



PO Box 1318 Concord, NC 28026

On The Wire

Volume 6 Issue 2 11/2020

Director's Corner Citizens United for Restorative Effectiveness

join in the conversation with CPP and offer



Dear Friends, We sincerely hope this letter finds you doing well. For the last eighteen months the Executive Board of Directors and Elizabeth Forbes, Interim Director, has been focused on finding the right candidate to lead NC-CURE into its next phase of advancement.

We are delighted and honored to announce, we have finally found that leader. Dr. Sandra Hardee will be serving in the role of Executive Director, effective as of October 1, 2020.

Dr. Hardee holds a degree from the University of North Carolina at Chapel Hill (PharmD, 5/84; BS 5/74) and has a diverse background in Pharmacy and Medicine, including specialization in diabetes care. In addition to her medical expertise, she and her husband Ron have advocated for criminal justice reform for sixteen years, working with incarcerated men and women in North Carolina. We are truly grateful to have Dr. Hardee join our criminal justice advocacy coalition, and hope you have the opportunity to extend her a warm welcome.

Dr. Hardee has already sprung into action. On October 17th, 2020, she

attended a virtual event on *COVID in US Prison and Jails*. Co-Hosted with the Harvard Petrie Flom Center For Bioethics, the Stanford Law School Center for Law and the Bio sciences, the Marshall Project, the Wilson Center for Science and Justice at Duke Law and the Yale School of Public Health. As a result of attending this event, NC CURE has been invited to work with the *COVID Prison Project (CPP)*. CPP is a national initiative formed to take a deep look into the ongoing impact the virus has had on people incarcerated and their surrounding communities. The initiative will focus on what Correction officials across the nation are doing to address COVID-19 health outcomes for the prison population. NC CURE is excited to have the opportunity to its support in preventing the spread inside our prison facilities in North Carolina. We are also cognizant that due to the nature of incarceration, Correctional leadership is faced with an unprecedented challenge in dealing with Covid-19. Through NC CURE's COVID awareness advocacy efforts we hope to assist the prison population and prison staff. We invite you to drop us a line and share your experience. For additional information on the CPP ini

tiative, please refer to page 7.

On a much lighter note, by now you should have been advised of the CARES Act Stimulus Relief for Incarcerated Recipients and received IRS form 1040. You are eligible to file a claim if you satisfy all of the requirements provided to you by the facility. Note, although the deadline for mailing claims is November 4, 2020 according to the ACT, inmates should be permitted to submit them even after that date. We would like to hear from you should you have difficulty applying for the funds or accessing your funds once deposited into your trust accounts. Please refer to page 6 for additional information.

Over the last eight years NC-CURE has advocated against "Felony Stigma" and other collateral consequences of having a criminal record. NC-CURE believes that once a sentence has been completed, punishment should not last a life time, blocking opportunities to independence. On June 25, Gov. Cooper signed into law The Second Chance Act (SCA) SB 562. The SCA expands expunction opportunities and streamlines the process, making it easier to apply. Unfortunately, the SCA does not help those with a class A

through G felony or a Class A1 misdemeanor under G.S. 15A-145.8.

Due to structured sentencing, Habitual Felon laws combined with the complex sentencing grid, many were charged as violent felons who never committed a violent crime. We will continue to advocate for legislation
Continued on page 4

Who We Are , What We Do

NC-CURE is a grassroots 501(c)(3) nonprofit criminal justice reform organization, that

advocates for humane prison conditions, effective programs and meaningful reentry support. We work with people incarcerated, their families, friends and others interested in criminal justice reform.

NCDPS Strategic Plan for 2020-2024

Under the leadership of new Commission of Prisons, Todd Ishee, the NC Division of Prisons Strategic Plan begins with a mission and vision statement.

As one team, the Mission of the NCDPS is to protect the public and our staff by operating a safe correctional system based on integrity, innovation, community consistent healthcare, respect and duty to promote excellence throughout our system.

NCDPS is committed to build a premier correctional organization based on integrity, respect, innovation and evidence to provide for the safety of all, while reducing recidivism and promoting the successful reintegration of our offenders as law-abiding citizens.

Following are the Strategic Planning Goals and *selected* Strategies:

1. Maintain safe, secure, humane and orderly institutions to protect the citizens of North Carolina and those who work and reside at our facilities.

Strategy 1.14 Develop incentives for the offender population providing incentive award time for maintaining good conduct and not participating in violent behavior. A 3-year study will be conducted to measure the efficiency and effectiveness of these incentives and determine if they achieve a goal of safer institutions.

2. Improve technology to enable

staff to complete tasks efficiently, communicate effectively and enhance the safety and security of institutions.

Strategy 2.5 Develop program curriculum for the use of tablets provided to offenders. The goal is to provide educational and other programming targeting the offender audience with more specificity.

Emphasis to be provided for offenders most in need as determined by evidence.

Strategy 2.11 Pilot a program of video visitation at 3 facilities to evaluate if it reduces contraband found to enter facilities through in person visits and if such a program increases the number of visits which an offender receives.

3. Develop strategies for staff recruitment, retention, morale and wellness.

Strategy 3.5 Improve pay and benefits.

Strategy 3.6 Work on cultural shift having an orientation less on punishment of offenders to a more human-services approach. Research suggests such a cultural shift would enable the hiring of new talent and a reduction of recidivism.

4. Enhance communications across all disciplines and stakeholders fostering interdisciplinary decision-making.

5. Develop, enhance and improve evidence-based programs and cog

nitive behavioral interventions to allow for the development of coping skills, reduce recidivism, and provide opportunities for successful transition into our communities.

Strategy 5.2 Decrease the rate at which offenders are returned to prisons by at least 5% over the next five years.

