

COVID-19 WITHIN THE MASS INCARCERATION SYSTEM†

Almasa Talovic††

“I understand that we are inmates and that we all made some horrible decisions, but at the end of the day we are still humans who need to be treated as such,” pleads Marsha Scaggs, a fifty-six year old woman who is currently incarcerated at SCI Cambridge Springs in Pennsylvania while a deadly virus runs rampant around the world.¹ The COVID-19 pandemic has exposed some of the most blatant shortcomings within our system of safety nets and social support in today’s society and has highlighted that our most vulnerable have historically been the populations expected to pay the greatest price. Prisons and the people within them, unsurprisingly, have been no exception to this phenomenon.

The U.S. criminal legal system has more people locked away per capita than any other nation, leading at 2.3 million people total at the early stages of the pandemic in March of 2020.² This reflects an increase of 700% in the number of people who are incarcerated since 1970, aided by a multitude of policies at the state and federal level along with actions at an individual level.³ This increase has not been felt equally among groups. While the wars on crime and drugs have often been cited as the reasons for this increase, it is impossible to pinpoint one piece of legislation that is solely to blame, and doing so would irresponsibly deny the racist, classist, and ableist systems that

† This is an honorable mention essay for an interprofessional writing competition held by the *Syracuse Law Review*. To accommodate various professional fields, the citations are a blend of APA and Bluebook style formats. Sources and details have not been independently verified by *Syracuse Law Review* and *Syracuse Law Review* did not complete a peer review of the study or of the conclusions drawn by the authors.

†† M.D. Candidate, Class of 2022, SUNY Upstate Medical University; B.S. Cell and Molecular Biology, 2018, SUNY Binghamton University

1. Melamed, S. (2020, December 12). Inside Pennsylvania’s prison outbreak, where catching COVID-19 can land you in ‘the hole.’ *The Philadelphia Inquirer*. <https://www.inquirer.com/news/pennsylvania-doc-covid-outbreak-sci-coronavirus-state-prisons-lockdown-20201212.html> Melamed, 2020.

2. Sawyer, W., & Wagner, P. (2020, March 24). Mass incarceration: The whole pie. *Prison Policy Initiative*. <https://www.prisonpolicy.org/reports/pie2020.html>.

3. American Civil Liberties Union. (n.d). Mass incarceration. *ACLU*. <https://www.aclu.org/issues/smart-justice/mass-incarceration>.

have existed for centuries that have set the framework for mass incarceration to prosper. According to the American Civil Liberties Union, one out of every three Black boys and one out of six Latino boys born today can expect to go to prison in their lifetime; this is compared to one out of every seventeen White boys.⁴ A larger percentage of the United States's Black population is imprisoned today compared to South Africa's Black population during apartheid.⁵ Further, poverty is a risk factor for arrest, as three out of five people in jail are presumed innocent and are simply waiting for trial because they cannot afford bail.⁶ People in prison are disproportionately poor and are more likely to be poor upon release, due to past legal fees, loss of wealth during prison, and systemic barriers in obtaining housing and employment.⁷ Other risk factors for incarceration include mental illness, drug use, and illiteracy.⁸

Because of these structural pieces that disproportionately expose certain individuals to arrest, people who are incarcerated often have unique or additional healthcare needs compared to the rest of the population. For many individuals, the prison system becomes the first time they even receive long term healthcare.⁹ Between 2011 and 2012, forty percent of people who were incarcerated reported having a chronic condition, a rate that is higher than the general population.¹⁰ Twenty percent also report having an infectious disease compared to five percent of the general population.¹¹ Additionally, more than half

4. *Id.*

5. Alexander, M. (2010). *The new Jim Crow: Mass incarceration in the age of colorblindness*. The New Press (18).

6. Vera Institute of Justice. (2015, February). Incarceration's front door. *Vera*. <https://www.vera.org/publications/incarcerations-front-door-the-misuse-of-jails-in-america>.

7. Sawyer & Wagner, *supra* note 2.

8. Coates, T. The Black family in the age of mass incarceration. *The Atlantic*. <https://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/>.

