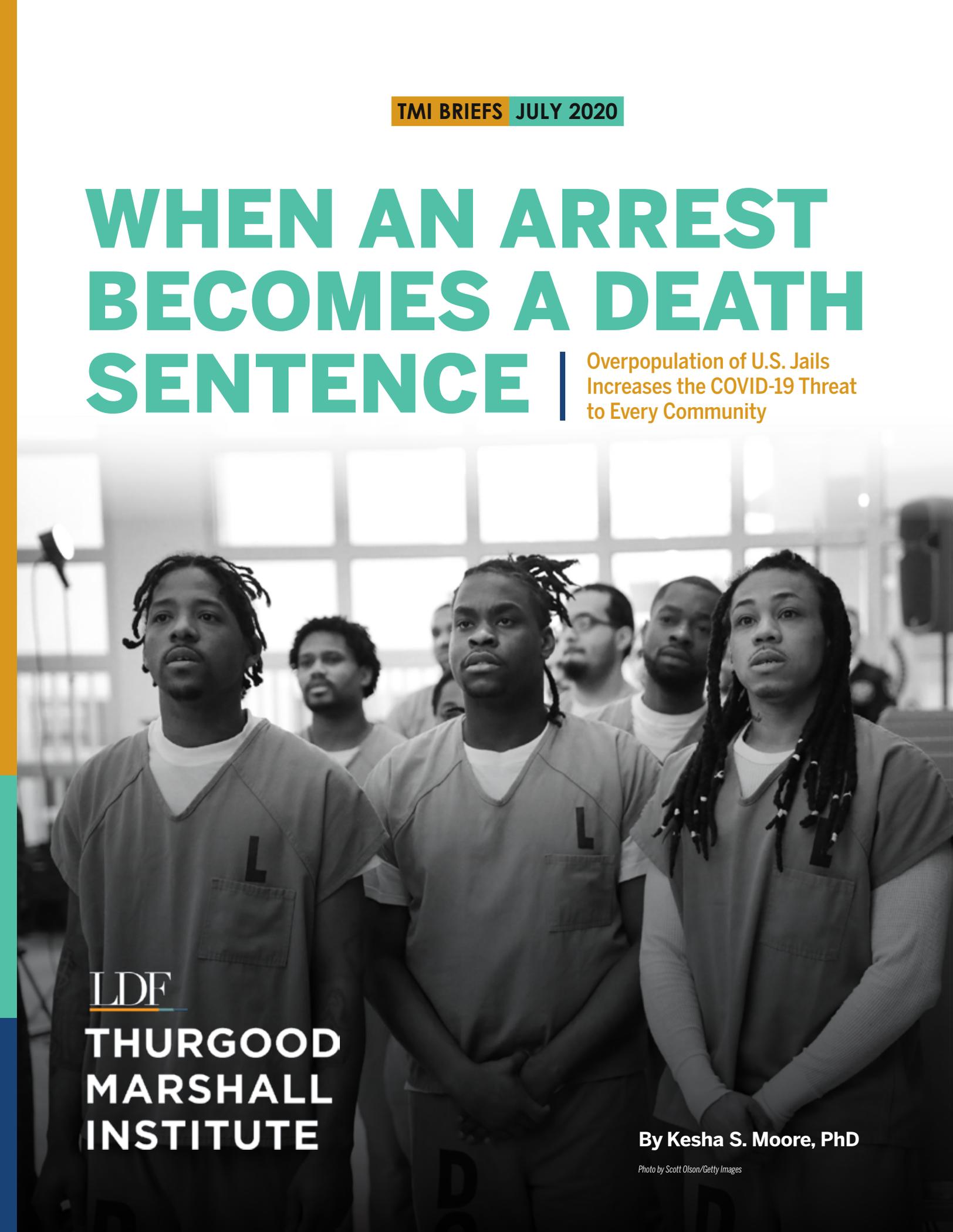


TMI BRIEFS JULY 2020

WHEN AN ARREST BECOMES A DEATH SENTENCE

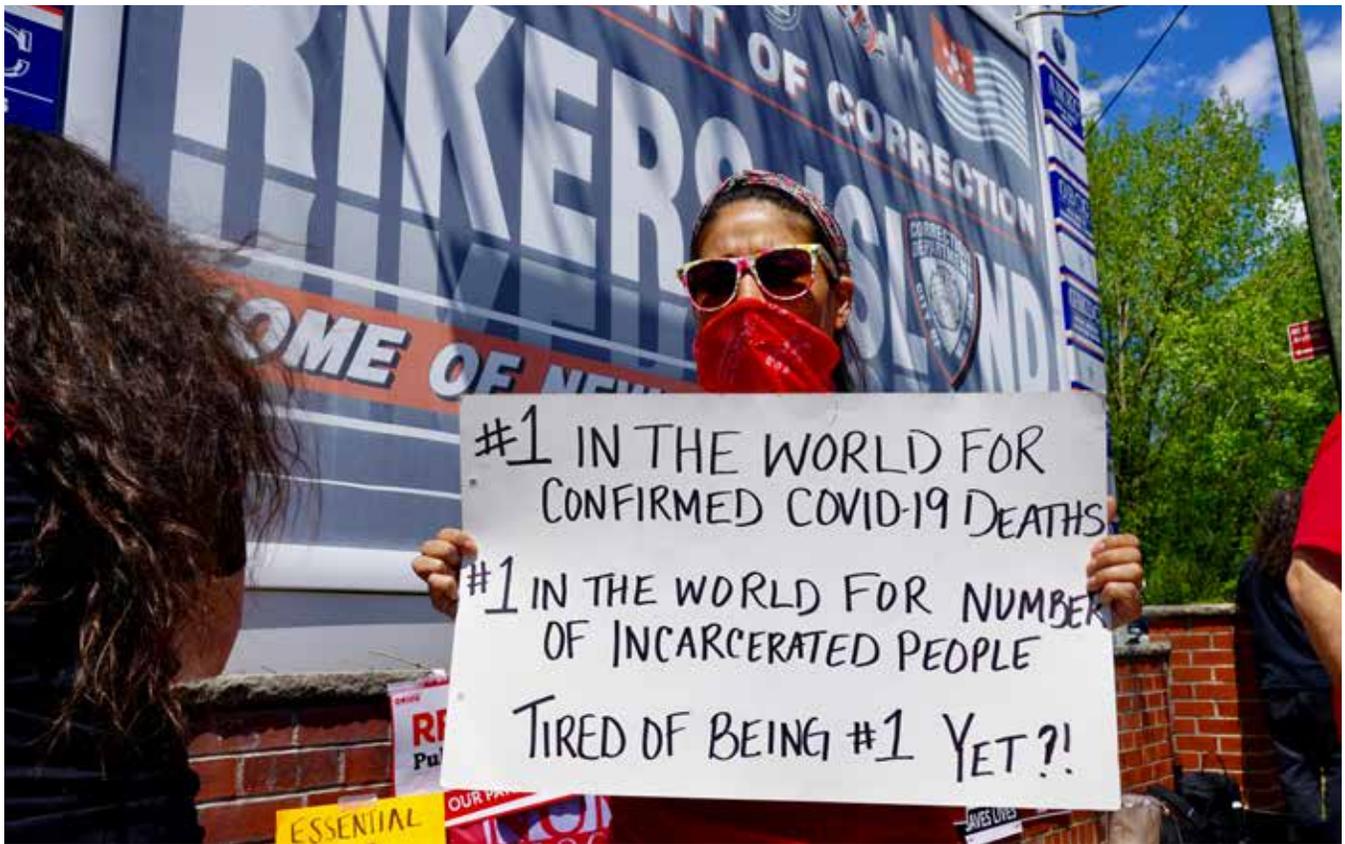
Overpopulation of U.S. Jails
Increases the COVID-19 Threat
to Every Community



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By Kesha S. Moore, PhD

Photo by Scott Olson/Getty Images



NEW YORK, NY – MAY 07: A nurse holds a sign during a nurses protest at Rikers Island Prison over conditions and coronavirus threat on May 7, 2020 in New York City. (Photo by Giles Clarke/Getty Images)

MICHAEL TYSON, aged 53, was the first person to die from COVID-19 at Rikers Island, the infamous New York City jail. Mr. Tyson was incarcerated for a technical, non-criminal parole violation and almost certainly caught the disease inside. He was transferred to a local hospital where he died on April 5. Between mid-March and mid-April, 362 of the 3,974 people incarcerated at Rikers Island were confirmed to have been infected with the coronavirus. As New York City emerged as a COVID-19 hot spot, the infection rate on Rikers Island was six times higher than the infection rate in the city. By April 20, at least six prison staffers across New York had died from the virus.¹

MID-MARCH MID-APRIL

362

of the **3,974** people incarcerated at Rikers Island were confirmed to have been infected with the coronavirus

INFECTION RATE

1 × **6**

New York City Resident

Rikers Island Population

JAILS ARE VECTORS FOR THE SPREAD OF THE CORONAVIRUS

In the age of COVID-19, an arrest and pretrial incarceration could mean much more than denial of individual liberty; it could mean a death sentence because there is no way to effectively, safely, or fairly quarantine inside a jail or prison.² As Dr. Matthew J. Akiyama, a professor of Medicine at Albert Einstein College of Medicine in New York City, states: “[w]e know that congregate settings like prisons and jails are some of the highest risk settings for widespread transmission.”³ Of the 3,992 individuals incarcerated in New York City jails, 340 of them are confirmed COVID-19 positive.⁴ The infection rate of COVID-19 among people working and incarcerated in New York City jails is 5 times higher than the infection rate of New York City, 6 times higher than the infection rate of New York State, and 21 times higher than the infection rate of the U.S. as a whole.⁵ Thus, successfully managing the COVID-19 pandemic in the U.S. requires successfully managing it in our prisons and jails.

