’s failure to protect claim.

Connecticut prisoner Christopher J.M. Lewis was a member of the PIRU or PIUU Bloods gang. He was housed in a maximum-security prison where all prisoners are confined to their cells except for one hour of recreation in a small prison yard.

Lewis was designated as a gang member who posed a threat to the general population, assigned to the Security Risk Group Threat Member (SRGTG) program and confined in the Phase 1 area. Phase 1 prisoners must be strip searched and handcuffed behind their back when escorted to the yard.

In July 2010, gang intelligence supervisor Lieutenant Brian Siwicki intercepted a written communication, accusing Lewis of disagreeing with “PIRU Bloods’ rules” and accusing him of breaking them. Siwicki learned that PIRU leader Christian Mulligan had decided that Lewis “was done.”

In August or September 2010, Siwicki informed Lewis that he was going to be assaulted. Siwicki and Captain David Butkiewicus later told Lewis that they were aware of the July 2010 incident, that his safety could be in “jeopardy” and that a PIRU member was “going to attack” him.

On November 25, 2010, PIRU member Nicholas Trabakoulos attacked Lewis in the recreation yard with a 4-inch piece of metal, inflicting serious wounds to his face and neck. Although Trabakoulos was handcuffed when he entered the yard, he was able to slip one of his hands out of the handcuffs. Siwicki’s investigation revealed that the assault was committed pursuant to Mulligan’s standing order.

Lewis brought federal suit against Siwicki and Butkiewicus, alleging that they violated his rights under the Eighth Amendment by failing to protect him from Trabakoulos’ attack after learning of the intended PIRU hit.

The district court dismissed, finding that “nothing happened for nearly six months,” when only four months had elapsed between the July threat and November assault. The Second Circuit vacated the dismissal and remanded for further proceedings.


The Second Circuit reversed, accept-
By some standards, Kansas has a relatively small prison system. Numbering only around 10,000 beds, it is dwarfed by California’s and Texas’ penal institutions, which have 134,000 and 142,000 beds, respectively. Regardless of size, however, the aging of the system’s prison population is roughly the same on the average and one Kansas is struggling to deal with.

The legislatively established Kansas Criminal Justice Reform Commission issued a November 2019 report on the matter, recommending the state add several hundred beds for substance abusers and aging prisoners as well as sentencing reforms.

Governor Laura Kelly is in favor of these remedies and is forging ahead with renovations to two existing buildings close to the Winfield Correctional Facility, which will add 241 more beds at a cost of $9.3 million. Another building remodel at the Lansing prison will cost $3.5 million. Estimates for an entirely new 1,200-bed prison run from $135 million to $145 million, making the renovation plans fiscally sound by comparison.

Kansas prisons are already so overcrowded the state pays the private prison firm CoreCivic to house over a hundred state residents in an Arizona prison.

Kansas American Civil Liberties Union director Nadine Johnson applauds the state’s efforts to provide for its aging prisoners, which now number about 20 percent of the prison population. She pointed out a provision in Kansas law already in place whereby most of the prisoners slated for those geriatric beds could be released.

“We would urge use of compassionate clemency to assess the possibility of release for these inmates for whom incarceration no longer makes sense from a community safety or financial perspective,” Johnson stated.

The national average for geriatric prisoners is about 20 percent and rising, in accordance with the Kansas numbers. [See PLN, November 2019, pgs. 54-55.] It is a statistically proven fact that people “age out” of the propensity toward criminal behavior, making compassionate and geriatric releases viable from public safety and fiscal standpoints.

Source: kansascity.com
In recent years, a growing outcry has been raised against the practice of confining prisoners in solitary, even for short periods, because of the connection between solitary and the impairment of overall mental health, especially post-traumatic stress disorder. Multiple studies have linked solitary confinement to heightened rates of in-prison suicide and violence, as well as recidivism rates far above those prisoners never placed in solitary.

Now, a study published February 1, 2020 in The Lancet public health journal by Cornell professor Christopher Wildeman and Lars Andersen of Denmark’s ROCK-WOOL Foundation has documented a link between being placed in solitary confinement and a significant increase in prisoner death rates within five years of release.

The authors set out to discover if they could find a link between solitary confinement among Danish prisoners and post-release mortality. For their study, they gathered data from Danish government sources on all 13,776 people who had been incarcerated for seven days or longer in the period stretching from 2006-2011.

They sorted these individuals into two groups — those who had spent at least 72 hours in solitary confinement during their incarceration and those who had not. The study tracked mortality rates among both groups for five years after release. Analysis showed that even after accounting for other variables such as age, sex, type of offense, and length of sentence, there was a measurable and statistically significant correlation between solitary confinement and increased mortality rates after release.

The study also showed two troubling trends. The first was a remarkably higher mortality rate among people who had been incarcerated versus the general population of Denmark. Fully 3% of the former prisoners in the study died within the five-year period analyzed, as opposed to three-tenths of a percent of the overall population after adjusting for age and gender.

That people who are released from prison are 10 times likelier to die than those who had not been incarcerated is alarming enough, but the study also found that prisoners who had been placed in solitary confinement, even for as little as 72 hours, suffered from an even higher mortality rate. While 2.8% of those who had not been placed in solitary confinement had died within five years, 4.5% of those who had been in solitary died during the period studied.

Many of these deaths were attributed to non-natural causes, including suicide, homicide, and overdose. Considering that nearly two-thirds of the cohort of prisoners in the study who had been in solitary confinement had spent less than a week there, the fact that this significantly elevated mortality rates is noteworthy.

The connection between solitary confinement and mortality was not invisible before the study. As far back as the 1840s, colonial officials in Tasmania had noted elevated mortality rates among transported male convicts kept in solitary as opposed to the rest of those transported to the colony.

More recently, a 2010 North Carolina study found a high mortality rate among released prisoners who had been in solitary confinement, especially from homicide, suicide, and opioid overdose. What these studies suggested, however, was shown conclusively in the Danish study.

Wildeman believes that the data he uncovered is important because it reveals that even short stays in solitary could be tied to higher mortality rates, and most short stays could be avoided. With more than 10 million people incarcerated worldwide and long stays in solitary confinement common in many nations, the effects of solitary confinement should be made apparent to policymakers so solitary confinement is eliminated as a “management” tool.

Sources: thelancet.com, forensicmag.com, sciencedirect.com

$2.8 Million Settlement in New York Pretrial Detainee’s Suicide

by David M. Reutter

New York’s Suffolk County Legislature agreed on September 26, 2019 to pay $2.8 million to settle a lawsuit concerning the events surrounding the suicide six years earlier of pretrial detainee Jack Franqui.

The morning of January 23, 2013, started innocently for Franqui. He called friend Simon Earl with the desire to go over to his house to show off a 1972 Cadillac El Dorado he’d just purchased. Franqui popped the hood so Simon could look at the engine.

A half-hour after he arrived at 10:45 a.m., someone called the Suffolk County Police Department to report a suspicious vehicle. Officer Karen Grenia accelerated down Simon’s street and abruptly stopped her patrol vehicle at a 45-degree angle in front of Simon’s home. She exited the vehicle with gun drawn, ordering Simon “to get down on his knees, get down on the ground, raise his arms, and not move.” She gave Franqui inconsistent orders, telling him to get out of the car and then to put his hands on the steering wheel and not move them or she would shoot him.

Simon was handcuffed and placed in the back of a police car once back-up arrived. No drugs or weapons were found on him. Police also illegally entered Simon’s home and conducted a search until a contractor working in the house asked if they had a warrant. Simon was subsequently released.

Franqui, however, was arrested. A search of his person and vehicle uncovered no drugs or weapons. His miniature Doberman pincher was seized. In making the arrest, police used excessive force on Franqui, causing “blunt impact injuries” to his head, torso, and upper and lower extremities.

He was taken to the Seventh Precinct in Suffolk County and charged with operating a motor vehicle under the influence after admitting he had smoked a joint about 30 minutes earlier, resisting arrest, and obstructing government administration for allegedly siccing his dog on Grenia, which Simon disputes ever occurred.