9. Gips, J., Spiegel, A., Norton, A., Gandhi, P., Hardenbergh, D., Gatti, J., Pugh, L., Jones, A., & Sufrin, C. (2020). Health Care in the Age of Mass Incarceration: A Selective Course for Medical Students in Their Preclinical Years. *MedEdPORTAL: the journal of teaching and learning resources*, 16, 11014. https://doi.org/10.15766/mep_2374-8265.11014.

10. Maruschak, L., Berzofsky, M., & Unangst, J. (2015). *Medical problems of state and federal prisoners and jail inmates, 2011-12*. Bureau of Justice Statistics. <https://www.bjs.gov/content/pub/pdf/mpsfj1112.pdf>.

11. The PEW Charitable Trusts. (2017). *Prison healthcare: Costs and quality. How and why states strive for high performing systems*. (8)

of the people who are incarcerated fit the criteria for a substance use disorder, and depression and other psychiatric conditions are four to eight times more common in people who are incarcerated than the general public.¹² Life in prison can additionally exacerbate pre-existing conditions. One person who is incarcerated states, “I’ve always said if you serve six months bodily, you’re doing twelve months mentally, because your mind works twice as fast in here...and I don’t think that’s good.”¹³ They describe the atmosphere as tense, disempowering, and boring; these harsh conditions can worsen a person’s mental health state.¹⁴ Incarceration serves as both an acute and chronic stressor and can strain relationships and social support systems, which are associated with poor cardiovascular and immune health. In addition, close quarters and unprotected sex allow for infections to spread within the prison, such as tuberculosis, hepatitis C, HIV/AIDS and other sexually transmitted infections.¹⁵ In fact, it has been argued that each year in prison takes two years off of one’s lifespan, and that mass incarceration is the reason why the overall United States life expectancy has decreased by five years.¹⁶

Another important factor to consider is that the prison population has been aging. The percentage of people in prison who are above the age of fifty-five has tripled since 2000, making up twelve percent in 2020. Harsher sentencing is greatly the cause for this, including three strike laws, truth in sentencing, and mandatory minimums for crimes.¹⁷ In 2013, six out of ten people above the age of fifty-five had

https://www.pewtrusts.org/~media/assets/2017/10/sfh_prison_health_care_costs_and_quality_final.pdf.

12. Rich, J. D., Wakeman, S. E., & Dickman, S. L. (2011). Medicine and the epidemic of incarceration in the United States. *The New England Journal of Medicine*, 364(22), 2081–2083. <https://doi.org/10.1056/NEJMp1102385>.

13. de Viggiani N. (2007). Unhealthy prisons: exploring structural determinants of prison health. *Sociology of health & illness*, 29(1), 115–135. <https://doi.org/10.1111/j.1467-9566.2007.00474.x>.

14. Rich et al., *supare note* 12.

15. Massoglia, M., & Remster, B. (2019). Linkages Between Incarceration and Health. *Public health reports (Washington, D.C. : 1974)*, 134(1_suppl), 8S–14S. <https://doi.org/10.1177/0033354919826563>.

16. Widra, E. (2017, June 26). Incarceration shortens life expectancy. *Prison Policy Initiative*. https://www.prisonpolicy.org/blog/2017/06/26/life_expectancy/.

17. Li, W., & Lewis, N. (2020, March 19). The chart shows why the prison population is so vulnerable to COVID-19. *The Marshall Project*.

aged into that cohort from serving longer sentences; this is further aided by an increase in admissions from 2003 to 2013 for those fifty-five and older as well.¹⁸ In addition, it appears that the same factors that contribute to poor health in prison can expedite aging. A study showed that a cohort of older men in the community, with an average age of seventy-two years old, had similar rates of high cholesterol, hypertension, poor vision, and arthritis, when compared to a group of men who were incarcerated with an average age of just fifty-three years old. Further, the majority of men in the community reported no barriers to health, with the most common barrier being lack of interest, while only 19.6% of men in the incarcerated group reported no barriers of health, with their most common barrier being lack of knowledge regarding programs or screenings that are available.¹⁹ These findings suggest that prison systems can age an individual upwards of fifteen years and leave them searching for healthcare in the midst of it.²⁰

