MOVERS AND TELEVISION OFTEN DRA-MATIZE prison for entertainment purposes, and just as often the dramatiza-
tions are unrealistic. One aspect of prison life that cannot be overly dramatized—and is a reality for many of the imprisoned—is the prospect of being raped. For decades now, PLN has chronicled incidents of this human rights violation and the lawsuit settlements that come at taxpayer expense to compensate the victims that succeed in prosecuting such claims.

Rape inside the confines of a prison can come from predatory prisoners preying on the weak or mentally ill. Juveniles are the most vulnerable, and Congress found that they “are 5 times more likely to be sexually assaulted in adult rather than juvenile fa-cilities—often within the first 48 hours of incarceration.” The culture is such that rape is viewed as part of doing time, so guards are often indifferent to preventing prison rape. As PLN has reported over the years, guards are more often the problem because they are also perpetrators. PLN editor Paul Wright has noted, prison rape is such a pervasive and common issue nationally that it has to be seen as an integral part of modern American prison management.

“It forever changed my life, and not in a good way. I understand that I made mistakes to go to prison, but those mistakes should not have led me to acquire all of this other stuff that I’m having to deal with the remainder of my life,” said Kara Guggino, 35, who was sexually abused and harassed by guards while serving time in federal prisons. “We should have to be punished for the things we do, but the experiences that we have [in prison] should not hinder us further from recovery and from becoming better people and making a life for ourselves. It’s just terrible, and I wish people would become aware of what’s going on.”

Fueled by the 1995 suicide of her son, 17-year-old Rodney Hulin, Jr., Linda Bruntyer became one of the main advo-cates for Congress to pass the landmark Prison Rape Elimination Act (PREA). Rodney was sent to the notorious Clemens Unit in Texas for the crime of setting fire to a dumpster. Within days of his arrival, other prisoners raped and beat Rodney. His pleas for guards to move him away from his abusers were denied, so the beating and sexual assaults continued. With seven years left on his sentence and nowhere to turn, Hulin committed suicide in his cell.

“This is not what we mean when we say justice,” Bruntyer said at a June 2003 Just Detention International (JDI) rally in Washington, D.C., held to demand PREA’s passage. “Rape should not be considered a part of the punishment. Rape is always a crime.”

Pushed by the outcry, PREA was signed into law on September 4, 2003. Its purpose is to implement standards and poli-cies to prevent prison rape and to “protect the Eighth Amendment rights of Federal, State, and local prisoners.”

While PREA became law in 2003, it was not until June 20, 2012, that the Depart-ment of Justice (DOJ) finalized watered down regulations that forced federal and state prison officials to start taking some action to implement PREA’s purpose. With the National Standards to Prevent, Detect, and Respond to Prison Rape codified at 28 C.F.R. pt. 115, the DOJ set 300 standards that applied to any “unit of a State, local, corporate, or nonprofit authority, or of the Department of Justice, with the direct re-sponsibility for the operation of any facility that confines inmates.”

That groundbreaking regulation set standards for prevention and responsive planning, data collection, review for cor-rective action, auditing, prisoner education, medical and mental-health care for victims and abusers, employee and volunteer train-ing, and contractor training, supervision, and monitoring. It also eliminated time limits on prisoner grievances to report sexual abuse or harassment.

Failure to comply with PREA will result in states losing 5% of their federal grant funding. To help states meet those
Prison Education Guide  
Christopher Zoukis  
ISBN: 978-0-9819385-3-0 • Paperback, 269 pages  
Prison Education Guide is the most comprehensive guide to correspondence programs for prisoners available today. This exceptional book 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. This book is an invaluable reentry tool for prisoners who seek to further their education while incarcerated and to help them prepare for life and work following their release.

The Habeas Citebook: Ineffective Assistance of Counsel, Second Edition  
Brandon Sample & Alissa Hull  
ISBN: 978-0-9819385-4-7 • Paperback, 275 pages  
The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing 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.

Dan Manville  
The Disciplinary Self-Help Litigation Manual, Second Edition, by Dan Manville, is the third in a series of books by Prison Legal News Publishing. It is designed to inform prisoners of their rights when faced with the consequences of a disciplinary hearing. This authoritative and comprehensive work educates prisoners about their rights throughout this process and helps guide them at all stages, from administrative hearing through litigation. The Manual is an invaluable how-to guide that offers step-by-step information for both state and federal prisoners, and includes a 50-state analysis of relevant case law and an extensive case law citation index.

The Habeas Citebook: Prosecutorial Misconduct  
Alissa Hull  
The Habeas Citebook: Prosecutorial Misconduct is the second in PLN Publishing's citebook series. It's designed to help pro se prisoner litigants identify and raise viable claims for potential habeas corpus relief based on prosecutorial misconduct in their cases. This invaluable title contains several hundred case citations from all 50 states and on the federal level, saving readers many hours of research in identifying winning arguments to successfully challenge their convictions.

Order by mail, phone, or online. Amount enclosed ________________

By: □ check □ credit card □ money order

Name ________________________________

DOC/BOP Number ________________________________

Institution/Agency ________________________________

Address _____________________________________________

City ___________________________ State _____ Zip _______________

Shipping included in all prices.
Prison Legal News
October 2021

Prison Legal News
a publication of the
Human Rights Defense Center
www.humanrightsdefensecenter.org

EDITOR
Paul Wright

MANAGING EDITOR
Brian Dolinar, Ph.D.

ASSISTANT EDITOR
Panagioti Tsolkas

COLUMNISTS
Michael Cohen, Mumia Abu-Jamal

CONTRIBUTING WRITERS
Anthony Accurso, Douglas Ankney, Kevin Bliss, Dale Chappell, Matthew Clarke, Michael Fortino, Derek Gila, Jayson Hawkins, Ed Lyon, Juliette LaMarr, David Reutter, Daniel Rosen, Keith Sanders, Chuck Sharman, Mark Wilson, Christopher Zoukis

ADVERTISING COORDINATOR
Judith Cohen

LAYOUT
Lansing Scott

HRDC LITIGATION PROJECT
Daniel Marshall – General Counsel
Jesse Isom – Staff Attorney

PLN is a monthly publication.

A one year subscription is $30 for prisoners, $35 for individuals, and $90 for lawyers and institutions. Prisoner donations of less than $30 will be pro-rated at $3.00/issue. Do not send less than $18.00 at a time. All foreign subscriptions are $100 sent via airmail. PLN accepts credit card orders by phone. New subscribers please allow four to six weeks for the delivery of your first issue. Confirmation of receipt of donations cannot be made without a SASE. PLN is a section 501 (c)(3) non-profit organization. Donations are tax deductible. Send contributions to:

Prison Legal News
PO Box 1151
Lake Worth Beach, FL 33460
561-360-2523
info@prisonlegalnews.org
www.prisonlegalnews.org

PLN reports on legal cases and news stories related to prisoner rights and prison conditions of confinement. PLN welcomes all news clippings, legal summaries and leads on people to contact related to those issues.

Article submissions should be sent to - The Editor - at the above address. We cannot return submissions without an SASE. Check our website or send an SASE for writer guidelines.

Advertising offers are void where prohibited by law and constitutional detention facility rules.

PLN is indexed by the Alternative Press Index, Criminal Justice Periodicals Index and the Department of Justice Index.

Prison Legal News
October 2021
3

Prison Rape (cont.)

According to the Bureau of Justice Statistics (BJS), each year roughly 200,000 prisoners are victims of sexual assault. DOJ has certified only 19 states as being in full compliance with PREA. While PREA has heightened awareness of prison rape, it has not had the full effect of eradicating this violation of the basic human right to bodily integrity.

As PREA has taken root, its reporting requirement is presenting a clearer picture of the extensiveness of prison rape, but doing little to stop it. A 2011-12 nationwide prisoner study by BJS found that about 4% of state and federal prisoners and 3.2% of jail prisoners reported being sexually victimized by another prisoner or staff member.

A 2015 report, which came after PREA’s stricter reporting requirements went into effect, found that allegations of sexual assault in prison had tripled. A 2019 report by BJS found that about 7% of juveniles reported being sexually victimized in 2018, which is down from 9.5% in 2012.

These figures are only part of the story, for even in society many victims of sexual assault do not report it due to shame or fear of not being believed. Such fear is heightened for prisoners.

“People think, ‘Well, criminals, they’re manipulative. They make bad choices. They’re doing things to hurt people. Can we trust what they say?’” said Michelle McCormick, former program director for the Center for Safety and Empowerment at the YWCA of Northeast Kansas, who is now head of victim services for the state Attorney General’s office. “Those are the questions we have as a society, so of course they’re being applied by professionals in the correctional system.”

Guards and other prison officials, in the wake of PREA, are quick to take action when a claim of sexual abuse or harassment is lodged by one prisoner against another. (In fact, a joke amongst prisoners is to kid each other that “I’ll scream PREA on you.”) Such a claim can be made via a “kite”—a form provided for grievances—or through another grievance process, even through the telephone system in those facilities with hotlines, or by telling a guard. Action on such a claim may be swift, yet we regularly report on prisoners being raped by other prisoners encouraged to do so by staff.

A prisoner’s complaint against another prisoner results in an immediate investigation, which means the complainant and
Prison Rape (cont.)

alleged abuser are placed in confinement until the matter is determined to be, as PREA mandates, substantiated, unsubstantiated, or unfounded. “It feels punitive. I know it feels punitive,” said Shannon Meyer, warden at Topeka Correctional Facility (TCF) in Kansas. “But it’s a hard balance when there’s not a lot of options.”

Recently, a prisoner in my dormitory had such a complaint lodged against him. Cameras in the dorm refuted the allegation of the complainant, who had made such claims against others in the past. The alleged abuser was released from confinement after three weeks, and the accuser received a protective custody transfer to another prison, which was apparently his true purpose in making the claim. Had there been no cameras, the complainant’s claim that a rape attempt on him was made would have been given credence, and the accused could have faced long-term confinement or new charges.

‘Sanctuary’ for Guards

According to JDI, in 2015 over 24,000 formal allegations of sexual assaults in jails and prisons were lodged. Of them, 58% were claims that involved staff being the perpetrator. When a sexual abuse allegation is made against a staff member, action on the complaint is not so swift. When a sexual abuse allegation is made against a staff member, action on the complaint is not so swift.

A lawsuit filed in September 2020 by 15 current and former prisoners at federal women’s prisons in Florida alleged the prisons, especially the Federal Correctional Complex (FCC) at Coleman created a “sanctuary” for sexual predator guards. [See Beaubrun v. United States, USDC MD FL, Case No. 5:19-cv-000615-TJC-PRL; PLN, Dec. 2020, p. 44].

“The sexual abuse at these female prisons is rampant but goes largely unchecked as a result of cultural tolerance, orchestrated cover ups, and organizational reprisals of inmates who dare to complain or report sexual abuse,” the complaint alleges.

The suit was settled for about $2 million by the federal Bureau of Prisons (BOP) in May 2021. We will report the details of the suit and the settlement in an upcoming issue of PLN.

Guggino, the former federal prisoner, was one of the plaintiffs. “I was incarcerated for almost eight years, and I saw it at pretty much every single institution I was at,” she said. “I was at maybe six different places, and this was going on everywhere, but it was by far the worst at Coleman.”

She said her first instance of abuse was from a guard at a federal prison in Florida who stalked, threatened, and forced himself upon her. Guggino was placed in solitary confinement three separate times as punishment for her nonconsensual encounters with another guard, who once pulled up a map of her family’s house and showed it to her. When she refused to cooperate with the DOJ’s Inspector General’s Office, she was threatened with spending her remaining five years in a cell the size of a parking space.

“They basically used that as a bully tactic to get me to comply,” she said, “and then after all of this nothing happened to the lieutenant. He still has his job in Tallahassee.”

The lawsuit described a group of guards who assaulted women with impunity. The women would be trapped in their cells or taken to the woods on the edge of the work camp and forced to perform sex acts. “You know they’ve accused me before of rape, but they’re never going to believe you,” a guard allegedly told one of the prisoners.

“There’s no safe outlet for you to go to speak about this if it’s happening to you because everybody is hiding and protecting one another,” said Guggino. “PREA, that’s a joke.”

She and other prisoners wonder whether PREA is nothing other than wall signs and procedures when a staff member is alleged to be the perpetrator of prisoner sexual abuse or harassment. The investigations surrounding Dr. Thomas Co, who was a dental lab supervisor at TCF, the women’s prison in Kansas where Meyer is warden, support such beliefs.

The dental lab was a coveted assignment where prisoners hoped to learn skills. “It was the closest I could get in the medical field,” said one prisoner, who also coveted the 60-cent hourly wage that came with working in the lab. “So, I did what I had to do.” That included dealing with Co’s sexual harassment and abuse.

Co’s grooming of women prisoners for sexual abuse started before they were even accepted into the program. “When I got interviewed by him, I was asked if I was in a relationship, which I didn’t think mattered, but I answered it because I didn’t want it to be used against me from getting the job,” said one TCF prisoner.

“He always made inappropriate comments: ‘Oh, you look really nice,’ or ‘Have you lost weight?’ or ‘Your shirt’s really tight today,’” another TCF prisoner said. “Continuously asked me am I with anybody, do I have a boyfriend, have I ever been married.”

Things would progress from there into a storage room. “He would call us in there and say, ‘Be sure to shut the door,’”

---

MARILEE MARSHALL, ATTORNEY AT LAW

California State Bar Board of Specialization
Certified Criminal Law and Appellate Law Specialist

If you have a California case you need a California lawyer!

(626) 564-1136

State and Federal Appeals and Writs, Lifer Parole Writs
30+ years of success
20 North Raymond Ave
Suite 240
Pasadena, CA 91103
marileemarshallandassociates.com
another prisoner said. “You always know something’s going to happen.”

To beat the camera, Co, 73, would cover it with bubble wrap or block it by stacking boxes on a shelf. Guards would admonish prisoners to clear the view for them, but the camera would be blocked the next day.

“There was a time he tried to kiss me. This was in the back room,” yet another prisoner said. “He tried to kiss me. I tried to hurry up, turn my face, or it would happen. That’s what I did report. There was a time he called me back there and had me sit in a chair, and he was sitting in the chair right in front of me, and just kind of pressed his hands on my leg. Didn’t touch my, you know, woman parts, but I felt that he might as well have.”

Co requested one woman, on multiple occasions, to reach into his pants, which had the pockets removed. He was not wearing underwear, and at his request the woman rubbed his penis until he ejaculated. Co rubbed his genitals against the women’s backs as they sat in chairs and gave them intimate hugs.

The prisoners began filing complaints about Co’s behavior in 2013. They went nowhere, and Co became more confident and the harassment intensified. Women who complained were moved to another part of the prison and lost their job. Co tried to compel silence by giving the women jewelry, painkillers, money, and synthetic marijuana.

When a complaint was lodged against him, he was aware of it. “The next day…he told us he knew and we would pay,” a prisoner said. “He even wrote us notes he left inside our desk instructing us to stay quiet. I gave mine to EAI (the Enforcement, Apprehensions & Investigations Division of the Kansas Department of Corrections). Once again, they lied and said it would be taken care of. It never was, obviously.”

The failure to take action was demoralizing. “One after another would come to me and say, ‘They’re not doing anything, and it just had a real adverse effect on the girls,” said a TCF prisoner. “They were upset. They didn’t understand why nothing was done. They’re young. They’re all young. I was appalled. I mean, they did everything they were told to do.”

A few months after Meyer became TCF’s warden in August 2016, she launched an investigation into Co based on a prisoner’s complaint. She recommended in early 2017 that he be fired, as did a federal auditor later that year. Those recommendations were rejected without explanation at higher levels of the Kansas Department of Corrections.

“Things happen, and if you can’t prove things happen, hands are tied. But that’s also really difficult as an employer. I can’t just fire somebody because I have a bad feeling,” said Meyer. “I constantly tell them that doesn’t mean we don’t believe you. That doesn’t mean we don’t care.”

The prison system’s blindfold was removed on October 30, 2018, when a prison employee assigned to the dental lab complained of sexual harassment by Co. He was placed on administrative leave on November 16, 2018, and fired on December 10, 2018. He was charged in February 2019 and arrested in April. Co’s lawyer insisted he would be found innocent at trial. He was convicted on January 20, 2020, on six felony counts of unlawful sexual relations with a prisoner. He was sentenced in March 2020 to a 32-month prison term, after which he will have to register as a sex offender for

...
Prison Rape (cont.)

25 years.

But it would not have been surprising to see the case go the other way.

That would not be an unusual result. A series of prosecutions brought against guards who worked at Vermont’s Chittenden Regional Correctional Facility (CRCF) illustrate how justice is rarely obtained in cases where a guard has sexually assaulted a prisoner. Like the prosecution of brutal and corrupt cops, the prosecution of prison and jail employees who rape the prisoners in their custody is all too often characterized by lackluster prosecutions and light sentences when convictions do result.

In 2012, guard Richard Gallow was charged with sexually assaulting a prisoner at the women’s prison. Two juries were unable to reach a verdict, resulting in a mistrial. The charges were dropped after the victim refused to testify at a third trial.

A federal grand jury in 2014 indicted guard Tracy Holliman on charges that he had sex with two female federal detainees. Prosecutors dropped the charges after Holliman pleaded guilty to obstruction of justice for deleting emails in which he admitted to the crimes. He was sentenced to five months in jail. See: USA v. Holliman, USDC VT, Case No. 5:13-cr-00121-gwc.

Also in 2014, guard William H. Savaria III, 29, was charged with the sexual exploitation of an 18-year-old prisoner. He admitted to having sex with her after her release, but he denied claims of sexual contact while she was in jail. At his 2016 trial, Savaria’s attorney challenged the prisoners’ credibility. Savaria was acquitted. Later in 2016, prosecutors filed two new charges involving similar claims as those in the first case against Savaria involving two other prisoners. Savaria denied the allegations, and prosecutors subsequently dropped the charges without explaining why.

Lawsuits are always a possibility in cases of sexual abuse and harassment, and this likely plays a role when prison officials try to sweep allegations against staff under the rug. A criminal conviction makes a civil judgment a virtual lock in terms of liability by the guard but in many instances, may foreclose payment of damages as rapes of prisoners will usually be found to be outside the scope of employment thus not subject to indemnification by the government. Which means any damages won’t be paid unless the rapist employee has the financial wherewithal to pay a judgement, which they rarely do. Absent a criminal conviction, civil judgments are difficult to earn due to judicial obstacles in the PLRA, the doctrines of qualified and governmental immunity, and state policies that may or may not indemnify employees for conduct committed while on duty. The latter keeps the perpetrator from having to face financial consequences for violating a prisoner’s human rights.

In an effort to prevent a complaint from being filed, some guards and staff members try the subtle approach Co took with a few prisoners. “The officers who are trading sexual acts for different types of favors, that often is a part of the grooming that often is a first step towards physical contact,” said Sheila Bedi, a clinical law professor at Northwestern University School of Law. “We’ve seen that happen over and over again.”

Author and advocate Leslie Schwartz spent only 37 days at Los Angeles County’s Century Regional Detention Facility in 2014, but in that short time she saw a lot of “obvious, clear flirtations” between the female prisoners and staff. She noted that some prisoners who “knew how to work it” were able to secure privileges.

Such a situation may lead one to think that any relationship that ensues from grooming or flirtation is consensual, but that is not the case under the criminal law in most states. “The bottom line is, given the power dynamics in prison,” Bedi said, “given the absolute control that authorities have over the lives of people who live behind bars, there can be no consent in terms of what the law defines as consent and there can be no consent in terms of equal power in the interaction.”

Often left unconsidered is the harm that comes from grooming. A Vermont prisoner held at CRCF, Penny Powers, claimed that guard Daniel Zorzi pursued a relationship with her after her release. He pitted her with drugs in return for sex. “We got high from 10:30 at night ’til 5:30 in the morning,” she said. “He pretty much fed my addiction.” Presumably Zorzi was then going to work while high.
“I struggled with addiction, as well. I feel like I’ve been put in situations where I felt like I didn’t have options,” said CRCF prisoner Mandy M. Conte. “It’s like they’re preying on women who they see as weak and vulnerable, and they use it for their own benefit. They don’t realize how much their behavior impacts us.”

Former Vermont prisoner Melissa Gaboury said two probation officers left her lewd Facebook messages while she was under supervision. One sought photographs and asked for a sexual rendezvous.

Another, in October 2017, wrote her and said, “I’m drunk and want to have raw sex. Melissa tell me to stop. I should not be talking to you like this. Do you want me to pull on your nipples?”

Gaboury was in and out of prison from the time she was 16 and suffered from mental health issues that resulted in several suicide attempts before her March 2021 death at age 29 from what her obituary called “an accidental drug overdose.”

“I need help. Everybody in DOC needs help,” she said. “They do nothing but abuse and beat down already hurting, abused people, and show them no other way.”

Zorzi’s drug use was well known at CRCF, and he often was visibly high while on duty. Yet, his bosses in 2018 declared him the “supervisor of the year” and said in a nominating letter that “he has experienced a plethora of situations and challenges that he has met with professionalism, enthusiasm, decisiveness and clarity—all marks of a great leader.”

In October 2020 Chittenden County State’s Attorney Sarah George said an investigation by Vermont State Police had failed to find “sufficient evidence” to prove “beyond a reasonable doubt” that Zorzi had committed any crime.

Sexual abuse and harassment in prisons is not limited to just prisoners. Female guards have complained of being subjected to the culture of sexual abuse and harassment inside of prisons. “It’s horrible. A girl comes in, and it’s like fresh meat. All the guys are after her,” said Brittany Sweet, a former guard at CRCF. “If you have a sexual relationship with a staff member, you’re a slut. But if you don’t have a sexual relationship with a staff member, you’re a stuck-up bitch.”

Sweet alleged she rebuffed advances of a supervisor and that he made comments about her appearance to her colleagues, saying he would “like to fuck anything but her face.” When she complained, he was assigned as her direct supervisor.

Although her complaints were substantiated, the supervisor was left in his position and Sweet was ordered to “respect the chain of command.” She and another guard subsequently received an $85,000 settlement for sexual harassment, but nothing changed. “It was like, ‘Give them the money and get them out of here,’” Sweet said. “Nobody was held accountable, and I was like, ‘That sucks.’”

“In my time at Chittenden, there were many officers that were under investigation for sexual misconduct with inmates. They were allowed to resign, and then faced no further criminal investigation,” said Sweet. “The state doesn’t want to report this because it makes them look bad that it’s happening, so they just sweep it under the rug.”

The Intercept website reported that it found there were 1,224 reports of sexual abuse filed with the federal Office of the...
Inspector General between January 2010 and September 2017, but only 43 of them were investigated.

In the Coleman lawsuit, it was alleged the women prisoners’ complaints of sexual abuse resulted in their being sent to the county jail to cover it up. “An example of that would be the 2018 audit that was conducted at Coleman where the audit mentioned they were not able to interview victims of sexual abuse because they had been transferred to the county jail,” said Bryan Busch, the attorney representing the 14 plaintiffs. “So there’s nobody there to interview for PREA violations because they’re all been shipped to more secure facilities for reporting any sort of misconduct.”

Sweet’s experience is particularly alarming to advocates. “If it’s hard for a staff member to come forward and report abuse, imagine how it is for inmates there,” said JDI spokesperson Jesse Lerner-Kinglake.

This report could detail numerous accounts of failures to prevent or investigate sexual abuse of pretrial and immigrant detainees and prisoners in federal, state, local, and private facilities as PREA envisions, but space is limited and Lerner-Kinglake succinctly makes the point. “The fact of the matter is, sexual abuse is rampant in facilities across the country,” she said. “But, it’s not inevitable.”

Though PREA has been the law of the land for 18 years, with “mandatory,” yet unenforceable, regulations in place for the last seven of those years, prison rape and sexual harassment is still a scourge affecting thousands of prisoners and staff each year. Some simple solutions are offered by experts to assure PREA’s purpose is met.

“It’s possible to take men out of the unit. It’s possible to have cameras. It’s possible to have a zero tolerance—so if you’re accused, and there’s any type of corroborating evidence, you’re punished for that,” said Sheryl Kubiak, director of the Center for Behavioral Health and Justice at Wayne State University School of Social Work. “The officers are always afraid there’s going to be these false accusations, but what we learned in reading testimony and the investigations is you would hear similar testimony from different women about the same officers.”

Meyer, the prison warden in Kansas, agrees action is needed. “The offenders need to see there’s a consequence,” she said. “I do think that’s important. I also think the staff and people who want to work in corrections also need to see it. I mean, that’s my opinion. People need to know there’s zero tolerance.”

In a 2018 BJS study on sexual abuse in youth prisons, Texas and Florida both reported rampant sexual abuse in many juvenile facilities, though in some there was no abuse at all. “If officials in some Texas and Florida facilities can stop kids from being raped, then officials in every Texas and Florida facility can do so—and indeed, so can officials in all facilities nationwide,” said Lovisa Stannow, JDI’s former executive director, in response to the BJS report. Since sexual assault data under PREA is self-reported, with no audits or verification to its accuracy, the lack of news is itself suspicious.

Another solution is for the public and mainstream media to change their perspective about prisoners. “We’re looked at as a number,” said one of Co’s accusers. “We’re not looked at as a human or somebody’s daughter or somebody’s sister.”

As the #MeToo movement has shown, sexual abuse is not accepted by some segments of society, but that outrage has not reached prison gates. When the rapist is a government employee raping prisoners, it appears to be acceptable, at least to the government.

“If this was any facility other than a prison, people would be rioting over this. Nobody would stand for this,” said Sarah George, the chief prosecutor for Chittenden County, Vermont, following a 2019 expose on CRCF. “Hopefully, it’s what happens anyways.”

A more peaceful alternative was offered by Victoria Law, author of Resistance Behind Bars: The Struggles of Incarcerated Women, “If we want to think about this problem holistically, one way to do it is reduce the number of people sent to prisons and detention centers in the first place.” So the guards have less people to rape.

**Prison Rape News by State**

**ALASKA:** Two state prisoners in Alaska filed a civil rights action in December 2019 alleging former guard Jimmie Weeks sexually abused them at Hiland Mountain Correctional Center. The complaint claims that Weeks, a 20-year veteran of the state Department of Corrections (AKDOC), requested that the prisoners show him their genitals and engaged in improper touching, sexual harassment, and penetration of them with his fingers. He also asked the prisoners to engage in “a dominance and submission relationship with him where they were the subs.” He allegedly had one of the women sign a power of attorney that stated, “I’ll be your slave, you will be my master.” The
incidents occurred over several months in 2019. Weeks resigned from AKDOC just before the suit was filed and surrendered his license as a prison guard to state police. He has not faced criminal charges.

Arizona: Four employees at Arizona prisons and jails were charged in 2019 with sexually assaulting state prisoners. One, a guard employed by private prison operator CoreCivic at its Saguaro Correctional Center in Eloy, was arrested in September 2019 for having sex with a man imprisoned there. The guard, 47-year-old Stephanie Garcia, at first denied the encounter, but admitted after being threatened with a DNA test that she had twice had sex with the unnamed man in the office where she was supposed to be conducting “faith-based counseling.”

The month before that, in August 2019, another guard at the same prison pleaded guilty to having sex with another man held there. The guard, 45-year-old Christina Lopez, admitted she had “a lapse in judgment” in June 2019 when she entered the cell of Justin Fuller, a prisoner from Hawaii, and demanded sex, telling Fuller that she would make his life “a living hell” if he refused. Fuller gave in but also reported the incident. Prison officials then placed him in confinement, lodged bogus disciplinary reports against him, and refused to allow him to call his attorney or a sex abuse-tip hotline, he said. Lopez was given two years of probation and not required by the judge to register as a sex offender.

In July 2019, a woman who worked for Trinity Services Group in the kitchen at the Eymann-Rynnig Unit of Arizona State Prison, 26-year-old Kristal Cintron, was charged with having sex with a man imprisoned there. If convicted, she faces a prison term of 24 to 54 months.

In March 2019, former Cochise County jail chaplain Douglas Packer, 64, resigned after he was arrested for sexually assaulting six women held at the lockup since 2014. He pleaded guilty and was sentenced to 15 years in prison in January 2020. Two of his victims, Devan Kingery and Elizabeth Durazo, sued Packer, the county

JailHelper.com

Hello, I am a former inmate who went to federal prison for five years for a crime that I did not commit and was taken into immigration custody for three years for a non-removable crime. I learned valuable lessons on how to fight and beat the government.

I have had success assisting inmates argue their cases correctly; I can help you too!

Some of the services that I provide are:

- Investigation
- Document recovery
- Recovering your case file from your former attorney
- Subpoenaing records relevant to your case
- Case-law research
- Typing of briefs & forms - Compassionate Release Petitions

I can help you beat many career / armed-career enhancements.

If you have immigration consequences due to a conviction, I can help with that, I have helped numerous people win immigration cases!

I have the unique experience of having been in your position and know the value of having someone on the outside that you can depend on!

If you have email access, add me at: JailHelper@gMail.com

Chris Rad
Email: JailHelper@gmail.com
Call: 321-InJail-1 (321-465-2451)
JailHelper.com
PO Box 11341
Hauppauge, NY 11788
Two former guards at the Los Angeles (LA) County juvenile detention facility, a guard was fired in December 2020—over a year and a half after a teenage detainee first reported that he sexually assaulted her. The guard, Detention Service Officer Ray Poole, took the girl to hospital visits, where she said he contrived to isolate her and show her semi-nude selfies in his phone before eventually assaulting her. But the only response to her Suspected Child Abuse Report (SCAR) was that she was moved to a facility in Monterey, where she continued to receive Snapchat messages from Poole. A second counselor to whom she reported the abuse helped her screenshot one of the messages and send it along with another SCAR to Probation Department investigators back in LA County. When nothing happened then, the girl made yet another report to a third counselor, who attached Poole’s name to a new SCAR sent to police in Downey, where the infamous youth jail Los Padrinos had been located. Still it took another year before an investigation was begun, leading to Poole’s dismissal four months later. By that time, the girl had escaped the Monterey juvenile facility and couldn’t be found.

**Connecticut**: York Correctional Institution (YCI) guard Wesley Applegate, 38, was arrested on March 29, 2021, after investigators determined that he had sex with an unnamed woman being held at the prison. An ongoing physical relationship between the two was exposed when they were caught having sex in November 2020 in the officer’s mess hall, where the woman was assigned to work.

At the end of that same year, in December 2019, a former BOP guard at the Federal Correctional Institute (FCI) at Danbury—whose arrest 

**Georgia**: After several prisoners at the Coweta County Jail claimed a guard was having sex with a detainee there in 2019, the county Sheriff’s Office asked the Georgia Bureau of Investigation (GBI) to look into the matter. That led to charges filed on December 2, 2019 against guard Cody Martin, 25. An employee at the jail since January 2018, he was accused of having sexual intercourse with three prisoners between May and November 2019. He made a blind plea on May 21, 2021, and was sentenced to five years in prison followed by five years on probation.

**Hawaii**: Two former guards at the Women’s Community Correctional Center near Honolulu were charged in October 2019 with sexually assaulting prisoners there. One of the former guards, Brent Baumann, was charged with sexually assaulting three women held at the prison over a nine-month period in 2015. Another indictment charges that his former fellow guard, Gauta Vaa, sexually assaulted one of the same women four times in 2015. Both former guards were fired by the state Department of Public Safety. They have pleaded not guilty.

**Kentucky**: Third-degree rape charges were brought in April 2019 against guard Tanya V. Risinger, 34, for having sex with a prisoner in the cafeteria at the Kentucky Correctional Psychiatric Center. Risinger admitted to having sex with the prisoner in front of another man while the two were on a work assignment from the neighboring Luther Luckett Correctional Complex. She also admitted to obtaining a second cellphone so she could contact the prisoner. She has since been convicted and forced to register as a sex offender.

**Louisiana**: On July 7, 2021, former Elayn Hunt Correctional Center guard Deshunta Miller, 22, filed suit against the Louisiana Department of Corrections (LADOC) over poor working conditions at the lockup that resulted in her being raped at knifepoint by one of the prisoners in July 2020. At the time she was the only guard on duty for 64 men. LADOC fired her afterward, when investigators determined that she had been having a consensual sexual affair with another man held at the prison, which is illegal. She was criminally charged with official malfeasance, but her rapist, 30-year-old Erick Dehart, was not. Both her criminal case and her civil suit are still in court.

