



MI-CURE NEWS

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RETHINKING THE CORRECTIONS ENVIRONMENT

Desert Wellness Correctional Outreach is an organization that is concerned about the environment in our correctional facilities. Founded in 2003, the organization develops and offers trauma-specific wellness trainings and other resources for corrections staff and families, and conducts research in correctional agency wellness. Staff member Caterina Spinaris, Ph.D., LPC, recently wrote about the importance of addressing staff wellness in order to achieve prison reform. The following data highlight the prevalence of serious problems correctional officers face:

- Post-Traumatic Stress Disorder: 34%-43%
- Depression (moderate to severe): 24%-48%
- Generalized anxiety disorder: 32%-60%
- Alcohol abuse: 26%
- Higher risk of death by suicide: 39%-41%
- Thought of suicide in the past 12 months (active-duty COs): 11%

Dr. Spinaris points out that, "(I)t may not be obvious at first glance that agencies cannot deliver good mental health care to incarcerated persons if the staff they employ – the tools with which the rehabilitative work gets done – are not well themselves." "COs' state of mind and overall health have much to do (dare I say, sometimes have EVERYTHING to do) with whether they will de-escalate a potential conflict, patiently talking incarcerated persons down, as opposed to being too tired or too agitated – 'on a ledge' themselves – to logically process what is happening and respond to it professionally. When the latter is the case, staff may react with indifference, impatience, verbal provocation, aggression, or unwarranted use of force."

Michael Friedrich reports that workforce issues are a major problem for correctional systems throughout the country today. There are high vacancy rates, low morale, and concerns about officer wellness. The Texas Department of Criminal Justice has 6,400 of its 24,000 correctional officers positions unfilled. Staff retention is a significant problem and paying higher wages will not be sufficient to solve the problem.

Issues like these may be a factor in the recent attempts of administrators to rethink how correctional facilities should operate. Nneka Jones Tapia, managing director of justice initiatives at Chicago Beyond says, "Physical safety is important, but we need to make sure that every person who comes into contact with the system has the tools and resources

they need not just to be safe but to feel safe." Ronald Simpson-Bey, executive vice president of JustLeadershipUSA observed that people running the prisons and those incarcerated "want the same thing... they want to get home safe at the end of their stays, whole and unharmed, and return back to their families."

The University of California, San Francisco (UCSF) has helped institute, and is now evaluating, changes at the Oregon State Prison. Those changes were modeled after Norwegian prisons. Among those changes is a healing garden that provides a break from the concrete world of the prison. Individuals are now referred to as residents or patients, rather than inmates or prisoners. Officers are trained to listen, empathize, de-escalate conflicts, communicate, avoid giving orders and avoid using force. Staff and residents are encouraged to socialize together. As a result of these changes, from 2016 to 2021, assaults among residents dropped almost 74%. Staff use-of-force incidents dropped nearly 86% in the unit that houses people with mental health disorders.

David Cloud, JD, Ph.D. who works at UCSF says, "We have this hidden public health crisis – not just among the people who live in the prisons, but the people who work there. If we're going to end the human rights abuses in our prisons, then we're going to have to really work on finding a way to show the people who work there a fundamentally different approach."

The realization that jails are housing more and more people with mental illnesses is affecting the design of new facilities in some cases. Newer jails are built more like secure hospitals than like detention facilities. "Newer jails have softer designs, controlled lighting that matches the day's progression, colors that provide warmth, materials that dampen sound, and daylighting that appeal to prisoners and corrections staff that must monitor them." Building facilities with these features does cost slightly more, but in relation to the cost of building a facility, the cost is pennies on the dollar.

Chicago Beyond has announced the creation of Holistic Safety Action Alliance (HSAA), a "multi-state coalition that will develop strategies to reduce physical and emotional isolation for people working and confined within correctional walls." The Cook County and San Francisco sheriff's offices will be working with national justice advocates to mitigate "the inherent negative impact of incarceration through significant investments in staff wellness programs and expanding family engagement opportunities for people incarcerated..." Cook County has already implemented trauma-informed, contact

visitation and San Francisco County has already made all jail calls free.

