

Doing COVID-19 Time:

The Impact of the Coronavirus Pandemic Inside America's Prisons

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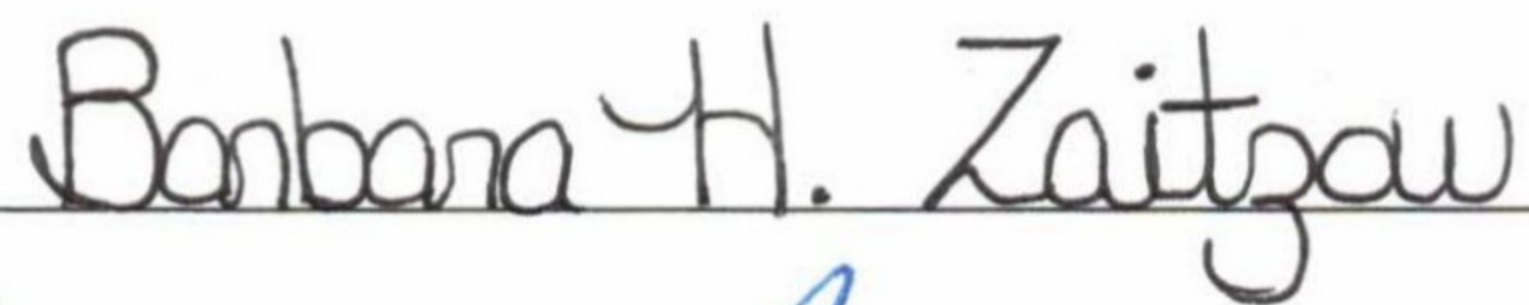
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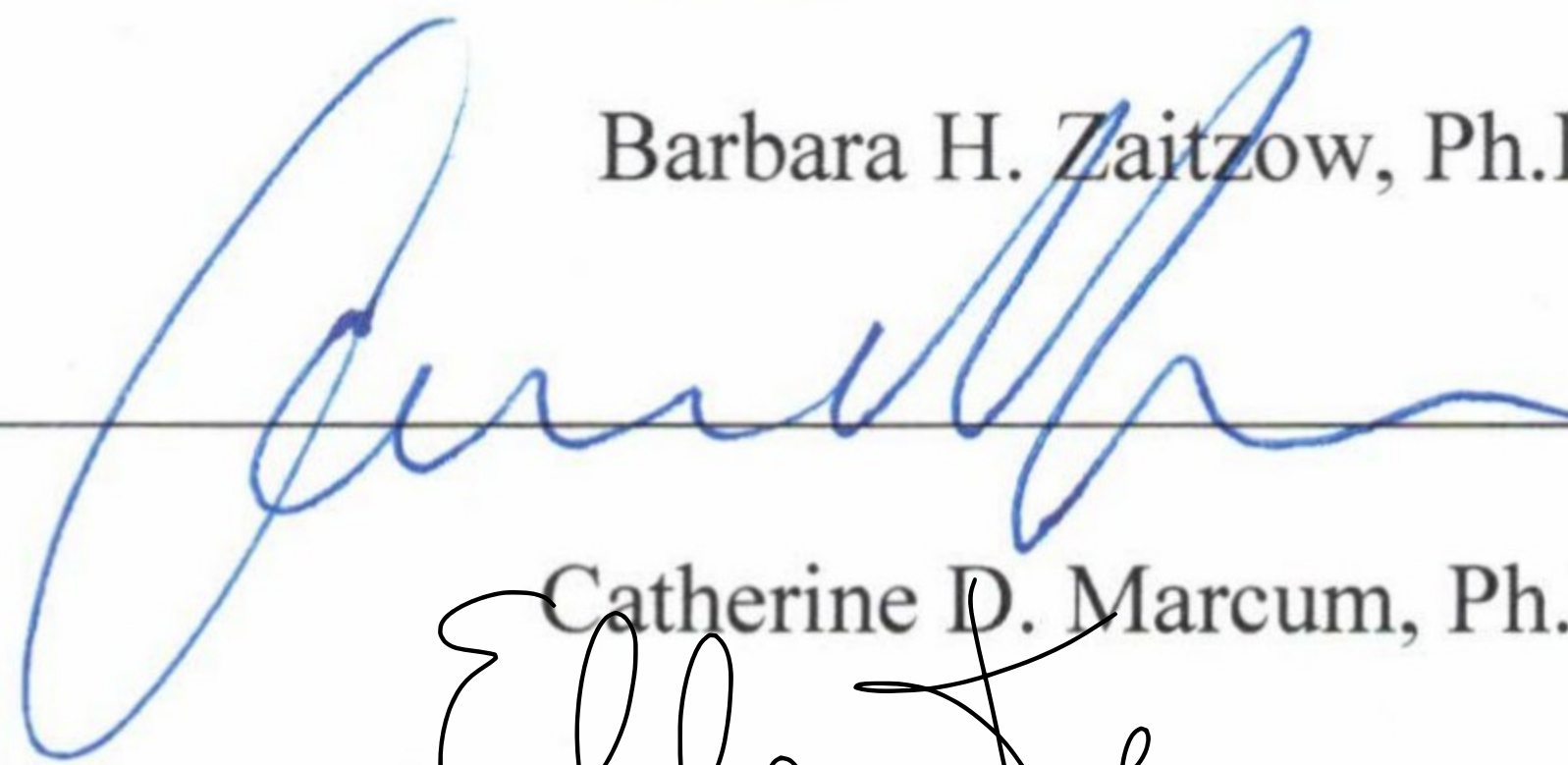
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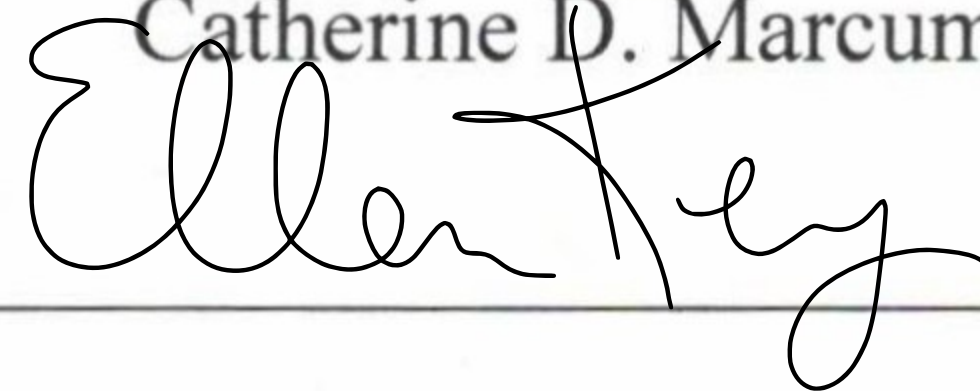
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Abstract

COVID-19 continues to create turmoil in America's prisons, proving to be superspreader sites for prisoners and staff alike. Incarcerated individuals are uniquely at risk as prison conditions aid the spread of the disease through overcrowding, poor ventilation, and delayed or inadequate medical care. Approximately 441,000 inmates have contracted the virus while incarcerated (Prison Policy, 2021) and although prisoners have a constitutional right to healthcare, the system continues to be unable to provide safe and timely treatment to those in their care and custody. The purpose of this paper is to explore the impact of COVID-19 in America's state prisons as well as the additional personal and social costs associated with the pandemic (e.g., lockdowns, limited visitation, etc.) while making policy recommendations to promote safer living and working conditions.

