

LWVMI PRISON/JAIL RESTUDY CONSENSUS QUESTIONS

1. In terms of guiding Michigan’s criminal justice systems, how would you rank the following sets of principles in terms of importance?

Retributive Justice	Important to Include	Irrelevant	Important to Exclude
Restorative Justice	Important to Include	Irrelevant	Important to Exclude
Therapeutic Justice	Important to Include	Irrelevant	Important to Exclude

2. Should the League support alternatives to incarceration?

Should alternatives be used for individuals who can be safely managed in the community?	YES	NO
Should an effort be made to find alternatives to incarceration for persons with mental illness who have committed crimes?	YES	NO
Should the League support ending incarceration of juveniles in adult facilities?	YES	NO

3. Should the State of Michigan pay all the costs of an indigent person’s defense?

YES NO

4. Should individuals sentenced to prison forfeit any of the following rights as citizens?

Right to Vote	YES	NO
Access to the Courts	YES	NO
Access to FOIA	YES	NO
Protection of Michigan Civil Rights Act	YES	NO

5. How important is each of the following forms of oversight?

Ombudsman	Important	Not Important
Media access to prisons	Important	Not Important
Policies that encourage visitation	Important	Not Important
Careful oversight of privatized services with penalties for non-performance	Important	Not Important

6. Which of the following should be responsibilities of the prison system?

Humane conditions	YES	NO
Mental health care at community standards	YES	NO
Health care at community standards	YES	NO
Timely rehabilitative programming	YES	NO
Assistance with transitioning to freedom	YES	NO

7. Which of the following are to be expected of the parole board?

Objective rationale for holding someone past his or her minimum date	YES	NO
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Ensuring that all individuals are released early enough to provide some transitional supervision	YES	NO
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Background Material for Prison/Jail Restudy

For the restudy, we have rewritten the scope statement to more accurately reflect the content of the existing position as well as a new position should one be adopted.

The scope of the study includes:

- How and why persons are sent to prison or jail
- How individuals are treated while in prison or jail
- How, when, and why individuals are released from prison or jail to the community

1. Please consider the following definitions in answering question #1.

Retributive justice is based on the principle that people should receive what they deserve. This means that people who work hard deserve the fruits of their labor, while those who break the rules deserve to be punished.

Restorative justice is a theory of justice that emphasizes repairing the harm caused by criminal behavior. To accomplish these goals, restorative justice systems:

- Create opportunities for victims, offenders and community members to voluntarily meet to discuss the crime and its aftermath
- Expect offenders to take steps to repair the harm they have caused.
- Seek to restore victims and offenders to whole, contributing members of society
- Provide opportunities for parties with a stake in a specific crime to participate in its resolution.

Balanced and restorative justice is more specifically based on principles of accountability (i.e., increasing the offenders' awareness of the effect of their actions on others and offering them opportunities to repair the harm caused), competency development (i.e., providing offenders with opportunities to increase their skills so they are able to function as more productive members of society), and community protection (i.e., increasing offenders' skills and ties to the community so they will be less likely to harm the community again).

Sources:

<http://www.restorativejustice.org/intro>

<http://www.abanet.org/justice/01summary/traditionalact/problemsolving.html>

Therapeutic justice refers to judicial approaches that address the offender's behavior as a problem requiring non-traditional sanctions and/or social services in addition to traditional sanctions. Courts that are established to look outside the traditional framework of legal proceedings for solutions to such cases are referred to as "problem-solving" courts. They include special initiatives such as drug courts, community courts, and mental health courts, as well as programs such as unified family courts.

Source: <http://www.abanet.org/justice/01summary/traditionalact/problemsolving.html>

Why does this matter?

These theories are not mutually exclusive. However, the institutional recognition of a theory or the emphasis on one theory over another can influence the way the justice system responds to crime.

Historically, Michigan's criminal justice system has been based upon a retributive approach. The primary focus has been in assessing the seriousness of the crime and the offender's criminal history and using that information to determine the appropriate punishment.

In recent years, there has been more recognition of the value of therapeutic justice, with more

support for problem-solving courts – especially drug courts. As yet, there has been very little institutional support for restorative justice models.

The question, then, is whether the League should be advocating for more specialty courts to deal with issues such as mental health, returning combat veterans, domestic violence, etc. Should the League advocate for restorative justice opportunities for the victims of crime who prefer that approach?

2. **Alternatives to Incarceration:**

“(T)he goal of introducing alternatives to prison is not only to address the problem of overcrowding in prisons. The wider use of alternatives reflects a fundamental change in the approach to crime, offenders and their place in society, changing the focus of penitentiary measures from punishment and isolation, to restorative justice and reintegration. When accompanied by adequate support for offenders, it assists some of the most vulnerable members of society to lead a life without having to relapse back into criminal behaviour patterns. Thus, the implementation of penal sanctions within the community, rather than through a process of isolation from it, offers in the long-term better protection for society. There are also economic arguments in favour of alternatives. In western societies, the supervision of offenders within a probation system is normally much less costly than the upkeep of a prisoner.”

Source: Custodial and Non-Custodial Measures, Alternatives to Incarceration, Criminal Justice Assessment Toolkit, United Nations Office on Drugs and Crime, 2006

Alternatives to incarceration include a variety of programs. For example, a survey of programs in Wisconsin identified the following: electronic monitoring, restorative just programs, drug courts, day reporting, pretrial monitoring/bail and bond monitoring, operating after revocation and drunk driving monitoring, deferred prosecution, first offender programs for drug use or crime, and victim/offender mediation, counseling, weekend work project, victim impact panels, and inmate worker programs.