Chicago Beyond's vision for holistic safety is described in the document "Do I Have the Right to Feel Safe?" that names the five core tenets that we must address to curb violence and trauma inside and outside the correctional walls, and suggests changes related to each. Those tenets are as follows:

Value: The idea that we must respect and invest in our shared humanity and individual strengths.

Health: The physical, mental, and emotional wellbeing we need to thrive, not just be injury-free.

Connectedness: The concept that we are all intrinsically bound as human beings and we are served best when our ties are positive and strong.

Trust: Our earned – not blind – belief in people to not only fulfill their responsibilities, but to also act in a manner beneficial to themselves and others.

Personal Agency: Our capacity to determine our own future, from making day-to-day choices to identifying and accessing the resources we need.

Leaders of Chicago Beyond believe that the vision will only be realized if they empower the incarcerated, staff, survivors of crime, families, communities, correctional unions, justice advocates, and all impacted individuals.

The document provides examples of how to foster the five values in a correctional setting. Below we summarize some of those methods.

Fostering a sense of value:

- Create opportunities for individuals to use their unique skills.
- Engage with individuals so they feel seen and heard.
- Use people-first language, non-derogatory language.
- Create a culture of positive affirmation.
- Offer classes and training on cultural diversity.

Fostering health:

- Ensure access to health care, including mental health and addiction, for staff and the incarcerated.
- Create calming effect by leveraging natural light, bright light, greenery, peaceful music, access to open air and murals.
- Invest in research-backed nontraditional wellness programming such as yoga, meditation, drumming, art, gardening, etc.
- Create supports for direct and vicarious trauma by teaching strategies for self-care and providing professional support following traumatic events.
- Relay sensitive or unwelcome news in private with compassion. Provide phone calls, special visits and/or support services as needed for incarcerated individuals.

Fostering connectedness:

- Promote positive family engagement. Suggestions include in-facility events for families of staff and trauma-informed visitation and reduced barriers for telephone contact for the incarcerated.
- Collaborate with communities on reentry.
- Treat jails and prisons as the public institutions they are. Encourage tours for families, advocates, policymakers, lawmakers, and media; allow local nonprofits to use meeting rooms.
- Create spaces for staff and the incarcerated to engage with the outside community.
- Reduce barriers for volunteers.
- Use peer support programs for staff and incarcerated persons.
- Invite formerly incarcerated people to deliver speeches, programs, or workshops.

Fostering trust:

- Consistently record and respond to inquiries, concerns, and suggestions from staff, the incarcerated, and external community members.
- Reduce mass messaging that teaches and reinforces distrust among staff and the incarcerated.
- Establish transparency with the community and key stakeholders.
- Train staff and provide them with resources to constructively coach people.
- Promote co-participation (staff and the incarcerated) in programming, e.g. yoga classes or religious events).
- Provide spaces for the incarcerated and staff to talk about their lives outside of prisons. Research has shown that meals are a good time for this.

Fostering personal agency :

- Ask people what tools and resources they need to thrive and provide them.
- Provide opportunities to share institutional decision-making power.
- Implement programs proposed, developed, and/or led by incarcerated people or staff.
- Implement a comprehensive schedule of programs inside disciplinary units.
- Implement multiple career tracks for staff.

Administrators are key to these changes. As noted in the document, "Change cannot happen on the floor without buy-in from the top." Richard Van Wickler, retired Superintendent of Cheshire County in New Hampshire and current Board Member of the Law Enforcement Action Partnership is quoted, "This shift is not going to happen on the floor if correctional leaders do not believe it. People often do things wrong in practice that they would never get wrong on a quiz. That is the difference between training and culture. Training means nothing if you do not have a culture that manages it."

