MCLS NOTES

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MCLS Sponsors Prisoner Health Care Forum

- DOC's medical and mental health staffs were *reduced* by 85 positions in February and March in response to the Governor's budget cuts; further cuts in the budget for the fiscal year beginning in July will likely require further staff reductions;
- Prisoners are five times more likely to have HIV/AIDS than the general population, nine to ten times more likely to have Hepatitis C, and up to seventeen times more likely to have tuberculosis (TB);
- A 2002 national survey of prisoners in local jails revealed that 68% had not had any medical exam since arrest, while a 2004 survey of state and federal prisoners showed non-exam rates of 20% and 14% respectively.

More than 90 people turned out to learn more about the need for better prisoner health care at a panel discussion sponsored by MCLS and the Boston Bar Association on March 11. The forum, held in the conference room of the Supreme Judicial Court, featured five experts in prisoner health care, including both practitioners and academics. The panel's focus was the generally poor state of prisoner health care, the public health and safety issues raised by substandard care, and what needs to be done to address the crisis.

Prisoner health care is in a state of crisis. It is supposed to be, but almost never is, comparable to health care in the community where the prison or jail in located. Now, prisoner medical and mental health care will surely get worse as correctional budgets are slashed and already stretched medical and mental health care staffs are drastically reduced. The crisis affects not only the more than 25,000 men and women behind bars in Massachusetts, but all communities to which former prisoners return.

The first panelist, Dr. Wesley Boyd, is a psychiatrist who teaches at Harvard Medical School. Dr. Boyd described the generally poor state of prisoner health care

in the U.S. described in a just-published national survey that he co-authored. Dr. Boyd opened his presentation by noting the astronomical incarceration rate in the USA: at 750 people per 100,000, it dwarfs the rates in Britain (148), Norway (75) and even China (119). The U.S. has 5% of the world's population, but 25% of the world's prisoners, each of whom has a constitutional right to health care. The survey found that American prisoners struggle with poor access to health care even though 40% report suffering chronic illness, far higher proportion than non-incarcerated Americans of a similar age. Compared to the population at large, prisoners are 31% more likely to have asthma, 55% more likely to have diabetes, and 90% more likely to have suffered a heart attack. Dr. Boyd reported that 68% of jail prisoners surveyed had *never* received a medical examination since being incarcerated, a statistic that underscores the health risk prisoners face from simply being imprisoned. The percentage of unexamined prisoners was better but still unacceptable for state prisoners (20%). Almost all (97%) of prisoners are eventually released.

Dr. Boyd spoke about the plight of mentally ill people in jail: 39% of prisoners in jail were not taking their medications at the time of their arrest, along with 30% of state prisoners. But only one-third of prisoners with serious mental illness, including schizophrenia and bipolar disorder, were even being treated at the time of their arrest. This led Dr. Boyd and his co-authors to conclude that improvements in community health services and outreach and substance abuse treatment might lower both crime and incarceration rates.

Dr. Boyd also noted in his concluding remarks that many prisoners with serious physical illness as well as many who suffer serious physical assaults fail to receive care while incarcerated. Addressing prisoners' physical and mental disabilities during incarceration is a critical step to their successful reintegration into society, and "will improve the health of the general community and improve existing health disparities in our communities," he concluded.

Dr. Scott Allen, the next panelist, spoke from his years of experience as a medical provider in the Rhode Island correctional system, including three years as medical program director. Dr. Allen is also co-director of The Center for Prisoner Health and Human Rights at the Brown University Medical School in Providence, RI. Dr. Allen spoke of the challenges of administering a correctional health care system, with its revolving door population, the lack of control of flow of prisoners, including sudden arrivals and, just as often, sudden and unannounced departures. He discussed the financial pressures on prison health administrators: health budgets are being cut even as health costs continue to rise with the increase in the number of prisoners, a larger proportion of whom are elderly and ill. He described the prison culture as abusive and punitive, with often lax oversight and ineffective internal self-policing. Conflicting loyalties muddy the picture as well: practitioners have professional duties to their prisoner patients, but loyalties and obligations to their employer, the prison system itself, pull in a different direction.

Dr. Allen underscored the serious harmful effects of prison on individuals. Among other things, prisons isolate; prisons dehumanize; their culture is corrupting; and prolonged isolation can cause lasting negative mental health effects. But prisons also present some important opportunities, including the chance to screen and diagnose for illnesses and disease, to provide treatment, and to educate. Dr. Allen emphasized that these opportunities can only

be realized through systemic criminal justice reform, however. Alternatives to prison and incarceration are sorely needed, sentencing laws and guidelines need to be rethought, correctional facilities and their inhabitants need to be more closely tied to the community.

