



Tilting the legal landscape

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There has been much moving and shaking in the corrections legal world during the last few months. Several new or enhanced laws concerning mentally ill offenders, drug treatment requirements, victims' rights, parole hearings, discrimination claims, and sentencing reform are now officially on the books.

At the end of September, the U.S. House of Representatives renewed the Mentally Ill Offender Treatment and Crime Reduction Act (MIOTCRA) for an additional five years and \$50 million of funds per year. Since 2004, MIOTCRA grants have helped non-violent, mentally ill offenders avoid jail and instead attend supervised treatment programs. The newly expanded law will also direct grants to improve intake and processing centers so staff can better assess individuals in custody for mental health and substance abuse treatment needs.

Senator Edward Kennedy of Massachusetts was a driving force behind extending the life of the bill.

“Senator Kennedy understands that far too often individuals are arrested and subjected to the criminal justice system, when what they really need is treatment and support to overcome mental illness or substance abuse disorders,” says Kennedy spokesman Anthony Coley.

According to the Council of State Governments, an estimated 16 percent of the United States correctional population suffers from a serious mental illness. This is four times higher for men and eight times higher for women compared to those in the general population.

The courts are also stepping up their role to assist corrections officials with the mentally ill offender population. In September, four states were selected to participate in the Chief Justices' Criminal Justice Mental Health Leadership Initiative. The national project helps state Supreme Court chief justices improve their responses to defendants with mental illness.

The chief justices for Delaware, Idaho, New Hampshire, and Wisconsin will begin convening task forces of state leaders to examine how their criminal justice systems handle mentally ill individuals.

“To address this complex issue, there must be extensive collaboration among a state's systems,” says Sharon Keller, the presiding judge of the Texas Court of Criminal Appeals. “The chief justice is often uniquely positioned to convene key leaders to develop bipartisan, coordinated strategies. I look forward to seeing what these four task forces will accomplish in the coming year.”

In addition to the judge's bench, the voter's booth recently played a major role in reshaping the corrections legal landscape too. On November 4, California voters approved Proposition 9, the Victims' Rights and Protection Act of 2008. This law will amend the state's constitution to add new provisions regarding crime victims.

It will expedite restitution payments and expand victims' legal rights. The new law also will affect how parole is granted and revoked. The parole hearing wait time for offenders serving life sentences will be increased from five to fifteen years. Opponents of the measure argued that the law will prevent the early release of offenders, an outcome that could cost taxpayers even more money.

Also on Election Day, Oregon voters approved a statewide ballot measure to increase prison terms for individuals convicted of specific drug and property crimes. The new statute also contains a mandate for the Oregon Department of Corrections to address the state's rise in drug and property crime.

According to the new law, ORDOC will be required to provide appropriate treatment services to drug-addicted offenders who are at high or medium risk of re-offending. The department also must make grants to counties to fund the operation of local jails and drug-treatment services.

"Too often, after release, offenders slip right back into addiction and then slip back into the property crimes and identity theft they use to keep up their habits," says Jackson County District Attorney Mark Huddleston. "With the mandatory drug treatment in [this measure], we have the opportunity to break that cycle."

On the other side of drug law reform, voters approved nine out of ten marijuana law reform measures that were being considered nationwide. In Massachusetts, voters approved a measure to remove the threat of arrest or jail for possessing an ounce or less of marijuana, instead replacing it with a \$100 fine. Now, anyone in the state caught with an ounce or less of the drug will no longer be considered a criminal. The fine can be paid through the mail without lawyers or court appearances, just like a speeding ticket.

Michigan voters approved a measure to permit terminally and seriously ill patients to use medical marijuana with their doctor's approval, while counties in Arkansas and Hawaii approved laws to require adult marijuana possession laws to be the lowest priority for local law enforcement.

With these successes, supporters hope to carry their Election Day momentum into a national movement and are looking to President-elect Barack Obama for assistance.

"President Obama should... reframe the drug policy debate from one of criminal policy to one of public health," says Paul Armentano, deputy director of the National Organization for the Reform of Marijuana Laws. "Obama can stimulate this change by appointing directors to the Office of National Drug Control Policy who possess professional backgrounds in public health, addiction, and treatment rather than in law enforcement."

On the smaller courtroom stage, discrimination lawsuits brought by correctional officers against their employers have recently grabbed some headlines across the country.

In New York, Native American correctional officer, Robert Hunter, filed a claim against Albany County Correctional Facility for severe discrimination in the workplace based on national origin. The allegations included acts of discrimination against the officer over a period of three years. During this time, the CO claims his supervisors were aware of and frequently engaged in the activities.

Hunter claims he was recurrently the target of derogatory comments and racial slurs, based upon his status as a Native American, at the hands of his fellow officers.

“The fact that administration failed to acknowledge and resolve the issue, in light of Mr. Hunter’s repeated requests, demonstrates a complete lack of responsibility and respect not only for employees but for civil rights in general,” said Ariel E. Solomon, the attorney representing Hunter. Solomon is a senior associate at the law firm, Tully Rinckey.

From national reform to the smaller courtroom battles, the last few months have made a strong case for the corrections legal landscape being one the most exciting areas in the world of law. For now, it remains to be seen just how wide of an impact these changes will make on the country’s corrections system.