There are several reasons why prisons and jails are particularly vulnerable to rapid and severe outbreaks of COVID-19: frequent movement in and out of jails from detainees and staff, aggregation of people from a variety of geographic locations, limited space available for medical

WHILE THE RISKS OF EXPOSURE TO COVID-19 MAY BE HIGHER WITHIN JAILS, THE RISKS DO NOT REMAIN CONTAINED WITHIN THE JAILS.

isolation, limited ability to practice disease prevention measures (e.g. handwashing) due to restrictions in access to soap, paper towels and hand sanitizers, as well as the inability to social distance given the volume of people and the architectural design of the facilities.⁶ Since April 1, New York City jails have admitted an average of 28 new individuals each day. Each admit brings increased vulnerability of being exposed to COVID-19 in jails and ultimately from the jails to the larger community. Between April 1 and June 5, of the 1,690 individuals entering New York City jails, 758 of them were likely or confirmed to have been exposed to COVID-19.⁷ Every day approximately 40 people are released from New York City jails into the community. Of the individuals released between April 1 and June 5, 45% are believed to have been exposed to COVID-19 during their incarceration.⁸ While the risks of exposure to COVID-19 may be higher within jails, the risks do not remain contained within the jails.

JAIL AND PRISON POPULATIONS ARE AT HIGH RISK FOR SEVERE FORMS OF COVID-19 AND DEATH

Incarcerated persons may have medical conditions that place them at increased risk of severe forms of COVID-19. According to data provided by New York City’s Department of Correction (DOC), 17% of the people incarcerated in New York City jails are over the age of 50, and most also have underlying health conditions.⁹ Figure 1 below shows that the incarcerated population has a higher percentage of asthma, hypertension, and diabetes than the general population.¹⁰

Figure 1: Prisoner Health Conditions, Prison Policy Initiative¹¹

PREVALENCE OF HEALTH CONDITION BY POPULATION

Health Condition	Jails	State Prisons	Federal Prisons	United States
Ever tested positive for Tuberculosis	2.5%	6.0%	6.0%	0.5%
Asthma	20.1%	14.9%		10.2%
Cigarette smoking	N/A	64.7%	45.2%	21.2%
HIV positive	1.3%	1.3%		0.4%
High blood pressure/hypertension	30.2%	26.3%		18.1%
Diabetes/high blood sugar	7.2%	9.0%		6.5%
Heart-related problems	10.4%	9.8%		2.9%
Pregnancy	5.0%	4.0%	3.0%	3.9%

Health conditions that make respiratory diseases like COVID-19 more dangerous are far more common in the incarcerated population than in the general U.S. population. Pregnancy data come from our report, [Prisons neglect pregnant women in their healthcare policies](#), the CDC’s [2010 Pregnancy Rates Among U.S. Women](#), and data from the 2010 Census. Cigarette smoking data are from a 2016 study, [Cigarette smoking among inmates by race/ethnicity](#), and all other data are from the 2015 BJS reports, [Medical problems of state and federal prisoners and jail inmates, 2011-12](#), which does not offer separate data for the federal and state prison populations. Cigarette smoking may be part of the explanation of the higher fatality rate in China among men, who are far more likely to smoke than women.

The above-mentioned health factors suggest that individuals incarcerated in jails are at a much higher risk of COVID-19 infection than the general public. A model of COVID-19 deaths developed by the American Civil Liberties Union (ACLU) indicates that

current national projections of deaths from the disease are undercounted by at least 100,000 people because they fail to consider the impact of jails on the spread of the virus.¹² According to this model, even with highly effective social distancing, our national rates of projected COVID-19 deaths rise by 98% due to infections in the jails.¹³ This model makes clear in stark terms that social distancing as a strategy to slow the spread of COVID-19 can only be effective if it includes jails, which are a primary vector for the infection. As shown in Figure 2 below, the better the general public is at social distancing, the more likely it will be that jails will contribute disproportionately to the number of COVID-19 deaths. Social distance safety protocols must extend to the jails as well



if we want to reduce the total number of deaths from the disease.

Figure 2: Forecast of COVID-19 Deaths Including Jails, ACLU¹⁴

	Highly effective social distancing	Somewhat effective social distancing	Less effective social distancing
Projected deaths – not accounting for jails (standard models)	101,000 ¹⁰	230,000 ¹¹	989,000 ¹²
Projected deaths – accounting for jails	200,000	372,000	1,177,000
Underestimated deaths due to jails	99,000	142,000	188,000
% more deaths due to jails	98%	62%	19%

Note: Totals rounded to the nearest 1,000.