In 1976, a landmark case, *Estelle v. Gamble*, established that all people who are incarcerated must have timely access to healthcare and that indifference to care is a violation of the Eighth Amendment.²¹ However, this does not reflect the quality of healthcare in prison systems, nor is it uniform across the country. Corizon, one of the nation's largest for-profit prison healthcare providers, has been the subject of thousands of lawsuits, ranging from staff shortages to neglect regarding treatable illnesses.²² In 2015, New York City Mayor Bill DeBlasio chose not to renew the contract with Corizon at Riker's Island after accusations of them playing a role in up to a dozen deaths

<https://www.themarshallproject.org/2020/03/19/this-chart-shows-why-the-prison-population-is-so-vulnerable-to-covid-19>.

18. The PEW Charitable Trusts, *supra note* 11, at 27.

19. Loeb, S. J., Steffensmeier, D., & Lawrence, F. (2008). Comparing incarcerated and community-dwelling older men's health. *Western journal of nursing research*, 30(2), 234–258. <https://doi.org/10.1177/0193945907302981>.

20. Chammah, M. (2015, August 24). Do you age faster in prison? *The Marshall Project*. <https://www.themarshallproject.org/2015/08/24/do-you-age-faster-in-prison>.

21. Gostin, Vanchieri, Pope, and Institute of Medicine (US) Committee on Ethical Considerations for Revisions to DHHS Regulations for Protection of Prisoners Involved in Research, 2007

22. Schwartzapfel, B. (2018, February 26). How bad is prison health care? Depends on who's watching. *The Marshall Project*. <https://www.themarshallproject.org/2018/02/25/how-bad-is-prison-health-care-depends-on-who-s-watching>.

and three accounts of employees bringing contraband into Riker's.²³ Access and quality of healthcare go beyond Corizon, however. Despite the majority of people in prison meeting the requirements for having a substance use disorder, only eleven percent receive treatment, most often focused on education and peer support despite evidence that medication assisted treatment is more effective.²⁴ Many states have also been sued over the quality of their healthcare and for failing to meet screening and treatment guidelines.²⁵ The high cost of copays can serve as an additional barrier in some states, such as in West Virginia where it would take a month to earn the six dollars needed to visit the doctor.²⁶ In addition, Medicare and Medicaid recipients do not have access to their benefits while incarcerated or while unable to pay their bail.²⁷

Thus, it should come as no surprise that the COVID-19 pandemic has traveled greatly through the prison system in America. As of December of 2020, one in five people who are incarcerated had tested positive for SARS-CoV-2, compared to one in twenty people in the general public.²⁸ Some experts believe this number is underreported due to the lack of testing available or conducted in prison systems. Homer Venters, the previous Chief Medical Officer for Riker's Island, traveled around the country conducting COVID-19 inspections in prisons. He states, "I still encounter prisons and jails where, when

23. Winerip, M., & Schwirtz, M. (2015, June 10). New York City to end contract with Rikers health care provider. *The New York Times*.

24. Zielinski, M. J., Hinton, K. E., & Bull, C. E. (2021). COVID-19 highlights the pitfalls of reliance on the carceral system as a response to addiction. *Journal of substance abuse treatment*, 122, 108190. <https://doi.org/10.1016/j.jsat.2020.108190>.

25. Gostin, L. O., Vanchieri, C., Pope, A., & Institute of Medicine (US) Committee on Ethical Considerations for Revisions to DHHS Regulations for Protection of Prisoners Involved in Research (Eds.). (2007). *Ethical Considerations for Research Involving Prisoners*. National Academies Press (US).

26. Sawyer, W. (2017, April 19). The steep cost of medical co-pays in prison puts health at risk. *Prison Policy Initiative*. <https://www.prisonpolicy.org/blog/2017/04/19/copays/>

27. Wang, E. A., Western, B., & Berwick, D. M. (2020). COVID-19, decarceration, and the role of clinicians, health systems, and payers: A report From the National Academy of Sciences, Engineering, and Medicine. *JAMA*, 324(22), 2257–2258. <https://doi.org/10.1001/jama.2020.22109>.

