

# COVID-19 Exposes Need for Progressive Criminal Justice Reform

Modeling conducted by the Centers for Disease Control and Prevention calculates that as many as 160 to 214 million people in the United States could become infected by the 2019 novel coronavirus (SARS-CoV-2, which causes the disease COVID-19) and that as many as 200 000 to 1.7 million may die from COVID-19.<sup>1</sup> Prisons and jails are amplifiers of infectious diseases because of overcrowding and unsanitary living conditions and will most certainly contribute to these estimates. COVID-19 outbreaks have already been identified in New York City and Cook County, Illinois, jails, with infection rates at the Rikers Island jail complex far exceeding community rates. In response, correctional systems are implementing changes to mitigate the spread of COVID-19, including reducing jail and prison admissions and releasing people from facilities. In tandem, jails and prisons must also initiate facility-level policies to help stop the spread of COVID-19.

Although some correctional entities have embraced the need for temporary reforms, many others remain opposed. This crisis reiterates the need for progressive criminal justice policy reforms—in particular, the wider adoption of compassionate release and the elimination of cash bail—and has shown that policy change is

possible. Immediate action will have a positive impact on slowing the spread of COVID-19 and should become standard practice to alleviate the health harms caused by mass incarceration.

## CORRECTIONAL POPULATIONS AT INCREASED RISK

Many people in prisons and jails are in relatively poor health and have chronic health conditions, such as high blood pressure, asthma, cancer, tuberculosis, hepatitis C, and HIV, making them particularly vulnerable to communicable diseases. Because of harsh sentencing policies, the prison population is aging, with 11% of the population being aged 55 years and older, amounting to 165 000 people at even greater risk for suffering from COVID-19 without the agency to take appropriate precautions.<sup>2</sup> Compounding this issue is the fact that older people who are incarcerated tend to have a higher number of serious chronic conditions compared with their counterparts in the community. Geriatric syndromes, common conditions associated with aging, are highly prevalent among people in prisons and include vision and hearing impairment, incontinence, and a tendency to fall. Overall, this sicker, aging

correctional population results not only in lamentable and avoidable human costs but also in increasing spending on correctional health care. Almost all states and the District of Columbia have adopted some form of compassionate release for people when they become terminally ill, elderly, very sick, or incapacitated. However, very few people actually receive compassionate release, and oftentimes states have overly strict or vague eligibility requirements.

## CORRECTIONAL FACILITIES AS DISEASE INCUBATORS

The built, social, and service environments of jails and prisons amplify health risks beyond COVID-19. Correctional facilities often lack the appropriate levels of trained staff to care for a sick and aging population. These spaces are often overcrowded, have little ventilation, and have little to no access to care. In fact, at

the end of 2014, 18 states reported operating at more than 100% capacity, and the nationwide occupancy level stands at 103.9%.<sup>3,4</sup> Overcrowding leads to an increase in preventable deaths and a decrease in health care, as *Brown v. Plata* and subsequent realignment of California's prison system illustrate. Compliance with the basic recommendation of frequent handwashing is impossible if no soap is provided and ineffective when limited supplies of soap have to be shared. Although it is vital in the long run to develop national guidelines for fundamental environmental health in correctional facilities, there needs to be clear and enforceable pathways for people who are already incarcerated to be released, and we need to revise our sentencing policies to reduce overly harsh, lengthy sentences that drive the aging correctional population.

By contrast to the people serving lengthier sentences in prisons, the majority of people in jails are pretrial detainees (i.e., without a conviction), and most of those people are in jail simply because they cannot afford bail. There are 750 000 people held in US jails on any given day, and 10.6 million people cycle through these facilities in a given year, with an average expected length of stay of

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## ABOUT THE AUTHORS

Kathryn Nowotny is with the Department of Sociology, University of Miami, Miami, FL. Zinzi Bailey is with the School of Medicine, University of Miami, Miami, FL. Marisa Omori is with the Department of Criminology and Criminal Justice, University of Missouri, Saint Louis. Lauren Brinkley-Rubinstein is with the Department of Social Medicine and the Center for Health Equity Research, University of North Carolina, Chapel Hill.

Correspondence should be sent to Lauren Brinkley-Rubinstein, 333 S. Columbia St, Macnider #341, Chapel Hill, NC 27559 (e-mail: Lauren\_Brinkley@med.unc.edu). Reprints can be ordered at <http://www.ajph.org> by clicking the "Reprints" link.

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25 days.<sup>5</sup> Legal scholars argue that releasing people before adjudication on recognizance should be the default, and detention should only be used for cases that meet a “clear and convincing” evidentiary burden. Cash bail (i.e., secured bonds, the predominant form of bail in the United States) is ostensibly used as a guarantee that people will return for court appearances. If they do not show up, they forfeit their bail. If they are unable to afford bail, they remain in jail. This practice disproportionately affects people of color and people with low incomes, and bail practices are frequently discriminatory, with Black and Latino men receiving higher bail amounts than White men for similar crimes.

Some states have moved to eliminate bail or use alternatives, such as pretrial community supervision, without negative ramifications, but they are in the minority. Releasing people from confinement pending court hearings should be an immediate priority, lest their unnecessary confinement heighten their likelihood of contracting, transmitting, and potentially dying from COVID-19 or other illnesses. In addition, people who are released should be given access to linkage services that ensure housing, food, and health care. For example, the Transitions Clinic Network has begun working with community health workers and primary care clinics to continue connecting people recently released to needed services in the community during the COVID-19 pandemic.

## PUBLIC SAFETY NOT AT ODDS WITH PUBLIC HEALTH

Critics may argue that these measures will place community

members in danger. However, incarcerating older individuals does little to increase public safety, and recidivism at older ages is much lower than at younger ages. The greater concern is making sure that proper supports are in place for elderly people once they are released from prison, as it is likely that they have spent decades behind bars and, therefore, have limited or nonexistent social support networks. Similarly, pretrial detention is related to a greater risk of recidivism because people’s networks become destabilized. Initial work at the county level indicates that the vast majority of people released will appear for their court date without a financial incentive and that when people do fail to appear, it is usually for nonfinancial reasons, such as lack of transportation, illness, or inability to leave work or find childcare.

## PROGRESSIVE CRIMINAL JUSTICE REFORM NEEDED

More widely adopting compassionate release and eliminating cash bail, in the short term, will improve our ability to weather the spread of COVID-19 through the United States. However, to truly tackle our current system of injustice, these changes should be accompanied by broader policy efforts aimed at decarceration using a prison abolitionist ethic. Mass incarceration is a public health emergency.<sup>6</sup> We can address this emergency by reducing the number of people who are sentenced to correctional supervision, whether in the community or in confinement, and increasing investments in the root causes of crime (e.g., expanding education and economic opportunities).

The need for radical criminal justice reform is long overdue. We join the activists and legal scholars calling for releasing as many people from prisons and jails as possible,<sup>7</sup> starting with those who have been detained before their trial and those who are elderly or sick. In the context of the current pandemic, doing nothing is criminal.

Kathryn Nowotny, PhD  
Zinzi Bailey, ScD, MSPH  
Marisa Omori, PhD  
Lauren Brinkley-Rubinstein, PhD

### CONTRIBUTORS

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### CONFLICTS OF INTEREST

The authors have no conflicts of interest to declare.

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