Introduction

The United States criminal justice system has been in need of reform for decades. As the country that holds the majority of the world's prisoners at 2.2 million, mass incarceration has resulted in the overpopulation of most correctional institutions, especially state prisons, and has contributed significantly to the disparities of resources and correctional practices across the states (Prison Policy Initiative, 2021). While it is evident that the system is in dire need of change, the pandemic has brought to light just how critical it is to develop new practices and policies in corrections. As the COVID-19 pandemic continues, incarcerated people and those who work in correctional facilities are uniquely at risk as such settings are "super spreader" sites. Approximately 440,611 inmates and 123,294 staff in federal and state institutions have tested positive for COVID-19 (COVID Prison Project, 2021).

The implications of this pandemic for institutional management, release, and continuity of care demands attention for reforms in sentencing options besides imprisonment as well as a focus on needed changes inside correctional facilities nationwide. Moreover, what happens in prison does not remain in prison. In particular, reintegration into the free world is not just an issue for those serving time, but it affects communities as well. Access to rehabilitation efforts and programming while incarcerated can have an important impact on the offender prior to their release back into the free world, and can also play a role in reducing recidivism. The Coronavirus pandemic has considerably affected prisoner access to healthcare services, a variety of types of educational and work programming, as well as other rehabilitative efforts including visitation, for example. Moreover, the pandemic has also

reignited discussions about the need for continuity of care for offenders who are released. Sentencing reforms that have resulted due to COVID-19 include the release of non-violent inmates, immunocompromised individuals, and those with little time left to serve. If implemented uniformly and fairly throughout our nation's court and correctional systems, these reforms (and others) may change people's belief about the purpose of imprisonment, the nature of the imprisonment experience, and have legal consequences for those who manage, live, and work in prisons.

Statement of Problem

The United States has relied heavily upon incarceration as a punishment in its criminal justice system and is currently leading the world in the number of individuals caught in the web of the criminal justice system including in jails, prisons, and those on probation, and parole. In fact, according to the Prison Policy Initiative (2021), the United States locked up people at a staggering rate of 698 per 100,000 residents. Overall, 2.3 million people are confined nationwide, and the majority of those incarcerated are held in state prisons at 1,291,000 in 2020 (Nellis, 2020). The large numbers of people who reside in prison settings continues to have a drastic and lasting impact on the provision of healthcare services inside state prisons. The already overburdened healthcare system continues to fail those who are serving time during the ongoing pandemic and has proved to have deadly consequences.

Correctional facilities in the United States often lack an adequate number of trained staff to care for the ever-growing population of sick and elderly prisoners. Although prisoners have a constitutional right to healthcare, prison conditions can easily fan the spread of disease through overcrowding, poor ventilation, and late or inadequate medical care. This paper will provide a detailed analysis of the current COVID-19 pandemic on correctional populations and staff in prison settings. The goal of this project is to analyze the facts, figures, and supplemental information on how COVID-19 is impacting those who live and work in the American corrections system and to suggest policy recommendations that will, hopefully, provide safer living and working prison conditions while promoting and preserving public health and safety.

Demographic and Crime-Specific Profile of Incarcerated Individuals

Mass incarceration in the United States has resulted in an enormous number of men and women being housed in state prisons across the country. The reliance on incarceration as a punishment in America has caused the population of incarcerated individuals to be unique in the specific set of challenges they face. Men and women who are incarcerated are more likely to possess a lower socioeconomic status (SES) than the free world (Rabuy & Kopf, 2015). The poverty levels for individuals prior to their incarceration can have detrimental effects on their physical and mental health. For example, they are more likely to have a lower education level, have a history of substance and other types of abuse, and be a racial minority. They are less likely to have a primary care provider for annual physicals or routine dental care. Moreover, these individuals also have little to no access to mental health treatment. The inability to access physical and mental health services prior to incarceration, compounded with the limitless issues related to “doing time” in prisons, can have serious and deadly consequences. As such, a brief overview and comparison of the differences between men and women in state correctional institutions are provided below.

A. Men Serving Time

Men are incarcerated at much higher rates than women. Also, large disparities by race have impacted the system as a whole. According to the Sentencing Project (2021), African-Americans are incarcerated in state prisons across the country at more than five times the rate of Whites, and seven states have, at least, a nine to one ratio of African-Americans to Whites (California, Connecticut, Iowa, Maine, Minnesota, New Jersey, and Wisconsin). The racial disparities in state prisons are indicative of racially-charged sentencing practices. Sentencing reforms such as mandatory minimums, three-strikes laws, and indeterminate

sentencing are all partially to blame for the increasing disparities of African-Americans in prison.

Men serving a sentence of incarceration earned substantially less income prior to their incarceration compared to those never incarcerated. In 2014, the average median income for men prior to incarceration was \$19,650 (across all ethnicities) compared to \$41,250 for non-incarcerated men. This is increasingly important as the majority of men who live in a co-parent household or single-parent household are largely responsible for financially providing for the family, in comparison to being responsible for childcare.

As a result of the use of lengthy prison sentences, the average age of men in state prisons is consistently getting older. The Pew Research Center reported, “from 2003 to 2013, admissions of those 55 or older increased by 82 percent—higher than the overall population growth for that age bracket—even as they declined for the younger group” (McKillop & Boucher, 2018, pg. 4). Men are arrested for more violent crimes in particular robbery, murder, which is not to diminish the role that men play in the rates of property and drug crimes. A majority of those offenses were new court commitments, which resulted in longer sentences than parole violations. As a result of this time span of increasing lengthy sentences for the older age bracket, individuals have become more likely to grow old in prison. An additional explanation for those lengthy sentences for the older population is the nature of the crime committed. Many of today’s current older inmates have been convicted of a serious or violent felony. The Pew Research Center reported, “Between 1993 and 2013, two-thirds of people 55 or older in state prison were sentenced for a violent crime, such as assault, rape, or murder. This was the highest percentage among all age groups” (McKillop & Boucher, 2018, pg. 5).

As the prison population of males gets older, health issues become increasingly more common. Physical and mental health needs skyrocket as inmates get older, and it becomes a challenge to safely house them in the system, as they are a special needs population. Not only do older males have physical health challenges such as limited mobility, but mental health issues as well. A study into the mental health disorders in older inmates found that “Older inmates have a higher prevalence of mental health disorders than younger prisoners and are more likely to use alcohol. Several studies mentioned an association between substance use and other mental health disorders” (Haesen et al., 2019, pg. 19). Incarcerated men face specific healthcare challenges and needs yet, access to along with stigmas associated with seeking treatment for mental and physical healthcare issues may limit or hinder their ability to seek medical assistance pre- and during incarceration. Men serving time may face specific challenges that can make them more susceptible to contracting the COVID-19 virus such as prostate cancer, cardiovascular disease, and sexually transmitted diseases.

