

DECARCERATION:

Seeking Justice in the Era of COVID-19

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SUMMARY

For thirty years, Partners In Health's mission has been to create a preferential option for the poor in health care. To realize this mission is to acknowledge that illness is not biological alone but linked to historical, social, and political forces that impoverish and oppress people. Incarcerated people around the world are among the most vulnerable to ill health and are often those who have suffered most from these damaging forces. From Russia to Peru, Haiti to Liberia, we have always worked to ensure that incarcerated people have access to health care.

The U.S. has the highest rate of incarceration in the world. Centuries of racist policies, policing, and bias in the justice system have led to mass incarceration and the disproportionate representation of Black, Indigenous, and Latinx individuals in prisons, jails, and detention centers. U.S. prisons and jails are overcrowded, and incarcerated people often lack basic health care and suffer from higher rates of chronic diseases. Not surprisingly, incarcerated populations throughout the U.S. have experienced rates of COVID-19 infection dramatically higher than the population as a whole, as well as higher morbidity and mortality when infection occurs. The virus has been demonstrated to spread rapidly from correctional facilities to the usually impoverished communities in which they are located. Individuals in these communities are disproportionately people of color with over-representation in the essential workforce and an already increased risk of COVID-19 infection.

We believe the carceral system in the U.S. is a tool of racialized oppression and must be abolished. The inequities entrenched in our carceral systems and illuminated by the COVID-19 pandemic will only be addressed by reimagining these systems wholesale and creating alternative institutions to support opportunity and safety. As we work toward the goal of abolition of our current unjust carceral system, we must develop harm reduction strategies for those currently entrapped within it: practical steps aimed at reducing negative consequences associated with incarceration.

The Centers for Disease Control and Prevention (CDC) has issued general recommendations to reduce COVID-19 transmission in correctional facilities that largely focus on infection prevention and control measures. High infection rates within facilities have highlighted key barriers to the success of these measures:

- Correctional facilities are overcrowded and are not designed for healthy social distancing;
- The rapid cycling of individuals between jails and communities results in more exposure and puts both those in custody and in the community at increased risk; and
- Variability in regulations and practices regarding testing, prevention, and treatment has impeded implementation of measures to halt transmission and provide care for the sick.

To reduce the harm being done by COVID-19 to incarcerated people, immediate action must be taken to:

- Depopulate carceral facilities by releasing as many currently incarcerated individuals as possible;
- Slow the transmission between facilities and communities by reducing the number of admissions to jails and detention centers;
- Regulate and fund facilities to ensure adequate COVID-19 testing, prevention (including a vaccine option), and care (including humane isolation and quarantine); and
- Provide robust post-release health support.

These actions are the most immediate and impactful steps to address inequitable COVID-19 spread in incarcerated populations.

STRUCTURAL RACISM, INCARCERATION, AND COVID-19 SUSCEPTIBILITY

While often [refusing to acknowledge](#) its roots and enduring structure, the U.S. is a [settler colonial](#) state with founding principles that include [elimination](#) of Indigenous peoples, appropriation of their lands, and the social and economic supersession by European settlers. The white supremacist philosophy and policies behind the [genocide](#) of American Indians also powered the U.S. to build the world's richest economy with the labor of kidnapped and enslaved human beings from West Africa. The historical, legal, and policy connections between U.S. slavery and the present-day carceral system is [convincingly detailed](#) by legal scholar Michelle Alexander and others. Centuries of oppressive racial policies have given rise to a criminal punishment system in which [racial inequities pervade every stage](#), from policing to arrest to prosecutorial decisions to trial to sentencing to re-entry experiences. Driven by “tough on crime” policy changes of the “war on drugs” era, and coinciding with the growth of the [for-profit prison industry](#), the incarcerated population in the U.S.

has [increased by 700% since 1970](#). The U.S. now has by far the [highest rate of incarceration in the world](#), and [more than 60%](#) of the people in prison today are people of color.

The Black, Indigenous, and Latinx communities in the U.S. most impacted by the historical processes of settler colonialism and [racial capitalism](#) not only face the [highest rates](#) of incarceration, but are also those most exposed to the ravages of COVID-19 outside of jails and prisons. Black, Indigenous, and Latinx Americans are significantly overrepresented in the [top nine essential occupations](#). These groups also suffer from higher rates of chronic diseases that increase the likelihood of COVID-19 mortality, receive inferior treatment and access to health care, and live in more crowded housing conditions, all a result of structural racism. The inequitable patterns of COVID-19 spread thus represent a vicious cycle within and between incarcerated and non-incarcerated communities of color.