When being booked, it was noted that Franqui was being treated for anxiety. He was subsequently placed into a “bitterly cold” holding cell with a thin blanket. He was wearing his jeans, T-shirt, and socks. Over the next few hours, Franqui begged
Dallas County, Texas Jails Finally Enter the 21st Century on Phone Rates

by Ed Lyon

Until February 18, 2020, it cost pre- and post-trial detainees in the Dallas County, Texas jails .24¢ per minute to speak to their families on the phone. Urged by criminal justice reform groups and the citizenry, the Dallas County Commissioners Court voted unanimously to forgo any and all profit-sharing in the jail’s phone system, operated by Carrollton, Texas-based Securus Technologies, in exchange for a reduction in calling costs to .01¢ per minute. This move will cost the county $2.4 million in yearly revenue.

Another positive change will be making electronic tablets available to the county jail’s population. It will cost detainees $5 per month to rent a tablet with educational programming included. Movies, music and video games will be available for 99¢ to $12.99 per item. Incoming e-mail messages will be free. It will cost 24¢ for a prisoner to send responses.

Additional source: newsday.com

Dallas, Texas

The Habeas Citebook (2nd edition)
by Brandon Sample and Alissa Hull

The second edition of The Habeas Citebook is now available! Published by Prison Legal News, it is designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief.

This book is an invaluable resource that identifies hundreds of cases where the federal courts have granted habeas relief to prisoners whose attorneys provided ineffective assistance of counsel. It will save litigants thousands of hours of research and it focuses on the winning cases criminal defendants need to successfully challenge their convictions.

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Beyond Harsh: 86 Mississippi Prisoners Serving Life Without Parole for Nonviolent Offenses

by Matt Clarke

In a resurgence of “tough-on-crime” sentencing reforms that swept the nation in the 1990s, many states enacted “three-strikes” laws mandating life sentences for those convicted of three felony offenses. Mississippi was among them (and harsher than most) with a mandatory sentence of life without parole (LWOP) for any person convicted of any felony after two previous convictions if one of the priors was a violent crime. The violent crime did not have to be a felony and did not have to be against a person as, for instance, the state classifies residential burglary as a crime of violence.

Some states have since repealed or amended their “three-strikes” laws due to unjust outcomes. Mississippi has not. This led to a buildup of 86 prisoners serving LWOP in Mississippi state prisons for nonviolent crimes, The Clarion-Ledger reported on March 18, 2020.

The Mississippi state prison system holds about 19,000 prisoners. Of them, 2,600 are serving long sentences enhanced by prior offenses—including the 86 convicted of nonviolent offenses and sentenced to LWOP. Incarcerating the prisoners with enhanced sentences costs Mississippi taxpayers over $38 million each year, the newspaper reported. This helps explain why Mississippi has the second-highest incarceration rate of any state.

Some of the nonviolent LWOPs are incredibly unjust. Four are serving LWOP for simple marijuana possession, one for shoplifting, one for intimidation, three for driving under the influence, two for forgery, one for uttering forgery, three for simple assault, and two for motor vehicle theft. It is difficult to see what public good is served by incarcerating these people for the rest of their lives.

Tameca Drummer, 45, was stopped by police in Corinth for a traffic violation. Police searched her car and found 2 ounces of marijuana. She has served a dozen years of her LWOP sentence and will likely die in prison.

“Ms. Drummer’s case is among the, if not the, most glaring injustice I’ve seen in my career,” public defender Justin Cook, who unsuccessfully appealed her case on the basis of the sentence violating the Eighth Amendment prohibition against cruel and unusual punishment, told the newspaper. “I think it is the most prime example of a misuse of habitual sentencing laws I’ve ever seen. Her dying in prison serves no purpose other than cruelty.”

Charlie Blount, 45, was a passenger in a stolen car in 1991 when he was 16. In 1993, he pleaded guilty to misdemeanor simple assault. Then, in 2011, he was convicted of vehicle theft and given LWOP. The Mississippi Court of Appeals and Supreme Court have rejected his argument that his misdemeanor offense should not have been used to enhance the felony sentence to LWOP.

“I know it’s real, but it seems unreal to me,” said Trianna Blount, Charlie’s mother, who agrees that her son should serve time for stealing a pickup, but not the rest of his life.

Bills have been filed in the Mississippi Legislature seeking to modify the habitual sentencing enhancement law—thus far to no avail. Democratic State Senator Derrick Simmons filed three of the bills—one to permit parole after a fixed number of years, another to prohibit the use of a sentence that was completed more than a decade earlier when determining habitual status, and a third to prohibit the use for enhancement purposes of an offense committed while younger than 18.

Simmons says Mississippians want to strand all of the prisoners in prison when they should be interested in making them productive members of society. This attitude has led to problems in the state’s prisons, such as overcrowding, squalor, violence, and suicide previously reported in PLN. [See PLN, July 2020, p. 1.]

Federal Judge: BOP Exercising “Reasonable Efforts” Against Coronavirus at NC Prison

by David M. Reutter

On June 11, 2020, a federal court in North Carolina found that 11 prisoners at the Federal Correction Complex (FCC) in Butner had failed to prove officials with the Bureau of Prisons were deliberately indifferent to preventing the introduction and spread of COVID-19.

BOP argued that it had stepped up sanitation, screening prisoners and staff and quarantining positive prisoners. Calling those “reasonable efforts” in “preventing unnecessary illness and death and slowing the spread of the virus,” Judge Louise W. Flanagan denied a May 26, 2020, petition the prisoners had filed seeking a writ of habeas corpus and a class-action request for declaratory and injunctive relief.

As of June 12, 2020, FCC Butner had reported positive coronavirus test results for 910 prisoners and 55 staff members. Since the pandemic reached the state in March 2020, 18 prisoners and a staff member have died from the disease. The majority of cases were at the prison’s low security complex, with 675 prisoners and 17 staff experience active cases. But at least two cases were reported in each of the complex’s four prisons.

Attorneys representing the plaintiffs argued that the 4,438 men at FCC Butner “are crammed into a space meant for no more than 3,998,” with symptomatic infected prisoners “housed alongside those with no symptoms.” The result, they alleged, was a dire situation that was “urgent” because prison officials had “failed to implement effective isolation, quarantine, testing, screening, hygiene, and disinfecting policies or meaningfully modify movement protocols for staff and incarcerated people.”

Pursuant to a Justice Department directive, 932 prisoners were reviewed for possible release, with 42 released to home confinement, nine placed in residential re-entry centers, and 48 more prisoners awaiting approval for one of the two options. Since March 2020, another 56 prisoners have been granted early release by sentencing judges.
United Nations Official Says Connecticut’s Use of Solitary May Amount to Torture

by David M. Reutter

A United Nations human rights expert has denounced the use of prolonged solitary confinement, which could inflict psychological torture on prisoners. His critique, given at a press conference on February 28, 2020, was aimed at conditions in Connecticut but has implications for the entirety of America’s prison system.

“The [Connecticut] DOC appears to routinely resort to repressive measures, such as prolonged or indefinite isolation, excessive use of in cell restraints, and needlessly intrusive strip searches,” said Nils Melzer, the UN Special Rapporteur on Torture. “There seems to be a state-sanctioned policy aimed at purposefully inflicting pain or suffering, physical or mental, which may well amount to torture.”

“These practices trigger and exacerbate psychological suffering, in particular in inmates who may have experienced previous trauma or have mental health conditions or psychosocial disabilities,” Melzer added. “The severe and often irreparable psychological and physical consequences of solitary confinement and social exclusion are well documented and can range from progressively severe forms of anxiety, stress, and depression to cognitive impairment and suicidal tendencies.”

Those comments were in response to a May 2019 letter from the Allard K. Lowenstein International Human Rights Clinic at Yale University, which alleged Connecticut “systematically engages in psychological and physical torture of persons incarcerated at Northern Correctional Institution.”

While state and federal laws allow solitary confinement, international law, known as the 2015 updated Mandela Rules, hold that prolonged or indefinite solitary confinement cannot be a “lawful sanction.”

U.N. rules define solitary confinement as “the confinement of prisoners for 22 hours or more a day without meaningful human contact.” Such confinement can only be imposed in exceptional circumstances, and “prolonged” use of solitary confinement of more than 15 consecutive days is regarded as a form of torture. See: ctmirror.org, news.un.org
Court Approves $1,250,000 Settlement in Suit Against Tennessee County for Fair Labor Violations

by Douglas Ankney


On July 2, 2019, Natasha Grayson – an employee of the Madison County Criminal Justice Complex (“MCCJC”) – filed a collective action lawsuit on behalf of herself and other similarly situated current and former employees seeking to recover unpaid wages, attorney’s fees, and statutory penalties for violations of the FLSA. “Grayson and other employees worked over 40 hours per week but were not paid for their overtime work,” said an article in The Jackson Sun. “The sheriff’s office required CJC employees to show up to work 15 minutes before their eight-hour shift and continue working 15-20 minutes after the shift ended.”