Source: Alternatives to Incarceration in the State of Wisconsin, Lynsey R. Johnson, 2004

Those who oppose alternatives to incarceration argue that incarceration is critical to ensuring public safety.

Source:

http://stopthedrugwar.org/chronicle/559/sentencing_reform_initiatives_NORA_tough_on_crime

Mentally Ill:

Confronting Confinement, A Report of The Commission on Safety and Abuse in America’s Prisons, June 2006 contains the following observations:

“The need for mental health care in our country’s prisons and jails is enormous. The most conservative estimate of prevalence—16 percent—means that there are at least 350,000 mentally ill people in jail and prison on any given day (Ditton 1999). Other estimates of prevalence have yielded much higher rates, even of ‘serious’ mental disorders—as high as 36.5 percent or 54 percent when anxiety disorders are included (NCCHC 2002, Pinta 1999, Teplin et al. 1997). These prevalence rates are two to four times higher than rates among the general public (NCCHC 2002). They reflect what many witnesses told the Commission: that prisons and jails have replaced state psychiatric hospitals as the institutions that house and care for persons with mental illness.”

“Louisiana Secretary of Public Safety and Corrections Richard Stalder warned: ‘Without the resources, without the staff, without the professionalism that’s needed to cope with those kinds of problems, you will not have the kind of safe environment that you promote as a Commission.’”

“The Commission also heard, time and again, that the first step in improving the ability of correctional systems to address the enormous mental health issues of prisoners is to improve and

expand community mental health treatment and thus to have options other than incarceration, especially for mentally ill people who commit lower-level offenses. Jails in particular are burdened by huge numbers of people with mental illnesses. In jails more than prisons, treatment options are limited by the very short stays of most people who are admitted, making screening and discharge planning the best way to ensure treatment in the community.”

“We should aspire to a zero tolerance policy for psychological misery and pain that could be alleviated by appropriate mental health treatment,” Jamie Fellner testified to the Commission, “but that standard cannot be met without better funding.” Fellner is director of U.S. programs for Human Rights Watch and an author of *Ill Equipped: U.S. Prisons and Offenders with Mental Illness*. Lawmakers and corrections administrators surely need to commit more resources toward identifying and treating the mentally ill in prison and jail, but that is only part of the solution. Our jails and prisons should not have to function as mental institutions.”

“As a society, we need to expand and improve community-based treatment for persons with mental illness.”

In “The Case for Mental Health Reform from a Judicial Perspective,” the Honorable Milton Mack, Chief Judge of the Wayne County Probate Court argues: “Our jails and prisons are filled with people whose only real crime was not to get timely treatment for their mental illness. Behind that criminal behavior are avoidable victims, if only we would provide timely treatment... Mental illness should be treated like any other illness, and that means intervening when the individual lacks the capacity to make an informed decision about their illness. For all other illnesses, a third party can be given the power to consent to treatment if the patient does not have the capacity to make an informed decision. For mental illness, involuntary treatment for that illness requires more than a lack of capacity, danger to self or others must also be shown.”

On January 15, 2007, the New York Times published an Op-Ed Column by Bernard E. Harcourt, a professor of law and criminology at the University of Chicago, entitled, “The Mentally Ill, behind Bars.” In that column, Harcourt makes several points:

- According to a study released by the Justice Department in September, 56 percent of jail inmates in state prisons and 64 percent of inmates across the country reported mental health problems within the past year.
- Over the past 40 years, the United States dismantled a colossal mental health complex and rebuilt – bed by bed – an enormous prison.
- After more than 50 years of stability, federal and state prison populations skyrocketed from under 200,000 persons in 1970 to more than 1.3 million in 2002. That year, our imprisonment rate rose above 600 inmates per 100,000 adults.
- What few people realize, though, is that in the 1940s and ‘50s we institutionalized people at even higher rates – only it was in mental hospitals and asylums.

One alternative to incarceration for the mentally ill is the Assertive Community Treatment (ACT) programming. Assertive Community Treatment uses a multidisciplinary team approach to provide intensive services where and when consumers need them—in their homes, at work and in other community settings—24 hours a day, seven days a week. Teams include peer support specialists and practitioners with expertise in psychiatry, nursing, social work, substance abuse treatment, and employment who work closely together to provide integrated and outreach-oriented services.

States have reported substantial success with ACT, including the following:

- Oklahoma reports that in the 12 months prior to admission to their ACT program in FY 2006, 229 consumers had a combined total of 9,583 days of hospital inpatient care and 3,614 days in jail. In the year following, the number of hospital days fell to 2,612—a 73 percent decrease. Days in jail dropped to 1,314—a reduction of 64 percent.
- Data for FY 2007 in Virginia indicated that consumers used 76 percent fewer state hospital days after ACT enrollment than in an equivalent period before enrollment. Of consumers served by ACT teams, 92 percent had no arrests during the year and 83 percent experienced

stable housing situations.

- In Georgia, a study of a forensic ACT team revealed a 78 percent decrease in jail days, 53 percent reduction in arrests, and 89 percent drop in hospital days, generating a net cost savings of \$1.114 million dollars in one year.