B. Women Serving Time

Of the 1,291,000 incarcerated in state prisons across America, it is estimated that roughly 99,000 of those individuals are women (Porter & Ghandnoosh, 2020). This difference is not surprising as it is well known that women are incarcerated at exceedingly lower rates than men. However, while women are incarcerated at lower rates than men, over the past 40 years, the female corrections population has risen by a rate of 700%, from “...a total of 26,378 in 1980 to 222,455 in 2019” (Porter & Ghandnoosh, 2020, pg. 1). This increase is the result of creating and enforcing drug laws, harsh sentencing practices, and post-conviction barriers that uniquely affect women. The chivalry effect, the idea that women were simply given a pat on the head after being

convicted of a drug crime, has diminished and women are the fastest-growing correctional population in America.

In state prisons, the imprisonment rate for African-American women (83 per 100,000) was over 1.7 times the rate of imprisonment for White women (48 per 100,000) (Porter & Ghandnoosh, 2020). Latina women are imprisoned at a rate of 1.3 times the rate of White women. Racial disparities are largely caused by the ongoing war on drugs, which essentially continues to target economically disadvantaged neighborhoods, dominated by African-Americans and the Hispanic community. African-American women are 60% more likely to have diabetes, 5.6 times more likely to have kidney disease, and 40% more likely to have cancer (DeNoon, 2021) compared to the general population.

Typically, women are the primary caregivers in a household at the time of arrest and conviction. In fact, 80% of women incarcerated in a state prison are mothers. Women also possess a series of physical and mental health issues that are unique to women which can make them more susceptible to complications after contracting COVID-19. It is well known that incarcerated women have high rates of mental illness and substance (ab)use disorders, and many of those illnesses were not treated in the outside world. Many times these conditions are related to self-medication issues due to abuse histories such that the woman may use drugs to mask or ease their exposure to violence and there are other situations in which women act as accomplices during crime commission to make money to support significant others or their drug addiction. In prisons, 66% of females had a history of a mental health diagnosis compared to 35% of males (Bronson & Berzofsky, 2017). Women are also more likely to have an STD and have higher cervical and breast cancer rates due to under-screening before incarceration. STDs, Hepatitis-C, and HIV/AIDS - to name a few medical conditions - are largely

drug-related or resulting from unsafe sex practices with others. Due to the inability to access healthcare prior to their period of imprisonment, women are likely to have no previous screenings for a variety of health conditions. Yearly checkups for women's health are critical, as preventative care is the only way to protect oneself from or receive treatment for the possible illnesses women can contract. And, pregnant inmates who may have pre-existing health conditions and/or those that result from the pregnancy, may require additional healthcare attention. Inability to access healthcare prior to incarceration and, in some cases, the inadequate provision of healthcare during imprisonment, makes them more susceptible to illness while incarcerated.

Healthcare Inside America's State Prisons

The healthcare system inside of America's prisons has been under scrutiny for decades. Mass incarceration has diminished the healthcare system and has made it nearly impossible for incarcerated individuals to seek and obtain timely and quality medical treatment. Prison overcrowding along with the increasing numbers of individuals who enter facilities with a variety of mental and physical health issues creates a reliance on the already compromised prison healthcare systems nationwide. For example, individuals in prison have higher rates of sexually transmitted diseases, diabetes, and high blood pressure, thus creating an increased need for reliable access to quality and effective healthcare. However, despite the increased reliance on healthcare by individuals who are incarcerated, in reality, it is increasingly becoming more difficult for inmates to get access to the healthcare system. Co-payments make it difficult or impossible for inmates to seek treatment for mental and physical health issues (Herring, 2020). Institutional barriers such as co-payments and extended wait times for appointments and/or follow-up treatments affects access to medical care while incarcerated.

On top of the mental and physical healthcare needs individuals bring with them into the prison setting, the nature of being incarcerated also poses health threats that make inmates more susceptible to needing access to healthcare. Violent assault, rape, and the outbreak of infectious diseases are much more common in prison than in the general population (Zaitzow & Willis, 2021). The physical and mental healthcare issues that individuals face while incarcerated require a well-funded prison healthcare system with trained staff that can adequately and efficiently provide quality care for inmate populations. As previously mentioned, the prison population is getting older, and the numbers of persons with an underlying disease or serious health condition(s) are at higher risk for complications from such conditions or even mortality due to SARS-CoV 2 infection (Hawks et al., 2020). In a study on prisoner access to healthcare services, researchers found “In 2013, state prisons housed 131,500 persons older than 55 years, a 400% increase since 1993. Many incarcerated persons older than 55 years have chronic conditions, such as heart and lung diseases. About half of the people incarcerated in state prisons have at least 1 chronic condition; 10% report heart conditions, and 15% report asthma, percentages far greater than those for the population at large, even when comparing similar age groups” (Hawks et al., 2020, pg. 1041).

Mass incarceration has created an increased need for accessible healthcare, and despite the ongoing need for safe and timely medical treatment, little to no effort has been put forth to better the healthcare system in prisons. Essentially, the healthcare system in prison is out of ear and eyesight from the public. Away from public scrutiny, there are essentially no accountability measures for the healthcare system. The lack of transparency and accountability results in an unsafe and unreliable system despite the legal standard(s) provided by state and federal law(s).

The healthcare system in prisons needs change and reform to provide safe and effective medical treatment to incarcerated individuals especially as state prisons have become even more dangerous due to the pandemic that continues to infect and even kill individuals daily.

A. Repercussions Due to Lack of Healthcare in the COVID-19 Era

Although the United States Constitution guarantees a right to healthcare for people who are incarcerated, available medical care varies greatly in regards to both quality and accessibility. As noted by researchers and social justice advocates, prison administrators and health care professionals were unprepared for the impact of the COVID-19 pandemic inside their facilities despite warnings regarding preparation and planning to address the potential surge in COVID-19 cases among those who live and work in such facilities. Hawks et al. (2020, pg. 1041) mention “Prior to the start of the pandemic, clinical and health advocates for incarcerated persons provided proposed measures to ameliorate the anticipated harms, such as the wide availability of protective equipment, testing, and medical care, and the elimination of co-payments and other policies that may deter inmates from seeking care.” Administrations failed to implement policies that would allow them to be better prepared for the oncoming pandemic, a failure to act that has resulted in an astronomical loss of life. While not completely preventable, due to the nature of prison institutions, a safe and effective healthcare system could have mitigated some of the effects of COVID-19.