**Minnesota**: In May 2019, the Minnesota Department of Corrections (MNDOC) fired former guard Jeffrey C. Anderson, 50, after he was charged the month before with a felony sex offense against a female prisoner at Shakopee Correctional Facility. The victim said that starting in 2017 Anderson began hounding her for sexual favors and made motions for her to expose her breasts as he made rounds at night. Three other guards were also fired for failing to report their knowledge of his...
misconduct and, in the case of one, retaliating against a victim who reported it. That guard, Daniel Boegeman, was reinstated in February 2020 after an arbitration between MNDOC and the guards’ union determined there was insufficient evidence to support his dismissal. He allegedly then gave the finger to an MNDOC investigator. Officials say Anderson, who had worked at the prison since 2012, had two more pending complaints against him.

Massachusetts: In May 2019, former Western Massachusetts Regional Women’s Correctional Center guard Willie Williamson was found guilty of four counts of a prison guard having sexual relations with a prisoner. Williamson, 30, was fired by then-Hampden County Sheriff Michael Ash after allegations came to light that he had sex with prisoners between December 2015 and September 2016. One prisoner testified she had sex with Williamson numerous times in exchange for whiskey and cigarettes. He was sentenced to 60 days in jail.

Missouri: A federal lawsuit filed in November 2019 alleges that counselor John Thomas Dunn sexually abused female patients at Chillicothe Correctional Center beginning in 2013, and his abuse did not end until he was arrested in 2017. The suit was filed by prisoner Teresa Ketner, 49, who said Dunn sexually assaulted her in his office when she was there for counseling to address her history of trauma. When she reported the incident, an investigator allegedly asked her why Dunn would “go after” her “when there’s young, beautiful women” at the prison. The 66-year-old therapist pleaded guilty in 2018 to sexual conduct with another prisoner. In all, nine women have accused him of sexual misconduct. The FBI is investigating whether Dunn should face federal criminal charges. Dunn was employed by the prison’s contracted healthcare provider, Corizon Health, which enjoyed 2020 revenues of about $800 million.

Montana: Allen Hagstrom, 38, a former guard at Montana Women’s Prison, was charged in September 2019 with having sex with a prisoner. The unnamed woman told investigators she had ten sexual encounters with Hagstrom. He admitted to three of them, saying he unsuccessfully tried to resist her advances. Hagstrom posted a $25,000 bail and was released.

New Mexico: New Mexico State Police arrested a Springer Correctional Center guard in January 2021 and charged him with sexually abusing multiple women who were imprisoned there. By that time, some of the allegations against the guard, Joseph J. Martinez, were nearly five years old. That’s when he allegedly raped his first victim—three times in the first three months she was at the prison. Later, he is accused of getting other prisoners hooked on Suboxone, which he then supplied them in exchange for sex. The state Department of Corrections announced in March 2021 that it would close the facility.

Two months before that, the prison’s chief of security, Robert Gonzalez, and another former guard, Christopher Padilla, were named as defendants in a January 2021 lawsuit filed by an unnamed woman held at the prison. She says Padilla sexually abused her from October 2018 to March 2019 by masturbating in front of her and forcing her to perform oral sex on him, paying her off afterward in food and cigarettes. She also says Gonzalez should have stopped the assaults but didn’t. Padilla was fired in

PLN & CLN Subscription Bundles

STAY INFORMED AND SAVE MONEY

1 Year PLN & CLN Subscription Bundle - $70.00 ($8.00 Savings)
2 Year PLN & CLN Subscription Bundle - $140.00 (2 Bonus Issues - $16.00 Savings)
3 Year PLN & CLN Subscription Bundle - $210.00 (4 Bonus Issues or Free Copy of Caught: The Prison State and The Lockdown of American Politics - $24.00 Savings)
4 Year PLN & CLN Subscription Bundle - $280.00 (6 Bonus Issues or Free Copy of Disiplinary Self-Help Litigation Manual - $32.00 Savings)

Name______________________________________________________________  Amount enclosed: $___________________

DOC/BOP Number: ___________________________  Facility: ____________________________________________________

Address: ________________________________________________________________________________________________

City: ________________________________________________________  State: _______________  Zip___________________

Human Rights Defense Center, PO Box 1151, Lake Worth Beach, FL 33460 561-360-2523 • www.prisonlegalnews.org
February 2020 after prison officials—tipped off by a phone call the woman made that they were monitoring—administered a lie detector test to both her and the guard. She passed, and he failed.

New York: In February 2020, a former New York Department of Corrections and Community Supervision guard at Albion Correctional Facility was sentenced to six months in jail for sexually abusing two women imprisoned there. The former guard, 26-year-old David F. Stupnick, pleaded guilty in December 2020 to a third-degree criminal sexual act. In May 2019, he was charged with four counts of second-degree sexual abuse, two counts of third-degree criminal sexual act, and official misconduct. Stupnick was also ordered to register as a sex offender.

Not quite a year earlier, in March 2019, St. Lawrence County jail head cook Jennifer Parker, 43, pleaded guilty to two felony counts of third-degree criminal sexual act, as well as one misdemeanor count of official misconduct. She admitted to engaging in oral sex with a prisoner in 2011 and with another in 2012. She also admitted to forcibly touching another prisoner in 2014. She was sentenced to serve weekends in jail for six months and ten years' probation.

North Carolina: In November 2019, felony charges of sex acts by a government employee were brought against Sgt. Mark Jason Stout, 44, for having sex with a prisoner at the Swannanoa Correctional Center for Women. He was accused of having sex with a woman held at the prison a half-dozen times between September and October 2019. He had been employed at the prison since 2005, having been promoted in 2012. At the time of his arrest, his annual pay was $37,476. He was placed on paid leave and with a $50,000 unsecured bond and ordered to have no contact with the unnamed woman.

Ohio: A former Meigs County probation officer and Middleport Jail guard, 57-year-old Larry Tucker, was convicted in May 2019 of sexual battery and kidnapping for victimizing 11 women between 2011 and 2017. The following March, in the same courtroom where he once worked, Tucker was found by Judge Linton Lewis not to be a sexual predator. But he was sentenced to a 246-month prison term.

Two months earlier, in March 2019, former Marion County Jail guard Ian C. Gordon, 22, was indicted on 13 counts of first degree felony rape and one misdemeanor count of unlawful sexual conduct with a minor. The rape offenses occurred between May 2015 and September 2017. Six of the rape charges allege the victims were under 13 at the time of the crime. Six other counts allege he used force or threats to commit the crime, and the last count alleges he used a drug or intoxicant to impair the victim's judgment.

Oklahoma: After 32-year-old Tulsa Transitional Center employee Brittany Jenae Alexander gave birth in May 2018, investigators with the Oklahoma Department of Corrections (OKDOC) determined it was the child of an unnamed 37-year-old prisoner at the halfway house, and they charged Alexander with second-degree rape in March 2019. The guard had resigned ten months earlier, when OKDOC received a tip about her affair with the prisoner and launched the investigation that led them to find incriminating text messages on her cellphone. Both she and the prisoner at first denied having sex. But the man had admitted the truth to his wife, as Alexander did to investigators before she resigned.

Pennsylvania: A prisoner at the State Correctional Institution (SCI)-Fayette in LaBelle, Pennsylvania, filed suit in February 2021 alleging that five guards sexually abused him in October 2018. When he threatened to report them, the suit also claims, they forced the prisoner, 40-year-old Abdul Murray, to cut off his dreadlocks in retaliation. The guards—Lt. Robert Jones, as well as three others not fully named—are accused with Cosmetologist Carrie Holman of conspiring to punish Murray for threatening to report sexual abuse by the fifth guard, Sgt. Justin Bourquin. He allegedly reached into Murray’s cell as the prisoner undressed to shower, ordering him then to jump in place and run while leering.
and laughing at his nude body. South Carolina: Five separate lawsuits filed by five women on June 3, 2019, allege that Berkeley County Jail nurse Alexander Lluvera conducted unnecessary vaginal or pelvic exams on them and never sent their pap smear tests away for results. “Lluvera did not wear gloves during the vaginal exam,” one suit alleged. The incidents allegedly occurred between June 2016 and July 2017, when Lluvera was employed by the jail’s contracted healthcare provider, Correctional Healthcare Companies, a division of Correct Care Solutions—known now as Wellpath—which boasted 2017 revenues of $1.17 billion.

Tennessee: Riverbend Maximum Security Institution guard Emily Davis, 22, was arrested in June 2019 and charged with having sex with an unnamed prisoner. Prison officials intercepted letters Davis wrote the prisoner under a pseudonym. Red flags arose because the letters described a May 2, 2019 sexual encounter and said Davis may be pregnant as a result. Davis resigned in mid-May 2019.

Vermont: Cameron Morin, a 22-year-old former guard at Southern State Correctional Facility near White River Junction, Vermont, pleaded guilty in November 2019 to a charge of lewd and lascivious behavior after performing oral sex the year before on a man being held at the prison. State police began investigating Morin in January 2019, after a prisoner phoned a hotline set up by the state Department of Corrections (VTDOC). Morin was also cited for bringing tobacco into the prison and fired from VTDOC. He pleaded no contest to a second charge of sexual exploitation because it carries by definition an allegation of penetration, which he denied.

Washington: Former Clallam County Jail guard Howard Andrew Blair, 55, pleaded guilty on March 6, 2021, to four gross misdemeanor charges of second-degree custodial sexual misconduct. The probable cause statement recited 19 instances of sexual contact with a female prisoner between January and September 2017. Blair, who worked at the jail for ten years, served no jail time. Instead he was sentenced to 364 days in jail, with all but 120 days suspended, and those he is required to serve on electronic house arrest.


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.

Well organized into 52 concise chapters, this easy-to-use book puts the law at the reader’s fingertips.

Price: $49.95
(shipping included)
275 pages

Order by mail, phone, or online.

---

Amount enclosed for Habeas Citebook ________ By: r check r credit card r money order

Name ________________________________________ DOC/BOP Number ______________________

Institution/Agency ________________________________

Address __________________________________________________________________________

City __________________________________ State ______ Zip __________________

Prison Legal News • PO Box 1151, Lake Worth Beach, FL 33460
Tel. 561-360-2523 • www.prisonlegalnews.org
From the Editor

by Paul Wright

For long time readers of PLN, this month’s issue may seem like déjà vu all over again with its national coverage of prisoners being raped, especially by guards and prison staff. For many years I wrote the “News in Brief” column and would print out the articles I found NIB worthy. At the end of the month I’d go through them and pick the ones to use in the next issue. There were, and still are, a lot of short news articles about prison and jail staff being charged, convicted and sentenced for raping prisoners. I strove for diversity of story topics and didn’t want the NIB column to turn into the “prisoners getting raped” column of PLN. I would pick out a few cases to use in that issue’s NIB and put the rest to the side to use in the following month.

But each month there were more sexual assault stories than I could use so the pile of news articles kept getting bigger. All this was happening without looking for these types of stories, just printing the ones I ran across while reviewing the news wires related to prisons and jails. At the end of the year I had a stack of prison rape stories about a foot high and this was after using five or six in every issue of PLN for the NIB column, and doing actual articles on the more egregious cases. That is how the first compilation story on prisoner rape came into being. Articles about staff being charged with raping prisoners are so frequent in the news media that PLN could easily devote ten or fifteen pages in each issue to the topic and still only scratch the surface.

While the Prison Rape Elimination Act gets a fair amount of attention, it should be viewed for what it is, a very weak and tiny first step to quantify the prevalence of prison rape that does little to prevent it and gives the rape victims no actual rights. The main thing PREA has done with its self-reported data collection is reveal that over half of reported prison rapes are sexual assaults carried out by prison and jail staff, and many of the perpetrators are women employees.

In many ways I liken prison rape to be, politically and culturally, where the rape of women was 50 or 60 years ago. It is the last bastion where sexual assault can still be publicly “joked” about or viewed as “funny” in mainstream political culture and also where sex offenders and rapists are coddled with lackluster prosecutions and light sentences, as long as prisoners are the victims and government employees are doing the raping on the taxpayer’s dime. Because most prison rape victims are men, there is additional stigma around it. For decades the Human Rights Defense Center and other activists have urged the FBI to include prison-based rapes in their crime statistics. They have declined to do so. Including prison rapes in official statistics would likely mean that more men than women are officially raped in the U.S. each year. Based on the FBI’s Uniform Crime Report that estimated 139,380 rapes were reported to law enforcement in 2018. As this month’s cover story points out, the Bureau of Justice Statistics (BJS) indicates each year roughly 200,000 prisoners are victims of sexual assault.

The sexual assault of women prisoners remains an ongoing outrage as well. When the #MeToo movement got started I kept hoping they would include the narratives, the well documented stories, of the thousands of women prisoners who are raped by guards each year, often with impunity. Alas, I am still waiting. The victimization of poor women prisoners by government employees is apparently not a convenient narrative for people in a position of wealth or power.

Anyone reading this month’s cover story, remember that this is only the tip of the iceberg. Thousands of prison and jail rapes are reported each year in news media, usually at the local level, and who knows how many more are never reported. PREA started out as the Prison Rape Reduction Act and apparently the wizards in Congress determined that rape is something that should be eliminated and not just reduced, so they changed the name of the bill. Sadly, they have done neither.

Steps to actually reduce prison and jail rapes would include giving sexual assault victims actual independent rights to sue and hold government officials accountable for the rapes. This would include repealing the Prison Litigation Reform Act and allowing for supervisory liability, among other changes. Politically and culturally, the rape of men and prisoners has to be viewed as the crime of power and violence that it is, just as it is finally recognized as such for women who are not locked in a government cage. Rapes committed by staff need to be treated as the abuses of power that they are, yet many government employees seem to treat raping the prisoners in their care as a job perk. Adding to the outrage is they are committing these sexual assaults...
while on the government payroll. Generally, rapists are not being paid by the taxpayers to commit crimes.

Eliminating prison rape is unlikely to happen anytime soon. But *PLN* will keep raising the issue and reporting on it so that the world knows both the ongoing scope and depth of this human rights outrage.

If you have not donated to our annual fundraiser, please do so. We rely on donations to carry out much of the advocacy work we do above and beyond publishing our books and magazines. During the CO-VID pandemic we have all been working extra hard to keep up with news reporting, litigation, advocacy and more.

For the past 12 years or so, HRDC has distributed the *Diabetes Manual*, a booklet aimed at prisoners with diabetes. We ran out of the last copies we had and Dr. Michael Cohen is in the process of writing an updated version for us. As soon as it is available, we will advertise it in *PLN* and *Criminal Legal News*. If you wrote and requested a copy and did not receive one, it is because it is out of print.

Many prisoners have taken advantage of our introductory subscription offers for *PLN* and *CLN*. I hope you have found the publications informative and helpful, and will consider subscribing to both. The sooner you subscribe at the full rate the more time and money it saves us from having to send renewal notices.

Enjoy this issue of *PLN* and please encourage others to subscribe. If you are reading someone else's copy please consider subscribing for yourself.

**Nevada Supreme Court Holds Discretionary Function Exception Bars Lawsuit Over Prison’s Botched Response to Uprising**

The Mother’s Day riot at Tecumseh State Correctional Institution (TSCI) in 2015 ended with two dead and countless injuries to prisoners and staff. When one of the prisoners injured filed a lawsuit that prison officials failed to protect him during the riot and that their response was inadequate, the court dismissed it based on the state’s immunity under the State Tort Claim Act (STCA).

Pointing to the so-called “discretionary function exception” (DFE), the Nevada Supreme Court, on appeal, took the moment to establish how and when this exception to liability under the STCA applies. Basically, a DFE defense applies when a state employee does or does not do something that is in his discretion to do. First, the court must consider whether the duty to act is a choice for the employee. If it is, then the court determines if the choice is one that the DFE was designed to protect.

In the case of the riots, the court found that the DFE applied because (1) staffing levels of the prison are at the discretion of the administration, and (2) the staff’s response during a riot cannot be set in stone for each prison uprising. There must be some room for discretion, the Court said, affirming dismissal of the STCA lawsuit. See: *Wizinsky v. Nebraska*, 308 Neb. 778, 957 N.W.2d 466 (2021).

---

**Prisoner Introductory Special:**

**6 Issues of Criminal Legal News for $3.00**

Are you reading someone else’s CLN? You don’t want to risk missing a single issue.

For over 30 years, we have been bringing prisoners the information they need to stay informed. This offer is only available to customers that have not previously subscribed to CLN. All orders are subject to approval. Your first issue will be mailed in 6-10 weeks via USPS. Renewal notices will be sent no later than 30 days prior to expiration at the current renewal rate (as of 7/1/2021 CLN’s annual renewal rate is $48.00, plus sales tax where applicable).

Act now as this offer is only valid through 12/31/2021.

Name_________________________________ Amount enclosed: $_____

DOC/BOP Number: ______________________ Facility: ____________________________

Address: _________________________________________________________________________

City: _______________________________ State: _______ Zip_______________

Human Rights Defense Center, PO Box 1151, Lake Worth Beach, FL 33460
561-360-2523 • www.criminallegalnews.org
On July 16, 2021, an Arizona federal court issued an order rescinding its 2015 approval of the settlement agreement (“Stipulation”) in a class action civil rights lawsuit challenging the adequacy of medical, dental, and mental health care in the Arizona Department of Corrections (DOC) as well as conditions of confinement in the DOC’s maximum custody units, including claims of inadequate nutrition, lack of opportunities for physical exercise, and extreme social isolation and environmental deprivation.

The lawsuit was filed in 2012 and is formerly known as Parsons v. Ryan. After two and a half years of litigation, the court approved the Stipulation put forth by the parties. In it, the DOC agreed to changes in health care and maximum custody. Implementation was monitored and assessed against specific performance measures. The monitoring would end if the DOC achieved 75% compliance the first year, 80% compliance the second year, and 85% compliance thereafter. The health care performance measures were the National Commission of Correctional Health Care standards, which were also used in DOC contracts, first with Corizon and later with Centurion.

“Over the past six years, Defendants have consistently failed to meet many of the Stipulation’s critical benchmarks. Beyond these failures, Defendants have in the past six years proffered erroneous and unreliable excuses for non-performance, asserted baseless legal arguments, and in essence resisted complying with the obligations they contractually knowingly and voluntarily assumed. The court has repeatedly used the remedies authorized by the Stipulation and often exercised forbearance rather than imposing sanctions.”

When the Stipulation was agreed upon, Corizon was the contracted provider of prisoner health care. Yet, it employed only seven staff physicians and five psychiatrists to treat over 40,000 DOC prisoners. Lead defendant Richard Pratt testified “Corizon may well have decided to pay the [contractual] fine [for understaffing] rather than fill staffing positions.”

### **$$ATTENTION$$**

**Mushfakers, Artists, and Craftsmen**

Our company, “Sticks From the Yard”, is seeking to purchase a variety of items made by prison inmates. We are looking for anything handmade and built with those materials your prison has made available for you to purchase and use. We are interested in all items (example: wood boats, picture frames, light houses, cars, jewelry boxes, planes, ships, cars, motorcycles, animals, clocks, banks, etc.) We ask that you take a picture of your item via the JPay kiosk or other means and send it to:

**Sticks From the Yard**

2283 Sunset Drive

Wickliffe, Ohio 44092

Don’t forget to include your own name and number and your prison address along with your asking price for your item. If we find there is enough interest in your item we will accept your price or make an alternative offer. When a price is agreed on we will make arrangements for you to mail the item to us and we will deposit the funds. Along with the item, you will send the name and address you want your funds directed to. Some prisons allow for deposit directly into your prison account but that would be your decision. All funds would be paid out by our attorney. Please address any questions to the address above and allow two weeks for a response.

### High Cost, Low Performance Health Care

**Pratt’s testimony is plausible because** the court noted that Corizon was paid so much that even fines as high as $1,000 per day for each noncompliant performance measure were insufficient to coerce compliance. Indeed, the court sanctioned defendants twice, once for $1.445 million and again for $1.1 million without subsequent compliance improvement.

The DOC’s contractual sanctions against Corizon were $5,000 per month for each noncompliant performance measure, but the maximum sanctions were capped at $90,000 a month, a tiny amount compared to the $407,000 Corizon received each day under the contract. Why should a company receiving over $148 million annually worry about sanctions having an annual cap of barely over $1 million?

Corizon could be fined to the max, and still reap $147 million in payments each year. So, its strategy appears to have been to provide some health care, but as little and as cheaply as possible and always be willing to accept prisoners’ suffering and deaths to increase its profit.

Little changed when the health care contract was switched to Centurion in April 2018. Centurion receives $657,952.72 per day ($240,143,617.80 annually) yet has been equally unable or unwilling to meet the performance measures. There were 178 monthly performance measures that were noncompliant between March 2020 and December 2020. This despite defendants’ own admission that their 2020 compliance numbers were inaccurate and plaintiffs’ complaints that the compliance number have been inflated ever since the Stipulation was signed.

### The Corizon Way, “Let Him Die”

Examples of Corizon’s business practices were given in the testimony of former temporary Corizon primary care physician Dr. Jan Watson. While working at the Eyman Complex, Watson was told to cancel two infectious disease consults because the consults had been approved more than 30 days earlier and they were going to be fined $1,000 a day for a tardy consult. She was asked to cancel a cardiology consult for similar reasons. Thus, inadequate performance sanctions did not speed the outside consultations, they just led to the consultations being cancelled.

Watson also testified that her supervisor, Dr. Stewart, told her that, if a prisoner who had complained of chest pain and had an abnormal EKG came back from the hospital, “keep him comfortable and let him die because none of his arteries were bypassable.” When she reviewed the prisoner’s hospital records, she discovered that the arteries could be bypassed. However, when she raised the issue, Corizon staff accused her of not doing things “the Corizon way” which she believed meant spending less time with patients, and ordering fewer

---

*Arizona Federal Court Rescinds Approval of Jensen Settlement; Sets Class Action Medical and Control Unit Case Against Arizona DOC for Trial*  

*by Matt Clarke*
medications and requesting fewer outside consultations.

Monitoring physician Dr. David Robertson reviewed prisoner deaths and found 17 cases with failure to recognize symptoms, delays in health care access, and failure to address requests for care compromised health care.

The DOC and Corizon also used tactics to frustrate accurate performance measures. For instance, a dozen measures involved recording a starting point when a prisoner placed a health needs request (HNR) form in an HNR box. The HNR boxes were removed, making it impossible to give accurate compliance results.

**Maximum Custody**

The Stipulation required that the DOC implement a multi-step system for maximum custody housing with specified minimum amounts of out-of-cell time to be offered per week at the various step levels. In a 2020 hearing on the matter, the court found the DOC’s compliance numbers were inaccurate and ordered production of evidence showing prisoners’ average length of stay at each custody level. The DOC never produced the documentation.

The court held that the record demonstrated maximum custody prisoners were not offered appropriate recreation blocks consistent with their step levels. Defendants claimed they were in compliance when clearly they were not.

**Mental Health Care**

The defendants also tried to pass off encounters with mental health care providers which were of three, five, or seven minutes in duration as adequate treatment despite noncompliance with a previous court order that a mental health professional evaluate whether a visit of less than ten minutes was meaningful and appropriate. The court expressed concern with three prisoner suicides which occurred between January 5 and February 3, 2021, after very brief visits.

**Withdrawing Approval**

The court found that the defendants always knew that rescission was possible and held that it had the power to order resumption of litigation following a settlement when one of the parties’ behavior amounts to “repudiation” or “complete frustration” of the settlement. It held that defendants’ lack of good faith and fair dealing amounted to a material breach, complete frustration and repudiation of the Stipulation that was unlikely to change in the future and had deprived plaintiffs of the Stipulation’s benefits in ways that cannot be compensated. Further, resuming litigation would not materially prejudice defendants and had been requested by plaintiffs. Therefore, it ordered relief under Federal Rule of Civil Procedure 69(b)(6), rescinding its approval of the Stipulation and set the case for trial. See: Jensen v. Pratt, 2021 U.S. Dist. LEXIS 163895.

**$50,000 Settlement for Denial of Medical Care at Tribal Jail in Montana**

The United States paid $50,000 to resolve a lawsuit alleging federal agents at Montana’s Fort Peck Tribal Jail failed to provide medical care for a detainee who was injured during an assault at the jail.

Tyler Headdress is a member of the Fort Peck Indian Reservation. He was arrested on December 12, 2018, and was unable to post a $100 bond, so he remained in jail. While Headdress was lying on the floor in a jail pod with a blanket over his head, detainee Silas Red Dog began kicking Headdress in the head and body.

Headdress put his hands around his head and face to protect himself, resulting in several broken bones in his hands. A fight soon ensued between Headdress and Red Dog. Guards broke it up and Headdress was placed in segregation. He requested and was denied medical care over the next four days for the swelling in his hands.

Headdress’s father attempted on December 18, 2018, to bond Headdress out of jail, but jail personnel did not allow him to do so. The next day, Headdress was told he would be taken to a hospital but that did not occur until December 21. X-rays at the hospital revealed several broken bones in Headdress’s hands. He had surgery on December 31, but surgeons were unable to repair all the damage.

Represented by attorney Timothy M. Bechtold, Headdress sued the United States on April 20, 2020, alleging a violation of the Eighth Amendment and negligence. The $50,000 settlement was reached March 30, 2021. See: Headdress v. United States, USDC, D. Montana, Case No. 4:20-cv-00036.
Georgia Enacts Massive Probation Reform Bill

*by David M. Reutter*

A bill that went into effect on July 1, 2021, allows individuals to access termination of felony probation after three years if they meet certain requirements. The bill impacts up to a quarter of Georgia’s current probationers, creating a huge savings for taxpayers.

Before the bill went into effect, Georgia had 191,000 people serving probation sentences. That is more than any other state. Georgia’s probation system has serious racial inequalities. Blacks are twice as likely as whites to be serving a probation sentence in every county in Georgia. In some counties, Blacks are eight times as likely as whites to be serving a probationary sentence.

The new law aims to make a huge change in those statistics. “Despite all the work we have done as legislators to reform and rethink the criminal justice system, Georgia still has the largest number of individuals serving probation in the country,” said Sen. Brian Strickland, who introduced the bill. “SB 105 addresses this problem by allowing individuals who have proven their rehabilitation through good behavior the ability to access early termination.”

SB 105 applies to persons convicted of a felony offense but have no prior felony convictions. It is limited to persons who were sentenced to not more than 12 months imprisonment with a probationary sentence following it. Courts are required to include a behavioral incentive date that does not exceed three years in its sentencing order.

The Department of Community Supervision (DCS) must notify the court and prosecuting attorney of people who have paid all restitution owed, have not had probation revoked in “the immediately preceding 24 months, or when the court includes a behavioral incentive date less than two years from the date a sentence was imposed” without revocation in that period, and has not been arrested for anything other than a non-serious traffic offense.

DCS is also required to provide the court with an order to terminate the defendant’s probation. The court must execute the order within 30 days of receipt unless the prosecuting attorney requests a hearing. In such cases, the court is required to set a hearing on the matter “as soon as possible but not more than 90 days after receiving the order to terminate.”

SB 105 is retroactive and provides that persons who were sentenced prior to it becoming effective shall have a behavioral incentive date three years from the date the sentence was imposed.

The Georgia Justice Project (GJP) was key in passing the legislation. GJP has helped pass 21 Georgia laws that create pathways for second chances for Georgians.

“Georgia Justice Project has been committed to helping Georgians impacted by the criminal justice system successfully reenter our communities,” said GJP’s Executive Director Doug Ammar. “We are thrilled that many Georgians who have proven their rehabilitation will now have access to early termination of their probation.”

The bill immediately impacts 25% of the Georgians on probation. Taxpayers also have reason to rejoice, for SB 105 is estimated to save them $34 million annually in reduced costs of supervision. Whether it actually does so remains to be seen.

Sources: atlantadailyworld.com, legis.ga.gov

---

Protective Order Issued in Florida
Solitary Confinement Lawsuit

*by David M. Reutter*

A Florida federal district court granted a protective order to protect “putative class members from retaliatory, chilling, or harassing conduct” and to prohibit “Defendants from improperly communicating with putative class members about th[e] lawsuit.” The court’s February 8, 2021, order was issued in a lawsuit challenging the Florida Department of Corrections’ (FDC) practice of placing prisoners in isolation or solitary confinement.

The court previously entered a protective order on January 28, 2020, to prevent retaliation from being taken against prisoner Johnny Hill. [See *PLN*, June 2020, p. 59]. The allegations and testimony at the hearing on the current motion were similar to that alleged by Hill with the exclusion of physical assault.

The current motion alleged guards tried to intimidate prisoners who spoke to class attorneys, deprived them of meals, made them languish while restrained in showers and holding cells for hours as they awaited the chance to speak to the attorneys, and invaded the privacy of legal calls and conversations with counsel.

After holding a hearing and considering the testimony and evidence, the court found that “actual overt retaliation by prison officials, as well as threats of retaliation” existed. It said that prisoners “deserve the assurance that their participation in the discovery—and indeed the lawsuit—will not result in any backlash. Only through a clear order from the court… will they receive such an assurance.”

The court noted that on February 13, 2020, FDC Secretary Mark Inch issued a memorandum which the court found “tacitly admits that retaliation is an ongoing threat” and that the FDC “has zero tolerance for retaliation of any kind.” The grievance process is supposed to guard against retaliation and grievances of that nature are supposed to be referred to FDC’s Inspector General (IG). The court noted at least one instance of a retaliation grievance that was investigated by the prison and denied without being sent to the IG.
The evidence also showed guards would question prisoners about what they said to the class attorneys, threaten loss of or actually deprive prisoners of property, label prisoners’ snitches if they spoke to attorneys, and that guards provided prisoners “air bags or air trays” at meal time, thereby depriving them of meals.

When prisoners were brought out of their cells to speak to class attorneys, they were often placed in showers in restraints for several hours as they awaited their turn. In instances where counsel conducted at-cell interviews, there would be as many as 17 administrators and supervisory guards present, which the court found was intimidating to prisoners. Guards would also stand so close that the conversations were not confidential.

Confidentiality was also an issue for out-of-cell interviews. Class counsel initially agreed to hold interviews in the visiting park, but guards would stand so close that privacy in the conversations was impossible. Even after the interviews were moved to classification offices, guards refused to allow the doors to be closed or if closed they would stand so close to the door that the conversations could be overheard.

The court declared that it has “zero tolerance for retaliation or threats of retaliation, against any person who participates in this litigation.” While the court did not intend to dictate protocols concerning prison security, it found it necessary to outline guidelines to carry out its protective order.

First, it said discussions between guards and prisoners concerning interviews or claims of the case “should be limited to sharing information regarding the timing of such events and should not involve any discussions regarding the purposes of the inspections/interviews or the wisdom or propriety of participating in the process.”

Next, only line staff should be present during the inspections/interviews. Guards should maintain a distance of at least ten feet from the prisoner and interviewers, unless a security issue is noted in writing to counsel the day before the interview. The court did not dictate how many guards could be present for the interviews, but it saw no reason for supervisory guards to be present.

The court further said that when interviews are conducted, “[p]rivate offices or cubicles are preferred to gymnasiums or visitation centers.” Prisoners and interviewers should be afforded “as much privacy as would be afforded legal counsel conducting a legal visit”

Finally, the court said prisoners should not be held in holding cells for longer than two hours and in shower for longer than 15 to 30 minutes. Restraints should be removed while in those areas. Guards are also to ask prisoners if they need water or to use the restroom every 45 minutes. Prisoners are also to be provided meals in one of these holding areas.

The court issued a protective order that prohibited “[r]etaliation or threats of retaliation of any kind relating to an inmate’s participation” in discovery or the lawsuit. If disputes arise in following the guidelines, the issue is to be raised immediately. If a dispute cannot be resolved, the court will entertain a motion to resolve the dispute. The court’s process is not intended to supplant or replace the parallel grievance process. See: Harvard v. Inch, USDC, ND FL, Case No. 4:19-cv-00212.

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

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

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

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

This effort is part of the Human Rights Defense Center’s Stop Prison Profiteering campaign, aimed at exposing business practices that result in money being diverted away from the friends and family members of prisoners.
In recent weeks, as the Delta variant has surged across the country, the rates of infection among prison workers are on the rise, while their vaccination rates remain dangerously low.

Of course, these trends are not unrelated. It’s now well-established that vaccines are highly effective at controlling the spread of the new variants of COVID-19, providing protection that is particularly critical in congregate settings like jails and prisons—places where maintaining physical distance is often impossible, and just one infection can cause massive outbreaks.