Strategy 5.3 Develop and implement vocational programs for offenders in "green" industries across the state.

Strategy 5.6 Establish designated reentry models at medium and close custody facilities.

6. Provide for continuing staff training to maintain and enhance technical skills, improve the supervising of others, develop abilities



DEPARTMENT OF PUBLIC SAFETY

to lead change, and motivate others all while understanding the conflicting roles presented by corrections.

7. Innovate the delivery of health services to allow appropriate access and equity with a community standard of care, while recognizing public stewardship responsibilities.

Strategy 7.1 Implement Telehealth statewide.

Strategy 7.2 Restructure medical services by implementing primary care provider teams statewide consistent with institution acuity levels.

Strategy 7.3 Activate Long-term care facility at Central Prison Health Care.

Strategy 7.6 Expand Substance Abuse beds in prisons.

8. Maximize operational efficiencies across all Correction Enterprises' industries.

9. Maintain Correction Enterprises' financial sustainability through increasing the cash balance and retained earnings.

10. Evaluate and study each part of this plan for costs to ensure the best efficiencies are realized to en

able funding as the result of efficiencies are reallocated.

OTW: Each of these goals has specific and detailed strategies for implementation. We should expect positive action for prison reform in NC over the next several years. A full version of the Strategic Plan can be found on the NCDPS website.

On The Wire | November 2020 2

What is Senate Bill 562? NC Second Chance Act

After months of organizing, advocacy, and having 1,000+ community members take to the capitol in 2019, the Second Chance Act (SB 562) was signed into law by Governor Roy Cooper on June 25th 2020.

One in 4 North Carolinians have criminal records, creating devastating "collateral consequences" that impact housing, employment, and other opportunities.

The Second Chance Act is a bipartisan "clean slate" bill that will expand eligibility for expunging nonviolent criminal convictions after a waiting period, and automates expungement of certain dismissed or "not guilty" charges. This bill allows prosecutors to petition for expungement for dismissed or "not guilty" charges and Raise the Age convictions, and allows individuals to petition for expungement of multiple nonviolent misdemeanor convictions after 7 years of good behavior.

How the Second Chance Act/SB 562 provides clean slate relief:

Raise the age expunctions

Any Misdemeanor or Class H or I Felony committed before Dec. 1, 2019 by a person between the ages of 16-18 (at the time of the offense) can

file a petition for expunction after an active sentence, probation and post release have been completed and there are no restitution orders outstanding. District Attorneys can now file these expungement petitions, which provide an opportunity for mass relief efforts.

You cannot file for expunction if: A. The violation was for motor vehicle laws under Ch. 20 including impaired driving.

B. The violation requires registration pursuant to Article 27A of Ch. 14 The forms to file an expungement under these criteria will be made and distributed by Sept. 1, 2020. There is a \$175 filing fee through the court for this expungement.

Expunction for charges not resulting in conviction

Felony Conviction no longer blocks these expungements.

One Dismissal: If a person has a dismissal of a misdemeanor or felony, the court shall order expunction. **Effective: Dec. 1, 2020.** Petition based: Must file with court.

Multiple Dismissals: If all charges are dismissed the court will order an expungement and if some of the charges are dismissed the court may order expungement. **Effective: Dec. 1, 2020.** Petition based: Must file with court.

Finding of Not Guilty: A person

charged with a misdemeanor or felony and a finding of not guilty or not responsible is entered, the court will file for expunction. **Effective: Dec. 1, 2020.** Petition based: Must file with court. Can be one or multiple offenses.

After Dec. 1, 2021: A person charged with a crime on or after Dec. 1, 2021 and charges are dismissed, found not guilty, or not responsible will be expunged.

Automated Relief: If all charges are dismissed in the case these offenses will be automatically expunged.

Plea Agreement: These are not automated but you can petition for expungement of charges that are dismissed through a plea agreement.

Modification of expunction of non violent misdemeanor and felony convictions

If a person is granted an expunction under this section, they are not eligible for any other expunction under this section for offenses committed after the date of the previous expunction. **Effective: Dec. 1, 2020** and applies to petitions filed on or after that date.

You can file for expunction of one nonviolent misdemeanor: 5 years after the date of conviction,



than one nonviolent misdemeanor: 7 years after the last date of conviction, or active sentence, probation or post release has been served; which ever occurs later, and have no other convictions that are excluded from expunction eligibility, felony or misdemeanor. You cannot have any other conviction during the 7-year waiting period, and must have no outstanding restitution or civil judgments.

or active sentence, probation or post release has been served; whichever occurs later. You must have no other felony or misdemeanor convictions other than traffic; and no outstanding restitution or civil judgments.

You can file for expunction of one nonviolent felony conviction: 10 years after the date of conviction, or active sentence, probation or post release has been served; whichever occurs later. You cannot have any

You can file for expunction of more

other convictions during the 10-year waiting period and must have no outstanding restitution or civil judgments. No other convictions that are excluded from expunction eligibility.

Note: The definitions of “nonviolent misdemeanor” and “nonviolent felony” are not changed by this bill. Expunged criminal records are not available to the public, but expunged dismissals and convictions can still be accessed by district attorneys and considered by courts for sentencing if the person re-offends.

www.ncsecondchance.org

3 On The Wire | November 2020

In Peace, NC-CURE



RESOURCES

NC PLS
PO Box 25397
Raleigh, NC 27611
<http://www.ncpls.org>
Email-ncpls@ncpls.org
Phone-919-856-2200

NCPLS civil attorneys evaluate potential civil rights claims. These claims include use of force by prison staff; dangerous prison conditions; inadequate medical care; religious freedom; and free

Director’s Corner

Continued from page 1

to consider broadening the felony classes allowed to participate. Most of you are familiar with North Carolina Prison Legal Service (NCPLS) and the good work they have done over the years to improve conditions of confinement and assist you with MARs. Mary Pollard, NCPLS Executive Director, is no longer serving in that role. As of August 2020, Pollard began her new position as Director for North Carolina Indigent Defense Services (IDS). We wish Mary all the best. We would like to take this opportunity and welcome Beth Thomas in her new role as Director for NCPLS.