Note that the lower the projection without accounting for jails, the bigger the underestimate. This is because as society at large adopts better social distancing measures in places other than jails, jails increasingly become a primary vector for infection. The takeaway is clear – social distancing measures can only be effective if we extend them to jails as well.

DEPOPULATING JAILS AND PRISONS IS AN IMPORTANT MEASURE TO SLOW THE SPREAD OF THE CORONAVIRUS

ADVOCATES PRESS JAILS AND PRISONS IN COURT

Much like nursing homes, the 2.1 million people currently held in U.S. jails and prisons live in housing structures that present ideal conditions for the spread of the coronavirus. Given that COVID-19 deaths in jails and prisons have spiked in several facilities across the country, many incarcerated people have sought legal counsel to protect their health and safety. The NAACP Legal Defense and Educational Fund, Inc.,¹⁵ Civil Rights Corps,¹⁶ and the ACLU¹⁷ have filed lawsuits across the country to protect the lives of incarcerated persons from the threat of the coronavirus.



Inmates work in the laundry room at Las Colinas Women's Detention Facility in Santee, California, on April 22, 2020. (Photo by Sandy Huffaker / AFP)

On any given day, there are 737,900 people in jail and approximately 66% of them are pretrial detainees — meaning they are presumed innocent and have not been convicted of a crime.¹⁸ Many of them remain incarcerated only because they cannot afford cash bail.¹⁹ It is well established that the practice of requiring cash bail to secure one's release from jail is discriminatory against people of low wealth and typically people of color²⁰ and doing so during the COVID-19 pandemic can also be deadly. Reducing admissions and releasing people who are currently incarcerated in jails are essential components of a COVID-19 response that will preserve the health and safety of people both inside and outside of jails.

The U.S. leads the world in rates of incarceration.²¹ Figure 3 below shows the current rates of COVID-19 deaths in jurisdictions with the largest jail populations²² and demonstrates the need for significant decreases in incarceration in U.S. jails. While New York City, Cook County, and Los Angeles have already taken great strides to reduce their jail populations, these jurisdictions would still need to lower their jail populations by 1,025; 2,677; and 8,450 people respectively in order to match the global incarceration average before

the pandemic began.²³ The COVID-19 predictive model developed by the ACLU (Figure 2 above) demonstrates that acting now to reduce the population in the U.S. jails will save lives. Reducing the pre-COVID-19 arrest rate by 50% can save 12,000 lives from COVID-19 in jails and 47,000 lives in the surrounding communities by September 30, 2020.²⁴ Limiting arrests only to crimes that physically harm others could save as many as 23,000 people in jail and 76,000 in the broader community in that same period of time.²⁵ Thus, states that have begun to reduce their jail populations are quantifiably saving lives. Colorado’s achievement of a 31% reduction in jail population will likely save 1,100 lives — reducing total lives lost to COVID-19 in the state by 25%.²⁶

Figure 3: Comparison of Jail Population in Counties with the Highest Number of COVID-19 Cases, Vera Institute of Justice.²⁷

County	COVID-19 Cases	Cases per 100K Residents	COVID-19 Deaths	Deaths per 100K Residents	Pre-COVID Jail Population	Jail Population (Latest Available)	Change	Percentage change	Add'l Jail Reduction to March Pre-COVID Intn'l Avg
New York City, NY	214,242	2,570	21,551	259	5,447	3,943	-1,504	-28%	-1,025
Cook, IL	84,581	1,642	4,173	81	5,555	4,480	-1,075	-19%	-2,677
Los Angeles, CA	72,023	717	2,890	29	17,076	11,964	-5,112	-30%	-8,450
Wayne, MI	21,711	1,241	2,669	153	1,140	835	-575	-41%	-223
Nassau, NY	41,172	3,03	2,668	197	733	609	-124	-17%	-134
Suffolk, NY	40,615	2,751	1,996	135	695	501	-194	-28%	16
Essex, NJ	18,336	2,295	1,741	218		1,110			-830
Bergen, NJ	18,805	2,017	1,664	179	615	270	-345	-56%	56
Westchester, NY	34,252	3,540	1,535	159	643	382	-261	-41%	-43
Oakland, MI	11,298	898	1,067	85	1,282	580	-702	-55%	-140

Data: See <https://github.com/vera-institute/jail-population-data> for jail data and sources. COVID-19 case and death data obtained from the *New York Times*.