COVID-19 IN PRISONS, JAILS AND DETENTION CENTERS

Nearly a year into the COVID-19 pandemic in the U.S., there is robust evidence of high rates of transmission among incarcerated people. Nationwide, [over 325,000](#) people incarcerated in prisons have contracted COVID-19. Many of the largest outbreaks in the country have been linked to carceral systems: in South Dakota, for example, [more than half of the 3,347 individuals](#) in prison have tested positive for COVID-19. The incidence of COVID-19 is [5.5 times higher in state and federal prisons](#) than in the U.S. generally, and in [some facilities](#) nearly the entire population has become infected. Data on COVID-19 in jails, in which one third of incarcerated individuals are confined, is sparse (owing to the fact that they are often locally-run), but among states that have reported incidence in jails [infection rates are high](#). The COVID-19 case rate among those in ICE detention is [13 times](#) the rate in the general population. Not surprisingly, those who staff correctional facilities are also at increased risk of COVID-19 infection. More than [80,000 prison staff members have contracted COVID-19](#) to date. Given limited testing throughout carceral systems, the reported number of infections among both staff and incarcerated individuals is almost certainly lower than the actual incidence.

Over [2,000 individuals in prison have died of COVID-19](#). Incarcerated individuals are at higher risk of dying from COVID-19 for reasons that are multifold. The [1994 crime bill](#) and [“three-strikes-and-you’re out”](#) laws that mandate life sentences, along with [cutbacks in parole release](#), have led to a historic rise in life sentences over the past four decades. With this, the population of incarcerated individuals has grown older: the percentage of people in state prisons who are 55 and older [more than tripled](#) between 2000 and 2016. Incarceration is also [inextricably linked to poverty](#), and many of those imprisoned [lacked access to quality medical care](#) before incarceration. Health care within jails, prisons, and [ICE detention facilities](#) is often sparse, unaffordable (with [co-pays a frequent barrier](#) to medical care), or non-existent. Lack of health care is linked to a [higher burden of chronic diseases](#) among incarcerated adults compared to older adults in the community. These factors—poverty, age, and comorbidities—[increase the risk of severe COVID-19 disease](#) among those incarcerated.

FAILURE TO MITIGATE TRANSMISSION IN CARCERAL SETTINGS

The CDC has released and updated [guidance for correctional and detention facilities](#) to prevent the introduction and spread of COVID-19. These recommendations include social distancing strategies; limitation of inter-facility transfers and intra-facility movement; enhanced cleaning, disinfecting, and hygiene practices; appropriate use of PPE; appropriate health care for those infected with COVID-19; and medical isolation of those with suspected or confirmed infection and quarantine of close contacts. This guidance is detached from the realities within many correctional facilities, and implementation at state and local levels is frequently impeded by insufficient resources and a lack of political will. The following are the primary drivers of the extraordinary transmission rates of COVID-19 in these facilities to date.

1 Correctional facilities are often overcrowded, and humane social distancing is rarely possible even when at or below capacity.

U.S. carceral systems are chronically overpopulated, with some state prisons reporting [over 300% occupancy](#), making the social distancing necessary to prevent COVID-19 transmission [impossible](#). In Massachusetts, the Department of Corrections estimates that [72% of prisoners sleep within six feet of another person and 70% eat within six feet of another person](#). Facility overcrowding has implications for not only the transmission of COVID-19 but the management of those who are infected or exposed. Because

many correctional facilities do not have designated capacity for quarantine or isolation, such practices are often implemented through solitary confinement, which is considered [inhumane punishment](#), results in [psychological distress](#), and does not allow for the medical supervision necessary for medical isolation. These practices have already taken a tremendous toll on the mental health of incarcerated people, including on [mothers](#) who have lost the ability to visit with their children.

