

The emergence of the novel coronavirus required the United States’ jail and prison systems to rapidly introduce solutions to slow the spread of COVID-19 among the incarcerated. While COVID-19’s impact is felt globally, its impact on prison and jail systems is unique. With a reliance on shared space, inmate turnover, and a large rotating staff it is difficult to implement some of the most effective, known public health recommendations - like social distancing - to jail and prison populations. Thus, federal, state, and local systems have been left to develop their own strategies that balance prevention, inmate health, and public safety.

The most common approaches implemented since March 2020 include the early release of offenders, a reduction in admissions, the elimination of medical co-pays, the prohibition of visitors, and the reduction of the costs of video and telephone calls. Without the luxury of time to develop a tested, uniform approach, America’s prisons and jails’ varied response is an experiment in protecting the health of incarcerated populations while balancing public safety concerns. While it may take months or years to observe the impact of COVID-19 response, extensive scientific research on related topics provides insight as to potential outcomes.

Figure 1

| COVID-19 Among Incarcerated and Detained Persons in United States  | No. of Cases Among Reporting Jurisdictions* |
|--|---|
| <i>Facilities reporting at least one confirmed COVID-19 case among incarcerated or detained persons or staff members</i> | 420   |
| <i>Facilities reporting COVID-19 cases only among staff members</i>  | 221   |
| <i>COVID-19 cases among incarcerated or detained persons</i>   | 4,893                                       |
| <i>COVID-19–associated hospitalizations among incarcerated or detained persons</i>                                       | 491   |
| <i>COVID-19–associated deaths among incarcerated or detained persons</i>   | 88  |

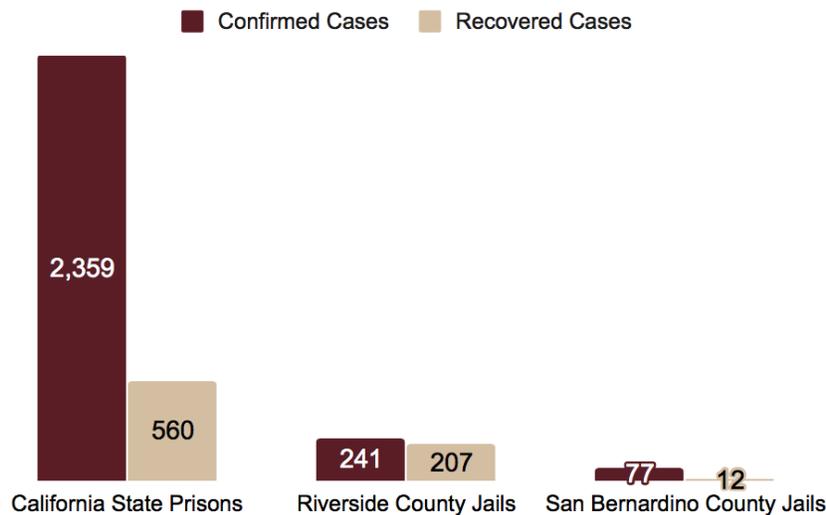
\*Jurisdictions reporting at least one laboratory-confirmed COVID-19 case among incarcerated or detained persons, 32 U.S. state and territorial health department reporting jurisdictions, January 21–April 21, 2020

Source: Wallace M, Hagan L, Curran KG, et al. February–April 2020. *COVID-19 in Correctional and Detention Facilities*. MMWR Morb Mortal Wkly Rep 2020;69:587–590.

Figure 2

## State-Wide, Riverside, and San Bernardino Cases Within Correctional Settings

As of June 7th, 2020



Source: CDCR. 2020. Population COVID-19 Tracking.; Recovered numbers are reported daily to RCPH by the Riverside Sheriff's Office.; San Bernardino County. Countywire: June 5, 2020 Update.

### STRATEGIES

**Early release** was adopted across the United States as a way of rapidly decreasing the number of offenders in custody, in turn allowing for greater distance between and protection of inmates who remain imprisoned. Early release is typically conditioned on the type of crime the offender committed (e.g. non-violent versus violent), age, and other risk factors that increase the inmate's propensity of developing a severe case of COVID-19.