Notes: The U.S. incarceration rate was 6.6 times higher than that of other nations before the COVID-19 pandemic (685 per 100K compared to 104 per 100K), and thus would need to decline by 85 percent to be in line with the Pre-COVID international average. Applying this reduction to the U.S. jail incarceration rate of 229 per 100K yields a rate of 35 per 100K, or 189,000 people in U.S. jails. Vera’s In Our Backyards project is supported by Google.org. **Last updated 6/15/2020 @ 12:06:07PM**

COUNTIES WITH COVID-19 CASES

938

COUNTIES VERA OBTAINED LATEST JAIL DATA

938

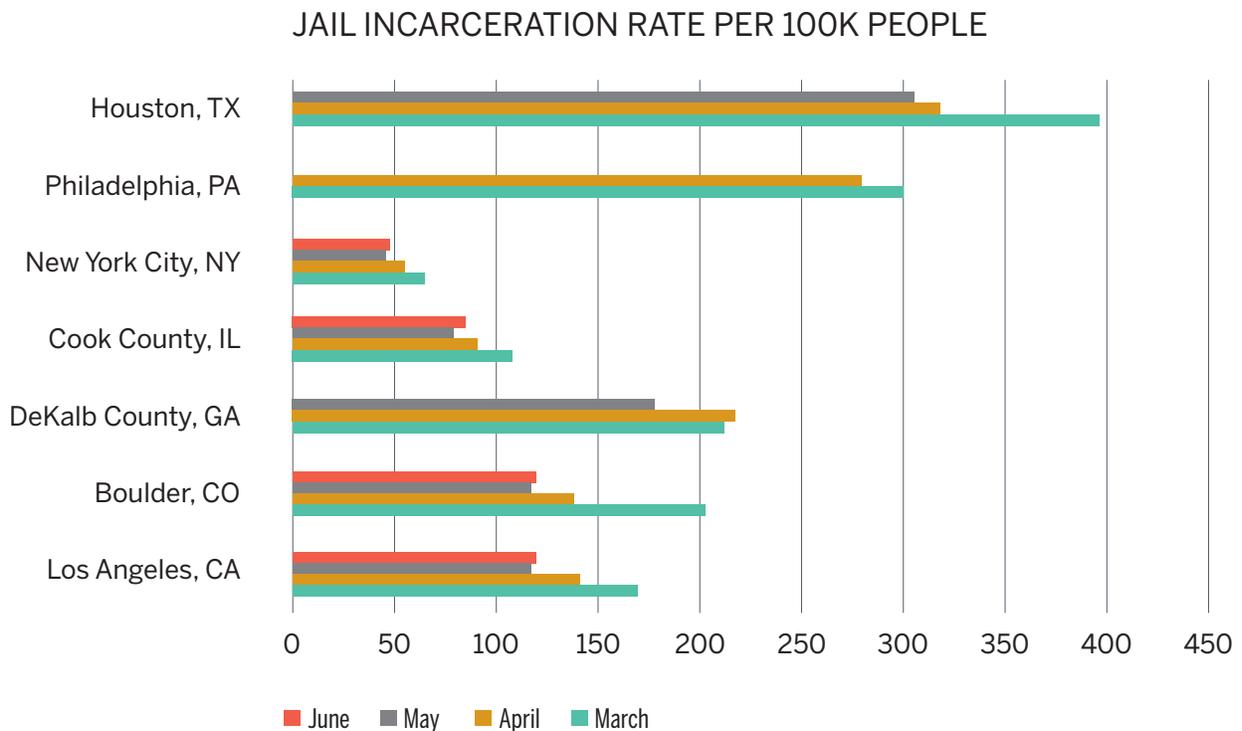
COUNTIES WITH PRE-COVID JAIL DATA

782

In a March 21 letter, the New York City Board of Correction (BOC), an independent agency that provides oversight to the Department of Correction (DOC), called for New York City Mayor Bill De Blasio to release inmates older than 50, inmates with underlying health issues, inmates detained for administrative reasons, as well as low-level offenders serving sentences of under a year.²⁸ With over 60 years of experience monitoring New York City jails, the BOC concludes that “DOC’s and CHS’s [Correctional Health System] best efforts will not be enough to prevent viral transmission in the jails.”²⁹ The BOC asserts that reducing the number of people in jails will save lives and minimize transmission among people in custody as well as staff and that without a drastic reduction in the jail population, COVID-19 infection rates threaten to overwhelm the city jails’ healthcare system as well as its basic operations.³⁰

In the figure below, we see the dramatic change in the jail rate of incarceration over the past four months. Most of this change occurred between the months of March and April, reflecting recent efforts to address the threat of COVID-19 spread in jails.