Source: http://www.nami.org/Template.cfm?Section=ACT-TA_Center

Mandated community treatment is another method of managing the mentally ill outside of hospitals, prisons, and jails. Those mandates can take several forms. Money, managed by a representative payee can be used to control the living arrangements and services of the mentally ill. Mandates attached to housing can foster compliance with treatment plans. Management by mental health courts can encourage compliance with treatment plans. Some may follow treatment plans in order to avoid hospitalization. Some mentally ill develop advance directives to specify acceptable and unacceptable treatment in the event they become incapacitated by mental illness. The article cited below discusses the debate that continues over just how much coercion is appropriate.

Source: www.macarthur.virginia.edu/article.pdf

In view of the failures of deinstitutionalization and the poor treatment that the mentally ill receive in prisons and jails, League members are asked to consider whether we should be imprisoning the mentally ill. If so, should we be insisting on specific measures to protect them?

Under Age of 18:

In the mid-1990s, due to a number of highly-publicized cases involving juveniles committing serious crimes, forty-seven states and the District of Columbia enacted “get tough” policies to transfer more juveniles to adult criminal courts and bolster their potential sentences. States enacted tougher policies on juvenile crime to deter other juveniles from committing crimes. Florida’s philosophy exemplifies this ideology: “if you are old enough to do the crime, you are old enough to do the time.”

Source: www.law.suffolk.edu/highlights/stuorgs/lawreview/documents/Kellar_Note_FINAL2.pdf

“The Supreme Court itself has noted that ‘(m)ost children, even in adolescence, simply are not able to make sound judgments concerning many decisions.’ The ‘lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.’ Indeed, growing evidence supports the view that even older adolescents, those fourteen to eighteen years of age, lack the developmental awareness of adults.” (Proportionality and Punishment)

Recent studies on the brain activity of adolescents have demonstrated that they “have significant neurological deficiencies that result in stark limitations of judgment. Research suggests that when compounded with risk factors (neglect, abuse, poverty, etc.), these limitations can set the psychological stage for violence. (Adolescence, Brain Development and Legal Culpability)

In Michigan, “On the motion of the prosecutor, and after a hearing, the juvenile court may waive jurisdiction over the case of a child of at least 14 accused of a felony (or any other offense, whether or not designated a felony, that is punishable by more than one year's imprisonment) if it finds that (1) there is probable cause to believe the child committed the offense alleged and (2) the best interests of the child and the public would be served thereby. The law specifies a number of factors that must be considered in making this determination, but mandates that the court give the most weight to two: the seriousness of the offense and the child's prior record.” (Michigan Transfer Provisions)

In 2008 Michigan was one of the states that had the most individuals serving life imprisonment without possibility of parole for a crime committed prior to the age of 18. There were 306 such individuals. There is no evidence that such sentences reduce violent crime among youth.

The UN Convention on the Rights of the Child includes the following:

- For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.
- Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so...

The American Youth Policy Forum, The Child Welfare League of America, The Coalition for Juvenile Justice, the National Collaboration for Youth, the National Crime Prevention Council, the National League of Cities, and the National Urban League copublished *Less Hype, More Help: Reducing Juvenile Crime, What Works--and What Doesn't*. Among their recommendation was: End overreliance on corrections and other out-of-home placements. (USA Today)

Sources:

- "The Age of Criminal Responsibility," *Include Youth*, February 2002
- JLWOP Talking Points, American Civil Liberties Union of Michigan
- Michigan Transfer Provisions, National Center for Juvenile Justice, 2008
- Proportionality and Punishment: Imposing Life without Parole on Juveniles, Wayne A. Logan, *Wake Forest Law Review*, Vol. 33, No. 3, 1998
- "Adolescence, Brain Development and Legal Culpability," *Juvenile Justice Cener*, American Bar Association, January 2004
- UN Convention on the Rights of the Child, Articles 1 and 37
- Adult prisons: no place for kids - Law & Justice - juvenile criminals, USA Today, July 2002

Given the evidence regarding the development of the brain and the challenge of protecting juveniles in an adult prison, should the League advocate to end incarceration of juveniles in adult facilities?

3. In the majority of states (30), the state pays all of the cost of indigent defense. Michigan is one of 20 states that do not. The National Legal Aid & Defender Association claims the impact is obvious in the following data. "Collectively, Michigan counties spend \$74,411,151 (or \$7.35 per capita) on indigent defense services; 38 percent less than the national average of \$11.86. Michigan ranks 44th of the 50 states in indigent defense cost per capita."

In 2005, the American Bar Association reported a host of problems with Michigan's Indigent Defense System, most related to the fact that budget-stretched counties are unable to provide adequate funding.

In its 2008 evaluation of Michigan's indigent defense system, the National Legal Aid & Defender Association (NLADA) reported many problems with the system. Again, lack of adequate funding was a major contributor to those problems.

Source: "A Race to the Bottom; Speed & Saving Over Due Process: A Constitutional Crisis," (Evaluation of Trial-Level Indigent Defense Systems in Michigan) National Legal Aid & Defender Association, June 2008

Funding at the local level gives counties more input regarding the delivery of services.

It is costly to provide adequate indigent defense – particularly if there is an attempt to provide resources comparable to those provided to prosecutors. While there may be some resulting savings, e.g. fewer persons incarcerated, it is not likely to offset the money spent on indigent defense. Given the state's budget challenges, should it be tackling additional financial commitments?