As many of you know, NC-CURE was founded by Elizabeth Forbes in 2007,

and since then she has dedicated thirteen years to criminal justice reform in North Carolina. At the request of the Executive Board, Forbes has agreed to accept the position of Senior Advisor to the Executive Board and assist the Director as needed.

Again, we regret that we must address once again, the inflammatory and disingenuous accusations Brenda Miles prints in her newsletter regarding this organization. We ask that you refer to page 5 and read the Executive Board’s response and their reply to your questions concerning Brenda Miles. A phrase frequently repeated these days, “We are all in this together.” Please continue to look out for your fellow prisoners and prison staff, follow all facility COVID protocols and above all, stay safe.

speech issues. NCPLS litigates these cases in court as resources

October 1, 2020: New Visitation Rules

Effective October 1, 2020, NCDPS has new visitation rules. These rules replace the restriction of visitation due to the COVID-19 pandemic.

Visitation in Prisons will resume under the following temporary

conditions and precautions, subject to change:

- Visits will be by appointment only and may be canceled with little notice if dictated by health and safety concerns. Visits must be arranged through the individual facility and visitors

should check to ensure the scheduled visits have not been canceled prior to leaving their residence to travel to the facility.

- Visitation will not be permitted if the prison is experiencing a significant outbreak of COVID-19 or if the

facility is on Red Status.

- Children under the age of 12 will not be allowed to visit at this time.
- All visitors will be medically screened with temperature checks, in addition to standard security procedures. Anyone with symptoms of COVID-19, or who has a fever of 100 degrees or more, or who has been exposed to someone who is COVID positive, will be denied entry.

- Offenders who are in medical isolation or medical quarantine, or who have any symptoms of COVID 19, will have their visit rescheduled.
- Visitation will be limited to 2 visitors per session. Each offender will be allowed one visit per calendar month. Visits will be limited to 30 minutes.
- Visitation will take place outdoors, if possible and weather permitting. Physical contact will not be allowed. Offenders and visitors will be kept six feet apart and further separated by a screen if indoors. Visitation areas will be limited to 25% capacity.
- Everyone

must wear a face mask covering their nose and mouth at all times and must sanitize their hands when entering and leaving the visitation area. Masks may not have offensive language, pictures or symbols.

Gaiters, bandanas and masks with a one-way valve are not permitted. Masks will be provided if needed.

- No outside food, beverages or photos will be allowed. Water will be provided for offenders and visitors.
- All visitation areas will be thoroughly sanitized between each visitation session.

Visitors should immediately inform the facility if they receive a diagnosis of COVID-19 or develop signs and symptoms of COVID-19 within 48 hours after a visit.

www.ncdps.org
permit.

When NCPLS cannot litigate a case, they still provide legal advice and self-help packets on post-conviction and civil issues.

NC Justice Center
PO Box 28068
Raleigh, NC 27601
Phone 919-856-2570
contact@ncjustice.org

NC Department of Military and Veterans Affairs
Incarcerated Veterans To Entrepreneurship
413 N Salisbury Street
Raleigh, NC 27699
Phone: 984-204-8366

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On The Wire | November 2020 4

Serving Sentences Outside a Prison-Extended Limits of Confinement Program

To help keep staff and offenders safe during the COVID-19 pandemic, the Division of Adult Correction and Juvenile Justice is transitioning select individuals to serve their remaining sentence under the supervision of community corrections officers.

To be considered for Extended Limits of Confinement (ELC), offenders must:

1. NOT be serving a sentence for crime against a person during the current incarceration AND must meet at least one of these criteria:

Be pregnant-Already be on home leave with a 2020 or 2021 release date.

Already be on work release with a 2020 or 2021 release date.

Be age 65+ with a 2020 or 2021 or

2022 release date.

2. Have a 2020 or 2021 release date **AND** underlying health conditions deemed by CDC that increase a person's risk of severe illness from COVID-19.

What ELC Means

Extending the Limits of Confinement (ELC) **means** certain incarcerated offenders are allowed to continue serv

FOR THE RECORD...

In the May 2020, Visions of Tomorrow NC, (VOT) newsletter, Brenda Miles made a number of inflammatory and false accusations we would like to address. Miles stated she joined NC CURE in 2017, however she became a member in 2013 and joined the Board in 2015. Miles states she was the

founder/editor of the OTW publication—absolutely false. Forbes designed, researched, edited and produced the publication. The Board became very concerned after discovering a Go-Daddy website Miles set up to solicit donations in NC-CURE's name that were forwarded to an undisclosed account without the Board's authorization or knowledge. For these reasons and others, the Board voted unanimously for Miles to resign. According to their sentence outside of correctional facilities. This is authorized under North Carolina General Statute §148-4 which gives the Secretary of the Department of Public Safety the authority to extend the limits of confinement in limited circumstances for certain incarcerated individuals.

This is NOT an early release from a sentence, nor commutation.

Offenders on ELC are serving part of their active sentence outside the confines of a correctional facility, and are under the supervision of community corrections officers and/or special operations officers. If an offender fails to remain within the extended limits of confinement or fails to otherwise follow the conditions of their community confinement, they will be returned to a correctional facility to serve the remainder of their active sentence. Offenders who willfully fail to remain within the boundaries of their alternate “confinement” in the community may also be charged with escape.