Overview of COVID-19 In Prisons

As the fight against COVID-19 continues in America’s state prisons, inmates and corrections personnel continue to test positive for the virus at an unacceptable and life-threatening rate. According to the Covid Prison Project (2021), 440,611 inmates in state

prisons across the county have tested positive for COVID-19 since the beginning of the pandemic in late March 2020. These positive rates are staggering across different states with the majority of those cases being in California, Minnesota, Texas, Florida, and Arizona. Staff members are testing positive at life-threatening rates as well, with the Covid Prison Project reporting that 123,294 corrections personnel have tested positive for the virus. While these numbers are approximations - due to discrepancies in reporting practices and sources - they, nonetheless, provide a clear picture of the virus running rampant through America's state prisons. The massive numbers of COVID-19 positive cases inside prisons have also resulted in death in both the inmate population and the corrections personnel community. Approximately 2,663 inmates have died due to COVID-19 or COVID-19 related health complications, and 242 corrections personnel have died due to COVID-19 or COVID-19 related health complications (Covid Prison Project, 2021).

A. Transparency of Information About COVID-19 in State Prisons

The nature of the prison setting has fueled the spread of the virus. For example, the inability to social distance, the lack of access to face masks and other CDC-noted safety necessities, the prison subculture influencing unsafe behaviors, staff exposure(s), and low vaccination rates of both groups have all contributed to the spread of COVID-19 in prisons. These organizational and individual level factors have cultivated an unsafe environment for those who are living and working in correctional institutions. The need for transparency and the timely communication of information and the provision of resources to everyone who lives and/or works in prisons is critical to help limit or slow the spread of the virus. Signage and general information about the virus needs to be provided to every inmate and staff member and should be

available in multiple languages to ensure that everyone has access to the most up-to-date information. Letting those who are serving time know the risks of COVID-19 can help them make an informed decision on whether or not to abide by the guidelines such as wearing a mask and getting tested or vaccinated.

Being transparent with those who are incarcerated about the virus can make or break an institution in its fight against the pandemic. While it is common knowledge that when someone tests positive for COVID-19 they must quarantine, those who are serving time may know little to nothing about the process. Moreover, even for those who are “in the know” they may be unable to be isolated due to limited prison space. Explaining the process of testing and quarantine can possibly encourage inmates to get tested if they feel sick or know of someone who is sick in their cell or dormitory. Explaining the symptoms of COVID-19 can also help those in an institution by creating awareness of symptoms and establishing a non-punitive reporting procedure that encourages people to share that someone may be infected. The risks of COVID-19 for those who have a chronic illness (e.g., cancer, COPD, asthma, etc.) are much higher, and without letting them know to protect themselves through handwashing, social distancing, vaccinating, and more, they may not think the virus is serious. Detailing the risks and seriousness of the pandemic to those who are incarcerated is crucial in the ongoing fight against COVID-19. Here, sharing timely information and promoting positive communication between prisoners and staff is important in attempting to create a pro-health environment necessary to stop the spread of the virus.

B. Corrections Personnel in State Prisons

Analyzing the ongoing impact of COVID-19 in America's state prisons is not possible without discussion of corrections personnel. This group of people includes but is not limited to corrections administrative staff, corrections officers, case managers, program staff, volunteers, visitors, and, of course, all medical staff including nurses, doctors, and dentists. These individuals who work within the state prisons have all been uniquely affected by the ongoing pandemic and, therefore, their roles inside institutions are impacted as well as the communities to which they return on a daily basis.

According to the Office of Occupational Statistics and Employment Projections, there were 437,100 correctional officers in the United States. This is expected to decrease in the next ten years as "... working in a correctional institution can be stressful and dangerous. Correctional officers and jailers have one of the highest rates of injuries and illnesses of all occupations, often resulting from confrontations with inmates" (Office of Occupational Statistics and Employment Projections, 2021, pg. 1). In fact, between 2020 and 2030, the job outlook for correctional officers is projected to decrease by 7%. This could be largely due to the nature of the job, and the fact that little to no previous work experience is required to enter the field, posing dangerous situations to the new and current officers.

Women are extremely underrepresented in the field of corrections, "In 2006 there were 127,000 women (28 percent) working as bailiffs, correctional officers (CO), and jailers, compared with 324,000 men" (MTC Institute, 2008, pg. 8). Women make up more than half of the United States population yet only hold less than a quarter of the jobs in correctional facilities. There are several possible reasons behind the gender gap of women working in

corrections and one such concern may be the possible sexual harassment women may face in facilities from inmates and fellow staff members. Even though women make up a small percentage of the corrections personnel, they are important in the contributions they provide by using their professional expertise as problem-solvers and use of their communication skills in diffusing situations.

Overall, corrections personnel do face difficult decisions and have several factors in their jobs that lead to occupational stress. A study of the consequences of job stress in correctional officers revealed that the life expectancy of a correctional officer is 59 years, compared to 75 years for the national average (Cheek & Miller, 1983). Stress can manifest in forms detrimental to one's health and can make one more susceptible to COVID-19 and health complications. It is crucial to mention these potential health issues with corrections personnel, as it can impact their fight with COVID-19.

Institutional Responses to Positive COVID-19 Test Results

As offenders and corrections personnel continue to test positive for COVID-19, the prison system is forced to provide an immediate response. Their response to COVID-19 -positive cases is critical to stopping the spread and deaths of incarcerated individuals and corrections personnel caused by the virus. The prison response to COVID-19 positive test results has changed since the beginning of the pandemic in 2020 and will continue to change as new variants of the virus appear.

Just as the outside world continues to place importance on identifying clusters, contract-tracing, access to vaccinations, and other Centers for Disease Control directives, prisons attempt to do the same for those in their custody as well as employees, but the

implementation process is different due to the setting. State prisons have a legal responsibility to keep the individuals housed in their facilities safe and secure at all times including during health crises like the current pandemic. Thus, it is essential that correctional institutions have an appropriate and evidence-based response to limiting the effects of COVID-19 and variants on prisoners and staff alike.

The majority of state prisons in the United States have developed some method of reporting COVID-19 testing data, which attempts to allow the public a glimpse of the seriousness of the pandemic inside some institutions. This responsibility is critical in giving the public a sense of security in their testing data and reporting measures. Unfortunately, state prison systems across the nation have set differing guidelines for their response to offenders and corrections personnel with, of course, varying degrees of effectiveness. In this section, the author will examine states' differing responses to positive COVID-19 tests and the importance of prisons reporting accurate testing data to the public.