As infection rates climb, prisons are extending—and, in some cases, reimposing—restrictive measures that keep incarcerated people on lockdown for as many as 23 hours per day, without access to programming or in-person visits. This continues even as vaccination rates among incarcerated people are higher than the national average in many states, and much higher than that of prison staff.

It is now becoming increasingly clear that as long as large swaths of prison staff refuse vaccines, incarcerated people will not only remain vulnerable to infection and death, but will continue to be subject to harsh isolation measures because of staff intransigence.

We estimate that, to date, just 47% of prison staff have received at least one dose of a vaccine, based on data from the 21 agencies that have recently reported this information. By comparison, more than 71% of all adults in the U.S.—and 64% of incarcerated people—have been vaccinated so far.

In several states, staff vaccination rates are much lower than the national average. In Alabama, Pennsylvania, and Georgia, fewer than 25% of prison staff report being vaccinated. In these states, more guards have tested positive for COVID-19 over the course of the pandemic than have reported getting a vaccine. In nearly all states that report data, staff vaccination rates lag behind the overall rate among adults by a considerable margin.

In Pennsylvania—where 80% of all adults and 88% of incarcerated people have been vaccinated—none of the state’s 24 prisons reports a staff vaccination rate above 50%. Just 8% of guards working at SCI Albion in Erie County have reported getting a shot. At SCI Smithfield in Huntington County, this number is just 7%.

These low vaccination rates are especially concerning given that incarcerated people often cannot create distance between themselves and prison staff. They’re also alarming because prison employees themselves have had much higher infection rates than the country’s population as a whole.

It is possible that true staff vaccination rates may be higher than reported, but because of agency data collection and reporting failures, we cannot know. The head of the Pennsylvania State Corrections Officers Association has said that he believes more guards have been vaccinated from outside health providers, but are choosing not to report their status to prison officials. In several other states, agencies have also suggested that reported data may undercount the true number of staff that are vaccinated.

No reason is given for the underreporting.

This failure to report accurate and timely vaccination data presents its own threat to public health and safety: policymakers and the broader public must know if and where large groups of unvaccinated individuals are regularly congregating in crowded environments already proven to be virus incubators. People with family members in prison should know if the people with whom their loved ones interact everyday, and with whom they might interact while visiting, remain unvaccinated.

Over the last several months, agencies have reported much higher rates of active infections among employees in prisons than among incarcerated people. This is the direct consequence of allowing large numbers of employees to continue to work in prisons without receiving vaccinations.

Based on data from the 21 states that report this information, we estimate that, as of August 11, the active infection rate among prison staff nationally is 81 cases per 10k. This compares to just 23 cases per 10k among incarcerated people and 36 cases per 10k among the overall population in the U.S. In Pennsylvania, Illinois, California, and Texas, the active infection rate among prison staff is more than twice the rate among the overall population in the state.

In total, the number of cases reported each week in prisons is still far lower than it was during earlier waves of the pandemic (although several agencies, including in Florida and Georgia, have altogether stopped reporting data from prisons in recent weeks, making it impossible to know the true number of new infections inside).

Still, of the new cases that agencies are reporting, a much higher share have come from staff, rather than incarcerated people.

Over the first 12 months of the pandemic, less than 25% of cases reported in state prisons were from staff who tested positive. Since April 2021, staff have accounted for more than 40% of new infections inside these facilities each week.

Now, with rising cases on the outside and unvaccinated staff likely serving as vectors bringing the virus into prisons, agencies are reimposing restrictive measures on their incarcerated populations, including suspending visitation and programming. It is unclear, however, exactly who these measures are designed to protect—the mostly vaccinated incarcerated population, or the mostly unvaccinated staff population.

In Louisiana, the Department of Corrections suspended visitation on July 27, citing “the latest surge of COVID-19 positive cases.” At the time of the announcement, the agency reported 26 active cases among staff but zero among those incarcerated across the state’s entire prison system.

That same day, the Mississippi Department of Corrections also suspended visitation across the state’s prisons, despite reporting vaccination rates between 82% and 99% for incarcerated people in its press release. Advocates in Pennsylvania have pointed out that incarcerated people, 88% of whom are vaccinated, are still facing strict lockdown restrictions in several prisons that may be “causing more harm than they are good.”

For more than eight months, agencies have failed to increase voluntary vaccinations among their employees to necessary levels.
levels. Despite being granted priority access to vaccines in nearly all states, and despite being offered incentives to receive vaccines, too many have been unwilling to accept a vaccine in the absence of mandates.

In recent weeks, medical experts have voiced their support for vaccine mandates for health care workers, noting the ethical obligation of medical professionals to ensuring the health and well-being of the patients whose care they are entrusted to protect. Prison staff are similarly entrusted with the health and safety of incarcerated people, but governors have implemented such mandates in only a handful of states, including California, New York, New Jersey, and Illinois.

In August, a court-appointed official overseeing medical care in California prisons recommended to a federal judge that the California Department of Corrections and Rehabilitation (CDCR) implement a mandatory vaccine policy—a step beyond the governor’s order requiring vaccination or the option of weekly testing.

“Institutional staff are primary vectors for introducing COVID-19 into CDCR facilities. This is not a criticism, it is simply a fact,” wrote J. Clark Kelso, federal receiver for the CDCR medical system. “Voluntary [vaccination] efforts have not produced acceptable results and continuation with a voluntary approach that yields such results must be acknowledged for what it has proven to be—an unacceptable half-way measure.”

When COVID-19 vaccines were first approved, prison staff were rightfully granted high prioritization for vaccine eligibility. Now, as more and more federal and state employees are required to receive vaccines, prison staff should be, too. There is no reason that incarcerated people—who often cannot social distance but have chosen to receive vaccines in large numbers—should pay the price for staff refusals, either through suspended privileges or through needless infection and death.

Note: In addition to the data that we collect directly from agencies, we have also included information on vaccination numbers and rates from news sources for this analysis. Data reflect the most recent information available as of August 11, 2021.

This article was originally published on August 12, 2021 at the blog of the UCLA COVID Behind Bars Project. Reprinted with permission.

The Second Circuit Court of Appeals held that “administrative remedies are ‘unavailable’ when (1) an inmate’s failure to file for the administrative remedy within the time allowed results from a medical condition, and (2) the administrative system does not accommodate the condition by allowing a reasonable opportunity to file for administrative relief.”

The court’s May 6, 2021 opinion was issued in an appeal by Anthony Rucker. Proceeding pro se in the district court and appeal, Rucker sought to sue guards and medical officials at New York’s Monroe County Jail.

While at the jail on June 10 or June 14, 2017, Rucker complained of extreme stomach pain, dizziness, nausea, shortness of breath, and weakness. His requests to be taken to a hospital were denied and he was told he had to wait to see a nurse the next morning.

When he sought help the next day, he was ignored and offered only his asthma pump. He was not seen by a doctor until June 21, 2017, despite his extreme medical distress. He was placed in a medical observation cell. Although Dr. Burton Fletcher observed that Rucker was dehydrated, no medical assistance was provided.

Rucker was finally taken to a hospital on June 23, 2017. By then, he was in and out of consciousness. Doctors at the hospital determined Rucker had “peritonitis, portal venous gas, and pneumobilia” that required an “exploratory laparotomy and small bowel resection.” Doctors told Rucker’s family that he had only a ten percent chance of survival with or without surgery.

Rucker spent a month in the hospital. During that period, he had surgery to remove his pancreas and 200 centimeters of his intestines, resulting in “short gut syndrome.” He was placed in a coma for the surgeries. Now he has diabetes and takes about 15 pills a day. He suffers “embarrassing digestive issues.”

In a July 23, 2018 grievance to Monroe County Jail officials, Rucker described his ordeal and included a sworn statement that the severity of his medical condition prevented him from filing a timely grievance. Jail officials responded by letter that they refused to process the grievance because it was not filed within five days of the act or occurrence giving rise to the grievance.

Rucker sued in federal court. The defendants moved to dismiss the complaint for failure to exhaust administrative remedies, and the district court granted the motion. Rucker appealed.

The Second Circuit agreed with the holding in Days v. Johnson, 322 F.3d 863, 868 (5th Cir. 2003), overruled on other grounds by Jones v. Book, 549 U.S. 199, 127 S. Ct. 910 (2007). The Days court held that a prisoner who is injured or undergoes significant medical treatment faces a substantial obstacle to making use of administrative remedies, and if the prison will not accommodate such injury or medical treatment but will treat the grievance as untimely, administrative remedies become effectively unavailable.

Relevant to Rucker’s case was the fact that his condition made him incapable of using the grievance procedure within the five days. Jail officials made clear that they would not consider any grievance outside that timeframe, so the grievance procedures were unavailable to Rucker. The district court’s judgment was reversed and remanded for further proceedings. See: Rucker v. Giffen, 997 F.3d 88 (2d Cir. 2021).

The Colossal Book of Criminal Citations
(6th Edition) By Richard Davis
• 5000+ Supreme, Circuit, and State Citations
• 125+ Topic Covering Pretrial - Post Conviction
• Prosecution & Defense Strategies Revealed
• District Court & Innocence Project Addresses
• Sample Motions
• 500+ Legal Definitions
• 8.5 x 11 Soft Cover

The Colossal Book of Civil Citations
(2nd Edition) by Richard Davis
• 2100+ Supreme, Circuit, and State Citations
• 80+ Important Topics
• 500+ Legal Definitions
• 8.5 x 11 Soft Cover
• A Must Have For Prisoners Filing 42 U.S.C. § 1983 or ADA/RA Actions

Send Check or M.O. to: Barkan Research
P.O. Box 352 Rapid River, MI 49878
www.barkanresearch.com
906.420.1380
Credit Cards Accepted
The States that Lead the Nation in COVID-19 Cases Are Hiding Their Prison Data
by Sharon Dolovich, Erika Tyagi, and Neal Marquez, UCLA COVID Behind Bars Project, August 20, 2021

When the pandemic hit, prison systems around the country started posting COVID-19 data for their facilities. This measure of transparency marked a striking departure from business as usual for American prisons, which typically operate behind a thick veil of secrecy, regardless of the public health import of what happens inside.

As we have reported over the past year, this data has been plagued by deep inadequacies. But the fact that it has been published at all seemed to indicate an unusual recognition on the part of correctional officials that the old impulse to obscure and conceal would no longer be acceptable—at least during the present crisis.

Yet now, as the Delta variant breaks hospitalization records in states across the country and vaccination rates among prison staff remain unconscionably low, some prison administrators appear to have decided that the toll COVID-19 is taking in their facilities, and the scale of continued outbreaks, is no longer information that the public needs to know. Despite growing case numbers in communities across the country, a number of carceral agencies had begun to roll back basic data reporting on the impact of COVID-19 in their facilities.

Now, it appears that an even more concerning trend has emerged: the corrections agencies that are located in states currently seeing the greatest surge in new cases are now the least transparent about the scope of COVID-19 infections and deaths inside their facilities.

Despite representing only 25% of the national population, Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Nevada, and Texas together account for half of all new cases and hospitalizations in the country as a whole. During one week in August, 2021, Florida alone had more cases than the 30 states with the lowest case rates combined, and Florida and Texas together now account for nearly 40% of new hospitalizations across the country.

Yet on June 2, the Florida Department of Corrections stopped reporting data on COVID-19 inside prisons, saying that the information was no longer "operationally necessary." As a result, for more than two months, we have had no idea how many of the 80,000 people inside Florida's prisons have tested positive or died of COVID-19—all while reports continue to emerge of hospitals overflowing across the state, along with new outbreaks and record-breaking case counts inside Florida's jails.

The Florida Department of Corrections is by no means the only agency opting for concealment despite Delta-driven surges in their states. On June 19, The Texas Commission on Jail Standards stopped reporting data on new cases inside Texas jails—although at the time, there were 120 active infections among detainees and jail staff. Since then, news outlets have reported new outbreaks inside Texas jails, while health officials call the current surge “worse than anything the state has seen yet.”

On July 8, without explanation, the Louisiana Department of Corrections took down most of the information that the agency had previously been reporting on its online dashboard, including the number of people who have died from COVID-19 and the cumulative number of cases and tests administered. Meanwhile, hospitalizations in Louisiana hit record highs in August 2021, and the state reported the second highest single-day death total since the pandemic began.

On July 16, the Georgia Department of Corrections abruptly announced it would no longer report COVID-19 updates for the 47,000 people in its custody. Since then, doctors in the state have described the latest surge, in which cases have risen by over 70% in the last two weeks, as “out of control.” By way of justification, the Georgia DOC cited its “successful vaccination rates”—although at that point only 24% of prison staff across the state had reported having received a shot.

And while the Mississippi Department of Corrections has not officially announced it would stop reporting data altogether, the agency has not updated its COVID-19 dashboard since July 8. In mid August, health officials in Mississippi described the worsening situation in the state, warning that “[w]ithout a doubt we have surpassed our previous peaks by a substantial margin, and we expect to see that continue.”

These carceral agencies are notable for having become less transparent in recent weeks despite the surge in cases in their states. At the same time, in other jurisdictions with growing case counts, prison officials are maintaining the same levels of secrecy they have employed from the start, sticking to the same opacity and poor data reporting practices they have displayed since the pandemic began.

One such state is Arkansas, where health officials reported a new record for hospitalizations this week. The Arkansas Department of Corrections is one of just six state DOCs that has never publicly reported the number of incarcerated people who have died from COVID-19—although, according to data obtained by The Marshall Project, at least 52 people have died from the virus in the state’s prisons since March 2020.

Another is Texas. While the Texas Department of Criminal Justice officially reports 202 presumed or confirmed deaths from COVID-19 among incarcerated people, the Texas Justice Initiative examined the medical records of people who died in TDCJ custody since early 2020 and found that at least 278 people have died from COVID-19 inside Texas prisons, suggesting a striking 38% undercount in the officially reported numbers. Our own preliminary analysis of excess mortality in TDCJ facilities during the pandemic suggests the true

This deliberate cloaking of the reality on the ground is occurring despite the overwhelming evidence that jails and prisons are COVID-19 hotspots and that outbreaks inside these facilities directly affect surrounding communities.

The lack of reliable data—or, in some especially opaque states, any data whatsoever—on new infections and deaths is the opposite of what is required for the latest wave of COVID-19 to be brought under control. It is also a reminder that, although prisons are nominally public institutions, prison officials still hold largely unchecked power to decide what the public is and is not allowed to know about what happens inside.

The past eighteen months have made clear what advocates and activists have long argued: jails, prisons, and detention centers are not isolated from their broader communities—and especially not during a pandemic. Every day, guards, medical staff, and incarcerated people move through facilities, and at the end of every shift, those who are free to leave return to their families and communities only to return the next day. Given the massive outbreaks inside carceral facilities during earlier waves of the pandemic and the science showing just how contagious the new Delta variant is, it would be dangerously misguided to think that the growing public health emergency in the states where Delta is surging is not affecting those inside jails and prisons.

Low vaccination rates among the staff who work in these facilities provide further grounds to fear that the agencies withholding data may be obscuring a growing crisis. In Alabama, just 23% of prison staff have reported receiving even one vaccine shot. It is not, however, an outlier: in Arkansas, that number is 47%; in Georgia, 25%; in Louisiana, 52%; in Nevada, 42%; and in Texas, 39%. These reported data may underestimate the true number who are vaccinated, as many agencies do not require employees to report shots received offsite. However, these data remain the only publicly available information—and if the true rates are indeed higher, agencies have an obligation to collect and report data on this critical public health measure. In some states, we have no sense at all as to staff vaccination rates; the DOCs in Florida and Mississippi, for example, have chosen to report no data at all on this issue.

The Florida Department of Corrections has said that the COVID-19 crisis has subsided, making this an appropriate moment for prison officials to pare back the data being reported or to stop reporting it altogether. These claims are rooted in dangerous fiction, and have no place in public health policy.

Instead of responding to the latest threat by doubling down on the public health strategies that have proven most effective—testing, tracing, isolating cases, vaccinating, and publicly reporting data to inform policy-making—we now see corrections agencies reverting to their longstanding resistance to transparency and accountability. Given what is happening with COVID-19 in these regions, these shifts in data reporting are almost certainly cloaking increased infections and preventable deaths among people who, whatever their crimes, were not sentenced to die in prison.

That prison officials should hide evidence of harm to those in their custody is nothing new—every day, in prisons across the country, incarcerated people suffer in ways the public never learns about. But this secrecy is precisely the problem. Prisons are public institutions, and in order to hold these agencies accountable, the public needs to know what happens inside their walls—at all times, and especially at this critical moment.
On June 14, 2021, United States District Court for the Southern District of Illinois granted Plaintiffs’ motion for class certification while granting in part and denying in part Defendant’s motion to Supplement.

The Plaintiffs, six prisoners housed in restrictive housing at different facilities in the Illinois Department of Corrections (IDOC), filed a federal complaint on June 2, 2016 against IDOC’s “use of segregation, which they claim is tantamount to ‘extreme isolation,’ violates constitutional standards.” The Plaintiffs alleged two counts: one, the conditions in IDOC restrictive housing violates the Eighth Amendment; and two, they have a “protected liberty interest in avoiding extreme isolation.”

Subsequently, the Plaintiffs filed a motion for class certification on September 6, 2019. The Defendant filed his motion to supplement authority and/or evidence. Plaintiffs originally sued John Baldwin, then Acting Director of the IDOC, but who was replaced by Rob Jeffreys, pursuant to Federal Rule of Civil Procedure 25(d) that automatically substitutes Jeffreys as a party.

The Court first addressed the Defendant’s motion to supplement additional authority. The Defendant submitted as additional authority opinions issued by the Seventh Circuit, McFields v. Dart, 982 F.3d 511 (7th Cir. 2020) and Howard v. Cook County Sheriff’s Office, 989 F.3d 587 (7th Cir. 2021). The Court, however, ruled those opinions did not constitute a new authority “that changes the law governing Plaintiffs’ class action.”

Nevertheless, because the Plaintiffs had previously submitted supplemental authority on “notice”—i.e., submitting their motion without first asking the Court’s permission—the Court allowed the Defendant to supplement the record with their motion, noting wryly that “what is good for the goose is good for the gander.”

Next, the Court denied the Defendants supplement for additional evidence. The Defendant provided updated restrictive housing policies, which were implemented October 2020, contending the policies “contributed to a sharp decrease in the numbers of segregated prisoners.” The Court responded that the Defendant did not provide any linkage between the updated policies and reduced numbers of prisoners in restrictive housing, and declined to review the 17 pages of policy updates to deduce the claims of cause and effect. Notably, the Court observed that less people in segregation did not defeat class certification.

The Court’s ruling then turned to the Plaintiffs’ motion for certification. Both parties submitted close to 100 exhibits, including internal documents and records from the IDOC, depositions from IDOC officials, and testimony from two expert witnesses, Dr. Craig Haney and Mr. Eldon Vail, retained by the Plaintiffs, comprising over 2,000 pages.

The Plaintiffs’ experts summarized how extreme isolation can negatively affect an individual. Dr. Haney, a professor of psychology from University of California, Santa Cruz, provided information and opinion on the adverse psychological consequences of solitary confinement. According to the professor, restrictive housing deprives people of “meaningful social contact” that commonly produces a “host of serious adverse cognitive, emotional, behavioral, and physical impairments, which can cause permanent and irreparable damage to a person’s overall psychology and physical functioning.”

The Plaintiffs’ other expert, Mr. Vail, a former administrator in corrections with 35 years of experience, evaluated the IDOC’s policies and practices regarding restrictive housing to offer an opinion on suggested reforms. Mr. Vail pointed out that “most states” impose restrictive housing or segregation for disciplinary reasons and for only 30, 60, or 90 days. But the IDOC, according to Mr. Vail, uses “segregation to punish offenses that did not require it.”

The latest publicly available data from 2018 shows that of the 1,619 people in IDOC restrictive housing, 44% had been there for two or more years, 24% for five or more years, 16% for seven or more years, and 5% for at least ten years. Disturbingly, the data also revealed that 11 individuals had been closeted inside restrictive housing for 20 years or longer.

The Defendant, the Court noted on two occasions, did not provide any experts to contest and rebut the information submitted by Dr. Haney and Mr. Vail.

Regarding the requirements for class certification, Plaintiffs had to satisfy numerosity, commonality, typicality, and adequacy of representation, the four requirements of Federal Rule of Civil Procedure 23(a).

The Court first addressed the Defendant’s argument that the Plaintiffs’ class certification should not be granted because the issues raised are “subsumed” by another class action in the Central District of Illinois: Rasho v. Walker, No. 07-1298, 2018 U.S. Dist. LEXIS 235990 (C.D. Ill. Oct. 30, 2018). The Court rejected the Defendant’s argument. The Rasho suit, though having some overlap with the Plaintiffs’ case, “did not ask, litigate, or resolve whether the IDOC’s policies and/or the purported systemic failure to adhere to those policies, creates inhumane conditions of confinement in restrictive housing for inmates.”

The Court also noted that the argument came too late in the proceedings, adding that the Defendant waited until after Plaintiffs had filed for class certification. “The timing and imprecision of Defendant’s argument suggests it is more likely a last-ditch effort to avoid class certification,” the Court observed.

Next, the Court addressed the four requirements. The Defendant’s claim the Plaintiffs do not satisfy numerosity rested on the argument that the Rasho prisoners should be excluded and that Plaintiffs are assuming that “every inmate who is currently serving time in restrictive housing or will in the future is a class member.”

The Court disagreed, pointing out the Plaintiffs are claiming the IDOC’s policies for restrictive housing put current and future prisoners at a “substantial risk of serious harm.” The Court found the Plaintiffs satisfied the requirement of numerosity.

Rule 23(a)’s second requirement of commonality must prove there are “questions of law or fact common to the class.”

Analyzing those questions requires a “precise understanding of the nature of the plaintiffs’ claims.” Phillips v. Sheriff of Cook Cty., 828 F.3d 541 550, 553 (7th Cir. 2016). The Constitution does not prohibit uncomfortable prison conditions, only if they are inhumane. If those conditions
deprive prisoners of “basic human needs” or “the minimal civilized measure of life’s necessities,” then the Eighth Amendment’s prohibition against cruel and unusual punishment is violated.

Moreover, commonality is satisfied when “inmates provide sufficient evidence of systemic and centralized policies or practices in a prison system that allegedly expose all inmates in that system to a substantial risk of serious future harm.” *Parsons v. Ryan*, 754 F.3d 657, 684 (9th Cir. 2014).

The Court, without opining on the merits of the Plaintiffs’ claims, established that Plaintiffs showed enough evidence to significantly prove their burden that common questions exist.

The Plaintiffs also had to satisfy commonality for their due process claim by showing they were “deprived of a protected liberty interest and the procedures they were afforded were constitutionally deficient.” *Lisle v. Welborn*, 933 F.3d 705, 720, (7th Cir. 0119). The Court ruled they did, again pointing out the Plaintiffs’ claim addressed IDOC’s policies.

Because the Plaintiffs are also seeking relief under Rule 23(b)(2), they must satisfy another requirement. The Plaintiffs are not seeking monetary damages but injunctive and declaratory relief. Rule 23(b)(2) allows class certification where “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Again, the Court noted the Plaintiffs are seeking to address “purported systemic defects” in IDOC’s policies and practices for restrictive housing and therefore found the Plaintiffs satisfied 23(b)(2).

The third requirement of Federal Rule 23(a) states that the “claims or defenses of the representative parties are typical of, the claims or defenses of the class.” The Court disagreed with the Defendant’s claim the Plaintiffs were alleging factual differences among the Plaintiffs’ experiences in restrictive housing and ruled that Plaintiffs met the requirement of typicality because they “are challenging as a general matter where restrictive housing in the IDOC is cruel and unusual and where it is imposed without due process.”

Finally, the Court also determined Plaintiffs satisfied the fourth requirement of adequacy of representation. This rule provides that the “named plaintiffs and proposed class counsel must fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). In other words, a “class representative must be part of the class and must possess the same interest and suffer the same injury as the other class members.” *Orr v. Shicker*, 953 F.3d 490, 499 (7th Cir. 2020). The Court noted that those currently in restrictive housing are “actively exposed to the purported due process violations and unconstitutional conditions of confinement” resulting from the “same system-wide policies and practices governing extreme isolation.”

The Plaintiffs are represented by Winston & Strawn LLP and the Uptown People’s Law Center. Alan Mills, co-lead counsel, said, “Illinois’ prison system locks up too many people, for too long, in horrific conditions. And as solitary confinement is prison within prison, it, too, is overused. The UN states that over 15 days of solitary is torture, yet sometimes people in Illinois spend decades there. And everyone who spends more than a couple of weeks ends up traumatized.” See: *Davis v. Baldwin*, USDC, SD IL, Case No. 3:16-cv-600-MAB.
South Carolina Attorney General Issues Opinion That Information in State Prisoners’ Death Certificates Is Public Information

by Matt Clarke

On May 14, 2021, the Office of the Attorney General (AG) of South Carolina issued an opinion that information relating to the death of state prisoners contained in their death certificates is public information subject to disclosure under the state’s Freedom of Information Act (FOIA), S.C. Code § 30–4–30(A)(1), and is not exempted from disclosure.

In response to some prison staff’s complaints that the DOC was violating privacy mandates contained in the federal Health Insurance Portability and Accountable Act (HIPAA), 42 U.S.C. § 1320d–2(d)(2) by releasing the names and causes of death of prisoners who died in state custody, South Carolina Department of Corrections (DOC) Director Bryan Stirling requested an AG’s opinion on whether the DOC was required to withhold the information. The DOC began withholding the information, a move that earned it derision in the media.

“What is the prison system going to do after an execution, say an unnamed inmate was executed for some crimes he committed long ago?” asked veteran media attorney Jay Bender who represents both the South Carolina Press Association and The State Media Company. “The notion that an inmate who dies has a right to privacy is bizarre because your right to privacy dies with you.” The detailed and thoughtful analysis in the opinion largely agreed with Bender. It first noted that the state Supreme Court had previously differentiated between autopsy reports, which clearly are medical records and thus exempt from FOIA disclosure, and death certificates, which are not medical records even though they may contain some medical information regarding the cause of death. Perry v. Bullock, 761 S.E.2d 251 (2014). Based on this, a list of prisoners’ names and causes of death are not medical records.

The opinion went on to note that information about prisoners dies was of great importance and an issue in which the public had a strong interest.

Further, a prisoner has a diminished right to privacy while in prison and any right to privacy is a personal right which does not survive a person’s death. Because of this, a list of prisoners’ names and causes of death must be disclosed under FOIA.

The opinion also found that, whereas the DOC is subject to the requirements of HIPAA, and HIPAA’s privacy rules prohibit the disclosure of a persons’ medical information for 50 years after death, HIPAA itself contains an exception from nondisclosure for the reporting of deaths. Further, Attorney General opinions from Nebraska, Ohio and Texas had all found prisoner death certificates to be exempted from HIPAA privacy requirements. Therefore, the opinion was that the names and causes of death of prisoners was not exempted from disclosure under FOIA and such disclosure was mandatory.

Sources: A.G.’s Opinion, dated May 14, 2021; thestate.com

Eighth Circuit Reverses Dismissal of HRDC Postcard-Only Suit Against Arkansas Jail

by David M. Reutter

The Eighth Circuit Court of Appeals ruled that the postcard only policy of the Baxter County, Arkansas Jail and Detention Center (BCJ) constituted a de facto permanent ban on the First Amendment rights of publishers. The Court’s June 8, 2021 opinion was issued in an appeal by the Human Rights Defense Center (HRDC), publisher of Prison Legal News. BCJ in January 2012 initiated a policy to limit incoming detainee mail, except legal or privileged mail, to postcards. Between August 2016 and May 2017, HRDC sent three batches of materials to multiple BCJ detainees. Pursuant to its policy, BCJ censored the materials.

HRDC sued, claiming the postcard-only policy violates its First Amendment rights to communicate with BCJ detainees and that BCJ violated its due process rights under the Fourteenth Amendment to notice an opportunity to appeal BCJ’s decisions. The district court granted partial summary judgment to HRDC, concluding the rejections were a “technical violation” of HRDC’s due process rights. It awarded $4 in nominal damages. The court also found there was no First Amendment violation.

HRDC appealed both rulings.

The BCJ has one of the most draconian mail policies HRDC has encountered. Prisoners are not allowed to receive books, newspapers, magazines or letters, nor to watch television. The jail plays the radio 20 minutes a day. The jail has no books or magazines and the “law library” consists of a milk crate with a few old, tattered court rules and statute books in it. For a distant publisher like HRDC, these alternative means are not practicable, the Eighth Circuit said.

“Further, a prisoner has a diminished right to privacy while in prison and any right to privacy is a personal right which does not survive a person’s death. Because...”

The Eighth Circuit agreed. The evidence at trial showed that BCJ detainees may not order or receive books or magazines. There was also evidence that BCJ “has no electronic reading kiosk and that it stopped maintaining a book cart for the inmates to use.” As HRDC had no alterna-
tive means to exercise its “First Amendment interest in access to prisoners,” the district court’s order dismissing that claim was vacated.

The Eighth Circuit then turned to the Fourteenth Amendment claim. It agreed with the district court’s conclusion that only a “technical violation” occurred. A distinction was drawn in that the rejection was not based on censorship but upon enforcement of a rule with general applicability. The court noted HRDC was sending outreach mail to test BCJ’s mail policies after it had learned of the postcard-only policy being implemented.

In addition to upholding the district court’s legal conclusion, it affirmed the $4 nominal damage award. It noted that HRDC would have incurred the costs of mailing from its investigation in any event. Thus, it was proper to award $1 for reach of the four types of mailings HRDC sent to BCJ. HRDC is represented in the case by Paul James of Little Rock, Bruce Johnson and Caesar Kalinowski IV of the Seattle law firm Davis Wright Tremaine and Dan Marshall, HRDC’s general counsel. The case has been remanded for further proceedings.

A number of organizations joined the case on appeal with two amicus curiae briefs on behalf of HRDC. These organizations were the Roderick and Solange Macarthur Justice Center, Americans for Prosperity, Arch City Defenders, the Rutherford Institute, R Street Institute, Center for Appellate Litigation, Free Minds Book Club, Just Detention International, the Michigan State University College of Law Civil Rights Clinic and the Uptown People’s Law Center. They were represented by Devi Rao and Emily Savner of Jenner Block and David Shapiro of the Macarthur Justice Center in one brief and by John Whitehead of the Rutherford Institute and Mark Sableman, Michael Nepple and Anthony Blum at the St Louis firm of Thomson Coburn. HRDC is grateful to the amicus and their counsel for their support. See: Human. Rights Def. Ctr. v. Baxter County, Ark., 999 F.3d 1160 (8th Cir. 2021).
A lawsuit filed in a California federal court on September 15, 2021, accuses private prison financier JPay, Inc. of violating both U.S. law and the constitutional rights of prisoners by returning money owed at their release in debit cards that eat up much of the balance in fees.

The lead plaintiff in the case, Adam Cain, is represented by the Seattle law firm of Sirianni Youtz, California civil rights attorney John Burton and the Human Rights Defense Center (HRDC), which has published *Prison Legal News* since 1990 and *Criminal Legal News* since 2017. The suit seeks national class action status to represent any and all prisoners harmed by having JPay handle its business with Cain and other released state prisoners, and none of them were given any choice in receiving the debit card. Yet all were then assessed fees to cover the cost of doing so. As a result, the complaint continues, JPay is also guilty of violating the plaintiffs’ right under the Fifth Amendment not to have their private property taken by—or for—the government.

The suit concludes with three other arguments against JPay’s policies and actions:

- that its fees amount to a “taking” in violation of the Fifth Amendment;
- that in so doing it engaged in unlawful conversion of others’ property to its own use; and
- that it is thereby unjustly enriched at the expense of Cain and other plaintiffs in the class.

JPay, a Florida-based subsidiary of hedge fund owned private prison communications giant Securus Technologies, is one of three defendants named in the suit. The others are Praxell and the debit card underwriter, Metropolitan Commercial Bank, both based in New York.

