



# MI-CURE NEWS

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## CAPITOL RALLY

On October 14, 2021, an estimated 300 people gathered at the state capitol for a rally organized by the National Lifers of America and sponsored by many other organizations. Speakers, including some who are incarcerated and spoke by phone, highlighted many ways to reduce Michigan's prison population. Those included implementation of good time, ending racial disparities, addressing wrongful convictions, and ensuring the right to vote for those impacted by the justice system. Senators Stephanie Chang and Jeff Irwin discussed their plan to introduce "Second Look" reforms that would allow courts to reconsider long sentences after the individual has spent some time in prison. At one point, Senator Chang asked attendees to name the people they were there to represent. Hundreds responded by shouting the name of a loved one who is incarcerated.

The Second Look legislation is not expected to be introduced soon. We will report the details when it is introduced.

*Sources: "Advocates for 'second look' prison reform rally at Michigan Capitol," by Erica Murphy, Fox 47, October 14, 2021; "Injustice anywhere is a threat to justice anywhere': Criminal justice reform rally at the Capitol," by Noah Edgar, October 15, 2021; "Rally, legislation call for giving Michigan prisoners 'second look,'" by Samuel J. Robinson, mlive.com, October 18, 2021*

## PRISON MAIL POLICIES CONTINUE TO CAUSE FRUSTRATION

Mail is important to people who are incarcerated and to their loved ones. Being able to read and re-read a letter or handle a card that was specially selected for you can provide comfort and a sense of connection that is not otherwise possible while incarcerated. Receiving a photograph or a picture drawn by a child can brighten a day and give lasting joy. Unfortunately, those experiences are becoming less frequent throughout the country as prison systems implement mail policies that are questionable at best.

A group of defense attorneys and incarcerated individuals in Massachusetts have filed a proposed class action suit against the Department of Corrections and the Sirchie Acquisition Co. LLC arguing that the system used to test mail for drugs is wrong nearly 80% of the time. The test reacts with chemicals commonly found in paper and falsely concludes letters are contaminated. Since a positive test can limit an individual's

eligibility for parole or contact with family, incarcerated people have begun refusing mail from attorneys.

The Florida Department of Corrections has proposed changes to curb contraband entering its prisons. Original mail would be scanned to a digital copy that could be viewed on a tablet or kiosk. Black and white printed copies would cost 25¢ a page or \$1 for a color copy page. Routine mail would be limited to 15 pages, back and front, per envelope. Article clippings and photographs could still be sent, but blank greeting cards would be prohibited. Mail processing time would change from 48 hours to 72 hours. One formerly incarcerated man was quoted, "So much of being incarcerated is just dealing with the profound separation and loneliness that comes from almost-total isolation from everyone who was ever important to you. To have FDC take that from so many people, people who have so little and are so desperate for hope and healing, it is truly egregious." Tracy Zuluaga, administrative assistant with the nonprofit Florida Cares, commented, "...all this is going to do is further disconnect them from their family."

In March 2020, the Federal Bureau of Prisons began a pilot program in two facilities to replace letters with scanned copies. The pilot ended in June 2021, but the bureau is considering expanding the program. The Knight First Amendment Institute at Columbia University has filed a suit seeking records related to the "digitization, retention, and surveillance of mail sent to people incarcerated in federal jails and prisons." The suit argues that "pervasive surveillance has already chilled the expression of members of the public who otherwise wish to send mail to people incarcerated in correctional facilities." We all know that physical mail has been reviewed by staff for a long time. But the new systems operated by private entities store the correspondence in electronic databases. One of those companies is Smart Communications. Their website touts that "MailGuard® creates a searchable database and opens a whole new filed of intelligence for your agency." Mail scanning highlights two major problems with American prison systems. One is that the systems use private contractors that exploit and price-gouge incarcerated people and their loved ones. The other major problem is that prison systems work hard to isolate people who are incarcerated and then act surprised when people have a difficult time reentering society.

The rationale for most of these policies is to keep drugs from entering the prison system. The dangers here are increasingly being challenged.