28. Schwartzapfel, B., Park, K., & Demillo, A. (2020, December 18). 1 in 5 prisoners in the U.S has had COVID-19. *The Marshall Project*. <https://www.themarshallproject.org/2020/12/18/1-in-5-prisoners-in-the-u-s-has-had-covid-19>.

people get sick, not only are they not tested but they don't receive care. So they get much sicker than they need to be."²⁹ This was especially true early in the pandemic when tests were scarcer and some places, like Oakdale Federal Correctional Center in Louisiana, decided to stop testing people with symptoms and just assume instead that they are positive.³⁰ This system, however, misses asymptomatic carriers and can mask the extent of the spread. In mid-April, Ohio began mass testing within its prison system and found a shocking positivity rate of seventy-five percent within Marion Correctional Institute.³¹ Further, a large number of states do not require staff to be tested, even though the Centers for Disease Control and Prevention (CDC) recommends testing among staff because they can be a large nidus of infection.³² Even with this lack of testing, over 379,000 people who are incarcerated and over 91,000 staff members in the prison system have tested positive for SARS-CoV-2 as of February 2021.³³

The extensive spread can be traced back to the way jails and prisons are set up. The CDC recommends for everyone to socially distance, but this is not feasible for most, if not all, prisons.³⁴ Poor ventilation and overcrowding allow for the virus to thrive, and there are not enough single rooms available to properly isolate and quarantine people.³⁵ The idea of solitary confinement is also not one that is appealing to people who are incarcerated, due to stigma, lack of trust in confidentiality, and the mental stress that comes from it, and

29. *Id.*

30. LaRose, G. Oakdale federal prison stops testing inmates with COVID-19 symptoms. *WDSU News*. <https://www.wdsu.com/article/oakdale-federal-prison-stops-testing-inmates-with-covid-19-symptoms/31989498>.

31. Nelson, B., & Kaminsky, D. B. (2020). A COVID-19 crisis in US jails and prisons. *Cancer cytopathology*, 128(8), 513–514. <https://doi.org/10.1002/cncy.22335>.

32. Melamed, *supra* note 1.

33. The COVID Prison Project. (2021b, January 29). National COVID-19 statistics. *The COVID Prison Project*. <https://covidprisonproject.com/data/national-overview/>.

34. Akiyama, M. J., Spaulding, A. C., & Rich, J. D. (2020). Flattening the Curve for Incarcerated Populations - Covid-19 in Jails and Prisons. *The New England journal of medicine*, 382(22), 2075–2077. <https://doi.org/10.1056/NEJMp2005687>.

35. Franco-Paredes, C., Jankousky, K., Schultz, J., Bernfeld, J., Cullen, K., Quan, N. G., Kon, S., Hotez, P., Henao-Martínez, A. F., & Krsak, M. (2020). COVID-19 in jails and prisons: A neglected infection in a marginalized population. *PLoS neglected tropical diseases*, 14(6), e0008409. <https://doi.org/10.1371/journal.pntd.0008409>.

2021]

The Mass Incarceration System

107

this can deter a person from seeking medical attention.³⁶ The virus can also survive on surfaces, prompting another recommendation by the CDC to wash hands frequently with soap and water and use hand sanitizer.³⁷ In many prisons, however, hand sanitizer is considered contraband due to the alcohol content present; this is an unsettling fact when reminded that throughout the pandemic, prison populations, including those in New York, have been paid low wages to create hand sanitizer for the general public with no clear indication of whether they will be afforded access to it as well.³⁸ Hand washing is not so simple either. Venters states, “There are lots of people using a small number of bathrooms. Many of the sinks are broken or not in use. You may have access to water, but nothing to wipe your hands off with, or no access to soap.”³⁹ Mask wearing is also an essential part to controlling the spread of the virus and this response has been questionable depending on the facility. David Cauthen went on strike for five weeks inside California’s Substance Abuse Treatment Facility in King’s County due to officers, nurses, and doctors only wearing masks when the facility has visitors. Also in California, at Pelican Bay State Prison in Del Norte County, thirteen staff members were sanctioned for noncompliance with personal protective equipment.⁴⁰ Therefore, both the inability to and the indifference to following CDC guidelines have aided in the emergence of this public health concern.