4. **Right to Vote:**

Only two states in the U.S. (Maine and Utah) currently allow individuals in prison to vote. That means that, in Michigan, approximately 50,000 adults are disenfranchised. More than 50% of those individuals are persons of color. Michigan citizens on probation and parole are allowed to vote.

The American Civil Liberties Union discovered the following in its evaluation of disenfranchisement associated with criminal convictions:

- Almost half of European countries allow all incarcerated people to vote while others disqualify only a small number... Almost all of the countries that disqualify all inmates are in Eastern Europe.
- A number of treaties and other types of international instruments support either the abolition of criminal disenfranchisement law or considerably narrower restrictions than those employed by most American states.
- All Foreign constitutional courts that have evaluated disenfranchisement law have found the automatic, blanket disqualification of prisoners to violate basic democratic principles. In countries where courts have called for enfranchisement of inmates, the legislative and executive branches have complied without significant resistance.
- Where prisoners are allowed to vote, they do so either in the correctional facilities themselves – with no threat to security – or by some version of absentee ballot, in their town of previous residence, in all cases with government entities facilitating the voting. In no country do prisoners vote in a manner that allows them to shape the politics of the prison locality.

Bill McCollum, Florida Attorney General wrote an opinion article published in the St. Petersburg Times on April 2, 2007, “Felons don’t merit automatic rights.” In that article, he argued:

- A person who breaks the law should not make the law.
- Denial of the vote is a matter of justice, respect for crime victims, and public safety.

Source:

Out of Step with the World: An Analysis of Felony Disenfranchisement in the U.S. and Other Democracies, ACLU, May 2006

“Felons don’t merit automatic rights,” St. Petersburg Times, April 2, 2007

Access to the Courts:

In 1996, Congress passed the Prison Litigation Reform Act (PLRA) that was designed to restrict and discourage litigation by prisoners.

The Commission on Safety and Abuse in America’s Prisons made the following recommendations: Congress should narrow the scope of the Prison Litigation Reform Act. For some time now, the federal courts have played the biggest role in watching over America’s prisons and jails and shedding light on the most dangerous conditions and abuses. According to scholars Malcolm Feeley and Van Swearingen, “Litigation has probably been the single most important source of change in prisons and jails in the past forty years” (Feeley and Swearingen 2004). With their independence from political forces and their obligation to protect the rights of those whose pleas might otherwise go unheard, federal judges provide the oversight of last resort, and in some cases the only truly effective monitoring. It is a role that must be protected.

In addition to the PLRA cited above, in 1999, at the parole board’s urging, the Michigan Legislature abolished the right of prisoners to appeal parole denials to the circuit court that had existed under the Corrections Code, although prosecutors and victims retain the right to appeal grants of parole.

On August 12, 2008, the *Detroit Free Press* editorialized: “The state Department of Corrections argues that the mental health provisions of the Hadix (prisoner litigation)... should now be closed. MDOC Spokesman Russ Marlan said prison mental health care has improved. All incoming inmates get effective clinical appraisals instead of standardized tests, he said, and the department has better ways to ensure that inmates continue to get the medications they need. But given the

department's record on prison health care and its prior resistance to change, such assertions don't carry the day.... Prisons are a secret world, and no one outside of them knows the full truth. At the very least, troubling questions remain about the quality of health and mental health care. Michigan citizens and taxpayers still need the independent eyes of the federal court."

Professor Erwin Chemerinsky has been quoted, " I believe that prisoners, for example, will get no protection from the political process. They have no political constituency. The only way to protect prisoners from inhumane treatment is the federal judiciary." (James E. Robertson)

Those who favored limiting prisoner access to the courts expressed the following concerns according to James E. Robertson):

- (Many federal judges had become) managers of systemic prison reforms and thus oversaw directly, or through special masters, the day-to-day operations of correctional institutions.
- Feeley and Rubin characterized "the massive intervention into state corrections ... [as] the most striking example of judicial policy making" in modern America.
- Moreover, they concluded that judicially engineered prison reform "violated nearly every accepted principle for controlling the judicial branch."
- (Some prisoners were) portrayed as recreational litigators, suing over bad haircut and the like.

Source:

- Confronting Confinement, A Report of The Commission on Safety and Abuse in America's Prisons, June 2006.
- Detroit Free Press editorial, August 12, 2008
- The jurisprudence of the PLRA: inmates as "outsiders" and the countermajoritarian difficulty, James E. Roberson, Journal of Criminal Law and Criminology, September 22, 2001

Access to FOIA:

Effective May 19, 1994, the Legislature amended the FOIA to specifically exclude incarcerated prisoners from the class of persons entitled to obtain public records. Section 1(2) of the FOIA, MCL 15.231(2); MSA 4.1801(1)(2), now provides:

It is the public policy of this state that all persons, *except those persons incarcerated in state or local correctional facilities*, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process. [Emphasis added.]

Further, § 2(a), MCL 15.232(a); MSA 4.1801(2)(a), exempts prisoners from the class of persons entitled to invoke the FOIA:

"Person" means an individual, corporation, partnership, firm, organization, or association, *except that person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.*^[1] [Emphasis added.]