In addition, depending on an individual offender’s unique circumstances, the crime for which he/ she was convicted and other factors, the offender may have additional security measures put in place while on

to NC-CURE’s legal advisors, Miles actions violated the NC Non-Profit Act (Standards of Conduct, § 55A-8-30), NC-CURE by-laws and fiduciary obligations as Director for NC-CURE. The following information will explain the astonishing events that took place during Miles’ Directorship and after.

In September 2017, Miles received

Federal Court ordered that \$1200 stimulus checks should go to inmates

In March 2020, Congress passed the Coronavirus Air, Relief, and Economic Security Act (“CARES Act”). The Act provides emergency relief to eligible individuals in the form of a tax credit for 2020. The Act instructs the IRS to issue advance refunds to eligible individuals as rapidly as possible.

The IRS previously took the position that people who are incarcerated are not eligible for advance refunds. On September 24, 2020, a federal court ruled that the IRS’s position was like

Board authorization to open a new NC-CURE postal box in Durham, NC. In January 2018, the OTW publication announced the new mailing address to be P.O. Box 72822, Durham, NC. In the same publication you were informed that Miles would assume the role of Executive Director effective February 1, 2018. On February 21, 2018, Miles was asked to tender her resignation.

ELC, such as: Electronic monitoring, Curfew, Drug testing.

The differences between ELC and Post-release/Probation

ELC allows individuals who have not completed their minimum sentence to transfer outside of a correctional facility to continue serving their active sentence. This is not a release from custody.

Post-release is a period of structured supervision after completion of an active sentence in a correctional facility. Not every offender is sentenced to post-release supervision.

Probation is a period of community supervision imposed by the courts instead of an active prison sentence. A violation of probation could result in an active sentence.

www.ncdps.gov

Note: Consent to sentencing modifications have to be signed off on by a judge. N.C. Prisoner Legal Services and the N.C. Justice Center are part of a coalition sending lists of state prison inmates to district attorneys for consideration.

In March, after Miles left NC-CURE, she mailed out a VOT publication to announce its address as P.O. Box 72822. Miles simply refused to return NC-CURE’s post office box and its keys back to NC-CURE. As a result, NC-CURE filed a formal complaint with the USPS. In June of 2018, the USPS Fraud Department opened an investigation and Miles continued to receive NC-CURE’s mail. After the investigation was completed, to our shock, we learned that Miles deceitfully registered the PO Box in her *own name!* Once again, violating her duty of care and NC non-profit laws. Miles could have easily opened another postal box for VOT, but chose not to. Furthermore, on March 14, 2018, Miles used NC-CURE’s bulk mail permit, card #434, to mail VOT newsletters to members of NC-CURE.

Continued on page 10

5 On The Wire | November 2020

can have transformative power, like it has in my life, and I hope everyone in America, including those in prison, can have this same opportunity.”

Twenty-eight years ago, I was sentenced to life without parole and began serving time in California. Around that same time, after the 1994 Crime Bill was enacted—ending Pell Grant eligibility for incarcerated students—I saw cuts to all kinds of programs, including educational ones. Going to school and getting a college degree seemed out of the question, especially since I still carried emotional baggage related to having a

ly unlawful. The case is Scholl v. Mnuchin, No. 4:20-cv-5309-PJH (N.D. Cal.). The court ordered the IRS to stop denying payments to people solely because they are incarcerated, and ordered the IRS to make payments to people who were previously denied one because they were incarcerated, within 30 days.

Transformed by Access to College in Prison

Allen Burnett, Student, Cal State LA

"Access to postsecondary education

learning disability growing up and constantly being told I was “slow.”

In the beginning, I bounced from pris on to prison, trying to avoid the vio lence that got me there in the first place. Once I ended up at the state Who is eligible for an Economic Im pact Payment? You are eligible if all of the following are true: You are a U.S. Citizen or Legal Permanent Resi dent; You were not claimed as a de pendent on another person’s tax re turn; and If you are married or if you have qualifying children, your spouse and your children have a valid Social Security Number. This restriction does not apply if you or your spouse served in the Armed Forces in 2019.

If I am eligible, how much will my payment be? If you meet the criteria above, your payment will be up to \$1,200 if you filed individually or \$2,400 if you filed jointly with a spouse, plus \$500 per qualifying child.

What do I need to do to receive a pay ment? It depends: If you filed a 2018 or 2019 tax return, or if you receive Social Security Benefits or Railroad Retirement Benefits, you do not need to take any action. You should receive an automatic payment in the mail. If you did not file a 2018 or 2019 tax

prison in Lancaster, though, I found a group of men who, despite also being sentenced to life without parole, were taking classes with Coastline Commu nity College. Their interest in educa tion began when they started a book club (anyone could join by buying one

book that would be shared among the group) and moved on to textbooks. Eventually, up to 700 people were enrolled in college courses at Lancas ter, and there have been more than 200 graduates from Coastline.