One fairly common misperception is the danger associated with touching or inhaling fentanyl. David Juurlink, a

toxicologist at the University of Toronto reports, “If you have fentanyl powder on your hand for five or ten minutes, it’s inconceivable that that would be sufficient to cause you to have an overdose.” A research report produced by the American College of Medical Toxicology “found that industrial workers who produce fentanyl require 200 minutes of exposure, unmasked to have 100 mcg of the drug in their system. That still isn’t enough to overdose.” A group of researchers for the International Journal of Drug Policy have written, “Concerns about supposed occupational risks of fentanyl exposure to police have been especially persuasive in invigorating hyper-punitive laws, including drug-induced homicide and capital punishment for distributing this supposed ‘weapon of mass destruction’. Given the fraught history of U.S. federal government messaging and policymaking in the wake of 9/11, the invocation of this trope is especially telling.”

The First Step Act, passed by Congress in 2018, contained a provision to require the federal prison system to expand access to medications for people addicted to opioids. There are three medications available. Methadone and buprenorphine (trade name Suboxone) activate the opiate receptors in the brain, quieting compulsive cravings associated with addiction and making it difficult to get high or overdose. Because they are opioids, they can be abused. But, “(d)ecades of research show that they reduce drug use, overdose, death, crime, and risky behavior like sharing needles.” The third medication, Vivitrol, is not an opioid. It blocks the opiate receptors and prevents the patient from getting high. It is effective at preventing some of the bad outcomes associated with opioid use, though it is newer and has been subject to fewer years of research.

Correctional administrators have resisted using methadone and buprenorphine. Michael Botticelli, former Director of National Drug Control Policy for the Obama Administration disagrees with the resistance. “They don’t see it necessarily as a medical disease that has highly effective treatment. If this were any other medical condition, would we see this level of lethargy in terms of implementing what is the standard of care of treatment for a disease?”

Though Vivitrol is favored by corrections, it is not commonly prescribed in the community. Dr. Josiah Rich, an addiction specialist for the Rhode Island prison system claims that methadone or buprenorphine are more effective because people favor them and are more likely to seek them when they are released from prison. That is important because the risk of overdose death is 129 times higher among those just released from prison than among the general population. By providing all three medications in its jails and prisons, Rhode Island reduced overdose deaths among recently incarcerated by 60% in two years.

At least 20 states now offer one or both medications in most or all of their state prisons. Justice officials have threatened to sue at least three correctional agencies, arguing that failure to provide all three medications may violate the rights of people with documented opioid addictions.

In a recent editorial, Josiah Rich and Rosemarie Martin argued that the best way to stop the smuggling of addiction treatment medications into prison is to make them available in the institutions. The Rhode Island Department of Corrections has been providing medication treatment for addictions since 2016. There has been no evidence that smuggled buprenorphine has led to overdoses. There have been numerous fentanyl overdoses. “Amid an overdose crisis of historic proportions, even smuggled buprenorphine is safer than not having it available. Realizing this fact, Rhode Island recently decriminalized unprescribed buprenorphine possession, as has Vermont.”

*Source: “Mass. Defense attorneys say drug test falsely flags client mail,” by Diana Jones, Reuters, July 28, 2021; “Handwritten letters are all Florida prisoners have left. Now FDC wants to take that away,” by Danielle Ivanov, The Gainesville Sun, August 1, 2021; “Prisons Are Increasingly Banning Physical Mail,” by Mia Armstrong, Slate, August 9, 2021; “Why Do the Media Keep Uncritically Repeating Implausible Police Fentanyl Overdose Stories?” by Billy Binion, Reason, August 9, 2021; “These Meds Prevent Overdoses. Few Federal Prisoners Are Getting Them,” The Marshall Project, August 10, 2021; “Opinion: We need treatment, not more of the same,” by Josiah Rich and Rosemarie Martin, Providence Journal, August 15, 2021*

## **FOOD SERVICE LEARNING FROM OTHERS**

In 2013, the Washington State Department of Corrections moved food service activities to its Correctional Industries (CI). At CI, all food is prepared at a centralized site, packaged, and delivered to the prisons for reheating and serving. The industrial model eliminated cooking locally grown food from scratch in favor of packaging, transporting and serving highly processed food products.

Michigan, of course, has never centralized food preparation. But it has centralized food sourcing, imposed uniform menus, eliminated local sourcing of fresh foods, and eliminated cooking from scratch. In this case, the inspiration was cost reduction and the actors were private vendors hired to provide food service for the entire system.

On October 25, 2016, Prison Voice Washington produced the report, “Correcting Food Policy in Washington Prisons,” in which they described the problems caused by centralizing food service throughout the system. Many of their observations are relevant to the current situation in Michigan.