In his article about prisoners use of the New York FOIA law, David Rohde reported, "In 1994, the Michigan State Legislature banned all prisoners from filing Freedom of Information requests. The Michigan measure is believed to be the most stringent in the country. Matt Davis, a spokesman for the Michigan Department of Corrections, said the measure was enacted after prisoners began filing increasingly large numbers of requests under that state's Freedom of Information law, including requests for personal information about prison guards and site plans for prisons.

“Mr. Davis said that 95 percent of the 60,679 Freedom of Information requests the State of Michigan received in 1993 were from prisoners. He said that the number of Freedom of Information requests filed in the state dropped to 6,922 in 1995.”

“But civil rights groups argue that the... answer to occasional abuses is to narrowly modify the law or hold hearings when sensitive information is requested by a prisoner.” Prisoner rights advocates argue that many incarcerated persons used the FOIA to hold the system accountable for following its policies and/or to gather information specific to their own situations.

Sources:

“In Prison, Free to Get Information; Inmates Abuse a Law to Obtain Personal Data, Critics Say,” By David Rohde, *New York Times*, Published: October 20, 1997

Protection of Michigan Civil Rights Act:

On May 24, 2005, a *Detroit News* Special Report identified legislation, policy decisions, and policy changes that have served to isolate prisoners:

1998 -- Gov. John Engler refuses to allow a United Nations investigator to inspect the state's female prisons.

1999 October -- The Legislature passes a law that requires inmates to prove lasting physical harm to collect damages.

1999 December -- Legislators amend the Michigan Civil Rights Act to exclude inmates from those whom the law protects beginning in March 2000.

2003 --The Legislature closes the office of the Legislative Corrections Ombudsman, which once investigated inmate complaints.

2005 February -- The Michigan Court of Appeals upholds the changes to the civil rights law, holding that women who claim abuse behind bars after March 2000 are not covered.

A ruling in the case Neal v. Michigan Department of Corrections concluded that prisoners are protected under the Michigan Civil Rights Act.

Source: http://www.publicjustice.net/PR/TLOY_Winner_2008.htm

In response to litigation by female prisoners related to sexual abuse by staff, the Legislature amended the Civil Rights Act to make clear that its intent was never to include correctional facilities as places of “public service.”

Source: The Civil Rights Litigation Clearinghouse, Case Profile Anderson v. Dept. of Corrections, <http://clearinghouse.wustl.edu/detail.php?id=9753>

5. Ombudsman:

The primary argument against an ombudsman is the cost. In fact, in 2003, the Michigan legislature closed the office of the Legislative Corrections Ombudsman in a cost-cutting move. (The office was reinstated in 2009.) Some may become frustrated that the ombudsman has no authority to correct problems; the office can merely advise those in authority. Some employees of the department may resent the intrusion of the office while investigating complaints.

The UN Standard Minimum Rules for the Treatment of Prisoners states that there shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are

administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.

“Problems in a large prison system are inevitable. Without independent oversight of the Department of Corrections, all of us will continue to pay a heavy price for the state's mistakes.” (Detroit Free Press)

The Commission on Safety and Abuse in America's Prisons made the following recommendation: Demand independent oversight.... Perhaps the least developed form of oversight at present is independent inspection and monitoring. Few states have monitoring systems that operate outside state and local departments of corrections, and the few systems that do exist are generally underresourced and lacking in real power.

Sources:

- Confronting Confinement, A Report of The Commission on Safety and Abuse in America's Prisons, June 2006.
- UN Standard Minimum Rules for the Treatment of Prisoners

Media access to prisons:

The Michigan Department of Corrections treats a media representative much like any other visitor. The individual must be on the prisoner's visiting list (or on the telephone list to receive calls). Audio or visual recording devices are prohibited when meeting with prisoners. Writing utensils "of reasonable size and quantity" and "approved" notebooks are allowed.

The Commission on Safety and Abuse in America's Prisons made the following recommendations with regard to media access to prisons and jails: Strive for transparency. Ensure media access to facilities, to prisoners, and to correctional data. Much of what the public knows about prisons and jails comes through the press. When journalists have the time and space to explore issues in depth, they can engage and educate the public. In 2005, the *New York Times* published a series of articles by reporter Paul von Zielbauer on the serious failings of the private company that provides health care in New York's correctional facilities. Accounts of individual suffering and death combined with detailed information about the operations of one of the biggest private correctional health-care companies brought this issue to the attention of ordinary people around the country. But the ability of the press to provide the public with the depth of information necessary to reach intelligent and informed opinions has been impeded by barriers that prevent members of the media from visiting facilities, talking to staff and prisoners, and reviewing official records.

Source: Confronting Confinement, A Report of The Commission on Safety and Abuse in America's Prisons, June 2006.

Prison officials insist that the changes are necessary to ensure the safety of the staff and state inmates. Source: <http://www.rcfp.org/news/1999/1220michpris.html>

When implementing similar restrictions, Massachusetts' officials cited journalists' safety and victims' privacy as justification for restricting access.

Source: <http://www.rcfp.org/newsitems/index.php?i=3134>

Visitation by family and friends:

The Commission on Safety and Abuse in America's Prisons made the following recommendation: Encourage visits to facilities. Create opportunities for individual citizens and organized groups, including judges and lawmakers, to visit facilities.... The Correctional Association of New York, the Pennsylvania Prison Society, and the John Howard Association of Illinois have long brought citizens to visit and monitor facilities in their respective states, without compromising safety or security. Indeed the visits may help to promote safety.