On December 2, 2019, the parties submitted a proposed settlement to the Court. The settlement required Madison County to pay $1.25 million to the Plaintiffs with a condition that 40% of that amount ($500,000) be paid to Plaintiff’s counsel, Michael L. Weinman, for fees and expenses. Plaintiffs had agreed to pay either Weinman’s regular hourly rate or 40% of any amount recovered – whichever was greater.

The Court observed that “[a]n award of attorney’s fees under § 216(b) is mandatory.” Smith v. Serv. Master Corp., 592 F.App’x 363 (6th Cir. 2014). In determining the amount to be awarded under the FLSA, courts begin with the “lodestar amount,” which is calculated by multiplying the number of hours worked by a reasonable hourly rate. Hensley v. Eckerhart, 461 U.S. 424 (1983).

The court may then adjust the amount upward or downward, taking into consideration factors such as (1) degree of success obtained; (2) whether the fee was fixed or contingent; and (3) awards in similar cases. Id. In Hebert v. Chesapeake Operating Inc., 2019 WL 4574509 (S.D. Ohio 2019), it was determined that “the requested fees of 40% of the fund are not reasonable,” finding that “33% is typical for attorney’s fees in common fund, FLSA collective action.” In Chapman v. Jet Mall, 2015 WL 2062099 (E.D. Tenn. 2015), plaintiff’s counsel’s request for a 40% attorney’s fee was rejected as unreasonable.

In the instant case, the Court rejected Weinman’s requested 40% fee. The Court calculated Weinman’s lodestar amount as $239,500 based on his affidavit stating he worked 490 hours at $400 per hour, and his paralegals worked 348 hours at $125 per hour.

The Court then took into consideration that Weinman had obtained a great deal of success for his clients. The Court also considered that Weinman had taken the case on a contingency basis, which meant he had risked earning nothing if the outcome had been unsuccessful. Based on those factors, the Court increased the lodestar amount by $135,500 for an award of $375,000 in attorney’s fees or 30% of the $1.25 million. The remainder of the settlement ($875,000) was to be disbursed to the members of the plaintiff class based upon the number of days worked at the MCCJC between July 9, 2016 and July 9, 2019.

The settlement also required Madison County to pay the arbitration fee in addition to the costs of locating class members and disbursing the funds. See Grayson v. Madison County, 2019 U.S. Dist. LEXIS 212615.

New Jersey: Commission Recommends State Take 100 Steps to Improve Re-Entry for Ex-Prisoners

by Chad Marks

A commission that was legislatively mandated recommended in an October 2019 report that New Jersey improve reentry services for those leaving prison. The Reentry Services Commission outlined 100 steps to aid in a successful reentry. Those steps targeted addiction treatment, opportunities for training, employment and improved health care, among many others.

The Commission was tasked with considering the psychological profile of prisoners, housing, employment, education, training, addiction and substance abuse treatment, medical and mental health treatment, access to legal assistance and other issues related to the failures and successes associated with reentry.

What the Commission found was that the prison population reflects deep social problems of race, poverty and the failure of social institutions to provide a way that would reduce the rates of incarceration. New Jersey has the highest racial disparity in state prisons in the nation. Individuals in the state who are Black are 12 times more likely than Whites to be incarcerated and Latinos six times more likely.

But how to fix the problem is at the top of New Jersey’s list.

With over 75 percent of parolees at the national level being rearrested within five years of release, the commission looked at ways to help lower that number. It found that some of the common issues that lead people back to prison are addiction, housing and employment.

For example, former prisoner Renault McCord said that without a driver’s license, identification or Social Security card, employers slammed the door in his face. Facing his fifth sentence, he told the judge he needed help. That judge gave him the second chance that he requested by connecting McCord with the New Jersey Reentry Corporation, which agreed to work with him.

McCord enrolled in school, earned his culinary degree from a local college and found employment. Four years later, he is still at the same job and has not reoffended.

When a person leaves prison with no money, no home, no job and, in many cases, no family support, reoffending is almost in-
evitable. Former Governor Jim McGreevey, who heads the New Jersey Reentry Corporation, agrees that with these obstacles, success is next to impossible. He placed emphasis on how important it is to improve the types of training available in prison so that people are prepared for real-world jobs.

The commission has recommended that barriers be removed to housing, employment, and other aspects that make it hard for former prisoners to make it. Sandra Cunningham, a commission co-chair of the Senate Higher Education Committee, said, “These people like everyone else, deserve the opportunity for a second chance. They are human beings who may have made a mistake but who are standing here saying, ‘I have corrected myself.’”

The Vera Institute of Justice has put the cost of incarcerating a person in New Jersey at around $61,000 annually. McGreevey said reentry services run $2,000 per person. Successful reentry eliminates the cost of incarceration. The costs to prosecute also disappear, saving taxpayers even more. And, when these adults are back to work, they are contributing taxpayers. Reentry is a win/win for people leaving prison and the community.

The realities that ex-prisoners face as they seek to reenter into the community are staggering. There are numerous problems that need to be addressed to better facilitate those leaving prison. Legal barriers, economic hurdles and lack of community support stand in the way of success.

With the legislature’s commitment and the commission’s report, it seems that New Jersey is all in on reentry. Other states would be wise to follow in its footsteps.


### Williams & Connolly, HRDC Win Censorship Case Against Virginia Regional Jail, $210,000 in Attorney Fees

**by Derek Gilna**

William & Connolly LLP of Washington, D.C. and the Human Rights Defense Center (HRDC), parent organization of Prison Legal News (PLN), have won a federal civil rights judgment against the Southwest Virginia Regional Jail Authority in the United States District Court in Abingdon, Virginia.

PLN won the right to deliver its materials to prisoners, plus monetary damages, and on August 24, 2020 was awarded substantial attorney fees. HRDC sued after jail authorities blocked the delivery of prisoner books, educational material, and all magazines, including PLN's monthly magazine provides important and useful information to the incarcerated. As part of that mission, PLN has relentlessly attacked the unwarranted and unconstitutional censorship of educational materials with a series of federal civil right lawsuits, effectively advocating for the right of prisoner dignity.

Under federal civil rights law, the prevailing party is entitled to reasonable attorney fees. Williams & Connolly was represented by Sean Douglass and Tom Henthoff. The court awarded attorneys' fees in the amount of $210,691.25 and 14,871.89 in expenses. HRDC was represented by General Counsel Daniel Marshall.

As noted by federal district court Judge James P. Jones, “HRDC was successful, at virtually every stage of this litigation.” As a result of the efforts of PLN, even more prisoners will have an opportunity to receive information unfiltered by jail authorities. See: Human Rights Defense Center, Inc. v. Southwest Virginia Regional Jail Authority, et al, 2020 U.S. Dist. LEXIS 152576.

### 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:

KMoses@humanrightsdefensecenter.org

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Kansas Leads Country in Female Incarceration Rates

by Kevin Bliss

According to the latest surveys, the national female prison population is increasing more rapidly than males — and Kansas is one of the leading contributors to this trend.

A report put out by the Prison Policy Initiative and the American Civil Liberties Campaign for Smart Justice in October 2019 collected what sparse data existed in gender-specific statistics and evaluated and presented them in a format that reflected female prison population trends and their effect on society.

Statistics were gathered from a number of government agencies and broke down the number of females held in facilities across the United States by offense. The report stated that it “answers the questions of why and where women are locked up.”

The report showed women’s incarceration rates growing twice as fast as men’s within the last 20 years. Most states do not have the capacity to house all of these women in their prisons, so more and more are being held in county jails than in prisons.

There were 231,000 women incarcerated in America: 53% White, 29% Black, 14% Hispanic, 2.5% American Indian and Alaska Native, 0.9% Asian, and 0.4% Hawaiian or Pacific Islander. Of those, 114,000 are in jails, either serving a sentence, awaiting trial or awaiting transfer to prison.

The report stated that men’s arrests have decreased 30% since the 1980s, yet women’s arrests have remained the same. For juvenile females, status offenses (running away, truancy, incorrigibility, etc.) account for 10% of arrests, while only 3% of male juveniles are incarcerated for such offenses. A major concern here is that these particular offenses are possible responses to abuse and should be treated more conscientiously.