The report points out what is probably obvious: implementing these changes is not easy. Challenges include political pressure, limited human capital, staff turnover, budget

constraints, the slow pace of change, and us vs. them mindsets. It is important to understand and address these challenges.

A key element of unlocking holistic safety is empowering people with lived experience. It is not adequate to just listen. It requires a partnership. Not all of them will want to participate. They are a diverse group. Individuals who have experienced the most difficulty may provide the best input. The conversations may be difficult. Their input and commitment to change are vital to any progress.

Sources: "Prison reform and staff wellness are inextricably linked," by Caterina Spinaris, PhD, LPC, Corrections I, September 18, 2023; "Can Improving Prison Safety Stem the Corrections Workforce Crisis?" by Michael Friedrich, Arnold Ventures, August 1, 2023; "How Norway is helping to restore humanity inside U.S. prisons," by University of California, San Francisco, Phys.org, August 30, 2023; "New jail projects create more humane spaces," by Frank Jossi, Saint Paul Legal Ledger, July 31, 2023; "Chicago Beyond Partners with Jails in Chicago and San Francisco in First-of-its-Kind Coalition to Address Physical and Emotional Isolation," Chicago Beyond, June 28, 2023; "Do I Have the Right to Feel Safe? A Vision for Holistic Safety in Corrections" by Dr. Nneka Jones Tapia, Chicago Beyond, 2022

COMMISSARIES

The California legislature has introduced a bill that would change commissary prices to prohibit its prisons system from charging more than a 35% markup above the amount paid to vendors. SB 474 is awaiting Governor Newsom's signature. In Massachusetts, a budget bill has been introduced to prohibit charging more than 3% above the purchase price for commissary items.

The city of San Francisco ended markups in its jail commissary in 2019. Virginia and Nevada are considering limiting markups.

As noted in *The Sacramento Bee's* opinion piece, "Because prisons have a monopoly over the people they incarcerate, they are able to gouge prices far beyond retail prices in order to maximize profit. It's often impossible for incarcerated people... to afford these prices."

Source: "California prisons price gouge necessities, leaving inmates struggling to pay for soap," Opinion by Rachel Zarrow and Christopher Blackwell, The San Francisco Bee, October 1, 2023

PRISON TELEPHONE SYSTEMS

Free Phone Calls

On August 9, Massachusetts Governor Maura Healey signed legislation to eliminate charges for all kinds of communications (phone calls, video calls, email, and messaging) with people incarcerated in the state's jails and

prisons. The changes will be effective December 1, 2023. Massachusetts' families will save more than \$25 million annually. The changes will also limit commissary markups in all jails and prisons to 3 percent above an item's purchase price. Massachusetts is the fifth state to provide free phone calls, following Connecticut, California, Colorado, and Minnesota. A provision of the new bill prohibits jails and prisons from limiting communication access beyond current levels.

The national organization Worth Rises was instrumental in advocating for this change. They estimate that communication companies make nearly \$1.9 billion annually from contracts with jails and prisons throughout the country. The organization will be working on legislation next year in Hawaii, New Jersey, Pennsylvania, Rhode Island, Virginia, Washington, and Wisconsin.

A report issued prior to the pandemic estimated that one-third of American families with a loved one in prison go into debt as a result of phone costs. Eighty-seven percent of these costs are borne by women. Those calls are important because studies consistently show that individuals with strong social connections are less likely to reoffend when released.

Sources: Email, Worth Rises, August 9, 2023; "Massachusetts Is Set to Make Communications Free for Incarcerated People," by Alex Burness, BOLTS, August 4, 2023; "Is This The End of Prison Phone Fees?" by Robin Kaiser-Schatzlein, Mother Jones, September + October 2023 Issue

Michigan

On September 28, 2023, the following notice was posted via JPay:

The Michigan Department of Corrections is pleased to share that the prisoner phone rate will be reduced due to the new state budget negotiated by the MDCC and Legislature.

Effective October 1st, 2023, ViaPath (GTL) Prisoner Telephone Rates will be \$0.0735 per minute for all calls. This is a reduction of roughly 15%.