Source: *Confronting Confinement, A Report of The Commission on Safety and Abuse in America's Prisons*, June 2006.

The Michigan Department of Corrections made the following arguments in justifying its restrictive visiting policies: The population of Michigan's prisons increased in the early 1990's. More inmates brought more visitors, straining the resources available for prison supervision and control. In particular, prison officials found it more difficult to maintain order during visitation and to prevent smuggling or trafficking in drugs. Special problems were encountered with the increase in visits by children, who are at risk of seeing or hearing harmful conduct during visits and must be supervised with special care in prison visitation facilities.

The incidence of substance abuse in the State's prisons also increased in this period. Drug and alcohol abuse by prisoners is unlawful and a direct threat to legitimate objectives of the corrections system, including rehabilitation, the maintenance of basic order, and the prevention of violence in the prisons.

Source: SUPREME COURT OF THE UNITED STATES, Case No. 02—94, (*Overton v Bazetta et. al.*, <http://www.law.cornell.edu/supct/html/02-94.ZO.html>)

Oversight of privatized services:

The Michigan Department of Corrections currently contracts for health care. There are calls to privatize other services such as food service.

With the continued use of private prisons and third-party service providers, contract monitoring is an important form of oversight. (Vera Institute)

The State Auditor General released a report, in March 2008, suggesting that the corrections department could control costs by doing a better job of monitoring contracts for medical care and pharmaceutical services. The report claimed that the medical staff were not seeing chronically ill inmates for routine exams. "As a result, BHCS (the Bureau of Health Care Services) may have jeopardized its ability to identify, manage, and treat potentially serious medical conditions before they became more severe and costly to treat, or before they became a threat to the prison population and staff."

The New York Times performed a yearlong evaluation of contractor Prison Health Services with the results published in 2005. The newspaper reported that the State Commission of Correction, "faulted company policies, or mistakes and misconduct by its employees, in 23 deaths of inmates in the city (of New York) and six upstate counties. Fifteen times in the last four years, it has recommended that the state discipline Prison Health doctors and nurses." They also reported serious problems with the contractor in seven other states.

In an editorial, the *Detroit Free Press* reported that the new contract for health care to be implemented in 2009, "contains incentives to keep costs low." They also offered the following opinions: "Bringing in a new service provider doesn't guarantee the system will be fixed.... MDOC spokesman Russ Marlan said the department now has controls to ensure quality prison health care, regardless of the provider. Among other things, Marlan cited a health care quality assurance administrator – a new position that reports directly to MDOC Director Patricia Caruso. That's encouraging, but the state's record on prison health care demonstrates that MDOC leaders, along with the Legislature and its new Corrections Ombudsman Keith Barber, must become far more vigilant in overseeing prison health care to end unnecessary suffering and death."

Sources:

- "As Health Care in Jails Goes Private, 10 Days Can Be a Death Sentence," *The New York Times*, February 27, 2005

- Kalamazoo Gazette, March 27, 2008
- Detroit Free Press, December 29, 2008
- Vera Institute of Justice, Compendium of Correctional Oversight Mechanisms in the United States, January 2009

We are not aware of arguments against contract monitoring. However, as noted above, the department has a history of very poor oversight of large contracts involving health care. Leagues are being asked to consider how important such monitoring is.

6. **Humane Conditions:**

States and localities must commit to eliminating the crowded conditions that exist in many of the country's prisons and jails and work with corrections administrators to set and meet reasonable limits on the number of prisoners that facilities can safely house. (Confronting Confinement)

“(T)he most important single factor (among many) that helps to explain the current crisis in American corrections – the lack of effective programming and treatment; the persistence of dangerous and deprived conditions of confinement; and the use of forceful, extreme and potentially damaging techniques of institutional control (such as supermax) – is the overcrowding that has plagued our state and federal prison systems for much of the last 30 years.” (Prison Overcrowding)

Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners. (Standard Minimum Rules for the Treatment of Prisoners)

“Few conditions compromise the safety and security of a correctional institution more than idle prisoners.” (Confronting Confinement)

Effective programming requires money, effort, and a recommitment to rehabilitation. But it is not only an investment in safe prisons and jails. It is also an investment in safe and healthy communities.” (Confronting Confinement)

Conflicts between staff and prisoners arise even in the best-run institutions, but nearly all of those situations can be managed without using physical force. While it might be instinctive to respond aggressively to someone who is being aggressive, the safety of both staff and prisoners depends on doing just the opposite. To talk merely of limiting the use of force is to miss a much larger opportunity to reframe the role of corrections officers in resolving and preventing conflict. Officers need guidance, inspiration, and a repertoire of effective, non-forceful responses so that the use of force is naturally limited to those rare situations where it is required to prevent serious harm. (Confronting Confinement)

Prison overcrowding, the adoption of excessively harsh and arbitrary control practices in reaction to prison violence, and the growing general punitive attitude toward prisoners have resulted in more punitive policies and practices. These include denial of adequate medical services, excessive use of physical force, and housing prisoners in exceptionally punitive arrangements, such as solitary confinement units and cells. The federal courts have ruled that all of these practices violate the Eighth Amendment of the United States Constitution. (Unlocking America)

Prisoners should be protected from assault, rape, murder, etc., by other prisoners and staff. Effective strategies such as adequate surveillance, voluntary access to safe living areas within the prison, housing prisoners in small units, and “single-celling” should be practiced to ensure prisoners’ safety. (Unlocking America)