The legal team litigating the case includes California attorney John Burton, Seattle, Washington attorneys Chris Youtz and Rick Spoonmore of the firm Sirianni Youtz, along with HRDC’s litigation director Dan Marshall. If you have been forced to accept a JPay release debit card upon release from a prison or jail anywhere in the country within the past year, please contact Dan Marshall, Attorney at Law, Human Rights Defense Center, PO Box 1151, Lake Worth, FL 33460. (561) 360-2523 or kmoses@humanrightsdefensecenter.org. See: *Cain v. JPay*, USDC CD CA, Case No. 2:21-cv-7401.

---

**Eleventh Circuit Holds No Qualified Immunity on Deliberate Indifference in Heat Exhaustion Case**

by David M. Reutter

The Eleventh Circuit Court of Appeals found a Georgia Sheriff’s Deputy employed excessive force by detaining a pretrial detainee “in a hot, unventilated, and unair-conditioned transport van for approximately two hours” and was deliberately indifferent to the detainee’s serious medical needs. The court concluded the deputy was entitled to qualified immunity on the excessive force claim but not on the deliberate indifference claim.

The court’s August 11, 2020, opinion was issued in an appeal brought by Nilesh S. Patel. He appealed from the district court’s grant of summary judgment in favor of Lanier County Sheriff’s Deputy James Smith. He was tasked with transporting Patel from the Cook County Jail, where he was being held due to overcrowding, to the Lanier County Courthouse to be processed for release on bond.

Smith stopped the Lowndes County Jail to pick up Brittney Grant, another pretrial detainee who was being taken to Lanier County to be released on bond. Upon arrival, Smith parked in the enclosed sally port and left Patel in van while he went to retrieve Grant. The conditions that day were “very hot” within the sally port and the van, with the outdoor temperature at around 85 degrees Fahrenheit.

Patel was left in the van for almost an hour without a fan or the air-conditioning running. When Smith returned with the van, Patel, who said he passed out from the heat, was lying unconscious on the floor, sweating, and hyperventilating.

Smith applied a “sternum rub” to rouse Patel, who said he passed out from the heat and asked for some water. Smith said he would get some water on the way back to Lanier County, but he failed to fulfill that promise. Grant testified that not much air circulated in the back of the van and that during the drive to Lanier County, Patel again fell to the floor of the van. He “remained there—unconscious, hyperventilating, and with mucus...”
and saliva running from his mouth and nose,” until Smith roused him upon arrival at Lanier County. By that time, Patel had been in the van almost two hours.

Once helped out of the van, Patel immediately got a drink from a water fountain. In the holding area, he visibly showed signs of distress. When he asked for an ambulance, a guard asked why and stated, “You’re being released.” Paramedics arrived and transported Patel to a hospital where he was diagnosed with heat exhaustion, heat syncope, and panic attack.

Patel sued Smith and other defendants, who were voluntarily dismissed. The district court granted Smith’s motion for summary judgment, concluding Smith had not violated the constitution and that he was entitled to official immunity on Patel’s state law claim.

The Eleventh Circuit found the district court applied an incorrect standard on the excessive force claim. How such claims are assessed for pretrial detainees changed with the ruling in *Kingsley v. Hendrickson*, 576 U.S. 389, 135 S. Ct. 2466 (2015). The *Kingsley* court abandoned the “shocks the conscious” standard under the Eighth Amendment for a pretrial detainee’s excessive use of force claim. It adopted the Fourteenth Amendment rule of “objective reasonableness.”

The *Kingsley* court listed six non-exclusive factors to apply that rule: “(1) the reasonableness between the need for the use of force; (2) the extent of the plaintiff’s injury; (3) any effort made by the officer to temper or limit the amount of force; (4) the severity of the security problem at issue; (5) the threat reasonably perceived by the officer; and (6) whether the plaintiff was actively resisting.”

After assessing those factors in Patel’s case, the Eleventh Circuit found that excessive force was used upon him by leaving him in the hot van for two hours. It, however, found that right was not clearly established and that Smith was entitled to qualified immunity.

The court further found that Smith exhibited deliberate indifference by failing to render aid or obtain medical care for Patel. That Smith is a trained first responder and failed to act in the face of an unconscious detainee were key factors. The court said it was clearly established that under such circumstances Smith had a duty to act, so he was denied qualified immunity on that claim.

Finally, the court found error in dismissing the state law claims of negligence and intentional infliction of emotional distress. It said there was a jury question of whether Smith had a ministerial duty in a written policy to not leave Patel “unattended during transport.”

The district court’s order was affirmed in part and vacated in part. See: *Patel v. Lanier County, Ga.*, 969 F.3d 1173 (11th Cir. 2020).
Colorado's El Paso County Jail, the state's largest jail, received almost $16 million in federal funds to cover costs related to the COVID-19 pandemic. It used most of those funds in jail renovations that were part of a longstanding wish list. Meanwhile, staff and detainees were not provided face masks, which led to an outbreak of COVID-19. The Colorado ACLU filed suit to force the jail to comply with basic COVID prevention protocols such as actually giving prisoners masks to wear.

Jail officials sought out money under the federal CARES Act after Deputies Jeff Hopkins, a 19-year veteran, died on April 1, 2001. He contracted COVID-19 while working at the jail's intake and release.

“Losing that sheriff’s deputy so early on... was incredibly impacting in the thinking about making decisions down the road,” said former El Paso County Commissioner Mark Waller.

“The CARES Act provides that payments from the Fund may only be used to cover costs that are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019,” guidance from the U.S. Treasury Department states. The guidance also states the money should only be used for costs that “were incurred during the period that begins on March 1, 2020, and ends on December 31, 2021.”

The El Paso County Jail used a large portion of its CARES Act funds to refurbish a locker room for deputies, and to build a new training facility. It also spent $600,000 on a conveyor belt to move detainee property from one place to another. The most expensive item, at a cost of almost $9 million, was the installation of high-tech locks, security cameras, and new doors throughout the jail.

The justification was that the new doors would help prevent infected detainees from infected ones. The new cameras allowed better angles in locked down cells. The new deputy locker room was touted as providing each deputy with a locker, ending the practice of shared lockers. Finally, the conveyor belt system organizes detainee property in plastic bags so the deputies didn’t have to touch it.

“Had COVID not happened, we wouldn’t have done these things because we wouldn’t have had to,” said jail spokeswoman Jacqueline Reed. “This was an aggressive undertaking because all of the money had to be spent before the end of 2020” (The period was later extended into 2021.)

The County Commission was persuaded to use the funds for those projects. “Certainly, I thought it would make it, not only our staff members safer, I thought it would make people who were incarcerated safer,” said Waller. “I’m not a lock expert and I have to rely on the sheriff’s deputies. I feel like they convinced me that it would make people safer and it was the right thing to do.”

While money was approved for the wish-list items, detainees and staff were without masks to wear. Jail officials said there was a shortage of PPE and it considered masks with metal in them contraband.

“Everyone was in there coughing on each other. I’m laying on my bunk and I’m literally at arm’s length to touch the next person,” said Cecil Haynes, who spent three months at the jail at the end of 2020. “I sent hundreds of messages... I had to get a T-shirt and cut off the sleeve and wear that as a face mask so I could protect myself. But that didn’t work, by the time I decided to do that, I’d already contracted it.”

The reality inside the jail was in direct contradiction to a summer 2020 Facebook post from El Paso County Sheriff Bill Elder.

“I just encourage people, wear a mask,” he said. “Let’s try to make this as easy as we can on the community and not try to make it more difficult on individuals.”

Just months after that post, the jail experienced its worst wave of COVID-19. In a single week of November 2020, 859 detainees and 73 staff members tested positive at the jail. As of the first week of April 2021, 1,272 positive cases were reported at the jail.

According to court filings, one deputy told detainees he was going to let the virus “run its course” through the jail population because there were so many infected detainees.

In July 2020, jail officials furnished masks to prisoners to wear back and forth to court, but they were forced to discard them upon return to the jail. According to a lawsuit filed by the ACLU, detainees were punished for fashioning their own masks.

Haynes described an insurrection at the jail in the second week of November 2020. He said detainees refused to eat, lock down, or follow directions. “They’re sitting there, lying to the general public, our family members, everyone,” he said. “And finally, they sent a bunch of deputies, the sergeants, and they said, ‘well, what would it take to get you to stop this?’ And we asked for masks and the very next day they brought us masks.”

Reed disputed that account. “There was nothing even close to an insurrection,” she said. “There were a few inmates who were upset they were not issued masks, so they decided to go to the media and at least one did an interview. Every inmate is given a cloth mask and approximately 10 percent of inmates wear them on a daily basis.”

As part of a preliminary injunction on January 4, 2021, the sheriff agreed to require all staff to wear masks, issue two cloth masks to people incarcerated at the jail, check temperatures, screen for at-risk individuals, provide clean drinking water, continue COVID testing protocols, isolate those who tested positive, and provide appropriate medical care for those with COVID. The injunction expired after 180 days.

A settlement was reached in May 2021 for $95,000 to cover attorney fees of the plaintiffs. El Paso County is to pay $65,000, and the medical provider Wellpath is to pay $30,000.

“To the jail’s credit, they responded promptly to the lawsuit and quickly agreed,” said Mark Silverstein, legal director of the ACLU of Colorado. “And now it looks like they’ve been doing pretty well on the outbreak front.” See: Weikert v. Elder, USDC, DCO, Case No. 1:20-cv-03646-RBJ. Sources: CPR.org
HRDC Support Gifts

Gift Option 1
In recognition of your support, we are providing the PLN hemp tote bag when making a donation of at least $75. Carry books and groceries stylishly and help end the war on drugs!

Gift Option 2
To show our appreciation for your support we are providing the following selection of books for you to choose from when making a donation of $100. Donations of $100 or more can choose one free title. Each $100 donation entitles you to another free title; i.e., donate $500 and you get five books! $1,000 and you get everything on the page! Please circle the books you want and send the corresponding donation amount.

Gift Option 3
As a thank you for your support, we are providing the entire PLN anthology of critically acclaimed books on mass imprisonment signed by editor Paul Wright! (The Ceiling of America, Prison Nation and Prison Profiteers) plus the PLN hemp tote bag to carry the books in when making a donation of $250 or more.

Please help support the Human Rights Defense Center!
The Human Rights Defense Center (HRDC), which publishes Prison Legal News and Criminal Legal News, cannot fund its operations through subscriptions and book sales alone. We rely on donations from supporters!

HRDC conducts only one annual fundraiser; we don't bombard our readers with donation requests, we only ask that if you are able to contribute something to our vital work, then please do so. Every dollar counts and is greatly appreciated and will be put to good use. No donation is too small (or too big)!

Where does your donation go? Here's some of what we've done in the past year:
• We won censorship lawsuits against jails in Maryland, Minnesota and Colorado ensuring prisoners can receive books and magazines in the mail.
• We filed lawsuits against prison systems in Florida and continue litigating lawsuits against prison systems in Michigan, Illinois, Arizona and Indiana which have censored HRDC publications.
• We won public record lawsuits against private prison companies, Geo and Corizon and ICE, the US Marshalls Service and various other state and federal agencies.
• We advocated for lower prison phone rates before the Federal Communications Commission and the California Public Utilities Commission.
• We continue litigating and advocating for the elimination of fee laden debit cards in the criminal justice system.
• We have brought timely and informative coverage of Covid throughout the pandemic at a national level.

We need your help to keep doing this and a lot more! Please send your donation to:
Human Rights Defense Center, PO Box 1151, Lake Worth Beach, FL 33460
Or call HRDC’s Office at 561-360-2523 and use your credit card to donate
Or visit our website at prisonlegalnews.org or criminallegalnews.org and click on the “Donate” link.

HRDC 2021 Annual Fundraiser

Where does your donation go? Here's some of what we've done in the past year:
• We won censorship lawsuits against jails in Maryland, Minnesota and Colorado ensuring prisoners can receive books and magazines in the mail.
• We filed lawsuits against prison systems in Florida and continue litigating lawsuits against prison systems in Michigan, Illinois, Arizona and Indiana which have censored HRDC publications.
• We won public record lawsuits against private prison companies, Geo and Corizon and ICE, the US Marshalls Service and various other state and federal agencies.
• We advocated for lower prison phone rates before the Federal Communications Commission and the California Public Utilities Commission.
• We continue litigating and advocating for the elimination of fee laden debit cards in the criminal justice system.
• We have brought timely and informative coverage of Covid throughout the pandemic at a national level.

We need your help to keep doing this and a lot more! Please send your donation to:
Human Rights Defense Center, PO Box 1151, Lake Worth Beach, FL 33460
Or call HRDC’s Office at 561-360-2523 and use your credit card to donate
Or visit our website at prisonlegalnews.org or criminallegalnews.org and click on the “Donate” link.

HRDC Support Gifts

Gift Option 1
In recognition of your support, we are providing the PLN hemp tote bag when making a donation of at least $75. Carry books and groceries stylishly and help end the war on drugs!

Gift Option 2
To show our appreciation for your support we are providing the following selection of books for you to choose from when making a donation of $100. Donations of $100 or more can choose one free title. Each $100 donation entitles you to another free title; i.e., donate $500 and you get five books! $1,000 and you get everything on the page! Please circle the books you want and send the corresponding donation amount.

Gift Option 3
As a thank you for your support, we are providing the entire PLN anthology of critically acclaimed books on mass imprisonment signed by editor Paul Wright! (The Ceiling of America, Prison Nation and Prison Profiteers) plus the PLN hemp tote bag to carry the books in when making a donation of $250 or more.

Please help support the Human Rights Defense Center!
The Human Rights Defense Center (HRDC), which publishes Prison Legal News and Criminal Legal News, cannot fund its operations through subscriptions and book sales alone. We rely on donations from supporters!

HRDC conducts only one annual fundraiser; we don't bombard our readers with donation requests, we only ask that if you are able to contribute something to our vital work, then please do so. Every dollar counts and is greatly appreciated and will be put to good use. No donation is too small (or too big)!

Where does your donation go? Here's some of what we've done in the past year:
• We won censorship lawsuits against jails in Maryland, Minnesota and Colorado ensuring prisoners can receive books and magazines in the mail.
• We filed lawsuits against prison systems in Florida and continue litigating lawsuits against prison systems in Michigan, Illinois, Arizona and Indiana which have censored HRDC publications.
• We won public record lawsuits against private prison companies, Geo and Corizon and ICE, the US Marshalls Service and various other state and federal agencies.
• We advocated for lower prison phone rates before the Federal Communications Commission and the California Public Utilities Commission.
• We continue litigating and advocating for the elimination of fee laden debit cards in the criminal justice system.
• We have brought timely and informative coverage of Covid throughout the pandemic at a national level.

We need your help to keep doing this and a lot more! Please send your donation to:
Human Rights Defense Center, PO Box 1151, Lake Worth Beach, FL 33460
Or call HRDC’s Office at 561-360-2523 and use your credit card to donate
Or visit our website at prisonlegalnews.org or criminallegalnews.org and click on the “Donate” link.
Tennessee Department of Corrections Rebids $123 Million Health Care Contract After Corizon Accuses It and Centurion of Bid Rigging

by Matt Clarke

On May 10, 2021, the Tennessee Department of Corrections (DOC) announced that it would rebid the $123 million contract it had awarded to Centurion to provide behavioral health services—including psychiatric and addiction services—to prisoners in DOC prisons. The move came after Corizon accused the DOC and Missouri-based Centurion of bid rigging in a federal court filing.

In April 2021, Corizon filed an amended complaint in federal court alleging former DOC chief financial officer Wesley Landers sent internal DOC emails related to the contract to a home Gmail account, then forwarded them to Centurion Vice President Jeffrey Wells. Landers used a program that automatically scrubbed the emails from his computer. Wells and Landers also allegedly communicated using the encrypted messaging service WhatsApp.

Some of the emails were recovered from Centurion. One was a draft of the request for proposals sent to Wells nearly two months before it was made public. The suit alleges Landers received a “cushy” job with a Centurion affiliate in Georgia in exchange for the information. Wells and Landers also allegedly communicated using the encrypted messaging service WhatsApp.

Centurion fired Landers and Wells in February 2021. The DOC said it decided to reissue the contract after receiving information about bidding irregularities but Centurion would continue to provide behavioral health services to its prisoners until the matter was resolved. The DOC would not say whether Centurion would be allowed to bid on the new contract.

Corizon’s lawsuit demands compensation for lost profits and triple damages from Centurion and Landers. It also requests an injunction against several DOC and state procurement office officials to prevent violations of federal antitrust laws. See: Corizon, LLC v. Wainwright, USDC Middle Dist. Tenn., Case No. 3:20-cv-00892.

A September 22 report from the Tennessee newspaper stated that bidders “vying to provide behavioral health services to Tennessee’s inmates must obtain a $120.8 million performance bond to be considered for the contract, a price tag a competitor fears may steer the contract unfairly toward companies with sizable financial backing.” This requirement was detailed in a new request for bids by the DOC. In response, Corizon spokesperson Charles Siegel stated the bond could “discourage competitors from participating.”

Additional sources: apnews.com, tennessean.com

Death, Neglect and Despair in U.S. Tribal Jails

by Daniel A. Rosen

An investigation conducted by the Mountain West News Bureau and NPR recently found that at least 19 men and women have died in the past five years in tribal jails overseen by the Interior Department, among other serious problems in the detention centers.

The Bureau of Indian Affairs (BIA) oversees more than 70 tribal detention centers spread across the U.S. Officials there have known about the mistreatment of prisoners, in-custody deaths, inhumane conditions, attempted suicides, and other problems at least since 2004, when a federal investigation revealed the issues. The Interior Department’s own inspector general called the prisons a “national disgrace.”

Several of the 19 deaths in just the past five years came after guards failed to provide timely medical care. And many of the ar-
restees were in custody for minor infractions like petty theft or breaking open container laws. The BIA has refused to release details of some deaths, even after multiple requests.

NPR and the Mountain West News Bureau recently conducted dozens of interviews with investigators, lawmakers, law enforcement, and victim's families, and reviewed hundreds of pages of records including lawsuits, jail logs, autopsy reports, and internal government reports—and found that the same problems remain.

Carlos Yazzie was arrested on a bench warrant in early 2017 and tossed into an isolation cell at the Shiprock jail on the Navajo Nation in New Mexico, even though he was severely inebriated. Guards failed to check on him for over six hours and he was found unresponsive the next morning. He died of acute alcohol poisoning, an easily treatable condition. His blood alcohol level was 0.461, or more than six times the limit, a potentially fatal dose.

“These correctional officers are basically holding these lives in their hands with these decisions,” Carlos’ brother Chris Yazzie said. Chris was a guard at the same jail once. “I don’t think these people are prepared,” he added.

Federal policy for an “extremely intoxicated” prisoner is to transfer him to a health facility.-

Another finding noted that many of the jails are in a state of disrepair, with one lacking even potable drinking water. Finally, the investigation concluded that the jails are severely underfunded by Congress.

Senator Jon Tester of Montana, who sits on the Indian Affairs Committee, called NPR’s findings “deeply disturbing,” and said they warranted an “immediate, transparent” official investigation. “Where policies are found to have failed, we will work to fix them and ensure that it does not happen again,” he said in a statement.

House Representative Teresa Leger Fernandez, who chairs the Indigenous Peoples Subcommittee, said the BIA jails’ problems are “heartbreaking but, sadly, not new.” She says she intends to boost funding for the jails and eliminate the Agency’s endemic budget shortfall.

In another incident, 37-year-old Joe Snell collapsed while exercising in a common area at a federally operated jail on the Spirit Lake Tribe Reservation in North Dakota. Neither of the guards on duty rendered aid, though the BIA says both were trained in CPR and in the use of defibrillators, which were available.

“Why are all these people working there?” Joe’s sister Michelle Snell asked.

“When someone collapses like that, they really should go for [the defibrillator] because that’s the lifesaving maneuver,” said Ian Paul, a forensic pathologist with the New Mexico medical investigator’s office.

The paramedics on scene initiated CPR upon arrival, but Joe Snell had already suffered a fatal heart attack, according to his sister. The North Dakota State Forensic Examiner’s office refused to release the autopsy to confirm her suspicions, citing state privacy laws.

Federal policy in such a circumstance states that guards should “initiate all available rescue options” if a prisoner’s life is in danger. BIA officials cited an unnamed preexisting medical condition that prevented them from doing so in Snell’s case, though his sister was unaware of any such condition.

As of early 2021, NPR found that one in five guards hadn’t completed the 400-hour basic training program in first aid, handling emergencies, and suicide prevention. In 2018, roughly one in four working guards had failed to finish the training. New hires have a year to do so, but it often takes longer, according to NPR’s interviews with guards.

The 2004 report by Interior Department Inspector General Earl Devaney was blunt. “BIA’s detention program is riddled with problems and, in our opinion, is a national disgrace, with many facilities having conditions comparable to those found in third world countries,” Devaney told Congress when he testified about it.

At the time, Senator Timothy Johnson of South Dakota said, “I hope this will not be one of those ‘gathering dust’ reports.” But that seems to be exactly what happened.

Interior Secretary Deb Haaland, the first Native American to serve as a cabinet secretary, reportedly declined NPR’s request for an interview on this matter.

While Indian tribes are purportedly sovereign nations, reservations are considered territory for law enforcement purposes with serious crimes being investigated by the FBI and prosecuted by the local U.S. Attorney’s office. The tribal jails tend to hold prisoners accused or convicted of misdemeanor offenses and are operated by tribal authorities.

Source: npr.org

NPR and the Mountain West News Bureau recently conducted dozens of interviews with investigators, lawmakers, law enforcement, and victim’s families, and reviewed hundreds of pages of records including lawsuits, jail logs, autopsy reports, and internal government reports—and found that the same problems remain.

Carlos Yazzie was arrested on a bench warrant in early 2017 and tossed into an isolation cell at the Shiprock jail on the Navajo Nation in New Mexico, even though he was severely inebriated. Guards failed to check on him for over six hours and he was found unresponsive the next morning. He died of acute alcohol poisoning, an easily treatable condition. His blood alcohol level was 0.461, or more than six times the limit, a potentially fatal dose.

“These correctional officers are basically holding these lives in their hands with these decisions,” Carlos’ brother Chris Yazzie said. Chris was a guard at the same jail once. “I don’t think these people are prepared,” he added.

Federal policy for an “extremely intoxicated” prisoner is to transfer him to a health facility.-

Another finding noted that many of the jails are in a state of disrepair, with one lacking even potable drinking water. Finally, the investigation concluded that the jails are severely underfunded by Congress.

Senator Jon Tester of Montana, who sits on the Indian Affairs Committee, called NPR’s findings “deeply disturbing,” and said they warranted an “immediate, transparent” official investigation. “Where policies are found to have failed, we will work to fix them and ensure that it does not happen again,” he said in a statement.

House Representative Teresa Leger Fernandez, who chairs the Indigenous Peoples Subcommittee, said the BIA jails’ problems are “heartbreaking but, sadly, not new.” She says she intends to boost funding for the jails and eliminate the Agency’s endemic budget shortfall.

In another incident, 37-year-old Joe Snell collapsed while exercising in a common area at a federally operated jail on the Spirit Lake Tribe Reservation in North Dakota. Neither of the guards on duty rendered aid, though the BIA says both were trained in CPR and in the use of defibrillators, which were available.

“Why are all these people working there?” Joe’s sister Michelle Snell asked.

“When someone collapses like that, they really should go for [the defibrillator] because that’s the lifesaving maneuver,” said Ian Paul, a forensic pathologist with the New Mexico medical investigator’s office.

The paramedics on scene initiated CPR upon arrival, but Joe Snell had already suffered a fatal heart attack, according to his sister. The North Dakota State Forensic Examiner’s office refused to release the autopsy to confirm her suspicions, citing state privacy laws.

Federal policy in such a circumstance states that guards should “initiate all available rescue options” if a prisoner’s life is in danger. BIA officials cited an unnamed preexisting medical condition that prevented them from doing so in Snell’s case, though his sister was unaware of any such condition.

As of early 2021, NPR found that one in five guards hadn’t completed the 400-hour basic training program in first aid, handling emergencies, and suicide prevention. In 2018, roughly one in four working guards had failed to finish the training. New hires have a year to do so, but it often takes longer, according to NPR’s interviews with guards.

The 2004 report by Interior Department Inspector General Earl Devaney was blunt. “BIA’s detention program is riddled with problems and, in our opinion, is a national disgrace, with many facilities having conditions comparable to those found in third world countries,” Devaney told Congress when he testified about it.

At the time, Senator Timothy Johnson of South Dakota said, “I hope this will not be one of those ‘gathering dust’ reports.” But that seems to be exactly what happened.

Interior Secretary Deb Haaland, the first Native American to serve as a cabinet secretary, reportedly declined NPR’s request for an interview on this matter.

While Indian tribes are purportedly sovereign nations, reservations are considered territory for law enforcement purposes with serious crimes being investigated by the FBI and prosecuted by the local U.S. Attorney’s office. The tribal jails tend to hold prisoners accused or convicted of misdemeanor offenses and are operated by tribal authorities. ■

Source: npr.org
A national audit of state parole systems conducted in 2019 gave Texas an “F” grade, noting it had some of the most burdensome requirements prisoners must meet before being approved for parole. Now a new study by the University of Texas Lyndon B. Johnson School of Public Affairs entitled, Dead Man Waiting, has shown that many of the prisoners who met those requirements die during the lengthy delays they suffer while awaiting release.

According to the report, only about 10% of the prisoners in the Texas Department of Criminal Justice (TDCJ)—over 10,700—have been approved for parole and are awaiting release. Many of those prisoners have been tentatively approved for parole by the Texas Board of Pardons and Paroles (BPP) conditioned upon the completion of in-prison rehabilitation programming.

The programming is not available to parole-eligible prisoners until the BPP approves them for parole and sets the requirement for the programming. The programming is administered by TDCJ, which places parole-approved prisoners on a list to enroll in the BPP-required programming whenever space becomes available. As a result, prisoners can remain in prison a year or two after receiving approval for parole while awaiting space to become available in a program or while participating in a program.

The usual delays in starting a program became exacerbated during the pandemic when transfers between prisons were halted. Even a resumption in prisoner transfers did not mean in-person classroom sessions had resumed. Eventually, TDCJ allowed some programs to resume using videoconferencing, telephone, and paper assignment packets. However, there continued to be a lengthy time lag between parole approval and release.

Another report, published in November 2020 co-authored by the authors of this report, showed that nine TDCJ prisoners had died of COVID-19 after having been approved for parole. They were curious whether such deaths were common in TDCJ outside of the pandemic and started a study which led to this report.

The study showed that, during the studied time period prior to the pandemic (January 2019 to January 2020), there was an average delay of between three and four months between parole approval and release. During the studied pandemic time period between March 2020 and March 2021, this delay increased to six months. The authors noted that these were conservative estimates and the actual average delays were likely longer.

During the pre-pandemic period, 26 TDCJ prisoners who had been approved for parole died while awaiting release. During the pandemic period, the number of deaths increased to 42. However, 18 were caused by COVID-19, leaving 24 non-COVID-19-related deaths in the pandemic period.

This study showed that a large number of prisoners dying while awaiting release after receiving parole approval was not solely due to the pandemic. However, COVID-19 was responsible for a 70% increase in the number of deaths during the pandemic time period. Other leading causes of death included cancer (nine pre-pandemic, five in pandemic), heart condition (five pre-pandemic, eight during pandemic), Hepatitis C (four pre-pandemic, zero in pandemic), liver disease (two pre-pandemic, zero in pandemic) and sepsis (two pre-pandemic, one in pandemic). There was a single suicide in each time period. No other cause of death accounted for more than one death during the combined time periods.

The demographics were similar in both periods. Only two women died in either period. White people accounted for 38% of pre-pandemic deaths and 41% during the pandemic period. For Black people, it was 38% and 33% while for Hispanics it was 23% and 26%.

During the pandemic period, 68% of the parole-approved prisoners who died had served at least half of their sentence. Five had served their entire sentence, but may have had prior sentences that were longer. Pre-pandemic, 54% had served at least half their sentences and two had served their entire sentences.

Pre-pandemic, the average number of months between parole approval and death was six. During the pandemic it rose to nine. The extra pandemic-related delay made it more probable that a parole-approved prisoner was exposed to COVID-19 or had a chronic condition fatally worsen.

The most recent BPP statistics show the BPP requires 60% of prisoners approved for parole to complete programming before release. The programming lasts between three and 18 months. Texas statutory law allows, but does not mandate, these programs and does not require their timely provision.

The report found a structural fault in the parole process design that was a contributing factor in the deaths by causing lengthy delays between parole approval and release. It recommended that the BPP-approved programming be made available near the start of prisoners’ sentences instead of after they are approved for parole. It noted that this would save Texas $744,722 a day—the cost of incarcerating the over 10,700 parole-approved prisoners at an average cost of $69.27 per TDCJ prisoner per day—for a total of over $271 million a year. The actual savings might be higher since the average parole-approved prisoner is older and has higher medical costs than the average TDCJ prisoner in general.

Front-loading the rehabilitative programming could also make a positive impact on the prisoners’ behavior while incarcerated, reducing misconduct and disciplinary violations and improving conditions for prisoners and staff alike. Two different bills introduced into the Texas House of Representatives in the last legislative session were intended to bring about front-loading of BPP-approved rehabilitation programming. The measures, sponsored by Reps. Jarvis Johnson and Ron Reynolds, received bi-partisan support and passed out of the House, but were never heard in the Senate.

The authors recommended that parole-approved prisoners with programming requirements be allowed to complete the programming in the community while on parole. They also recommended releasing parole-approved prisoners with serious chronic medical conditions rather than making their release conditional on the completion of rehabilitative programming.

Source: repositories.lib.utexas.edu.
File a CFPB Complaint for Unfair Money Transfer Fees

Prison Legal News (PLN) is encouraging our readers to file complaints to the Consumer Financial Protection Bureau (CFPB) if you feel you are being made to pay expensive rates to transfer money to your loved one in jail or prison or, if you are a prisoner, to receive money transfers from people outside of prison or jail.

The CFPB is a U.S. government agency that makes sure banks, lenders, and other financial companies treat consumers fairly. They are concerned with the issues facing imprisoned consumers and their families.

As PLN has reported, private companies like JPay, GTL and others charge exorbitant fees for transferring money to prisoners. Services that used to be free when performed by the government are now available through monopoly contracts where private hedge fund owned companies charge obscene fees to do the same thing the government used to do at no cost.

In order to send $50 to a prisoner, a person may be charged an additional $6.95. Fees can be as high as 35 to 45 percent of the amount sent. In the aggregate, the amount of money sent to prisoners nationally each year is in the billions of dollars with these companies taking a big cut at every step. Meanwhile, outside of the prison and jail context, consumers have choices through companies like Zelle, PayPal, Venmo (owned by PayPal) and others, to transfer money at no cost and for no fees.

If you’re tired of paying high rates to these companies, you can file a complaint with the CFPB asking them to investigate and take action on your behalf. You can follow the instructions provided by the CFPB on the next pages. These companies have avoided private legal action for their predatory behavior. This is a chance to stop their exploitation. For several years HRDC, the publisher of PLN, and executive director Paul Wright, has engaged with the CFPB around this issue. Tell the CFPB how you or your family members are being exploited through the money transfer industry and provide them with concrete examples of the fees you are being charged.

Let others know about this potential avenue for relief and share it widely. The more people complain to show how widespread and serious the problem is, the more likely it is that the CFPB will take action.

Stop worrying about the people you care about and start receiving and leaving voice messages with Corrio Messaging.

No more wasted time waiting for a telephone.
No more missed calls.

WITH CORRIO MESSAGING EVERY CALL CAN BE A SUCCESSFUL CALL.

To get your own Corrio Messaging phone number, simply select “Sign up” at https://corriospc.org

CORRIO MESSAGING
VOICEMAIL FOR PRISONERS

You have 1 new message.

MAGNA LAW FIRM

CIVIL RIGHTS LAW FIRM

Our firm represents individuals nationwide who have been the victims of:
- Inmate Medical Neglect / Deliberate Indifference
- Guard Abuse (Physical and/or Sexual)
- Police Brutality / Excessive Force

If you or your loved one was the victim of any of the above resulting in serious injury or wrongful death, please contact our office to discuss your case.