Figure 4: Changes in Jail Incarceration Rate of Select Jurisdictions Practicing Depopulation as a COVID-19 Safety Measure³¹



On March 23, fourteen U.S. Senators sent a bipartisan letter to Attorney General William Barr and Federal Bureau of Prisons (BOP) Director Michael Carvajal urging them to take the necessary steps to depopulate U.S. prisons to slow the spread of COVID-19. The senators requested the early release or transfer of prisoners who are elderly and those most vulnerable to severe infections from the virus.³² The Prison Policy Initiative also identified the depopulation of prisons and jails as an important way to slow the COVID-19 pandemic.³³ While some jurisdictions have begun to depopulate prisons and jails in an attempt to slow the pandemic, a survey of prisons across the nation revealed that most remain largely unprepared.³⁴

Ohio was the first state to issue mass testing of its prison population regardless of symptoms.³⁵ This mass testing revealed that, as of April 19, 79% of prisoners tested in Ohio were COVID-19 positive.³⁶ In fact, 20% of all COVID-19 positive cases in the state are from the incarcerated population.³⁷ Officials in Ohio's largest counties, fearing coronavirus spread in their jails, have taken steps to reduce jail populations by releasing nonviolent offenders, ordering police to issue citations instead of making arrests, and striking plea deals to resolve cases quickly. Those efforts are most dramatic at the Cuyahoga County Corrections Center in Cleveland, where the jail population dropped from nearly 2,000 people to under 1,300 in one week.³⁸



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IN FACT

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ALL FRONT-END CRIMINAL JUSTICE SYSTEM ACTORS CAN TAKE STEPS TO REDUCE THE SPREAD OF THE CORONAVIRUS

Numerous public officials are in roles that enable them to protect the safety of our communities by reducing the jail population during this pandemic. Many hold elected positions, which highlights the importance of placing people with a comprehensive vision of public safety and justice in these roles. Below is a list of key front-end criminal justice system actors responsible for shaping the jail population and therefore, the health and safety of individuals both inside and outside the jails. The examples included below illustrate the steps that each front-end actor can take in slowing the spread of the coronavirus.

Chiefs of Police and Sheriffs can help reduce the spread of the coronavirus by limiting custodial arrests to only individuals who present an imminent and serious risk of bodily harm to another person.³⁹ Law enforcement should be encouraged to issue summons and to give verbal warnings or written citations for low-level offenses where such risk is not present.⁴⁰ Police departments in Los Angeles County, California and Philadelphia, Pennsylvania are reducing arrests by using these cite and release practices, delaying arrests, and issuing summons. Los Angeles County



has reduced the number of arrests from an average of 300 per day to about 60 per day.⁴¹ As a result, between March 1 and April 1, the total jail population in Los Angeles County decreased by 3,100 people.⁴² As of June, Los Angeles has reduced its county jail population by 30% since the start of the pandemic, and Philadelphia has reduced its jail population by 16% during the same time. Yet, there is still much more to be done. Los Angeles would need to further reduce its jail population by approximately 8,400 people and Philadelphia by 3,400 people to be at

the global average of incarceration before the pandemic.⁴³

Sheriffs, in their capacities as jail administrators, can choose to release anyone in their custody who is uniquely vulnerable to serious illness or death based on age or underlying medical conditions, as defined by the Centers for Disease Control. They can also consider releasing other people in custody, including people held on immigration detainers, where the release poses no risk of serious physical harm to another person. On April 6, the California Judicial Council issued a set of emergency rules⁴⁴ that includes ordering zero bail amounts for people arrested for certain felonies and misdemeanors, forcing deputies to release them as soon as they are booked.⁴⁵ This empowered many California sheriffs to more aggressively depopulate local jails. Within a week, the San Diego County Sheriff's Department had released 300 people from the county jail and the San Mateo County Sheriff's Office had released 382 people from their two county jails.⁴⁶ The Los Angeles Sheriff reduced the jail population by 1,700 people by releasing those with less than 30 days left on their sentences and now is considering releasing pregnant women and older adults at high risk.⁴⁷

Prosecutors can help reduce disease transmission by declining to prosecute custodial arrests made for low-level charges, recommending pretrial release



without conditions in all cases where there is no risk of imminent serious physical harm to another person, and proactively identifying and releasing anyone currently incarcerated who was convicted of low-level offenses.⁴⁸ The District Attorney's Office in Boulder, Colorado has taken steps to release people held in jail with limited time left on their sentence and those charged with non-violent offenses. From March 1 to April 15, the daily average number of people in jail in Denver, Colorado dropped by about 41% following the release of people over 60, those who are pregnant or have health conditions, people with low bond amounts, and those with less than 60 days remaining on their sentences. The District Attorney's Office released more than 100 people from Boulder's jails based on preexisting medical conditions and by utilizing personal recognizance bonds.⁴⁹ As of June 23, the jail population in the county is 43% less than its pre-COVID-19 rates.⁵⁰