Prior to the changes in Washington, prisons grew their own food, maintained dairies and bakeries, saved money by sourcing food locally, and cooked natural, unprocessed foods. Incarcerated food service workers learned to cook and bake professionally and could leave the system with marketable skills. The range of fresh vegetables included more than carrots and celery. They regularly served unprocessed lean meats, rather than those that are highly processed with high sodium and fat contents and textured vegetable protein. To

highlight the problems with highly processed foods, the report notes that, “At a Sustainability in Prisons Project site that composts food at one Washington prison, difficulties were encountered when even compost worms would not eat certain types of highly processed CI food.”

The report notes that the diet offered by CI is often supplemented with aspartame-sweetened, fortified drinks and observes that dietary guidelines are meant to meet nutritional requirements without supplementation.

The report points out that a more nutritional diet would be a responsible preventative action. Many of the diseases that are prevalent in prison (hypertension, diabetes, and heart disease) can be prevented or mitigated with an appropriate diet. High levels of sodium are especially discouraged for Blacks and the elderly. High sodium levels are common in processed foods.

The report points out that the typical prison commissary list contains all non-refrigerated, prepackaged items with no good selection of healthy foods. They contain “an enormous selection of debilitating junk food, including dozens of varieties of candy, sugar drink mixes, processed high-fat, high-sodium meats, sugar coated breakfast cereal, refined flour crackers, and cookies.

It is true that, in the short term, healthy food costs more than unhealthy food. The difference is not very significant, and is offset by other factors. Healthy food improves the mental and physical health of those who are incarcerated and reduces recidivism rates. Poor food quality becomes a security risk by creating unrest. Tim Thielman, president of the Association of Correctional Food Service Affiliates was quoted, “years of penny-pinching on food can be wiped out in minutes if a riot erupts over the quality of food.”

*Source: “Correcting Food Policy in Washington Prisons,” Prison Voice Washington, October 25, 2016*

### RETHINKING LONG SENTENCES

In 2011, Nancy Gertner retired as judge in the U.S. District Court of Massachusetts. She wanted to write a book “for a lay audience about the actual work of sentencing the human beings who had appeared before me – what I knew of them, the decisions I made, how they should have been treated in a humane criminal legal system, and how they were not. Not even close.”

She asserts that all judges find sentencing the hardest part of their job. Because of her background as a criminal defense and civil rights attorney she found it to be excruciating. It was more difficult because she was a judge “when the American criminal justice system went off the rails.” Mandatory minimum sentences and mandatory guidelines left no room to consider the impact of addictions, trauma, and mental health, or the impact of imprisonment on families or communities. “Congress stopped asking what works to deter crime and literally picked round numbers out of the air – sentence

lengths 5, 10, 15 years.” She wanted her book to focus on how the system treated people as categories and reduced judges to functionaries. She wanted to make sure that the country never does that again.

Before she wrote the book, and by accident, she began meeting with people she had sentenced. She was surprised to learn that while she was furious about the way the system/she had treated them, the individuals with whom she spoke were not angry. They were not angry at the system, the prosecutors, their lawyers, or her. As a result, the book did not turn out as planned. It still included what she knew about the defendants when they were in court, what she did at sentencing and what she should have done. But, in addition, it included how little she knew about them, how much she missed. And how distorted her vision was.

She points out that while the book includes only a small selection of cases, there were many more. Those included in the book are “not aberrations in an otherwise fair system. They *were* the system.” “I had sentenced hundreds and hundreds of men (mostly men) to sentences 80 percent of which I came to believe were unfair, unjust, and disproportionate.”

The book is *Incomplete Sentences*, (Beacon Press).

In 2018, California passed Assembly Bill 2942 that allows district attorneys to recommend that courts reconsider old cases and issue new, lighter sentences. Those sentences can include people who were convicted of violent offenses. At least 75 people have been resentenced under the law. In most cases, they were released from prison quickly.

Now the state will provide funds to nine district attorney offices to help examine more cases. The offices for the pilot program were selected to reflect diverse geography and demographics in order to demonstrate that the program will work throughout the state and the country. It is worth noting that two other states (Oregon and Illinois) have passed similar laws in the past year.

Santa Clara County District Attorney Jeffrey Rosen spoke of the time required to carefully evaluate cases and perform risk assessments. That evaluation includes talking with victims. He pointed out that while some victims are more supportive than others, he has never had a victim that said the incarcerated person should remain in prison forever.

