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FEATURE ARTICLE

PROTECTING PUBLIC HEALTH FROM INSIDE A JAIL CELL

by SARAH GEDULDIG

The Affordable Care Act (ACA) has provided Cook County Jail with a new tool to combat overcrowding, overspending, and reduce the likelihood of recidivism. The ACA allowed Illinois to opt into Medicaid expansion in order to increase access to health care for low-income individuals. Taking advantage of this, Cook County Jail has started the Medicaid application process for inmates as part of its intake process. Though Medicaid does not cover inmates while they are incarcerated, once released, many will have health coverage for the first time. This coverage has the potential to ease the process of commu-
community reentry and improve the health of both former inmates and the community.\(^5\)

**Health Care and the Jail Population**

Jails see the largest number of people filtering in and out of the criminal justice system.\(^6\) In contrast to prisons, jails generally house people pending trial and those whose sentence requires imprisonment of less than one year.\(^7\) The majority of inmates, two thirds of the inmates, are not confined because they are seen as a threat to the public, but instead because they are unable to post bail.\(^8\)

Cook County is one of the largest single-site jail facilities in the country.\(^9\) The jail has a daily population of around 9,000 inmates and incarcerates roughly 100,000 people annually.\(^10\) The typical inmate at Cook County Jail is a single, 32 year old, African-American male from the Chicago metropolitan area.\(^11\) Cook County provides health care coverage to all of these individuals while they are incarcerated, as required by the United States Constitution.\(^12\)

Under the 8th Amendment’s prohibition of cruel and unusual punishment by state actors, the United States Supreme Court has held that inmates must receive adequate health care while they are held in jails.\(^13\) Providing this care can be very expensive and can consume a large part of a jail’s budget.\(^14\) Inmate health care expenses are on the rise; 44 states reported increased health care spending in jails and prisons from $4.3 billion in 2001 to $6.5 billion in 2008.\(^15\)

With few exceptions, the jail pays the cost of health coverage for a person who is incarcerated, including hospitalization for more than 24 hours.\(^16\) However, when a person is released from jail, there is no guarantee of health care coverage.\(^17\) If an individual had health insurance through Medicaid prior to being incarcerated, they are disqualified from Medicaid while they are incarcerated.\(^18\) Once released, difficulties in reenrolling may cause gaps in the former inmate’s coverage lasting several months.\(^19\) This assumes that they will be able to reenroll; however such reenrollment is not certain.\(^20\)
MEDICAID AND THE EXPANSION UNDER THE ACA

Medicaid is a government-funded health insurance plan covering low-income individuals. Prior to the enactment of the ACA, many inmates, particularly males, did not qualify for Medicaid. Medicaid was only available to those who met a specific set of criteria, generally meaning that the person was a child, mother, pregnant, or an individual with a severe disability. This precluded most low-income males who did not have a qualifying disability.

One of the goals of the ACA was to provide health care coverage to underserved and vulnerable populations. To accomplish this, the ACA set out to encourage the expansion of Medicaid on a state level, by providing financial incentives to those states that chose to opt in. If a state chose to opt into the Medicaid expansion, all individuals whose income falls below 138 percent of the federal poverty level would be eligible for Medicaid coverage. The jail population is primarily composed of individuals who would be eligible under this Medicaid expansion income criterion. This eligibility makes jails a viable point of access enabling the enrollment of a large number of the targeted low-income population.

Medicaid expansion holds the possibility of reducing spending, including jail spending, and helping states meet their budget constraints. Though under the expansion jails will still be required to cover the cost of health coverage for its inmates, having healthier inmates upon entry and release is expected to reduce jail health care costs. In Cook County the Medicaid expansion was implemented through CountyCare; a partnership with the State of Illinois and the Cook County Health & Hospital System.

CountyCare is an Illinois Medicaid program run by Cook County, which allows the newly eligible individuals under the ACA to enroll in Medicaid. Through a Federal Section 1115 Demonstrations wavier, which provides approval for experimental programs that promote the objectives of Medicaid, CountyCare was able to start accepting applications in November of 2012. Recognizing that the jail population contains a high percentage of individuals who would benefit from health care coverage, Cook County Jail, with the help of Treatment Alternatives for Safe Communities (TASC), has established a program where, during the intake process, inmates are assisted in initiating the
CountyCare application. As of early March 2014, over 13,000 applications had been initiated.

INMATE HEALTH AND THE COMMUNITY

Each year 70,000 ex-offenders return to the community throughout the U.S. These former inmates have a disproportionally high-rate of infectious disease, chronic disease, and mental illness. This problem was historically ignored because it was viewed solely as an issue affecting the rights of the prisoner rather than as an issue of public health and affecting the whole community. Now, through this latter view, many are acknowledging and bringing awareness about how the prevalence of illness can take a huge toll on the community — both through the spread of disease and the impact of illness on those in close contact with the former inmates.

Generally, inmates have poor health, and the health coverage they receive in jail is of low quality. This poor health care results in large populations living in close proximity to each other, with a high possibility of spreading disease. Compounding the problem, 90 percent of inmates are uninsured, and though they may be aware that they have some sort of illness, have never received treatment. The average inmate at Cook County Jail spends 54 days in jail, with the most common length of stay being 12 days. During this time, it is not uncommon for the inmate to contract a contagious disease or other illness affecting their health. The inmate is then released back into the community, where they remain untreated and may spread diseases to friends and family.

The spread of contagious disease is not the only impact reentry has on the community; chronic illness, addiction, and mental illness can also take a toll. These conditions can result in difficulty finding and retaining jobs, cause financial hardship, housing insecurity for both the former inmates and their families and lead to reoffending. Treatment, specifically for substance abuse, can help a former inmate stay away from illegal activity, which they previously were around in order to pay for their habit. Studies have shown that having health coverage upon release is associated with lower rates of rearrests and drug use, which result in a decrease in violence that is often associated with drug use.
Untreated mental illness in particular is an issue that leads to increased recidivism in former inmates.\textsuperscript{51} Cook County Jail is particularly affected by mental illness because it is one of the largest providers of mental health services in the U.S.\textsuperscript{52} During the course of one day in Cook County Jail, 60 percent of the individuals who completed intake stated they have been diagnosed with a mental illness.\textsuperscript{53} Not only is mental illness expensive to treat, but it can also lead to criminal activity and self-management through drug and alcohol use.\textsuperscript{54} These offenses may land individuals in jail where, as discussed above for other illnesses and drug addiction, they may receive some treatment, but as soon as they are released, they face few beneficial options.\textsuperscript{55} Under the ACA expansion of Medicaid, mental health treatment is covered.\textsuperscript{56} Through this expanded enrollment program, more individuals will receive treatment for mental health issues and will be less likely to subsequently commit crimes in the community.\textsuperscript{57}

Treating infectious disease and managing addiction, chronic illness, and mental health should decrease the rate that former inmates reoffend.\textsuperscript{58} Lowering this rate will likely reduce overcrowding and decrease spending and budget pressures.\textsuperscript{59} It should also improve the overall health and well being of the community.\textsuperscript{60}
ISSUES IN RECEIVING TREATMENT

Even with increased coverage under CountyCare, there are still several logistical issues that former inmates will face when attempting to receive treatment. First, though enrollment occurs during intake procedures, there are staffing constraints that will limit the number of inmates who are screened. Currently TASC is helping with enrollment in Cook County Jail to ease this problem in Chicago, but other jails may continue to face this problem. Furthermore, when individuals are arrested and incarcerated, they often do not have the required information needed to enroll. Many may not have any identification or other required information, e.g. social security number, causing the application process to be incomplete.

Once enrolled, there is still the problem of accessing prior medical records. In order to properly treat these newly enrolled individuals, their doctors need to be able to access former records to gain knowledge on prior diagnoses, treatment, and other beneficial information they contain. However, many former inmates have scattered records documenting their health histories, visiting different emergency rooms and clinics when serious health issues arise. Even with the increased use of electronic medical records, collecting all past, relevant health records for a patient can be very difficult and the absence of such records could impede further treatment.

Along with lack of continuity in sharing medical records, there may be a shortage in providers. The increase in people seeking treatment may flood the overworked staff in local clinics — resulting in many individuals having coverage and seeking treatment and preventative services with no place to go. There also may be a shortage in physicians that are willing to except Medicaid, further limiting options for newly enrolled. The degree of this shortage may, in part, depend upon the number of those who are covered that actually seek treatment. The projected increased benefits of health coverage depend on whether these new enrollees actually seek treatment and adhere to their doctor’s directions.
CONCLUSION

The Medicaid expansion under the ACA should lead to greater coverage for populations, particularly former inmates, that otherwise would not have access to health coverage.\textsuperscript{72} This population is very representative of individuals filtering through the jail system.\textsuperscript{73} The enrollment program for CountyCare has the potential to increase access for hundreds of thousands of people including a large proportion of former inmates, benefiting the health of the whole community while decreasing recidivism.\textsuperscript{74}

NOTES

2 CountyCare, Cook County Health & Hospital Services, http://www.cookcountyhhs.org/patient-services/county-care/ (last visited 04/21/2014).
3 Mark Niquette, Jails Enroll Inmates in Obamacare to Pass Hospital Costs to U.S., BLOOMBERG (Feb. 6, 2014).
4 Id.
5 Id.
7 MARSHA REGENSTEIN & JADE CHRISTIE-MAPLES, MEDICAID COVERAGE FOR INDIVIDUALS IN JAIL PENDING DISPOSITION, Dep’t of Health Policy George Washington Univ. (2012).
8 Id.
10 Id.
11 David E. Olson & Sema Taheri, Population Dynamics and the Characteristics of Inmates in the Cook County Jail, Criminal Justice & Criminology (2012).
13 Id.
14 Niquette, supra note 3.
15 Id.
16 Id.
17 Id.
18 Regesntein, supra note 7.
19 Pollock, supra note 6.
20 Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.


Cardwell, supra note 28.

Maki, supra note 29.

CountyCare, supra note 2.

Id.


Niquette, supra note 3.


Teitelbaum, supra note 13 at 1337.

Teitelbaum, supra note 13 at 1334.

Teitelbaum, supra note 13 at 1337.

Maki, supra note 29.

Teitelbaum, supra note 13 at 1337.

Id.

Niquette, supra note 3.

Olson, supra note 11.

Teitelbaum, supra note 12 at 1337.

Id.

Id.

Id.


Teitelbaum, supra note 12 at 1356.

Teitelbaum, supra note 12 at 1337.


Id.

Id.

Id.

Id.

Maki, supra note 29.
58 Ollove, supra note 49.
59 Cardwell, supra note 28.
60 Teitelbaum, supra note 12 at 1337.
61 Cardwell, supra note 28.
62 Niquette, supra note 3.
63 Cardwell, supra note 28.
64 Id.
65 Maki, supra note 29.
66 Id.
67 Id.
68 Id.
69 Id.
70 Id.
71 Id.
72 Ollove, supra note 44.
73 Maki, supra note 29.
74 Id.
In May 2013, Cook County amended its human rights ordinance to prohibit discrimination against Housing Choice Voucher holders. Specifically, the amended ordinance prohibits landlords from denying housing applications on the basis that an applicant pays rent with a Housing Choice Voucher (HCV). This prohibition will have positive implications for all HCV holders, particularly HCV holders who are people of color, because landlords in Cook County cannot discriminate based on source of income.
County may have been using lawful discrimination against HCV holders as a proxy for unlawful race discrimination. Moreover, source of income (SOI) discrimination disparately impacts people of color. Therefore, in order to promote fair housing choice, Illinois should prohibit SOI discrimination, without exception, in all Illinois municipalities, most of which have a legal obligation to promote fair housing choice under the federal Fair Housing Act and Department of Housing and Urban Development regulations.

**Source of Income Disadvantage and Its Effects on HCV Holders**

When landlords refuse to screen HCV holders on the same basis as non-HCV holders, they discriminate based on SOI. In jurisdictions with complete SOI protection, landlords may not refuse to process an application simply because the applicant pays rent with an HCV. That being said, HCV holders must still meet the landlord’s legitimate criteria in order to be eligible to rent a particular unit. For instance, even in jurisdictions with SOI protection, HCV holders must meet a landlord’s credit and criminal background standards.