This rate includes all costs except applicable Federal, State, Local Taxes, and Federal Universal Service Fees.

International calls will be \$0.0735 plus the applicable call termination rate for the international destination of the call.

SEX OFFENDER REGISTRY LITIGATION UPDATE

The following update is from the *Does III* litigation team:

First, we want to thank you for your unwavering patience and commitment. Litigating a class action requires not only lawyers' time and work, but the collective effort and persis-

tence of everyone involved. Your trust, cooperation, and willingness to share your experiences have been instrumental in our pursuit of justice for all 45,000 class members.

To supplement the facts in the complaint, almost 300 class members submitted personal narratives about what it is like to live subject to SORA. We chose about 30 of them to give the Court firsthand accounts of the law's injustice. These accounts lend a human touch, and will give the judge a better feel for the real-world implications of living under SORA.

As you may recall, the judge let us know early in the case that he did not want to decide the legal issues piecemeal. He gave us a shortened discovery schedule to keep the case moving as quickly as possible. In discovery both sides gather documents and take depositions of some of the other side's witnesses and experts. The parties took 26 depositions, each of which requires lots of preparation and can generate half a day or more of testimony.

We were also able to gather extensive data about the class. Our experts were able to use it to create a detailed picture of who is on the registry. The class profile data will help us show that the registry has demonstrably harmful effects, as you all know. It affects jobs, housing, social and family relationships, use of the internet/social media, travel, mental/emotional health, etc. We now know that the average age of the class is over 50 years old, with many people's only sexual crime in the far distant past. Our experts were also able to show that thousands of class members pose no more risk of being convicted of a sexual crime today than do males in the general population with no history of such crime.

In discovery we also learned that some people with out-of-state convictions were being treated more harshly than people with Michigan convictions. The out-of-staters were not given a chance to contest their tier assignment or whether they were to be on the public or private registry, which we think violates their due process rights. In April, the Court granted our motion to amend the complaint to add a claim on their behalf, as well as our motion to certify an out-of-state conviction subclass. The case now has 11 claims for which we are seeking relief.

What's Next: Last week the Court entered a briefing schedule on the upcoming cross-motions for summary judgment. The briefing will be completed by late January 2024. If the Court wants oral argument on the case, that will probably be in late winter. If there are factual disputes that require a hearing, we expect that to occur in the spring or early summer. We hope to have a decision by fall 2024, and possibly sooner. We will also be working on a case in the Michigan Supreme Court (*Lymon*) which is another challenge to SORA 2021. We know that it is a long time to wait, but we have put together the strongest possible case we could, and there are lots of documents and legal arguments for the Court to consider.

Thanks for your cooperation and hard work during discovery. We will continue to keep you posted as *Does III* proceeds.

TRACKING LAW ENFORCEMENT MISCONDUCT

Most law enforcement personnel work hard to serve the public honorably. As with all occupations, there are individuals working in law enforcement who are not suited for the job. Holding those individuals accountable has proven to be a difficult task. According to the National Association of Criminal Defense Lawyers (NACDL), "There is no centralized system for sharing personnel information across states, nor a standard decertification process for officers." However, there is now a network of defenders working to create databases to track police misconduct. Since 2020, the NACDL has been working to help defenders develop this data. The Full Disclosure Project uses a software application developed by the Legal Aid Society in New York.

The data needed to populate these databases can be difficult to obtain. Some of the information is gathered from news articles, civil rights lawsuits and published legal findings. In some cases, defenders may witness misconduct in a courtroom or be told of inappropriate behavior by a client. But, police disciplinary records are often not subject to public disclosure. Even in cases where police departments post data on training and disciplinary histories, the information cannot be trusted. For example, one New York officer with no "applicable" discipline in the NYPD database had been sued 31 times for civil rights violations, resulting in \$1.46 million in civil fines. Requests for information have been met with protracted legal battles, exorbitant fee demands, illegal record deletions, and union objections. When data is received it may be voluminous, involve multiple datasets, and be presented without an index. Technology is being used to help organize this type of data.