Chief Judges and **State Administrative Judges** can create a streamlined and uniform approach to depopulating county jails by directing all state judges to void or suspend outstanding arrest warrants for failure to appear, failure to pay, and technical parole or probation violations. Chief Judges and State Administrative Judges can also instruct the other judges to order pretrial release without conditions in all cases where release poses no risk of imminent and willful flight or imminent serious physical harm to another person.⁵¹ New Jersey was the first state to issue sweeping changes to release people from jails in light of COVID-19, releasing nearly 1,000 people from its jails.⁵² New Jersey's Chief Justice, Stuart Rabner, signed an order authorizing the release of inmates serving certain types of sentences in jails.⁵³ The order applies to inmates jailed for probation violations as well as to those convicted in municipal courts or sentenced for low-level crimes in Superior Court.⁵⁴ Although New Jersey's COVID-19 release process for persons incarcerated in jails was streamlined and effective, the release process from prisons has been more

complex and less swift.⁵⁵ As a result, more than 900 people incarcerated in New Jersey prisons have tested positive for COVID-19 and 43 individuals in the state prisons have died.⁵⁶ The known cases of COVID-19 are 678% higher in New Jersey prisons than the state overall and the COVID-19 death rate in prisons is 77% higher than the state overall.⁵⁷ Fortunately, this level of rapid infection and death was averted in New Jersey jails as a result of the swift actions of the state's Chief Justice described above.

Judges can help by ordering pretrial release without conditions in all cases where there is no risk of imminent serious physical harm to another person, ordering the release of anyone currently incarcerated who meets pre-established conditions (i.e. elderly, medical vulnerabilities, less than a year left on sentence), as well as suspending issuance or enforcement of any bench warrants for failure to appear or technical parole or probation violations.⁵⁸ In Philadelphia, Pennsylvania, 531 people have been released from local jails since special court hearings began in early April.⁵⁹ As seen in Figure 4 above, the incarceration rate in

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MORE THAN

43

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Philadelphia jails was reduced within one month from 301 persons for every 100,000 people to 280 persons for every 100,000 people.⁶⁰ In New Orleans, Louisiana, District Court judges have issued orders calling for the immediate release of people awaiting trial for misdemeanors, arrested for failure to appear at probation status hearings, detained in contempt of court, or detained for failing a drug test while on bond.⁶¹ As a result of this COVID-19 reduction strategy, New Orleans has seen a 19% reduction in its jail population.⁶²

Ensuring public safety not only involves jail depopulation but also **implementing an effective re-entry** system for people being released from jails. In Arizona, the release of individuals from jails is coordinated with social workers to make sure that the released person has a safe place to quarantine. All released individuals are instructed to self-quarantine for 14 days. If an individual does not have a place to quarantine, community-based organizations working with the jail or prison ensure that the person has secure housing, medical coverage, and relevant social services before release.⁶³

As the coronavirus continues to spread in the U.S. and surge in an increasing number of states,⁶⁴ it is critical that the role of jails in the control of the disease be given higher recognition and priority in our response. Jails are a fluid boundary — inhabitants come from our communities

and return to our communities. The average time an individual spends in jail is 25 days,⁶⁵ and jail employees go to and from the community daily. Most people held in jail have not been convicted of any crime and only suffer incarceration because of the discriminatory impact of cash bail.⁶⁶ These facts make clear that in order to successfully address the coronavirus pandemic in the U.S., we must significantly reduce our jail population and that it is possible to do so in a manner that protects public safety and improves our criminal justice system by addressing pretrial detention. These measures can be implemented quickly and will significantly improve safety for the staff and individuals held in jails and result in a significant improvement in safety for us all.



“

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- ⁶ *See*, Cmty. Just. Exch. & Pub. Health Awakened, *supra* note 2.
- ⁷ Legal Aid Soc’y., *supra* note 4, at 3.
- ⁸ *Id.*
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²³ *Id.*

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³⁴ Emily Widra & Peter Wagner, *How Prepared are State Prison Systems for a Viral Pandemic*, Prison Pol'y Initiative (Apr. 10, 2020), <https://www.prisonpolicy.org/blog/2020/04/10/prepared/>.

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³⁷ Josiah Bates, *supra* note 3.

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³⁹ ACLU Model, *supra* note 12, at 4.

⁴⁰ *Id.*

⁴¹ Prison Pol'y Initiative, *Responses to the Covid-19 Pandemic*, <https://www.prisonpolicy.org/virus/virusresponse.html> (last reviewed June 23, 2020); Salvador Hernandez, *Los Angeles Is Releasing Inmates Early and Arresting Fewer People Over Fears of the Coronavirus in Jails*, Buzzfeed News (Mar. 16, 2020), <https://www.buzzfeednews.com/article/salvadorhernandez/los-angeles-coronavirus-inmates-early-release>.

⁴² Computed from data available for download from Vera Inst. Just., *Jail Population Data* at <https://github.com/vera-institute/jail-population-data> (last visited June 22, 2020).

⁴³ Vera Inst. Just., *supra* note 22.