SOI discrimination limits housing choice for HCV holders—people whose low-income already narrows their housing options—and relegates HCV holders to disadvantaged neighborhoods. HCV holders who want to leave high-poverty, distressed neighborhoods are prevented from doing so when landlords in higher opportunity neighborhoods categorically refuse to rent to HCV holders. Landlords who do rent to HCV holders often steer HCV holders away from opportunity neighborhoods. There are significant negative effects associated with forcing people to stay in high-poverty neighborhoods with failing schools, distressed housing, high crime and no work. People living in disadvantaged neighborhoods with high levels of poverty generally have poorer health outcomes, lower levels of academic achievement, fewer employment opportunities, heightened vulnerability to gang recruitment, and greater exposure to violence relative to otherwise-comparable people living in more advantaged neighborhoods. Hence, in the absence of true revitalization efforts for high-poverty neighborhoods, housing mobility for HCV holders is crucial for their well-being.

Although SOI discrimination is often difficult to detect, municipal ordinances which ban SOI discrimination make it harder for landlords to discriminate based on SOI. Fair housing advocacy organizations in Cook County,
which include Metropolitan Tenants Organization, Open Communities, and Chicago Lawyers’ Committee for Civil Rights Under Law, monitor Cook County landlords for SOI discrimination and help HCV holders file complaints against landlords who discriminate based on SOI.19

ILLINOIS SHOULD FORBID SOI DISCRIMINATION BECAUSE SOI DISCRIMINATION IS OFTEN USED AS A PROXY FOR RACIAL DISCRIMINATION

Housing advocates suspect many landlords refuse HCV applications as a proxy for intentional race discrimination.20 Advocates believe many landlords categorically refuse HCV holders in order to prevent African Americans from moving into their building, community or municipality.21 But even if landlords refuse to rent to HCV for non-discriminatory reasons, the effect of many landlords categorically refusing to rent to HCV holders has a disparate impact on minorities.22 Moreover, housing advocates believe Illinois and its municipalities have effectively allowed SOI discrimination to act as a proxy for race discrimination by permitting SOI discrimination to occur.23 Hence, outlawing SOI discrimination throughout all of Illinois may be necessary to effectively outlaw and prevent race discrimination in specific Illinois municipalities.

For instance, Glenview, a Cook County suburb, has attempted to nullify the County’s recently amended ordinance by adopting its own ordinance.24 Glenview’s ordinance repeals protection for HCV holders.25 Glenview claims this is necessary to restore choice for landlords who may not want to rent to HCV holders because it would require the landlord to participate in the HCV program.26 However, the premise of Glenview’s retaliatory ordinance may be paradoxical, since discrimination against HCV holders restricts housing choice for people trying to leave high poverty areas, often resulting in poorer outcomes in the areas of health, employment and education, to name a few.27

Toni Preckwinkle, President of Cook County’s Board of Commissioners, contends that Glenview’s move is not supported by Illinois law.28 She notes that Glenview purports to be exercising its home rule authority, but she claims the Illinois Human Rights Act has explicitly prohibited Glenview from enacting an ordinance that limits housing choice.29 If it remains in effect, Glenview’s ordinance would allow Glenview landlords—those who intend to discriminate—to continue preventing African Americans from moving into Glenview, which is currently only one percent black.30
In order to prevent race discrimination by way of HCV discrimination, Illinois should adopt SOI protection statewide. Although Chicago and Cook County have taken steps to prevent landlords from engaging in by-proxy race discrimination, SOI discrimination is likely just as prevalent in other counties in Illinois as well.\footnote{Cook County, Illinois Adds Voucher Holders as Protected Class, Nat. Low Income Hous. Coal. (May 17, 2013) http://nlihc.org/article/cook-county-illinois-adds-voucher-holders-protected-class. Cook County, which already prohibited landlords from discriminating against housing applicants with government subsidies, repealed its one exception to that general rule. The exception allowed landlords to openly discriminate against people paying with Housing Choice Vouchers. Housing Choice Vouchers, formerly known as Section 8 tenant-based assistance, are tenant-based portable rent subsidies that families with low income can use in seeking private rental housing. See James A. Riccio, Subsidized Housing and Employment: Building Evidence About What Works to Improve Self-Sufficiency 3 n.5 (Joint Ctr. for Hous. Studies of Harv. U., Working Paper No. RR07-6, 2007), available at http://www.jchs.harvard.edu/research/publications/subsidized-housing-and-employment-building-evidence-about-what-works-improve (explaining Section 8 program is now called Housing Choice Voucher program).} Furthermore, Illinois has considered adopting SOI protection state-wide, but the bill remains indefinitely stalled in the Illinois House.\footnote{Illinois and many of its municipalities receive HUD funding. In furtherance of this duty, HUD has required some HUD funded municipalities to adopt SOI protection where SOI discrimination has impeded fair housing choice for FHA protected classes in that municipality. Furthermore, when HUD finds a municipality noncompliant with this duty, HUD may cut-off funding to that municipality.}

Illinois should adopt SOI protection in order to promote fair housing for African Americans.\footnote{Illinois should adopt SOI protection in order to promote fair housing for African Americans. Jurisdictions that receive funding from the Department of Housing and Urban Development (HUD) have a responsibility to affirmatively further fair housing for classes of people who are protected under the Fair Housing Act (FHA). African Americans are part of a protected class under the FHA. Furthermore, Illinois and many of its municipalities receive HUD funding. In furtherance of this duty, HUD has required some HUD funded municipalities to adopt SOI protection where SOI discrimination has impeded fair housing choice for FHA protected classes in that municipality. Furthermore, when HUD finds a municipality noncompliant with this duty, HUD may cut-off funding to that municipality.} Hence, to promote fair housing for racial minorities, and to prevent unnecessary but justifiable HUD intervention, Illinois should adopt SOI protection. If Illinois were to follow Cook County’s lead—prohibiting SOI discrimination without exceptions—Illinois would deter unlawful racial discrimination statewide and thereby aid many municipalities in meeting their fair housing obligations.

3. See infra notes 20–22 and accompanying text.

4. See infra note 23 and accompanying text.

5. See infra note 22 and accompanying text.

6. Fair Housing Alliance Fact Sheet, supra note 2.

7. Id. Specifically, SOI protection means individuals may not, because of a person’s source of income: refuse to sell or rent, negotiate for sale or rental, or otherwise make unavailable or deny a dwelling; impose different terms, conditions, privileges, or services; make discriminatory statements or publish discriminatory communications with respect to the sale or rental of a dwelling; lie about the availability of a dwelling; or steer (show units in an area on the basis of source of income).

8. Id.

9. Id.


11. Generally recognized as neighborhoods with above average schools, employment rates and housing conditions and below the city’s average rates for crime and property vacancy (both residential and commercial). See, e.g., Mobility Counseling Program, CHI Hous. Auth., http://www.thecha.org/pages/mobility_counseling/2639.php (last visited Apr 27, 2014) (“A CHA Opportunity Area is a census tract with less than 20% of its individuals with income below the poverty level and a low concentration of subsidized housing. Some census tracts with low poverty, moderate subsidized housing, and improving community economic characteristics are also designated as Opportunity Areas.”).

12. See, e.g., Woman alleges housing voucher discrimination in pricey Chicago buildings, CHI. PUB. MEDIA (Apr. 14, 2014) http://www.wbez.org/news/woman-alleges-housing-voucher-discrimination-pricey-chicago-buildings-110023 (reporting story about African-American mother with two small children who was trying to move to a higher opportunity Chicago neighborhood but was turned away by landlords on account of her HCV).


matter for families. Research shows that helping families leave high-crime, dangerous neighborhoods translates into immediate and significant improvements in their lives. Personal safety is a key factor, as is an improvement in mental health . . . Neighborhood location influences where children go to school, access to employment for adults . . . and proximity to such amenities as supermarkets, parks, and open spaces. Further, neighborhood location also affects exposure to environmental hazards and access to clean air and water, particularly for low-income households.” (internal citations omitted); Stuart Rosenthal, Where Poor Renters Live in Our Cities 2 (Joint Ctr. for Hous. Studies of Harv. U., Working Paper No. RR07-2, 2007), available at http://www.jchs.harvard.edu/research/publications/where-poor-renters-live-our-cities (concentrating people who have low income into low-income neighborhoods reduces access to middle-income amenities such as schools and job networks).

15 CUNNINGHAM, supra note 14, at 1.

16 See generally Rosenthal, supra note 14, at 1 (discussing different housing policies designed to improve rental opportunities for people with low-income, one focusing on place-based construction programs and the other on tenant-based voucher programs); see also George C. Galster et al, The Social costs of Concentrated Poverty: Externalities to Neighboring Households and Property Owners and the Dynamics of Decline 43 (Joint Ctr. for Hous. Studies of Harv. U., Working Paper No. RR07-4, 2007), available at http://www.jchs.harvard.edu/research/publications/social-costs-concentrated-poverty-externalities-neighboring-households-and (demonstrating that “major gains in net social well-being would ensue were we to enact programs that fought exclusionary zoning, concentrations of subsidized housing, and ‘NIMBY’ responses to proposed developments of assisted housing (Galster et al., 2003), and instead promoted inclusionary zoning, mixed-income developments, and mobility counseling for recipients of rental vouchers.”). Notably, existing place-based federal housing programs to improve neighborhoods—such as HUD’s Choice Neighborhoods Initiative and the U.S. Department of Education’s Promise Neighborhoods program—are designed to remedy conditions that make housing mobility necessary, but these programs are newly developed and not funded for realistically revitalizing all disadvantaged neighborhoods nation-wide. See ROBIN S MITH, HOW TO EVALUATE CHOICE AND PROMISE NEIGHBORHOODS, URBAN INST. 1 (2011), available at http://www.urban.org/UploadedPDF/412317-Evaluate-Choice-and-Promise-Neighborhoods.pdf (“Both programs are place-based initiatives intended to transform neighborhoods by coordinating improvements across multiple sectors, such as housing, education, employment, transformation, and health.”).

17 SOI discrimination, although pervasive, can be difficult to detect. See generally LCBH Report, supra note 9 (discussing unexpected prevalence of SOI discrimination throughout Chicago). SOI discrimination is easier to detect when landlords tell tenants they will not rent to Housing Choice Voucher holders; post signs that say “Section 8 not accepted;” or decide not to renew an HCV holder’s lease because the landlord does not want to “deal with section 8 inspections anymore.” Covert SOI discrimination is more difficult to detect, hence much of it may go unreported. See Manny Fernandez, Bias Is Seen as Landlords Bar Vouchers, N.Y. TIMES (Oct. 30, 2007), http://www.nytimes.com/2007/10/30/nyregion/30section.html?pagewanted=all (reporting statement by then-councilman, now-mayor de Blasio who said that much of SOI discrimination goes unreported); see also LCBH Report, supra note 9 at 6 (“Discrimination based on the voucher, though known anecdotally to housing agencies, has not previously been studied.”).

18 See Questions (and answers) about new Cook County Section 8 guidelines, Ill. Assoc. of Realtors, http://www.illinoisrealtor.org/legal/issues/section8 (last visited Apr. 19, 2014) (explaining the rental application processing criteria and methods landlords may or may not use without violating SOI protection).

19 See Tenants’ Rights Hotline, Metro. Tenants Org., http://www.tenants-rights.org/programs/citywide-tenants-rights-hotline/ (last visited Apr. 20, 2014) (advertising MTO hotline volun-
teers answer questions on a range of tenants’ rights issues; Fair Housing, Open Communities, http://www.open-communities.org/Programs/Fair_Housing/ (last visited Apr. 20, 2014) (offering education about fair housing laws, claim investigation, assistance in filing a fair housing complaint and referral services); Fair Housing & Lending Project, Chi. Lawyers’ Comm. For Civil Rights Under Law, http://www.clcrul.org/fair-housing (last visited Apr. 20, 2014) (announcing the Committee’s Fair Housing Project offers education, advocacy, investigation, referral and representation services aimed at eliminating housing discrimination based on source of income, among other forms of discrimination).