Examples include the following. Within the month of March, the **Los Angeles County** jail population dropped by almost 30% and, at the time of publication, **San Bernardino County** had released 116 inmates due to COVID-19. **Alabama** also implemented early release for nonviolent offenders, over 55 years of age, with pre-existing medical conditions and Alabama's Mobile Metro Jail population decreased its 1,580 population to 1,100 within four weeks. Similarly, **New**

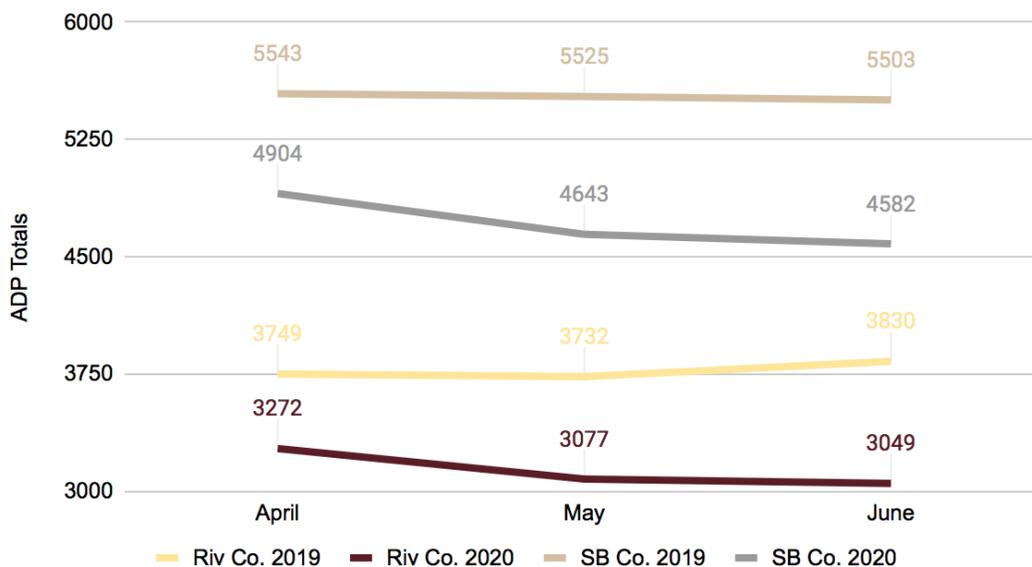
**York** Governor Andrew Cuomo's office instructed its state's prisons to release pregnant and non-violent offenders with under six months remaining on their sentences. Public response to this strategy is mixed, with some highlighting the potential for increase in crime that accompanies early release and others lauding the decision to protect offender health, especially of those who are at high risk.

**Reducing admissions** to jails follows similar logic by protecting inmate health by decreasing the number of offenders imprisoned during the pandemic.

On April 6th, the California Judicial Council established a temporary 'zero dollar bail' policy for low-level felonies and most misdemeanors, which expired June 20th. After this statewide emergency order was issued, the **Santa Barbara County** Sheriff's Department released half of those in pre-trial detention with a citation, rather than

Figure 3

### Average Daily Population of Riverside and San Bernardino County Jails, 2019 v. 2020



Source: Board of State and Community Corrections. 2020. Jail Profile Survey. <https://app.bscc.ca.gov/joq/jps/QuerySelection.asp>

admitting them into the county jail. The cities of **San Marcos, Austin, and San Antonio, Texas** adopted cite and release resolutions in place of jail admissions for low-level offenses. Other states, like **Colorado**, adopted similar strategies to avoid admissions during COVID-19 by providing alternatives to traditional incarceration for parole violations, including referral to treatment programs, electronic monitoring, and house arrest. Taking it one step further, the **New York** District Attorney's office announced they would stop prosecuting low-level, nonviolent crimes committed during the pandemic.

While the data for **Riverside** and **San Bernardino** counties' release and admissions strategies is not yet public, Figure 3 compares the total jail population for both counties from April to June of 2019 and 2020. Both counties have fewer inmates in-custody during the 2020 period, which may be due to COVID-19 response strategies.

**Eliminating medical co-pays** provides further protection for those who must remain in custody by encouraging inmates to seek medical care during the pandemic, especially if they are experiencing symptoms of COVID-19. Twelve states, including **California**, never require prisoners to pay for their medical expenses. Ten states waived co-pays for all medical care during the pandemic and twenty-six waived co-pays for treatment of COVID-19 symptoms.