*Sources: “Unfinished Business,” by Nancy Gertner, Inquest, August 3, 2021; “New State Funding Boosts Prosecutor-Led Resentencing Efforts in California, by Matthew Green, KQED, July 26, 2021*

### WOMEN SERVING LONG SENTENCES

Michigan ranks fourth highest among state that sentence women to life without parole. Currently, 173 women are serving that sentence in the state. Nationwide, one of every 15 women in prison (over 6,600 women) are serving a life

sentence or a virtual life sentence of 50 years or more. Nearly 2,000 are serving life without parole (LWOP). Nationwide, one of every 39 Black women in prison is serving life without parole, compared with one of every 59 imprisoned white women. In Michigan, one in 11 Black women is serving LWOP. In Michigan, 57 of the 203 women serving LWOP have been sentenced for felony murder, which means they were involved in a crime where someone died, but they were not directly responsible for the death.

“Between 2008 and 2020 there was a 2% increase in the number of women imprisoned for a violent crime, and a 19% increase in the number of women serving life sentence. This includes a 10% increase in the life with parole population and a staggering 43% rise in the number of women serving LWOP sentences.”

Psychiatric disorders, histories of physical and sexual violence, and previous suicide attempts are prevalent among women serving life sentences. Though we now understand more about the impact of trauma (almost all who commit violence have first experienced it.), it is seldom considered as a mitigating factor when courts mete out punishment. Our criminal justice system was designed by and for men. It does not account for the important differences in the experiences and needs of women.

*Source: “In the Extreme: Women Serving Life without Parole and Death Sentences in the United States,” by Ashley Nellis, Ph.D., The Sentencing Project, National Black Women’s Justice Institute, and the Cornell University Center on the Death Penalty Worldwide, 2021*

## RACE AND PRISONS

According to a recent report by the Sentencing Project, Black Americans are incarcerated in state prisons at nearly 5 times the rate of white Americans. One in 81 Black adults per 100,000 in the U.S. is serving time in a state prison. Michigan is one of 12 states in which more than half the prison population is Black. Latinx individuals are incarcerated in state prisons at a rate that is 1.3 times the incarceration rate of whites.

A number of factors contribute to the disparities. Policing policies that target specific areas and focus on low-level crimes that allow a high degree of discretion are problematic. Pre-trial detention disproportionately impacts Black defendants due to income inequality. The use of criminal history in sentencing decisions affects Black defendants more than white defendants, because of policing policies. Prosecutors are more likely to charge Black defendants under habitual offender laws than similarly situated white defendants. Disproportionate social factors such as poverty, employment, and housing also contribute to the problem.

The report recommends three solutions. Scale back the use of prison for low-level drug offenses and invest more in prevention and intervention. Scale back punishments for serious crimes, especially those that trigger long sentences for

repeat offenses. Produce racial impact statements for new laws to forecast the effect of the proposal on people of different races and ethnicities.

The Ohio Black Judges Association recently came out in support of a mandatory criminal sentencing database compiled by race. In 1999, the Ohio Commission on Racial Fairness reported, “...the consensus of the available research acknowledges that minorities are more frequently sentenced to prison, and generally receive harsher penalties than do whites.” The commission then recommended that criminal sentencing data be compiled to better understand the problem. Those recommendations were ignored. The Black Judges Association is now arguing that the data be compiled. “It is our collective judgment that only through transparency can justice truly be served.”

*Source: “The Color of Justice: Racial and Ethnic Disparity in State Prisons,” by Ashley Nellis, Ph.D., The Sentencing Project, 2021; “Opinion: Ohio’s Black judges support creation of a criminal sentencing database,” by Nadine Allen and Ronald Adrine, The Enquirer, August 15, 2021*

## WHAT CAN BE DONE TO PREVENT WRONGFUL CONVICTIONS?

Nationwide, nearly 200 wrongful convictions have been attributed to false testimony by jailhouse witnesses. Minnesota has now become the eighth state to pass legislation to address this problem. A new law requires prosecutors to report the following when using jailhouse witness testimony: benefits offered to the witness, any other cases in which the witness has testified, and any cases in which the witness previously recanted testimony. The prosecutors must also notify the victims of jailhouse witnesses’ crimes of any leniency or benefits provided in exchange for the testimony.