When a California State University, Los Angeles (Cal State LA) professor visited and saw what these men were accomplishing pretty much on their own, he was impressed with their work and tenacity, and he eventually brought in other professors from dif ferent schools. I began my college journey in late 2015, and I plan to graduate from Cal State LA either this semester or next with a degree in communication studies and a minor in English. Last year, the governor of California decided to commute my sentence and let me return home, I think in large part because he was im pressed with my educational aspira return and your income was below \$12,200 (or \$24,400 if filing jointly), but you are an eligible individual as defined above, you must take action to receive an advance payment by filing a claim form. If you have access to the internet, you can file a claim at the following URL before November 21, 2020: www.irs.gov/coronavirus/non-filers-enter-payment-info-here Alter natively, you can file a claim using a paper form available from the IRS website or online at caresactprisoncase.org. All paper forms must be postmarked on or by November 4, 2020.

www.caresactprisoncase.org

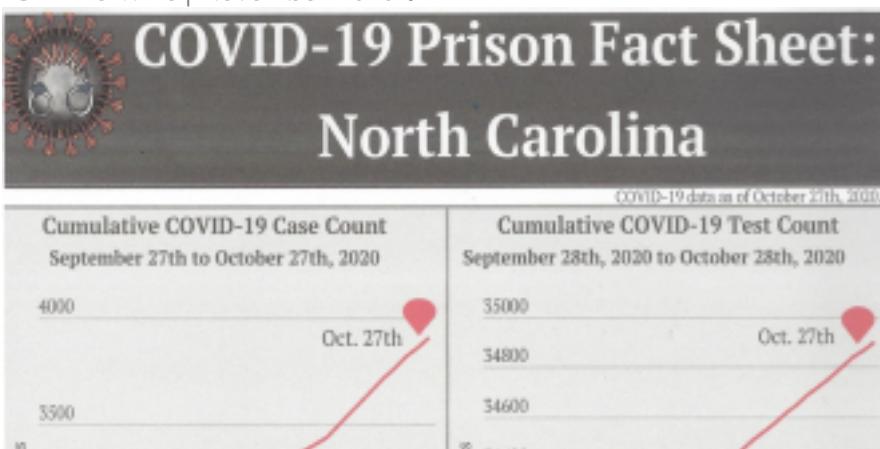
OTW understands that you may be

receiving this newsletter after the deadlines for filing; we apologize for our delay. Please let us know if you were able to file for the pay ment, if you received a CARES check from the IRS, and how you gained access to the funds deposited in your account.

tions and all the achievements I’d made while incarcerated. If you’d told me a few years ago about the opportu nities that my stepdaughter, which brought us closer together. We’ve been able to discuss classes and pro fessors, quiz each other on shared sub jects, and even be on Zoom calls to gether. She will graduate this semester and has plans to become a teacher, and I couldn’t be more proud.

I believe that everyone, no matter their current sentence, should have the same opportunities I did to educate themselves and learn more about the world beyond the few blocks they grew up on. Learning different styles of thinking and communication phi losophies has completely changed my outlook on life, and I know it will for others, too. As I sit here today, I feel empowered to advocate for all my brothers and sisters who are still be hind bars, some sentenced to life with out parole, like I was. Access to post secondary education can have trans formative power, like it has in my life, and I hope everyone in America, in cluding those in prison, can have this same opportunity. www.vera.org

On The Wire | November 2020 6



COVID Prison Project

As of October 23, 2020, there have been 155,466 COVID-19 cases and 1,267 COVID-related deaths among people in carcerated in US prisons. The COVID Prison Project (CPP) was established to increase transparency about coronavirus in incarceration settings as well as to

track national and state policies and procedures. The CPP's co-founder, Lauren Brinkley-Rubinstein, Ph.D., assistant professor of social medicine at UNC-Chapel Hill, researches how incarceration can impact health outcomes.

CPP's website, www.covidprisonproject.com states: Justice-involved individuals in congregate living facilities are at a high risk of exposure to COVID-19. With recent outbreaks seen in prison facilities across the nation, there is a demonstrated need to examine national prison data on COVID-19 testing, confirmed cases, and policies and procedures. CPP examines national and statewide data on prevalence rates in federal and state prisons. They also collect data on prison policies and adherence to these policies. Currently, all 50 states, Puerto Rico, the Federal Bureau of Prisons, and Immigration and Customs Enforcement (ICE) are reporting some data.

Please write OTW about the status of COVID protection in your facility. We are all in this together advocating for.

Graph prepared by COVID Prison Project, October 27, 2020

DOJ: Imprisonment rate dropped, Steep dive in Blacks and Hispanics jailed

The U.S. imprisonment rate has reportedly dropped to its lowest level since 1995, led by a steep decline in the percentage of Blacks and Hispanics jailed over the last decade.

The *Washington Examiner*, citing a new Department of Justice Department headcount, found that the imprison-

ment of Blacks is the lowest in 31 years and is down 24% for Hispanics.

"Across the decade from 2009 to 2019, the imprisonment rate fell 29% among Black residents, 24% among Hispanic residents and 12% among white residents," stated the report, posted by The Washington Times.

"In 2019, the imprisonment rate of black residents was the lowest it has been in 30 years, since 1989."

The report added that at the end of 2019, there were 1,096 sentenced Black prisoners per 100,000 Black

residents, 525 sentenced Hispanic prisoners per 100,000 Hispanic residents and 214 sentenced white prisoners per 100,000 white residents in the United States, the news outlet reported,

"Among sentenced state prisoners at year-end 2018," the most recent data available, "a larger percentage of Black (62%) and Hispanic (62%) prisoners than white prisoners (48%) were serving time for a violent offense," according to the DOJ data, the news outlet reported.

The report did not cite any reasons for the drop. *Newsmax, Oct 25, 2020*

Women Face Unique Harms from Solitary Confinement

As with almost every other aspect of imprisonment, women have gender

specific experiences that lead to solitary confinement, also known as restrictive housing, special housing

units (SHU), or segregation.