Kamala Mallik-Kane, the lone female panelist, directly tied prisoner health to chances of successful reentry. A researcher at the Urban Institute in Washington, D.C. and co-author of the 2008 report, "Health and Prisoner Reentry: How Physical, Mental, and Substance Abuse Conditions Shape the Process of Reintegration," Ms. Mallik-Kane spoke first to the overall poor health of prisoners, echoing Dr. Boyd's findings. According to her report, virtually all reentering prisoners – 8 in 10 men and 9 in 10 women – reported chronic physical or mental health conditions requiring treatment or management. Just as important, two-thirds of respondents reported active substance abuse within the six months prior to incarceration. These findings indicated the depth of the challenges that returning prisoners face. Following release, two-thirds of prisoners lacked insurance, and the rates of treatment for specific health conditions declined, sometimes dramatically. Fully 25% reported using an emergency room within ten months of release, which indicates that many received care for chronic conditions only when their problems became acute.

The report found that reentry success varied by health status. Prisoners with health or substance abuse conditions were less likely to have lined up housing before release than their healthy counterparts. Mentally ill men and women had particular problems with homelessness after release. Reentering prisoners with serious health problems were less likely than their healthy counterparts to find and hold regular employment. Again, the population of

reentering prisoners with mental illness had the poorest results, although interviewees with substance abuse problems reported the highest amount of criminal activity and irregular (i.e., "under the table") work. Not surprisingly, substance abusers reported the highest re-incarceration rate within one year of release.

Ms. Mallik-Kane called for a more accurate assessment of health needs both upon incarceration and release since nearly all prisoners have physical, mental, or substance abuse problems, and more than one-third have co-occurring conditions. Early intervention is a necessity: prisoners must secure health coverage and public assistance *before* release. Returning prisoners should be linked to community-based providers, an effective health care program option that Sheriff Ashe, the fourth panelist, described in detail. Finally, individualized, client-centered discharge planning was needed for every prisoner with health problems.

Hampden County Sheriff Michael J. Ashe described the strategy he has used for many years at his jail and house of correction: a "continuum" of health care. At the Ludlow jail, health care is provided by the same clinics – and often the same doctors and nurses – that serve the community at large. Prisoners are matched with health care providers who have offices

in their home neighborhoods. A prisoner with hepatitis C, for example, will likely be set up so that when he or she is paroled, the continuity of care will involve visits to the same doctor who was treating him or her in jail. Hampden County appears to be the only facility in Massachusetts that systematically ties inside and outside health care together in this way.

Joel Thompson, the fifth panelist, is a staff attorney and co-chair of the Health Care Project at MCLS. He recently received an award from the Boston Bar Association for his dedicated service to the health care needs of incarcerated people. Joel spoke of the daunting challenges to correctional health care as reported by prisoners themselves. Noting that health care is the number one issue among prisoners who contact MCLS, with over 500 new health care matters last year. Mr. Thompson described the significant obstacles prisoners face in receiving adequate medical care.

Problems tend to fall into three broad categories. First, difficulties that many prisoners face conveying critical information to providers. This is particularly hard for prisoners with mental health issues. It also is a problem for the many for whom English is not their first language, as well as for those who have trouble reading and writing. Many prisoners are also intimidated by the process and by unsympathetic health care staff.

The flow of information from prisoner to health care worker is obviously not the only problem. Responses from health care staff to prisoners can take months, and often there is none at all. Sick slips go unanswered, test results are not conveyed, and the recommendations of outside consultants and (on occasion) health care staff themselves are overridden by administrators. Prisoners are regularly in the dark about their conditions and diagnoses, and feel the system simply is not interested in genuinely helping them. The health care administration is often non-responsive as well, particularly to grievances. This builds mistrust between prisoner patients and health care providers.

Already shorthanded, health care staff face deeper budget cuts that are already shrinking their numbers significantly. This means more stress in an already tense environment. Providers looking to stop prisoner patients who are allegedly seeking medication they don't need or otherwise trying to manipulate the system sometimes overreach to the point of denying legitimate requests for help.

What can advocacy do? Joel made clear that his advocacy is focused on filling in the two-way communication gap outlined above. Much of the effort is directed at securing information through releases, obtaining records, sometimes conferring with outside experts, and then supporting the client in making the best case with DOC and its providers.