Philadelphia District Attorney Larry Krasner announced charges against three former homicide detectives who made false statements that led to the wrongful conviction of a man who then spent 25 years in prison for a rape and murder he did not commit. The detectives then repeated the false testimony decades later. Krasner’s Conviction Integrity Unit (established in 2018) has helped to exonerate 22 people, 18 of whom were Black men. The detectives who have been charged worked on at least four of the cases that have been overturned.

The Innocence Project recently reported on 20 state-based reforms in 16 states that they have assisted partner organizations to accomplish. Those include the following:

- Ohio and Washington passed laws requiring police to record interrogations.
- Delaware passed similar legislation that was awaiting the governor’s signature at the time of the report.
- Illinois became the first state to ban police deception of juveniles.
- Oregon passed legislation to prohibit police deception of young people during interrogations.

- Virginia passed a law to make closed criminal investigation files open to the public.
- West Virginia passed a law to enable people to seek relief from a conviction when science has evolved or when experts repudiate past testimony.
- New Hampshire made positive changes affecting post-conviction DNA testing.
- Montana and Maryland passed new compensation laws to provide more money for exonerees.
- Idaho became the 36<sup>th</sup> state to pass a compensation law affecting those wrongfully incarcerated, on parole, or on the sex offender registry.
- Rhode Island passed its first-ever compensation law.
- Minnesota passed a law to track and regulate the use of jailhouse informants.
- Oregon passed a law to improve the discovery framework and Connecticut made significant improvements in its discovery framework through the courts.
- Maryland became the first state to implement a complete regulation of the use of non-suspect DNA in criminal investigations.
- New Mexico abolished qualified immunity; New Mexicans can now recover damages from the government when their rights are violated by government employees, like police officers.
- Michigan established a Task Force on Forensic Science through an Executive Order.
- Maryland passed a statute to make police disciplinary records publicly available.
- Virginia became the first southern state to abolish the death penalty.

*Sources: "New limits on jailhouse witnesses part of Minnesota push to undo wrongful convictions," by Stephen Montemayor, Star Tribune, August 8, 2021; "3 Former Cops Charged In Wrongful Conviction That Sent A Man To Prison For 25 Years," by Jessica Schulberg, Huffpost.com, August 13, 2021; Email from the Innocence Project, August 16, 2021*

### GOOD TIME LEGISLATION

We have received a significant number of inquiries about the status of good time legislation. Two very different sets of bills have been introduced. Each set remains in committee, with **no substantial action** taken at this point. It is impossible to know whether either set of bills might be passed by the legislature. Below is a brief explanation of the bills.

Senate Bills 649-652 are currently in the Senate Committee on Judiciary and Public Safety. If the bills become law, an incarcerated person who has not been found guilty of a major misconduct in a calendar month would receive good time credit for that month equal to the number of days in that month. No credits would be given for a month in which the person was found guilty of a major misconduct. The good time would be applied to both the minimum and maximum sentence. Any good time not earned as a result of a major misconduct must never be earned or restored. The good time

credits will be calculated and applied for each individual who is incarcerated on the date the law becomes effective.

HB 4670-73 are currently in the Committee on Rules and Competitiveness. These bills, if enacted would award productivity credits to incarcerated individuals who participate in and complete educational programs, vocational programs, or other programs recommended or approved by the Department of Corrections, as well as for successful completion of a high school diploma, high school equivalency certificate, or higher education degree. The credits would only apply to individuals sentenced after the effective date of the change. Individuals sentenced to life without parole or eleven other offenses would not be eligible to earn the credits. Individuals who score very high risk on a validated risk and needs assessment or who are assigned to a level V or VI housing unit are not eligible to earn credits.

### MAKING EDUCATION AVAILABLE TO THOSE WHO ARE INCARCERATED

We have read about a number of initiatives to provide educational opportunities for people in prison. Some are unique. Other are extensions of existing programs. Many involve using community resources. We applaud them all. Below are descriptions of some of these efforts.

The U.S. Department of Education will expand the "Second Chance" Pell Grant experiment for the 2022-23 award year. Up to 200 colleges and universities will be able to offer prison programs. (The current number is 131.) Students in this program have earned over 7,000 credentials. The change will expand the geographic range of the program with a goal to serve most states. Students will be able to access the grants beginning on July 1, 2023.