20 Interview with John Bartlett, Exec. Dir., Metro. Tenants Org., MTO Office (Feb. 26, 2014) (“HCV discrimination is also tied to race. People of color use Government subsidies. Landlords use HCV as a race discrimination proxy to prevent minorities from moving into predominantly white communities.”); see also Fernandez, supra note 17 (reporting statement by Bertha Lewis, executive director of New York community organizing group Acorn, who said, "this is really about gentrifying neighborhoods and the fact that this is a way for landlords to do race and gender discrimination"); Rebecca Tracy Rotem, Using Disparate Impact Analysis in Fair Housing Act Claims: Landlord Withdrawal from the Section 8 Voucher Program, 78 Fordham L. Rev. 1971, 1981 (2010) (“Discrimination against Section 8 voucher holders can be used as a proxy for racial discrimination because many recipients are minorities. Discrimination against the poor and discrimination against minorities are intertwined: Because most urban poor are African American, and because the vast majority of African Americans live in residential ghettos, this economic bias transforms itself into racial attitudes. Race thus becomes a proxy, such that being a Black equates with being a poor tenant or poor neighbor. And neighborhoods must keep these poor (black) individuals out, lest their neighborhoods become ‘ghetto-like’ too. Class-based discrimination and race-based discrimination have become combined. This is one reason that Section 8 discrimination can be a proxy for race discrimination.”) (internal citations and quotations omitted).

21 See Gail Schechter, Exec. Dir., Open Communities, letter to Cook County President Toni Preckwinkle (2013), available at http://glenview.patch.com/groups/politics-and-elections/p/north-shore-nonprofit-challenges-glenviews-landlord-ordinance [hereinafter Open Communities Letter] (“Given that voucher holder discrimination is often used as a cover for discrimination against race [sic] (primarily Black) . . . and Glenview is only one percent Black, Glenview’s new ordinance is a barrier to open, integrated housing in the Village.”).

22 Rotem, supra note 20, at 1981 n.70; Toni Preckwinkle, President, Cook County Board of Commissioners, letter to Ms. Schechter regarding Cook County’s Efforts to Affirmatively Further Fair Housing (Sept. 19, 2013), http://www.tenants-rights.org/cook-county-responds-to-glenview-landlord-ordinance-concerns/ [hereinafter Toni Preckwinkle Letter] (“Studies have repeatedly found that source of income is used as a proxy for other forms of illegal discrimination based on race, familial status, disability, and age; while withdrawing from the program may appear to be a neutral act, it disproportionately affects a protected class[,]”); see also Paula Beck, Fighting Section 8 Discrimination: The Fair Housing Act’s New Frontier, 31 Harv. C.R.-C.L. L. Rev. 155, 159 (1996) (“The Section 8 program’s minimal success in promoting integration is attributable to the widespread discrimination against prospective Section 8 tenants by private landlords, [which] . . . can create large concentrations of Section 8 recipients, often resulting in slum conditions and community resentment.”); LCBH Report, supra note 9, at 11 (finding voucher holders of color more likely to be discriminated against than white HCV holders); Laura Bacon, Godinez v. Sullivan-Lackey: Creating A Meaningful Choice for Housing Choice Voucher Holders, 55 DePaul L. Rev. 1273, 1280 (2006) (citing the LCBH report and noting increased discrimination against Black and Latino HCV holders reduces the number of housing
units available to Black and Latino voucher-holders to a larger extent than for white HCV holders).

23 See Betsy Shuman-Moore, End Discrimination Against Housing Choice Vouchers (May 4, 2012), http://clccrul.raceandpoverty.org/node/32548 (finding Cook County’s HCV exemption from SOI protection to be damaging because landlords often refuse to rent to voucher holders as a pretext for other types of illegal discrimination, such as race).


25 Id.

26 Id.

27 See supra notes 10–13 and accompanying text (discussing the effect of SOI discrimination on HCV holders).

28 Toni Preckwinkle Letter, supra note 22.

29 See Illinois Human Rights Act, 775 ILL. COMP. STAT. 5/7-108 (2012), available at http://www.ilga.gov/legislation/ils/ils5.asp?ActID=2266&ChapterID=64 (authorizing any municipality or county to prohibit broader or different categories of discrimination than the Illinois act, and stating that any ordinance, resolution, rule or regulation which prohibits, restricts, narrows or limits the housing choice of any person shall be void and unenforceable).

30 Open Communities Letter, supra note 21.

31 See infra notes 21–22 and accompanying text (explaining conditions under which SOI discrimination acts as proxy for race discrimination, none of which are particular to Chicago).

32 See Bill Status of HB1551 (Human Rights-Source of Income), ILL. GEN. ASSEMBLY (Jan. 8, 2013), http://www.ilga.gov/legislation/BillStatus.asp?DocNum=1551&GAID=11&DocTypeID=HB&SessionID=84&GA=97. The bill was referred to the House Rules Committee in 2011, and on January 8, 2013 the House adjourned discussion on the proposed amendment without setting a date for finishing the discussion. Id.

33 See CHI. LAWYERS’ COMM. REPORT, supra note 9, at 3 (“Widespread refusal to rent to HCV holders [in Chicago], particularly African-American HCV holders, and steering them away from opportunity areas, are serious obstacles to fair housing and integration.”).

34 This responsibility of HUD funded jurisdictions—almost all municipal governments—extends from HUD’s own duty under the Fair Housing Act. 42 U.S.C. § 3608(e)(5) (2011).


37 See MOLLY SCOTT ET AL., EXPANDING CHOICE: PRACTICAL STRATEGIES FOR BUILDING A SUCCESSFUL HOUSING MOBILITY PROGRAM, URBAN INST. 82–83 (2013), available at http://www.urban.org/UploadedPDF/412745-Expanding-Choice.pdf (“HUD has already begun to make important reforms, but you can encourage it to do more by taking steps within its statutory authority to use its fair housing enforcement authority to investigate discrimination against voucher holders in jurisdictions where it is banned, and in areas where such discrimination has an obvious discriminatory racial impact”).
FEATURE ARTICLE

THE PREGNANCY EXCLUSION IN ADVANCE DIRECTIVES: ARE WOMEN’S CONSTITUTIONAL RIGHTS BEING VIOLATED?

by KATIE RINKUS

Advance directives, frequently known as living wills, are common and necessary safeguards in the United State’s health care system that allow for someone to prepare for the rare possibility that he or she will suffer a serious illness or injury resulting in brain death.¹ The issue of controversial interpreta-
tions of someone’s advance directive and/or conflicting familial views has come to the media forefront numerous times, including the stories of Terry Schiavo in 2005 and Marlise Muñoz in early 2014. The media story usually plays out like this: an individual is declared “brain dead,” and his or her advance directive is unclear on that person’s wishes. For example, it does not cover this specific medical instance, or an individual’s family members have differing views as to what care should be provided. This issue becomes even more complicated and controversial when that individual suffering a brain injury is a pregnant woman, as many state statutes indicate that advance directives are not applicable if a woman is pregnant.

THE CASE OF MARLISE MUÑOZ

In January 2014, a Texas court ordered John Peter Smith Hospital to remove Marlise Muñoz, a 33 year-old woman who was 14 weeks pregnant, from a ventilator and other “life-sustaining” treatment. Her family members, including her husband and her parents, said that Marlise never wanted to be kept alive via life-support, yet the hospital refused to adhere to her wishes, as the Texas statute precluded them from doing so. The Texas Advance Directive Act states, “A doctor may not withdraw or withhold life-sustaining treatment from a pregnant patient.” However, the authors of the statute stated that the intent behind this provision was to keep a pregnant woman who was in a persistent vegetative state on a ventilator until she could deliver her baby, but not to keep a dead pregnant woman alive via life-support indefinitely. The Texas law apparently did not anticipate the all-too often case of brain death in a pregnant woman. This leads to the question of whether other states have similar provisions and, as a result of such provisions, if situations like Marlise Muñoz’s are apt to happen again.

ILLINOIS LAW

According to a statement of Illinois law on advance directives published by the Illinois Department of Public Health, an advance directive is a “written statement you prepare about how you want your medical decisions to be made in the future, if you are no longer able to make them for yourself.” Illinois law allows for three types of advance directives, two of which are relevant to the discussion at hand: health care power of attorney and a living will. A health
care power of attorney allows an individual to choose someone else to make health care decisions on his or her behalf in the future, if that person is no longer able to make decisions him or herself. Further, a living will tells a health care provider whether one wants death-delaying procedures in the event the person suffers a terminal condition and is unable to state his or her preferences. A terminal condition means an incurable and irreversible condition such that death is imminent and the application of any death delaying procedures serves only to prolong the dying process. “A common misconception with advance directives among people is that if someone is ever not competent to make decisions, that is when the advance directive will apply. In reality, an advance directive doesn’t kick in unless you meet the criteria the statute carves out,” explains Nadia Sawicki, assistant professor at the Beazley Institute for Health Law and Policy at Loyola University Chicago School of Law. “It’s a lot more limited than people think.”
The "Pregnancy Exclusion" throughout the United States

The use of advance directives becomes even more complex when a pregnant woman suffers brain injury and wishes to end life-sustaining treatment. In many states, including Illinois, the fact that a woman is pregnant essentially renders her advance directive null. Illinois law states, "if you are pregnant and your health care professional thinks you could have a live birth, your living will cannot go into effect." 

According to a 2012 research study conducted by the Center for Women Policy Studies, thirty-seven states had pregnancy exclusions in their advance directive statutes. Twelve states, including Michigan, Indiana, and Wisconsin, automatically invalidate a pregnant woman’s advance directive, with no exceptions, making these the most restrictive pregnancy exclusion statutes. Statutes in fourteen states, including Illinois, require life support when it is probable the fetus will develop to the point of “live birth” or viability outside the uterus. Further, only five states allow pregnant women to include their wishes regarding pregnancy in their advance directives, which guarantees that their instructions will be followed. Thus, there is no uniform guideline and states have varying statutory guidelines regarding pregnant women and their advance directives. These variations often lead to a dissonance between the law, individual rights (and, in this context, women’s rights), and family opinions. This is where the controversy surrounding the use and interpretation of advance directives emerges.

Constitutional Constraints and the Meaning of "Death"

The fact that most states do not allow pregnant women much, if any, say in how they will be treated in the event of a traumatic brain injury leads to the question of whether these statutes, including Illinois’ statute, contravene a woman’s right to control her body. Critics of these laws and the “pregnancy exclusion” discussed above argue that in these situations, women’s bodies are essentially being used as incubators without regard to their rights. As a result, critics argue that the state is controlling pregnant women’s bodies by refusing to adhere to their advance directives.
On the other hand, proponents of this “exception” believe that if the fetus is viable, it should be able to be born as if its mother was still alive. In the 1973 seminal United States Supreme Court case, *Roe v. Wade*, the Court held that the determinative “test” in whether a state has the right to exercise control over a woman’s body is a balance between the woman’s interest in protecting reproductive choice versus the state’s interest in preserving life. “The way I read the [Illinois] statute, a woman’s right to choose is a lot less relevant here, as the argument would be that the state’s interest in protecting reproductive choice is diminished, and it is increased with regard to the viability of the fetus. The woman in this case is not coming back to express her wishes,” explains Professor Sawicki. However, in order to fully understand women’s rights, and whether these rights are being violated by state statutory standards, it is important to look to the meaning of “death” and how the media has portrayed death in these situations.

Professor Sawicki notes that the media often portrays brain death as something different than actual, physical death. However, from a medical and legal standpoint, brain death is physical death. “When a woman is dead, the state’s interest in keeping a fetus viable would not exist, since the woman is deceased,” says Professor Sawicki. “When a person dies, the family essentially gets property rights over the body. This becomes confusing when a woman is pregnant and dead, and there is no useful law to address this situation.” Professor Sawicki notes that people often confuse brain death with actual, physical death because of preconceived notions of what death looks like. “When a body is being maintained on a ventilator, the body doesn’t look like it is dead. It’s understandable for a family to not understand, and the development of medical technology has made this even more complicated,” says Professor Sawicki.

**Is there any way to avoid these conflicts?**

Notice, with regard to the pregnancy exclusion, is a large problem, as there is little to no public awareness that these pregnancy exclusions exist. Furthermore, there is also no uniformity in the way in which these clauses are written within statutes, as states have very differing stances on this same issue. However, the underlying point to take away is that the laws that govern the use of advance directives, and the situations in which they are applicable, are meant to be used as a default, and should only be utilized as a last resort. “Many
statutes are very vague and, since these are tough situations, there is a limit on what the law can do,” explains Professor Sawicki.33

Professor Sawicki notes that, in the end, the most important thing someone can do to protect himself or herself should a situation like this arise is to communicate their wishes with their families.34 “States can set standards for what a family needs to prove in order for a person to establish their wishes, but in the end, it comes down to what the family knows about a person’s wishes,” says Professor Sawicki. In the case of Marlise Muñoz, the state law was just not clear enough, and did not anticipate the situation that ultimately arose. Unless and until states come up with clear and unambiguous statutes that address advance directive use with pregnant women, it is imperative that the public know of their rights, or lack thereof, and also that they continue to communicate their wishes with their friends and family.