All the panelists agreed: better health care in prisons is a critical component of an improved criminal justice system. Better health care means a better shot at a successful release. It means a healthier prison community as well as a healthier society. Ultimately it means a healthier, safer life for people on both sides of the wall.

MCLS' speed dial phone number for state prisoners is automatically authorized on all DOC pin cards. The speed dial number is *9004#. The office accepts calls about new matters on Monday afternoons from 1 to 4 (Tuesday, if Monday is a holiday). County prisoners should call (617) 482-4124, collect, during that same time.

Lawyers Learning About CORI and the Collateral Consequences of Criminal Convictions

Increased attention to the importance of CORI as an impediment to getting jobs, housing, and social benefits has prompted professional education opportunities for lawyers who wish to more effectively serve clients with these issues. Massachusetts Continuing Legal Education will hold a class on May 20 that will teach attorneys how to obtain a copy of a client's CORI, read and understand it, correct errors, determine if it can be sealed, and how to seal it. Lawyers will also learn about

- CORI and the role of the Criminal History Systems Board and the Department of Probation
- Who can access CORI
- Debunking myths about the advisability of CORI sealing
- What types of convictions can be sealed
- What convictions can never be sealed
- Sealing of "aged out" convictions
- Sealing drug offenses and other cases through the court process
- Sealing dismissed, nolle prossed, or "not guilty" cases
- The legal standard and case law governing sealing of non-convictions
- First Amendment Rights of Public Access to CORI
- Governor's Executive Order on CORI
- Legislative and Other Initiatives to Reform CORI
- Dealing with "Open" or "File" Cases and Criminal Aspects of a Client's Record
- Special Considerations When Considering Sealing a Conviction for an Undocumented or Immigrant Client

Of interest to prisoners and ex-prisoners is that lawyers who agree to take one pro bono CORI sealing case over the next year will be able to attend the course for only $25, a fraction of its regular cost. Hopefully this training will make more attorneys available to people facing the unfair and seemingly endless complications of CORI.

Help With CORI-Related Problems

A community organization called the Boston Workers' Alliance is offering CORI advocacy to assist people who have issues getting work, housing, or social benefits because of CORI. Boston Workers' Alliance is located at 411 Blue Hill Avenue in Dorchester and is open Monday to Friday 10 A.M. to 6 P.M. The phone number is (617) 606-3580. They have a website at http://www.BostonWorkersAlliance.org and an email address, which is info@BostonWorkersAlliance.org.

If you have been denied housing or a job because of a criminal record background check, you can also contact the Massachusetts Law Reform Institute at 617-357-0700 ext. 504 or 1-800-717-4133 ext. 504.

Help with CORI sealing may also be available by calling the Legal Advocacy and Resource Center (LARC) at (617) 603-1700.

Will the Obama Administration Offer A "New Deal" For Prisoners?

The United States has less than five percent of the world's population, but a quarter of the world's prisoners. This amounts to well over 2 million people. With these figures, it is hardly surprising that many of us wonder where our new President stands on criminal justice policy and prison reform.

The McCain-Obama race was, unusually, largely silent on the issue of crime, criminal justice, and prison reform. Indeed, some voters expressed frustration that as a presidential nominee, Obama never mentioned the prison industrial complex, although he did pledge to put 50,000 additional police officers on U.S. streets. Last month, activist and University of California Santa Cruz professor Angela Davis, expressed the sentiment of prisoners' rights advocates when she stated that she wanted to see more of a focus from this administration on prison reform.

The President has not so far implemented prison policy beyond signing into law the closure of the Guantanamo Bay detention center. That action, however, is more about the "War on Terror" than "conventional" prison policy. He does have something to say on the topic of prisons and criminal justice reform, however. Currently on his presidential website, President Obama pledges to reduce recidivism by creating a prison-to-work incentive program and eliminating barriers within systems of corrections so that ex-prisoners may more easily find jobs. And during his campaign, he said that among his civil rights priorities was the elimination of the grossly disparate punishment of crack cocaine related crimes compared to powder cocaine crimes, which Regan-era legislation he deemed a "mistake." His stated priorities also include greater prisoner reentry support and opportunities for some first time, non-violent offenders to serve their sentences in rehabilitation centers rather than behind bars. The President has also publicly noted the problem racial disparity in incarceration poses to society, and has acknowledged that the criminal justice system does not affect people equally.