They are often placed in these restrictive environments for lower-level of

fenses, such as noncompliance, disrespect, and other nonviolent behaviors. This punitive segregation counterproductively amplifies the harms women experience in prison, including problems maintaining dignity and obtaining hygiene supplies, particularly while menstruating, and increased vulnerability to all forms of staff abuse and harassment in the less public restrictive housing settings. Placement in restrictive housing undermines contact with children and other family members and interrupts treatment and services. For women with serious mental illnesses or other trauma symptoms, restrictive housing can aggravate these symptoms, often escalating into destructive behavior and self-harm efforts. For all these reasons, correctional facilities should cease the use of solitary confinement for women.

Women in solitary confinement have extensive and often unmet mental health needs. Vera has found that people in solitary confinement and other forms of restrictive housing have higher rates of mental health problems than those in the general prison population. Women also have extremely high rates of trauma in their pathways to prison; these experiences include multiple forms of abuse and assault as children and adults. Such abuse and the resulting trauma is tied to women's initial criminal behavior, particularly in terms of coping behaviors, such as substance abuse, mental health symptoms, and some violent behaviors.

These trauma backgrounds are often the basis for "disruptive" behavior while imprisoned. Knowledge of these backgrounds is key to understanding rule-violating behavior women may demonstrate in their paths to restrictive housing. Much of standard operational practice in prisons can re-traumatize women. Loud noises, raised voices, search procedures, and unfamiliar people create threats to well-being that undermine their emo-

tional and physical equilibrium. Disruptive and noncompliant behaviors occur when women's abilities to cope are overwhelmed in this punitive environment. Women in solitary confinement appear to have the greatest incidence of these challenges of any subpopulation in prison. This demonstrates a failure of mental health treatment services in jails and prisons throughout the country. Much of women's behavior inside prison is related to untreated trauma, which can result in a range of other conduct that custody staff consider problematic. There's a solution. Jails and prisons should adopt gender-responsive and trauma-informed approaches, which consider women's unique experiences through a lens of safety, empowerment, and healing. These approaches have shown significant improvements across all measures of violence and mental health crises and across a range of disruptive or problematic behaviors. Treating trauma—for both incarcerated women and men—is key to prison safety, rehabilitation, and successful return to the community. Minor offenses receive major punishment. Although women are typically less likely than men to be confined to solitary-like housing, women tend to be placed in restrictive custody for lower-level and minor nonviolent infractions. Vera's research and other empirical sources show that very few women are placed in solitary confinement for serious violence against staff or other women. Instead, they are there for things like disobeying orders, insubordination, and other forms of noncompliance.

Corrections staff can be trained to recognize and understand the roots of many behaviors defined as defiant—and that instituting gender-responsive disciplinary processes significantly improves safety outcomes in women's prisons. Addressing women's behavior through treatment and programming, as well as creating disciplinary systems that balance punishment and

incentives, will reduce negative consequences for each incarcerated person and for prison staff.

Women are more likely to suffer in punitive environments.

I have written elsewhere that "security is not safety" for women in prison. The harms embedded in contemporary prisons damage women—differently than they do men. As noted above, operational practice grounded in the need for physical security has been shown to harm imprisoned women. Gendered harm can also be seen in terms of corrections agencies' inability or unwillingness to meet women's needs to access multiple forms of treatment, build healthy relationships, and develop emotional and practical skills that promote self-sufficiency. These treatment and other needs are often unmet in prison, where policy fails to acknowledge the gender-based realities that shape women's pathways to prison and their behavior once inside.

Placing women in restrictive housing when they do not represent a threat to the security of a facility is one form of unnecessary gender-based suffering. The National Resource Center on Justice Involved Women has developed guidance to address these issues. Moreover, international norms and standards, as set out in the Bangkok Rules and the subsequent Mandela Rules, consider overuse of solitary confinement a human rights violation. Based on the guidance of these international norms, as well as the innovations in gender- and trauma-informed operational practice and standards suggested here, I urge all correctional agencies to eliminate the use of restrictive housing for women. It is the right thing to do.

Barbara Owen, Advisory Council member for Vera's Safe Alternatives to Segregation Initiative www.vera.org

The NC First Step Act *by*

Jamie Markham, 7/8/2020 North Carolina Criminal Law, a UNC School of Government blog

A new law provides a limited possibility of sentencing and post-conviction relief for certain defendants convicted of drug trafficking.

The law, [S.L. 2020-47](#), is called the North Carolina First Step Act. I wrote about it earlier in the year, [here](#), when it was still under consideration in the General Assembly. At that point we were already getting questions about how North Carolina's proposed law related to an existing federal law of the same name. (There's no real connection between the two.)

North Carolina's enacted law amends the drug trafficking sentencing provisions in G.S. 90-95(h) by adding new G.S. 90-95(h)(5a). That new subdivision says the judge sentencing a defendant for drug trafficking or conspiracy to commit drug trafficking (which is sentenced the same as drug trafficking itself) may depart from the otherwise mandatory sentencing rules for trafficking if he or she makes a finding that the defendant meets 11 conditions.

Among those conditions are two threshold requirements that substantially limit the law's applicability. First, the law applies only to defendants being sentenced solely for trafficking or conspiracy to traffic *by possession*; trafficking by manufacture, delivery, and transport are not eligible. Second, the trafficking must be for possession of an amount within the lowest category of trafficking for the particular controlled substance in

question. So, less than 50 pounds of marijuana, less than 200 grams of cocaine, etc.

Several of the other conditions are directed at the defendant's criminal history. He or she must not have previously been convicted of any felony under G.S. 90-95 (which would include, for example, any prior felony drug possession, sale, or PWISD—not just trafficking). The court must also find that the defendant has not used violence or a credible threat of violence or possessed a firearm or other dangerous weapon in the commission of any other violation of law, and that there is no substantial evidence that the defendant has ever engaged in the sale, transport for purpose of sale, manufacture, or delivery of a controlled substance. Those latter provisions are not expressly limited to things for which the defendant has been convicted, although I suspect prior convictions will be the most likely way of proving commission of a prior disqualifying offense.