2 The rapid cycling of individuals between jails and communities leads to rapid transmission.

The constant cycling of inmates—known as “jail churn”—is driven by the ephemerality of jail populations. Jails primarily contain people without any criminal conviction ([76% of the jail population](#)) and those serving short sentences for misdemeanors. In Texas, [80% of the individuals in detention facilities who have died of COVID-19](#) were in pretrial detention and had not been convicted of a crime. The jail population—now [10.6 million per year](#), or 750,000 on any given day—has

grown primarily from an increasing pretrial population; many individuals remain in jail because they are unable to post bail, which amounts to discrimination against the poor. The exceptional fluidity between jail and non-jail populations accelerates COVID-19 transmission throughout communities. The cycling of people through Chicago’s Cook County Jail was associated with [15.7% of all COVID-19 cases](#) in the entire state of Illinois as of early June 2020.

3 State regulations regarding testing, prevention, and treatment are variable and inconsistently implemented.

Broad testing recommendations for incarcerated populations were not issued [until July 2020](#), and while some states have adopted widespread testing, many states routinely test [only symptomatic individuals](#) even after changes to CDC guidelines. Mass testing in 16 prisons and jails revealed that actual infection rates were [12-fold higher](#) than those discovered by symptom-based testing alone. In many states, the testing of correctional facility staff is [not mandated](#). Inadequate testing both delays adequate care for the sick and the timely implementation of measures to halt chains of

transmission. Limited access to personal protective equipment and hygiene products, including soap and hand sanitizer, has been reported in [numerous facilities](#) and restricts the ability of incarcerated people and staff to practice infection control protocols. Only half of all states [require correctional officers to wear masks](#). Most correctional health care systems have [limited staff](#) and only [basic medical supplies and equipment](#) (including few oxygen tanks and [no ventilators](#)), and are not equipped to appropriately care for those who become seriously ill from COVID-19 infection.

RECOMMENDATIONS FOR CONTROLLING TRANSMISSION

[Abolitionist frameworks](#) call for the dismantling of the existing carceral system and [reimagining](#) the U.S.'s public [support](#) and [safety](#) structures. As we work toward abolition, we recognize the incompatibility of the current state of incarceration practices with COVID-19 containment, and recommend the following harm mitigation strategies for public health departments, corrections officials, and local and state authorities.

1 Depopulate carceral facilities by releasing as many currently incarcerated individuals as possible.

Reducing population numbers in correctional facilities is the most important public health strategy to mitigate COVID-19 transmission. In Massachusetts, an [inverse correlation](#) has been demonstrated between the percentage of prisoners released in a given county and the number of COVID-19 cases within that county's prisons. Early responses to the pandemic included [reductions in jail populations](#) in many states and evidence demonstrated the safety of doing so: the rebooking rates of those released during the pandemic were [lower than pre-pandemic rates](#). However, within a few months practices returned to normal, and many jails across the country now hold [more individuals](#) than they did a year ago. Rapidly increasing COVID-19 infection rates across the U.S. underscore the need for urgent decarceration.

Strategies for release will require the collaboration of sheriff's offices, prosecutors, and judges, and include:

- Design and implementation of release programs that are *transparent* and [racially equitable](#) and that prioritize individuals assessed to be at high risk for becoming infected or developing severe COVID-19 disease (including those with advanced age, pregnancy, and certain medical conditions), recognizing that COVID-19 is a new infection

and understanding of the risk factors for severe disease is [evolving rapidly](#) and that healthy people of any age can become critically ill with COVID-19 infection.

- Revision of furlough and commutation practice as has been done in [Oregon](#) and [Kentucky](#). In [New Jersey](#), passage of the [S2519 bill](#) has led to the reduction of sentences resulting in the release of more than 2,000 inmates. In Wayne County, Michigan, the [jail population was decreased by over 40%](#) largely due to administrative jail release, leading to further work to [institutionalize jail reform](#) in the county.
- Expansion of compassionate release practices to account for factors important in the context of the COVID-19 pandemic including age, medical conditions, cognitive impairments or disabilities, and family circumstance.
- Release of all individuals currently held in immigration detention facilities except in extraordinary circumstances. Court-ordered ICE facility releases have occurred in [California](#) and [Massachusetts](#) in response to a class action suit that alleged detainees were being kept in unsafe conditions related to COVID-19.

2 Slow the transmission between facilities and communities by reducing the number of admissions to jails and detention centers.