President Obama supported reforming crack cocaine sentencing laws while serving as a United States Senator. Senator Biden introduced, and Senator Obama cosponsored, the Drug Sentencing Reform and Cocaine Kingpin Trafficking Act of 2007, which would have eliminated the 100 to 1 quantity-based sentencing disparity between crack and powder cocaine. The legislation did not make it to a vote, but if passed it would have moved federal law enforcement efforts away from neighborhood drug sellers and towards large-scale drug traffickers. On January 7, 2009, a similar bill was introduced, supported by a large number of cosponsors. It has since been referred to three committees in the United States House of Representatives.

Before he was elected president, Obama was an early sponsor of The Second Chance Act, introduced in the Senate by Vice President Biden and signed into law in April 2008. Still awaiting funding approval in the Senate, the Second Chance Act aims to reduce recidivism by giving federal grants to nonprofits that provide reentry services and assistance to released prisoners in areas such as housing, education, job training, substance abuse prevention, mental health, and mentoring. In a preliminary budget for fiscal year 2010, President Obama continued to support the vision of this newly enacted bill by requesting $109 million for prisoner reentry programs, with $75 million of that

amount allotted to the Second Chance Act specifically. Likewise, last September, at the Third Annual Prisoner Reentry Summit held in San Francisco, the President applauded the city's efforts to reduce recidivism and reiterated his commitment, if elected, to create opportunities for former prisoners.

The outlook for an improved executive position on capital punishment seems dim. While in the Senate, Obama opposed legislation making it easier to impose the death penalty in some scenarios, but he has also supported making capital punishment an option in others. That attorney general Eric Holder is against the death penalty does not affect its continued practice, though some are persuaded its use – at least by federal prosecutors -- will now be more limited.

Some believe Biden brings much of the hope to the table when it comes to criminal justice issues. In July of last year, he introduced the Justice Integrity Act (yet to make it to a vote), aimed at increasing public confidence in the criminal justice system through exercising oversight of the process and analyzing the causes of any racial and ethnic disparities found within it. But according to Silja J.A. Talvi, journalist and senior editor of In These Times, Obama himself, during his seven years as an Illinois senator, sponsored more than 100 bills on crime, corrections, treatment, re-entry, racial disparities and the death penalty that were overwhelmingly progressive.

Though Obama's record of legislative support and sponsorship, as well as his public statements of support for some pro-rehabilitation policies may be indicative of where federal policy is headed, little has yet been accomplished. The President is, after all, overwhelmingly focused on the economy. According to Talvi, supporters of prison reform hope that the new administration will take heed of recommendations from the U.S. Sentencing Commission as to how to alleviate prison overcrowding, which will likely include sentencing alternatives such as drug treatment, and increased judicial discretion.

Over – Classification: The Never – Ending Story

Every prisoner in the Massachusetts DOC system knows that classification is a mess. Massachusetts has a grater proportion of prisoners in maximum security and a smaller proportion of prisoners in minimum security when compared to the average of all states. When this was publicized two or three years ago there was "movement" to fix it, and classification repair remains one of the stated objectives of the Clarke regime. So far, not so good.

The percentage of DOC prisoners in maximum, medium and minimum security changed little from 2003-2008.

	2003	2008
Maximum	17%	16%
Medium	73%	71%
Minimum	10%	13%

MCLS is looking at problems with the DOC classification instrument. We would like to hear from people whose classification status has been affected by any of the following ways:

Severity of Convictions Within the last 7 years - You received points for convictions in juvenile court or for convictions where the arraignment date was more than seven years from your reclassification date;

History of Escapes - You received points even though you did not receive a disciplinary hearing or a criminal trial;

History of Prior Institutional Violence - You received points for something that happened either: (a) while you were not serving your current sentence or (b while you were in a juvenile facility or (c) for which you did not receive a disciplinary hearing or report;

Number of Disciplinary Reports - You received points for multiple d-reports even though two or more of the tickets arose out of the same incident;

Code C override because you are subject to civil commitment - You received an override even though (a) you have not been convicted of one of the sex offenses listed in c. 123A, or (b) you will not have to register as a sex offender, or (c) you have been excused from participating in the DOC Sex Offender Treatment Program;

Code F override (conviction for a crime involving loss of life or a crime while incarcerated) even though you are not currently serving such a sentence;

Code B or Code M for an outstanding legal issue that did not relate to the length of your potential sentence, or because DOC did not have the "official version" of the crime for which you were convicted;

Code R - High notoriety of the offense;

Code S - Prior criminal history;

Code T - Institutional negative adjustment;

Code U - Safe, orderly operation of the facility.

