



CCJ

National Commission  
on COVID-19 and  
Criminal Justice

# Recommendations for Response & Future Readiness

INTERIM COMMISSION REPORT | OCTOBER 2020

## About the Council

The Council on Criminal Justice (the “Council”) works to advance understanding of the criminal justice policy choices facing the nation and build consensus for solutions that enhance safety and justice for all. Independent and nonpartisan, the Council is an invitational membership organization and think tank, serving as a center of gravity and incubator of policy and leadership for the criminal justice field. Harnessing the experience and vision of the nation’s top experts, innovators, and influencers, the Council serves as a catalyst for progress based on facts, evidence, and fundamental principles of justice. Above all, the Council is founded on the belief that a fair and effective criminal justice system is essential to democracy and a core measure of our nation’s well-being.

## About the Commission

The National Commission on COVID-19 and Criminal Justice (“the Commission”) was established by the Council to assess the impact of the coronavirus pandemic on the justice system, offer strategies to limit outbreaks, and produce a priority agenda of systemic changes to better balance public health and public safety.

Given the urgent need to address the immediate health and safety risks posed by the pandemic, the Commission has been required to work quickly. Since it was established in late July 2020, the Commission has produced multiple research reports to better inform both the Commission and the public at large. Those reports can be found [here](#).

The Commission was charged with producing policy recommendations to address the immediate impact of the coronavirus pandemic, along with a broader set of recommendations to improve the readiness, effectiveness, and fairness of the criminal justice system in a post-pandemic world. The recommendations for immediate action are contained in this interim report; systemic recommendations will be released by the end of 2020.

Council Commissions and Task Forces are independent of the Council and solely responsible for the content of their reports. Topics are selected by Council leadership and meetings are facilitated by Council staff and consultants, but neither the Board of Directors nor the Board of Trustees approves or disapproves the findings and recommendations.

Diverse in background and perspective, Commission members strive to reach consensus on findings and policy proposals through private, nonpartisan discussions. Members are asked to reach a consensus endorsing the general policy thrust and judgments reached by the group, though not necessarily every finding and recommendation. Members participate in the Commission in their individual, not their institutional, capacities, and professional affiliations included in Commission reports do not imply institutional endorsement.

## Suggested Citation

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# From the Chairs

*In the months since COVID-19 began reshaping our way of life, leaders of America's criminal justice system have grappled with a deadly threat unlike anything most had ever seen.*

Like those coping with challenges in other sectors, they have been forced to adapt and improvise to curb the pandemic's impact on our jails and prisons as well as our courts, law enforcement services, and community organizations.

In July, we agreed to co-chair a national initiative to support these leaders. The National Commission on COVID-19 and Criminal Justice is working quickly to identify the most effective measures to contain the coronavirus and produce an agenda of long-term policy changes to better balance public health and public safety.

In this interim report, we present recommendations for response and future readiness to help justice system leaders and involved citizens set priorities as they manage a crisis that remains urgent on many fronts. Our report rests on the best available facts, evidence, and experience gathered across the system. That includes oral and written testimony from a broad range of organizations and individuals, including formerly incarcerated people and corrections officials who detailed the perils and challenges COVID-19 presents behind bars.

We are proud to note that our recommendations were adopted unanimously by a Commission that features an exceptionally diverse membership, including justice system professionals on the front lines, a big-city mayor, a respected incarceration researcher, a top public health specialist, and leading community activists.

Looking ahead, the Commission's next phase will focus on broader systemic reforms. While COVID-19 is a new menace, it has brought to the fore problems that have long plagued the administration of justice in America. By the end of 2020, we will produce final recommendations detailing the policies and practices that need to change based on what the pandemic – and its management – have taught us about the system's fairness and effectiveness, particularly for people of color.

Throughout our deliberations, the Commission has been driven by the sobering knowledge that COVID-19 has exacted a heavy toll on those who work in and are confined by our justice system. As we release this report, more than 168,000 incarcerated individuals and 29,000 correctional staff have tested positive for the coronavirus, while more than 1,000 of those individuals and more than 50 staff have died. Hundreds of thousands of others who police our streets, run our courthouses, and help justice-involved citizens through community organizations have also become ill or died.

Members of this Commission come from across the political spectrum, and we do not see eye to eye on the intricacies of every policy or practice. But we do share a commitment to honor those lost to COVID-19 by ensuring our system emerges from this crisis better equipped to mitigate harm from future public health threats.