36. Beaudry, G., Zhong, S., Whiting, D., Javid, B., Frater, J., & Fazel, S. (2020). Managing outbreaks of highly contagious diseases in prisons: a systematic review. *BMJ global health*, 5(11), e003201. <https://doi.org/10.1136/bmjgh-2020-003201>.

37. Centers for Disease Control and Prevention. (2021, February 4). How to protect yourself and others. *CDC*. https://www.cdc.gov/coronavirus/2019-ncov/preventgettingsick/prevention.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprepare%2Fprevention.html.

38. Farzan, A. (2020, March 10). Inmates are manufacturing hand sanitizer to help fight coronavirus. But will they be allowed to use it? *The Washington Post*. <https://www.washingtonpost.com/nation/2020/03/10/hand-sanitizer-prison-labor/>.

39. Blakinger, K., & Schwartzapfel, B. (2020, March 6). When Purrell is contraband, how do you contain coronavirus? *The Marshall Project*. <https://www.themarshallproject.org/2020/03/06/when-purrell-is-contraband-how-do-you-contain-coronavirus>.

40. Chabria, A., & Winton, R. (2020, November 29). COVID-19 continues to roil California prisons, jails as officials face new criticism. *Los Angeles Times*. <https://www.latimes.com/california/story/2020-11-29/coronavirus-outbreaks-california-state-prisons>.

Due to the nature of the virus, it is also likely that not only will people who are incarcerated become infected more, but they will also experience more serious effects from it. As stated before, the prison population is living with chronic illnesses and is aging, which are both risk factors for serious manifestations of COVID-19.⁴¹ Of course, this is all coupled with the fact that people who are incarcerated typically have less access to quality healthcare as well. The death rate from March to June of 2020 was 5.5 times the general population; this reported number is probably higher than the actual number due to the initial lack of testing in the prison system which leads to a decrease in the total number of cases.⁴² Nevertheless, it shows that people are dying at high rates within the prison system.

A number of public policy options have been proposed, one of the biggest and most controversial being decarceration. Michelle Bachelet, the United Nations High Commissioner for Human Rights, issued a statement on March 25, 2020 calling for governments to release people who are especially at risk for the virus along with low risk offenders.⁴³ The World Health Organization (WHO) has also called for the reduction of numbers within the prison system, specifically those who are detained for offences not recognized under international law and people with specific risks for COVID-19.⁴⁴ This advice has been followed to a certain extent. By both reducing admissions and releasing those already incarcerated, the total incarcerated population fell about 10% during the first half of 2020, a value equaling 250,000 people.⁴⁵ Compassionate release, a legal provision that allows for people with terminal illnesses to be released

41. Nelson & Kaminsky, *supra* note 31.

42. Saloner, B., Parish, K., Ward, J. A., DiLaura, G., & Dolovich, S. (2020). COVID-19 cases and deaths in federal and state prisons. *JAMA*, 324(6), 602–603. <https://doi.org/10.1001/jama.2020.12528>.

43. Burki T. (2020). Prisons are "in no way equipped" to deal with COVID-19. *Lancet (London, England)*, 395(10234), 1411–1412. [https://doi.org/10.1016/S0140-6736\(20\)30984-3](https://doi.org/10.1016/S0140-6736(20)30984-3).

44. World Health Organization Regional Office for Europe. (n.d). FAQ: Prevention and control of COVID-19 in prisons and other places of detention. *WHO*. <https://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/focus-areas/prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention/faq-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention#page-wrap>.