Other conditions are directed at the circumstances of the trafficking offense now being sentenced. The defendant must not have used violence or a firearm or other dangerous weapon in the commission of the trafficking offense and must accept responsibility for his conduct. The court must find that the otherwise mandatory sentence would result in substantial injustice, and that it is not necessary for the protection of the public. The defendant must also admit that he or she has a substance abuse disorder and has successfully completed a treatment program approved by the court to ad-

dress it. I can imagine that it might sometimes be necessary to continue prayer for judgment in an otherwise eligible case to allow a defendant time to complete a court-approved treatment program before sentencing. A final requirement is that the defendant has, to the best of his or her knowledge, provided all reasonable assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals. That provision is of course very similar to the longstanding provision in G.S. 90-95(h)(5) regarding *substantial assistance*—with the only difference being that the new law requires only *reasonable* assistance, not *substantial* assistance. To the extent that those types of assistance overlap, bear in mind that if the court could find that the defendant provided substantial assistance, it could offer far more relief under the existing substantial assistance law than it can under the new First Step Act—and for more defendants with fewer required findings. If a judge finds substantial assistance for any drug trafficking defendant (regardless of drug quantity or prior criminal history), the sentence can be essentially whatever the judge wants it to be (a shorter active term, probation, a reduced fine, etc.).

Not so under the First Step Act. Assuming the judge can make findings on all 11 conditions listed in the statute, the law permits only a limited form of relief. It operates similarly to our existing law for attempted trafficking, allowing the judge to reduce

Continued on page 11

The Good Stuff

In a race, athlete Abel Mutai representing Kenya was just a few feet from the finish line, but he was confused with the signage and stopped, thinking he had completed the race. The Spanish athlete, Ivan Fernan

dez was right behind him; realizing what was happening, he started shouting at the Kenyan for him to continue running. But Mutai didn't know Spanish and didn't understand. Then the Spanish man pushed him to victory. A journalist asked Ivan, "Why did you do that?" Ivan replied, "My dream is that someday we can have a kind of community life." The journal insisted, "But you could have won! Ivan looked at him and replied, "But what would be the merit of my victory? What would be the honor of that medal? What would my Mom think of that?"

For the Record

(continued from page 5)

(According to the USPS, unauthorized use of a postal permit, is fraud). Miles has yet to return our mail permit card.

Meanwhile, we learned that Pastor Luther Brooks (Board Member and friend of Miles) formed a 501(c)3 (*Visions Of Tomorrow Community Development Corporation*) ten years ago. Both Miles and Brooks signed binding agreements as Board members to disclose any possible conflicts of interest with affiliated organizations. Neither Brooks or Miles disclosed their relationship with the organization, *Visions of Tomorrow Community Development Corp.* Prior to Miles' appointment as Executive Director, Forbes spent more than a year training her in criminal justice reform, advocacy and preparing her for her position of Director. During her first week as Executive Director, Miles requested all intellectual property, to include presentations, brochures and future campaign platforms. After Miles left NC CURE, requests were made for all materials to be returned at no avail. NC-CURE retained legal assistance, who in turn sent a demand letter to Miles and Brooks. To date, Miles has declined to return any property belonging to NC-CURE.

In April 2018 Miles registered VOT with the Secretary of State at PO Box 72822, aware that when she served as Executive Director, she had already registered NC CURE at the same address on 1/31/2018. Miles also changed the VOT name using a DBA,

Visions of Tomorrow of NC. Little did we know, our troubles with Miles had only just begun. By July 2018 Miles continued to receive NC-CURE's mail. After multiple complaints to the USPS, they told us that Miles did not fill out the forwarding mail form for NC-CURE's mail to be forwarded to the Concord address. Miles' nefarious and deliberate actions prevented NC-CURE from receiving their mail in a timely matter for over a year! Furthermore, because Miles refused to return our bulk mail permit, we were prevented from mailing out the OTW to inform members of our address changed to Concord, NC, forcing us to apply for another permit.

Regarding Miles' family member, NC CURE received a letter written by her in incarcerated family member and mailed to NC-CURE by Miles-- we assume by mistake. The letter spoke of Pastor Brooks who was part of the pre-release TANS program. Information provided in the letter may violate the program's policy and strict guidelines. In an effort to protect and safe guard the program from being shut down, a Board Member and ordained minister who worked with Chaplin Services for years shared the information with NCDPS (*not Forbes*). Furthermore, it was NCDPS, (*not NC-CURE*) who found cause to conduct an investigation that resulted in Brooks losing his privileges.

To this day, we do not understand Ms. Miles' actions and remain hopeful that she will dispose of her defamation campaign that undermines the true

meaning of advocacy and reform. We have taken great care to speak the truth to the best of our ability and will provide documentation where possible to substantiate our claims.

We recognize you have more important issues to deal with, we apologize for burdening you with this issue. Thank you.



NC-CURE Board of Directors

Citizens United for Restorative Effectiveness

NC-CURE WORKS TO

- *Promote the reduction of crime and improve public safety through reform of the criminal justice system
- *Educate members and the general public by providing the resources that they need to better understand the criminal justice system
- *Become proactive advocates for change
- *Foster the belief that persons convicted of crimes are deserving of humane treatment and restorative rehabilitation while serving a sentence
- *Promote alternatives to incarceration for those inflicted with serious mental illness and suffer from substance abuse disorders whenever possible
- *Work with local and national Policy Makers involved in the criminal jus

“Serious illness and severe loneliness before God and men, threat, persecution, imprisonment and whatever conceivable peril there is on earth are known by the Psalms, the prayer book of the Bible.