NOTES


3 Id.


5 Strange Case of Marlise Munoz, supra note 2.

6 Id.

7 Id.

8 Id.

9 Statement of Illinois Law, supra note 1.

10 Id.

11 Id.

12 Id.

13 Id.

14 Interview with Nadia Sawicki, assistant professor at the Beazley Institute for Health Law and Policy at Loyola University Chicago School of Law (Feb. 25, 2014) [hereinafter Sawicki interview].

15 Id.

16 Find Law, supra note 4.

17 Statement of Illinois Law, supra note 1.
19 Id.
20 Id.
21 Id.
22 Center for Women Policy Studies, supra note 18.
23 Id.
25 Sawicki interview, supra note 14.
26 Id.
27 Id.
28 Id.
29 Id.
30 Center for Women Policy Studies, supra note 18.
31 Id.
32 Sawicki interview, supra note 14.
33 Id.
34 Id.
MORE GUNS: MORE OR LESS VIOLENCE?

by Bonnie Peters

The Illinois Firearm Concealed Carry Act (the Act), which passed on July 9, 2013 and took effect on January 5, 2014, allows Illinois citizens who are 21 years of age or older to apply for a permit to carry a concealed firearm. Although the Act has some exceptions, including a prohibition of firearms on public transportation and in certain bars and restaurants, the inevitable effect of this legislation is that more Chicagoans will have the ability to carry weapons. Because the Act permits people to legally carry firearms, it will allow for a greater total number of firearms in Illinois. The debated issue is whether gun violence will resultantly increase or decrease.
Illinois previously banned concealed firearms, and is the last of the 50 states to pass a concealed carry law. More than 12,000 Cook County residents have applied for concealed carry permits since January 2014. If all of the applicants receive permits, as many as 12,000 new firearms could be legally possessed in Illinois.

The Act restricts a citizen’s right to carry concealed weapons by requiring applicants to pass a 16-hour training course. Any law enforcement agency can deny permits to applicants who pass the training course if law enforcement can show by a preponderance of the evidence that the applicants are a danger to themselves or others.

In addition, concealed carry is prohibited on public transportation, at some public gatherings or special events, and on private property where the owner has chosen to disallow it. Although all property owners have a right to exclude guns from their property, the Act requires them to post a sign explicitly stating that guns are not allowed. As a result of this law, concealed carry is primarily allowed only on city streets and in businesses that have not explicitly banned firearms.

Supporters of the Act

Supporters believe that, although the Act allows more people to legally purchase firearms, which will most likely result in a greater number of firearms in Chicago, this result will not lead to an increase in gun violence. For example, Guns Save Lives, a nonprofit organization, claims that the fact that more people are armed could actually deter criminals from using their weapons, thereby decreasing gun violence. In addition, according to Justice Police Chief Kraig McDermott, although police officers will use more caution when stopping an individual who could have a firearm, officers do not predict that the Act will lead to more gun violence on the streets because criminals will not apply for or receive concealed carry permits.

According to the Independent Journal Review, Chicago’s murder rate for the first three months of 2014 was the lowest it has been since 1958, a phenome-
non that police are attributing to the Act.\textsuperscript{12} Compared to the first quarter of 2012, there have been over 200 fewer shootings and nearly 300 fewer shooting victims.\textsuperscript{13} Gary Scheck, a crime expert, credits this occurrence to statistics that suggest that more guns equal less crime.\textsuperscript{14}

**Opponents of the Act**

On the other hand, opponents of the Act worry that it will exacerbate Chicago’s already serious gun problem. Chicago reported more homicides than any other American city in 2012, and, although Chicago’s homicide rates dropped in 2013, gun violence continues.\textsuperscript{15} The July 4, 2013 weekend resulted in 74 shooting victims, 12 of whom were killed, raising the total number of murder victims to over 200 by midsummer of 2013.\textsuperscript{16}

Chicago Police Department’s Superintendent Garry McCarthy announced in early December 2013 that over 6,500 illegal firearms were seized by December 2013.\textsuperscript{17} He acknowledged that the police department’s efforts to eradicate illegal guns from Chicago do little good if people can legally obtain firearms and use them for illegal purposes.\textsuperscript{18} McCarthy stated that without the implementation of more stringent deterrence and punishment methods, gun violence will not stop.\textsuperscript{19}

According to the Illinois Council Against Handgun Violence, the Act can lead to more gun violence simply because more people will own and have the ability to use firearms.\textsuperscript{20} Although the Act does not condone the illegal use of firearms, it does make ownership of them legal, which could result in more illegal use.

Ellen Alberding, president of the Joyce Foundation, states that requiring permit applicants to participate in training courses is a way of limiting the negative effects of the Act.\textsuperscript{21} Although she does not think the Act will directly increase violence, she is concerned that it will not be effective in decreasing gun violence.\textsuperscript{22} Opponents of the Act advocate for deterrence methods, including a 3-10 year prison sentence for the illegal possession of a firearm, that will limit, rather than aggravate, gun use in Chicago.\textsuperscript{23}
CONCLUSION

Many organizations and individuals have varying opinions on how the Act will impact gun violence in Chicago. Because concealed carry permits only recently began being granted in March 2014, it is a little early to determine how the Act will affect gun violence in Chicago on a long-term basis. Therefore, this question should be more fully addressed after more time has passed.

NOTES

2 Id.
5 Concealed Carry, supra note 1.
6 Id.
7 Id.
10 Id.
11 Bong, supra note 3.
13 Id.
14 Id.
18  Id.
19  Id.
22  Id.
In an attempt to deter criminal behavior and streamline the rental housing business, more than 100 municipalities in Illinois have adopted crime-free rental-housing ordinances. While the intention of the ordinances is to lower the crime rate that takes place on rental properties, the ordinances potentially pose serious ramifications for crime victims. With many of Illinois’ ordinances only a couple of years old, enforcement and implementation on a municipality-to-municipality basis is important to watch.
The ordinances all contain a threshold number of arrests, calls to police, or some other measurement of criminal behavior that triggers eviction.3 “I don’t think the intention [of these ordinances] was to ever prevent victims from calling to report offenders’ behavior—that is the unfortunate consequence of it. I really think they need to seriously look at it and see who is going to be impacted,” said Maria Macaluso, the Executive Director of the Women’s Center of Montgomery County.4

The trend of municipalities passing these ordinances is not exclusive to Illinois. Nearly 2,000 cities across 44 states have adopted some form of a crime-free rental-housing ordinance.5 The ordinances have recently garnered national attention because of Lakisha Briggs — a resident of Norristown, Pennsylvania — who lived under the city’s crime-free rental housing ordinance.6 Norristown’s ordinance issues strikes against tenants for tenants’ and their guests’ criminal behavior, as well as their calls for emergency assistance.7 Briggs, who is currently being represented by the American Civil Liberties Union in a case against the municipality, was a victim of domestic violence in her rental property but was deterred from calling the police for fear of eviction.8 Briggs stated, “If I called the police to get him out of my house, I’d get evicted. If I physically tried to remove him, somebody would call 911 and I’d be evicted.”9 Municipalities in Illinois should look to the Briggs case as an example of the serious ramifications of crime-free housing ordinances and draft and implement their ordinances carefully, if they choose to pass an ordinance at all.

Effects on Landlords

In addition to reducing crime, cities have attempted to streamline rental housing through the use of crime-free housing ordinances.10 These ordinances create a licensing program for all landlords in the municipality.11 The landlords then attend crime-free housing training to learn about their rights and responsibilities, gain access to resources to conduct and understand background checks on tenants, and obtain mandatory boiler-plate lease addendums.12 Proponents of the ordinances believe that their enforcement will result in a reduction of crime, and as a result, landlords will enjoy an increase in property values, less repair and maintenance costs, an increase in demand for safer rental properties, and more time to perform routine management that would otherwise be consumed by dealing with rowdy tenants.13 Ordinance rules require landlords to pay fees per buildings and units managed.14 For example, in the
city of DeKalb, landlords pay a fee of $50 for each building they manage, and an additional amount per unit for multi-unit buildings. In addition, landlords face fines and possible revocation of their license to possess rental property if they fail to comply with the ordinance.

Mandatory compliance has raised concerns by landlords and landlord associations as to why such laws only apply to landlords and not all business owners alike. A Collinsville, Illinois landlord saw similar crime problems at large retail stores, and questioned why rental property businesses were being treated differently. Brad Rubeck, President of the DeKalb Area Renters Association, questioned the effectiveness of the fees imposed on landlords, stating that he is “not really sure how [to] do a fair evaluation, the evictions do not lead to people leaving DeKalb, they just get juggled around.” It seems, however, that in Collinsville, there are signs that the ordinance’s requirement of licensing landlords has opened up communication between the landlords and the police. Phil Astraukas, a Collinsville landlord, believes the city’s ordinance should be credited with getting “a better grade of tenants moving into town.” Bill Berger, Collinsville Crime Free Housing Program Coordinator, said the results from the first year of the program show a 30 percent reduction in calls to police in “hotspots,” or troubled property areas. The results must be taken into perspective, however, since Collinsville’s overall crime rate increased by 4.2 percent during 2011, the first year of the ordinance. An alternative explanation for the 30 percent reduction could be that the ordinance created a deterrent for victims in these “hotspots” to seek police assistance in emergency situations out of fear of being evicted.

**Potential Impact on Victims of Crime**

Carl Leoni, Coordinator of the DeKalb crime free housing ordinance program says the intention of the program is to “move the bad guys out of town,” and “all [he] cares about is seeing the crime rate go down.” Despite these intentions, many worry that the ordinances do not distinguish between the ‘bad guys’ and victims. The ordinance in Elgin, Illinois, lists over a dozen types of calls to police that can trigger a strike toward the eviction threshold. The threshold in Elgin can be reached when a single violation occurs. While Elgin’s ordinance does not specifically list domestic violence as counting toward the threshold, tenants, household members, and tenants’ guests could still be victims of crimes such as assault, battery, weapons violence, threats, and intim-
These violations could lead to strikes and possible eviction if the police are notified. Kate Walz of the Shriver National Center on Poverty Law ("Shriver Center") claims that these ordinances have "set domestic violence advocacy back 20 years." According to Walz, advocates' efforts over the last decades have been focused on educating law enforcement on how to approach victims and how to aid them in escaping the cycle of domestic violence while maintaining their housing. Now, Walz believes all of this work has been "turned on its head when the sole focus of the ordinances is that when a call is made to the police in your alleged crime, everyone [in the household] has got to go." Alderman Joerg Seifert in Darien, Illinois shares this concern. Darien aldermen implemented a crime-free ordinance with a 5-2 vote. One of the aldermen voting against the program, Joerg Seifert, said he was concerned the ordinance could negatively impact good people in one of the more than 480 rental units in the city. Seifert referenced a situation where a household member commits a crime that does not involve the other household members, yet the entire household will face eviction if the ordinance is enforced.

LACK OF PROTECTIONS

While Illinois law does not have housing protections for all victims of crime, state and federal laws do offer some protection for victims of domestic violence. Under the federal Violence Against Women Act ("VAWA"), victims of domestic violence have an affirmative defense against eviction. However, this protection from eviction only applies for victims living in public housing, such as Section 8 housing. Domestic violence victims in private housing are offered protections under the Illinois Safe Homes Act, but only when they wish to change their locks or leave their rental housing prior to the end date on the lease. Without a similar affirmative defense under the VAWA, domestic violence victims living under the jurisdiction of a private crime-free rental housing ordinance have no legal protections from eviction. Gwyn Kaitis, the Director of the Illinois Domestic Violence Helpline, recalls an example where "a woman with five children called to say that her boyfriend had choked her and she was trying to end their relationship, but her landlord had told her that if the police were called one more time, he would evict her."
HOUSING SHORTAGE

Crime-free ordinances have the potential to majorly impact housing supply. Once an eviction threshold is reached, landlords are forced to evict. If a landlord does not comply, his or her license can be revoked. A revocation results in all of the landlord’s rental properties in the city’s jurisdiction becoming unlicensed, and therefore, illegal rental properties. Depending on how many units and buildings a landlord owns, a single license revocation can produce a serious decrease in the availability of rental housing. This can impact victims of crime not only because they were victims of crimes that caused the threshold being reached, but also because housing shortages disproportionately impact groups protected by fair housing laws. The 2012 American Community Survey estimates that minorities make up only 22 percent of owner-occupied housing units.