Maureen Onyelobi recently became the first woman to take the Law School Admission Test (LSAT) behind bars. Incarcerated in Minnesota, she had help from the Prison-to-Law Pipeline, a nonprofit that offers paralegal and law degrees remotely.

In 2009, New Mexico paired formerly incarcerated people with currently incarcerated people to form a peer education program. The goal was to reduce recidivism. The program was so successful that it has now been expanded to include peer support for probationers and parolees. At the time of the report, 64 people were participating and 269 had completed it. Of those who completed it, 128 were still participating in weekly workshops. Because of the pandemic, the contact is virtual. Peer educators help with many issues, including housing, employment, navigating documents and processes related to supervision, and using technology.

With a grant from the Austin E. Knowlton Foundation, Augustana College is offering a 4-year bachelor's degree program to individuals incarcerated at East Moline Correctional Center in Illinois. Though the technology is missing, all other aspects of the program are consistent with what occurs on campus.

Georgetown University in Washington, D.C. is now accepting applications for a program that will allow individuals incarcerated in Maryland to get a college education. Twenty-five individuals who are selected for the program will be transferred to the Patuxent Institution for the five-year program that will begin in January 2022. Students will earn a liberal arts degree with a specialty in cultural humanities, interdisciplinary social science or global intellectual history. The program is funded by a grant from the Andrew W. Mellon Foundation.

Imagine Justice, a non-profit organization founded by artist Common, has donated all the equipment needed to establish a state-of-the-art music studio at the Statesville Correctional Center in Joliet, Illinois. Common was quoted, "I know personally how music can heal and allow the human spirit to be free regardless of your environment. I wanted to offer a world class studio experience to support these residents as they are committed to changing their lives." A 12-week course, taught by songwriter Antony Abla, includes lessons in song writing, audio engineering, and music production. Each individual who completes the course will reportedly earn time off his sentence.

The Royal Credit Union is offering financial literacy training at the Chippewa Valley Correctional Treatment Facility in Wisconsin. The program includes training in skills such as banking literacy, credit, and budgeting. The information is shared in a 90-minute class once a week and has proven to be valuable to those preparing to leave the system.

Florida State University and the Florida Department of Corrections are partnering in a unique program. It offers incarcerated young adults with special needs and obstacles the opportunity to earn their General Education Degree (GED) while also addressing topics such as mental health and emotional and behavioral challenges through art therapy. The program has been so successful that the university and state negotiated a new, three-year program that will double the program's size. The program is funded with an Individuals with Disabilities Education Act (IDEA) multi-year grant.

*Source: "Second Chance Pell Grants Program Expands to 200 Schools in 2022," by Gabriela Felitto, The Crime Report, August 2, 2021; "Inmate becomes first woman to take law school test in prison," by Liz Collin, KESQ.com, August 17, 2021; "Peer education initiative for prisoners goes mainstream," by Matthew Reisen, Albuquerque Journal, September 14, 2021; "Augustana Prison Education Program launches at East Moline Correctional Center," by Tayla Faggart, KWQC, October 4, 2021; "Georgetown University accepting applications for bachelor's degree program for Md. Prisoners," by Ken Duffy, WTOP, October 4, 2021; "State prison's new music studio sends message of 'purpose and hope'," by Staff of 25Week, October 6, 2021; "RCU program teaches inmates financial literacy," by Chris Vetter, October 13, 2021; "Florida Department of Corrections expand Art Therapy in Prisons program," by Ann Prentiss, FSU News, October 14, 2021*

## WHAT'S HAPPENING WITH MICHIGAN'S SEX OFFENDER REGISTRATION ACT?

In separate cases, Michigan's previous sex offender registration act was found to be unconstitutional by the Sixth Circuit Court of Appeals, the federal district court and the Michigan Supreme Court. The legislature, in response to the lawsuits, passed a new law that became effective on March 24, 2021. The court rulings cited above do not apply to the new law. Registrants must follow the new law until there are court rulings related to it.

The new law is different from the old law though the American Civil Liberties Union (ACLU) of Michigan and the State Appellate Defender Office (SADO) do not believe it solves all of the constitutional problems with the old law. The organizations describe the new law as follows: "It remains a conviction-based law, it still has a three-tier system, and it does not change the 15-year, 25-year, and lifetime reporting requirements. It continues the retroactive extension of pre-2011 registrants' registration terms (e.g. lengthening the 25-year registration period to life). It continues to require extensive reporting of all sorts of information, often within three business days and in-person. Tier II and III registrants remain on the public registry. (Tier I registrants remain in a law-enforcement-only database.) The public registry no longer lists the tiers, but can now include posting of a person's email and internet information. There is no individualized review nor any path off the registry in most cases. In other words, the basic structure of SORA remains unchanged."