**Eliminating in-person visits** is akin to limiting gatherings to occupants of a single household to reduce transmission and has been adopted across the board by federal, state, and local systems. **Riverside** and **San Bernardino** counties have restricted in-person visits to attorneys and other similar, official visits.

**Reducing the cost of phone and video calls** while in-person visits are suspended allows inmates to remain connected to friends and family. The **California** Department

of Corrections & Rehabilitation partnered with an inmate telephone network provider to offer state prisoners three days of free phone calls each week in April, two days of free phone calls each week through the end of May, and one free phone call each week in June. In **Shelby County, Tennessee**, all fees associated with phone calls and video communications were temporarily suspended and in **Connecticut** an agreement was reached with its prison phone service to allow every inmate two free phone calls a week for one month, beginning March 12th. All 122 federal prisons in the **United States** have also waived the cost of phone calls for its incarcerated population.

### POTENTIAL IMPACTS

Many studies have been conducted in the areas of early release, criminal deterrence, inmate medical care, and the importance of social connections while incarcerated. These projects offer a glimpse into the potential impact of COVID-19 response on public safety and crime rates. The findings discussed below are the product of sound scientific research, but it is important to keep in mind that there are limitations in using prior scholarship to predict future impacts. This is particularly true given the unprecedented impact of COVID-19 across our society. Prior scholarship helps to predict outcomes to the best of our ability until there is data from the criminal justice system for this period in our history that can be analyzed.

#### Early Release

Early release is a common prison depopulation strategy and extensive research evaluates whether early release is correlated with an increase in crime and decrease in public safety. These studies do not evaluate the impacts of early release due to a pandemic, but it is possible to extrapolate the

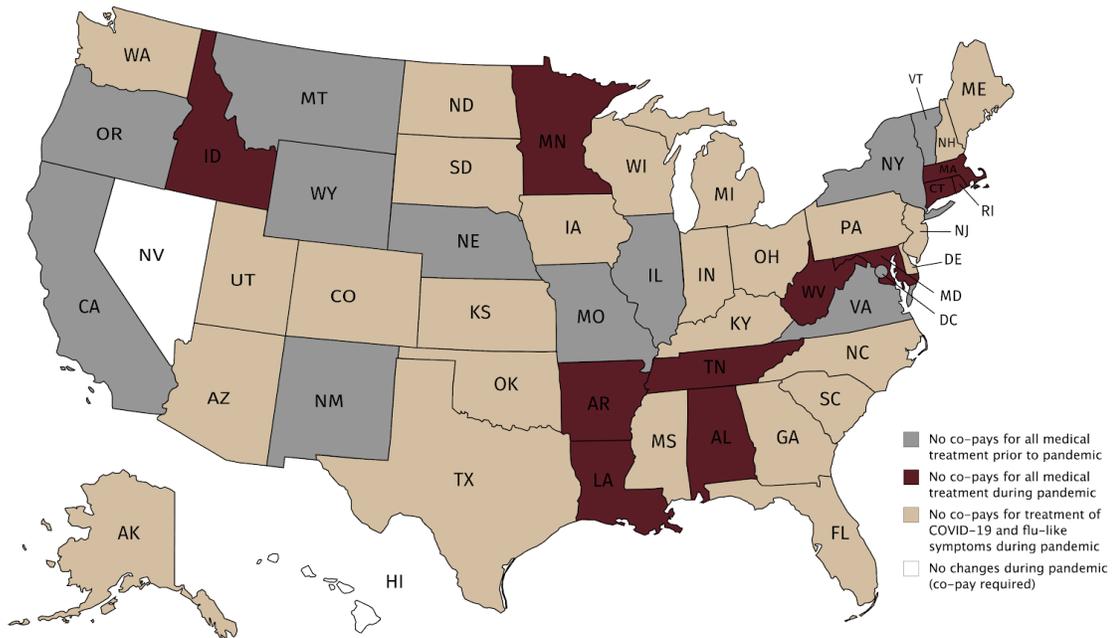
potential effects in the wake of COVID-19.