Magna Law Firm LLC
2915 South Wayzata Boulevard
Minneapolis, MN 55405
Tel: 763-438-3032
Email: info@magnalaw.net
Website: www.magnalaw.net

Burleson Law Group

Ashley Burleson
Attorney at Law
955 Dairy Ashford Rd. Suite 110
Houston, Texas 77079
ashleycando@gmail.com

Texas State Habeas Applications
Texas State Appeals
Texas State Parole Representation
Texas Federal Habeas Applications
Texas Federal Appeals to the Fifth Circuit Court of Appeals

For more info send SASE to:
Corrio SPC (a Social Purpose Corporation)
2620 Bellevue Way NE, Ste. #175
Bellevue, WA 98004
or call (206) 489-0017
Corrio has an A+ Rating from BBB
The CFPB is on your side

The Consumer Financial Protection Bureau is a U.S. government agency that makes sure banks, lenders, and other financial companies treat you fairly.

What we do for you

Part of the CFPB’s work is to reach out and help people with their money decisions. One of the ways we do this work is through partnering with government and nonprofit agencies that serve underserved consumers, including justice-involved consumers. For example, we work with groups that help those affected by the criminal justice system by giving them information, tools and other support around how to make financial decisions in ways that help them achieve their goals.

Many of the issues facing people in prison or transitioning from incarceration have to do with money. For example, how to order and fix credit reports; avoiding tricks and traps when choosing financial products; and what to do when a debt collector calls. The CFPB can help with these issues. Learn more at www.consumerfinance.gov

We have many tools in our Focus on Reentry guide and booklets, which you can find https://www.consumerfinance.gov/consumer-tools/educator-tools/your-money-your-goals/ or by writing to us to request the Focus on Reentry guide and booklets at CFPB Publications Request, Pueblo, CO 81009 (allow 4 or more weeks for delivery)

We handle consumer complaints

Since the CFPB started in 2011, it has handled more than three million complaints about financial products and services like credit cards, credit reports, credit repair, debt collection, debt relief, money transfers, mortgages, prepaid cards, payday loans, student loans, vehicle loans and leases, and other financial services like check cashing and money orders. Some of these complaints were submitted by people who are currently incarcerated or by people who are facing financial challenges after they were released from prison or jail.

If you have a problem with a consumer financial product or service, you can try reaching out to the company. Companies can usually answer questions unique to your situation and more specific to the products and services they offer.

If you have a complaint about a consumer financial product or service, we can also help you connect with the company to get a response to your issue.

How to submit a complaint

1. **By phone:** Call us toll-free at 855-411-CFPB (2372), 8 am to 8 pm ET Monday thru Friday, except federal holidays. We can help consumers in over 180 languages. We can also take calls from consumers who are deaf, have hearing loss, or have speech disabilities by TTY/TDD at 855-729-CFPB (2372).

2. **Online:** Visit consumerfinance.gov/complaint. If you have authorized someone else to contact the company for you, they can also submit a complaint for you. Before responding to your complaint, companies generally require signed, written permission from you. The online form will explain where the person you have authorized should put their information and where they should put your information, and they can upload a copy of your written authorization.
3. **By mail:** Use this sample letter to submit your complaint; just edit it to fit your situation. Mail the completed letter and any supporting documents to: Consumer Financial Protection Bureau, P.O. Box 2900, Clinton, Iowa 52733-2900.

[Today’s date]

Dear CFPB,

I am writing to submit a complaint. Here are the details of my complaint:

**My name:** [Insert your first and last name]

**My address:** [Insert your current address or the address of the institution where you live]

**My email address:** [If you have one]

**My complaint is against:** [Insert the name of financial company and, if possible, its address]

**My complaint is about:** [Include the product or service your complaint is about. You can submit a complaint about: mortgage/student loan/vehicle loan or lease/payday loan/other consumer loan (pawn, title, online, store and other installment loans)/ bank account or service/credit card or prepaid card/credit reporting or background checks/debt collection/money transfer or virtual currency/other financial service (check cashing, credit repair, debt settlement, tax refund anticipation checks, money order, foreign currency exchange, traveler’s check, cashier’s check)]

**What happened:** [Tell us what happened in a few words. For example, you might say that you tried to access your free credit report but were not able to receive it, or that your credit report includes a debt that you believe you already paid or that is not yours. It is helpful to include any dates and other useful information.]

**My desired resolution:** [Tell us what you think would be a fair resolution to your issue. We will forward this information to the company along with your description of what happened so that all parties can understand what you are looking for.]

Sincerely,

[Your name, prison number and location]

Companies generally respond within 15 days. The company may contact you directly to confirm information provided in your complaint before it responds. In some cases, the company will let you know their response is in progress and will provide a final response within 60 days.

**After we receive your letter:**

- We will send you a confirmation that we have received it. We will communicate with you by email if you provide an email address or by postal mail if you provide a mailing address. If we need additional information to send your complaint to a company, we will let you know.

- We will keep you updated about the status of your complaint. If you can get online, you can login to track the status and review the company’s response to your complaint. Some companies might mail their response to you directly at the address you provided.

- If you don’t provide an email address when you submit your complaint or cannot get online, you can call us toll-free at 855-411-CFPB (2372) for an update, or if you have questions. Be sure to have your complaint number ready when you call us. It is on all letters or emails that you receive from us. This helps our Consumer Guides help you as quickly as possible.

- To find out how the company responded, you can call us toll-free at 855-411-CFPB (2372). If you provided an email address, we will email you when the company has responded and you can review the response online.
Hunger Strike, Ceiling Collapse, Lawsuit Spotlight
Deteriorating Conditions at Women’s Prison in Illinois

by Brian Dolinar and Panagioti Tsolkas

“I’ve been incarcerated since the age of 18, I grew up in the penal system,” shares Mishunda Davis. “I went from the Cook County jail, to Dwight prison, to Lincoln, and I have never seen as many condemned buildings as I’ve seen since arriving here at Logan. I know because I’ve lived behind these prison walls for 20+ years. Logan is by far in the worst shape.”

“Years of living like this was the spark,” says Davis. “I chose to starve for a change.”

The worsening conditions at Logan Correctional Center, the main prison for women incarcerated in the Illinois Department of Corrections (IDOC), recently grabbed headlines when three women organized a hunger strike. They wanted to expose the toxic and dangerous environment for all women there.

The Chicago Tribune reported in June 2021 news of the hunger strike. Women had been made to stand in raw sewage for days. There were 49 women who were moved to fix what IDOC spokesperson Lindsey Hess called “plumbing issues.” The women were housed in an old unit which had been previously shut down due to its crumbling infrastructure.

Conditions were so bad for three of the women that on June 7, 2021 they started their strike. They ended the strike after three days with a promise from authorities to make the proper repairs.

According to IDOC spokesperson Lindsey Hess, who released an email statement, the strike was a protest of the “lack of video conference kiosks and weak Wi-Fi connection in the temporary space.”

State Rep. Kelly Cassidy (D-Chicago) told the Tribune she believes the hunger strike drew attention to the ongoing issues at Logan prison. She continued, “the stories that you hear from the inmates and the stories that you hear from the facility administrators are wildly different, and the only way to know is to actually go there.”

Cassidy asked IDOC to allow her a meeting with the women affected by the sewage leak, but to date her request has not been answered. In Illinois, elected officials have no legal right to tour prison facilities.

House of Shit

Located 160 miles from Chicago in Lincoln, Illinois, Logan houses more than 1,000 women prisoners. It was opened in 1978, originally as an all-male facility. Dwight Correctional Center used to be the primary facility for women, but when it was closed in 2013, they were transferred to Logan. Advocates for several years have called for closing the aging prison.

Prison Legal News has communicated with all three of the hunger strikers—Jamille Brown, Sharonda Miller, and Mishunda Davis—who say that since their action none of the “plumbing issues” have been fixed, and other problems persist.

Jamille Brown wrote in a GTL message to PLN that on May 28, she woke up to “faces and sewage water in the dayroom of my living unit.” The area she was moved to suffered even more “severely poor conditions” and in the shower there were maggots. After trying to speak with someone she was “overlooked and unheard.”

According to Sharonda Miller, her housing unit has been dubbed the “House of Sh#” for the smell and treatment, “or lack thereof.” The repairs have been “minimal,” she said. The authorities have only been “band-aiding the problem, which creates other problems.”

“There are still toilets leaking, sinks dripping, ceilings caving in, mold growing,” Miller described, “and not once has anyone said, okay let’s shut it down for repairs. This has been ongoing for decades, and now it’s worse and we are fed up.”

As the Human Rights Defense Center’s Prison Ecology Project has argued, prisons are an environmental hazard, most often impacting poor people, and people of color. The backed-up sewage is not only harmful to the women at Logan, but to the larger community. The sewage can end up in the groundwater, impacting impact fishing, wildlife, and drinking water. These violations have resulted in successful environmental litigation, as in Alabama where a judgement was entered against the state prison system’s waste management operation for over $243,000. [See Black Warrior Riverkeeper Inc. v. Thomas, Civil Action Number 2:13-cv-00410-AKK (N.D. Ala. Apr. 12, 2013); PLN June 2015, p. 36. For a sample of additional water quality articles see also PLNs June 2008, p. 24; Aug 2015, p. 1; Sept. 2015, p. 12; Mar. 2016, p. 22; Dec. 2017, p 1; Nov. 2018, p. 38; June 2018, p. 16].

In mid-July, a ceiling at Logan collapsed after heavy rains. Mishunda Davis wrote to PLN, “Well, the ceiling finally fell in with water, along with the smoke detector and exit sign. Thank God no one was hurt or electrocuted. Two long red thick wires were hanging down out of the ceiling.”

“Rainwater was coming in through the ceiling of the dayroom,” Brown told PLN. Brown and Davis were part of the cleaning crew. They picked up five big bags of ceiling debris.
This Is About Everyone

Davis is concerned for all the women suffering at Logan: “This is about everyone, not just one person.” She highlighted the story of a friend that has since been released named Tina Howard who nearly died after contracting MRSA and meningitis due to the filthy conditions at Logan. “She used to be full of life,” Davis remembered, “now she’s only a shell of herself.”

A lawsuit was filed in 2020 by Howard against Logan’s warden, Glen Austin, Wexford, the health care provider, and other administrators [See: Howard v. Austin et al., USDC, CD IL, Case No. 1:20-cv-01171-SLD-JEH]. Attorneys Melinda Power and Elizabeth Mazur filed the suit, claiming that the “deplorably dirty conditions” exposed Howard to an unreasonable risk of contracting MRSA. The suit claims before falling ill, Howard began to work in the shower area which was “unsanitary.” Shortly after complaints were made, the shower area was “full of mold.” Shortly before falling ill, Howard began to work in the laundry area which was “unsanitary.”

On May 2, 2018, Howard complained to a nurse about leg pain and a rash. By May 6, she was in a wheelchair, writhing in pain, and begging to go to the hospital. At the outside hospital, she was diagnosed with a systemic MRSA infection that spread all the way to her cerebrospinal fluid, causing meningitis and requiring her to undergo urgent brain surgery. After nearly 6 weeks in the hospital, Howard was returned to Logan, “where she was bed ridden, incontinent and needed total care.” A year later she finished her sentence and was sent home.

The sight of Howard’s rapid decline left an indelible imprint on the memory of Davis and other women at Logan. “What happened to her could happen to me or any of us,” Davis reflected, “especially living in these conditions for many years.”

A Dangerous Situation

Jennifer Vollen Katz, Executive Director of the John Howard Association (JHA), an independent monitor of prisons in Illinois, spoke to PLN in an interview. JHA toured Logan in July for the first time since the pandemic. They had heard about the hunger strike reported in the media. After talking to the women inside, they “heard a lot of frustration.” The roof had caved in, pests were a problem, medical equipment was broken, and the food was bad. The plumbing issues—broken toilets, and standing water—had “impacted the greatest number of people.” Logan is an aging facility, “with a lot of deferred maintenance.” Conditions there, she said, “appear to be devolving, not improving.”

“What we have is a dangerous situation,” warned Vollen Katz, “it is only a matter of time before someone gets hurt. There are enormous safety risks.”

Alexis Mansfield, senior adviser at the Women’s Justice Institute, told PLN that the state should close Logan prison rather than spend millions to fix it: “We have seen a significant reduction in the prison population in recent years. We hope that the women’s prison population will continue to decrease as IDOC implements the recently passed Safe-T Act. We can move women away from these large, old, deteriorating facilities into smaller, community-based centers, where women and families can be together. We look forward to working with IDOC to make this happen.”

Additional sources: Chicago Tribune, Chicago Reader

---

**Book from Prison Legal News**

**Prison Education Guide**

by Christopher Zoukis

This exceptional 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.

This guide is the latest and best resource on the market for the incarcerated nontraditional student. It includes a detailed analysis of the quality, cost, and course offerings of all correspondence programs available to prisoners.

**Price:** $49.95 (shipping included), 280 pages. *Order by mail, phone, or online.*

---

Order by mail, phone, or online.

<table>
<thead>
<tr>
<th>Amount enclosed for PEG</th>
<th>By:</th>
<th>r check</th>
<th>r credit card</th>
<th>r money order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Institution/Agency</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Address</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>City</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>City</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>State</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Zip</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Prison Legal News • PO Box 1151, Lake Worth Beach, FL 33460
Tel. 561-360-2523 • www.prisonlegalnews.org
Sacramento Sheriff Used Prisoner Welfare Fund for Trips, Salaries and Equipment

by Matt Clarke

According to the Sacramento Bee, Sacramento County Sheriff’s Office employees used money from a fund paid for by profits from the prisoners’ commissary purchases and phone calls to pay for airline fares, hotel rooms, routine jail maintenance, employee salaries, and security-related equipment. The prisoner welfare fund is designed to pay for programs and services that benefit the prisoners such as education and reentry job training.

The Bee requested Sheriff’s Office financial ledgers for fiscal years 2014-2020 under the Public Records Law. In hundreds of pages of documentation, it discovered that the Sheriff’s Office had collected an average of around $5 million each year from phone call and commissary fees, depositing the money in the fund. Each year between 66% and 93% of the fund expenditures were for personnel salaries, benefits, training and facility maintenance. In most years, less than $1 million was spent on programs that directly benefit prisoners such as the law library and education programs. Phone services at the jail are provided by IC Solutions, which in turn is owned by Keefe Group, the prison commissary company.

Prior to 1993, by state law, prisoner welfare funds could “solely” be used for the “benefit and welfare” of the jail prisoners. But Assemblyman Dean Andal (R-Stockton) proposed that the law be changed so that the funds “primarily” be used for programs benefiting prisoners. The new law gave sheriffs coverage to use excess monies in the funds for salaries, maintenance and other purposes “deemed appropriate by the sheriff.” That opened the floodgates for sheriffs to spend the welfare fund monies as they pleased. California is one of the few states to have even this nominal level of regulation. Nationally, so called Inmate Welfare or Benefit Funds operate as an unregulated slush fund for jail and prison administrators to use as they please and also seems to operate as a bottomless pit of unaccountable corruption.

In 1994, the year after the law was changed, the Sacramento County Sheriff’s Office used $1.1 million from the fund to pay for in-car computers, justifying it as “backfilling” a hole in the budget. In later years, the Sheriff’s Office became bolder, paying for rooms at the Beach Retreat & Lodge at Tahoe for six people in 2019 at the cost of $2,018. Over the past two years, the office spent at least $12,000 of fund monies for airline flights and lodging, $1 million for parking lot improvements and $150,000 for perimeter fencing. Since 2014, it used $15 million in fund monies to pay employee salaries.

“That needs to come out of his core budget!” said former state senator Holly Mitchell. “How does he justify that, that’s not part of his core budget? That’s what his budget is for.”

Payments into the fund have been growing since 2017. There was a balance of $7 million left over in the fund at the end of fiscal year 2019.

“That sounds to me like a slush fund that they’re just drawing from,” said Kyra Kazantzis, who runs a Bay-area nonprofit that won a $1.5 million settlement after filing a lawsuit against the Santa Clara Sheriff’s Office for similar spending excesses. [See PLN, April 2009, p.22.]

Kazantzis emphasized that the current law requires the funds to be used “primarily for the benefit, education, and welfare” of the prisoners and only allows money not needed for that purpose to be used for maintenance and salaries “deemed necessary by the sheriff.” She noted that the spending on travel expenses was especially bold.

“What I remember saying for a really long time is that there’s never going to be a situation in which those funds are not needed for the welfare and education of inmates,” said Kazantzis. “There just isn’t, you know, a limit on the support that the folks in jail need.”

Steve Meirnath, a former ACLU advocate and legal counsel for the California Legislature, called the spending on travel and infrastructure “revolting.” He was part of the ACLU team that blasted the Butte County Sheriff’s Office for trying to take $650,000 from their prisoner welfare fund to pay for an entirely new jail and the San Diego County Sheriff’s Office for using fund money to buy toilets. His legal analysis for the legislature said the plan was illegal and bad public policy.

“I know the statute gives sheriffs a lot of leeway, but that must be a violation of the law, or the law is utterly meaningless,” said Meinrath, referring to the Sacramento County spending. “Regardless, using money from inmate families for these kinds of expenses that don’t benefit inmates is just disgusting.”

When Mitchell was a powerful Democratic state Senator, she introduced a bill to cap the markup on phone calls and commissary purchases and require the fund monies be used solely for incarcerated people’s benefit. Over 50 legal and justice-focused organizations signed on to SB 555. One opposed it—the California State Sheriff’s Association, which claimed sheriffs would lose fees that pay for some prisoners’ recreational activities, education and personal hygiene items. Nonetheless, the bill was passed in the summer of 2020.

In September 2020, Governor Newsome vetoed the bill, voicing concerns that it would have the “unintended consequence of reducing important rehabilitative and
The funds originated in 1949, when then-California Governor Earl Warren allowed sheriffs to sell tobacco, candy and other sundries in a small jail store with profits going into a fund for the welfare of prisoners. In 1956, then-Sacramento County Sheriff Don Cox used $40,000 from what he called an “embarrassingly large” fund to install a sound system to play AM and FM radio news reports and make announcements in the new jail then under construction.

“It helps to relax some prisoners,” said Cox. “It takes their mind off being in jail for a while. After all, part of our job is to rehabilitate inmates.”

From this inauspicious start in which the sheriff called a PA system a rehabilitation program, jail officials went on to spend $7,500 to provision a 2,500-square-foot recreation room with ping pong tables, weights, a pair of arcade-style video games, and a Foosball table in 1986. But the 1980s soon gave way to the “tough-on-crime” policies of the 1990s and Andal’s amendment to the statute that allowed sheriffs to semi-legally loot the welfare funds.

“It’s been a longtime axe I’ve been grinding,” said Andal at the time. “I really think inmates should pay for more of their upkeep.”

Of course, most jail prisoners are not the ones paying for their commissary purchases or phone calls. Their friends and loved ones, since the vast majority of prisoners in the jails are not earning an income.

Ironically, the pandemic has been a boon for the funds. Prisoners have been locked in their cells with most programs hindered or cancelled due to the requirements of social distancing. In-person visits have been banned, increasing the demand for expensive phone calls and video visits. Between July 2020 and May 2021, the main Sacramento Jail’s fund deposits increased by over $3 million, a 38% increase over the entire previous year and more than 70% above the year before that. Despite a reduction in the prisoner population numbering in the hundreds, the jail collected double the phone fees compared to the previous year.

Without a law specifically prohibiting it, California sheriffs will likely continue to plunder the prisoner welfare funds for inappropriate purposes while denying prisoners the kinds of programming they were intended to fund. There has been no legislation introduced on the subject since Mitchell’s bill was vetoed. The reality is, precious little concern is shown for prisoners’ actual welfare, and they and their families are seen as profit centers whose very existence is designed to line the pockets of hedge fund owned telecom companies and their government collaborators.

Source: sacbee.com
Fourth Circuit Rules Prisoner Sex Offender has No Right to In-Person Visitation with His Minor Children

by Doug Ankney

James Desper is a convicted sex offender incarcerated at the Augusta Correctional Center in Craigsville, Virginia. For six years, Desper received visits from his minor child without incident. None of Desper’s crimes or convictions involved his child. But in March 2014, the Virginia Department of Corrections (VDOC) amended Operating Procedure 851.1 (OP 851.1).

As amended, OP 851.1 prohibits prisoners who are required to register on Virginia’s Sex Offender and Crimes Against Minors Registry from having in-person visits with minors unless the prisoner receives an exemption from prison officials. Desper’s child was removed from his list of approved visitors and the two could no longer visit. Desper twice applied for an exemption but his applications were denied without any reason given. Desper filed suit against several officials from the VDOC alleging his right to association under the First Amendment, as well as his rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment were denied. The district court granted Defendants’ motion to dismiss and Desper appealed.

The Fourth Circuit observed “[w]hile ‘[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution,’ Turner v. Safley, 482 U.S. 78 (1987), they do severely curtail those protections.” The very object of prison is confinement and many of the liberties enjoyed by other citizens must be surrendered by the prisoner. Overton v. Bazzetta, 539 U.S. 126, 123 S. Ct. 2162 (2003). Furthermore, there is no constitutional right to prison visitation, either for the visitors or the prisoners. White v. Keller, 438 F. Supp. 110 (D. Md. 1977). But even where a constitutional protection does survive incarceration, Turner found that a prison regulation may impinge upon the protected liberty as long as the regulation is rationally related to legitimate penological interests.


In the instant case, the court opined that finding “a registered sex offender whose crime involved a minor can demand in-person visitation with his minor daughter cuts against” the goals of incarceration which the court defined as “to deter others from committing crimes, protect others from dangerous individuals, and offer offenders a chance to rehabilitate themselves in a structured environment.”

The court concluded that Desper didn’t have any protectable interest in visiting with his minor child because “[t]he denial of prison access to a particular visitor is well within the terms of confinement ordinarily contemplated by a prison sentence and therefore is not independently protected by the Due Process Clause.” Ky. Dep’t of Corr. v. Thompson, 490 U.S. 454, 109 S. Ct. 1904 (1989).

Accordingly, the court affirmed the decision of the district court. See: Desper v. Clarke, 1 F.4d 236 (4th Cir. 2021).

Virginia Department of Corrections Confirms Visitation Not Primary Means of Contraband Introduction

by Kevin Bliss

The Virginia Mercury reported this year that the COVID-19 pandemic has proven that a vast majority of contraband being introduced into the Virginia Department of Corrections (VDOC) has not been coming from visitation as indicated by the Department. Statistics show stopping visitation did not have the effect of reducing incoming contraband by the expected amount.

The article said that the VDOC focused overwhelmingly on prisoners’ visitation as the primary means of contraband introduction into prison facilities. Starting from that flawed perspective, draconian visiting rules were implemented. The VDOC began requiring prisoners to be stripped, searched and changed into state issue underwear and jumpsuit in 2017. After their visitation was over they were again subjected to a strip search and clothing change.

The following year, the VDOC stated women could not wear tampons to visitation when menstruating. The Department had picked up a new type of body scanning device which could detect contraband hidden in body cavities and a tampon gave a false positive reading.

Spokeswoman Lisa Kinney emphasized the VDOC’s position with a comment she made at that time. “There have been many instances in which visitors have attempted to smuggle drugs into our prisons by concealing those drugs in a body cavity, including the vagina," she said. Interestingly enough, no such protocols were ever instituted for menstruating female guards entering prisons.

This policy was challenged as intrusive and abusive by prisoners and their families and friends. It was soon rescinded yet officials maintained a policy which required women wearing tampons to restrict their visitation to no-contact visits through a glass partition or by video feed.

The VDOC limited a prisoner’s visitation list to no more than ten people last year. The intent was purportedly to prevent prisoners from getting visits from “mules” simply to drop off drugs. Moreover, this policy was immediately followed by one that called for the strip searching of minors. Lawmakers promptly banned this practice but attempted to justify it nonetheless. “They’re ingenious,” stated Brian Moran, Secretary of Public Safety. “Where there’s a will, there’s a way.”

Yet activists say that statistics during the COVID-19 pandemic lockdown reveal a different story. The VDOC logged 871 drug seizures last year, down 10% from
2019’s 967 seizures. This in a time when prison populations in the state had fallen nearly 20%. Overdoses fell from 87 to 45 and positive drug tests increased .4% (again during a time of decreased population).

The VDOC could not provide statistics on the introduction of contraband by any staff or discipline resulting therefrom. The only statement given concerning staff’s involvement in contraband introduction was that immediate action would be taken and the commonwealth attorney notified for possible charges.

Several retired and active VDOC guards and other personnel have spoken out against the quantity of drugs that come into the prison by staff. Low pay, low morale, and lax security contribute to the facility of staff smuggling drugs into the prisons. “Think about it, basically they send you through a metal detector—a lot of places you don’t have to take off your shoes it’s just a pat down,” stated one sergeant. “People just tape it somewhere.”

Source: virginiamercury.com

Seven Former GEO Employees Plead Guilty in Federal Texas Private Jail Bribery Scheme

On July 6, 2021, Veronica Ortega, 45, a former medical assistant at the GEO-owned and -operated East Hidalgo Detention Center pleaded guilty to bribery after admitting she received cash to smuggle marijuana into the jail. She was the seventh GEO employee to plead guilty to the charges presented in federal indictments following a joint U.S. Marshals Service, FBI, and U.S. Department of Justice’s Office of the Inspector General investigation into bribery and drug smuggling at the jail.

The 1,300-bed jail is used to hold people in the custody of Immigration and Customs Enforcement, the Marshals, and other federal agencies. Notably, it held Erick Alan “Cachorro” Torres Davila, who was arrested along with his stepfather, Guillermo “Don Gio” Morales, as part of an Organized Crime Drug Enforcement Task Force investigation targeting the Gulf Cartel. Although they pleaded guilty to drug trafficking charges in 2018, they were held in the jail awaiting sentencing for three years.

Former GEO guard Erasmo Loya confessed to providing Torres Davila cocaine between November 2016 and June 2019, before pleading guilty. Former GEO guard Jhaziel Loredo and former GEO commissary officer Jayson Catlan also pleaded guilty to the federal charges.

Former GEO guard Domingo Gonzalez Hernandez admitted being bribed with cash, a gift card and a Chevrolet truck before pleading guilty and receiving a six month prison sentence. Former GEO guard Amber Marie Estrada admitted having received cash and a horse before pleading guilty and being sentenced to 27 months in prison. Former GEO cook supervisor Brenda Fuentes admitted to performing oral sex on a prisoner and received a one-year-and-one-day sentence after pleading guilty.

Ortega was the last of the seven to plead guilty. She was sentenced to two and a half years in prison.

Source: progresstimes.net

GO HOME TO YOUR LOVED ONES!
The Law Offices of Julia Bella
Parole - Post-conviction - Appeals

Call or Write or Email:
(832) 757-9799
503 FM 359, Ste. 130 Box 228
Richmond, Texas 77406
julia@bellalaw.com

Working zealously for you and your family!

Know What’s Good On TV With Channel Guide

Daily schedules for over 120 channels
Weekly TV best bets
Over 3,000 movie listings
TV Crossword, Sudoku, celebrity interviews and more
1 Year (12 issues) for just $35

Mail your $35 check or money order payable to Channel Guide Magazine to:
Channel Guide Magazine
PO Box 8501, Big Sandy, TX 75755-8501
Include your name, ID number, address and code AHE21.
Or call 888-899-9992
Indiana DOC Settles Class-Action Lawsuit Over Ban on Incoming Mail Except That in White Envelopes Using White, Lined Paper

On August 9, 2019, an Indiana federal court memorialized the stipulations in a private settlement agreement between the Indiana Department of Corrections (DOC) and a class of prisoners subject to restrictions on incoming mail. The DOC agreed to photocopy non-legal mail, including greeting cards, and deliver the photocopies to the prisoners.

Charles Sweeney and Anthony Delarosa were the named plaintiffs in a federal class-action civil rights lawsuit challenging the constitutionality of DOC mail regulations that effectively banned greeting cards, colored paper, colored envelopes and printer paper in non-legal incoming correspondence.

Executive Directive #18-34 required that non-legal incoming correspondence “be in a plain white envelope and the letter/ correspondence inside the envelope must be on originally purchased, plain while, lined paper. Photographs shall be permitted provided they are printed onto originally purchased, plain white, lined paper.”

The justification given for this restriction was that paper was being dipped in liquid drugs and mailed into the DOC and colored paper helped disguise it. By contrast, the lines on white lined paper became distorted when the paper was dipped in a drug solution, revealing the manipulation.

The plaintiffs pointed out that such an extreme restriction infringed on their First Amendment rights—especially since printer paper was not generally available in a lined format and the common school-notebook-type lined paper would not run through a printer. They noted that photocopying was a simple solution to the problem of drug smuggling through the mail which would be a lesser infringement on their rights and was being practiced in several other prison systems.

The court agreed and issued a preliminary injunction against enforcing the regulations. This prompted the DOC to enter into a private settlement agreement to photocopy all incoming non-legal mail, regardless of the type of paper it is written or printed on and hold the originals for 14 days to allow the receiver to file a grievance to complain should the copy be incomplete.

The court required the DOC pay plaintiffs’ attorney fees of $42,359. The agreement was limited to two years, after which the case would be dismissed without prejudice. The agreement was approved, and went into effect, on February 21, 2020. The prisoners were represented by the ACLU of Indiana. See: Sweeney v. Commissioner, Indiana Department of Corrections, Case No. 1:17-cv-03550-JMS-MPB (U.S.D.C., S.D. Ind.).

Supreme Court Reverses Qualified Immunity Dismissal of Texas Prisoner’s Excessive Force Claim

by Douglas Ankney

In December 2016, Prince McCoy Jr. was confined in a segregation cell at the Darrington Unit in Rosharon, Texas. The prisoner in the cell adjacent to McCoy’s threw water on Officer Tajudeen Alamu. Alamu left and the prisoner covered the front of his cell with bedding. Alamu returned with pepper spray. Frustrated that he could not spray the prisoner who had thrown the water, Alamu sprayed McCoy.

McCoy filed suit in federal district court in 2017, alleging excessive force in violation of the Eighth Amendment. The district court relied on Hudson v. McMillian, 503 U.S. 1, 112 S. Ct. 995 (1992) and ruled in Alamu’s favor. The district court determined that McCoy had failed to show that Alamu’s assault was excessive or malicious and that McCoy’s injuries were minor.

McCoy appealed. The U.S. Court of Appeals for the Fifth Circuit found that Alamu had indeed violated McCoy’s Eighth Amendment rights but ruled in Alamu’s favor on qualified immunity grounds. In a nutshell, the Court determined that because there wasn’t any circuit precedent with similar material facts to inform correctional officers that spraying prisoners with pepper spray without provocation or justification violated the Eighth Amendment, it was not “established” that a reasonable officer such as Alamu would know his or her conduct violated the prisoner’s rights. See: McCoy v. Alamu, 950 F.3d 226 (5th Cir. 2020).

McCoy petitioned for certiorari to the Supreme Court of the United States (SCOTUS). McCoy explained that there was precedent within the circuit that clearly demonstrates punching a prisoner in the face without justification and tasing a prisoner without justification violate the Eighth Amendment. McCoy argued “there is no requirement that a constitutional violation be weapon-specific” and “defining Eighth Amendment violations weapon-by-weapon and granting qualified immunity to defendants using novel weaponry would also break from the other circuits that have considered the question.”

On February 21, 2021, SCOTUS reversed and remanded to the Fifth Circuit for further consideration in light of SCOTUS’s recent decision in Taylor v. Riojas, 141 S. Ct. 52 (2020) [See PLN, Jul. 2021, p. 32]. In that case, also originating in the Fifth Circuit, the appellate court had determined that officers who had locked a naked prisoner in two cells for two days—one cell covered with “massive amounts” of human feces and the other filled with raw sewage—were entitled to qualified immunity because there wasn’t any circuit precedent with similar facts. SCOTUS reasoned that “no reasonable officer” would have believed placing a prisoner in such squalid conditions was constitutional and a precedent with similar material facts was unnecessary. See: McCoy v. Alamu, 141 S.Ct. 1364 (2021).

The defense of qualified immunity is a doctrine invented from whole cloth by the Supreme Court and it shields government actors from liability for their unconstitutional conduct. To defeat the defense, a plaintiff has to show the defendant violated a constitutional right and that the right was “clearly established” at the time of the alleged violation. Lower courts have repeatedly held that to show the right was clearly established there must be circuit precedent defining the right and materially similar facts to show that the alleged conduct violated that right. The supreme court has
continually tweaked the standard every few years for decades making it harder for constitutional rights to become “established”. In real life, this has lead to rights but no remedies, at least not for money damages which is usually the only remedy for people who have been killed, raped, or otherwise mistreated by the government.