A. Quarantine Procedures and Effectiveness

One of the first methods used in preventing and stopping the spread of the virus is putting the individual into quarantine until testing and COVID-19 status are determined. In fact, in one study, it was determined that “quarantine of [COVID-19 positive individuals, symptomatic or asymptomatic]...was to be important in reducing the number of people infected and the number of deaths. Results suggested that quarantine was most effective, and cost less when it started earlier” (Nussaumer-Streit, 2020, pg. 1). On the outside of the prisons, quarantine is as simple as asking individuals to stay in their homes for ten days after symptoms begin (Centers for Disease Control, 2021). Quarantining, used widespread in society, has been

one of the key tools in limiting the spread of COVID-19 in communities. While this practice has been extremely effective on the outside, it is difficult to use in prison. Not only is it complicated to find quarantine space for prisoners due to prison space limitations (e.g., institutional design, capacity, etc.) but when individuals have to be isolated for determination of COVID-19 status, the isolation becomes a punishment in and of itself in the prison setting. It is necessary to quarantine people to help prevent the spread of COVID-19; however, it is proving to have unintended effects on inmates as well as extra duties for already overworked corrections personnel.

Quarantine requires space for individuals to be alone, with access to everything they need in order to stay in one location. While it may seem to the average person that individuals in prison are already in quarantine by nature of the setting, it could not be farther from the truth. The standards, rules, and regulations set forth by the federal government and the individual institutions across the country are critical to ensure that those who test positive are quarantined until they have a negative test. The Centers for Disease Control states “regardless of COVID-19 vaccination status, inmates should be given a mask (if not already wearing one and if it can be worn safely), moved to medical isolation in a separate environment from other individuals, medically evaluated, and tested. Facility staff should carefully evaluate and support the mental health needs of individuals before and during medical isolation” (Centers for Disease Control, 2021, pg. 5). The criteria for discontinuing isolation are different depending on symptoms and severity of illness. For adult offenders symptomatic with COVID-19, it can be discontinued 14 days after symptom onset and after resolution of fever for at least 24 hours and improvement of other symptoms. For people who are severely ill (i.e.,

those requiring hospitalization, intensive care, or ventilation support) or severely immunocompromised, extending the duration of isolation and precautions up to 20 days after symptom onset and after resolution of fever and improvement of other symptoms may be warranted. For people who are infected but asymptomatic (never develop symptoms), isolation and precautions can be discontinued 10 days after the first positive test. Patients who have recovered from COVID-19 can continue to have detectable SARS-CoV-2 RNA in upper respiratory specimens (common COVID-19 test) for up to 3 months after illness onset. However, infectiousness is unlikely. Science-based quarantine is one of the most effective ways to limit the spread of COVID-19.

However, there are certain factors within a correctional facility that need to be considered when making decisions regarding quarantine. Although the Center for Disease Control recommends that non-fully-vaccinated individuals should be quarantined for 14 days after testing positive for COVID-19, not all facilities follow the guidelines recommended by scientists. Therefore, before making decisions on the duration of quarantine for COVID-19 positive offenders, it is crucial that institutions weigh the risks of increased transmission and secondary clusters. Transmission rates in the facility should be closely monitored, and more room for and longer periods of quarantine may be needed. Individual facility policies such as required vaccinations of staff and incarcerated individuals, level of community transmission, ability to social distance inside the facility, compliance with mask mandates, ability to properly ventilate all building sites, and availability of testing resources are all important factors when making decisions regarding quarantine. These factors mean incarcerated/detained persons exiting quarantine prior to 14 days may not be able to comply with prevention

measures necessary to reduce the risk of post-quarantine transmission (e.g. mask-wearing, physical distancing).

B. Reporting Testing Data on Public Databases

In order to provide the public with an accurate picture of the widespread effects of COVID-19 in individual state prisons, facilities have begun to provide a database online that contains their recent testing and vaccination data (North Carolina Department of Public Safety, 2021). Some states, such as North Carolina, have been reporting on the numbers of offenders and staff who have been tested, positivity rates, and deaths since the pandemic began, while other states such as Texas (a state that holds the majority of the nation's prisoners) have just begun to make public the reporting of prison COVID-19 data. Not only is it crucial to allow the public an idea of the seriousness of the pandemic inside the prisons, but it is important to have accurate data in order to make policy recommendations with respect to prison operations and management as these affect public health and safety inside prisons as well as in our communities. High-quality and accurate data provides a level of confidence to all who depend on the data. The nature of this data that prison institutions are reporting on is sensitive and pertains directly to human lives. This data is the only way that those on the outside know just how serious the pandemic is inside an individual institution.

Vaccine and Testing Procedures

Arguably, the most important procedures in place to combat COVID-19 in prisons are vaccination and testing procedures. However, it is important to repeat that data collection and reporting practices related to COVID-19 in prisons varies. For example, while one state may

prioritize vaccines for prisoners in their statewide rollout of the vaccination (North Carolina), other states may have prisoners at the bottom of the roll-out list (Arizona). Thus, our confidence in the statistical picture of COVID-19 in our nation's prisons requires more scrutiny, attention to detail, and uniformity in practices and procedures utilized in all facilities. Adequate testing procedures are crucial to stopping the spread of COVID-19 in prisons as well, as it allows prison administration to quarantine and contact trace in response to positive results. Testing is one of the most important and efficient approaches to limit the spread of COVID-19 in prisons, and increased and accessible testing of both offenders and staff is crucial (Marcum, 2020). Both the prisoners and staff inside of state prisons have been subject to changing vaccine and testing procedures as the pandemic continues, and without safety testing and vaccine procedures in place, COVID-19 and variants will continue to spread.

The safe and proactive measures that institutions take to control the spread of the virus have the biggest impact on the health of the inmates under their supervision and care. Testing procedures can have an important influence on the spread of COVID-19 in close-quarter settings like the housing units in prisons. It is crucial to examine the timeliness of the testing, the actual procedure, and even the requirements of testing for inmates as well as the staff members who work in the prisons. When the pandemic began, the procedures of testing for COVID-19 were much different than they are at the present time. It was (and still is) a time full of unknowns. As our knowledge base continues to expand with respect to COVID-19, testing is an important means to detect and treat those with the virus as well as protect others from exposure when possible. In a location such as a prison, there was only so much that administration and staff members could do to prohibit the virus from coming into the

institution. It was only so long before COVID-19 began to infect offenders and staff members alike. In fact, according to a study on COVID-19 in prisons and jails, “In mid-March 2020, the 19 novel coronavirus 2019 (COVID-19) became a prison-issue at Rikers Island, the main jail complex in New York City. Within 2 weeks, more than 200 cases were diagnosed within the facility, despite efforts to curb the spread” (Hawks et al., 2020, pg. 1041).

A. The First Wave: COVID-19 in America’s State Prisons

In May of 2020, the World Health Organization (WHO) declared COVID-19 as a global pandemic (Mayo Clinic, 2021). In response, the Center for Disease Control (CDC), along with the WHO began to set guidelines in place to control, prevent and treat the spread and symptoms of COVID-19. As the number of cases in the United States began to rise in early 2020, it seemed as if society went into a lockdown mode, where travel was restricted, and people were confined to their homes, fearing for their lives as vaccination was not yet available. What most of society came to forget in their fear, was the American prison system. As with most things related to those serving time, the prison system was put on the “back-burner” as state governments were mostly concerned with protecting the lives of their citizens in the outside world. Testing procedures and guidelines began to emerge from organizations such as WHO and the CDC, with little to no advice on how to test those in prison settings. Individual states began to create and implement their individual testing and vaccination procedures which drastically differ between states as well as custody levels of facilities.