California's prison realignment is perhaps the most studied early release effort of all time. AB-109 (2010) required California's prisons to decrease their population by releasing all non-violent, non-serious, non-sexual offenders and remanding them to county-level supervision, typically overseen by probation departments. In the three years following California's realignment act, there was no significant change to violent or property crime rates overall<sup>20,21</sup>, which may be attributed to local governments' investment in community supervision strategies to bridge incarceration and autonomous living. These findings echo an earlier study of Illinois' early release program during the 1980s, which found being granted release did not increase non-violent offenders' probability of committing additional crimes and the risk to public safety is mitigated if release is limited to low-level offenders.<sup>7</sup> If this research holds and assuming quality supervision and reentry services are made available to the recently released, releasing non-violent offenders during the pandemic should not increase crime rates.

Moreover, a frequent factor in determining eligibility for COVID-19 early release is the age of the offender, with inmates over age 55 being considered for release because they are high risk for more serious complications if they contract the virus. Research strongly suggests people age out of criminal behavior and are increasingly less likely to commit crimes in each decade of life after their thirties.<sup>17</sup> Therefore, the population released due to COVID-19 should be less likely to recidivate overall than the younger population that largely remains in custody.

Figure 4

## Inmate Co-Pays for Medical Treatment, June 2020



Source: Prison Policy Initiative. 2020. Responses to the COVID-19 Pandemic. <https://www.prisonpolicy.org/virus/virusresponse.html#copays>

### Reducing Admissions

Yet another strategy to reduce the population density of jails and prisons is to reduce new admissions during the pandemic. Correctional facilities that adopted this approach typically reduce admissions in one of three ways: 1) by reclassifying misdemeanor offenses that do not threaten public safety into non-jailable offenses, 2) using citations instead of arrests for all low-level crimes, and 3) diverting offenders to community-based treatment and resources in lieu of custodial supervision.

Critics argue that without the threat of a stint in jail there will be an increase in crime. This argument relies on the assumption that traditional custodial supervision is an effective deterrent against crime. However, ample research finds that the threat of being caught by police is a much stronger deterrent than the threat of being incarcerated after being caught.<sup>18</sup> Incarceration successfully incapacitates offenders by making it impossible for them to commit a crime

against the public while in custody, but the threat of jail or a harsh prison sentence is not nearly as effective a deterrent as the perception that it is likely the individual will be caught by police while committing a crime.<sup>19</sup>

The overwhelming majority of admission reduction strategies do not remove the threat of being caught but remove incarceration as the punishment for being caught. If prior findings on deterrence hold, it is unlikely reducing admissions will lead to an increase in crime as long as policing efforts remain in full effect. For instance, Austin's cite-and-release policy still allows for effective policing, whereas Brooklyn's refusal to prosecute low-level offenses during the pandemic may discourage policing of those offenses and have the secondary effect of increasing crime.

### Eliminating Medical Co-Pays

Eliminating inmates' medical co-pays was a

crucial step in swiftly identifying potential cases of the novel coronavirus for quarantine. Many states have done away with co-pays for medical treatment – including California, in January 2020 – as even a small fee often deters prisoners from seeking care they require. A 2012 survey conducted in a maximum security prison on the East Coast discovered that over 70% of incarcerated males, “avoided medical services at least once in the past three months due to the five dollar copayment.”<sup>11</sup> Similarly, a 2010 study of previously incarcerated women found that co-pays hindered women inmates’ access to health care and that they would often forgo care because of the financial burden of a co-payment.<sup>12</sup>

Early identification, treatment, and quarantine of COVID-19 patients is recognized as critical in reducing transmission rates, both among the general and incarcerated populations, and 48 states’ decisions to eliminate or suspend co-payments is a proactive step that is supported by a large body of research.

#### Eliminating In-Person Visits & Reducing the Costs of Phone and Video Calls

The majority of federal prisons, state prisons, and local jails have eliminated friends and family visitation so as to reduce the risk of exposing inmates and correctional staff to COVID-19. However, there is significant research that sustained social ties among family and incarcerated individuals is crucial to improved reentry outcomes and a decreased risk of recidivism. A 2007 study of 16,420 offenders released from Minnesota prisons found prison visitation policies, “yield public safety benefits by helping offenders establish a continuum of social support from prison to the community.”<sup>14</sup>

In an effort to compensate for the elimination

## CALIFORNIA’S PRISONS HAVE BEEN HERE BEFORE

In April of 1918, an inmate from Los Angeles County jail was transferred to San Quentin and mingled with the prison population of 1,900 before reporting to the hospital with flu-like symptoms. The diagnosis? H1N1, commonly referred to as the Spanish Flu. Within one month, nearly half of the 1,900 inmates housed at San Quentin were presumed positive for H1N1 and there were two additional outbreaks - one in October and one in November - before the year’s end.