This unreasonable application has led to many egregious and unjust decisions. For example, in a 2019 case from the Ninth Circuit police officers stole $225,000 while executing a search warrant. Because there was no circuit precedent holding that theft during execution of a search warrant violated the suspect’s constitutional rights, the Ninth Circuit determined the officers were shielded from liability because of qualified immunity, Jessop v. City of Fresno, 936 F.3d 937 (9th Cir. 2019).

In another case, an officer who shot a ten-year-old boy while attempting to shoot an aggressive dog was immune from suit because of a lack of precedent with similar facts.

Many advocates and organizations, including the Human Rights Defense Center, have repeatedly called on both Congress and the SCOTUS to eliminate the doctrine of qualified immunity. This unreasonable application has led to rights but no remedies, at least not for money damages which is usually the only remedy for people who have been killed, raped, or otherwise mistreated by the government.

Additional sources: texastribune.org, everythinglubbock.com, reason.com, supremecourt.gov

**Local Pennsylvania Voters Ban Solitary Confinement and No-Knock Warrants**

*by David M. Reutter*

Residents of Allegheny County voted to restrict the use of solitary confinement. The ballot measure was overwhelmingly approved during a May 18, 2021 election.

*PLN* has previously reported on the brutalizing by guards and the improper use of solitary confinement within the Allegheny County Jail (ACJ). [See *PLN*, Sept 2016, p. 27]. Voters apparently decided it was time for a change. Nearly 70% of them, or more than 166,000 people, supported the ballot measure to ban the use of solitary confinement within ACJ except in certain circumstances. Voters said such confinement may be used only in cases of lockdowns, medical or safety emergencies, and protective separation requests.

Officials used solitary confinement as punishment whenever a detainee violated jail rules. “It’s inhuman,” said Brandi Fisher, who heads the Alliance for Police Accountability (APA) in Pittsburgh.

On the same day as the vote on ending solitary in the county, Pittsburgh voters banned no-knock warrants in the city. About 81% of voters, or more than 49,000 people, supported the measure. That approval amends the city charter to ban police from serving a search warrant without announcing themselves.

The measure is similar to laws enacted in other jurisdictions in the wake of the death of Breonna Taylor. Taylor was killed in Louisville, Kentucky after midnight on March 13, 2020. Officers broke her door down without announcing themselves. Taylor’s boyfriend, a registered gun owner, fired a warning shot, hitting one officer in the leg. The officers returned fire with at least 22 shots. Taylor, an EMT, was hit eight times and died minutes later.

Prosecutors found that the officers were justified in using force. One officer, however, was fired and charged with wanton endangerment because he blindly fired through a window and door.

According to Allegheny County District Attorney spokesman Mike Manko, Pittsburgh police do not use no-knock warrants because there is no way to request such warrants in Pennsylvania.

Voters were united in ending both these public safety measures related to local police and prisons. “There was an overwhelming response from people who wanted these to be passed,” said Fisher.

Source: news.yahoo.com

---

**NEW in 2020**

8th Ed of Winning Habeas Corpus & Post Conviction Relief

Case review to include Supreme Court thru Shoop v Hill, 139 S.Ct.504 (2019)

Atty. Kent Russel writes: “Now that I’ve been turned on to Winning Habeas Corpus, I always make sure it’s close at hand.” Power packed 635 pages—NOT WHITE SPACE. Write your brief directly from the book, actual quotes of the judge.

• Habeas Corpus law
• Plea Agreement
• Ineffective Assistance of counsel
• Actual innocence
• Post-Trial Motions
• Equitable tolling

Price to Prisoners $59.50

Newest Book!!

QWIK LEGAL CITES, 2nd edition

Finally, a reference book of legal subjects—A thru Z. Qwik Cites gives you a basic understanding all major legal subjects including: AEDPA, Arrest, Attorneys, Brady Claims, Consumer Rights, Contracts, Civil Rights, Courts, Due Process, Ex post facto, Free Speech, Immigration; Insurance, Health Care, Judgments, Jury, Parole, Prisoner rights, Search & Seizure, and much more!

Price to Prisoners: $46.50

Send Order to:

Fast Law Publishing

PO Box 2315, Port Orchard, WA 98366 • www.fastlaw.org

---

**The LITT Group, LLC**

Executive Clemency and Pardon Experts

Sentence reduction and other sentence modification through executive clemency or a pardon.

Please contact our offices or have a family member contact our offices:

The LITT Group, LLC

PO Box 358

Nellysford, VA 22958

www.LITTfreedom.com

littfreedom@gmail.com

917-940-8055

Serving inmates in all fifty states as well as federal inmates.

Unsolicited documents not returned.

Not a pro bono group.
Absent Expert Medical Testimony, Deliberate Indifference Tough to Prove in Medical Cases

by David M. Reutter

Redmond filed a civil rights action pro se alleging Eighth Amendment violations by prison and hospital doctors, and other prison officials. The court appointed counsel who apparently failed to hire expert witnesses who could testify about the standard of care. The district court granted the defendant’s motion for summary judgment. On appeal, Redmond only challenged the dismissal of claims against Hacker, Kosinski, and UIHC orthopedic surgeon Dr. Michael Wiley.

The Eighth Circuit noted that a determination whether a physician acted with deliberate indifference is a factually intensive inquiry that presents a “substantial evidentiary threshold” to show the medical providers “deliberately disregarded the inmate’s needs by administering an inadequate treatment.” Redmond, the court said, did not clear that threshold.

“He presented no medical evidence that Hacker’s actions did not meet a nurse practitioner’s standard of care or that her alleged four-day delay in transferring him back to the hospital caused his wound to deteriorate,” wrote the court. “And without expert testimony, no jury could conclude that Kosinski or Wiley made decisions that were grossly incompetent.”

The district court’s order was affirmed. The reality is that it is virtually impossible to win a medical claim without expert testimony. See: Redmond v. Kosinski, 999 F.3d 1116 (8th Cir. 2021).

Erie County Sheriff Settles
AG Lawsuit for Violating New York Reporting Directives

by Kevin Bliss

A suit against Erie County Sheriff Timothy Howard was settled in June 2021. The New York State Commission of Correction (Commission) filed the suit against the Erie County Sheriff’s Office (ECSO) for their inability to comply with a directive regulating the reporting and investigating of incidents “of a serious or potentially problematic nature.”

The lawsuit alleged that the Erie County Holding Center and the Erie County Correctional Facility (the Facilities) failed to report several incidents occurring after the directive was issued, including sexual misconduct and staff assaults on prisoners.

In 2017, the Commission held a hearing and determined the ECSO failed to properly report several incidents of assault, erroneous release, and suicide. This failure prompted the Commission to develop a set of directives regarding reporting and investigating incidents within the jails. First, all serious incidents of sexual misconduct and assault must be reported to the Commission within 24 hours. Reports of erroneous releasee or suicide attempts must be filed promptly. Serious incidents occurring within the Facilities must be reported immediately using eJusticeNY Integrated Justice Portal’s online submission form.

In March 2021, the Commission filed suit against the sheriff of Erie County claiming there were at least eight new incidents at the Facilities which the ECSO failed to properly report and investigate as dictated by the previously issued directive.

In April 2018, a prisoner with substance abuse history and mental health problems was assaulted by a sergeant when the prisoner attempted to conceal contraband in his mouth. The sergeant said he handcuffed the prisoner then used physical force to pry the prisoner’s mouth open. The prisoner refuted these accusations and
claimed he was sexually assaulted by the sergeant. This claim, the lawsuit stated, was not properly reported or investigated.

In another incident from June 2020 a prisoner reported seeing a sergeant and another female prisoner engaging in sexual relations. These allegations were later substantiated with statements from a second prisoner. The suit stated that the case was determined unfounded due to lack of physical evidence, although claims of the female prisoner being paid for her services could be verified by unusually large trustee payments in her account.

More such incidents were listed in the lawsuit. The Commission stated that the ECSO was in violation of the 2017 directives and in a knowing and deliberate fashion. The Commission sought injunctive relief through the courts. They asked for independent oversight from an uninterested third party for the next five years, and mandated training in New York’s zero-tolerance sexual misconduct policy.

The parties entered into a consent judgement in Erie County Supreme Court. Under the terms of the consent decree, the jail agreed to require training for ECSO employees in both sexual misconduct and proper reporting and investigating of incidents to the Commission. The ECSO agreed to work with an independent monitor to ensure proper training.

The ECSO gets to choose its own independent monitor, subject to the Commission’s approval. The monitor will review the jail’s policies and procedures and audit prior incident reporting. ECSO agreed to pay for the monitor and retain them for three years. The monitor will assist ECSO in developing training and policies to ensure compliance with reporting requirements as well as criminal sexual assault investigations. This includes protocols to prevent retaliation against prisoners who complain of being raped in custody, retaining video of such assaults and that investigators be properly trained and supervised. The policies must ensure zero tolerance for sexual assaults of prisoners and jail responses must be effective.

The jail agreed to ensure that all its policies and procedures will be available to prisoners including those with disabilities and limited English proficiency.

The jail agreed to provide all the relevant staff training by December 15, 2021 and refresher training by that date each year for the duration of the agreement.

In its audit, the monitor must identify any incidents which were not properly reported to the commission and the staff responsible. The monitor is to have unrestricted access to all documents and information necessary to complete any task consistent with the consent decree. See: New York v. Howard, S.Ct. of Erie County, Index #803433/2021.

The McKinley Home for Boys was supposed to be a safe haven for youth without a home. But for many, it was a personal hell. Now it’s time to make them pay.

If you or someone you know was abused at the McKinley Home, you don’t have to stay silent. We have 20 years of experience representing survivors of sexual abuse, including those abused at other homes sponsored by Kiwanis International, and have successfully gone toe to toe with some of the nation’s largest institutions, including the Catholic Church and the Boy Scouts of America.

Contact attorney Darrell Cochran to learn how we can fight for you or your loved one.

Catastrophic Injury • Medical Malpractice • Sexual Abuse

PCVA Law, Attn: Dept. DCPLN
909 A Street, Suite 700, Tacoma, WA 98402
Email: pln@pcvalaw.com • Phone: (888) 303-9045
www.pcva.law
California Slashes High Call Rates in Prisons and Jails

by Chuck Sharman

On the heels of a May 2021 decision by federal regulators that sharply lowered rates prisoners and their loved ones pay for interstate calls, the California Public Utilities Commission (CAPUC) adopted a rule on August 19, 2021, which takes a hatchet to rates on *intrastate* calls—the lion’s share of the $1.2 billion U.S. market for prisoner calls, which currently run as high as $6.95 a minute in the state. The rule establishes a rate cap for the first time in the Golden State that now limits providers of “Incarcerated Person’s Calling Services” (IPCS) on an interim basis to a fee of $0.07 per minute.

Paul Wright, the director of the Human Rights Defense Center, a Florida nonprofit which publishes *Prison Legal News* and *Criminal Legal News*, provided expert testimony in the proceedings before CAPUC.

When the new rule takes effect on October 7, 2021, 45 days after it was both adopted and issued, it will provide immediate relief to nearly 77,000 prisoners held in California’s 249 local and county jails, plus almost 11,500 prisoners held in 16 federal prisons in the state. There are another 94,500 state prisoners held by the California Department of Corrections and Rehabilitation (CDCR) in its nearly 90 facilities, but they already enjoy lower rates, costing one family more than $21,000 in conversation with an incarcerated loved one, whom described spending “an average of almost 300 other Californians, some of whom described spending “an average of $10 to $12 a day for 30 minutes” of phone conversation with an incarcerated loved one, costing one family more than $21,000 in range replacement funding. (Or cut back on the unregulated funds prison and jail officials use as their private slush funds.)

In justifying the need for rate regulation, CAPUC pointed to studies showing that maintaining contact with loves ones while imprisoned has proven to result in lower rates of recidivism. Other studies cited in the ruling also demonstrate that: • up to 34% of families of prisoners go into debt to stay in touch with them; • women and people of color—who are among the most economically disadvantaged groups—are over-represented in the prisoner population; and • prisoners’ annual household incomes fall by about $20,000 from their pre-incarceration levels, putting further strain on family budgets.

Moreover, when a prison or jail signs a contract with an IPCS, it is granting what the Federal Communications Commission (FCC) deems a “locational monopoly” for “a captive consumer base of inmates.” Under California law, if CAPUC cannot encourage a free and open market in which sellers compete against one another to establish a price, the agency must step in to ensure that monopolistic prices are “just and reasonable.” HRDC is advocating for both rate reductions to $0.05 a minute or less and consumer choice in terms of being able to choose the phone carrier they want to provide their service in order to foster competition.

During the period when it collected public comments on prisoner call rates, CAPUC heard from six of the largest IPCS providers in the state: GTL, Securus Technologies, IC Solutions, Legacy Inmate Communications, NCIC Inmate Communications and Paytel. GTL is the state’s largest prison call provider, with a nearly 50% market share. Securus Technologies is second-largest, with a market share of 20%. All six firms hold a Certificate of Public Convenience and Necessity from CAPUC, subjecting them to the agency’s regulatory authority.

Testimony was also received from almost 300 other Californians, some of whom described spending an “average of $10 to $12 a day for 30 minutes” of phone conversation with an incarcerated loved one, costing one family more than $21,000 in fees over a two-year period. Commenters also complained of poor call quality, dropped calls and opaque billing practices.

CAPUC staff researchers could not find a single prisoner found in the state who had a choice of IPCS providers. But they did find widely varying call rates in the state’s jails and prisons—as high as $1.75 per minute, with first-minute or connection fees reaching $3.60. The result was that a fifteen-minute call could cost as little as little as 37.5 cents in a state prison or as much as $26.95 in some jails. For these reasons, CAPUC said the new rulemaking was justified.

In formulating its rule, CAPUC said it relied in part on work done by the FCC to regulate fees that can be charged for interstate calls. In a rule adopted on May 24, 2021, the FCC capped those rates at $0.14 per minute for prisons and $0.16 per minute for jails with an average daily population of 1,000 or more. For smaller jails, the FCC left in place its existing rate cap of $0.21 per minute.

The new CAPUC rule also places an interim cap on third-party transaction fees passed through by an IPCS provider—such as those from a financial services firm to load a prisoner’s account—which is limited to the actual cost without markup and may not exceed $6.95 per transaction. That matches the cap established by the FCC for interstate calls, which in turn was set to match the cost of loading a prisoner’s prepaid calling account with a Western Union transaction. HRDC has pointed out that in no other context are consumers made to pay for the privilege of paying their bills.

In addition, just as the FCC ruled for interstate calls, CAPUC said an IPCS provider in California may pass through without markup any government taxes charged for an intrastate call. However, the FCC also allowed ancillary fees for placing just a single call, requesting a paper bill, using a live agent or making an automated payment, none of which is permitted by CAPUC’s new rule for an intrastate call in California.

CAPUC also did not match the FCC’s per-minute allowance of $0.02 for site commission payments included in its rate caps. That apparently was because, under SB 87 passed in 2007, site commission payments
had already been phased out at state prisons by 2011. However, despite kickbacks being ostensibly banned in state prisons in California, rates remained very high and GTL provided the de facto kickback of cellphone detection services to CDCR prisons, which also served to boost its bottomline. Just like the FCC, though, CAPUC got pushback from IPCS providers.

Some providers attempted to argue that the rate caps represented unconstitutional “ takings.” They also said that their competition for a facility’s contract exerted the same market forces on pricing as competing for each prisoner’s call. The FCC didn’t buy those arguments, and neither did CAPUC.

It also didn’t create any mechanism to seek a waiver of the caps, as some providers requested and as the FCC had done. But neither did the agency heed the call of some advocates to provide one free call per week or per month to every prisoner. CAPUC also didn’t flinch from smashing down GTL and Securus Technologies when the firms complained that the rate caps were below their cost to provide the service, noting that neither one had provided any cost data to back up that assertion. Those same two firms also insisted that the higher rates they charged California prisoners (outside of state prisons run by CDCR) were simply reflective of the higher cost of doing business, either because the facility was a small one that lacked the economies of scale afforded by a larger jail population or because it was a jail holding arrestees and pretrial detainees with a higher rate of turnover.

But two other large IPCS providers, Verizon and NCIC Inmate Communications, agreed with CAPUC staff that rates were monopolistically elevated. That contention was also advanced during public comments by prisoner and consumer advocates, including: CAL Advocates, TURN (The Utility Reform Network), CforAT (Center for Accessible Technology), Prison Policy Institute and the Justice Coalition.

The new rule is specifically limited to voice and voice-over-Internet-protocol (VoIP) calls. In the next phase of its rule-making, CAPUC also promised to address video calling and messaging services not covered by the new interim rate caps.

By the time the recently adopted rules take effect, every IPCS provider in California must submit a Notice of Compliance and an Interim Rate Compliance Report to CAPUC. A Plan for Notification to current and prospective customers and account holders is due for review 15 days before that, including drafts notices of policies for allowed third-party charges and ancillary fees, as well as customer service contacts for websites, bills and marketing materials.

Securus has already indicated it plans to file suit to challenge the regulatory attempt that might in any diminish its exploitation of prisoners and their families. It is expected that other prison phone providers will do the same.

HRDC has partnered with the Center for Accessible Technology to advocate on behalf of California prisoners and their families in this proceeding. The proceedings are ongoing. See: Decision Adopting Interim Rates for Incarcerated Person’s Calling Services (IPCS), Before the Public Utilities Commission of California, Rulemaking 20-10-002, Decision 21-08-037, August 19, 2021; Date of Issuance 08/23/2021.
Mailbox Rule Inapplicable to Prisoners Represented by Counsel

The Sixth Circuit Court of Appeals held that “in the context of civil complaints, the prison mailbox rule applies only to prisoners who are not represented by counsel and are proceeding pro se.”

The court’s February 17, 2021, opinion was issued in an appeal brought by Blake Cretacci, who alleged that guards at Tennessee’s Coffee County Jail failed to protect him and used excessive force on him. His complaint is for three separate incidents that occurred on September 29, 2015, October 11, 2015, and January 14, 2017 while he was a pretrial detainee at the jail.

That occurred on September 29, 2015, October 11, 2015, and January 14, 2017. Cretacci alleged that during those incidents guards failed to protect him from assault by other detainees and that guards used excessive force by shooting pepperballs at him.

Cretacci secured attorney Andrew Justice to represent him in a lawsuit against the jail. On the eve of the one-year statute of limitations expiring to bring suit, Justice realized he was not admitted to practice law in the Middle District of Tennessee. He then took the complaint to Cretacci on September 29, 2016, and told him to give it to jail officials immediately to file. Justice hoped to take advantage of the prison mailbox rule by having Cretacci file the complaint from jail.

The district court granted the defendants’ motion for summary judgment. It found counts I and II were barred by the statute of limitations. It also found there were no constitutional violations underlying counts III and IV. Cretacci appealed.

The Sixth Circuit said the mailbox rule considers a filing from a prisoner to be filed at the moment it is handed to prison authorities for mailing. The rule addresses the unique challenges that face prisoners, for they cannot directly place the documents in the mail or go to the courthouse to file their pleadings, nor can they track the progress of their case. “The prison mailbox rule was created to prevent pro se prisoners from being penalized by any delays in filing caused by the prison mail system.”

Cretacci, however, was not acting pro se. He and Justice “had an explicit attorney-client relationship in which Justice agreed to represent Cretacci in his lawsuit against the jail,” the Sixth Circuit said. “Importantly, Justice developed Cretacci’s case against Coffee County, identified the proper legal causes of action to bring, and wrote the complaint.”

The district court was correct in finding Cretacci was represented by counsel and that he could not benefit from the mailbox rule due to that relationship. The Sixth Circuit also affirmed judgment on the claims that were not subject to the statute of limitations, finding there was no constitutional violation. See: Cretacci v. Call, 988 F.3d 860 (6th Cir. 2021).

Federal New York City Jail Made Infamous by Jeffrey Epstein Death Closed Due to Persistent Problems and Incompetence

In late August, 2021, the federal Bureau of Prisons announced what is likely a temporary closure of its Metropolitan Correctional Center (MCC), located in lower Manhattan. It has been cited for its repeated lack of oversight, most recently for the death of accused child sex trafficker Jeffrey Epstein who died, or was murdered, while guards slept and surfed the internet [See PLN, Jul 2021, p. 65].

Other famous prisoners who have been held at the jail include Mexican drug lord Joaquin “El Chapo” Guzman, mob boss John Gotti, and Ponzi scheme financier Bernie Madoff.

More than 200 prisoners currently held at MCC are expected to be moved to a federal jail in Brooklyn. Meanwhile, security and infrastructure issues will be addressed at the Manhattan facility. The closure comes just weeks after a deputy attorney general toured the jail.

In early 2020, just before the pandemic broke out, a gun was found at the MCC, prompting a week-long lockdown and an investigation by then-Attorney General William Barr.

In April 2020, a class action lawsuit was filed which alleged administrators of MCC failed to provide an adequate response to the COVID-19 pandemic. “The MCC’s treatment of those suspected of having COVID-19,” the complaint charges, “is as ill-conceived as it is inhumane. In multiple instances, the MCC has simply left symptomatic inmates in open dormitories in which more than two dozen men bunk closely together, sharing a single toilet and one or two sinks. Unsurprisingly, the virus has spread rapidly through at least one of the units that contain these open dormitories.”

The suit asks for increased testing, quarantine measures, improved cleaning, free distribution of basic hygiene supplies, early release for those who are eligible, and an independent monitor. The suit was dismissed due to the MCC’s closure. The court had previously denied the BOP’s motion to dismiss the suit. See: Fernandez-Rodriguez v. Lion-Vital, 470 F. Supp. 3d 323 (S.D.N.Y. 2020).

As PLN has reported, a woman held at MCC won a $2 million lawsuit after she went blind from an untreated case of pink eye [See PLN, Jan. 2021, p. 56; Richardson v. United States, USDC, S. Dist. NY, Case No. 1:19-cv-01892-WHP].

Another story emerged from the case of Tiffany Days who was held at MCC on federal drug conspiracy charges. Days experienced conditions so unbearable that it prompted U.S. District Court Judge, Colleen McMahon, to condemn the facilities as “inhuman as anything I’ve heard about
[in] any Columbian prison.”

According to her attorney, after testing positive for COVID-19, Days languished for 75 days in solitary confinement. Days endured weeks without a shower, access to recreation, or the use of telephones and computers. She also described having to eat moldy food and frozen sandwiches that hurt her teeth when she tried to eat them.

Days recounted one instance where her tears froze to her face due to the extremely cold temperatures inside a facility. On another occasion, Days survived what she described as a “feces flood” with “chunks of defecation coming out of the pipes and urine-filled water gushing all through the area.” Days recalled prisoners vomiting from nausea as the guards told them to clean up the filth with their “own hands.”

Judge McMahon expressed her frustration about the facilities’ condition during an April 29, 2021 hearing where she reluctantly sentenced Days to a mandatory minimum of five years for conspiring to distribute and possess meth and cocaine. According to her attorney, after testing positive for COVID-19, Days languished in any Columbian prison.”

Judge McMahon blamed a revolving door of wardens that left the administration of the facilities without continuity or leadership. “They lurch from crisis to crisis, from gun smuggling to Jeffrey Epstein…. There is no excuse for the conditions…. You shouldn’t have to suffer for the incompetence of the United States Department of Justice and its subsidiary agency, the Bureau of Prisons,” Judge McMahon said. See: USA v. Days, USDC, S. Dist. NY, Case No. 1:19-cr-00619-CM.

If and when the federal jail opens, it remains to be seen if the BOP is capable of running the jail in a safe and humane manner. Coupled with the well documented problems at nearby city run Rikers Island, it appears to be an open question if America’s biggest and richest city should be in the business of caging people at all given their apparent inability at the local, state and federal level, to do so competently.

New Connecticut Law Eliminates Prison Gerrymandering

On May 26, 2021, Connecticut Governor Ned Lamont signed S.B. 753, Public Act 21-13, which created a new statute requiring the state to count most imprisoned persons as residents of the district where they were living before they were imprisoned for purposes of redistricting. The previous practice was to count them as residents of the district where they are imprisoned. That practice—known as prison gerrymandering—exaggerated the political power of the mostly rural districts where the prisoners are located while diluting the political power of the urban districts most of the prisoners come from.

The Connecticut State Conference of the NAACP and the ACLU of Connecticut (ACLU-CT) have been championing an end to prison gerrymandering in the state for more than ten years. They were represented by the Yale School of Law’s Peter Gruber Rule of Law Clinic.

With the enactment of S.B. 753, Connecticut became the eleventh state to be added to the list of those abolishing prison gerrymandering. New York, California and New Jersey have also passed similar legislation.

“This moment is only possible because justice-impacted people and their loved ones have been fighting for it for more than a decade. No longer will Connecticut violate the dignity of incarcerated people by counting them where they are caged instead of the place they call home,” said ACLU-CT’s Interim Public Policy and Advocacy Director Claudine Fox. “Prison gerrymandering is racist and undemocratic, and today our state made a historic leap forward to right one of the wrongs of its past.”

The new law requires the Connecticut Department of Corrections (CTDOC) to create a unique anonymous identifier for each of its prisoners and link it to that person’s location of incarceration, address prior to incarceration, race, ethnicity, and whether the person is over 18 years of age. They are to then provide the information to the Secretary of the Office of Public Management. There are exceptions for persons serving life without parole or whose prior address was out-of-state or unknown. It also stipulates that the Secretary request similar information from federal prisons in the state.

The law requires the Secretary to use the information to adjust the decennial census population counts such that the non-exempted prisoners are counted as part of the district of their prior address, not the district the prison is located in, unless they are the same. The CTDOC is specifically prohibited from providing prisoners’ names or other information that could uncover their identities.

Sources: S.B. 753, acluct.org

$56 Million Settlement in CoreCivic Securities Violation Lawsuit

by David M. Reutter

Private prison operator CoreCivic, formerly known as Corrections Corporation of America (CCA), paid $56 million to settle a class action lawsuit alleging it violated securities laws that resulted in a loss to stockholders.

The lawsuit was filed August 23, 2016, on behalf of the class of stock holders of CoreCivic, which trades on the New York Stock Exchange under the ticker symbol “CXW.” The class consisted of persons who held CCA stock between February 27, 2012 and August 17, 2016.

The class specifically excluded CCA and CoreCivic officers named as defendants.

At issue were allegedly materially false and misleading statements issued during the class period. The civil complaint cited statements made in Annual Reports CCA filed with the Securities and Exchange Commission. A 2012 report noted that 40-43% of CCA’s revenue was derived from contracts with the federal government through operation of prisons and detention centers.

CCA also boasted that, as of December 10, 2010, the American Correctional Association (ACA), “an independent organization of corrections industry professionals that establishes standards by which a correctional facility may gain accreditation,” had accredited 85% of its facilities. “We believe that this percentage compares favorably to the percentage of government–operated adult prisons that are accredited by the ACA,” the report stated.

Other reports continued the theme of “high standards” that governed the operation of CCA’s federal facilities. CCA specifically listed “the ACA, The Joint Commission, the National Commission on Correctional Healthcare, the Occupational Safety and Health Administration, federal, state, and local government codes and regulations, established correctional procedures, and company-wide policies and procedures that may exceed those guidelines” that it met or exceeded.

In 2014 and 2015 reports, CCA said, “We are committed to equipping offenders in our care with the services, support, and resources necessary to return the community as productive, contributing members of society.”

The facade fell off on August 18, 2016, when Deputy General Attorney Sally Yates announced the Department of Justice had decided to end its use of private prisons. “[T]ime has shown the [private prisons] compare poorly to our own Bureau facilities. They simply do not provide the same level of correctional services, programs, and resources,” Yates said in making the announcement. Private prisons “do not save substantially on costs; and as noted in a recent report by the Department’s Office of Inspector General, they do not maintain the same level of safety and security.”

Those statements came as no surprise...
Report Reveals How Census Bureau Still Counts Prisoners Differently Than Other U.S. Residents

Every ten years on April 1, Census Day, the government takes stock of the nation’s population. Generally, people are counted at their place of residence. The Census Bureau determines residency status by applying the “usual residence rule,” which means that people are counted where they “live and sleep most of the time.”

There are some exceptions to this rule, for example: military personnel, regardless of where they are stationed; and boarding school students are counted as residents of their home addresses.

So-called “snowbirds,” seasonal travelers with multiple residences, are also counted wherever “they live and sleep the most.”

However, according to a June 2021 report by the Prison Policy Initiative (PPI), after two decades of campaigning, most American prisoners are still an exception to the Census Bureau’s exception. [See PLN, June 2001, p.13; Dec. 2012, p.1; July 2018, p.26; March 2020, p.36.] People incarcerated in jails and prisons are counted as residents of whichever facility they are caged in rather than their home addresses.

About 30% of America’s incarcerated are held daily in local and county jails. The American Jail Association disclosed that “75% of people entering U.S. jails are released within 72 hours.”

Data from 2019 showed that people stayed in jail for an average of 27 days. According to PPI’s latest report, this underscores how the Census Bureau deviates from its own rule defining residence as where an individual lives and sleeps most of the time.

Those in state and federal prisons, even those serving life sentences, are routinely transferred to other facilities during incarceration. The Bureau of Justice Statistics notes that “approximately three quarters of incarcerated people serve their time in more than one prison facility (including approximately 12% who serve time in five or more facilities) before release.”

The inconsistency and flaws in how the Census Bureau counts prisoners has myriad political consequences. The data generated by the Census determines, to a large degree, the amount of federal monies distributed to cities; thus, counting prisoners at the facilities they reside in during Census Day inaccurately determines how those funds are allocated.

More importantly, those financial benefits are not available to the neighborhoods and cities where prisoners have home addresses. Losing resources due to unfair Census counts adversely affects those in urban areas inhabited by people of color, leaving their communities impoverished.

Redistributing federal dollars is one thing, but according to PPI’s reporting, the flawed manner in which the Census Bureau counts prisoners also alters voting districts. In effect, the Bureau engages in “prison gerrymandering” which “siphons political power from urban communities and communities of color” while diluting “local representation,” the report observed.

Source: prisonersofthecensus.org
Eleventh Circuit Grants Prisoner with Hep C Exception to PLRA Three Strikes Rule

The Eleventh Circuit Court of Appeals, in an unpublished decision, held a prisoner who had symptoms of fibrosis from Hepatitis C (HCV) and claimed prison officials refused to treat him was sufficient to satisfy that he was under imminent danger of serious physical harm. He, therefore, satisfied the exception to the three strikes rule in 28 U.S.C. § 1915(g) to proceed in forma pauperis.

The court’s March 5, 2011, opinion was issued in an appeal brought by Georgia prisoner Lester J. Smith. His civil rights action alleged he has chronic HCV and he was seeking treatment that Georgia prison officials have been denying him. The district court found, and Smith admitted, that he has three strikes under § 1915(g).

That provision of law prohibits a prisoner from proceeding in forma pauperis in a civil action when he “has, on 3 or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted.” The only exception to the three strikes rule is when, “the prisoner is under imminent danger of serious physical injury.”

The district court rejected Smith’s claims of imminent danger and it denied him in forma pauperis status. Smith appealed. A judge with the Eleventh Circuit granted him in forma pauperis status after finding his appeal was not frivolous and that he made a showing of imminent danger of serious physical harm. Counsel was also appointed to Smith.

The Eleventh Circuit noted its precedent holds that a failure to treat HCV constitutes a threat of imminent danger in certain circumstances. Smith alleged he had symptoms consistent with his HCV at the F2 stage on the standard scale of progressive liver fibrosis.

In Hoffer v. Sec’y, Fla. Dep’t of Corr., 973 F.3d 1263 (11th Cir. 2020), the court affirmed a district court’s order requiring direct acting antiviral drugs for prisoners who had reached the F2 stage or beyond.

The Eleventh Circuit held that, “Smith adequately alleges the threat of imminent danger of serious physical injury.” Specifically, he alleged the HCV had caused “sores throughout his body, fatigue, vomiting, pain in the liver area, jaundice of the skin and eyes… loss of appetite at times, hemorrhaging, and deterioration of other body organs.”

The district court’s order was vacated and the case remanded for further proceedings. See: Smith v. Ward, 848 F. Appx 853 (11th Cir. 2021).

Judge Orders COVID Emergency Release Procedures at Lompoc Federal Prison

by Jayson Hawkins

In July 2020, Judge Consuelo Marshall of the U.S. District Court for Central California granted class certification to a group of prisoners at Lompoc federal prison, granting in part and denying in part their motion for preliminary injunction.