As co-chairs, we are thankful for the opportunity to work with the Council on Criminal Justice in this critical, ongoing endeavor. On behalf of our fellow commissioners, we respectfully submit this report with the strong belief that it provides criminal justice leaders with a roadmap of policy choices that will help them save lives and better balance public health and safety for the well-being of all.

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# Executive Summary

*The coronavirus pandemic has deeply impacted every corner of American life.*

More than 6.9 million people have been infected and over 200,000 have died. Social and recreational gatherings of all kinds have been curtailed. Businesses have closed. Schools have suspended in-person teaching. Millions are out of work, out of school, and those who remain are often working, learning, and socializing from home.

Criminal justice agencies, organizations, their staffs, and justice-involved populations have not been spared. Almost overnight, the operations of criminal justice agencies were dramatically altered in order to preserve both safety and health. While contingency plans were in place, none contemplated a public health crisis of this speed and magnitude. The virus was quick and deadly, spreading primarily through respiratory droplets that are difficult to contain. In addition, criminal justice leaders were challenged by a lack of credible and consistent guidance, resulting in a patchwork of plans and policies nationwide.

## CHARGE

The National Commission on COVID-19 and Criminal Justice was established by the Council on Criminal Justice in order to help meet this challenge. It has three chief goals:

- + Evaluate the pandemic's impact on the four major sectors of the justice system (law enforcement, courts, corrections, and community programs);
- + Identify the most effective ways to minimize the spread of COVID-19 and the impact of future pandemics on the proper functioning of the justice system, and on the people who work in and are served by it; and
- + Establish a priority agenda of policies and practices that should change, or remain changed, based on what the pandemic and response have revealed about the system's fairness and effectiveness, particularly for communities of color.

Since it was established in late July, the Commission has worked quickly, publishing [five reports](#) assessing the impact of COVID-19 on crime rates, budgets, and jail and prison populations. It has taken written and oral testimony from a broad spectrum of criminal justice organizations, researchers, advocates and others, including those recently released from correctional facilities.

This interim report tackles the second goal. It is intended to assist criminal justice leaders on the front lines by offering actionable guidance on how to respond immediately and directly to the coronavirus pandemic, and to prepare for a possible second wave of infections this fall.

A subsequent report, to be released by the end of 2020, will offer consensus recommendations that address the broader implications of the pandemic and systemic reforms to policy and practice.

## GUIDING PRINCIPLES

What should criminal justice leaders do, right now, when responding to COVID-19? What are the most important steps they can take immediately to limit the spread of the virus and improve readiness?

First, they should follow a set of key principles, as detailed in these recommendations.

- + **Preserve public health** in addition to public safety
- + **Get the facts** and rely on strong data and science
- + **Be proactive**, going above and beyond normal measures to protect all those connected to the criminal justice system
- + **Improve equity and increase inclusion** in decision-making, being mindful of the racial and other disparities that plague both the health and justice systems

## CROSS-SECTOR RECOMMENDATIONS

Criminal justice leaders should also consider the following general recommendations that apply to all sectors of the system.

- + **Stop exponential growth.** Leaders should aim to exceed authoritative guidance from the Centers for Disease Control and Prevention and other authoritative bodies in order to contain the potential exponential spread of COVID-19. Exponential growth means that one person infects many, and those many infect many more. It is imperative for leaders to prevent such growth of COVID-19 cases - and remain vigilant once it is controlled - by consistently implementing and enforcing well-known, scientifically proven measures such as physical distancing, universal masking, and mass testing.
- + **Communicate transparently.** Criminal justice leaders should be as transparent as possible in addressing the coronavirus pandemic. Leaders must communicate clearly, quickly, and repeatedly with staff, justice-involved populations and their families, and the public. They must also collect, report, and make public critical data related to COVID-19 infection, morbidity, and mortality, taking care to capture data by race and ethnicity in order to produce a full picture of how the virus has affected the groups most impacted by the justice system.