Unsafe, inhumane, and secretive prisons not only traumatize the incarcerated but also contaminate prison staff and their families, as well as townsfolk near the prison. More generally, support for an inhumane prison system requires that prison workers and the public embrace the simplistic concept that prisoners are unworthy beings that deserve their harsh punishment above and beyond the

segregation from society and loss of freedom from incarceration itself. (Unlocking America)

Sources:

- Confronting Confinement, A Report of The Commission on Safety and Abuse in America's Prisons, June 2006.
- Prison Overcrowding: Harmful Consequences and Dysfunctional Reactions, Testimony of Professor Craig Haney, University of California, Santa Cruz
- UN Standard Minimum Rules for the Treatment of Prisoners
- Unlocking America, Why and How to Reduce America's Prison Population, The JFA Institute, November 2007

While it is unlikely that anyone would argue for inhumane conditions, in fact, conditions in our prisons are perceived by many to be inhumane. Without a position on this issue, the League would be less effective when advocating on policies and legislation affecting overcrowding, use of isolation, use of restraints, adequate staffing for psychological services, etc.

Mental Health Care at community standards:

In an opinion issued last Monday U.S. District Court Judge Richard A. Enslen described the need for significant improvements to mental health care in Michigan prisons and provided details of the needlessly tragic death of the prisoner (referred to by the ACLU only as TS under the terms of a court order). Judge Enslen opened his opinion with a prayer for TS and others who have died avoidable deaths due to deficient health care, noting that "Any earthly help comes far too late for them."

For much of the four days TS was held in restraints, he was exposed to extreme heat inside his cell. His physical and mental health deteriorated quickly, but neither medical nor custody staff reacted to his repeated refusals of food and water. When offered a shower on the last day of life, he could barely stand up and needed help to walk. Still, medical and mental health staff did not intervene.

Source: Autopsy Confirms Michigan Prisoner Died Due to Deficient Care (11/20/2006), ACLU Press Release

We are not aware of anyone arguing against providing adequate mental health care for prisoners. The Michigan Department of Corrections does report difficulty recruiting qualified staff, particularly in remote locations. It is worth noting that most of the segregation units (which house many mentally ill) are in remote locations like Munising, Standish, and Baraga. This isolation may well be intentional. It is also the case that the mental health care delivery is not a primary responsibility for Corrections.

Health care at community standards:

Prisoners should have access to the resources and services required to maintain their physical and mental health. These include access to medical and psychiatric services, adequate diet, and recreation. Prisoners should not be subjected to physically and mentally deleterious incarceration regimens such as extended periods of isolation and, restricted mobility, and excessive noise. (Unlocking America)

Prisoners disproportionately suffer from substance abuse problems, mental illnesses, chronic diseases and communicable diseases such as HIV/AIDS, hepatitis B, hepatitis C and tuberculosis. Within prisons the rate of hepatitis C ranges from 15 percent to 40 percent, while the rate is 2 percent in the general population. The rate of confirmed AIDS cases in the prison population is four times that of the overall population, according to a Bureau of Justice Statistics report. (New Manual)

The Michigan Department of Corrections recently announced that it will terminate its health care

contract with Correctional Medical Services and enter into a new contract with Prison Health Services (PHS). In 2005, the New York Times reported on problems in at least eight states with health care services provided by PHS. Many of those problems resulted in deaths – 29 in New York alone.

Sources:

- Unlocking America, Why and How to Reduce America's Prison Population, The JFA Institute, November 2007
- New Manual Provides Guidelines on Prison Health Care, Standards for Health Services in Correctional Institutions, 3rd edition, by APHA Task Force on Correctional Health, April 16, 2003
- "As Health Care in Jails Goes Private, 10 Days Can Be a Death Sentence," The New York Times, February 27, 2005

We are not aware of anyone arguing against providing adequate health care for prisoners. The Michigan Department of Corrections does report difficulty recruiting qualified staff, particularly in remote locations. Given its poor track record for monitoring health care delivery, we are asking whether it is important that we be able to advocate on this issue.

Timely rehabilitative programming:

The organization and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life. (UN Minimum Rules)

Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. (UN Minimum Rules)

Targeted interventions work. In particular, highly structured programs that help prisoners understand the motivations underlying their actions and the consequences of their behavior can reduce misconduct in correctional facilities and lower recidivism rates by at least 10 percent. These "cognitive-behavioral" programs are becoming more common. If implemented nationwide, they would reduce the number of people re-incarcerated by tens of thousands. Education—particularly at the college level—also reduces rule-breaking and disorder in prison. Studies show that post-secondary education can cut recidivism rates by nearly half. (Confronting Confinement)

Authors of "Education as Crime Prevention: The case for Reinstating Pell Grant Eligibility for the Incarcerated" report on "the overwhelming consensus among public officials that postsecondary education is the most successful and cost-effective method of preventing crime." Others have argued that such studies are not robust enough to draw conclusions.