An additional public health issue related to COVID-19 in state prisons is the timely testing of inmates upon entry and release. This is an increasingly important issue as sentencing reforms across the country are calling for the compassionate release of nonviolent,

immunocompromised, and elderly offenders. Without proper pre-release COVID-19 testing and/or treatment safeguards releasing offenders from prison could pose a public health risk to others in communities. Despite the public health concern regarding pre-release testing, individuals continue to be released from state correctional facilities without being tested for COVID-19. On April 22, 2021, Nacola McNeil was released from a North Carolina facility without prior testing. John Bull, a spokesperson for the North Carolina Department of Public Safety, wrote in an email, “that people leaving prisons ‘were not tested on their release in April,’ noting that routine prerelease testing did not begin until January 2021” (Lewis & Schwartzapfel, 2021, pg. 2). Despite the pandemic beginning in early 2020, the implementation of preventative measures was not started until almost a year later in North Carolina state prisons. This is a common practice by many state prisons which may be a contributing factor to the spread of COVID-19 in communities. There is a need to empirically assess the possible link between pre-release COVID-19 testing, continuity of care upon release, and community outbreaks if we hope to decrease the potential of adding to the current public health crisis.

The push for the release of non-violent inmates can be seen nationwide from North Carolina’s rural institutions to California’s urban state prisons. Expedited release from prison is a tool institutions are using to “...ensure the health of our incarcerated population and staff, and aim to be done in a way that aligns both public health and public safety. Reducing the prison population will also alleviate the impact on local hospitals that provide emergency care to individuals in prisons experiencing outbreaks, which can require transporting dozens of patients to outside hospitals for care” (California Department of Corrections and Rehabilitation, 2020, pg. 1). These goals derived directly from the California Department of Corrections and Rehabilitation (CDCR) can not be safely carried out without the timely testing of inmates upon

arrival and release.

B. Variants of COVID-19 Inside America's Prisons

As COVID-19 has changed over time, new variants of the virus have once again made it difficult to limit or slow the spread of positive cases. As more information is made available about the virus, new suggestions from the CDC and the WHO continue to shape the efforts to address COVID-19 at the international, national, state, and local levels including the impact inside America's prisons. In 2021, two new variants of COVID - "Delta" and "Omicron" - have surfaced and new concerns about continued preparation to deal with the pandemic is ongoing.

Importance of Correction Personnel Testing and Vaccinations

Strategic planning related to COVID-19 testing and vaccination procedures for corrections personnel are equally important to note as these are the men and women who have the most contact with incarcerated populations. Although corrections personnel do not live in prisons, they certainly spend their assigned shifts and, on occasion, double-shifts resulting from staff shortages inside of prisons. Thus, their potential exposure to COVID-19 not only from the offender population but also from their home and community, creates a situation where the staff themselves could be "spreading" the virus in and outside of the prison setting; a situation that demands further attention. Again, as new testing and vaccination guidelines are provided by the Centers for Disease Control and other public health officials, states are attempting to apply these guidelines based on the legal mandates along with real-life challenges related to enforcing such mandates when faced with high staff turnover rates and the number of offenders housed in the institutions.

As of June 7th, 2021, the Centers for Disease Control suggests that any facility staff member known or suspected to have been exposed to someone with COVID-19 (including close contacts) should be tested for SARS-CoV-2 regardless of vaccination status. Increasing COVID-19 vaccination rates among facility employees is “an important step to prevent incarcerated and detained persons and correctional staff from getting sick with COVID-19 disease” (Centers for Disease Control, 2021, pg. 2). The COVID-19 vaccination is controversial despite its widespread success with little to no fatalities (Centers for Disease Control, 2021). In fact, research supports the finding that death rates of those who are vaccinated compared to those who are not vaccinated are much lower; thus, adding to the persuasive scientific arguments that advocate for everyone to be vaccinated with the Pfizer, Moderna, or Johnson and Johnson options. (Centers for Disease Control, 2021). It is critical now more than ever that corrections personnel are being tested after possible exposure to the virus. Vaccination is a means by which to lower the curve of positive staff cases that are on the rise. Some states have taken the Centers for Disease Control’s guidance a step further and require all corrections personnel to be tested once every two weeks.

Since one of the main ways that COVID-19 gets into the prison system is through the correctional staff, it is vital that they are routinely tested. Routine testing of staff members is a tool that multiple institutions have put in place to ensure that those who do work in the institution are not bringing the virus in. In a personal conversation with David Cothron, an administrator at Marion Correctional Institution in North Carolina, he stated that the staff members who work in that institution are “required to submit to daily temperature checks, and for those who are unvaccinated, they must be tested bi-weekly, to ensure that they are not

asymptomatic carriers of the virus” (personal communication on October 25th, 2021).

Challenges as a Result of Prison Subculture

The prison subculture reflects the values and behavioral patterns of prison inmates. They are the mechanisms that inmates develop in the population or community to cope with the harsh realities of prison life. This subculture defines and dictates the community norms for inmates while they serve their sentence and the consequences of straying from the norms of the specific institution can be dangerous or even deadly. It directly influences behavior and the difficult decisions that offenders have to make regarding choices about their health. The prisoner subculture can be influential in the effort(s) to control the pandemic inside the facility. Here, the acceptance (or not) of any prison policy is impacted by the inmate code of a prison and whether (or not) inmates have decision-making power to accept or reject COVID-19 policies related to their personal health as well as in creating a pro-health environment. Cultivating a pro-health environment is more than critical in limiting the spread of the virus. If the subculture of the offenders inside a facility is pro-health then offenders may be more inclined to wear their masks, get tested when possibly exposed to the virus, and get fully vaccinated. All of these factors are crucial in limiting the spread of the virus, and unless the prison subculture supports those actions it can be near impossible to accomplish.

Although correctional institutions are required by law to create a safe and pro-health culture inside their facilities, it can be difficult to do without the compliance of the incarcerated people. Practicing simple good hygiene such as good cough and sneeze etiquette, hand washing, wearing personal protective equipment when indicated, and avoiding sharing utensils can each have a big impact on limiting the spread of the virus. It truly takes the

combined efforts of everyone serving time and those who work inside a prison to have a real and lasting effect against the pandemic.

Impact of COVID-19 on Prison Operations

Different states have different laws and enforcement policies when addressing the COVID-19 pandemic. The same applies to prisons. Prison policies and operational procedures vary and can impact the physical and mental health effects on offenders, staff, and others impacted by having someone living or working in a prison setting during the pandemic. We know that the Coronavirus pandemic has affected prisoner access to timely and effective health care services, has impacted access to educational and work programming, and has had an impact on prisoner privileges and institutional operations. And, while such operational tactics by correctional administrations may, indeed, be slowing the spread of the disease (depending on what data source one examines) such responses also contribute to the resulting hardships that are (in)directly associated with prison lockdowns that limit or eliminate relief from housing units by having access to yard time, attending services or events in prison chapels or other areas within a prison, work release programs that are “on hold” thus restricting the payment such jobs provide in order to buy canteen items or even the ability to make phone calls, and highly restricted visitation opportunities that result in less contact with family and support systems.