- + **Limit contact, maximize distance, reduce density.** Given the risks associated with criminal justice contact during the pandemic, leaders should take measures to limit system contact, maximize distance, and reduce density wherever possible. Such measures may include limiting custodial arrests, reducing admissions to and increasing releases from jails and prisons, and moving indoor operations and activities outside, among others.
- + **Allocate resources strategically.** The coronavirus pandemic has deeply impacted the local, county, and state budgets that fund the vast majority of criminal justice operations in the country. In response to declining revenues and shrinking budgets, leaders should allocate resources strategically rather than order simplistic across-the-board cuts. In particular, leaders should innovate, using technology to do more with less, as well as preserve funding for evidence-based programming and solutions that provide equitable access to justice.
- + **Engage impacted communities.** Critically, criminal justice leaders should actively collaborate with each other and engage and consider impacted communities in all decision-making. Regular opportunities for input from disproportionately impacted groups, especially poor communities of color, should be provided. Leaders should be mindful of the racial disparities that continue to plague the criminal justice and health systems and ensure their responses to COVID-19 do not exacerbate such disparities.

## SECTOR-SPECIFIC RECOMMENDATIONS

The Commission recommends a series of measures for each of the four major sectors of the criminal justice system. These recommendations provide more detailed, specific guidance for leaders to address the unique realities of each sector.

As knowledge of COVID-19 continues to evolve, so will the measures needed to combat it. The Commission views these recommendations as a reflection of the best current thinking of leading experts in the field—a prioritized roadmap for justice system leaders to use in crafting their immediate next steps.

A strong theme has emerged from the Commission's discussions to date: until there is a vaccine, the success of the system in meeting its mandates will be more about *perspiration* than *inspiration*. No magic solutions have been discovered, and for the foreseeable future, containing the virus will take still more dogged work on multiple fronts.

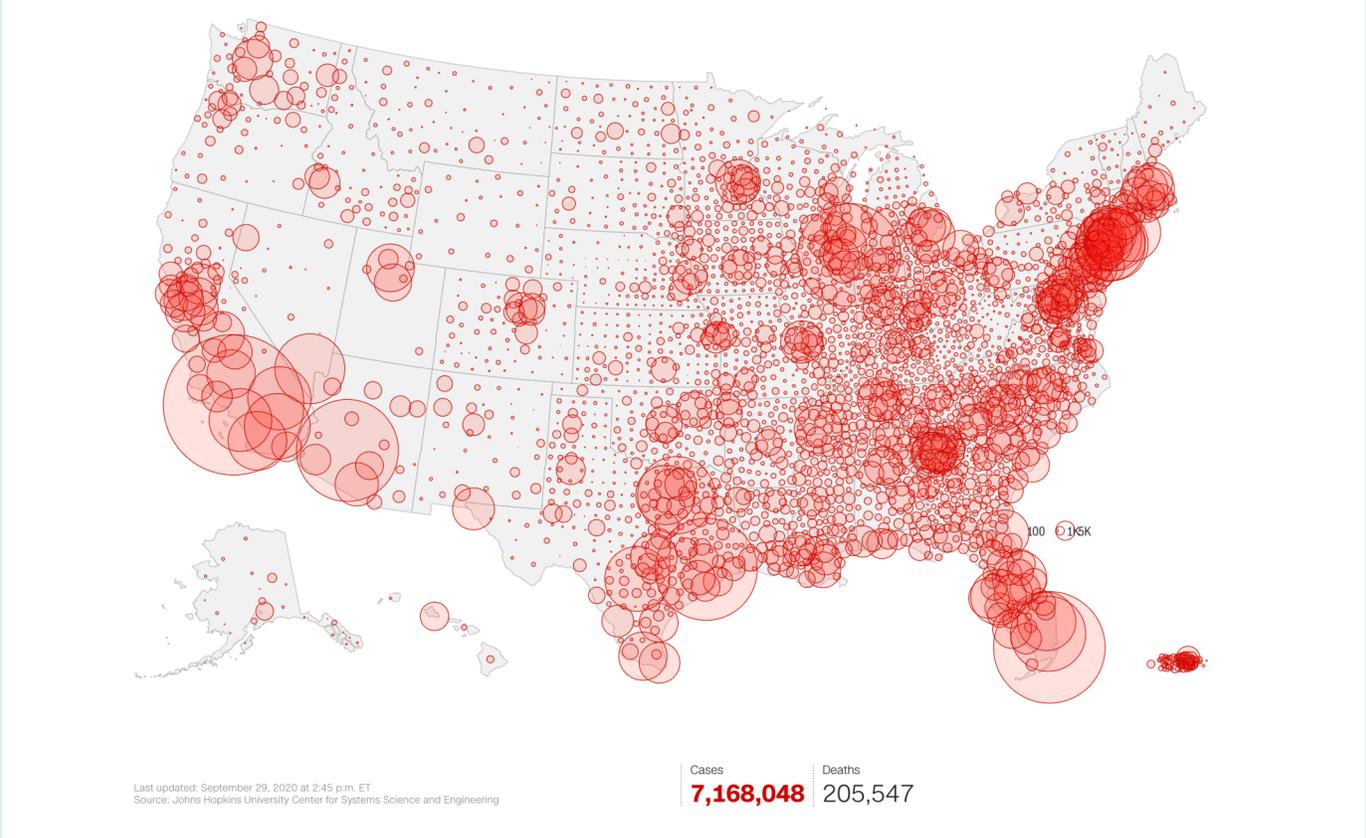
Seven months into the pandemic, many are exhausted. That is understandable, but justice, public safety, and public health demand continued vigilance.