45. National Academies of Sciences, Engineering, and Medicine. (2020, October 20). Decarcerating correctional facilities during COVID-19: Advancing health, equity, and safety. *The National Academies Press*. (50) <https://doi.org/10.17226/25945>.

before the end of their sentence, has not been as successful, with only 156 out of the 10,940 people in the Federal Bureau of Prisons (BOP) who applied from March to May being granted release.⁴⁶ Of note, because this is a public safety concern for many, there has not been an increase in crime associated with decarceration during the pandemic.⁴⁷ Many activists still agree that this decrease is not enough.⁴⁸ Major cities have seen their prison populations increase again during the second half of 2020, and some, including New York City whose level fell to its lowest in the last seventy years, are back near their pre-pandemic levels.⁴⁹ In Los Angeles, California, people are statistically being held longer pre-trial compared to before the pandemic, leading to an increase in jail numbers; this is partly due to policy failures leading to a cycle of COVID-19 exposure and missed court dates, resulting in more waiting and more exposure.⁵⁰ A study found that prisons operating at eight-five percent capacity were associated with a lower risk for COVID-19 infection and death, and has been proposed as the absolute minimum requirement for decarceration nationally.⁵¹ While no national data is available during the pandemic, the United States's occupancy level was at 95.6% in 2019 according to the World Prison Brief.⁵²

The act of decarceration by itself is also not enough. Because people who are incarcerated have such a high rate of transmission within the facilities, people need to be tested and quarantined before

46. Wang, Western & Bernick, *supra note 27*.

47. American Civil Liberties Union. (2020, July 27). Decarceration and crime during COVID-19. *ACLU News & Commentary*. <https://www.aclu.org/news/smart-justice/decarceration-and-crime-during-covid-19/>.

48. Macmadu, A., Berk, J., Kaplowitz, E., Mercedes, M., Rich, J. D., & Brinkley-Rubinstein, L. (2020). COVID-19 and mass incarceration: a call for urgent action. *The Lancet. Public health*, 5(11), e571–e572. [https://doi.org/10.1016/S2468-2667\(20\)30231-0](https://doi.org/10.1016/S2468-2667(20)30231-0).

49. Ianelli, J. (2021, February 3). COVID-19 is spreading faster than ever. Jail populations are surging too. *The Appeal*. <https://theappeal.org/covid-19-jail-populations-surging/>.

50. Munro, A. (2021, January 21). L.A County jails are locking people up for longer during the pandemic. *The Appeal*. <https://theappeal.org/l-a-county-jails-are-locking-people-up-for-longer-during-the-pandemic/>.

51. Vest, N., Johnson, O., Nowotny, K., & Brinkley-Rubinstein, L. (2020). Prison population reductions and COVID-19: A latent profile analysis synthesizing recent evidence from the Texas state prison system. *Journal of Urban Health: Bulletin of the New York Academy of Medicine*, 1–6. <https://doi.org/10.1007/s11524-020-00504-z>.

52. World Prison Brief. (n.d). United States of America. *World Prison Brief*. <https://www.prisonstudies.org/country/united-states-america>

going back into the community. According to the Marshall Project, out of the thirty-one states that responded, seventeen states and the BOP reported they test all people before release, twelve states reported they quarantine people before release, and twelve states reported they delay the release of people who tested positive.⁵³ Many people will be going back to families in low income Black and Brown communities that have already been hit disproportionately by the virus, so care needs to be taken in ensuring that the virus is not simply being moved from one location to another. Further, we must ensure that returning citizens are getting the support they need to survive. Eight percent of re-entry programs, which can be essential in finding homes or jobs, reported that they are “very” or “extremely” concerned that returning citizens will have decreased access to services, and two thirds said they needed more funding and resources.⁵⁴ Rates of homelessness are high among the recently incarcerated, which is especially heartbreaking during a pandemic when social distancing is necessary.⁵⁵ Even prior to the pandemic, returning citizens had higher risks of hospitalization and death than the general population. Death rates are 3.5 times higher among previously incarcerated people compared to other state residents, especially in those first two weeks after release.⁵⁶ More than ever, they need effective discharge planning, including a minimum ninety-day supply of medications, appointments with a primary care provider, and access to a phone for virtual visits to ensure not only their health but everyone else’s.⁵⁷

In addition to decarceration, measures need to be taken to protect the people remaining in the prison system. For starters, care needs to