Kansas female prison population increases far exceed nationwide statistics — 60% in the past 20 years while men’s only rose 14%. This has resulted in several adverse effects on women in prison. Crowding has become a major issue, with women sleeping in dayrooms reserved for recreation or spending weeks in intake until a bed comes open on the compound. Low-security females with shorter sentences are getting all of the treatment and programs (which are more geared for male prisoners to begin with), leaving medium- or high-security females largely untreated. Lastly, females are more apt to have caregiver duties that conflict with probation or parole regulations resulting in more technical violations.

Kansas City Sentencing Commission senior research analyst George Ebo Browne attributed Kansas’ probation and parole violation sanction changes in 2013 for much of the female population growth. No longer can judges use their discretion when sentencing defendants who have violated parole. The judge must consult a “graduated sanctions” chart, and exceptions cannot be made for extenuating circumstances like single household caregiver. “It changed the practice for everyone,” he said. “But how it was applied on the bench greatly impacted women.”

The report cited policing practices for contributing to female population increases. Racial and sexual disparities in traffic stops, arrests and parole/probation violations were significant and with 40% of juvenile females claiming lesbian, bisexual, or questioning and gender non-conforming, they are more susceptible to receiving longer sentences.

The Prison Policy Initiative and the ACLU’s Campaign for Smart Justice hope the report serves as incentive to promote reforms that do not leave women behind and that change polices that have led to discriminatory incarceration.

Sources: kcur.org, kctv5.com, prisonpolicy.org

Court Orders South Carolina Prisons to Move Forward with Hepatitis C Treatment

by Kevin Bliss

On January 14, 2020, Judge Margaret Seymour of the Florence division of the U.S. District Court for South Carolina signed preliminary approval of a settlement order granting hepatitis-C (HCV) testing and treatment in the South Carolina prison system.

“This action today is going to save 1,184 lives,” attorney Reuben Guttman argued to Seymour during the hearing.

He represented Bernard Bagley and Willie James Jackson, two prisoners who joined a lawsuit originally filed against the state Department of Corrections (DOC) in March 2018 by prisoner Russell Geissler, who was represented by Christopher Bryant. Geissler’s complaint was about lack of HCV treatment, while the others’ complaint was about HCV testing. The two complaints were combined in a class-action granted in December 2018. [See PLN, June 2019, p.44.]

Chronic HCV causes liver inflammation, scarring (fibrosis) and decreased liver function. It can lead to liver disease, cancer, internal bleeding and even death. The acceptable standard of care for prisoners is across the board testing and treatment with direct-acting antiviral (DAA) drugs, which have been proven to provide a 95 percent cure rate. Moreover, DAA drugs, which may have cost upward of $80,000 per patient a few years ago, now only cost about $15,000 — even less if the disease is caught early with aggressive testing – reducing the overall costs of long-term care for prisoners with chronic liver failure as well as preventing the spread of the disease after release.

Under DOC’s old testing policy, “opt-out” HCV screening (automatic testing for all prisoners unless they specifically refuse) was not offered. Instead no prisoners at all were tested “except in certain limited
circumstances.” Those circumstances did not include testing people born between 1945 and 1965, those who have had a blood transfusion before 1992 or those requesting testing based on self-reported exposure to at-risk activities, each of which is the standard of care recommended by the federal Centers for Disease Control and Prevention (CDC).

As for HCV treatment, it was given only to those prisoners who had a liver fibrosis score greater than 2 under the APRI scoring system, though many medical professionals believe a score of 1.5 would be a better gauge. Using the more restrictive cut-off score to deny them treatment, plaintiffs argued, violated their rights under the Americans with Disabilities Act and failed to protect them from cruel and unusual punishment as guaranteed by the U.S. Constitution.

CDC estimates indicate one-third of all prisoners have HCV, based on statistics from states that do comprehensive testing and treatment. Since DOC had recorded only about 600 cases of HCV out of more than 19,000 prisoners in its care, the lawsuit suggested the actual number could be over 6,000. About two-thirds of the state’s prisoners had been offered testing by the DOC, and failed to protect them from cruel and unusual punishment as guaranteed by the U.S. Constitution.

The plaintiffs had requested declaratory judgment and injunctive relief, but not monetary damages. The suit did not waive down to was his saying ‘we get everybody with hepatitis C treated.’"

Agreed DOC attorney Buddy Arthur, “I don’t think we would be here today if it were not for director Stirling.”

The plaintiffs had requested declaratory judgment and injunctive relief, but not monetary damages. The suit did not waive

monetary damages, though, for prisoners who wish to file in the future for failure to test or treat their HCV. A federal magistrate will be appointed to monitor the DOC’s progress. See: Geissler v. Stirling, 2019 U.S. Dist. LEXIS 131110.

Additional source: thestate.com, webmd.com

New Law in Maryland Reveals Pathetic Prison Wages

by Jayson Hawkins

A new law in Maryland approved last year required disclosure of wages paid to prisoners, information that The Baltimore Sun reported on January 2, 2020. The law covered the Division of Correction (DOC), which employs about 12,000 at 17 prisons and prerelease centers, and Maryland Correctional Enterprises (MCE), which makes goods for state agencies.

Wages for prisoners at the DOC vary from $0.90 to $2.75 per day, according to position and skill level. MCE’s 1,500 prisoner laborers receive between 17 cents and $1.16 an hour.

Maryland spends more than $5 million a year to pay for DOC prisoner labor. Wages for MCE workers add another $2.68 million. Meanwhile, the program brought in $52 million last year from the sale of products ranging from furniture and flags to stationery and license plates.

The move by lawmakers to publish prison wages was also seen as a window into the job skills offered during incarceration and how or if those skills would be useful after release. An earlier version of the bill also called for transparency on the costs that prisoners pay for commissary items, but that failed to pass.

The Prison Policy Initiative, a nonprofit based in Massachusetts, reports that prisoner wages nationwide run on average from 14 cents to 63 cents an hour for institutional jobs. Hourly rates in state-owned entities operating within prisons, like MCE, spanned from 33 cents to $1.41. These figures do not include states such as Texas, which pay incarcerated workers nothing.

Student protesters have recently demanded that Maryland universities cut all ties with MCE. Some compared prison labor to “modern slavery” and institutionalized racism.

Other activists, such as William Freeman of the Baltimore-based Out for Justice, are concerned about what would happen to incarcerated employees if colleges or other agencies refused to do business with MCE. Freeman himself spent a dozen years working for MCE during his two decades in prison and said the program allowed him to support himself during that time and save up money to attend college once released.

Source: baltimoresun.com

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A History of Success in Wisconsin

Appeals: Homicide overturned, 2014
Postconviction: 37.5-year sentence vacated, 2015
Habeas: Homicide overturned, 2020
Civil Rights: $2.4 mil on guard’s sex assault, 2019

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T he DC Council approved an emergency bill July 7, 2020 that included the Restore the Vote Amendment, authorizing voting by residents incarcerated in jail or prison with a felony conviction.

The District joins just two states, Maine and Vermont, which maintain voting rights for imprisoned citizens.

The District of Columbia is first among several jurisdictions considering expanding voting rights to imprisoned citizens. In recent years, Connecticut, Hawaii, Massachusetts, New Mexico and New Jersey have considered similar measures.

The Restore the Vote Amendment was included in emergency policing and justice reform legislation. The DC Council intends to permanently authorize voting rights for all incarcerated District residents with a felony conviction in a future bill. While District residents sentenced to local code violations are imprisoned in the federal Bureau of Prisons, residents incarcerated in federal prisons are allowed to vote under the reform. As residents of the District of Columbia, D.C. voters can vote in local and presidential elections but do not have representation in Congress.

Now is the time to register and get your absentee ballot if you had a District address prior to imprisonment. The D.C. Board of Elections is trying to contact District residents in BOP lockups. But residents can contact them, too. The Board of Elections must receive voter registration applications submitted by mail by October 13, 2020. Absentee ballots will be sent to the registered address. Voted and mailed ballots must be postmarked or otherwise demonstrated to be sent on or before Election Day, and must be received by November 10, 2020. Residents can contact the DC Board of Elections at 1015 Half Street, SE, Suite 750, Washington, DC 20003.

Community groups, from the Mayor’s Office on Returning Citizen Affairs to the League of Women Voters of the District of Columbia, are helping to get the word out. Eligible voters will hear from family and friends about their eligibility to participate in the November election. D.C. residents in BOP lockups might help get the word out, too.