# Introduction

In January of this year, the World Health Organization (WHO) announced that a novel, or new, coronavirus had been identified in Wuhan, China.<sup>1</sup> By the time of this report's release, more than 33 million people globally had been infected and almost one million had died.<sup>2</sup> In the United States, there had been more than seven million infections and more than 205,000 deaths.<sup>3</sup> Estimates suggest that the number of U.S. infections may be more than ten times greater than the number of confirmed diagnoses.<sup>4</sup>

It is difficult to overstate the impact of the pandemic. In addition to the devastating effects on people's lives and health, American social and economic life has been fundamentally altered. Gatherings of all kinds have been sharply curtailed. More than 100,000 businesses have closed and millions of jobs have been lost. Many schools, colleges, and universities have suspended in-person instruction, holding classes only virtually, via video conferencing.

**FIGURE 1: CORONAVIRUS IN THE U.S.**



Source: [CNN: Tracking COVID-19 cases in the U.S.](#)

Criminal justice agencies and organizations have contingency plans for various types of disasters, but few if any were fully prepared for a public health emergency of this speed, scope, and severity. COVID-19 spread quickly across police precincts, courts, jails, prisons, and impacted communities. Many who come into contact with the criminal justice system are at an elevated risk for infection, serious illness, and death. Like schools, factories and other settings, criminal justice facilities offer few opportunities for physical distancing. In jails and prisons, more than 168,000 people have tested positive for COVID-19 and at least 1,061 incarcerated people and correctional officers have died.<sup>5</sup>

The coronavirus pandemic poses numerous challenges for criminal justice policymakers and practitioners seeking to preserve the health and safety of their staffs, people under correctional control, and the public at large. The first challenge is the nature of the virus itself. Current research suggests that COVID-19 is as contagious as the seasonal flu; both infect the respiratory system, spreading easily from person to person via the mouth and nose.<sup>6</sup> Unfortunately, COVID-19 is significantly deadlier, with some estimates suggesting a mortality rate that is several times higher.<sup>7</sup>

Policymakers and practitioners also face a lack of credible information and data about the spread, scope, and severity of the disease. A near-constant refrain from Commission members, experts who produced studies and reports for the Commission, and those who testified before the Commission, including formerly incarcerated people who completed their sentences during the pandemic, was the lack of timely, reliable, and actionable information concerning COVID-19. In addition, gaps in data collection and dissemination have impeded the analysis and study of the pandemic's impact on system agencies and actors.

Without clear guidance or reliable data to guide their strategy, criminal justice policymakers and practitioners instituted a patchwork of policies nationwide – with varying degrees of success.<sup>8</sup> This lack of consistency created confusion and inequities in responding to a pandemic that spans organizational and jurisdictional boundaries. It is in response to these challenges that the Commission was created and these recommendations were developed.

## **GUIDING PRINCIPLES**

In addition to providing the concrete recommendations to criminal justice policymakers and practitioners that follow, the Commission offers the following guiding principles for response and future readiness.

When addressing the coronavirus pandemic, the Commission urges leaders to:

- + **Preserve public health.** In addition to traditional responsibilities such as administering justice, reducing crime and maintaining order, take all necessary measures to preserve the health and well-being of staff, people under supervision, and the public at large.