Additionally, all of the offender hardships noted above directly impact the staffing crisis that almost all institutions are trying to manage in light of high employee turnover rates resulting from the pandemic. Here, early retirements by staff and those who are opting for other employment settings they deem to be less risky with respect to COVID-19 exposure as

well as those whose personal beliefs conflict with State/Federal mandates requiring vaccinations have resulted in additional staffing shortages. The combination of COVID-19-related prison restrictions impacting both offenders and staff may also have unintended effects on (1)successful reintegration of offenders as access to rehabilitation efforts and programming while incarcerated can create the cross-road that many offenders face prior to their release back into the free world and their ability to pursue crime-free lives, (2)offender frustrations resulting from lockdowns that add fuel to an atmosphere of violence toward one another, self-harm and staff, (3)the morale of staff members that may effect the safe and lawful operation of prisons, and (4)the yet-to-be-determined multifaceted impact(s) on family and friends of those with a loved one who lives and/or works in a prison. Thus, COVID-19 in correctional institution settings is everyone's problem and we can pay now or we will pay later in a variety of ways.

Legal Implications for Offenders and Staff Members

As a result of the ongoing pandemic, there are multiple legal implications for offenders and staff alike. The sheer nature of the pandemic has resulted in constitutional arguments regarding freedom of choice. COVID-19 has shaken the foundations of correctional institutions and the results have been devastating. In addition to the widespread effects the pandemic continues to have on those who live and work in state prison systems, there are serious and severe legal implications that will have a lasting impact on the sheer nature of serving time. There are several questions that need to be addressed from a legal standpoint, such as enforcing the CDC guidelines inside institutions, staff turnover, and the right under the care and custody of the state not to be exposed to COVID-19. All of these factors have

significant legal implications that will force change inside and outside America's state prisons. These and other legal factors can and will make it difficult to establish a pro-health subculture, which is crucial to limiting the spread of the virus.

Prisons and jails throughout the country are legally obligated to provide healthcare to inmates. This requirement comes from both federal and state law. Two Supreme Court decisions – one 45 years ago and another in May 2011 – continue to have profound impacts on how the states provide healthcare to their prison populations. Nearly forty years ago, in *Estelle v. Gamble*, the U.S. Supreme Court ruled that the government has an obligation to provide medical care to those whom it incarcerates and that failure to provide such care may violate inmates' constitutional rights. In the 1976 case *Estelle v. Gamble*, the U.S. Supreme Court ruled that the Eighth Amendment (which prohibits cruel and unusual punishment of prisoners) requires that prisoners be provided with medical care. However, the two legal tests for care - that medical need is "serious" and that prison officials are not "deliberately indifferent" to that need - provide little guidance about the actual provision of care.

Correctional facility medical care is considered a condition of confinement. When conditions of confinement are extremely severe or inadequate, they can amount to cruel and unusual punishment in violation of the Eighth Amendment. In *Estelle*, the Court held that the Eighth Amendment can be violated by the failure to provide necessary medical care. The Court reasoned:

An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical "torture or a lingering

death,” the evils of most immediate concern to the drafters of the Amendment. In less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose. The infliction of such unnecessary suffering is inconsistent with contemporary standards of decency. (*Estelle v. Gamble*, 429 U.S. 97, 103, 97 S. Ct. 285, 290 (1976).

While the Eighth Amendment’s deliberate indifference standard presents a relatively demanding standard for proving liability against/by correctional staff, it does require that sufficient resources be made available to implement three basic rights: the right to access to care, the right to care that is ordered, and the right to a professional medical judgment. And, in May 2011, the U.S. Supreme Court decision to order California to release tens of thousands of prison inmates (*Plata v Brown*) had a sobering impact on these prison systems. The California decision represents one of the largest prison releases in U.S. history and was driven by the issue of prison overcrowding which the Court indicated has caused suffering and death.

Health is a human right. The Universal Declaration of Human Rights (1948) affirms that “everyone has the right to a standard of living adequate for the health and well-being of himself and his family” and while the declaration wording reflects the wording of the authors of that time period, it is fair to assume and apply that standard to women and her family as well. The International Covenant on Economic, Social, and Cultural Rights (1996), which the United States has signed but not ratified, requires States to “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,” and to take steps necessary for “the prevention, treatment and control of epidemic, endemic, occupational, and other diseases.” Several other international treaties recognize the right to health, including

the International Convention on the Elimination of All Forms of Racial Discrimination (1965) which the United States has ratified, and the Convention on the Rights of the Child (1989) which the United States has signed but not ratified.

The right to health is linked to other rights of incarcerated people. The International Covenant on Civil and Political Rights (1966) and the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1984), both of which the United States has ratified, prohibit torture and cruel, inhuman, or degrading treatment or punishment. In line with these human rights obligations, the U.S. Supreme Court has held that conditions in carceral facilities that pose an unreasonable risk of future harm, including the risk of contracting a communicable disease, violate the Eighth Amendment's prohibition against cruel and unusual punishment. The basic human rights of incarcerated people require that the United States take immediate and comprehensive action to protect them from COVID-19.

Conclusion

For decades, the U.S. health and criminal justice systems have operated in a vicious cycle that in essence punishes illness and poverty in ways that, in turn, generate further illness and poverty. Individuals in the community with under-or untreated disease, particularly addiction, and mental illness, often find themselves in a cycle that is driven by criminal justice approaches instead of medical or therapeutic approaches - a cycle that exacerbates rather than alleviates the original health problems and increases risks of recidivism and unresolved health disparities.

It is understandable that many individuals are frustrated by the state of the healthcare system in the United States. Some might say that the system is broken and in desperate need of

reform. But, those that are incarcerated do not have the ability to drive to the nearest emergency room or call for assistance when faced with a serious medical need. He or she must rely on prison officials in that instance. Thus, providing some measure of oversight to ensure that inmates receive basic healthcare access for serious illness or conditions seems reasonable.

Correctional systems cannot be expected to take full responsibility for addressing the healthcare problems in correctional facilities. Public health departments, community-based organizations, and community-based providers have critical roles to play as well. There is a need for increasing collaboration among these entities. While there are differences in philosophy and priority among these organizations, to be sure, there are also growing examples of overcoming the barriers and forging successful collaborations to provide needed services, to inmates and releasees, to benefit the public health and serve the interests of society.