As the world coordinated its response to the global pandemic, San Quentin was left to adopt its own treatment and prevention strategies.

- **Isolation:** Communal gatherings were suspended after hospital staff noted most cases presented on Wednesdays, three days after the weekly movie night. Seeking to provide a safe alternative form of entertainment, the Oakland Marching Band was brought to the yard. Despite being held outdoors, there was an increase in H1N1 cases that doctors speculated might be attributed to the inmates’ singing, which promoted the spread of the virus through aerosol particles.
- **Masks:** Masks were distributed, but quickly abandoned as their design was uncomfortable and the six-ply fabric made it difficult to breathe. Ultimately, masks were required to be worn only by prisoners and their friends and family during visits.
- **Social Distancing:** When possible, social distancing was promoted including during visits, when visitors were instructed to sit at the far ends of tables away from inmates, and during the day, when inmates were moved outdoors due to suspicions that the “stuffy air” indoors promoted the virus’ spread.

Source: Stanley, L.L. (1919). Influenza at San Quentin Prison, California. Public Health Reports (1896-1970), 34(19), 996.

of in-person visits, many federal, state, and local facilities have increased the number and length of calls that inmates may make per week and have negotiated lower cost calls with their telephone providers during the pandemic. While there are not studies that have compared the effect of in-person versus telephone calls on reentry outcomes, the importance of sustained social connections is well-documented in numerous other studies<sup>15,16</sup> and is especially important in California given the state's goal of decreasing recidivism as a prison depopulation strategy.

### MOVING FORWARD

Without the luxury of time and ample evidence to support their decisions, federal, state, and local systems have had to make hard choices to protect the health of their incarcerated population and correctional staff, while balancing their concern for public safety. Insofar as it is possible to extrapolate existing research to a new scenario, it seems more likely than not that the strategies adopted by correctional facilities will not significantly increase crime or compromise public safety. It will be months, if not years, before the full ramifications of the criminal justice system's COVID-19 responses are known, but they will surely be the focus of research that compares these varied approaches.

### KEY TAKE AWAYS

- Between January 21 and April 21, 2020 there were 88 confirmed COVID-19 associated deaths and 4,893 COVID-19 cases among incarcerated or detained persons amongst 32 U.S. state and territorial health department jurisdictions.
- On January 1st, 2020, A.B. 45 went into effect, making California the twelfth state to permanently bar its jails and prisons from charging inmates copays and other

fees for medical services.

- States across the country are implementing early release strategies for nonviolent offenders, over 55 years of age, and those with pre-existing medical conditions.
- California implemented a 'zero bail policy' for most misdemeanors and low-level felonies to reduce admissions, which expired June 20th.
- States are reducing admissions by adopting cite and release resolutions, referring to treatment programs, using electronic monitoring, and – in some cases – not prosecuting low-level non-violent crimes.
- Prior research shows early release for low-level, non-violent offenders and reducing admissions while maintaining active policing does not typically lead to an increase crime, but data collected during the pandemic will provide insight into whether these previous findings hold in today's context.
- With in-person visits temporarily suspended, many states increased the number of calls each inmate may make per week and negotiated a decrease in the cost of calls with their service providers.
- San Bernardino and Riverside counties' sheriff departments temporarily suspended personal visitation due to COVID-19.
- Medical co-pays are a barrier to care for the incarcerated population and suspending payment during the pandemic will likely encourage inmates to seek medical care.
- Having a strong social network decreases the likelihood of an offender recidivating and supporting an inmate's relationships by increasing the number of calls they have during the pandemic will likely help protect against the negative effects of suspending in-person visits.

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**ROBERT PRESLEY CENTER  
OF CRIME AND JUSTICE STUDIES**

University of California, Riverside  
School of Public Policy  
Interdisciplinary North 4022  
900 University Avenue  
Riverside, CA 92521