Expanding the franchise in D.C. is part of long tradition of challenging felony voting bans. Last year, Colorado lawmakers expanded voting rights to nearly 11,500 residents on parole. Nevada lawmakers automatically gave voting rights to 77,000 residents with a felony conviction released from prison regardless of offense type or parole or probation status. New Jersey lawmakers expanded the voting rights to 83,000 persons on felony probation and parole. The governors in Iowa and Kentucky issued executive orders restoring voting rights to most residents with a felony conviction who completed their sentence.

Since 1997, 25 states have amended their felony disenfranchisement policies in an effort to reduce their restrictiveness and expand voter eligibility.

The DC Council’s authorizing of voting for residents in prison is historic. Hopefully as many as possible participate in the franchise this November.

Nicole D. Porter manages The Sentencing Project’s state and local advocacy efforts on sentencing reform, voting rights, and eliminating racial disparities in the criminal justice system.

DC Council Approves Voting in Prison Ahead of November Election

by Nicole D. Porter

O n March 4, 2020, federal Bureau of Prisons (BOP) guard Colin Akparanta pleaded guilty to the 2017 sexual abuse of a female prisoner at the Metropolitan Correctional Center in New York City, thereby also depriving the woman of her civil rights.

The 43-year-old naturalized citizen from Nigeria, also known as “Akon” or “Africa,” had been charged in a nine-count indictment handed down in May 2019 with sexually abusing a total of seven female prisoners between 2012 and 2018. The other six women were willing to join the seventh victim in public testimony against Akparanta, prosecutors promised.

In exchange for his guilty plea and undefined restitution to the seven women, prosecutors plan to ask for a prison sentence of 36 to 47 months, less than one-third the maximum sentence of 12 years that Akparanta faces. He was scheduled for sentencing on July 8, 2020, but on June 4, 2020, his attorneys requested a delay until September 2020. Prosecutors did not object. He remains out of confinement on bail at his New Jersey home with his wife.

Akparanta allegedly smuggled feminine hygiene products, makeup and food to his victims to extort their cooperation in the abuse and its coverup. He also allegedly extorted the victims’ personal contact information from them so that he could continue to see them after their release.

“Correctional officers have a duty to protect federal inmates, but Akparanta allegedly abused his power over female inmates,” noted Special Agent-in-Charge Guido Modano, of the federal Department of Justice Inspector General’s Office New York branch.

“Colin Akparanta was a predator in uniform, exploiting his position to sexually abuse multiple inmates over a several-year period,” stated U.S. Attorney Geoffrey S. Berman at the time the guard was indicted. “No inmate in a (BOP) facility should fear sexual abuse at the hands of a correctional officer, and thankfully, Akparanta will have no more victims.”

Berman noted that his office “has prosecuted, and will continue to prosecute, correctional officers who use their positions to engage in criminal conduct.” He encouraged anyone with knowledge of criminal conduct involving prison guards to contact the U.S. Attorney’s Office in Manhattan.

The same day that Akparanta pleaded guilty in federal court in Manhattan, MCC went on lockdown following reports that a loaded gun had been smuggled into the prison. BOP banned all visits with prisoners and pretrial detainees at MCC, even attorney visits, prompting an outcry from

BOP Guard Pleads Guilty to Sexually Molesting Prisoners at MCC Manhattan

by Dale Chappell
federal public defenders who complained the ban violated prisoners’ constitutional right to an attorney.

After an eight-day search, the gun was found in a prisoner’s cell. Other contraband recovered during the sweep included cellphones, narcotics and homemade weapons. U.S. v. Akparanta, 2019 U.S. Dist. LEXIS 189273.

Sources: nydailynews.com, nj.com, innercity-press.com, nbcnewyork.com

The Prisoner Litigation Reform Act (PLRA) of 1995 barred prisoners from filing a new lawsuit “in forma pauperis (IFP),” or without payment of a filing fee, if the prisoner had previously had three actions dismissed for failure to state a cause of action.

In the case of Lomax v. Ortiz-Marquez, et al., the Supreme Court of the United States (SCOTUS) in a 9-0 decision on June 8, 2020, affirmed the Tenth Circuit opinion dismissal of Arthur Lomax’s lawsuit as barred under what has been termed the “three-strikes” rule, rejecting his argument that dismissals that were “without prejudice” to refiling did not count as “strikes.”

Justice Elena Kagan, writing for the high court, noted, “Petitioner Arthur Lomax is an inmate in a Colorado prison. He filed this suit against respondent prison officials to challenge his expulsion from the facility’s sex-offender treatment program. As is common in prison litigation, he also moved for IFP status to allow his suit to go forward before he pays the $400 filing fee.”

Lomax argued that Section 1915(g), which defines the “three-strikes” rule, did not bar his free filing as at least two of his three previous lawsuits were dismissed “without prejudice.” However, Justice Kagan stated that the provision does not make that distinction if it is “dismissed on the ground that it … fails to state a claim upon which relief may be granted.”

Kagan also rejected the argument that Federal Rule 41b dismissals that were without prejudice should not be counted as “strikes,” stating that, “Its very existence is a form of proof that the language used in Section 1915(g) covers dismissals both with and without prejudice.”

The opinion resolved a circuit split over the applicability of the “three strikes” rule in instances of “without prejudice” dismissals, and closely tracked federal court’s general hostility to multiple lawsuits filed by prisoners unrestrained by the financial responsibility of paying a filing fee. It does not prevent a prisoner lawsuit from proceeding if the filing fee is paid, however. See: Lomax v. Ortiz-Marquez, 140 S. Ct. 1721 (2020).

New Book from Prison Legal News

Prison Education Guide

by Christopher Zoukis

This exceptional new book is the most comprehensive guide to correspondence programs for prisoners available today. Prison Education Guide provides the reader with step-by-step instructions to find the right educational program, enroll in courses, and complete classes to meet their academic goals.

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ON March 4, 2020, the U.S. Court of Appeals for the Seventh Circuit held an Indiana federal district court abused its discretion in denying a prisoner’s motion for appointment of counsel in a civil rights lawsuit.

That ruling came in an appeal brought by Indiana prisoner Leonard Thomas, who sued numerous prison officials at the Westville Correctional Facility. His complaint alleged his requests for mental health care were denied or ignored and that officials failed to protect him from self-harm.

Over a 20-month period, “Thomas’s case traveled a lengthy journey, which included amendments to his complaint and denials of his requests for counsel,” the Seventh Circuit wrote. His failure to respond to a district court order resulted in dismissal of the case.

The Seventh Circuit first considered the question of appointment of counsel because it resolved the other issues on appeal. While civil litigants do not have a statutory right to court-appointed counsel, the district may request an attorney represent a party.

In exercising that discretion, the district court must inquire if (1) “the indigent plaintiff made a reasonable attempt to obtain counsel … and if so; (2) given the difficulty of the case, does the plaintiff appear competent to litigate himself.” See: Pruitt v. Note, 503 F.3d 647 (7th Cir. 2007).

In denying Thomas’s two 2015 requests for counsel, the district court satisfactorily evaluated the efforts Thomas had made toward seeking counsel, but in denying his 2016 request, its inquiry was insufficient.

As to whether Thomas had the ability to litigate the case, the district court again failed to make necessary findings in denying the 2016 request. While the court cited his mental illness and the types of motions and filings he had made to determine in denying the 2015 requests, those orders failed to consider “Thomas’s literacy, communication skills, and litigation experience.” His lack of a high school education should have been considered, but it was not. The medical evidence made the case complicated, and prejudice was apparent in that with counsel’s assistance Thomas would have responded to the district court’s order to show cause.

The Seventh Circuit vacated the district court and ordered Thomas’ case be reinstated and that he be appointed counsel. See: Thomas v. Wardell, 951 F.3d 854 (7th Cir. 2020).