Many of the problems and costs associated with overcrowded prison systems and questionable medical services are rooted in decades of choices by elected officials to close mental health institutions, impose lengthier prison sentences, and implementing harsher punishments for first-time offenders, non-violent offenders, and drug offenders. As a result, prisons have become asylums, drug treatment centers (usually without the treatment component), hospitals, and retirement homes rather than its designated function. Although the intent may have originally been to be tough on crime, time has proven that as more people are incarcerated, there is an increasing need for resources to deal with the growing numbers of people with a variety of types of illnesses. Unfortunately, quality resources and personnel are lacking, and, moreover, investing limited state budgets for prisoner healthcare results in less program availability and opportunities in other areas of prison life.

Advocacy is needed on two fronts. First, they should use their professional weight to urge the reallocation of public funds to programs that have proved not only to provide access to treatment but also to reduce recidivism: expanding access to drug courts and mental health courts, or other programs or strategies that divert people from the criminal justice system into community treatment, expanding linkage to care and case management services; and ensuring that the Patient Protection and Affordable Care Act, once safely ushered through legal challenges, is used as a forum to construct alternative venues of accessing marginalized communities to forestall further reliance on correctional facilities for that access. Second, public health practitioners should keep their eyes on the long-term agenda. The May 2011 Supreme Court decision (*Brown v. Plata*), which frames healthcare as a fundamental task of corrections, should capitalize on *Brown v. Plata*'s other function: as a warning shot to the correctional-industrial complex. Perhaps the greatest service public health practitioners could provide the incarcerated and their communities is advocacy: for a drastic reduction of the largely unnecessary incarceration that has resulted from the war on drugs, including dismantling the economic incentives to target minority communities in that war; for an expansion instead of treatment programs for the mentally ill and the addicted; and for the recreation of those jobs without which such communities cannot recover.

The real public health research need is not only for understanding specific or even coexisting health conditions but also the structures of healthcare and prevention during and after incarceration. It appears critical to understand better who is delivering care to the incarcerated and how well, which alternatives to incarceration and transitional programs have proved most effective, and which social programs may mitigate the community health effects

of both incarceration and reentry.

Recommendations for the effective provision of healthcare and services in prisons are plentiful. They are found in the standards and guidelines of the American Correctional Association and the National Commission on Correctional Health Care, in court rulings, expert reports, and in voluminous professional literature. What is lacking in prison health services is not knowledge about what to do, but the resources and commitment to do it. Compassion, common sense, fiscal prudence, and respect for human rights dictate a better approach to the treatment of persons with healthcare needs in U.S. prisons than is evident today.

Policy Recommendations

Correctional professionals have a responsibility to protect and treat anyone who lives or works in their institution. They should seek collaboration with experts from the American College of Correctional Physicians, American Correctional Association, or National Commission on Correctional Health Care and observe published guidance from the Centers for Disease Control and Prevention¹ and World Health Organization. This section summarizes public health recommendations regarding COVID-19 in prisons, which can improve the state of the pandemic in prisons as the virus continues. Prisons and public health officials can pick suitable courses of action among the following recommendations to ensure that prison facilities initiate more effective primary prevention and mitigation measures to curb the spread of COVID-19 within prison facilities and ultimately in surrounding communities where prisoners are being released. The author will detail specific preventive measures that states should immediately adopt, including providing incarcerated people, staff, and visitors with information about the virus that allows them to protect themselves, the provision of adequate hygiene and cleaning products and

personal protective equipment, and the implementation of wide-spread testing.

1. Enforce Health Precautions

Specific preventive measures that states should immediately adopt including providing incarcerated people, staff, and visitors with information about the virus that allows them to protect themselves, the provision of adequate hygiene and cleaning products and personal protective equipment, and the implementation of wide-spread testing

- *Screen prisoners, staff, and visitors entering and exiting prison facilities for temperature, symptoms, and exposure.

- *Enforce mask-wearing and social distancing.

- *Encourage staff to stay home when they are feeling ill.

- *Clean all high-touch areas with increased frequency.

- *Reduce movement of inmates within institutions and between institutions to the greatest extent possible.

- *Guidelines on physical distancing and medical isolation, including how to manage contact with the outside world and ensure access to lawyers during the pandemic.

2. Create Hygienic Environments

- *Post clear and simple signage throughout prison facilities in English and Spanish that describe proper hand hygiene instructions, PPE use, and social distancing guidelines.

- *Educate prisoners on COVID-19 prevention in a way that is culturally and linguistically appropriate.

- *Create proper ventilation and utilize air conditioning at correctional facilities.

- *Provide prisoners and staff with no-cost soap, hand sanitizer, masks, and gloves.

- *Increase hand sanitizing stations in prisons, as well as access to running water for handwashing.

- *Install no-touch hand dryers and trash bins.

- *Guidelines on the provision of treatment and medication

3. Reducing the Prison Population

- *Release prisoners booked for nonviolent offenses who have served at least 75% of their time, elderly and medically vulnerable prisoners who are not a threat to the community, and prisoners booked on technicalities and minor violations.

- *Reduce overall prison population size in order to minimize overcrowding and allow for social distancing.

- *Reduce incarceration and unnecessary face-to-face contact for people on parole and probation.

4. Ensure Data Transparency

The an increased need for states to be more transparent in disclosing measures taken to address the pandemic.

- *Keep prisoners and staff regularly informed about the number of COVID-19 cases within the facility.

- *All COVID-19 mitigation signage should be made of clear, simple wording in English and Spanish, with other languages available upon request.

- *The duty to properly and independently investigate cases of death in prison.

Closing Remarks

From the beginning of the pandemic, it was clear that densely packed prisons and jails offered ideal conditions for the transmission of the COVID-19 virus. The number of people in prisons and jails has led to more COVID-19 cases, among those working or confined in these facilities and among those who simply live near them.

What is needed immediately, at the policy level, is increased use of clemency, parole expansion, and other legal mechanisms to depopulate prisons and stop the virus from spreading behind bars. But there is a greater need over the long term: a profound rethinking of how we use incarceration in this country. It has never been more obvious that locking up millions of people in crowded and unsanitary conditions is harmful - not only for those who are locked up but for people outside prisons as well. With the pandemic dragging on, our ability to radically reduce our use of incarceration is now a life or death matter. If lawmakers cannot make swift changes to reduce correctional populations and keep them low, we should expect that more COVID-19 outbreaks - and more deaths - in prisons and the communities that surround them are still to come. If we are going to end this pandemic - bring down infection rates, bring down death rates, bring down ICU occupancy rates - we have to address infection rates in correctional facilities.

The COVID-19 pandemic has created an infectious disease crisis in the setting of what was already a public health travesty - mass incarceration. As the public health community battles the pandemic and prepares for a resurgence of COVID-19, addressing the poverty, racial inequality, and historical oppression that fuel mass incarceration will be crucial. If public health lessons learned from the pandemic in prisons are properly applied, COVID-19 can be an impetus for overdue justice reform and interventions that promote health equity. As the world awaits

widespread distribution of vaccines and more effective antiviral therapies, the public health community has a vital role to play in creating the conditions that best protect the human rights and health of prison residents and staff in all types of prison settings. We must not squander the lessons learned from the 2020 COVID-19 pandemic.

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