There are positive changes in the new law. It is no longer a crime to live, work, or "loiter" within 1,000 feet of a school. (Parole, probation, and similar restrictions can still apply.) Registrants may now attend their children's and grandchildren's school events, though schools can make their own policies. Individuals can no longer be prosecuted for unintentional or mistaken violations; prosecution must prove the violation was "willful." People whose offenses are expunged, set aside, or who successfully complete a term of supervision under the Holmes Youthful Trainee Act can now be removed from the registry.

The ACLU is preparing a lawsuit to challenge the new law. It will be filed as a class action. If the court certifies the class, the lawsuit will include all people on the registry. Registrants will not have to take any action to be included. The focus of the suit will be "the need for individual review and a process for removal from the registry... specific claims for pre-2011 registrants (including reduction of registration terms to at most the pre-2011 length), as well as specific claims for other groups of registrants."

*Source: "Michigan's Sex Offenders Registration Act: Updates on the Law and Legal Challenges," ACLU of Michigan and State Appellate Defender Office, September 13, 2021*

**FOR INDIVIDUALS ON LIFETIME TETHER**

If you or someone you know is on Lifetime Tether in the State of Michigan, please consider contacting [wash@micitizensforjustice.com](mailto:wash@micitizensforjustice.com). The group Michigan Citizen's For Justice is a support and advocacy organization for people affected by Michigan's sex offense laws. Some of its members are actively working to eliminate, or at least change, Michigan's mandatory lifetime tether law. They are looking for help from people who are negatively impacted by this law. They want to hear your story. They can share your story anonymously, use just your first name, or (best) let you tell your story yourself to a legislator. If you want to contribute to this advocacy effort, please contact [wash@micitizensforjustice.com](mailto:wash@micitizensforjustice.com)

## SHORTS

**Balancing Justice:** California Governor Newsom recently signed a bill that will compensate low-income San Francisco jurors \$100 a day for jury service. Many people in San Francisco could not afford to take time off from work for jury service and did not have employers who would pay them. The change is expected to make juries more economically and racially diverse.

*Source: Gov. signs bill to pilot higher compensation for low-income jurors in SF!* The San Francisco Financial Justice Project October 13, 2021

**Maternal and Post-Partum Health Care:** Governor Whitmer and the Department of Corrections have announced a policy directive designed to improve the health of incarcerated pregnant and post-partum women and their newborns. Some portions of the policy affirm practices already in place. Major features of the policy are as follows:

- Every pregnant woman will have an opportunity to develop a birth plan in consultation with health care staff and can work with a doula.
- Every woman can designate a support person to be present at the hospital and provide support for the woman and baby.
- A woman may be restrained for no more than one hour and only if others are at risk. She will not be restrained during labor.
- Visitation between a post-partum woman and her newborn will only be restricted in extreme circumstances; a woman will be allowed to breastfeed the newborn during visits.
- A woman will have access to peri-natal and post-partum vitamins as determined by the birth plan and can participate in Medication Assisted Treatment if appropriate based on substance use disorder history.
- The MDOC will develop new training for staff and ensure appropriate staff are trained annually in managing pregnant and post-partum women.

**JPay Fined by Regulators:** The Consumer Financial Protection Bureau (CFPB) has concluded that JPay has "engaged in unfair and abusive acts." JPay required individuals leaving prison to set up an account with JPay

before they could receive a debit card with the money due them when released, i.e. money saved from work while in prison or state benefits. The CFPB determined that the fees attached to those debit cards were, in some cases, different from the fees disclosed on the cardholder agreements. JPay must now pay \$4 million to reimburse people who were overcharged and \$2 million in civil penalties. Under the agreement, JPay cannot attach any fees to its release cards except for an inactivity fee after 90 days.

*Source: "CFPB orders prison banker to pay \$6 million for charging inmates 'unfair fees,'" by Aaron Gregg, The Washington Post, October 19, 2021*

**The Problems with Electronic Monitoring:** A recent study by the George Washington University Law School has concluded that the systems "set people up to fail." Among the problems cited were the following: Monitored individuals must agree to rules "that undermine family and social relationships." The rules make it impossible for individuals to do things like take out the garbage, work in the yard, or take someone to a doctor. Fees charged range from \$2,800 to over \$5,000 a year – a cost most monitored people cannot afford.