Additionally, the 2010 Census reports female-headed households in Illinois are more than twice as likely to rent than the general Illinois population. With minority groups and women owning homes at lower rates than white males and making up a larger percentage of rental housing occupants, any change to
the availability of rental housing units can have a drastic impact on their quality of life. Walz cautions that due process is required before eviction occurs, as “you are not only depriving the property owner of his or her property interest, but you are also depriving the tenant of a tangible property interest they have as a renter in rental housing.”

AVOIDING DELETERIOUS RESULTS

A 2012 American Sociological Association study on the impact of a crime-free ordinance in Milwaukee, Wisconsin, found that domestic violence was the third most common reason police issued citations, making it more common than drug, property and trespassing offenses. With many of the Illinois ordinances in the early years of implementation and many cities considering adopting such ordinances, measures should be taken now to avoid similar impacts. In order to gauge how the ordinances are being implemented, organizations such as the Shriver Center follow a specified process when a complaint is received from an individual regarding their community’s ordinance. If the individual claims they were a victim of crime and received an eviction notice under the ordinance, the Shriver Center issues a Freedom of Information Act request to those communities to confirm the events that led to the tenant’s eviction. Based on this process, the Shriver Center has found that local governments do not appear to be using discretion in enforcing the ordinances. Walz adds that the ordinances “are written in such a way that trash in the yard will be treated the same as a homicide occurring on the property.”

While Walz does not “think this is the tool that local governments believe it is to address problem rental properties,” the Shriver Center advises local governments to provide “front end training of those enforcing the laws in domestic violence, sexual assault, stalking, dating violence, and fair housing laws.” Though providing this type of training will fall short of legislative efforts to protect victims of crime in housing, training and careful enforcement will hopefully help eliminate the negative impacts on victims of crime and, ultimately, help law enforcement efforts focus on reducing criminal activity in communities.

NOTES


3 Werth, supra note 1.


7 Id.

8 Id.

9 Id.

10 Crime Free Rental Housing, supra note 2.

11 Id.

12 Id.

13 Id.


15 Id.

16 Id.


18 Id.

19 Dahlstrom, supra note 14.

20 Starkey, supra note 17.

21 Id.

22 Id.

23 Id.

24 Dahlstrom, supra note 14.

25 Interview with Kate Walz, Director of Housing Justice, Sargent Shriver National Center on Poverty Law, in Chicago, Ill. (Mar. 19, 2014).


27 Id.

28 Id.

29 Id.

30 Walz, supra note 25.

31 Id.

32 Id.

34 Id.
35 Id.
36 Id.
38 Id.
39 Id.
41 Werth, supra note 1.
42 Id.
43 Id.
44 Id.
45 Id.
47 Werth, supra note 1.
48 Walz, supra note 25.
50 Walz, supra note 30.
51 Id.
52 Id.
53 Id.
54 Id.
Earlier this year, the Republican leadership in the U.S. House of Representatives sounded the death knell for passage of a comprehensive immigration reform bill. While Washington’s partisan gridlock continues unabated, the number of persons deported under the Obama Administration has soared to nearly two million, giving rise to the president’s newest moniker: “Deporter-in-Chief.”

by Joseph M. Gietl
Increased deportations and state and local involvement in federal immigration enforcement greatly impact the 198,000 Illinois family households that contain at least one undocumented member. In addition, the increased enforcement fosters fear in the communities where these families live and work, hindering cooperation with law enforcement agencies (LEAs). Nearly 90 percent of those households are mixed status (i.e., they include another member who is an immigrant with legal status or a U.S. citizen), which leads to difficult family choices often resulting in painful separation.

SECURE COMMUNITIES PROGRAM AND ITS BROAD REACH

One of the administration’s most controversial tools responsible for increasing the number of deportations is the Secure Communities program, a sweeping federal immigration enforcement initiative carried out by U.S. Immigration and Customs Enforcement (ICE) since 2008. Secure Communities uses an information-sharing collaboration between federal LEAs to determine whether a person arrested and booked by a local LEA for a criminal violation may also be deportable.

Proponents of Secure Communities have cited its efficiency in removing aliens with criminal records and its ability to keep dangerous people “from falling through the cracks.” In fact, last year, ICE deported more than 133,000 noncitizens apprehended in the interior of the U.S., claiming that 82 percent of these persons had been convicted of a crime. Despite the numbers, a majority of individuals caught up in ICE custody through the Secure Communities program have never engaged in violent or dangerous activities.

In fact, 69 percent of ICE detainers in Illinois (during the 2012-13 federal fiscal years) were issued to individuals who had not been convicted of any offense, and a further 22 percent of the detainers were issued on persons in Illinois who at most had been convicted of a misdemeanor or petty offense, like traffic violations or an illegal entry. Despite ICE’s clearly enunciated enforcement priorities, just 6 percent of all detainers issued in Illinois during this time period were aimed at persons convicted of Level 1 crimes (e.g., serious felonies, like murder, arson, sex crimes, aggravated battery, etc.). These numbers are grossly disproportionate to ICE’s stated enforcement priorities of removing serious criminals. Mark Fleming, National Litigation Coordinator at the National Immigrant Justice Center in Chicago, is not surprised. “ICE’s data-keeping track record has been spotty,” Fleming notes. “But through na-
tionally-coordinated Freedom of Information Act requests, we are slowly getting a better sense of the damage done by programs like Secured Communities.”

**TABLE 1.** Comparison by county of ratio of ICE detainers to foreign-born non-U.S. citizens

<table>
<thead>
<tr>
<th>Illinois County</th>
<th>Foreign-born, non-U.S. citizen population</th>
<th>Number of ICE detainers issued to county’s jail</th>
<th>Ratio of ICE detainers to foreign-born, non-U.S. citizens</th>
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<tbody>
<tr>
<td>Cook</td>
<td>599,042</td>
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<td>16,595</td>
<td>49</td>
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<tr>
<td>McHenry</td>
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<td>12,741</td>
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<td>McLean</td>
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<tr>
<td>Kendall</td>
<td>4,354</td>
<td>13</td>
<td>0.30</td>
</tr>
</tbody>
</table>

**LOCAL GOVERNMENTS WEIGH IN**

In response to this disturbing trend, a small but growing number of state and local governments – including the City of Chicago and Cook County – have enacted legislation to sharply curtail their LEA’s participation with Secure Communities in order to rebuild trust between local communities and the LEAs who are duty-bound to protect them. Citing “troubling inconsistencies in ICE policies” which cause many LEAs to believe that the detainer requests are mandatory, the Cook County Board of Commissioners passed an ordinance in September 2011 to decline ICE detainer requests unless ICE presents a criminal warrant against the person they wish to detain and unless the federal government agrees to pay the $43,000 daily cost incurred by Cook County by housing immigrants otherwise able to leave custody. Similarly, the Sheriff of Champaign County advised ICE in March 2012 that his office would not hold inmates based on a routine detainer, but would require a court order or original warrant instead. As observed in Table 1, such policies have had a dramatic effect on the number of ICE detainers issued among the immigrant population in these areas. Both Champaign and Cook Counties have some of
the lowest ratios of ICE detainers issued to foreign-born, non-U.S. citizens. See Table 1.

However, not all places in Illinois are as welcoming. Tensions have been growing in central Illinois’ McLean County, an area with a growing Latino and immigrant population. Instead of reducing cooperation with ICE, the policy of McLean County Sheriff, Mike Emery, is to contact ICE any time a foreign-born person is arrested, without regard to the nature of the offense. A local community-based organization alleged that the sheriff books immigrants into the jail on minor traffic offenses and then alerts ICE. Traumatized, these immigrants are forced into federal custody away from their families and away from legal representation. The sheriff, along with other local police chiefs, wrongly believes that contacting ICE is mandatory and defends the policy as non-discriminatory. This is no slight misinterpretation of the law: an immigrant in McLean County is over eight times more likely to have an ICE detainer issued on him or her than in Cook or Champaign Counties. See Table 1.

CUE THE TRUST ACT

A new piece of legislation, the Illinois TRUST Act, was introduced in the Illinois legislature in Spring 2014, as an amendment to Senate Bill 1011. The intention of the TRUST Act’s creators was “to make it as comprehensive as possible to find novel ways by which state and local governments can restore trust to immigrant communities in Illinois.” The Illinois TRUST Act would be modeled after other state legislation passed in California and Connecticut and pending in Arizona and Massachusetts. The legislation would bar LEAs throughout the state from complying with ICE detainers once an individual is eligible for release from custody. A bill of this kind would go far to help restore trust between the state’s immigrant population and LEAs, who depend on immigrants to report criminal activity and to “act as the eyes and ears of the community.”

One unique goal of the legislation is to add safeguards to help immigrants in obtaining U Visa certifications. It includes language affording an individual an opportunity to seek a U Visa certification from a state court if a local LEA delays more than 90 days in responding to such a request. The proposed legislation would also increase trainings to LEAs regarding the U Visa. Fleming hopes that including the U Visa language in the act will facilitate victims’ feeling comfortable coming forward to cooperate.
CONCLUSION

Passage of the TRUST Act in Illinois would ensure the proper allocation for law enforcement priorities that strengthen immigrant communities’ trust in LEAs rather than driving undocumented immigrants further into the shadows.

NOTES

5 Nik Theodore, Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement, DEP’T OF URBAN PLANNING AND POLICY, UNIV. OF ILL. AT CHI., at 5, (2013), http://www.uic.edu/cuppa/gci/documents/1213/Insecure_Communities_Report_FINAL.pdf (“[A] substantial portion of the Latino populations in Cook . . . Count[y] are reluctant to voluntarily contact the police to report a crime or to provide information about crimes specifically because they fear that police officers will inquire about the immigration status of themselves, their friends, or their family members”).
6 Tsao, supra note 4.
7 Nicole M. Jacobsen, Nicole’s story: A Father Deported, a Family Separated, REFORM IMMIGRATION FOR AMERICA BLOG, (Mar. 24, 2014, time it was last accessed?), http://www.reformimmigrationforamerica.org/blog/latest-news/item/1385-nicole-s-story-a-father-deported-a-family-separated.html (“Deportation of a loved one is a pain I can only imagine is matched by death itself. I seek solace that at least I can talk to him and maybe see him once a year, but there are times when a loved one is needed for support companionship, affection, attention; these things cannot be replaced by the phone. Many nights my daughter cries herself to sleep, telling me she won’t be little forever and she wants to sleep in her dad’s arms while she’s still small. . . . Immigration often claims family unity is important, yet never backs it up with decisions that show empathy and compassion for the families that are being torn apart, for the children who grow up fatherless or motherless or sometimes worse in foster homes while both parents are deported”).
sent to the Federal Bureau of Investigation (FBI), which checks the new data against its nationwide criminal justice database. See Lindsey J. Gill, Secure Communities: Burdening Local Law Enforcement and Undermining the U Visa, 54 WM. & MARY L. REV. 2055, 2059 (2013), available at http://scholarship.law.sm.edu/wmlr/vol54/iss6/7. Next, through Secure Communities, the FBI automatically shares the fingerprint data with ICE. Id. Finally, once a person is identified as potentially deportable, ICE sends a request to the local LEA to continue detaining an alleged unauthorized alien for up to 48 hours—even if he or she would otherwise have been released—so that ICE can transfer the person from the local LEA’s custody to ICE custody. See 8 e-C.F.R. § 287.7(d) (2014). Federal courts continue to reaffirm the voluntary nature of these so-called “ICE holds” or “ICE detainers” on local LEAs. See, e.g., Galarza v. Szalczyk, 12-3991, 2014 WL 815127 (3d Cir. 2014) (holding that 8 C.F.R. § 287.7 “merely authorizes the issuance of detainers as requests to local LEAs”). Secure Communities’ instantaneous data sharing with the FBI is now activated in every single county-level jurisdiction in the United States, including all 102 Illinois counties. See Activated Jurisdictions, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, (2014), http://www.ice.gov/doclib/secure-communities/pdf/sc-activated.pdf.