Under Human rights law, the United States government has made commitments to ensure the right to education for incarcerated populations. (The Right to Education)

Any rational and humane system of punishment should provide access to program opportunities that increase prison safety and improve prisoners' chances of making it in the community after prison. Such programs would include academic, technical and citizenship education, as well as a wide variety of treatment programs that help prisoners improve themselves and develop more conventional, law-abiding interests and pursuits. These types of programs should be provided regardless of whether they reduce recidivism. (Unlocking America)

Sources:

- Confronting Confinement, A Report of The Commission on Safety and Abuse in America's Prisons, June 2006.
- "Education as Crime Prevention: The case for Reinstating Pell Grant Eligibility for the Incarcerated," Daniel Karpowitz and Max Kenner, Bard Prison Initiative, Bard College,

- UN Standard Minimum Rules for the Treatment of Prisoners
- The Right to Education in the Juvenile and Criminal Justice Systems in the United States, Submission by Vernor Muñoz, Special Rapporteur on the Rights to Education, Human Rights Council, United Nations, December 31, 2008
- Unlocking America, Why and How to Reduce America’s Prison Population, The JFA Institute, November 2007

A growing literature on “what works” in correctional programming has found that many programs have no impact on recidivism rates. A recent “meta-analysis” of treatment programs reviewed 291 evaluations of adult offender treatment programs, both in-prison and in-community, conducted in the United States and other English speaking nations. It reports that 42% of the evaluated programs, including jail diversion programs, domestic violence programs, faith-based, psychotherapy or behavior therapy for sex offenders, boot camps, electronic monitoring, and restorative justice programs *had no impact* on recidivism. (Unlocking America)

Sources:

- Unlocking America, Why and How to Reduce America’s Prison Population, The JFA Institute, November 2007

Assistance with transition to freedom:

Most prisoners receive little or no preparation for release from prison or assistance subsequent to their release. They face extraordinary difficulties in achieving stability, viability, and life fulfillment on the outside. States should develop and provide access to transitional and permanent housing, education, vocational training and placement, counseling, coaching, and mentoring. (Unlocking America)

Sources:

Unlocking America, Why and How to Reduce America’s Prison Population, The JFA Institute, November 2007

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Sources:

- Unlocking America, Why and How to Reduce America’s Prison Population, The JFA Institute, November 2007

7. Objective rationale for denying parole:

In describing the current parole process in Michigan, Citizens Alliance on Prisons and Public Spending made the following observations: “With a high probability score, the board may, in most cases, release the prisoner without an interview. If it denies parole, the board must give ‘substantial and compelling reasons’ for departing from the guidelines recommendation. However, there is no prohibition on using factors already scored (when establishing the minimum sentence). The board frequently cites aspects of the offense or the prisoner’s prior record. It also frequently uses a subjective assessment of the prisoner’s thinking, such as insufficient remorse or minimizing participation in the offense. If the prisoner scores low probability, the board may deny release without an interview. In these cases, it must have substantial and compelling reasons for departing from the guidelines and granting parole. For people who fall into the average probability category, the board has absolute discretion. While by statute it must articulate reasons for denying parole,

these do not have to be substantial and compelling. Prisoners commonly receive notices denying parole with boilerplate language telling them that to improve their chances for release they should do what they have already done, such as keeping a clear conduct record and completing recommended programs.”

(Other than Michigan,) no other state provides the parole board such discretion in determining what the length of time served should be. In most states where the parole board has significant discretion, the judge sets the maximum sentence for an individual offender based on the specifics of the case. (Justice Center)

The Justice Center of The Council of State Governments recommended the following changes in Michigan:

- Require that people sentenced to prison after the effective date of this policy (anticipated to be April 1, 2009) serve no less than 100% of their court-imposed minimum sentence and no more than 120% of that sentence.
- Direct the parole board to release offenders who have served 100% of their court-imposed minimum sentence except in cases where there is failure to complete required programs that are determined to reduce an offender’s risk to public safety or institutional misconduct.
- Permit the parole board to hold an offender beyond 120% of their court-imposed minimum sentence in cases where the offender poses a very high risk of reoffending as determined by a validated risk assessment.

Authors of Unlocking America recommend that we reduce time served in prison. This central recommendation is grounded in three facts: 1) many prisoners are now serving longer prison terms; 2) the longer prison terms are not proportionate to the severity of the crimes they were convicted of; and 3) the extension of their length of incarceration has no major impact on their recidivism rate, or crime rates in general.,, (T)here is no association between length of stay and recidivism rates. Coupled with the previous research finding that released prisoners account for a small percentage of all arrests, one has to question the benefits of increasing the length of time served.

Sources:

- The high cost of denying parole, an analysis of prisoners eligible for release, Citizens Alliance on Prisons and Public Spending, November 2003
- Justice Reinvestment in Michigan, Policy Options to Deter Crime, Lower Recidivism, and Reduce Spending on Corrections, Justice Center, The Council of State Governments, January, 2009
- Unlocking America, Why and How to Reduce America’s Prison Population, The JFA Institute, November 2007

The Michigan Parole Board has, for years, operated on the belief that attitude does matter – that persons who deny their guilt or minimize the crime are more likely to violate parole rules or commit new crimes. We are not aware of statistical support for that belief.

Release early enough to allow supervision:

Require offenders who have served 100% of their minimum sentence to be released at least 9 months prior to their statutory maximum sentence in order to ensure a period of intensive supervision in the community.

Sources:

Justice Reinvestment in Michigan, Policy Options to Deter Crime, Lower Recidivism, and Reduce Spending on Corrections, Justice Center, The Council of State Governments, January, 2009

The Michigan Parole Board has apparently reached the conclusion that some individuals are simply too dangerous to permit their early release.