53. Lewis, N., & Schwartzapfel B. (2021, January 19). Prisons are releasing people without COVID-19 tests or quarantines. *The Marshall Project*. <https://www.themarshallproject.org/2021/01/19/prisons-are-releasing-people-without-covid-19-tests-or-quarantines>

54. CSG Justice Staff Center. (2020, April 22). Survey shows reentry services halting across U.S. *Justice Center The Council of State Governments*. <https://csgjusticecenter.org/2020/04/22/survey-shows-reentry-services-halting-across-u-s/> CSG Justice Staff Center, 2020

55. Couloute, L. (2018, August). Nowhere to go: Homelessness among formerly incarcerated people. *Prison Policy Initiative*. <https://www.prisonpolicy.org/reports/housing.html>

56. Binswanger, I., Stern, M., Deyo, R., Heagerty, P., Cheadle, A., Elmore, J., & Koepsell, T. (2007). Release from prison--a high risk of death for former inmates. *The New England Journal of Medicine*, 356(2), 157–165. <https://doi.org/10.1056/NEJMsa064115>.

57. Wang, Western & Berwick, *supra note 27*.

be accessible and affordable. In March of 2020, many states relaxed their co-pay system in response to the pandemic; since then, some have tightened them back and suspended co-pays only for respiratory or flu like symptoms. This is unacceptable during a pandemic, especially with a virus that can cause a wide range of symptoms.⁵⁸ In the same way, basic hygienic necessities should be provided free of charge.⁵⁹ More emphasis needs to be placed on testing and screening everyone, including the staff and any visitors.⁶⁰ Further, people need to be treated with compassion. Christopher Blackwell, a thirty-eight year old man at Washington State Reformatory, describes how he has been worried about how his family is doing outside of the prison but the JPay email system costs \$150 to use.⁶¹ Jerry Metcalf, a forty-five year old man at Thumb Correctional Facility, says he is scared to death of dying alone.⁶² Tyreem Rivers, a forty-three year old man at SCI Dallas, states he has never witnessed a darker time in prison.⁶³ This pandemic has been a stressor for many, but when factoring in the stress of prison, isolation, pre-existing mental conditions, and lack of agency in controlling your own environment, it can become unbearable.

The latest question regarding prison populations is the administration of the vaccine. From a strictly public health standpoint, it makes sense. Prisons and jails have served as hotspots continuously throughout the pandemic, transmitting the virus between people within, staff, and visitors. Data analysis done by the Prison Policy Initiative shows that mass incarceration has contributed to over half a million cases inside and outside the facilities, or thirteen percent of all

58. Herring, T. (2020, December 21). Prisons shouldn't be charging medical co-pays - especially during a pandemic. *Prison Policy Initiative*. <https://www.prisonpolicy.org/blog/2020/12/21/copay-survey/>.

59. Wagner, P., & Widra, E. (2020, March 27). Five ways the criminal justice system could slow the pandemic. *Prison Policy Initiative*. <https://www.prisonpolicy.org/blog/2020/03/27/slowpandemic/>.

60. Barnert, E., Ahalt, C., & Williams, B. (2020). Prisons: Amplifiers of the COVID-19 Pandemic Hiding in Plain Sight. *American journal of public health*, 110(7), 964–966. <https://doi.org/10.2105/AJPH.2020.305713>.

61. Blackwell, C. (2020, March 18). What coronavirus quarantine looks like in prison. *The Marshall Project*. <https://www.themarshallproject.org/2020/03/18/what-coronavirus-quarantine-looks-like-in-prison>.

62. Metcalf, J. (2020, March 25). No, your coronavirus quarantine is not just like being in prison. *The Marshall Project*. <https://www.themarshallproject.org/2020/03/25/no-your-coronavirus-quarantine-is-not-just-like-being-in-prison>.