11 Id.


13 Targeting of ICE Detainers Varies Widely by State and by Facility, TRANSACTION RECORDS ACCESS CLEARINGHOUSE (TRAC) IMMIGRATION, (Feb. 11, 2014), http://trac.syr.edu/immigration/reports/343/. In an effort to more clearly delineate ICE’s enforcement priorities, a series of memos were issued by ICE Director, John Morton, in 2011, laying out a three-tiered system for reviewing who should be detained and transferred to ICE custody. See John Morton, Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, Memorandum, (Mar. 2, 2011), available at http://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf. The memos state that ICE should prioritize removing criminals with aggravated felonies or who have re-entered illegally after previously being deported. Id. At the same time, the memos encourage ICE officers to consider granting prosecutorial discretion not to pursue deportation for victims of serious crimes, domestic violence survivors, and others who meet a laundry list of 19 different factors. See John Morton, Memorandum, Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, Memorandum, (June 17, 2011), available at http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf (“The term ‘prosecutorial discretion’ applies to a broad range of discretionary enforcement decisions, including but not limited to . . . deciding to issue or cancel a notice of detainer [and] . . . deciding whom to stop, question, or arrest for an administrative violation”). This authority is rarely granted at the Chicago Immigration Court, where a mere 5 percent of all closed cases from October 2012 to February 2014 were a result of ICE exercising prosecutorial discretion. See Immigration Court Cases Closed Based on Prosecutorial Discretion by Immigration Court and Hearing Location, TRANSACTION RECORDS ACCESS CLEARINGHOUSE (TRAC) IMMIGRATION, (Feb. 28, 2014), http://trac.syr.edu/immigration/prosdiscretion/compbacklog_latest.html.

14 Targeting of, supra note 13.

15 Id.

16 In-Person Interview with Mark Fleming, National Litigation Coordinator at the National Immigrant Justice Center in Chicago, Ill. (Mar. 24, 2014).
Id.


19 ICE Detainers Issued for Facilities by Level of Most Serious Conviction, TRANSACTION RECORDS ACCESS CLEARINGHOUSE (TRAC) IMMIGRATION, (Mar. 19, 2014), http://trac.syr.edu/immigration/reports/343/include/table3.html (From most serious (Level 1) to least serious (Level 3) based on "ICE Criminal Offense Levels Business Rules." Data cover all of FY 2012 and FY 2013 with the exception of three months: February 2013, April 2013, and September 2013).


25 Edith Brady-Lunny, supra note 23.

26 Id.

27 Id.

28 Id.


30 Id.

31 Challenge Unjust, supra note 20.


34 The U Visa (8 U.S.C. § 1101(a)(15)(U); 8 C.F.R. § 214.14 (2012)) encourages undocumented immigrants to work with their local LEAs to report criminal activity and cooperate in criminal investigations or prosecutions without fear of being detained and placed in removal proceedings due solely to their immigration status. See How Law Enforcement Is Using the U-Visa, Practice Brief, VERA INSTITUTE OF JUSTICE, CENTER ON IMMIGRATION AND JUSTICE,
In order to apply for the U Visa, an immigrant crime victim needs an official from an appropriate LEA to certify that he or she was, is, or will be helpful to the investigation or prosecution of the crime. See U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, DEP’T OF HOMELAND SECURITY, at 6, available at http://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf (last visited Mar. 20, 2014). Thus, the LEA serves as a gatekeeper, and at a time when there simply are no viable immigration options for undocumented immigrants to legalize their status, a U Visa is often the only route available. Id. at 3. Due to substantial misinformation about the U Visa or blatant dilatory tactics, many LEAs refuse to sign the certification form when presented with one. See How Law Enforcement, supra.

35 Fleming, supra note 16.
36 Illinois TRUST Act, Pamphlet, supra note 32.
37 Fleming, supra note 16.
FEATURE ARTICLE

HIDDEN IN PLAIN SIGHT: GENDER-BASED DIFFERENCES IN ADDRESSING SEX TRAFFICKING IN CHICAGO

by Kathryn Huber

When people in the United States hear the term “sex trafficking,” they often picture a young girl in a faraway, impoverished country, forced into prostitution against her will. Most of them find this image sad or troubling, and they probably wish that there was something they could do to help. Still, they reassure themselves that sex trafficking is an isolated problem of
underdeveloped nations, far removed from the U.S. “What a relief,” they often think, “that we don’t have to worry about things like that here.”

Contrary to this common misconception, however, sex trafficking is a multi-million dollar industry in the U.S., one that is often tied to organized crime, gang activity, and drug trafficking.¹ This is especially true of Chicago, thanks to a perfect storm of intertwining factors that create a lucrative market for commercial sex.² Sex trafficking is often viewed as exclusively a women’s issue, and to some extent that is accurate – over 90 percent of sex trafficking victims are women and girls. However, just as it is important to acknowledge that sex trafficking is both an international and a local problem, it is also important to recognize that there are male victims of sex trafficking, many of them juveniles. Often, they are not identified or recognized as victims, and do not receive appropriate interventions and services when they are discovered.³

Male and female victims who have been trafficked have many similar needs, including shelter, counseling, and assistance with immigration and legal matters.⁴ Unfortunately, the response they receive from law enforcement, the justice system, social service networks, and the public is often noticeably inconsistent.⁵ In order to competently address the significant issue of sex trafficking in Chicago, it is necessary to respond to those affected with sensitivity to gender-specific issues, while at the same recognizing that in many respects, male and female victims share more similarities than differences in their need for comprehensive intervention.

A Problem Close To Home

Regardless of the gender of its victims, sex trafficking is a distinctly local issue for the Chicago metro area.⁶ The reasons for this phenomenon are varied, but there are several overlapping factors that intertwine in Chicago, facilitating a thriving market for commercial sex.⁷ The city is a major transit hub for domestic and international travel, with millions of people passing through every year.⁸ Traffickers benefit from a ready supply of customers, many of whom flock to the city for business, leisure, or major sports and entertainment events.⁹ In addition, Chicago is a highly segregated city, and victims residing in insular ethnic communities may not be as visible to the public, or they may be unable to seek help outside the language and culture of their neighborhood.¹⁰ Perhaps most importantly, sex trafficking is often a lucrative venture,
and warring gang factions and organized crime syndicates often get into the business as a less risky and more profitable undertaking than selling drugs.\textsuperscript{11}

Despite the attention and efforts of Illinois lawmakers and law enforcement agencies, the problem of sex trafficking is still a prevalent one. In Chicago last year, an estimated 16,000-25,000 girls and women were victims of sex trafficking, along with 450-5,000 men and boys.\textsuperscript{12} Illinois has some of the strictest laws in the country against human trafficking, yet historically, very few people are prosecuted under these statutes.\textsuperscript{13} Law enforcement crackdowns tend to suppress the problem for a period of time, but without reaching the source, such operations are only a temporary fix.\textsuperscript{14}

Though they have some distinct characteristics, male and female victims share many similarities in their reasons for becoming involved in sex trafficking, their needs after being identified as a victim, and the support that is most beneficial to them in rebuilding their lives. For both genders, risk factors include a history of abuse, neglect, or sexual victimization, poverty, homelessness, status as a ward of the state, limited educational attainment, and prior employment in a sex-based industry, such as stripping or pornography.\textsuperscript{15} Once identified, victims often need help finding shelter, navigating the legal system, enrolling in counseling, and obtaining employment and independent living skills.\textsuperscript{16} Without assistance, both genders face many similar consequences, including developing trauma-based mental health issues, contracting sexually transmitted infections (STIs) and chronic health conditions, elevated risk for violent victimization or homicide, and increased rates of suicide.\textsuperscript{17}
Despite these similar profiles, victims are often treated very differently on the basis of gender.\textsuperscript{18} Male trafficking victims tend to be arrested and charged at much higher rates, and often are not identified as victims as readily as women.\textsuperscript{19} This is due at least in part to stigma – the vast majority of the demand for commercial sex comes from men, so male victims facing societal bias against same-sex conduct may be extremely reluctant to seek help.\textsuperscript{20} In contrast to recent efforts within law enforcement and the criminal justice system toward victim sensitivity for women involved in commercial sex, male victims are still largely viewed as willful participants who have chosen the sex trade as a “lifestyle.”\textsuperscript{21} In reality, many male victims become involved in the industry as minors, often because they are recognized by traffickers as vulnerable.\textsuperscript{22} Federal funding, social services, law enforcement resources, and outreach programs are limited for all victims, but for men, they are virtually non-existent.\textsuperscript{23} Many agencies cite budget realities – the majority of their clients are women, and they are not financially able to facilitate separate shelters, groups, and resources for men.\textsuperscript{24}

\textbf{A Solution to Gender Disparity}

One economically feasible solution might be specialized programs within homeless shelters that already serve male clients. Many shelters for women already screen for domestic violence or sex trafficking victimization, often by adding a few items to an intake questionnaire.\textsuperscript{25} At men’s shelters, intake screening could be adapted in a similar manner, and staff could be trained to recognize male victims of trafficking just as those at women’s shelters are now trained to recognize female victims. Since shelters already have the staff, infrastructure, and supportive services in place, adding effective services for trafficking victims could be accomplished at minimal cost, without the difficulty and expense of starting an entirely new program or agency.\textsuperscript{26} Youth shelters and other agencies serving homeless minors are particularly likely to come in contact with male trafficking victims.\textsuperscript{27} Consequently, youth shelters need to be prepared to screen and identify male victims, and to provide services that will be sensitive to their needs.\textsuperscript{28}

For law enforcement, the same comprehensive training that is being utilized to identify female victims can and should be used to identify male victims, who are often equally exploited and equally powerless over their situation.\textsuperscript{29} Law enforcement is frequently the first point of contact for victims of both genders,
and the tone of that interaction is likely to shape whether the victim reaches out for help or withdraws further from the police in the future.\textsuperscript{30} Once a victim has been indentified, it is also critically important that prosecutors within the State’s Attorney’s Office and U.S. Attorney’s Office be knowledgeable about the prevalence and impact of sex trafficking on male survivors, and that they recognize the similar dynamic of victimization that many female \textit{and} male victims are trapped in.\textsuperscript{31} Illinois lawmakers have chosen to make sex trafficking a priority and have passed strict legislation to facilitate prosecution.\textsuperscript{32} Now, it is equally important that law enforcement and the legal system utilize these statutes frequently and consistently, and that they apply these legal protections for the benefit of both genders.\textsuperscript{33}

\textbf{CONCLUSION}

In order to make its efforts truly meaningful to combating human trafficking, Chicago must recognize not only how male and female victims differ, but the common needs they share. This could be accomplished through increased training for law enforcement in recognizing victims of both genders, gender neutral laws and statutes designed to combat sex trafficking, public education to reduce stigma and increase awareness, and utilizing the Illinois Human Trafficking Act in making charging decisions, regardless of the gender of the victim.\textsuperscript{34} By protecting the needs of \textit{all} sex trafficking victims, Chicago will be able to make meaningful strides to eliminate this prevalent but preventable issue. In a city working to both combat sex trafficking and eliminate the demand that gives rise to its existence, Chicago cannot afford to overlook an entire category of victims based on gender.

\textbf{NOTES}


5 See generally, Keziah, supra note 3; Gummow, supra note 3; Moxley-Goldsmith, supra note 3; REICHERT & SYLWESTRZAK, supra note 1.