To know that others have walked a similar road may not make the difficulties of the journey easier, but it should give us hope.”

Dietrick Bonhoeffer, while in Nazi prison during WWII

tice system to promote fair and just criminal justice policies to reduce recidivism, reform sentencing laws and support incarcerated people returning home

NC-CURE

At Work for YOU

On The Wire | November 2020 10

Recognition of Good Deeds by Correctional Officers

Inmates and staff alike know the job of a Correctional Officer is tough indeed. COs receive low wages, work in very harsh and dangerous environments, and rarely receive recognition or thanks for a job well done. These conditions result in low job morale and sometimes a not-so-appropriate attitude with those they supervise.

OTW believes that employees work better when they receive positive feedback. We want to highlight COs who demonstrate care and kindness toward others. Write and tell us about their good moves. Give us names and details.

Good deeds should not go unnoticed!

First Step Act

Continued from page 9

the otherwise mandatory fine and sentence the defendant in accordance with the ordinary Structured Sentencing grid for his or her class of offense and prior record level. For example, suppose a defendant is convicted of Class G trafficking by possession of less than 200 grams of cocaine. If the judge can make all the required findings under new subdivision (5a), it can disregard the otherwise mandatory 35–51 month sentence and \$50,000 fine and instead sentence the defendant like a regular, non-trafficking defendant under the sentencing grid. If the defendant was prior record level II, for example, the sentence could be something like 12-24 months, suspended, with supervised probation and a reduced fine.

Procedurally, the sentencing judge may only make First Step findings after a hearing where the district attorney has an opportunity to present evidence, including evidence from the

investigating law enforcement officer, other law enforcement officers, or witnesses with knowledge of the defendant’s conduct at any time prior to sentencing. Ultimately, the judge can impose the reduced sentence regardless of whether the State agrees to it. The law described above applies prospectively to sentences ordered on or after December 1, 2020, regardless of the date of offense. The First Step Act also includes a provision reaching back to certain inmates already serving active time for drug trafficking. Defendants serving an active sentence imposed solely for drug trafficking who were not sentenced under the substantial assistance law are authorized to file a motion for appropriate relief to seek a sentence modification as provided in new subdivision (5a). Eligible inmates must file their MAR within 36 months of December 1, 2020; the State must respond within 60 days of the filing; and the court must hold any hearing it deems necessary within 180 days of the filing. It’s not clear whether the MAR provision incorporates all of the eligibility

conditions discussed above for newly imposed sentences. The enacting language describes the MAR as one seeking relief “as enacted in Section 2 of this act,” which is the section in which all 11 conditions are listed. However, it then goes on to set out a shorter list of only four requirements for retroactive relief:

1. That the MAR was filed within 36 months of the effective date of the act;
2. That the inmate has no other felony convictions under G.S. 90-95;
3. That the inmate was convicted solely for trafficking or conspiracy to traffic by possession; and
4. That the inmate was convicted for trafficking a drug quantity in the lowest category of trafficking for that substance.

The law then says that if the inmate meets those four requirements, the court shall resentence the defendant in accordance with new subdivision (5a)—which, again, means under the ordinary sentencing grid for the defendant’s offense class and prior record level. It’s interesting that the front end sentencing provision says the judge



may grant relief if the defendant meets all the required conditions, while the MAR provision says the judge *shall* do it. Does the *shall* there override the otherwise applicable requirements for the judge to consider whether the ordinary sentence is a “substantial injustice” and “necessary for the protection of the public”? Perhaps the reference back to subdivision (5a) brings all 11 conditions back into play, but it’s not clear. The MAR provision applies only to sentences imposed on or before November 30, 2020. So, going forward, defendants who don’t get First Step relief at sentencing do not get another shot at relief via MAR.

It will be interesting to see how often the First Step Act provisions are used. (And we’ll know, because the law adds new G.S. 90-95(j) requiring the AOC to issue a report on it each year.) Looking at the eligibility conditions, I don’t think many defendants will be eligible for relief at sentencing. Of the 422 drug trafficking convictions entered statewide last year, only a fraction were for trafficking by possession of the lowest quantity category of that substance, and committed by a defendant with no prior felony drug record. And it’s possible that the existing substantial assistance law will continue to have more appeal.

We know that judges already use the substantial assistance law at least about 20 percent of the time for drug traffickers, because over 75 of the 422 trafficking defendants sentenced last year got probation. (There are even more who received a shortened active sentence or a reduced fine pursuant to a substantial assistance finding, but those don’t stand out as clearly in the data.)

But even if the law isn’t used very often, it could be an important sign of other changes to come. As the law’s name says, it’s just the first step in what may be a broader plan to amend North Carolina’s sentencing laws.



Citizens United for Restorative Effectiveness

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“The degree of civilization in a society can be judged by entering its prisons.”

Fyodor Dostoyevsky

JOIN TODAY AND LET NC-CURE BE YOUR VOICE FOR CHANGE

When you join NC-CURE, you are supporting and promoting our advocacy work. You will receive information on local and national, laws and/or policy updates, that impact the criminal justice system. NC CURE works to empower, educate and to bring public awareness to the need for criminal justice reform, re entry programs and to improve conditions of confinement for people incarcerated across North Carolina

while promoting public safety. Note: Membership is annual. Prisoners may send stamps ONLY if allowed; contributions waived for indigent prisoners or if they violate prison policy. NC-CURE is a 501(c)(3) organization, contributions are used to produce this newsletter and are tax deductible. For membership, please complete and return this form to: NC-CURE P.O. Box 1318 Concord, NC 28026, In Peace, NC-CURE



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