In order to divert individuals from incarceration, proposed measures include:

- Institution of a moratorium on detention admissions for nonviolent crimes (including misdemeanors, probation violations, failure to pay fines and fees, and other low-level offenses), as has been done in [Cleveland](#), [San Marcos, Texas](#), and [Kentucky](#) with citations issued in place of arrests. Non-carceral correctional measures including parole, home confinement, or electronic monitoring have been employed in [Colorado](#).

- Suspension of all immigration detention except in extraordinary circumstances.
- Reduction or elimination of bail. In California, a [statewide reduction in bail](#) for misdemeanors and some low-level felony offenses resulted in a marked reduction in pre-trial jail populations—[over 45% in some counties](#).
- Expansion of public health facilities for substance use and [mental health](#) disorders.
- Default recommendation against pretrial detention by judges and prosecutors.

3 Ensure COVID-19 prevention, diagnosis, and treatment for incarcerated people.

To protect those individuals who remain incarcerated during the pandemic, state and federal authorities must ensure that facilities are regulated and funded to rapidly diagnose COVID-19, implement practices to prevent transmission, and provide humane care for those infected. This will require:

- Increased access to COVID-19 testing with consistent protocols for testing incarcerated people and facility staff.
- Monetary investments to assure adequate personal protective equipment and hygiene for incarcerated people and facility staff.
- Prioritization of a COVID-19 vaccine option. CDC advisory discussions to date [prioritize](#) correctional officers but not incarcerated people for vaccination allotment. Given the history of medical abuse

and experimentation on incarcerated people, and because some vaccines include novel technology slated for emergency authorization without long-term data, it is essential that vaccination is not mandated but that incarcerated people have robust information about risks and benefits for a maximally informed decision. Incarcerated and detained people should be prioritized for vaccination along with all other high-risk, high-transmission groups in congregate settings.

- Protocols to ensure that those with symptomatic COVID-19 infection are rapidly assessed and transferred to treatment facilities as indicated.
- Methods of isolation for those with confirmed or suspected COVID-19 and quarantine for those exposed to COVID-19 that do not resort to solitary confinement.

4 Ensure adequate post-release health support.

Expanded and improved reentry services for individuals diverted or released from carceral facilities and detention centers are essential to preventing community-based transmission of COVID-19. Recommendations for reentry practices include:

- Routine COVID-19 testing of all individuals upon release, with provision of shelter and other resources for individuals who require periods of quarantine and self-isolation in the community upon discharge.

- Collaboration with community health systems and local boards of health to ensure transition of medical care upon discharge.
- Provision of adequate shelter to those individuals who require it for safe decarceration. This will require revising policies and practices that restrict housing eligibility based on criminal history.
- Removal of barriers for formerly incarcerated individuals to access public benefits including cash assistance, food support, and medical coverage ([ending the exclusion](#) of incarcerated individuals from Medicaid/Medicare coverage).

CONCLUSION

The injustice in COVID-19's impact on incarcerated communities represents only one example among [many](#) of how racism drives inequity within the pandemic. [Modeling data](#) suggests that the spread of COVID-19 could have been significantly reduced with the payment of reparations for enslavement, and a similar reparative framework to address mass incarceration impacting specific communities of color is overdue. Recognizing the structural violence underlying COVID-19's devastation in the U.S. demands that our COVID-19 response include changes to our economic, political, and legal structures. In light of the evidence of COVID-19's transmission behind and across bars, the immediate COVID-19 response requires strong and expedient mitigation measures centered on diverting and releasing as many individuals from carceral facilities as possible. Decarceration as one facet of this response is imperative from public health, medical, ethical and racial justice perspectives.



Incarcerated people inside Cook County Jail post messages in the window and signal to protesters outside Sunday, April 12, 2020 during the coronavirus pandemic. *Photo by Brian Cassella/Chicago Tribune/Tribune News Service via Getty Images*

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This publication was written by:

Anne Beckett, MD, MPH
Bram Wispelwey, MD, MS, MPH
Akshatha Kiran, MPH
Joia Mukherjee, MD, MPH

The following individuals contributed to the preparation of this material (listed alphabetically):

Izza Drury	Alexander Miamen
Babara L'Italien	Lindsay Palazuelos
Evan Lyon	Devin Worster
Justin Mendoza	Alicia Ely Yamin

For additional information, contact Justin Mendoza, U.S. Advocacy Manager, Global Policy and Program, Partners In Health, U.S. Public Health Accompaniment Unit, at jmendoza@pih.org