6 Hounmenou, supra note 2; Goh, supra note 2.

7 See generally, Goh, supra note 2; Hounmenou, supra note 2; END DEMAND ILLINOIS, supra note 2.

8 Griffen, supra note 1; Hounmenou, supra note 2; END DEMAND ILLINOIS, supra note 2.

9 Griffen, supra note 1; Hounmenou, supra note 2.

10 END DEMAND ILLINOIS, supra note 2.

11 Goh, supra note 2; see generally Fenster, supra note 2.

12 Hounmenou, supra note 2; Griffen, supra note 1; ILL. RESCUE AND RESTORE COALITION, supra note 2.
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13 Griffin, supra note 1; ILL. RESCUE AND RESTORE COALITION, supra note 2.
14 Eisen, supra note 2.
15 Sun Chin, supra note 4; Griffin, supra note 2; REICHERT & SYLWESTRZAK, supra note 1; see generally POLARIS PROJECT, supra note 1.
16 REICHERT & SYLWESTRZAK, supra note 1; see generally CALIFORNIA CHILD WELFARE COUNCIL, supra note 4.
17 REICHERT & SYLWESTRZAK, supra note 1.
18 Keziah, supra note 3; Irvine, supra note 2; REICHERT & SYLWESTRZAK, supra note 1; Moxley-Goldsmith, supra note 3; Sun Chin, supra note 4.
19 Keziah, supra note 3; Moxley-Goldsmith, supra note 3; see generally Irvine, supra note 2.
20 Keziah, supra note 3; Moxley-Goldsmith, supra note 2; Sun Chin, supra note 4.
21 Clymer, supra note 3; Sun Chin, supra note 4; Moxley-Goldsmith, supra note 3.
22 Moxley-Goldsmith, supra note 3; Keziah, supra note 3; Sun Chin, supra note 4; POLARIS PROJECT, supra note 3.
23 Sun Chin, supra note 4; Keziah, supra note 3; See generally REICHERT & SYLWESTRZAK, supra note 1.
24 See generally REICHERT & SYLWESTRZAK, supra note 1.
26 See generally Clawson & Grace, supra note 4.
29 Sun Chin, supra note 4.
30 Sun Chin, supra note 4; Moxley-Goldsmith, supra note 3.
31 Hounmenou, supra note 2; Griffin, supra note 1; Clymer, supra note 3; Parsons et.al., supra note 27; Sun Chin, supra note 15; See generally CALIFORNIA CHILD WELFARE COUNCIL, supra note 4.
32 Hounmenou, supra note 2; Griffin, supra note 1; ILL. RESCUE AND RESTORE COALITION, supra note 2; END DEMAND ILLINOIS, supra note 2; Irvine, supra note 2.
33 RESCUE AND RESTORE COALITION, supra note 2; Parsons et.al., supra note 27.
34 See generally, REICHERT & SYLWESTRZAK, supra note 1; CALIFORNIA CHILD WELFARE COUNCIL, supra note 4, Ryan, supra note 28; Clawson & Grace supra note 4; Parsons et.al., supra note 27.
A mere twenty miles southwest from Chicago’s Gold Coast, lies one of the biggest oil refineries in the United States, capable of processing over 400,000 barrels of oil daily.¹ This process of refining oil, or “cracking,” produces the fuel that we need to power our cars, heat our homes, and run our power plants.² When the oil is “cracked”, a dusty coal-like product is generated along with the various fuels. This product is called Petroleum Coke.³ The refining process has generated Petroleum Coke, or “Pet Coke,” for almost 100 years, and refiners have found marketable uses for the solid, grainy, coal-like material.⁴ It can be burned as a fuel, assist in making dry cells for batteries, and make products necessary to smelt aluminum, steel, and titanium.⁵ However, this by-product has a far nastier side to it.
Today, piles of Pet Coke are sitting on the Southside of Chicago and have grown so large that natural forces like wind and weather are working to spread dust to localities, causing both health and environmental problems. The City of Chicago and the State of Illinois are facing this growing issue head on, as there is evidence that Pet Coke is exacerbating asthma conditions for those with the disorder, as well as polluting the Calumet River.

**WHAT IS PET COKE AND WHY IS IT A PROBLEM NOW?**

Normally, Pet Coke is stockpiled until enough has accumulated to make it feasible to sell on the market. For years, the piles were relatively small, as refineries were not producing large amounts of the substance. Companies found numerous buyers and the Pet Coke did not sit on the ground, uncovered, for an extended amount of time. With the changing U.S. economy, demand for Pet Coke has decreased recently and fluctuating market forces along with increased environmental regulations have resulted in Pet Coke accumulating in uncovered piles on Chicago’s Southside. However, the real problems with the growing piles did not become as apparent until about 20 years ago.

Since 2000, the U.S. has greatly increased its production of domestic, high quality, sweet (light) crude oil. In fact, current production is at its peak for the last two decades. A significant source of this production comes from processing the oil sands found in Canada through refineries located in the mid-western states, such as the Whiting, Indiana Plant. This increase in production combined with a large drop in demand has led to a massive increase in the production of Pet Coke, and unfortunately, its accumulation as well. Because the companies are producing so much more Pet Coke than normal, they are unable to find enough buyers or even move the product into the market at a pace that would prevent its collection.

In actuality, pet coke is in high demand. Many companies want the product for use in various industrial projects but as these companies are often located outside the U.S., the shipment of Pet Coke is often slow. Another issue with Pet Coke is that it is a very dirty substance. Burning Pet Coke as a fuel source is very effective on a weight basis relative to coal. Some studies suggest that it can emit 30-80 percent more energy per unit than coal! However, the process is incredibly unclean. By burning the material, an energy consumer would release up to 10 percent more carbon dioxide than if they were using coal.
Given environmental regulations in the U.S., that is not an economically feasible option.

**Effects of the Piles of Pet Coke: Dust Devils Abound**

The rising concern is that the piles of Pet Coke are being scattered throughout the Southside due to wind and changing weather conditions. The dust is causing numerous problems by damaging homes, destroying personal property, and polluting the air. The residents of the nearby Pet Coke factories claim that on windy days, they cannot open their windows for fear of having Pet Coke dust blow all around the interior of their homes.

On the environmental front, the weathering of the piles has caused Pet Coke dust to blow into the Calumet River, a significant waterway on the Southside of Chicago. The river itself serves as a conduit between Lake Michigan and the Mississippi River. It is also rich in animal and plant life. The effect of the Pet Coke dust on plants and animals is not specifically known, but Pet Coke can carry heavy metals and other toxic materials, both of which have severe health effects. Beyond animals and plants, drinking water contaminated with Pet Coke dust could have cancerous or other significant health concerns for humans. Because it is a drinking water source, contamination of the Calumet River is a significant concern. The far more concerning effect of the blowing dust is the effect that it has on individuals who breathe it. Children with asthma or other breathing disorders could have their conditions exacerbated by the presence of this dust. Moreover, the particles would act as an irritant to eyes and could cause other health problems.

**Enclose, Contain, Clean**

The City of Chicago and State of Illinois have reacted quickly to this issue. Bill McCaffery, a spokesman for the Mayor of Chicago, declared that a proposed ordinance to limit Pet Coke dust in Chicago addresses the problem. “Under this ordinance, Chicago will not become a dumping ground for pet coke and we are preventing this material from negatively impacting our communities.” This ordinance bans the creation of new Pet Coke storage areas but allows existing operations to continue. Along with these rules, Attorney General Lisa Madigan and the EPA have brought significant lawsuits against the pile own-
ers. In response, one of the pile owners KCBX, a division of Koch industries, threatened litigation and the fight continues to this day.

CONCLUSION: WHAT IS THE BEST APPROACH?

The existence of Pet Coke is a reality. Our economy relies on developing affordable forms of energy and Pet Coke is an unfortunate byproduct of processing oil to make the fuel that powers our lives and economy. However, reasonable and affordable regulations can be put in place to manage the health and environmental risks of the dust. To develop a regulatory system to enclose, contain, and keep our streets clean of Pet Coke dust is a reasonable and just objective for society to pursue.

NOTES

3 Id.
9 Id.
10 Id.
12 Id.
14 Hawthorne, supra note 8.
15 Id.
17 Id.
18 Id.
19 Id.
23 Id.
24 Id.
26 Id.
28 Id.
29 Id.
30 Bill McCaffery Written Statement, May 1, 2014.
FEATURE ARTICLE

CHANGES TO THE ILLINOIS JUVENILE JUSTICE LAWS
FOCUS ON REHABILITATION AND SENTENCING OF YOUTH

by Alexandra Hunstein

When he was just 14 years old, an Illinois court sentenced Addolfo Davis to a mandatory life sentence without parole. In March, 23 years later, the Illinois Supreme Court held that he, along with approximately 100 other prisoners, is entitled to a new sentencing hearing. The Court decided that the United States Supreme Court’s decision in Alabama v. Miller should be applied retroactively. In that Supreme Court decision, the Court held that
mandatory life sentences for juveniles are unconstitutional. As Davis’ case was proceeding to the Illinois Supreme Court, the Illinois legislature passed a new law requiring that 17-year-olds be tried in the juvenile justice system, rather than as adults. This new law, as well as the decision of the Illinois Supreme Court in Davis’ case, represents critical changes to the juvenile justice system within this state that place emphasis on rehabilitation of youth offenders and provide justice to those adults who were convicted as minors.

**17-Year Olds in the Juvenile Justice System**

Davis was not the only teenager in Illinois to receive a harsh sentence as a juvenile in the early 1990’s. In the 1980’s and 1990’s, the War on Drugs turned law enforcement’s attention on “super predators,” or young, violent offenders. Most states enacted harsh punishments for juveniles convicted of violent crimes. But Illinois was one of only 10 states that automatically tried 17-year-olds facing felony charges as adults, rather than granting jurisdiction to the juvenile courts. As the War on Drugs continued, youth convictions rose rapidly. By 2012, Chicago had more arrests of 17-year-olds than any other city in the U.S. Between 2007 and 2012, 4,352 17-year-olds were convicted of a felony. However, the national rate of violent crime among youth fell 33 percent between 2001 and 2008.

An unintended consequence of treating juveniles as adults in the justice system is that the youth are more likely to reoffend. Being convicted of a felony at a young age only makes it harder for juveniles to return to their communities and find employment, education, and housing. In 2009, advocates in Illinois attempted to transfer the jurisdiction of all 17-year-olds to the juvenile court in an effort to rehabilitate the minors. The Illinois General Assembly passed a compromise: all 17-year-olds charged with misdemeanors would be within the juvenile court’s jurisdiction, but those charged with felonies would remain in the adult court system. The legislature charged the Illinois Juvenile Justice Commission (IJJC) with conducting research about the impact of this change as well as the possibility of moving 17-year-olds charged with felonies to juvenile court as well.

The IJJC released its study in February of 2013 after looking at scientific research, data of criminal arrests, and speaking with attorneys who work with youth. It concluded that not only was the juvenile justice system able to
handle the influx of 17-year-olds charged with misdemeanors, but that it would be in keeping with legal trends, adolescent behavior research, public safety, and cost efficiency to transfer jurisdiction to juvenile courts. Lisa Jacobs, the Program Director of Illinois Models for Change, and the Vice-Chair of the IJJC said that the study answered many of the objections from those opposing the change. She noted that “a lot of groundwork had been laid and a lot of thought went into it.”

Illinois’ new law returning 17-year-olds facing felony charges back to the juvenile court system went into effect January 1, 2014. The Illinois legislature passed the bill with the support of the IJJC, Cook County Board President, Toni Preckwinkle, Cook County Sherriff Tom Dart, and many youth advocates. The law places more focus on rehabilitating juveniles, rather than simply punishing them, because social services are made available to offenders in juvenile court. However, the law will not apply retroactively to pending felony cases. It will only apply to those juveniles charged after January 1, 2014. According to the Sherriff’s Office, the 197 minors who are currently in Cook County’s Jail awaiting trial will remain in the adult court system. Although the offenders could be charged with similar or identical crimes to those charged after the first of the year, the Illinois State’s Attorneys Office has declined to comment about how it will handle the pending cases.
MANDATORY LIFE SENTENCES FOR JUVENILES

In mid-January, on the heels of the enactment of the new law, the Illinois Supreme Court heard oral arguments for Davis’ case. His case was the first case to successfully reach the Illinois Supreme Court to determine how this state will apply the Supreme Court decision in *Alabama v. Miller*. While the U.S. Supreme Court held that mandatory life sentences without parole for juveniles are unconstitutional as cruel and unusual punishment, it did not completely rule them out. Juveniles can still be sentenced to life without parole; it just cannot be *mandatory* for a court to do so. The U.S. Supreme Court found that mandatory sentences don’t allow judges to consider the circumstances surrounding the crime like a person’s home life, involvement in the act, and potential for rehabilitation. The Court did not, however, specify whether the law should be applied retroactively to the 2,500 inmates across the country.

At the time of the *Miller* decision 37 states had mandatory youth sentencing laws on the books, and those states have either chosen to address the change through legislation or litigation. Thus far nine states have decided to apply the law retroactively. Just a few months before the Illinois Supreme Court decision, the Nebraska Supreme Court also held three life sentences unconstitutional because the offenders were sentenced when they were minors, and remanded the cases to the district courts for sentencing. Similarly, a federal judge in Michigan ordered that such inmates be made eligible for parole if they had served 10 years of their sentence.

The ruling of the Illinois Supreme Court affected approximately 100 prisoners in Illinois prisons who were convicted as minors. Some of the prisoners were convicted as young as 14 years old, about half were 17 years old, and most were convicted of multiple murders. The prisoners will receive a new sentencing hearing in which he or she can present evidence, including their circumstances at the time of the crime and their subsequent efforts at rehabilitation in prison. The prospect of new hearings is raising concern for some victims’ families, who feel the proceedings will reopen emotional wounds from the past.