"Electronic surveillance is not an alternative to incarceration, it's an alternative form of incarceration."

*Source: "Electronic Monitoring 'Sets People Up to Fail' Study," by TCR Staff, The Crime Report, September 24, 2021*

**MDOC Must Provide Kosher Holiday Meals:** The U.S. Court of Appeals for the Sixth Circuit has ruled that the Department of Corrections must provide kosher meat and dairy products on the Sabbath and on the Jewish holidays of Rosh Hashanah, Yom Kippur, Sukkot, and Shavuot. The ruling upheld a previous district court ruling.

*Source: "Michigan Prisons Must Provide Kosher Meals to Jewish Inmates on Holidays, Federal Appeals Court Rules," by Marisa Sarnoff, msn.com, October 12, 2021*

**MDOC Changes Health Care Providers:** The Department of Corrections has entered into a \$590 million contract with Grand Prairie Healthcare Services. Grand Prairie will provide medical care and will reportedly partner with the company Wellpath, which will provide nonclinical support such as human resources, finance, and legal services. *The Detroit News* reports that controversies involving Wellpath have appeared in several publications.

A Wellpath vice president reported that the change will result in savings of 20% for the state. MDOC public information officer Chris Gautz stated that the company's value comes from experience in crisis intervention, providing weekend and night shift care and medication practices that could lower pharmacy spending. He also noted that Michigan has the country's oldest prisoner population, including people in their 80s. In the state's prisons, doctors are largely contracted by companies. Other health care providers, such as nurses, are employed by the state.

*Source: "Controversial provider takes over health care for Mich. prisoners," by Emerson Wigand, Capital News Service, The Detroit News, October 3, 2021*

**Problems with Mental Health Care in Illinois Prisons:**

Five years ago, in response to a class action suit (*Rasho v. Jeffreys*), mental health care for people incarcerated in Illinois was declared unconstitutional. A recent review by an independent court monitor, Dr. Pablo Stewart, has found that the same problems still exist. Those problems “include an inappropriate use of solitary confinement, failing to properly manage medication, failing to provide adequate treatment plans and extended ‘crisis watches’.”

Stewart reported, “The overwhelming cause of this lack of performance, in the opinion of the Monitor, is lack of adequate clinical and custody staff. Until this vexing problem is addressed, the Department will unfortunately fall short of its responsibilities to the *Rasho* class members.”

*Source: “‘Unconstitutional’: Mental health access in Illinois prisons fails to meet standards,” by Kallie Cox, The Southern Illinoisian, October 5, 2021*

**Oregon Governor Grants Clemency to Juvenile Offenders:**

In 2019, the Oregon legislature passed SB 1008, a law that eliminated life without parole sentences for crimes committed by minors, made it more difficult to prosecute juveniles as adults, and created early-release opportunities for individuals who showed rehabilitation. The bill only applied to individuals sentenced after that law was enacted.

In October, Governor Kate Brown commuted the sentences of over 70 people who were excluded from SB 1008 and who committed crimes before they were 18 years old and are serving sentences of 15 years or more. Those individuals now can now petition the Board of Parole and Post-Prison Supervision for release after serving 15 years in prison. The order excludes individuals who are serving time for crimes later committed as adults and those with a release date of 2050 or later. (Those individuals can still petition the governor for clemency.)

The governor wrote a letter in which she noted, “SB 1008 takes into account the fact that these youth are capable of tremendous transformation. For these reasons, I have no doubt that the above-referenced list will be comprised of many individuals who have demonstrated exemplary progress and considerable evidence of rehabilitation, and who – unfairly - did not benefit from the effects of SB 1008.”

*Source: “Oregon Governor Grants Clemency To Dozens Of People Who Committed Crimes as Kids,” by Jessica Schulberg, Huffpost.com, October 21, 2021*

**WITH SYMPATHY**

Since publication of our last newsletter, we have learned of the deaths of MI-CURE members and supporters Patricia Biggs, Darnell (Donny-B) Bolden – 142399, Robert “Silk” Cannon – 153591, Clemente Paul Pena – 225120, and Michael Barry Whalen,