News in Brief

CALIFORNIA: In June 2020, California Gov. Gavin Newsom (D) commuted 21 state prisoners’ sentences, a dozen of them were for murder convictions, patch.com reported. Seven were committed when the prisoner was 22 or younger. Half of the prisoners are now 59 or older. One commutation went to 62-year-old Thomas Waterbury, who served 39 years of a life-commutation

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the cell's toilet. As reported by *USA Today*, the incident erupted around 11 a.m. on the fifth floor of the Duval County Jail, where convicted prisoners await transfer to other facilities, when the two men argued over the nature of 56-year-old Ramirez's crime. He was convicted in 2013 of lewd or lascivious molestation of an 11-year-old girl after jury deliberations that lasted just 15 minutes, *Newsweek* reported. Dixon, 43, was serving a term for a murder conviction he received at age 17. As of August 2020, he was still at the jail awaiting trial for Ramirez's murder. A third prisoner who allegedly witnessed it refused to answer investigators' questions. Crime and safety analyst Ken Jefferson said that convicted child molesters find "no peace in jail" and “have to constantly watch over their back.”

**Florida:** A fight at the U.S. Penitentiary in Coleman, which left prisoner Troi Venable dead and five other prisoners hospitalized, broke out between rival gangs of Black prisoners and white supremacists, according to the local guards' union leader. Joe Rojas also said that prior to the melee on August 4, 2019, prisoners had brawled in the recreation yard and refused commands to return to their cells at the penitentiary, part of a massive federal prison complex holding nearly 6,700. No staff injuries were reported, according to *USA Today*. Venable, 39, who was serving a 17-year sentence for assault and weapons convictions, had previously been charged with assault on a fellow prisoner in 2014 while housed at the federal penitentiary in Lewisburg, Penn. The Coleman prison once housed mobster James “Whitey” Bulger, who was murdered in a federal prison in West Virginia in 2018, as well as former U.S. Rep. Corrine Brown (D-Jacksonville), who was released in April 2020 after serving time for a fraud conviction. Still in the prison are former USA Gymnastics team doctor Larry Nassar, convicted of molesting underage athletes, as well as Amine El Khalifi, whose plot to bomb the U.S. Capitol was foiled in February 2012.

**Florida:** A Florida group organized to protest mistreatment of female prisoners at Lowell Correctional Institution (LCI) near Ocala has turned its efforts to collecting personal protective equipment and cleaning supplies for use at the prison during the COVID-19 pandemic. In a July 2020 interview with Orlando National Public Radio station WMFE, Debra Bennett of Change Comes Now said her group was motivated by spread of the coronavirus at LCI and the nearby Florida Women's Reception Center. Together the two prisons have reported more than 1,200 infections among incarcerated women, as well as more than 50 infected staff members. The group was formed by Bennett and other former LCI prisoners outraged by the July 2019 beating of Cheryl Weimar, a prisoner left quadriplegic after her attack by LCI guards. No arrests have yet been made in that incident. The $9,000 worth of soap, bleach, hand sanitizer, gloves and toilet paper the group delivered, along with five TV sets, were all purchased with funds donated by formerly incarcerated women or their loved ones.

**Florida:** A Florida sheriff’s deputy whose violent assault on a detainee detoxifying from drugs was caught on videotape in March 2019 was never arrested, never charged with more than a misdemeanor and then allowed a plea deal to avoid jail. It was nearly three months after the attack inside a padded cell in the medical unit of the Manatee County Jail in Bradenton when the guard, Tyler Michael LeMond, was finally charged by State Attorney for the 12th Judicial Circuit Ed Brodsky with one count of simple battery. In August of that year, the 21-year-old's attorney negotiated a deal to let him plead no contest to the charge in exchange for a 12-month anger management course and paid a $25 fine he would be free. Two other Manatee deputies were also charged with battery against different inmates earlier the same year.

**Florida:** As reported by Tampa TV station WTVT, the Florida Department of Corrections (FDC) announced on July 31, 2020, that its Secretary, Mark Inch, had tested positive for the novel coronavirus that causes COVID-19, along with Deputy Secretary Ricky Dixon. Both men had visited Columbia Correctional Institution, where 1,300 prisoners and 72 guards have been infected. They are self-isolating and their contacts being traced and tested, Inch said. He has experienced mild symptoms of the disease, while Dixon remains asymptomatic. As of the date FDC announced their infection, it reported 8,126 of its 87,700 prisoners had tested positive for the virus, along with 1,675 staff members. Fifty prisoners had already died from COVID-19.
the disease that killed him. Hernández was diagnosed with COVID-19 in June 2020 and released from Tegucigalpa hospital the same month that Romero died. Former President Manuel Zelaya called his death “a murder by the regime” of Hernández.

**Illinois:** In January 2020, Rhonda G. Keech was sentenced for the crime of public indecency after deputies at the Macon County Jail in Decatur caught the 64-year-old private investigator performing oral sex on her client, detainee James D. Jones. The 37-year-old, who was being held on drug charges in violation of his parole, had hired Keech and met with her privately at the jail, where their behavior aroused deputies’ suspicions. A review of security camera footage from July 5, 17 and 24, 2019, found Keech attempting to hide behind a file folder while Jones stood with his back to the camera as she performed fellatio on him during each visit. At a subsequent meeting on July 31, 2019, Sgt. Roger Pope said she was “caught in the act.” Prior to sentencing, Keech had been free on $1,000 bail. In a plea deal, she received one day in jail with credit for time served and 100 hours of community service.

**Indiana:** Two Indiana jailers found themselves on the other side of the law in late 2019 after they were convinced by the same woman to smuggle contraband to a Ripley County Jail inmate who was her boyfriend. When Courtney Miller wanted to get notes and then a contraband cellphone into the jail to Eric Schott, she found not one but two willing accomplices who worked there. Former guard Darin S. Laird, of Versailles, received a two-year sentence in September 2019. Former guard William “Tiny” Dreyer was arrested and charged the following month for the same crime committed with the same detainee for the same woman. Prosecuting attorney Ric Hertel said the men had placed “other jail staff, inmates, law enforcement officers, and the community in jeopardy.” Sheriff Jeff Cumberworth used the crimes as a teaching moment to warn his other employees at the jail. Laird, 42, told the court, “I made the worst mistake of my life.”

**Iran:** After assurances from Iranian authorities in April 2020 that none of the country’s prisoners had died from COVID-19, letters leaked to Amnesty International from officials at the national Prisons Organization indicate that three months later at least 20 Iranian prisoners had been killed by the disease. The jailers letters also showed that requests for personal protective equipment – millions of masks and gloves, along with hundreds of thousands of liters of disinfectant and hand sanitizer – had been ignored by the national Ministry of Health. Since the beginning of the pandemic caused by the coronavirus, about 29,000 prisoners have been furloughed. But that leaves nearly 220,000 imprisoned in facilities designed for 80,000. As a result, even prisoners exhibiting symptoms of the disease are ignored, and if their symptoms get worse, they are thrown into solitary confinement cells. Diana Eltahawy, the deputy regional director for the Middle East and North Africa at Amnesty International, said that “overcrowding, poor ventilation, lack of basic sanitation and medical equipment, and deliberate neglect of prisoners’ health problems, are making Iranian prisons a perfect breeding ground for COVID-19.”

**Louisiana:** In what authorities called a “large-scale” smuggling operation at Louisiana State Penitentiary at Angola, 22 people were indicted on conspiracy and drug trafficking charges in August 2019. Among them were seven prisoners: Anthony Basaldua, 41; DeAnthony Ford, 32; Nelson Tippen, 39; Kevin Narcisse, 34; Dudley Melancon, 31; Joshua Gonzalez, 35; and Jared Graham, 30. Five others were among 40 former staff members – guards and one nurse – arrested in the preceding year for smuggling drugs, smuggling contraband and having inappropriate relationships with prisoners. They are Tommy Carter, Jr., 31; Precious Shelvin, 33; Jeffery Day, 34, who resigned after his July 2018 arrest for trying to smuggle drugs into the prison inside a Subway sandwich; April Mathews, 25, who resigned after a May 2017 arrest for trying to smuggle drugs into Angola and then led police on a high-speed chase in April 2019 after she was caught trying to smuggle more contraband into Elyan Hunt Correctional Center; and Tichina Williams, 24, who resigned after an April 2018 arrest for smuggling drugs in exchange for $4,000 to an Angola prisoner whom she admitted kissing and whose name was tattooed on her arm.