Jodi Cates, Chicago Director of the Human Rights Watch, stated that the goal of fighting for people like Addolfo Davis is not to absolve them of responsibil-
ity, but to restore their humanity and spare them the death sentence that is life without the possibility of parole. In fact, prisoners often refer to life without parole as “the other death penalty.” But Cates noted that applying the Miller decision retroactively would “help some young offenders find a path to becoming productive members of society.”

Youth advocates point to research indicating that teenagers do not have the ability to consider long-term consequences of their actions, have less impulse control, and are easily influenced than adults in arguing that they should be treated differently than adults in the legal system. Research shows that juveniles who are sent to a juvenile detention center rather than a prison have a greater chance of improving their behavior. “Youth are capable of tremendous positive change,” Jacobs noted, “Even kids who have made serious mistakes can learn and grow and come back to their communities.” Nearly 50 academics wrote to the U.S. Supreme Court before its decision in 2012, pointing to flaws in the “super predator” theory of juvenile sentencing.

Since his original sentence Davis has renounced his gang membership, started encouraging youth to avoid gang life, written poetry, and completed writing his own book. Davis’ attorneys say that these developments in prison will be fundamental in demonstrating his capacity for rehabilitation. It is still unclear when the new sentencing hearings will take place.

NOTES


3 Geiger, supra note 1; Linda Paul, Should ban on mandatory life without parole encompass old juvenile cases?, WBEZ (Jan. 15, 2014) [hereinafter Should ban encompass old juvenile cases?], http://www.wbez.org/news/should-ban-mandatory-life-without-parole-encompass-old-juvenile-cases-109516; Miller v. Alabama, 132 S.Ct. 2455, 2475 (2012); Duaa Eldeib and Steve Mills, Ruling offers hope to some imprisoned as youths, CHI. TRIB., March 22, 2014, http://arti-
4 Miller, 132 S.Ct. at 2455; Geiger, supra note 1; Should ban encompass old juvie cases?, supra note 3.
6 Lee, supra note 1; Should ban encompass old juvie cases?, supra note 3.
7 See Lee, supra note 6.
8 Id.
11 Minor misconduct, supra note 9; Illinois Juvenile Justice Reform, supra note 10.
12 See supra note 11.
14 Minor misconduct, supra note 9.
15 Id.
16 Kollmann, supra note 13 at 6.
17 Id.
18 Id. at 10; Interview with Lisa Jacobs, Program Director of Illinois Models for Change and Vice-Chair of the Illinois Juvenile Justice Commission, in Chi., Ill. (March 12, 2014).
19 Interview with Lisa Jacobs, supra note 18.
20 Kollmann, supra note 13 at 6-7.
21 Interview with Lisa Jacobs, supra note 18.
22 Id.
23 Meyer, supra note 5.
24 Id.
26 Meyer, supra note 5.
27 Id.
29 Meyer, supra note 5.
30 Geiger, supra note 2; Grosboll, supra note 5.
31 Geiger, supra note 2.
33 Id.
34 Geiger, supra note 2; Lee, supra note 1; Should ban encompass old juvie cases?, supra note 3.
36 Lee, supra note 1.
37 Illinois, California, Delaware, Iowa, Mississippi, North Carolina, Massachusetts, Nebraska, Michigan are the states that have decided to apply the Miller ruling retroactively. Lee, supra note 1. See also Nebraska holds Miller retroactive, The Campaign for the Fair Sentencing of Youth (Feb. 7, 2014), http://fairsentencingofyouth.org/2014/02/07/nebraska-holds-miller-retroactive; People v. Davis, supra note 2.
38 Nebraska holds Miller retroactive, supra note 37.
40 Ruling allows new hearings for 100 convicted killers, supra note 2.
41 Ruling allows new hearings for 100 convicted killers, supra note 2; Ruling offers hope to some imprisoned as youths, supra note 3.
42 Ruling allows new hearings for 100 convicted killers, supra note 2.
43 Ruling allows new hearings for 100 convicted killers, supra note 2.
44 Lee, supra note 1.
45 Geiger, supra note 2.
46 Lee, supra note 1.
47 Geiger, supra note 2.
48 Meyer, supra note 5.
49 Interview with Lisa Jacobs, supra note 18.
50 Ruling offers hope to some imprisoned as youths, supra note 3.
51 Geiger, supra note 2.
52 Ruling allows new hearings for 100 convicted killers, supra note 2.
53 Ruling allows new hearings for 100 convicted killers, supra note 2; Ruling offers hope to some imprisoned as youths, supra note 3.
COOK COUNTY JAIL: A DE FACTO HOSPITAL FOR THE MENTALLY ILL

by Melissa Kong

Illinois’ mental-health care budget was reduced by more than $1.8 million from 2009 to 2012. Due to budget cuts, six Chicago mental health clinics and half the Chicago area state hospitals closed in the last three years. Today, private clinics struggle to receive funding. According to estimates by the Illinois Hospital Association, while Illinois state hospitals had 35,000 in-patient beds during the 1950s-60s, only an estimated 1,400 beds remained in 2009.

Meanwhile, Illinois hospitals have seen an increase in the number of mentally ill patients over the years. Without private and public mental health facilities to provide patients with necessary counseling and medication, many mentally ill persons end up in jail as an unfortunate consequence. Cook County Sheriff
Tom Dart estimated that Cook County Jail became Illinois’ largest mental health provider around 2008.  

MENTALLY ILL IN COOK COUNTY JAIL

According to a 2013 report by the National Alliance on Mental Illness (NAMI), Cermak Mental Health Services, Cook County Jail’s health care provider, delivers treatment to an estimated 1,100 inmates on a daily basis. This poses a problem because Cook County Jail is currently at 99 percent maximum capacity, just short of 10,200 inmates, and according to a Jail intake, an estimated 44 percent of arrestees self-identify as mentally ill. This means more than half of the mentally ill inmates are unable to receive proper care, as Cermak already runs at 130 percent capacity.

Betsy Wilson, a mediation specialist, suspects the number of mentally ill inmates extends even further. She stated that many of her clients, several of whom are at Cook County Jail, have well-documented mental health illnesses and remain undiagnosed as mentally ill in the criminal justice system. Wilson exclaims this is largely due to inadequate screening, “When my clients were first locked up in Cook County Jail, they would go through a five-minute, one-page screening process and people with serious mental illnesses often don’t know or acknowledge that they are mentally ill. The inmates don’t tell the providers and the providers are unable to pick up on it.”

It is critical for mentally ill inmates to have access to treatment. Joseph Monahan, a Chicago attorney who represents mentally ill clients, stated, “I end up fighting for my clients to get into Cermak so that they can get [mental health] services.” Monahan also described his experiences working with an elderly client who was ordered to receive mental health treatment. “The state facility which provides treatment for people who are not fit to stand trial had a waiting list. [My client] was in jail for 160 days before she could even get into there,” explained Monahan. Accessing adequate health care is a difficult feat for many inmates.
A REVOLVING DOOR

Some inmates have found themselves committing petty crimes so they can return to jail and receive medication. According to National Public Radio, one inmate confessed, “Sometimes I would even commit a crime just to make sure I would get my meds,” and two other inmates also made the same admission. Inmates with mental illnesses generally commit minor offenses such as possessing drugs or sleeping in abandoned buildings. One inmate, according to Sheriff Dart “wandered down the street, took all his clothes off, and then picked [up] a large ashtray and threw it through a plate glass window at the courthouse.” Deputies eventually had to take the individual back to jail.

Overall, the mentally ill inmate population has a high recidivism rate at about 80 percent higher than the general inmate population. Many inmates leave jail without a plan and no support system. These factors are compounded when a released inmate doesn’t know how to access “social services, food stamps, social security disability, or computers to try and obtain health insurance,” said Monahan. Monahan further explained that the culmination of these factors leads to a downward spiral. Based on these circumstances, the unfortunate outcome is that unless inmates are provided with (or receive) more resources, it probably won’t be long until they return to jail. The Sheriff’s Office refers to this as the “revolving door” where an inmate continuously returns.

ENROLLING INMATES IN MEDICAID

To better prepare inmates for their release, Cook County Jail is helping inmates register for Medicaid. Illinois is among 27 states, including the District of Columbia, that expanded Medicaid coverage to individuals at or below 138 percent of the federal poverty level, effective January 1, 2014. According to a Bloomberg article, approximately 90 percent of inmates are uninsured and have never received treatment for their illnesses. Ben Breit, a spokesman for the Sheriff’s office, stated, “Having some form of insurance at least gives them a fighting chance of remaining stable.”

At Cook County Jail, after an individual is booked, a worker from Treatment Alternatives for Safe Communities helps the inmate complete a Medicaid ap-
lication. Since April 2013, Cook County has initiated approximately 13,000 insurance applications and more than 2,000 inmates have obtained coverage after their release.

CONCLUSION

Cook County Jail was never intended to function as a mental health facility. In light of budget cuts, state hospitals and mental-health clinics closing, and private facilities struggling, the Jail has become a de facto hospital for the mentally ill. Sheriff Dart has been actively fighting to move away from this model. While it is too early to predict the greater impact of Cook County Jail’s initiatives to enroll inmates in Medicaid, there is still an encouraging movement toward providing this vulnerable population with access to health care. In addition to directly helping inmates obtain insurance coverage, more attention needs to be given to the current states of the criminal justice and mental health care systems. For example, this past year, a group of politicians, ministers and mental health experts proposed a referendum for the Illinois November 2014 ballot to shift money to provide for the care of mentally ill individuals. More steps like these need to be taken to ensure access to health care.

NOTES

2 Id. (stating that in the last three years, half of the state hospitals in the city closed); Judith Graham, Doors to Treatment Opening for Poor People Struggling with Mental Illnesses, CHICAGO TRIBUNE, Jan. 9, 2014, available at http://articles.chicagotribune.com/2014-01-09/health/ct-aca-mental-health-met-20140109_1_health-insurance-county-care-charity-care/2 (stating that in 2012, six of twelve mental health clinics closed because of budget cuts).
5 Id.


9 Winters, supra note 1 (stating Cook County Jail has a capacity of 10,200 and runs at 99 percent capacity); Cook County Sheriff, Welcome to the Cook County Sheriff’s Office [hereinafter Sheriff’s Office], http://www.cookcountysheriff.com (last visited March 20, 2014)(stating as of March 18, a Cook County Jail intake found that 44% of arrestees self-identify as mentally ill).

10 Compare Sheriff’s Office, supra note 9 (stating 44% of arrestees identify as mentally ill) with Mental Health, supra note 8 (stating Cermak provides care to only 1,100 inmates on a daily basis) and Winters, supra note 1 (stating 10,200 inmates is full capacity and Cermak’s Health Services department that cares for mental ill inmates is at 130 percent capacity).

11 Interview with Betsy Wilson, Partner at Sentencing Advocacy Group of Evanston, Mitigation Specialist, (March 19, 2014).

12 Id.

13 Id.

14 Interview with Joseph Monahan, Founder of Monahan Law Group, LLC, Adjunct Professor of Law at Loyola Law School, (March 19, 2014) [hereinafter Monahan].

15 Id.

16 Id.


18 See Sullivan, supra note 3 (stating three inmates admitted to returning to Cook County Jail to continue to receive their medication when their local clinic closed).

19 Id.

20 Id.


22 Id.

23 Id.

24 See Interview with Ben Breit, Director of Communications at the Cook County Sheriff’s Office, [hereinafter Breit] (stating many mentally ill inmates have burned out their families with one too many episodes); see also Monahan, supra note 14 (stating it is easy to retreat back into the criminal justice system when you have a criminal record, an untreated mental illness, and family members who have given up for various reasons).

25 Monahan, supra note 14.

26 Id.

27 See Breit, supra note 24 (indicating inmates need case managers, they need people who are dedicated to their well-being to make sure they stay on their medications and remain stable once they are released); see also Monahan, supra note 14 (indicating without knowledge on how-to access public services and social and familial support, it is difficult to re-enter the community).

28 Breit, supra note 24.


31 Niquette, supra note 29.

32 Breit, supra note 24.

33 Niquette, supra note 29.

34 Id.


36 See Sullivan, supra note 3 (indicating due to these factors mentally ill tend to end up in front of the police and in the ward at Cook County Jail).

37 See Winters, supra note 1 (indicating Cook County Sheriff Tom Dart is appalled by the conditions that plague the prison system and he is “naively” trying to inform people of the mental health crisis at the jail).

38 See Breit, supra note 24 (stating that it is too early to tell the outcome of the Medicaid applications).