The group of prisoners at Lompoc filed a complaint against the Director of the Bureau of Prisons (BOP) and the warden of Lompoc asserting violations of the Eighth Amendment prohibition against cruel and unusual punishment in relation to conditions of confinement at Lompoc during the COVID-19 pandemic and the BOP’s failure to alleviate overcrowding at the prison through home confinement and early release procedures provided for by law.

The suit, Torres v. Milusnic, survived the standard motions for dismissal, and the plaintiffs subsequently petitioned the court for certification as a class comprising “all current and future people in post-conviction custody at Lompoc,” and also sought a preliminary injunction compelling the BOP to institute emergency procedures for early release and release to home confinement during the pandemic.

In order to succeed in a motion for preliminary injunction, a petitioner must show (1) they are likely to succeed on the merits, (2) they are likely to suffer irreparable harm in the absence of injunctive relief, (3) the balance of equities is in their favor, and (4) injunctive relief is in the public interest (see Winter v. Nat. Res. Def. Council, 555 U.S. 7, 20 (2008)).

In this case, the prisoners are seeking relief pursuant to habeas corpus 28 U.S.C. § 2241 in relation to the early release statues enacted as part of the CARES Act in March 2020 and the idea that “no set of conditions of confinement under the present circumstances could be constitutional.”

The court found that, while ordinarily conditions of confinement cannot be challenged under §2241, the present suit challenged the fact or duration of confinement to a degree that gave rise to a habeas claim. To prevail in their pursuit of a preliminary injunction, the petitioners therefore now must show a likelihood of success on the merits in asserting that conditions are unconstitutional and that the BOP has not pursued the release programs mandated by the CARES Act. The standard for constitutionality is deliberate indifference.

The BOP contended that it has initiated a series of emergency procedures to deal with the reality of COVID-19, including limiting prisoner interactions, testing staff, screening prisoners, and issuing masks. The prisoners in this suit assert that these actions, even when actually implemented,
have proven ineffective and therefore demonstrate indifference.

The court found that the factual disputes related to this issue put success on the merits in doubt, and even if resolved in the prisoners' favor, failure is not evidence of deliberate indifference. The motion on this issue was therefore denied. In relation to early release, the court found that the warden at Lompoc had demonstrably failed to move on the programs mandated by the CARES Act.

In fact, Lompoc had not only failed to ease overcrowding, but was 500 prisoners over capacity when the initial petition was filed.

Having determined that success on the merits was likely, the court also found that irreparable harm was likely, the balance of equities was in the prisoners' favor, and the reality of the pandemic outweighed the risk of releasing prisoners early.

When the court reached the issue of class certification, it considered numerosity, commonality, typicality, and adequacy of representation, as per Fed. R. Civ.P. 23 (a). The court subsequently found the proposed class to be overly broad and redefined it to be certified as all prisoners at Lompoc over 50 or suffering from pre-existing conditions that make them vulnerable to COVID.

The court ordered the BOP to identify all class members, identify all members eligible for early release measures, notify all prisoner class members, and process all the identified early release candidates within thirty days. See: *Torres v. Milusnic*, 472 F. Supp.3d 713 (CD CA 2020).

On August 27, 2021, Judge Marshall issued another ruling and ordered the BOP to do the following: (1) Re-evaluate any class member who was denied home confinement on the basis of their time served on their sentence. They must consider risk factors for illness and death from COVID-19 for those over 50 years old or with underlying conditions, and explain why their length of time served outweighs their risk of contracting COVID. (2) Re-evaluate any class member who was denied home confinement based on prior offense. Again, they must explain why their prior offense outweighs their risk from COVID. The BOP must conduct the review within 28 days. It also applies to future class members and those not yet evaluated for home confinement.

Those who are granted home confinement must be transferred within one month, and must not be quarantined longer than 18 days.

All those currently in BOP custody who are transferred to Lompoc in the future should be notified if they are at-risk and eligible for class status, informed they are entitled to class eligibility, added to the class list, reviewed for home confinement within 14 days of their arrival, and their review completed within another 14 days. For others who must surrender to Lompoc, but are not in BOP custody, this process must also apply. See: *Torres v. Milusnic*, USDC, CD CA, Case No. CV 20-4450 CBM (PVCx).

Writing to Win

Need to write better? Writing to Win will teach you the basics of how to compose clear and convincing written and oral legal arguments! 270 pages packed with solid, practical advice and tips. $19.95 from PLN's Book Store!

See page 69 for more information.

Criminal Legal News is online!

Full issues of CLN are available on our website at www.criminallegalnews.org.

In addition to the content available in CLN’s print issues, our website contains updated criminal justice related news stories, subscribing and book ordering information, ability to search all past articles, HRDC Litigation Project information, and much more!

Visit us online today for all your criminal justice related news and information!
WASHINGTON, D.C.’s jail safe cell use has been under scrutiny since 2013 when a rash of suicides prompted the jail to hire Lindsay Hayes, a nationally renowned jail and prison suicide prevention expert, to evaluate the jail’s operations and offer recommendations to make it more effective with fewer deaths and more humane conditions. Prisoner rights activists are concerned that conditions have still not changed since then, even after a 2015 lawsuit ordered the county to make changes.

The use of isolation in confinement by jails and prisons has been a major focus in the nation recently. Yet, that has not included the use of “safe cells” for those under suicide prevention watch. These cells are similar to other solitary confinement cells in prison with a few additions. Overhead fluorescent lights are left on 24 hours a day. A hard, plastic box with no mattress serves as a bed. Access to water for drinking or flushing the toilet must be specifically requested each usage. And the only clothing issued is a type of smock made out of blankets and Velcro which hangs loosely on the body, not fully covering anything.

Hayes recommended avoiding the use of isolation as well as the removal of privileges such as phone calls and visitation as punishment except as a last resort. He said tie down points in cells should be removed and guards needed to receive appropriate suicide prevention training.

Although the jail stated it would immediately implement all of the recommendations made by Hayes, similar complaints over conditions have persisted to date. Department of Corrections Director Quincy Booth said at the Department’s annual oversight hearing, held February 2021, that he was unaware of any situation. “This is the first time I’m hearing about this as it relates to this matter regarding the safe cells,” he stated.

Occupants of safe cells are not allowed to have clothes, blankets, religious material, or any personal property. Safe cell prisoners are not permitted phone calls, visitations, or interaction with others. Showers are limited to every other day and meals consist of only those foods able to be consumed without utensils. Many receive “management loaf” which combines an entire meal into one pressed together mass eaten with the person’s fingers. Amazingly, jail officials claim these draconian conditions and treatment are not punitive and are designed to “protect” suicidal prisoners. If anything, it seems obvious that they can and would induce mentally ill, depressed and unstable prisoners to kill or otherwise harm themselves.

Conditions such as these have been found to increase incidents of self-harm, not decrease them. Some courts have found these conditions to be considered cruel and unusual punishment. Still, jails and prisons continue isolation and safe cell use.

The Public Defender Service has joined with University Legal Services (ULS), the Washington Lawyer’s Committee for Civil Rights and Urban Affairs, and the Sidley Austin law firm to demand more improvements. Requests are being made to give safe cell residents more access to running water, out-of-cell time, and kiosk and phone privileges. Moreover, occupants should be evaluated at least every two days to ensure they are not considering any type of self-harm.

“In my observation, the DC jail has attempted to create a cell that is physically safe from the point of view that it makes it difficult for an inmate confined therein to engage in self-harm,” said former New York City jail department head Martin Horn. “However, they have added a level of deprivation that is unnecessary, punitive and damaging to the mental health of the person confined in these conditions.”

Source: washingtoncitypaper.com

IOWA COUNTY WANTS TO USE COVID-19 RELIEF MONEY TO BUILD NEW JAIL

On June 8, officials in Woodbury County, Iowa, voted unanimously to approve the use of money from the American Rescue Plan Act (ARPA) to help fund the construction of a new $65 million regional jail complex. The 110,000 square-foot facility will house 480 prisoners and provide space for four courtrooms and a county attorney’s office.

Originally, the county’s cost to build the new jail was $50 million, which was raised during a bond referendum in 2020. But according to reporting by IowaWatch, county supervisors announced that the cost had gone up due to inflation induced by the pandemic. They also disclosed that Woodbury County has less reserve funds than other counties in Iowa, thus needing to seek funding from other sources.

ARPA passed in early 2021 in order to provide economic relief to Americans amidst the coronavirus pandemic in the form of direct financial payments. The $1.9 trillion stimulus package was also supposed to stimulate the lagging U.S. economy. Money from ARPA was allocated to the states, which in turn dispersed it to counties and cities. Iowa received $4 billion.

The U.S. Treasury set specific guidelines for how states, cities, and counties could spend ARPA funds. IowaWatch reported that, “ARPA funds should be used to support public health expenditures, address negative economic harms to workers, households, small businesses and the public sector, provide premium pay to essential workers, and...”
However, Pat Garrett, the governor’s communications director, related via an email to IowaWatch that phasing out the backfill “is not a tax cut so not sure how the ARPA provision applies.”

Butler told IowaWatch that if Woodbury County could not use ARPA money to build the jail, then he would seek to siphon off leftover funds from the earlier Coronavirus Aid, Relief, and Economic Security Act (CARES).

But IowaWatch cautioned that the Treasury “will claw back funds if misappropriated in error or by design.”

For instance, Oklahoma had to return $15 million to the Treasury after transferring $40 million from CARES to a failing jail. Governor Reynolds also had to give back $21 million of CARES funding after using the money to purchase a new computer system for the state’s human resources department.

Local residents of Woodbury County have organized against the proposed use of COVID relief money for the jail. Trisha Etringer, a member of the Winnebago Tribe of Nebraska and the director of operations for the Great Plains Action Society, said the funding could be better used to care for the homeless community. “The prison itself represents the school to prison pipeline,” she said, “this is not anything that is going to really benefit our community.”

It is not clear yet if the Treasury will allow Woodbury County to proceed, but one way or another the new jail will be built. If the county is barred from using COVID relief money, the $50 million bond referendum authorized a tax increase anyway.

Editor’s note: While some political commentators have decried a purported movement to “defund the police,” the reality is that both the Trump and Biden administrations have been shoveling tax money hand over fist to the American police state at every level since the COVID pandemic started: cops, jails and prisons are awash in funds. Very much a replay of the federal bailout in 2008–09 during the financial crisis when, within days of taking office, President Obama and then Vice President Biden were sending billions to prop up prisons and jails around the country. Whatever the health, infrastructure or educational needs of the U.S. may be, having a well-funded police and carcereal state is the most important governmental priority.

Source: iowawatch.org, siouxcityjournal.com.

THE AMERICAN PRISON WRITING ARCHIVE

Calling for Essays by Incarcerated Americans, Prison Workers, and Prison Volunteers

The American Prison Writing Archive (APWA) is an in-progress, internet-based, non-profit archive of first-hand testimony to the living and working conditions experienced by incarcerated people, prison employees, and prison volunteers. Anyone who lives, works, or volunteers inside American prisons can contribute non-fiction essays, based on first-hand experience: 5,000 word limit (15 double-spaced pages); a signed APWA permission-questionnaire must be included in order to post work on the APWA. All posted work will be accessible to anyone in the world with Internet access. Hand-written contributions are welcome. There are no reading fees. We will read all work submitted. For more information and to request the permissions-questionnaire, write to: APWA, c/o Hamilton College, 198 College Hill Road, Clinton, NY 13323-1218; or go to https://apw.dhinitiative.org/ Do not send added stamps. Sincerely—the APWA Editors.

PLN Needs Your Photos, Videos, Verdicts and Settlements!

We are expanding the multimedia section on PLN’s website, and need more prison and jail-related content! We know many of our readers have pictures and videos related to prison and criminal justice topics, and we’d like to post them on our site. We are seeking original content only—photos or video clips that you have taken yourself.

Please note that we are not seeking articles, editorials, poems or other written works; only photos and videos. They can be taken inside or outside of prison, but must relate to prisons, jails or criminal justice-related topics. By sending us multimedia content, you are granting us permission to post it on our website. Please send all submissions via email to:

CONTENT@PRISONLEGALNEWS.ORG

Please confirm in your email that the photos or videos are your original content, which you produced. Also please provide some context, such as where and when they were taken. Your name will not be posted online or otherwise disclosed. Please spread the word that PLN needs photos and videos for our website.

We also need verdicts and settlements in cases won by the plaintiff. Note that we are only seeking verdicts, final judgments or settlements—not complaints or interim orders in cases that are still pending. If you’ve prevailed in court against prison or jail staff, please send us a copy of the verdict, judgment or settlement and last complaint so we can post them on our site and potentially report the case in PLN. If possible, please e-mail your submissions; we cannot return any hard copy documents. Send to:

Prison Legal News
PO Box 1151
Lake Worth Beach, FL 33460
content@prisonlegalnews.org

P.O. Box 1151
Lake Worth Beach, FL 33460
content@prisonlegalnews.org
$1 Million Settlement in Georgia Prisoner’s Preventable Suicide Attempt and Death

by David M. Reutter

A $1 million settlement was reached in a civil rights lawsuit alleging officials at Georgia State Prison (GSP) failed to take action to prevent a prisoner’s suicide attempt, which resulted in his death three years later.

Prisoner Nicholas Baldwin was 17 years old when he was transferred to GSP, which was a violation of its policy to house only persons 18 and older. Prior to that transfer, Nicholas had attempted suicide on two prior occasions. His mother, Debra Baldwin, became very concerned when he refused visitation with her on October 23, 2014, which compelled her to contact the prison to express her concern that Nicholas should be placed in a psychiatric facility.

Debra spoke to mental health counselor Kimberly Hall on November 6 and informed her of the prior suicide attempts. While Hall recognized after an interview with Nicholas that he needed “emergency” psychiatric care, her response was to schedule an appointment five days later on November 11.

Another mental health counselor, Madia West, met with Nicholas on November 6, and she suspected “possible psychosis” as his current mental health condition. He reported seeing Satan and practicing black magic. The reason he refused visitation was because Satan told him to, or something bad would happen. Nicholas said he had been to hell and was practicing black magic because it would get him out of prison and make him rich.

Despite the finding that Nicholas was suffering from psychosis, no psychiatric care was provided. Less than 24 hours after meeting with West, Nicholas was found hanged from a bed sheet in his cell. His cellmate discovered him and summoned a guard, who refused to open the cell until back up arrived.

It took about four minutes for help to arrive, and then guards took no action until a camera arrived. When it did arrive, it was discovered the battery was dead and guards waited for another camera to arrive while Nicholas continued to hang from the sheet. Once the other camera arrived, guards put on latex gloves and took action to cut Nicholas down. They discovered he was breathing and began CPR.

He was resuscitated and taken to GSP’s medical unit. Despite having normal vital signs and “breathing well,” Dr. Marcus Occhipinti ordered two amps of Epinephrine be administered. When it was, Nicholas suffered cardiac arrest. He was revived, but he suffered anoxic brain damage due to being oxygen deprived for so long. He remained in a minimally conscious state in 24 hour nursing care until his death on November 7, 2017.

Attorneys Robin Frazier Clark and Gerard J. Lupa filed suit on the estate for Nicholas on April 12, 2017. The Georgia Board of Regents, on October 18, 2019, agreed to settle that suit for $1 million. MHM Correctional Services, GSP’s private medical provider, settled all claims against it in a confidential amount in August 2019. See: Baldwin v. Daniel, Tattenall County Superior Court, Case No. 2017-SV-13, A.

Additional sources: Atlanta Journal-Constitution, law.com

Immigration Detention Contracts Cancelled in Georgia and Massachusetts

by Daniel A. Rosen

The Department of Homeland Security (DHS) recently ordered two civil immigration detention facilities closed and terminated the contracts for both. DHS said the Carreiro Detention Center in Bristol County, Massachusetts and the Irwin County Detention Center in Ocilla, Georgia were “no longer operationally necessary,” according to an agency official.

Both centers have been the subject of complaints about the conditions of confinement. The Massachusetts jail has been accused of inhumane conditions, abuse and neglect of detainees, and overcrowding. The Georgia facility was accused of failing to follow COVID-19 protocols, and abusive medical practices.

In announcing the closures, Homeland Security Secretary Alejandro Mayorkas said, “Allow me to state one foundational principle: We will not tolerate the mistreatment of individuals in civil immigration detention or substandard conditions of detention.” Mayorkas went on to say that “We have an obligation to make lasting improvements to our civil immigration detention system. This marks an important first step to realizing that goal.”

In Massachusetts, the Bristol County Sheriff’s Office (BCSO) has come under federal scrutiny for its management of the ICE contract. The state’s Attorney General, Maura Healey, also found in a 2020 report that the BCSO violated the rights of detainees in response to a disturbance that year. The AG’s office put forward a series of reform recommendations to address systemic issues at the jail and address detainees’ rights, including that DHS terminate the Sheriff’s contract.

Bristol County Sheriff Thomas Hodgson is well known for being as brutal as he is reactionary. His response to news of the contract termination: “Shame on Department of Homeland Security Sec. Alejandro Mayorkas for putting his left-wing political agenda above public safety by ending the Bristol County Sheriff’s Office contracts with Immigration and Customs Enforcement,” he said. “This is nothing but a political hit job orchestrated by Sec. Mayorkas, the Biden administration and other anti-law enforcement groups to punish outspoken critics of the administration and other anti-law enforcement groups to punish outspoken critics and advance their partisan agenda to score political points.” If that does not endear him to ICE nothing will.

“We commend DHS for ending its partnership with [BCSO], which has a long history of abuse and neglect of immigration detainees,” said Healey in a statement. The state’s ACLU director, Carol Rose, also said, “The end of the ICE contracts with Bristol County is a long overdue and critical step in

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

Now available from Prison Legal News Publishing. $49.95, shipping included

Order by mail, phone or on-line.

By: [ ] check [ ] credit card [ ] money order

Name ________________________________

DOC/BOP Number _____________________

Institution/Agency ____________________

Address ______________________________

City State Zip __________________________

Prison Legal News • PO Box 1151, Lake Worth Beach, FL 33460
Tel. 561-360-2523 • www.prisonlegalnews.org

Join us over here at Divaz and Conz.

Where real divas and cons are appreciated! This pen-pal social media site was designed for you by you. That is why for a limited time you all can join free! That is right free! We also have a new audio recording feature so you can give people a little bit more. Time is running out! Join us free now!

divazandconz.com

$500,000 Settlement for California Jail Rape, Deputy Fired and Sentenced

A Ventura County, California jail deputy finds himself on the other side of the law after Superior Court Judge Gilbert Romero recently found him guilty of sexual misconduct with a female prisoner. The county of Ventura has paid $500,000 to settle a sexual assault lawsuit filed by the same former prisoner.

Megan Wilson was being held in the Ventura County Jail in 2019 when she was raped by guard Leonard Lopez. Lopez, a 49-year-old Southern California deputy, entered her cell in the special housing unit and the jail infirmary where she was recuperating from seizures and other medical conditions and proceeded to fondle and rape her. After the encounter, Wilson immediately reported Lopez’s misconduct to staff members at the jail.

Ventura County officials and Deputy Lopez denied the woman’s allegations. Nevertheless, criminal charges were later filed against Lopez, who was subsequently terminated in September 2020. Lopez was sentenced in June to 120 days in jail and a year on probation.

In February 2021, Wilson filed a civil suit in federal court against Ventura County and Lopez alleging civil rights violations. On August 16, 2021, the parties reached a settlement, with Wilson being paid $500,000 for agreeing to drop the suit. See: Wilson v. City of Ventura, USDC, CD CA, Case No. No. 2:21-cv-01231-PA-JPRx.

Wilson’s attorney, Neil Gehlawat, said in the end Wilson was disappointed in the criminal justice system.

Source: Associated Press, vcstar.com

Sources: atlantadailyworld.com, nbcboston.com

decoupling Massachusetts law enforcement from federal immigration enforcement.”

Senator Elizabeth Warren also spoke for the state’s congressional delegation in saying, “My colleagues and I commend [DHS'] decision to end its immigration-detention contracts with [BCSO]. This is a just and humane step, and a victory for the detainees, families, lawyers, and advocates who pushed for accountability.”

In Georgia, advocates have spent years documenting abuses since the facility opened in 2010. The closure is a major win for those detained there and for organizations fighting to shut it down. Irwin is the number one detention center on Detention Watch Network’s #FirstTen in the “Communities Not Cages” campaign demanding the shutdown of ten immigration detention facilities in the first year of the Biden administration.

The Georgia announcement comes just months after detainees and a whistleblower employee filed a shocking Inspector General complaint with DHS about abuses at the facility. Among the more disturbing allegations were descriptions of a pattern of “unnecessary and invasive gynecological procedures performed on women held at the facility without informed consent.” The accounts of medical abuses garnered national headlines and a congressional inquiry. The last immigration detainees left the facility on September 3, 2021.

Priyanka Bhatt, of the advocacy group Project South, said, “For over a decade, LaSalle and ICE have ignored, threatened, and even attacked immigrants at Irwin in an attempt to silence them…. Today matters because the people suffering abuse at Irwin have been seen.”

The director of the Georgia Latino Alliance for Human Rights (GLAHR), Adelina Nicholls, said, “Today’s closure marks an important step in the right direction—but this country’s disgraceful practice of profiteering from locking people up lives on.”

Sources: atlantadailyworld.com, nbcboston.com
Pay-to-Play Lives in FEC Decision Not to Enforce Ban on Political Contributions by Boca Prison Contractor The GEO Group

by Dan Christensen, Florida Bulldog, September 20, 2021

In a ruling that undermines an 81-year-old anti-corruption law prohibiting pay-to-play political contributions by federal contractors, an impotent Federal Election Commission in September 2021, disclosed that it allowed Boca Raton private prison contractor The GEO Group to get away with making hundreds of thousands of dollars of otherwise illegal contributions to Super PACs.

The Federal Election Campaign Act, passed in 1940, bars any person or firm negotiating or performing a federal contract from contributing “directly or indirectly” to any political party, committee, federal candidate or any person for any political purpose or use. The idea: to prevent undue influence in the awarding of taxpayer-funded contracts.

Super PACs, technically known as independent expenditure-only committees, are allowed to raise unlimited sums of money from corporations, unions, associations and individuals. They can spend that money to overtly advocate for or against political candidates. They are not allowed to donate money directly to political candidates, and their spending cannot be coordinated with the candidates they benefit.

In 2016, Washington, D.C.’s Campaign Legal Center filed a complaint with the FEC against Rebuilding America Now, the primary pro-Trump Super PAC founded that year by then-Trump campaign manager Paul Manafort and real estate mogul Tom Barrack. (Editor’s Note: Manafort was later convicted and sentenced to prison on assorted ethics and human resources and have an “employee sharing agreement,” in which “all of the senior managers throughout the domestic entities in the GEO family work.”

Recommendation Not Followed
That uniformity boils down to this finding: that GCH is “part of a family of companies with management, operations, policies and finances so thoroughly integrated that GCH should not be considered a separate and distinct legal entity.”

But after that determination was recommended, the FEC’s six commissioners—three Republicans, two Democrats and one Independent who often votes with Democrats—the commission voted 3-3 in August 2021 on whether to find probable cause as well as whether to find no probable cause.

Republicans Allen Dickerson, Sean Cooksey and James “Trey” Trainor III did not explain their votes not to punish GCH for making prohibited contributions. Democrats Shana Broussard and Ellen Weintraub published a three-page “statement of reasons” explaining in detail why they voted to find probable cause.

The partisan stalemate, the latest in a long string of partisan splits that have sapped the FEC’s ability to enforce the law, prompted the FEC to close its file on the matter without taking action.

According to Open Secrets, the non-profit and nonpartisan Washington, D.C. watchdog group that tracks money in politics, Rebuilding America Now spent nearly $21.2 million in the 2015-16 election cycle, including $17 million advocating against Democratic presidential candidate Hillary Clinton and $4.1 million in favor of Republican Donald Trump.

The FEC’s failure to follow its General Counsel’s recommendation and enforce the federal election law follows the August 2021 announcement that another South Florida-based federal contractor had paid a $125,000 civil penalty to settle similar charges that it made an illegal $500,000 contribution to a different pro-Trump Super PAC, America First Action. Randal “Randy” Perkins, the chairman and founder of the Deerfield Beach disaster clean up contractor AshBritt, paid the fine. Earlier, America First Action refunded the contribution to AshBritt.

According to Open Secrets, 2,276 groups organized as Super PACs have reported total receipts of more than $3.4 billion and total independent expenditures of more than $2.1 billion in the 2019-2020 election cycle.

This article was originally published on September 20, 2021 at floridabulldog.org. Reprinted with permission.
People told you monsters weren’t real. They were wrong. Those tasked with your protection stole your future, and we’re the bogeymen who will make them pay for the damage they have done.

Darrell Cochran and the attorneys at PCVA are passionate advocates for survivors of sexual abuse and believe abusers should be held accountable for the lifetime of pain and suffering they cause.

If you or someone you know has been abused in a group home, contact Darrell to learn how we can fight for you or your loved one.

We have worked with victims from:
The Catholic Church
The Church of Jesus Christ of Latter-day Saints
Big Brothers
Seventh Day Adventist
Kiwanis-sponsored group homes
State-licensed foster homes
State-licensed group foster care homes
J-Bar D Ranch
O.K. Boys Ranch
Toutle River Boys Ranch

Catastrophic Injury • Medical Malpractice • Sexual Abuse

PCVA Law, Attn: Dept. DCPLN
909 A Street, Suite 700, Tacoma, WA 98402
Email: pln@pcvalaw.com • Phone: (888) 303-9045
www.pcva.law
**News in Brief**

**Alabama:** On August 19, 2021, two convicted robbers were convicted of murder in the death of a fellow prisoner they and two others attacked in 2017 at Bibb Correctional Facility in Brent, Alabama. According to a report by Montgomery TV station WSFA, Dominique Covin and Roderick DeLaune were found guilty of killing Cedic Jerome Robinson in an attack which also left another unidentified prisoner with injuries described as non-life-threatening. Two other convicted robbers involved in the attack, Anthony Bright and Byron Epps, also face capital murder charges in Robinson’s killing. Dallas County District Attorney Michael Jackson said that Covin was sentenced to a 30-year prison term for the murder conviction, adding that DeLaune’s sentencing was waiting on a pre-sentence investigation.

**Arkansas:** Ivermectin, a veterinary medicine touted by some conservatives as a COVID-19 treatment has been used to treat prisoners at the jail in Washington County, Arkansas, a justice of the peace there revealed at a county meeting on August 24, 2021. According to a report by TalkingPointsMemo.com, Justice of the Peace Eva Madison shared a photo at the meeting of a prescription for the medication written for a jail employee by its contracted healthcare provider, Dr. Rob Karas. Though Madison said she was “mortified” by the news, Karas was singled out for praise at the same meeting by Sheriff Tim Helder who confirmed that the doctor was using the drug on prisoners at the county jail. Those who took the drug have since said it was given to them without their consent. Conservative voices such as TV commentator Laura Ingraham, Sen. Ron Johnson (R-WI) and Arizona GOP Chair Kelli Ward have all touted the drug as a COVID-19 treatment, especially in states represented by Republicans, and Arizona GOP Chair Kelli Ward have all praised the drug as a COVID-19 treatment.

**California:** A San Diego Central Jail prisoner is facing an additional charge of murder after being accused of killing his cellmate on August 22, 2021. According to a report by the San Diego Tribune, a coroner’s inquest ruled the caused of murder of Richard Lee Salyers’ death was strangulation. He had been booked into the jail on August 18, 2021 on suspicion of contempt of court. His alleged assailant, 32-year-old Steven Young, is a registered sex offender who was booked into the jail on the same day for violating conditions of his parole. He had been extradited to California from Oklahoma, where he was apprehended on July 8, 2021, after attempting to elude authorities by jumping into the Oklahoma River, Oklahoma City TV station KOKH reported.

**Canada:** With wooden cell doors and signage in native Inuktitut instead of English, a new jail was set to open in September 2021 in the far northern Canadian province of Nunavut, according to a report by The Star. Costing $90 million CAD, the 96-bed Aaqigigavik Correctional Healing Facility in Iqualuit replaces the Baffin Correctional Center (BCC), which acting Director of Corrections Mickey McLeod said was “not a very healthy place.” A 2015 report from the Auditor General agreed that BCC needed to be replaced not only because it was unsanitary and unsafe but also because chronic problems with contraband and a dearth of culturally appropriate programming were violating prisoners’ rights.

**Florida:** An Orlando man was over 450 miles from home when he was caught trying to toss a package of drugs over the fence into Century Correctional Institution (CCI) near Pensacola on August 24, 2021. According to a report by NorthEscambia.com, the state prison was placed on lockdown after guards with the Florida Department of Corrections (FDOC) spotted a man who turned out to be 35-year-old Dickale Tanzano Cothrell prison where she was supposed to be guarding him. After he was transferred to another facility in January 2021, she began a new relationship with another prisoner, Caleb Valeri. When he was released, the couple began documenting their affair on social media, where the posts caught London’s attention. He spilled the story of his own relationship with Goodwin during an expletive-laden phone call with his mother, which prison officials were monitoring.

**News in Brief**

**Alabama:** On August 19, 2021, two convicted robbers were convicted of murder in the death of a fellow prisoner they and two others attacked in 2017 at Bibb Correctional Facility in Brent, Alabama. According to a report by Montgomery TV station WSFA, Dominique Covin and Roderick DeLaune were found guilty of killing Cedic Jerome Robinson in an attack which also left another unidentified prisoner with injuries described as non-life-threatening. Two other convicted robbers involved in the attack, Anthony Bright and Byron Epps, also face capital murder charges in Robinson’s killing. Dallas County District Attorney Michael Jackson said that Covin was sentenced to a 30-year prison term for the murder conviction, adding that DeLaune’s sentencing was waiting on a pre-sentence investigation.

**Arkansas:** Ivermectin, a veterinary medicine touted by some conservatives as a COVID-19 treatment has been used to treat prisoners at the jail in Washington County, Arkansas, a justice of the peace there revealed at a county meeting on August 24, 2021. According to a report by TalkingPointsMemo.com, Justice of the Peace Eva Madison shared a photo at the meeting of a prescription for the medication written for a jail employee by its contracted healthcare provider, Dr. Rob Karas. Though Madison said she was “mortified” by the news, Karas was singled out for praise at the same meeting by Sheriff Tim Helder who confirmed that the doctor was using the drug on prisoners at the county jail. Those who took the drug have since said it was given to them without their consent. Conservative voices such as TV commentator Laura Ingraham, Sen. Ron Johnson (R-WI) and Arizona GOP Chair Kelli Ward have all touted the drug as a COVID-19 treatment, especially in states represented by Republicans, and Arizona GOP Chair Kelli Ward have all praised the drug as a COVID-19 treatment.

**California:** A San Diego Central Jail prisoner is facing an additional charge of murder after being accused of killing his cellmate on August 22, 2021. According to a report by the San Diego Tribune, a coroner’s inquest ruled the cause of 46-year-old Richard Lee Salyers’ death was strangulation. He had been booked into the jail on August 18, 2021 on suspicion of contempt of court. His alleged assailant, 32-year-old Steven Young, is a registered sex offender who was booked into the jail on the same day for violating conditions of his parole. He had been extradited to California from Oklahoma, where he was apprehended on July 8, 2021, after attempting to elude authorities by jumping into the Oklahoma River, Oklahoma City TV station KOKH reported.

**Canada:** With wooden cell doors and signage in native Inuktitut instead of English, a new jail was set to open in September 2021 in the far northern Canadian province of Nunavut, according to a report by The Star. Costing $90 million CAD, the 96-bed Aaqigigavik Correctional Healing Facility in Iqualuit replaces the Baffin Correctional Center (BCC), which acting Director of Corrections Mickey McLeod said was “not a very healthy place.” A 2015 report from the Auditor General agreed that BCC needed to be replaced not only because it was unsanitary and unsafe but also because chronic problems with contraband and a dearth of culturally appropriate programming were violating prisoners’ rights.