Defender-led databases are seen as critical to changing the criminal legal system. Defense attorneys can hold the system accountable by using the information in court and identifying injustices. They also have a duty to seek and use this information. "The American Bar Association's Standards for the Defense Function explicitly state that counsel's investigation should include 'potential avenues of impeachment of prosecution witnesses.' In order to provide competent representation, defense attorneys must investigate the backgrounds, past conduct, potential biases, and credibility issues of police witnesses to effectively cross-examine them and challenge their testimony. With the ever-increasing availability of electronic information and advancements in technology, thorough online research and checking databases is arguably every defense lawyer's duty."

In other cases, patterns have been identified that can then be addressed. For example...

- Richmond, CA police dogs caused significant injuries at least once a month over a six-year period and were used disproportionately against Black people.
- Bakersfield, CA officers broke 45 bones in 31 people in four years, with no officers being held accountable.
- Bakersfield, CA police claimed that only 3% of people seriously injured or killed by police were "suffering directly from a mental health crisis;" the

analysis found that number to be 44%.

- Based on patterns it identified in the data it collected, the Legal Aid Society in New York initiated five lawsuits that resulted in changing police practices.

The Maryland Office of Public Defender began creating its defender database in 2021 with help from the Full Disclosure Project. As a result of that, they were able to...

- Get better outcomes for clients at every stage of a criminal case. Awareness of prior misconduct can inform every decision point, from conditions of release to judicial determinations about the lawfulness of a stop or jury deliberations about the credibility of a police witness.
- Hold police officers accountable. When defenders are able to expose officers with significant histories of misconduct in court, the officers are no longer trusted in the courtroom or able to testify, making it difficult for them to effectuate meaningful arrests and more likely they will be taken off patrol.
- Hold prosecutors accountable to fulfill their disclosure obligations, changing the culture of the criminal legal system.
- Expose the effectiveness or ineffectiveness of current accountability systems, such as internal affairs divisions or civilian complaint review boards.
- Identify problematic police practices and patterns.
- Monitor wandering officers, ensuring an officer does not leave their misconduct history behind by crossing a county border.
- Prevent wrongful convictions and enhance the ability of organizations to vacate convictions.

The report contains five recommendations for defender offices that want to create a defender database:

1. Make an office-wide commitment to track police misconduct.
2. Review all potential sources of misconduct data.
3. Train attorneys on how to access records and introduce them in court.
4. Save disclosures and investigations electronically.
5. Build an accountability coalition.

Source: "Dismantling the Blue Wall of Silence: Why Every Defender Should Track Law Enforcement Misconduct," by Julie Ciccolini, National Association of Criminal Defense Lawyers and NACDL Foundation for Criminal Justice, 2023

PUBLIC DEFENSE WORKLOAD STUDY

The Rand Corporation recently published the results of a national study designed to answer four questions:

1. If public defense attorneys complied with ethics rules and practice standards, how much time would be needed, on average, to represent individuals in adult criminal cases of varying case types?
2. How can these recommended average times (i.e., case weights) be used to establish caseload limits in a specific jurisdiction?

3. How can these case weights be used to help public defense providers and policymakers calculate budgetary and personnel needs and identify excessive workload conditions?
4. Are existing national workload standards for public defenders reasonable and adequate?

The need for such standards seem obvious. Reasonable workloads are essential to ensuring competent representation for clients.

To establish new standards, researchers performed "a comprehensive review and analysis of 17 state-level public defense workload studies conducted between 2005 and 2022." Working with a panel of 33 expert criminal defense attorneys from throughout the country, they reached consensus on the following average times:

- High-severity felony cases required the most time, on average: cases with a possible sentence of life without parole, 286 hours; murder cases, 249 hours; sex crimes cases 167 hours; and other high-severity felony cases, 99 hours.
- Mid- and low-severity felony cases required an average of 57 and 35 hours respectively.
- High- and low-severity cases for driving under the influence required 33 and 19 hours respectively.
- High- and low-severity misdemeanor cases required an average of 22.3 and 13.8 hours respectively.
- Probation or parole violation cases required an average of 13.5 hours.