**Michigan:** A 67-year-old Michigan prisoner imprisoned 24 years after a marijuana sale will not be eligible for release before he is 85 – if he lives that long. In August 2020, Michael Thompson was transferred to a medical facility after testing positive for the novel coronavirus that causes COVID-19. Because he suffers from diabetes and other exacerbating conditions, Thompson's attorney has sent a clemency petition to Gov. Gretchen Whitmer (D). An earlier petition sent to her predecessor, former Gov. Rick Snyder (R), was denied in 2018 – the same year Michigan legalized recreational marijuana use. For the three pounds of pot found on Thompson, he could have completed his sentence no later than 2011, said the state's attorney general, Dana Nessel (D). She is pushing for his release, CNN reported. Because Thompson was also found with 14 guns in his home – and though his wife testified most were hers – the judge at his trial handed down the longer sentence, one enhanced by his prior convictions, none of which was for a violent crime. The state parole board was scheduled to take up his case in August 2020, but the process will likely take months, according to Department of Corrections spokesman Chris Gautz.

**New Hampshire:** A former chaplain at the Federal Correctional Institution (FCI) in Berlin, N.H., is now himself a prisoner after he was caught smuggling drugs and contraband into the medium-security prison where he worked from 2015 until he was questioned by investigators with the federal Bureau of Prisons (BOP) in November 2018. As reported by the New Hampshire Union Leader, Joseph Buenvijaje, 55, then admitted to bringing Suboxone, synthetic cannabinoids, marijuana, tobacco and cellphones into the prison, selling enough to earn $52,000 in bribes from prisoners he was supposed to be ministering to. Some of the loot and money was funneled through his personal ministry, Joseph's Coat of Many Colors. Buenvijaje pleaded guilty to bribery and possession of contraband charges in April 2019, receiving a 40-month sentence in August of that year for what U.S. Attorney Scott Murray called “a massive breach of trust.” He is scheduled for release from the U.S. Penitentiary in Tucson, Ariz., in January 2022.

**New Jersey:** A New Jersey jury has convicted a former prison guard of smuggling drugs and other contraband into Southern State Prison, where he worked before his arrest in August 2017. After receiving the guilty verdict in July 2019
on second- and third-degree charges — including conspiracy, misconduct and bribery, as well as possession of oxycodone and distribution of marijuana — Steven B. Saunders, 51, was sentenced that September to a seven-year prison term by Burlington County Superior Court Judge Gerard H. Brelan. An accomplice in the scheme, Tasha N. Swain, pleaded guilty to passing the prohibited items and cash to Saunders. The 40-year-old was sentenced to probation in July 2019. Her boyfriend, Lakovian Shepherd, a 44-year-old inmate at the prison, pleaded guilty February 2019 to distributing the contraband. At his sentencing in July 2019, Her boyfriend, Lakovian Shepherd, a 44-year-old inmate at the prison, pleaded guilty February 2019 to distributing the contraband. At his sentencing that August, he received an additional three years added to the 10-year sentence he was serving for narcotics distribution.

New Mexico: In August 2020, three weeks after a prisoner uprising at the San Juan County Adult Detention Center in New Mexico, a group of detainees at a privately operated federal prison in the state launched another protest against their “quarantine status” during the COVID-19 pandemic. The protest ended without incident, according to Amanda Gilchrist, public affairs director for CoreCivic, the private firm managing the Cibola County Correctional Center (CCCC). The prison, which houses federal detainees — including migrants held by U.S. Immigration and Customs Enforcement — had recorded 320 confirmed cases of COVID-19 as of August 18, 2020. Gov. Michelle Lujan Grisham (D) said she was applying as much pressure as possible on federal authorities to control the spread of the disease at CCCC and three other prisons in the state where federal detainees are held, which together have recorded another 483 cases. At one of those, the Torrance County Detention Facility, guards in May 2020 pepper-sprayed detainees during another protest over crowded conditions putting them at increased risk of contracting the disease.

Oregon: A hunger strike began August 17, 2020, at Eastern Oregon Correctional Institute, with prisoners demanding reforms in the use of solitary confinement as well as hospitalization for one of their own — Steven Corbett — whose Crohn's disease had advanced to the point that his organs began to bleed from his body into his colostomy bag. In an email, Southwestern Law School student E. Rose Harriot added that Corbett suffered seizures resulting in injuries. Though nurses suspected he was “faking it,” Portland TV station KATU reported that Corbett’s fellow prisoners thought he was dying. Allowed just a bar of soap and baking soda when entering solitary confinement, prisoners can get additional hygiene supplies like toothpaste, more soap, and cleaning supplies only after a month. With the threat of COVID-19, inmates argue that this treatment is life-threatening.

Ohio: Former Cuyahoga County Jail guard Marvella Sullivan pleaded guilty on July 23, 2020, to charges of attempted bribery and trafficking drugs into the facility with another guard, Stephen Thomas. He pleaded not guilty to the same charges — originally filed in August 2019 — along with nine others in an indictment unsealed
on July 21, 2020. A pretrial hearing was scheduled for August 19, 2020. Thomas and Sullivan resigned after the first charges were filed. The guards were accused of smuggling heroin, fentanyl, marijuana and cellphones into the jail under the direction of prisoner Lamar Speights, who also pleaded guilty on the same day as Sullivan to charges of bribery and obstructing justice. His sentencing will be set at a later date. Another prisoner, Alexander Foster, pleaded not guilty to the same charges. His pretrial hearing was set for August 6, 2020.

**Pennsylvania:** In February 2020, Jamie Lynn Brownlie, 37, was sentenced to a term of 24 to 48 months after pleading guilty in August 2019 to hiding methamphetamine in a body cavity when she entered the Luzerne County Prison in Wilkes-Barre, Penn., the previous January. She was one of four female prisoners who had been charged in March 2019 with smuggling and dealing drugs at the jail. Aubreana Hosey, 21, pleaded guilty in November 2019 and received an additional sentence of 10 to 22 months. Linzy Chodnicki, 31, also pleaded guilty and was still awaiting sentencing in early 2020. Joleen Gambardella, 38, pleaded guilty but filed a motion to withdraw her plea. Four more women in Scranton – 20 miles away – were charged in 2019 with similar crimes committed the previous year at the Lackawanna County Prison. In that scheme, 48-year-old contract employee Brenda Cruise admitted to smuggling tobacco, marijuana, synthetic marijuana (“Spice”) and suboxone into the prison. She was scheduled for sentencing in federal court in December 2019.

**Pennsylvania:** After a September 2019 domestic dispute, Upper Allen Township police arrested Scott K. Lewis, 48, charging the Dauphin County Prison guard with assault, reckless endangerment and making terroristic threats after he allegedly threw a metal object at a woman, pushed her to the ground and pointed his loaded gun at her head, the *Pennsylvania Chronicle* reported. The incident occurred in Mechanicsburg, not far from the Harrisburg prison where Lewis held the rank of sergeant. He was suspended and freed on a $9,000 bail bond.

**Tennessee:** On July 29, 2020, Jerry Lawler tweeted respects to his son on the second anniversary of his death. Brian Lawler, 46, who was also a professional wrestler known as Brian Christopher, died by suicide on July 29, 2018, after a drunken-driving arrest landed him in jail in Hardeman County. Jerry Lawler told *wrestlinginc.com* that he drove to the jail and personally advised Sheriff John Doolen of his son’s two previous suicide attempts, receiving assurances that he would be guarded while also receiving addiction treatment. A $3 million wrongful death suit filed in July 2019 by the 70-year-old wrestling star alleges that his son was never treated in over three weeks of custody, by the end of which he had been injured in a fight and placed in solitary confinement. There, he used his shoelaces to kill himself. A supervising deputy allegedly ignored his cries for help “for four to six hours,” chalking them up to pretending.

**Tennessee:** On the day an inmate died in the Warren County Jail in McMinnville, two guards did not conduct a required walk-through and then falsified jail logs to cover up their failure. That was the substance of two indictments returned by a county grand jury on September 6, 2019, against the men. Zechariah Jacob Clark, 22, and Steven Thomas Mason, 28, both faced counts of destroying and tampering with government records in the incident, which occurred on January 14, 2019. Neither man continued to work at the jail, Nashville TV station WSMV reported. Agents with the state Bureau of Investigation discovered the crime when they were called in to investigate the inmate death by 31st District Attorney General Lisa Zavogiannis. The name of the deceased inmate was not reported.