**Florida:** An Orlando man was over 450 miles from home when he was caught trying to toss a package of drugs over the fence into Century Correctional Institution (CCI) near Pensacola on August 24, 2021. According to a report by NorthEscambia.com, the state prison was placed on lockdown after guards with the Florida Department of Corrections (FDOC) spotted a man who turned out to be 35-year-old Dickale Tanzano Cothrell prison where she was supposed to be guarding him. After he was transferred to another facility in January 2021, she began a new relationship with another prisoner, Caleb Valeri. When he was released, the couple began documenting their affair on social media, where the posts caught London’s attention. He spilled the story of his own relationship with Goodwin during an expletive-laden phone call with his mother, which prison officials were monitoring.
near the perimeter fence. They immediately began conducting a prisoner count, while two of them apprehended Cothrell near the perimeter fence and found him carrying a package containing three cellphones, 23.8 grams of suspected "spice" (synthetic cannabinoids), 111.5 grams of tobacco in cigarettes, a cellphone charger and two charging cables. He was turned over to deputies from the Escambia County Sheriff's Office, who took him to the county jail. Cothrell is charged with one count of introduction of a contraband into a state correctional facility and one count of interference with prisoners. FDOC Press Secretary Paul Walker said all prisoners at CCI were accounted for.

Florida: Two state prisons will soon close in northern Florida, and another now closed will not reopen, due to chronic staffing shortages, the prison guard's union said August 26, 2021. A report by the Miami Herald cited the president of the Corrections Chapter of the Police Benevolent Association, Jim Baiardi, who said he had received the information from Secretary Mark Inch of the state Department of Corrections (FDOC). Reassigning some 1,200 guards from the shuttered prisons may temporarily help shortages at other prisons, Baiardi said, but it is a "band-aid" that "is not going to solve the vacancy problem." FDOC lost 1,802 beds when Cross City Correctional Institution (CCI) was shut down by flood damage on August 4, 2021. Leaving it mothballed, along with the decision to close Baker CI, an 1,165-bed prison in Sanderson, and New River CI, a 1,050-bed lockup in Raiford, "should come as a shock to nobody," according to the vice chair of the state Senate's Criminal Justice Committee, Jeff Brandes (R-St. Petersburg). He said the moves were made out of "desperation" fueled by FDOC's nearly 5,000 vacant guard positions. The shortage persists despite the fact that the state's prisoner population has shrunk by 20,000 since that beginning of the COVID-19 pandemic in March 2020. Former prison inspector Aubrey Land said there are "a lot of inmates who have been in prison for a lot of years who are parole eligible." Yet FDOC promised that the closures "will not result in the early release of inmates."

Florida: On September 3, 2021, a former Florida prison guard made his first court appearance on federal civil rights charges for beating a prisoner and lying about it on his official report. According to the federal Department of Justice, the former Santa Rosa Correctional Institution guard, 29-year-old Andrew J. Fremmer, carried out the alleged attack and cover-up in July 2019. His victim was not named. Fremmer faces up to 30 years in prison if convicted.

Georgia: In a since-deleted video posted on August 22, 2021 to the Facebook page of the Wayne County Sheriff's Office (WCSO) in Jesup, Georgia, deputies scissored the uniform shirt off the naked torso of a guard found smuggling contraband into the county lockup. A report by Savannah TV station WTOC identified the guard as Dayton Beasley, who was "stripped of his authority and status as a detention officer," according to a statement released by Sheriff R.E. "Chuck" Moseley. Beasley was fired after a two-week undercover investigation by the Jesup-Wayne Tactical Narcotics Team. He is charged with Violation of Oath of Office, Trading with Inmates without Consent of Warden or Superintendent and Crossing the Guard Line with a Controlled Substance. In the video post, an unnamed WCSO deputy told Beasley, "You're a disgrace to this uniform and you need to go to jail for good."

India: Two Indian prison guards were arrested on August 13, 2021 after a prisoner's wife accused them of raping her when she went to visit her husband. According to a report by the New Indian Express, the incident allegedly occurred on August 1, 2021 at Narsinghgarh sub jail in the Raigarh district of the central Indian state of Madhya Pradesh. Neither the victim nor her husband were named, but he has been confined at the prison four years on counterfeiting charges. She said the two guards also threatened her after the sexual assault.

Indiana: A prisoner who died at the U.S. Penitentiary in Terre Haute, Indiana on August 24, 2021—a day after he was beaten by a fellow prisoner—was a former guard with the federal Bureau of Prisons (BOP). According to a report by U.S. News, Michael Rudkin was serving a 90-year sentence at the 1,100-bed maximum-security lockup for a 2009 conviction on charges he plotted to have his wife killed with a prisoner he was sexually involved with at the federal lockup in Danbury, Connecticut, where he worked [See PLN, Jun. 2012, p. 38]. Part of the $5,000 he promised to pay in that plot was deposited into the woman's commissary account at the prison. After he went to prison, he was caught asking fellow prisoners to help arrange another murder-for-hire plot again targeting his wife—from whom he was by then divorced—as well as other intended victims, including an agent with the federal Department of Justice's Office of the Inspector General. A second prisoner, 47-year-old Stephen Dwayne Cannada, was killed on September 6, 2021, the very day he arrived at the prison, prompting questions about understaffing and lack of security at the federal facility.

Kansas: A pre-trial detainee held for the U.S. Marshals Service (USMS) at a private prison in Kansas died after he was assaulted by a fellow prisoner on August 2, 2021. According to a report by the Leavenworth Times, 39-year-old Scott W. Wilson was kicked, punched and struck with a tray by his 28-year-old assailant, whose name has not been released because he has not yet been charged. Wilson died two days later from his injuries. All of the Leavenworth Detention Center was placed on lockdown after the assault. It is owned by Leavenworth County and operated by Tennessee-based CoreCivic, the nation's second-largest private prison firm with 2020 revenues of $1.91 billion. The company has given notice that it will not renew its contract when it expires at year end because the administration of Pres. Joseph R. Biden, Jr. (D) has prohibited the federal Department of Justice (DOJ) from signing or renewing contracts with private prison operators. USMS is part of DOJ. But on May 5, 2021, county commissioners said they were not interested in running the prison, either, because of concerns about liability, throwing its fate and that of the pre-trial detainees it holds in doubt.

Kentucky: A jail guard in Henderson County, Kentucky, was arrested on August 13, 2021, and charged with attempting to smuggle drugs into the county lockup where he works. According to a report by the Henderson Gleaner, two unnamed prisoners and an unnamed outside accomplice were also charged in the scheme with 47-year-old Deputy Jailer Jason A. Evans. He allegedly was promised $200 to deliver a package which he thought contained 113 grams of loose tobacco. But it actually had another package hidden inside with 10 grams of crystal methamphetamine when he left it in a bathroom inside the jail for one of his prisoner accomplices to find on July 6, 2021. He didn't know then that Pennyrile Narcotics Task Force agents had already been tipped-off to the plot, and they had set up the hand-off of the package from the outside accomplice to Evans. They were also
monitoring the bathroom where the prisoner accepted the delivery. Evans and the two prisoners are charged with trafficking. The prisoners also face additional charges of promoting prison contraband.

Maryland: On August 13, 2021, the U.S. Attorney for the District of Maryland unsealed an indictment against a prisoner held by the federal Bureau of Prisons (BOP), accusing him and his father of laundering drug proceeds through cryptocurrency transactions while the man has been incarcerated. According to a report by the Baltimore Sun, federal prosecutors now want about $130 million of bitcoin seized from 37-year-old Ryan Farace and his 57-year-old father, Joseph, three years after the younger man was sentenced to a 57-month term in 2018 for manufacturing and selling 920,000 tablets of alprazolam over the so-called “dark web” using the handle “Xanaxman.” At his earlier sentencing, Farace was ordered to forfeit over $5.6 million in cash and 4,000 bitcoin, the value of which has since skyrocketed 700 percent. It was not clear if the newly seized cryptocurrency was part of what Farace was originally ordered to surrender. He and his orginal co-conspirator, Robert Swain—who is also 37 and was also convicted in the scheme—used fake IDs to accept cash buyers of bitcoin they earned in their drug business.

Maryland: Officials at Maryland state prison in Baltimore said a prisoner was killed on August 27, 2021, according to a report by local TV station WJZ. The prisoner, identified as 33-year-old Shane Burton, died from an apparent stabbing at an intake center for the state Department of Public Safety and Correctional Services (MDDPSCS). He was being held on assault and drug charges. MDDPSCS said that state police were assisting in the investigation, which had already identified several suspects who were not named.

Michigan: A Michigan prisoner was fatally stabbed on August 28, 2021. According to a report by MLive, two fellow prisoners at the Earnest C. Brooks Correctional Facility in Muskegon—who were unnamed—were transferred to a maximum-security facility after the attack that killed 40-year-old Joshua Kenneth Stead. His unnamed cellmate was also transferred. Stead was serving a 15-year sentence for fleeing and assaulting police in a violent run-in November 2016 in the Upper Peninsula, during which he allegedly rammed a state trooper’s cruiser before another state trooper shot him three times. He had three prior convictions for drug possession and burglary dating back to 2000.

Minnesota: A Minnesota prisoner sustained a restraining order against a prison guard on August 30, 2021. According to a report by the Twin Cities Pioneer Press, the order has prevented the guard, Anthony Pietrzak, from reporting to work at Lino Lakes State Prison since it was first granted in June 2020 to the prisoner, Dane Michael Vandervoort. He is serving time for a conviction on assault charges after pointing a gun at a police officer responding to a call from a former girlfriend that Vandervoort was threatening her in her home. His release is expected in 2023. In his application for the restraining order, he alleged that Pietrzak “harassed, threatened, and intimidated” him and also “wrote lies, spread rumors, made vulgar and explicit gestures.” Vandervoort added that he had been “bullied” by the guard “on several occasions,” concluding as a result: “I do not feel safe when he is around me.” In granting the initial order, Anoka County District Judge Thomas Fitzpatrick barred Pietrzak from direct or indirect contact with Vandervoort and ordered him to stay three blocks away. That has kept the guard on paid leave, argued state Department of Corrections (MNDOC) attorney Jeanine Putnam, who said “his attendance is needed to ensure the safety and security of inmates, staff, and the community.” The order was then amended to keep the guard 500 feet away from Vandervoort.

Nebraska: A prison nurse resigned from the Nebraska Department of Corrections (NEDOC) after she was arrested on September 3, 2021 on suspicion that she sexually abused a prisoner. According to a report by the Lincoln Journal-Star, the 46-year-old nurse, Summer Brandt, is also accused of unauthorized communication with the prisoner at the Community Corrections Center—Lincoln (CCC-L) and the Diagnostic and Evaluation Center (D&EC). Both charges are felony offenses. Brandt had been employed by NEDOC since 2016. CCC-L houses 88 women and 312 men participating in work-release programs. D&EC is a skilled nursing facility with 12 beds.

New York: A state prison transport bus caught fire in Fishkill, New York, on August 28, 2021. According to a report by New York City TV station WCBS, trapped and screaming prisoners reportedly fought with guards before being rescued from the burning vehicle. Police said two prisoners were sent to a hospital with minor injuries they sustained in the scuffle. The other 25 prisoners aboard were transferred to another transport bus. The cause of the blaze is under investigation.

New York: Just after giving New Yorkers two weeks notice on August 10, 2021 that he was resigning, embattled Gov. Andrew M. Cuomo (D) handed out several clemencies. Cuomo resigned under pressure after allegations surfaced that he had sexually harassed multiple women. One of those granted clemency was political prisoner David Gilbert, 76, who is serving a life sentence for the famed 1981 Brink’s robbery in which he was an unarmed getaway driver. Another who received clemency from Cuomo was Jon-Adrian Velasquez, 45, whose claims he was wrongfully convicted of second-degree murder in 1999 had been taken up by actor Martin Sheen. Nehru Gumbs, 36, had his conviction commuted for a shooting when he was 18 that killed a bystander on his way home from Christmas Eve services. Richard “Lee” Chalk, 63, had his sentence reduced for a second-degree murder in 1988 in which he was a hitman’s getaway driver. Seven pardons were handed out for lesser crimes, including five to immigrant felons who would otherwise be deported.

New York: A Long Island jail guard was arrested on August 20, 2021 and charged with taking $100 bribes from prisoners in exchange for smuggling them cigarettes. According to a report by Patch.com, the guard, 35-year-old Harris Ferro, faces a five-count indictment, one for each occasion on which he allegedly smuggled contraband into the Nassau County Jail in January and February 2021. Acting County District Attorney Joyce Smith said on two of the occasions Ferro also smuggled lighter which is also considered contraband. The payments he received were allegedly arranged through a third party, whom Smith did not identify.

North Carolina: A prison guard was arrested on August 9, 2021 after she was caught trying to smuggle marijuana into the Pasquotank Correctional Institution (PCI) near Elizabeth City, North Carolina. According to a report by the local Daily Advance, the guard, 29-year-old Vanessa Uniqua Spence, resigned the same day from the state Department of Public Safety (NCDPS). At the time she worked as a housing manager at PCI. She
was charged with possession of a controlled substance while in a prison facility as well as possession of drug paraphernalia, after a routine search of her possessions turned up 12 grams of marijuana, along with “grinders, rolling paper and smoked marijuana cigars.” She had worked for NCDPS since August 2015, receiving two promotions the following year that boosted her annual salary to $45,744 at the time of her arrest. John Bull said his agency investigated the allegations against Spence in cooperation with Wooten’s deputies.

**North Dakota:** On September 2, 2021, a former guard at the North Dakota State Penitentiary was charged with taking bribes to smuggle contraband to a prisoner. According to a report by *U.S. News,* the prisoner, Joshua Gomez, allegedly sent a text outlining the scheme to an unnamed woman who provided the information to investigators with the state police. They say that the guard, Matthew Taylor, took two MoneyGram payments totaling $900 from the woman in exchange for delivering Gomez a cellphone, two SIM cards and a cigarette package that later tested positive for methamphetamine.

Gomez faces charges of possession of a controlled substance by an inmate and possession of an electronic device by an inmate. He was moved to the James River Corrections Center by the state Department of Corrections (NDDOC). Taylor’s employment with NDDOC ended in November 2020 when he was tested positive for methamphetamine.

On September 2, 2021, guards at a Panamanian prison found an apparently
federal cat wandering in the door. On closer inspection, however, they discovered the cat was dressed in a bandana holding packages containing a white powder, leaves and vegetable matter—later confirmed to be cocaine, crack and marijuana, according to a report by Newsweek. The contraband was seized, and the so-called “Narcocat” was turned over from the Nueva Esperanza Prison to a pet adoption agency. It is not the first animal used in attempt to mule drugs into one of the country’s 23 prisons, where drug-laden pigeons have also been intercepted. The Panamanian Prison System holds 18,174 prisoners, fully 25 percent over its capacity of 14,591.

Pennsylvania: A Pennsylvania state prison guard was arrested on August 16, 2021 and charged with having sex with a prisoner under her watch. According to a report by the Washington Observer-Reporter, the guard, 40-year-old Melanie Nicole Lewis, was recorded performing sex acts on the unnamed prisoner—while she was in uniform—in images found on a cellphone discovered in his cell at the State Correctional Institution at Fayette in Luzerne Township, a 2,000-bed maximum-security lockup for men where state license plates are manufactured. After her arrest on charges of institutional sexual assault, obstructing administration of law or other government and official oppression, Lewis was released.
Pennsylvania: A former prison guard in Pennsylvania pleaded guilty on August 27, 2021 to forging documents in order to get paid leave for U.S. Army reserve training he never attended. According to a report by PennLive.com, the former guard, 24-year-old Anthoney Brooks, may have tipped off administrators at Lycoming County Prison when they discovered he had filed a phony bereavement request to attend his mother’s funeral in October 2020. That request was never paid, but two earlier requests were disbursed for reserve training, one for $2,067 over three weeks in July and August 2020 and another for about $700 in October of that year. Brooks resigned on November 2, 2020, shortly after county Detective Stephen J. Sorage contacted the administrator of Brooks’ reserve unit and discovered he had fabricated both events. As part of his plea agreement, he must repay the entire amount he swindled—nearly $2,800—and also serve 18 months on probation following any sentence he receives. County Judge Nancy L. Butts postponed a hearing on that matter until October 26, 2021 in order to give prosecutors time to prepare a presentence report because she wanted to know more about Brooks.

Virginia: A prisoner uprising on August 10 and 11, 2021, which heavily damaged the Lynchburg, Virginia, Detention Center, was...
precipitated by unsanitary living conditions and inadequate food, according to an interview with an unnamed employee broadcast by local TV station WSET on August 20, 2021. That report noted a 2019 compliance audit from the state Department of Corrections had found some of the problems that allegedly still persist, including broken drinking-water fountains, clogged showers and ceiling leaks. Those reports did not mention mold and cockroaches that caused the employee to say that “cleanliness was awful” at the jail. The employee also reported that food rations were so inadequate that “sometimes it wasn’t enough beans, it was just soup.” Yet the jail passed all food inspections in 2019 and 2020. Prisoners who missed roll call while assigned to kitchen work were also denied medication, ultimately prompting the employee to resign.

**Wisconsin:** A Wisconsin state prison guard who admitted having sex with a prisoner was sentenced on August 27, 2021 to 42 months of imprisonment and supervised release. According to a report by the *Wisconsin State Journal*, the unnamed Oakhill Correctional Institution prisoner also sold fellow prisoners contraband delivered by the guard, 36-year-old Mariah S. Kreinke, and split the money with her. The scheme was uncovered when prison officials acting on a tip discovered an illegal cellphone in the prisoner’s cell that contained text messages with Kreinke referencing the payments. Her nude photos were also found on the cellphone’s camera roll, at which point the prisoner admitted the two had also had sex in the prison kitchen. In addition to the cellphone, the contraband—which was delivered in December 2020 and January 2021—also included nutritional supplements, food and chewing tobacco.  

### Criminal Justice Resources

**Amnesty International**
Campaigns for the worldwide abolition of the death penalty. Publishes information on torture, gun violence, counter-terrorism, refugees’ rights and other human rights issues. No legal services are provided. Reports on the U.S. and other countries are available online at: www.amnesty.org.

**Black and Pink**
Black and Pink is an open family of lesbian, gay, bisexual, transgender and queer prisoners and "free world" allies who support each other. A national organization, Black and Pink reaches thousands of prisoners across the country and provides a free monthly newspaper of prisoner-generated content, a free (non-sexual) pen-pal program and connections with anti-prison movement organizing. Contact: Black and Pink, 6223 Maple St. #4600, Omaha, NE 68104 (531) 600-9089. www.blackandpink.org

**Center for Health Justice**
Formerly CorrectHELP. Provides information related to HIV in prison – contact them if you are not receiving proper HIV medication or are denied access to programs due to your HIV status. Contact: CHJ, 900 Avila Street, Suite 301, Los Angeles, CA 90012 (213) 229-0985; HIV Hotline: (213) 229-0985 (collect calls from prisoners OK). www.centerforhealthjustice.org

**Centurion Ministries**
Centurion is an investigative and advocacy organization that considers cases of factual innocence. Centurion does not take on accidental cases. To be considered, the evidence must be against you and why you were arrested. You will receive a return letter of acknowledgement. Contact: Centurion, 1000 Herrontown Rd., Clock Bldg. 2nd Fl., Princeton, NJ 08540. www.centurion.org

**Critical Resistance**
Seeks to build an international movement to abolish the Prison Industrial Complex, with offices in California, New York, and Portland, Oregon. Publishes The Abolitionist newsletter. Contact: Critical Resistance, P.O. Box. 22780, Oakland, CA 94609, (510) 444-0484. www.criticalresistance.org

**FAMM**
FAMM (Families Against Mandatory Minimums) advocates against mandatory minimum sentencing laws with an emphasis on federal laws, and works to “shift resources from excessive incarceration to law enforcement and other programs proven to reduce crime and recidivism.” Contact: FAMM, 1100 H Street, NW #1000, Washington, DC 20005 (202) 822-6700. www.famm.org

**The Fortune Society**
Provides post-release services and programs for prisoners in the New York City area and occasionally publishes Fortune News, a free publication for prisoners that deals with criminal justice issues, primarily in New York. Contact: The Fortune Society, 29-76 Northern Blvd., Long Island City, NY 11101 (212) 691-7554. www.fortunesociety.org

**Innocence Project**
Provides advocacy for wrongfully convicted prisoners whose cases involve DNA evidence and are at the post-conviction appeal stage. Maintains an online list of state-by-state innocence projects. Contact: Innocence Project, 40 Worth St., Suite 701, New York, NY 10013 (212) 364-5340. www.innocenceproject.org

**Just Detention International**
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. www.justdetention.org

**Justice Denied**
Although no longer publishing a print magazine, Justice Denied continues to provide the most comprehensive coverage of wrongful convictions and how and why they occur. Their content is available online, which includes all back issues of the Justice Denied magazine and a database of more than 4,500 wrongfully convicted people. Contact: Justice Denied, P.O. Box 66291, Seattle, WA 98166. www.justicedenied.org

**Just Detention International**
A Wisconsin state prison guard who admitted having sex with a prisoner was sentenced on August 27, 2021 to 42 months of imprisonment and supervised release. According to a report by the *Wisconsin State Journal*, the unnamed Oakhill Correctional Institution prisoner also sold fellow prisoners contraband delivered by the guard, 36-year-old Mariah S. Kreinke, and split the money with her. The scheme was uncovered when prison officials acting on a tip discovered an illegal cellphone in the prisoner’s cell that contained text messages with Kreinke referencing the payments. Her nude photos were also found on the cellphone’s camera roll, at which point the prisoner admitted the two had also had sex in the prison kitchen. In addition to the cellphone, the contraband—which was delivered in December 2020 and January 2021—also included nutritional supplements, food and chewing tobacco.

### National CURE
Citizens United for Rehabilitation of Errants (CURE) is a national organization with state and special interest chapters (such as federal prisoners and sex offenders) that advocates for rehabilitative opportunities for prisoners and less reliance on incarceration. Publishes the CURE Newsletter, $2 annual membership for prisoners. Contact: CURE, P.O. Box 2310, Washington, DC 20013-2310 (202) 789-2126. www.curenational.org

**National Resource Center on Children and Families of the Incarcerated**
Primarily provides research, fact sheets and a program directory related to families of prisoners, parenting, children of prisoners, prison visitation, etc. Contact: NRC, 789-2126. www.curenational.org

**November Coalition**
Advocates against the war on drugs and previously published the Razor Wire, a bi-annual newsletter on drug war-related issues, releasing drug war prisoners and restoring civil rights. No longer published, back issues are available online. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 680-4679. www.november.org

**Prison Activist Resource Center**
PARC is a prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, able-ism, heterosexism and classism, specifically within the Prison Industrial Complex. PARC produces a free resource directory for prisoners and supports activists working to expose and end the abuses of the Prison Industrial Complex and mass incarceration. Contact: PARC, P.O. Box 70447, Oakland, CA 94612 (510) 893-4648. www.prisonactivist.org
SUBSCRIBE TO PLN FOR 4 YEARS AND CHOOSE ONE BONUS!
1. SIX (6) FREE ISSUES FOR 54 ISSUES TOTAL! OR
2. PRISON PROFITEERS (A $24.95 VALUE!)

Prison Profiteers: Who Makes Money from Mass Incarceration, edited by Paul Wright and Tara Herivel, 323 pages. $24.95. This is the third book in a series of Prison Legal News anthologies that examines the reality of mass imprisonment in America. Prison Profiteers is unique from other books because it exposes how profits and benefits from mass imprisonment, rather than who is harmed by it and how.

3. $34.99


4. $39.99

The Habeas Citebook: Ineffective Assistance of Counsel, 2nd Ed. (2016) by Brandon Sample, PLN Publishing, 275 pages. This is an updated version of PLN's second book, by former federal prisoner Brandon Sample, which extensively covers ineffective assistance of counsel issues in federal habeas petitions.

5. $49.95

Prison Nation: The Warehousing of America's Poor, edited by Tara Herivel and Paul Wright, 332 pages. PLN's second anthology exposes the dark side of the 'lock-em-up' political agenda and the reality of mass imprisonment in America.

6. $49.95

The Merriam-Webster Dictionary of Law, 2016 edition, 939 pages. $9.95. This is the paperback dictionary of reference for the most common legal words and phrases, with more than 75,000 entries.

7. $10.00

Protecting Your Health and Safety (A $10.00 VALUE!)

Spanish-English/English-Spanish Dictionary, 2nd ed., Random House. 694 pages. $15.95. Has 145,000+ entries from A to Z; includes Western Hemisphere usage.

8. $54.95

Writing to Win: The Legal Writer, by Steven D. Stark, Random House. 303 pages. $19.95. Explains the writing of effective complaints, responses, briefs, motions and other legal papers.

9. $19.99

Roger's Thesaurus, 709 pages. $9.95. Helps you find the right word for what you want to say. 11,000 words listed alphabetically with over 200,000 synonyms and antonyms. Sample sentences and parts of speech shown for every main word. Covers all levels of vocabulary and identifies informal and slang words.

10. $27.95

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.

11. $27.95


12. $27.95


13. $27.95

Merriam-Webster's Dictionary of Law, 2016 edition, 939 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 jail, court, and house lawyers who need to learn legal terminology.

14. $27.95


15. $27.95

Blue Collar Resume, by Steven Provenzano, 210 pages. $16.95. The must have guide to expert resume writing for blue and gray-collar jobs.

Please Note: Book orders are mailed via the U.S. Postal Service with delivery confirmation. PLN does not assume responsibility to replace book orders once their delivery to the destination address is confirmed by the postal service. If you are incarcerated and placed a book order but did not receive it, please check with your facility’s mailroom before checking with us. If books ordered from PLN are censored by corrections staff, please file a grievance or appeal the mail rejection, then send us a copy of the grievance and any response you received.
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 jailhouse 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


Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A., by Mumia Abu-Jamal, 36 pages. $16.95. In Jailhouse Lawyers, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned advocates who have learned to use the court system to represent other prisoners—many uneducated or illiterate—and in some cases, to win their freedom. 1079

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 ad-dresses medical malpractice claims and issues in general, not specifically related to prisoners. 1079

Arrested: What to Do When Your Loved One's in Jail, by Wes Denham, 240 pages. $16.95. Whether a defendant is charged with misdemeanor disorderly conduct or first-degree murder, this is an indispensable guide for those who want to support family members or friends who are facing criminal charges. 1084

Encyclopedia of Everyday Law, by Shae Irving, J.D., Nolo Press, 544 pages. $34.99. How-to handbook for anyone who conducts a deposition or is going to be deposed. 1102

Federal Prison Handbook, by Christopher Zoukis, 493 pages. $29.95. This leading survival guide to the federal Bureau of Prisons teaches current and soon-to-be federal prisoners everything they need to know about BOP life, policies and operations. 2022

Locking Up Our Own, by James Forman Jr., 306 pages. $19.95. In Locking Up Our Own, he seeks to understand the war on crime that began in the 1970s and why it was supported by many African American leaders in the nation’s urban centers. 2025

Win Your Case, by Gerry Spence, 287 pages. $21.95. Relying on the successful methods he has developed over more than 50 years, Spence, an attorney who has never lost a criminal case, describes how to win through a step-by-step process. 1092


The Habeas Citebook: Prosecutorial Misconduct, by Alissa Hull, 300 pages. $59.95. This book is designed to help pro se litigants identify and raise viable claims for habeas corpus relief based on prosecutorial misconduct. Contains hundreds of useful case citations from all 50 states and on the federal level. 2023

Arrest-Proof Yourself, Second Edition, by Dale C. Carson and Wes Denham, 376 pages. $16.95. What do you say if a cop pulls you s to search your car? What if he gets up in your face and uses a racial slur? What if there’s aroach in the ashtray? And what if your hot-headed teenage son is at the wheel? If you read this book, you’ll know exactly what to do and say. 1083

Caught: The Prison State and the Lockdown of American Politics, by Marie Gottschalk, 496 pages. $27.99. This book examines why the carceral state, with its growing number of outcasts, remains so tenacious in the United States. 2005

* ALL BOOKS SOLD BY PLN ARE SOFTCOVER / PAPERBACK *

<table>
<thead>
<tr>
<th>Subscription Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 year</td>
</tr>
<tr>
<td>Prisoners</td>
</tr>
<tr>
<td>Individuals</td>
</tr>
<tr>
<td>Professionals</td>
</tr>
</tbody>
</table>

Subscription Bonuses

<table>
<thead>
<tr>
<th>2 years</th>
<th>3 years</th>
<th>4 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>- 2 bonus issues for 26 total issues</td>
<td>- 4 bonus issues (40 total) or a free book (see other page)</td>
<td>- 6 bonus issues (54 total) or a free book (see other page)</td>
</tr>
</tbody>
</table>

(All subscription rates and bonus offers are valid as of 6-2021)

Mail Order To:

Name:__________________
DOC #:__________________
Agency/Inst:__________________
Address:__________________
City/State/Zip:__________________

* NO REFUNDS on PLN subscription or book orders after orders have been placed.*

* We are not responsible for incorrect addresses or address changes after orders have been placed.*

* Please send any address changes as soon as possible; we do not replace missing issues of PLN due to address changes.*

Subscribe to Prison Legal News

6 month subscription (prisoners only) - $18
1 yr subscription (12 issues) - ________________________
2 yr subscription (2 bonus issues for 26 total) - ________________________
3 yr sub (write below: FREE book, Protecting Your Health & Safety or 4 bonus issues for 40 total) - ________________________
4 yr sub (write below: FREE book, Prison Profiteers or 6 bonus issues for 54 total) - ________________________

Single back issue or sample copy of PLN - $5.00 each

Books Orders (No S/H charge on 3 & 4-year subscription free books OR book orders OVER $50)

Qty. ________________________

Add $6.00 S/H to BOOK ORDERS under $50

FL residents ONLY add 6% to Total Book Cost

TOTAL Amount Enclosed: ________________

P.O. Box 1151
Lake Worth Beach, FL 33460

www.prisonlegalnews.org

561-360-2523

 Purchase with Visa, MasterCard, AmEx or Discover by phone: 561-360-2523
Or buy books and subscriptions online: www.prisonlegalnews.org

Note: All purchases must be pre-paid.

Please Change my Address to what is entered below

Mail Order To:

Name: ________________________
DOC #: ________________________
Suite/Cell: ________________________
Agency/Inst: ________________________
Address: ________________________
City/State/Zip: ________________________

* NO REFUNDS on PLN subscription or book orders after orders have been placed. *

* We are not responsible for incorrect addresses or address changes after orders have been placed. *

* Please send any address changes as soon as possible; we do not replace missing issues of PLN due to address changes. *

October 2021

70

Prison Legal News
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

Order by mail, phone, or online. Amount enclosed __________

By: [ ] check [ ] credit card [ ] money order

Name _________________________________________________________________

DOC/BOP Number _______________________________________________________

Institution/Agency _______________________________________________________

Address _______________________________________________________________

City ____________________________ State _____ Zip ________________

Prison Legal News
Dedicated to Protecting Human Rights

PO Box 1151 • Lake Worth Beach, FL 33460
Tel 561-360-2523 • www.prisonlegalnews.org
10/21 — Subscription Renewal
The above mailing address for PLN subscribers indicates how many issues remain on the subscription. For example, if it says “10 LEFT” just above the mailing address, there are 10 issues of PLN remaining on the subscription before it expires. IF IT SAYS “0 LEFT,” THIS IS YOUR LAST ISSUE. Please renew at least 2 months before the subscription ends to avoid missing any issues.

Criminal Legal News

Criminal Legal News is the sister publication of Prison Legal News. Both are published monthly by the Human Rights Defense Center, Inc. Same timely, relevant, and practical legal news and features as PLN, BUT CLN provides legal news you can use about the criminal justice system prior to confinement and post-conviction relief. Coverage includes:

- Criminal Law & Procedure
- Prosecutorial/Police Misconduct
- Ineffective Counsel
- Militarization of Police
- Junk Science
- False Confessions
- Witness Misidentification
- Post-Release Supervision
- Due Process Rights
- Police Brutality
- Habeas Corpus Relief
- Sentencing Errors & Reform
- Surveillance State
- Wrongful Convictions
- Search & Seizure Violations
- Paid/Incentivized Informants
- Police State in America

Between the two publications, every possible interaction with the criminal justice system is reported, analyzed, and exposed.

“STOP RESISTING” and subscribe today!

Subscriptions to CLN are $48/year for prisoners/individuals and $96/year for professionals/entities. To subscribe, send payment to: Criminal Legal News, P.O. Box 1151, Lake Worth Beach, FL 33460; (561) 360-2523. www.criminallegalnews.org