The conclusion, then, was that the existing workload standards (established in 1973 by the National Advisory Commission on Criminal Justice Standards and Goals) are outdated, not empirically based, and inadequate.

"The new standards reflect expert attorneys' experience with current criminal defense practice, including digital discovery and forensic evidence, as well as the expanded scope of a criminal defense lawyer's obligations, including advising clients on collateral consequences."

Source: "National Public Defense Workload Study," by Nicholas M. Pace, Malia N. Brink, Cynthia G. Lee, Stephen F. Hanlon, The Rand Corporation, September 18, 2023

RISK ASSESSMENTS

The University of Michigan's Science, Technology and Public Policy program recently studied the use of risk assessment instruments used in making pretrial release decisions. They concluded that these instruments should not be used in administering pretrial programs. The report cites five problems.

- The tools overstate certainty and objectivity. Subjective judgments affect scores, results vary by jurisdiction, and different tools result in different results.

- The data used to compute scores is flawed and subjective. Historical arrest records and judgments about personal attitudes and familial ties are neither reliable nor neutral.
- The tools promote racial and socioeconomic bias. Since there is racial bias throughout our criminal legal systems, tools that rely on arrest histories are biased.
- The tools overestimate the likelihood of violence. Pretrial violence is so rare that it is unlikely a tool could accurately predict it.
- The tools overstate the risk of pretrial flight. The primary reasons that people fail to appear in court are missing a bus, inability to arrange childcare, inability to get time off work, clerical errors, or schedule misunderstanding. Many of these can be prevented with pretrial reminders by text or phone.

Source: "The Risks of Pretrial Risk Assessment Tools: Policy Considerations for Michigan," by Ember McCoy, University of Michigan Ford School of Public Policy, Science, Technology and Public Policy, May 2023

MICHIGAN FORENSIC SCIENCE TASK FORCE

In April 2021, Governor Whitmer created a task force to review the state of forensic science in Michigan and develop recommendations to improve the practice, delivery, and use of forensic science in the state. On December 21, 2022, the task force issued its report and recommendations.

Before drafting any recommendations, the task force gathered information on the use of forensic science in the state. They heard testimony about wrongful convictions involving forensic evidence, particularly in cases hinging on arson, bite marks, ballistics, and hair evidence. They also recognized that some wrongful convictions attributed to forensic science are actually problems with evidence collection or documentation, misconduct by investigators, withholding of exculpatory evidence, prosecutorial misconduct, or insufficient defense.

There is currently no database of forensic service providers and their credentials. Despite conducting two surveys, the task force was unable to develop a complete list of providers.

The Michigan State Police has seven forensic labs throughout the state; the second largest public provider is Oakland County. Both providers are accredited and have mature quality management systems. The Battle Creek Police Department also has an accredited lab which handles only seized drugs and latent prints. Little is known about other labs in the state.

The Task Force noted that given the rapid changes in technology, it is expensive for forensic science providers to keep up-to-date equipment and to provide adequate training. Employee retention is a challenge and the hiring/learning curve for technicians can be as long as three years.

While the Task Force had no way to determine the volume of

all forensic science work being done in the state, there are records for the largest provider. In 2021, the State Police Forensic Science Division (FSD) completed 69,037 analysis requests with a staff of 280. Not all of those staff members were analysts and some of the analysts' time was spent testifying in court. The FSD reported that, "...the number one complaint of our services is timeliness. In some forensic disciplines, we do not have enough capacity to meet the needs of the criminal justice community." They also reported that the average turnaround time for cases in various disciplines in 2021 ranged from 14 days to 68 days. Despite the fact that the volume of requests has been increasing, there has not been a corresponding increase in available resources.