**Texas:** In July 2019, Texas Depart-
ment of Criminal Justice (TDCJ) Regional Director Wayne Brewer was forced from his job after a tip about illegal pill-pushing at the Huntsville Unit led investigators to employees who admitted to buying prescription amphetamines the previous month from Brewer’s mother-in-law, 58-year-old Kathy Lindley. She was arrested on felony drug-dealing charges. The two TDCJ employees, Karen Prestwood and Lonna Britt, were also fired. Both are married to high-ranking officials with the prison system, according to reports in the *Houston Chronicle*. Brewer’s 45-year-old wife, Melinda, also lost her job at TDCJ. She allegedly said her mother planned to accuse her of stealing a TDCJ computer and burning it on a trash pile at home. Lindley told investigators the accusation was false and that her crime was a setup in retaliation from Brewer’s mother-in-law, who she said was trying to drive her from her job after a tip about illegal pill-pushing at the Huntsville Unit led investigators to employees who admitted to buying prescription amphetamines the previous month from Brewer’s mother-in-law, 58-year-old Kathy Lindley. She was arrested on felony drug-dealing charges. The two TDCJ employees, Karen Prestwood and Lonna Britt, were also fired. Both are married to high-ranking officials with the prison system, according to reports in the *Houston Chronicle*. Brewer’s 45-year-old wife, Melinda, also lost her job at TDCJ. She allegedly said her mother planned to accuse her of stealing a TDCJ computer and burning it on a trash pile at home. Lindley told investigators the accusation was false and that her crime was a setup in retaliation

**Texas:** Reality Winner, a former Air Force intelligence contractor imprisoned in 2018 for leaking a report on Russian interference in the 2016 Presidential election, has contracted the novel coronavirus that causes COVID-19, *The Verge* reported. The 28-year-old whistleblower is currently asymptomatic, her sister said. But her attorney cited underlying medical conditions that put her at higher risk of dying from the disease in seeking compassionate release from the Federal Medical Center at Carswell, Texas, which had recorded five prisoner deaths to the disease as of August 18, 2020. Winner is not currently scheduled for release until 2021.

**Texas:** In late July 2020, a former U.S. Congressman imprisoned at the Federal Correctional Complex in Beaumont tested positive for the novel coronavirus that causes COVID-19. As reported by local TV station KDFM, Steve Stockman is one of 28 infected prisoners in his unit. The 63-year-old suffers diabetes, asthma and high blood pressure, putting him at higher risk of dying from the disease, according to his wife, Patti. On August 2, 2020, loved ones of “at-risk inmates who are non-violent and pose minimal likelihood of recidivism and who might be safer serving their sentences in home confinement” staged a protest outside the prison, demanding that the federal Bureau of Prisons follow language quoted from the memo sent them March 26, 2020, by U.S. Attorney General William Barr. In 2017, Stockman pleaded guilty to diverting over $1 million in campaign funds to his personal use. He is serving a 10-year sentence for the crime.

**Ukraine:** At the same time that he announced the government would attempt to sell off its notoriously old and decrepit prisons, Ukrainian Justice Minister Denys Malyuska said in August 2020 that his agency would begin offering certificates for “luxury” holding cells, which wealthy pre-trial detainees can buy. The certificates are nonrefundable and valid for only six months from the date of issue.

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months, Mayluska said, emphasizing that anyone convicted would be treated equally to all other prisoners. But as reported by BBC News, his jokes about the planned sales – including “reduced chances of contracting COVID-19” – fell flat with opposition Member of Parliament Iryna Friz, who dubbed Mayluska “Mr. Troll.” Businessman Yevhen Chernyak dryly called the certificate plan “convenient” for corrupt officials, noting that money they have embezzled could end up buying them upgraded prison cells. Over the next decade Mayluska said the country would sell 120 of its 130 prisons, which house 51,000 prisoners, using the proceeds along with funds from certificate sales to build new and better facilities.

**United Kingdom:** Like many restaurants whose dining rooms have been shuttered by the COVID-19 pandemic, a south London eatery called the Clink has turned to home delivery. What’s unusual about this restaurant is that it is located inside a prison. As reported by BBC News, Chief Executive Chris Moore said the switch to “take-aways” – delivered within a five-mile radius by van – will allow Clink charity to continue using the restaurant to train Brixton prisoners for jobs after their release. Ministry of Justice research has found that those graduating from the program have a significantly lower rate of recidivism, which it says costs British taxpayers £18 billion (about $23.75 billion) annually. After starting the delivery service during the last week of July 2020, clink@home reported all of its delivery slots already taken for the week ahead. The most popular items have been jerk chicken and katsu curry, though the menu also features gourmet items like “sun-dried tomato and parmesan arancini with rocket pesto.”

## Criminal Justice Resources

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<tr>
<th><strong>Amnesty International</strong></th>
<th><strong>Critical Resistance</strong></th>
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<td>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: <a href="http://www.amnesty.org">www.amnesty.org</a>.</td>
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<tr>
<td>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, 1004 Franklin Street #504, Oakland, CA 94612 (510) 444-0484. <a href="http://www.criticalresistance.org">www.criticalresistance.org</a></td>
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<th><strong>Black and Pink</strong></th>
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<td>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. <a href="http://www.blackandpink.org">www.blackandpink.org</a></td>
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<td>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. <a href="http://www.FAMM.org">www.FAMM.org</a></td>
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<th><strong>Center for Health Justice</strong></th>
<th><strong>The Fortune Society</strong></th>
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<td>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). <a href="http://www.centerforhealthjustice.org">www.centerforhealthjustice.org</a></td>
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<td>Provides post-release services and programs for prisoners in the New York City area and occasionally publishes Fortune News, a free publication for prisoners and less reliance on incarceration. Publishes the Fortune Society, 29-76 Northern Blvd., Long Island City, NY 11101 (212) 691-7554. <a href="http://www.fortunesociety.org">www.fortunesociety.org</a></td>
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<th><strong>Centurion Ministries</strong></th>
<th><strong>Innocence Project</strong></th>
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<td>Centurion is an investigative and advocacy organization that considers cases of factual innocence. Centurion does not take on accidental innocence. Contact: Centurion, 1000 Herrontown Rd., Clock Bldg. 2nd Fl., Princeton, NJ 08540. <a href="http://www.centurion.org">www.centurion.org</a></td>
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<td>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. <a href="http://www.innocenceproject.org">www.innocenceproject.org</a></td>
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<th><strong>National Resource Center on Children and Families of the Incarcerated</strong></th>
<th><strong>Just Detention International</strong></th>
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<td>Primarily provides research, fact sheets and a program directory related to families of prisoners, parenting, children of prisoners, prison visitation, mothers and fathers in prison, etc. Contact: NRC, CFI at Rutgers-Camden, 405-7 Cooper St. Room, 103, Camden, NJ 08102 (856) 225-2718. <a href="https://nrc.rutgers.edu">https://nrc.rutgers.edu</a>.</td>
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<td>Formerly Stop Prisoner 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. <a href="http://www.justdetention.org">www.justdetention.org</a></td>
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<th><strong>November Coalition</strong></th>
<th><strong>Prison Activist Resource Center</strong></th>
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<td>Advocates against the war on drugs and previously published the Razor Wire, a bi-annual newsletter on drug war-related issues, releasing drug war prisoners and restoring civil rights. No longer published, back issues are available online. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 680-4679. <a href="http://www.november.org">www.november.org</a></td>
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<td>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. <a href="http://www.prisonactivist.org">www.prisonactivist.org</a></td>
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The Merriam-Webster Dictionary, 2016 edition, 939 pages. $9.95. This paperback dictionary is a handy reference for the most common English words, with more than 75,000 entries. 2015

The Blue Book of Grammar and Punctuation, by Jane Straus, 201 pages. $19.99. A guide to grammar and punctuation by an educator with experience teaching English to prisoners. 1046

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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. 1080

The Federal Rules of Civil Procedure, Practitioner’s Desk Reference 2017, by A. Benjamin Spender, 439 pages. $54.95. 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 pro se litigants with a handy resource that facilitates quick reference to the Rules. 1095

Merriam-Webster’s Dictionary of Law, 634 pages. $19.95. Includes definitions for more than 10,000 legal words and phrases, plus pronunciations, supplementary notes and special sections on the judicial system, historic laws and selected important cases. Great reference for jailhouse lawyers who need to learn legal terminology. 2018

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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. 1085

**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


**Sue the Doctor and Win! Victim’s Guide to Secrets of Malpractice Lawsuits**, by Lewis Laska, 336 pages. $39.95. Written for victims of medical malpractice/neglect, to prepare for litigation. Note that this book addresses medical malpractice claims and issues in general, not specifically related to prisoners. 1079

**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. 1090a

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