If your classification has been affected by any of these problems, please mail a letter describing the situation along with your classification papers to **MCLS Classification, 8 Winter Street, 11th floor, Boston, MA 02108.**

Overcrowding Snapshot

DOC Population 12/29/2008: 11,245
County Population 12/29/08: 12,890
Total: 24,135

County total includes DOC prisoners in county houses of correction.

Criminal Justice System Controls Four Percent of Massachusetts Residents

A national survey of prison policy by the Pew Center for the States that was released at the beginning of March indicates that one in every 24 Massachusetts residents was either actually incarcerated, on probation, or on parole at the end of 2007. Massachusetts is fifth in the country in the proportion of its state population that is under some form of criminal justice supervision, and is spending at least 1.25 billion dollars per year on these social controls - most of it on prisons and jails.

Massachusetts has the third highest rate of community supervision of all the states. One in 28 adults or 179,854 people were under parole and probation control at the state and federal level. It is worth noting, however, that along with Massachusetts' heavy reliance on community supervision, the state has a relatively low proportion of its residents actually behind bars - one in 128, which places the state 47th. By contrast, one in every 50 residents of Washington, D.C., is behind bars.

Supervision in the community is far cheaper than incarceration. The state spends an average of $130 per day to jail people. That sum covers 18 days of parole supervision.

At the end of 2007 there were 7.3 million Americans on probation or parole. This is more than three percent of the adult population of the country.

High In-State Collect Call Rates?

MCLS is considering action to address the high cost of collect telephone calls from county jails and houses of correction. We are interested in hearing from family members and friends of prisoners **who live in Massachusetts** and pay high rates for calls from county facilities. If you receive high collect call charges for in-state calls, please write to MCLS attorney Brad Brockmann at MCLS / Prisoners' Legal Services, 8 Winter Street, Boston, MA 02108, or by email at bbrockmann@mcls.net. Thank you.

MCLS understands that collect charges for calls to **other** states are an even bigger problem for prisoners who must make them. Such interstate calls are being addressed by an administrative proceeding filed in 2003 by the D.C. Prisoners' Project and others which is pending before the Federal Communications Commission, the national agency charged with overseeing and regulating interstate telephone calls. A ruling is unlikely to come before the Obama administration appoints new commissioners in 2009. MCLS is monitoring that proceeding and will put news of any important developments there in this newsletter.

Who's Who at MCLS

MCLS staff changes from time to time. This is the current line-up.

A**ttorneys:** Leslie Walker, (Executive Director), Jim Pingeon, (Litigation Director), Peter Berkowitz, Brad Brockmann, Peter Costanza, Lauren Petit, Bonnie Tenneriello, and Joel Thompson.

Paralegals: Al Troisi (Supervising Paralegal), Alphonse Kamanzi, Amelia Alex, and Inna Fain (Brutality and Civil Rights Project). Ms. Fain replaces Karim Wahid, who is now in law school.

Do You Know of a Prisoner Who Needs Help Communicating With MCLS?

MCLS Notes is available in Spanish. But MCLS is looking for information about prisoners who speak neither English nor Spanish or who otherwise need additional assistance communicating with MCLS. If you know of such individuals who need translation help please write or call MCLS and let us know about them.

Currently, there are MCLS staff members who speak Spanish, Portuguese, French, Swahili, Kinyarwanda, and Russian.

Incarceration Rate Per 100,000

India = 30

Norway = 75

China = 119

UK = 148

Russia = 628

United States = 750

Massachusetts Correctional Legal Services
Eight Winter Street, 11th Floor
Boston, MA 02108-4705

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Permit No. 58866

Speed Dial phone number for MCLS for state prisoners: *9004#

MCLS has arranged with the DOC for a **toll free speed dial number** that is accessible to all **state** prisoners on the PIN system. **County prisoners must call collect on (617) 482-4124.**

Families and friends of prisoners can also call MCLS for free on 1-800-882-1413 toll free from anywhere in the state. Prisoners who cannot reach us by phone should write to: MCLS / Prisoners Legal Services, Eight Winter St., Boston, MA 02108.

Regular call-in hours are 1:00 to 4:00 on Monday afternoons unless it is an emergency, in which case you can call whenever you can get a phone during business hours (9:00 A.M. to 4:00 P.M., Monday to Friday). On weeks when Monday is a holiday, MCLS accepts calls on Tuesday from 1:00 to 4:00.

En la oficina de MCLS (Servicios Legales para Prisioneros) se habla español. El número directo de MCLS para los presos del DOC es *9004#. Los presos de los condados deben llamar el número (617) 482-4124 (a carga reversada).