The Task Force convened a group of defense attorneys to gather their views on access to forensic science case information. "They noted the limited access to the underlying case file, with difficult processes for access, and a tight timeline from when it would become available. They recommended a database system in the future to access case files and complete information, expansion of access to speak with the forensic analysts performing the work, and the need for a database that lists experts in different forensic science disciplines."

The Task Force also looked at how the courts evaluate forensic testimony. "...Michigan Rules of Evidence (MRE) 702 incorporates the Daubert standards of reliability." Under the Daubert Standard, the [trial court](#) considers the following factors to determine whether the expert's methodology is valid:

1. Whether the technique or theory in question can be, and has been tested;
2. Whether it has been subjected to publication and peer review;
3. Its known or potential error rate;
4. The existence and maintenance of standards controlling its operation; and
5. Whether it has attracted widespread acceptance within a relevant scientific community.

"However, in practice it seems that most state courts continue to routinely admit most forensic science offered by the prosecution, and defense attorneys rarely challenge such forensic science testimony. Defense attorneys likely fail to challenge forensic science evidence due to a lack of training. There are few opportunities to learn about forensic science evidence in law school, and Michigan does not have a mandatory continuing education requirement for attorneys. There are also no continuing education requirements in place for judges in Michigan (although a new requirement will take effect in 2024)."

Following its review, the Task Force issued a number of recommendations. The following is an overview of those recommendations:

1. Create a Forensic Science Statewide Body (FSSB)

2. Require Accreditation of Forensic Science Agencies
3. Require Registration of Forensic Science Experts
4. Establish a Standardized Statewide Process for Complaints and Investigations
5. Establish Model Policies for Disclosing Negligence or Misconduct
6. Provide Forensic Science Education and Information
7. Make Appropriations to Enable Best Practices in Forensic Science
8. Promote Independence of Forensic Science Work within Law Enforcement Agencies
9. Standardize and Streamline Access to Forensic Science Service Providers
10. Implement Practices to Promote Quality Control and Compartmentalization
11. Establish Forensic Science Practitioner Training Requirements
12. Require Continuing Education for Attorneys including Forensic Science
13. Require Forensic Science Evidence Education for Judges
14. Promote Accredited Training Programs for Studies of Forensic Science
15. Testimony – Amend Michigan Rules of Evidence 702 to Correspond with Proposed Amendments to Federal Rules of Evidence
16. Jury Instructions
17. DNA Evidence and Discovery

Legislation to address these recommendations has not yet been introduced.

LEGISLATION

Michigan Legislation

HB 4534 would require the Michigan Department of Corrections to provide information about voter registration to people being released from prison. Unlike some other states, individuals in Michigan are eligible to vote as soon as they are released from prison.

HB 4878 would create the Michigan Fair Chance Access to Housing Act to generally prohibit a landlord from using an individual's criminal record when evaluating the individual's rental application at any stage in the application process, except as provided by the act or under federal or state law.

HB 4625-4626, 4628-4630, 4633, 4636-4637, 4639-4640, and 4643 and SB 0418, 0421, 0425-6, 0428-9, 0432, and 0435-6 will reform the state's juvenile justice system. The legislation includes the utilization of evidence-based practices for risk screening tools and mental health screening tools, the elimination of most juvenile court fines and fees, and the expansion of juvenile defense and appellate services. The bills were voted out of the House on October 17.

HB 5175, 5176, and 5177 would amend different acts that govern college tuition assistance programs to allow

individuals who have been convicted of felonies or are incarcerated to be eligible for those respective programs.

SB 0599 would make several changes to the law governing medical paroles. Released individuals would no longer have to be housed in a medical facility and would no longer be subject to a risk assessment. It also expands the definition of medically frail to include "a terminal medical or mental health condition resulting in life expectancy of under 12 months."

NOTE: As this newsletter goes to print, there has been no significant legislative activity on bills involving Good Time, Earned Credits, or Second Look Sentencing.