⁴⁴ Cal. Cts., Jud. Branch of Cal., *Emergency Rules Related to COVID-19* (adopted effective Apr. 6, 2020, amended effective June 20, 2020), <https://www.courts.ca.gov/documents/appendix-i.pdf>.

⁴⁵ Dave Minsky, *Sheriff Has Booked, Released Nearly Half of those Arrested Since Coronavirus Emergency Order*, Santa Maria Times (Apr. 20, 2020), https://santamariatimes.com/news/local/crime-and-courts/sheriff-has-booked-released-nearly-half-of-those-arrested-since-coronavirus-emergency-order/article_5ddbc4f5-f2b9-5abe-ba0c-45f6ed7c1760.html.

⁴⁶ Prison Pol'y Initiative, *supra* note 41; Kate Bradshaw, *Hundreds of Inmates Have Been Released from San Mateo County Jails in Recent Weeks*, Almanac (Apr. 16, 2020), <https://almanacnews.com/news/2020/04/16/hundreds-of-inmates-have-been-released-from-san-mateo-county-jails-in-recent-weeks>.

- ⁴⁷ Prison Pol’y Initiative, *supra* note 41; Maura Dolan et al., *California Releases More Inmates Amid Coronavirus Crisis*, L.A. Times (Mar. 20, 2020), <https://www.latimes.com/california/story/2020-03-20/california-releases-more-jail-inmates-amid-coronavirus-crisis>.
- ⁴⁸ ACLU Model, *supra* note 12, at 4.
- ⁴⁹ Prison Pol’y Initiative, *supra* note 41; Daliah Singer, *In Colorado Prisons and Jails, A Piecemeal Approach to the Threat of Coronavirus*, Colo. Sun (Apr. 4, 2020)
- ⁵⁰ Vera Inst. Just., *supra* note 22.
- ⁵¹ ACLU Model, *supra* note 12, at 4.
- ⁵² Tracey Tully, *1,000 Inmates Will Be Released From N.J. Jails to Curb Coronavirus Risk*, N.Y. Times (Mar. 23, 2020), <https://www.nytimes.com/2020/03/23/nyregion/coronavirus-nj-inmates-release.html>.
- ⁵³ Consent Order, *In the Matter of the Request to Commute or Suspend County Jail Sentences*, No. 084230 (Sup. Ct. N.J. Mar. 22, 2020), https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22_-_Consent_Order_Filed_Stamped_Copy-1.pdf.
- ⁵⁴ *Id.*; see also, Tully, *supra* note 52.
- ⁵⁵ See Colleen O’Dea, *NJ’s Covid-19 Release Program for Prisoners Is Slammed for Major Failings*, NJ Spotlight (May 26, 2020), <https://www.njspotlight.com/2020/05/njs-covid-19-release-program-for-prisoners-is-slammed-for-major-failings/>.
- ⁵⁶ *Id.*
- ⁵⁷ The Marshall Project, *A State-by-State Look at Coronavirus in Prisons*, <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons> (last reviewed June 23, 2020).
- ⁵⁸ ACLU Model, *supra* note 12, at 4.
- ⁵⁹ Claudia Vargas, *Prisoners Being Released From City, State Prisons Are Not Being Tested for Covid-19*, NBC Phila. (Apr. 16, 2020), <https://www.nbcphiladelphia.com/investigators/prisoners-being-released-from-city-state-prisons-are-not-being-tested-for-covid-19/2365885/>.
- ⁶⁰ Figure created from data available for download from Vera Inst. Just., *Jail Population Data*, <https://github.com/vera-institute/jail-population-data> (last visited June 22, 2020).
- ⁶¹ Prison Pol’y Inst., *supra* note 41; *Orleans Criminal Court Judges Order Release of Certain Inmates Amid Coronavirus Crisis*, WDSU 6 News (Mar. 26, 2020), <https://www.wdsu.com/article/orleans-criminal-court-judges-order-release-of-certain-inmates-amid-coronavirus-crisis/31943462>.
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- ⁶³ See ABA webinar, *Expanding Pretrial Release in the Age of COVID-19*, (Apr. 1, 2020), https://www.americanbar.org/groups/crsj/events_cle/program-archive/covid-pretrial-release/.
- ⁶⁴ See, e.g., Jaimy Lee, *The Surge in Coronavirus Cases in Some States Isn’t Part of a ‘Second Wave’*, MarketWatch (June 16, 2020), <https://www.marketwatch.com/story/the-surge-in-coronavirus-cases-in-some-states-isnt-part-of-a-second-wave-2020-06-15>; CDC COVID Data Tracker, <https://www.cdc.gov/covid-data-tracker/#cases> (last visited June 17, 2020).
- ⁶⁵ Zheng, *supra* note 18, at 8.
- ⁶⁶ *Id.* at 6.