63. Melamed, *supra* note 1.

new cases, over summer of 2020. In other words, if these cases were a country, they would rank 5th in the world.⁶⁴ From a social and moral standpoint, it makes sense. Systemic racism and classism has allowed the prison system to concentrate poor people, Black and Brown people, immigrants, and people with mental illnesses among others. To deny them this vaccine would be repeatedly denying their humanity and the protection that the government is supposed to provide them.⁶⁵

The actual government response to this has varied. In October, the CDC released guidelines for vaccine rollout and included people who are incarcerated as people who are at increased risk of acquiring or transmitting SARS-CoV-2.⁶⁶ According to the COVID Prison Project, which analyzed what phase people who are incarcerated would fall into, fourteen states included them in Phase one, twenty states included them in Phase two, two states included them in Phase three, and fourteen states did not explicitly identify how they would prioritize them.⁶⁷ As of January, fourteen states out of the thirty states with data plus the BOP have started vaccinating their prison populations.⁶⁸ One of the main reasons why people have not been included is due to social stigma revolving prison populations. Governor Polis from Colorado stated in a press conference, “There’s no way it’s going to go to prisoners before it goes to the people who haven’t committed any crime.”⁶⁹ Still, activists and public health

64. Hooks, G., & Sawyer, W. Mass incarceration, COVID-19, and community spread. *Prison Policy Initiative*. <https://www.prisonpolicy.org/reports/covidspread.html>.

65. Romero, A. (2020, December 24). Incarcerated people should get priority access to the COVID-19 vaccine. It’s the smart and humane thing to do. *ACLU*. <https://www.aclu.org/news/prisoners-rights/incarcerated-people-should-get-priority-access-to-the-covid-19-vaccine-its-the-smart-and-human-thing-to-do/>.

66. Centers for Disease Control and Prevention. (2020, October 29). COVID-19 vaccination program interim playbook for jurisdiction operations. *CDC*. (15) https://www.cdc.gov/vaccines/imz-managers/downloads/COVID-19-Vaccination-Program-Interim_Playbook.pdf.

67. Maner, M. (2020, December 18). An analysis of interim COVID-19 vaccination plans. *The Covid Prison Project*. <https://covidprisonproject.com/blog/data/data-analysis/an-analysis-of-interim-covid-19-vaccination-plans/>.

68. The COVID Prison Project. (2021b), *supra note* 33.

69. Ingold, J. (2020, December 2). Colorado governor says prisoners won’t get priority before elderly for a coronavirus vaccine. *Coloradoan*. <https://www.coloradoan.com/story/news/2020/12/02/colorado-vaccine-distribution-polis-says-prisoners-wont-get-priority/3796111001/>.

2021]

The Mass Incarceration System

113

experts alike are adamant that the crimes people are convicted of should bear no weight on this decision.⁷⁰

According to international law, the state is required to ensure the health of people who are incarcerated and to not discriminate based on legal status.⁷¹ The response of the United States to the COVID-19 pandemic in prisons has been slow and inadequate and over 2000 people have lost their lives as a result of this inadequacy.⁷² This has taught us lessons about the vulnerability of our society and these lessons need to be translated into the criminal legal system. Mass incarceration does not correlate well with falling crime levels or safety and leads to collateral damage in our society as returning citizens struggle to return to their lives.^{73,74} According to the Vera Institute, if New York kept their incarceration rates at June of 2020 levels and amended rules regarding minimum staffing, they could save up to \$638 million annually.⁷⁵ This money could be invested in our communities, in sustainable housing, in education, and in public health instead of prisons. Currently, effort needs to be directed to protecting people who are incarcerated from contracting the deadly SARS-CoV-2 virus and aiding individuals who have been decarcerated in their return to society. Going forward, addressing the causes of mass incarceration will relieve some of the inequalities that continue to exist in this country and will allow for a society where we are not morally failing an entire group of vulnerable people at once.

70. Romero, *supra* note 65.

71. World Health Organization Regional Office for Europe, *supra* note 44.

72. The COVID Prison Project, 2021b, *supra* note 33.

73. Harding, D. (2019, June 21). Do prisons make us safer? *Scientific American*. <https://www.scientificamerican.com/article/do-prisons-make-us-safer/>.

74. Coates, *supra* note 8.

75. Vera Institute of Justice. (2021, January). The cost of incarceration in New York State. *Vera*. <https://www.vera.org/publications/the-cost-of-incarceration-in-new-york-state>.