SHORTS

Kudos to MRF: MI-CURE recently received a letter from an incarcerated member expressing gratitude for the efforts of the Recreation Director at Macomb Correctional Facility. Because of his efforts, older incarcerated men with physical disabilities may now participate in the new "Fit for Life" program, which provides opportunities for exercise and physical fitness.

Counting Deaths in Custody: In 2000, Congress passed the Death in Custody Reporting Act (DCRA). It required states to report the number of people who die during arrest or while in custody. The act authorized the federal government to financially penalize states that failed to report the data. Unfortunately, states have not complied and enforcement has been lax.

Roger A. Mitchell, Jr. and Jay D. Aronson have recently released their book *Death in Custody: How America Ignores The Truth and What We Can Do About It*. They argue that it is important for the public to know that people are dying unnecessarily from things like lack of mental health care, untreated acute drug withdrawal, treatable diseases for which treatment is not provided, and lack of timely health care. The authors assert that, "death in custody occurs on a continuum from first contact with law enforcement through release from custody." Without good data, it is impossible to know how big the problem is, which law enforcement agencies are doing a good or bad job, which policies will lead to fewer deaths, and what changes are occurring over time.

Mitchell and Aronson argue that there should be a death-in-custody checkbox on the U.S. Standard Death Certificate to facilitate collection of accurate data.
Source: "Unlocking the Black Box of In-Custody Deaths," by Chris Blackwell, The Appeal, September 6, 2023

Prosecutorial Accountability: Michael P. Heiskell recently began his term as president of the National Association of Criminal Defense Lawyers (NACDL). One of his first initiatives was to create a Task Force on Prosecutorial Accountability. Heiskell began his legal career as a prosecutor, because as a Black attorney he wanted to have a voice on behalf of people who historically were not heard during charging decisions and because he wanted immediate

trial experience. His ultimate goal was to become a defense attorney.

Looking back on his career, he makes several observations. While most of his colleagues behaved professionally, he recognized that “one bad prosecutor can destroy a lot of lives, and our system simply does not do enough to address this reality.” His orientation and training for the role of prosecutor did not include rules, standards, and best practices related to overreach and possible misconduct. He also believes that nearly every defense attorney has experienced some form of prosecutorial misconduct.

The mission of the new task force is as follows:

“Prosecutorial misconduct undermines truth-seeking by, and public confidence in, our criminal legal system and contributes significantly to wrongful convictions. For this reason, the task force will investigate the impact of unethical or illegal tactics by prosecutors, including withholding of favorable evidence, use of unreliable informants, taking unreasonable and obstructionist positions in post-conviction claims of actual innocence, and other unfair tactics. The task force will explore and develop solutions, including legislation, policies, and practices, to promote prosecutorial accountability.

Source: “From the President: NACDL’s Task Force on Prosecutorial Accountability,” by Michael P. Heiskell, The Champion, August 2023

Illinois to Ease Parole Conditions: As a result of recent legislation, beginning in January 2024, parole and mandatory release supervision in Illinois will be a bit easier. Individuals will not be required to take a drug test unless there is reasonable suspicion of drug use that can be documented. Supervised people will be able to meet with their agents by telephone or other electronic communication, rather than required to meet in person. The term of supervision will be reduced by 90 days for anyone who earns an associate degree, vocational technical certification, or other educational standard. (Currently, only individuals who earn a high school diploma or equivalent are granted a 90-day reduction.)

Source: “New law loosening post-prison conditions is latest criminal justice change under Gov. J. B. Pritzker,” by Jeremy Gerner, Chicago Tribune, July 28, 2023

Juvenile Life without Parole: This year, Illinois, Minnesota, and New Mexico have abolished life without parole sentences for juveniles. There are now 28 states that prohibit such sentences.

Source: “Just an Opportunity to Come Home,” by Daniel Nichanian, BOLTS, June 29, 2023

WITH SYMPATHY

Since publication of our last newsletter, we have learned of the death of MI-CURE members Tom Kennedy.