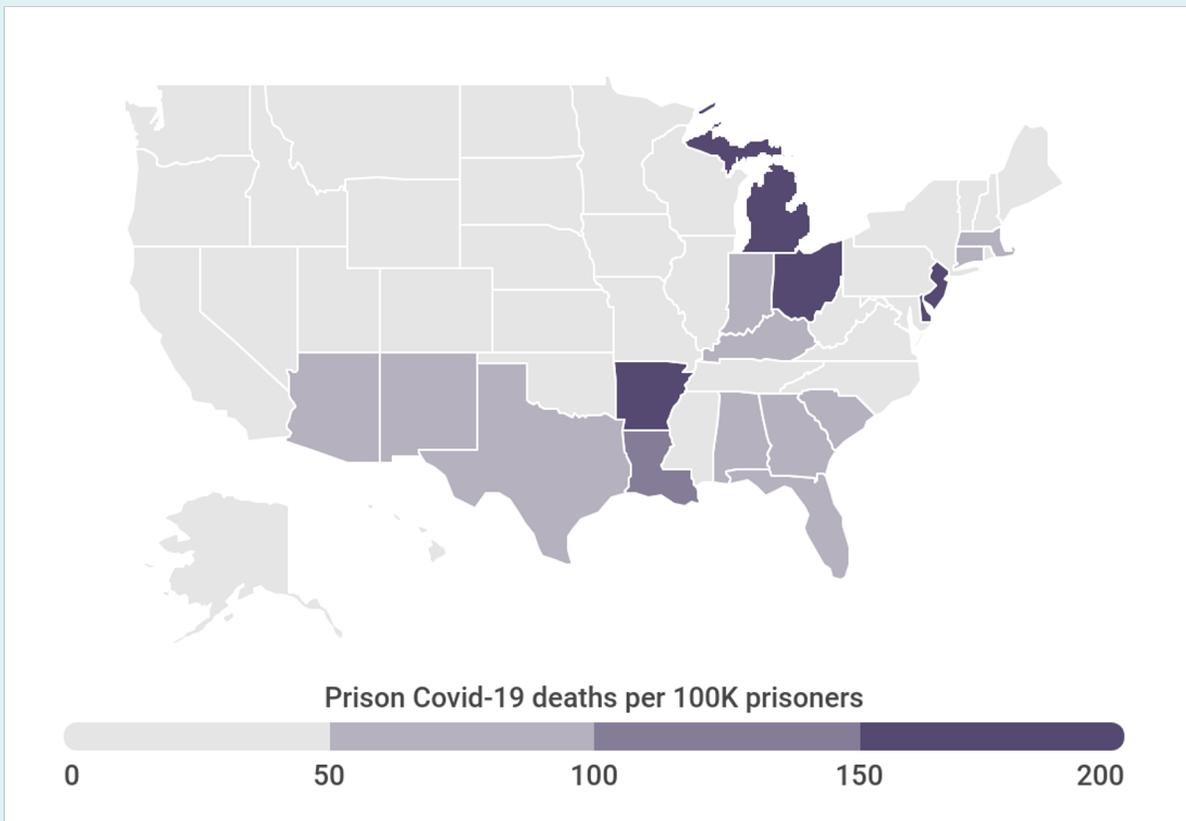
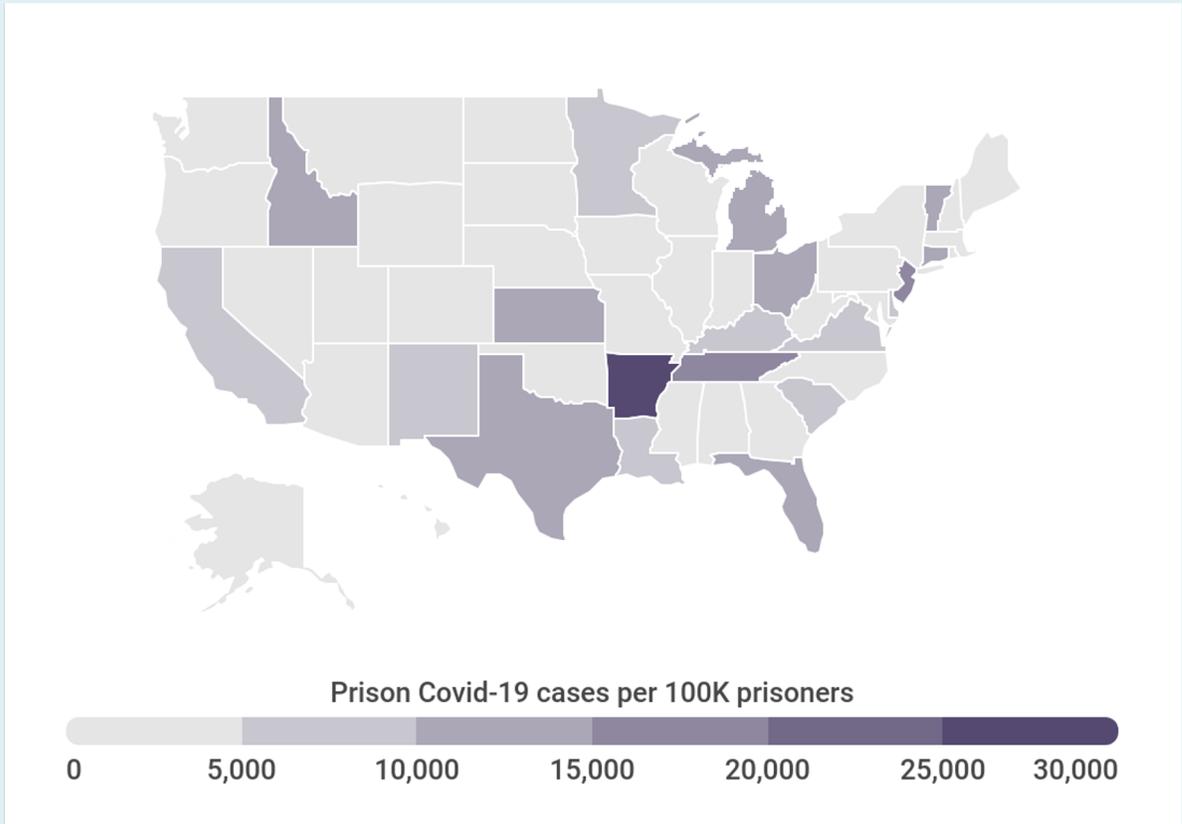
- + **Get the facts.** Identify and rely on authoritative sources of guidance and information on COVID-19, its impacts, and effective containment measures, including the [Centers for Disease Control and Prevention](#) (CDC), [National Institutes of Health](#) (NIH), [World Health Organization](#) (WHO), and the [Johns Hopkins Coronavirus Resource Center](#).
- + **Be proactive.** COVID-19's spread through the criminal justice system has far outpaced the availability of research and data. Given the uncertainty surrounding the virus, the fundamental importance of criminal justice services to society, and the outsized risk COVID-19 poses to those working in and supervised by the justice system, precautions and responses should, at a minimum, meet – and, ideally, exceed – those recommended to the public at large.
- + **Improve equity and increase inclusion.** The disparate impacts of the criminal justice system on racial and socioeconomic groups are well documented. Strive to improve fair treatment of impacted groups and avoid exacerbating unequal outcomes. Include such groups in policy- and decision-making and ensure diverse representation when distributing resources.

## ABOUT THESE RECOMMENDATIONS

The Recommendations for Response and Future Readiness (the “recommendations”) provide prioritized guidance to criminal justice leaders in responding immediately to the coronavirus pandemic. As described above, broader recommendations for systemic changes to policy and practice will be included in the Commission’s final report, to be released later this year. These recommendations span four key sectors of the criminal justice system:

- + **Policing:** Local, state, and federal law enforcement agencies, including sheriff’s departments.
- + **Courts:** Local, state, and federal judicial systems, including prosecutors and criminal defense attorneys.
- + **Corrections:** Local jails, state and federal prisons, and community supervision agencies.
- + **Community-based organizations:** Nongovernmental organizations serving impacted populations, including reentry and rehabilitation programs, victim services organizations, and violence prevention efforts, among others.

**FIGURE 2: CORONAVIRUS CASES, DEATHS IN U.S. PRISONS**



Source: COVID-19 in State and Federal Prisons, Report to Commission by Kevin T. Schnepel. Data as of August 15, 2020.

# General Findings and Recommendations

The Commission bases its recommendations on the following general findings, each of which is relevant to the four core sectors of the criminal justice system.

## THE SCIENCE OF COVID-19

### COVID-19 Transmission

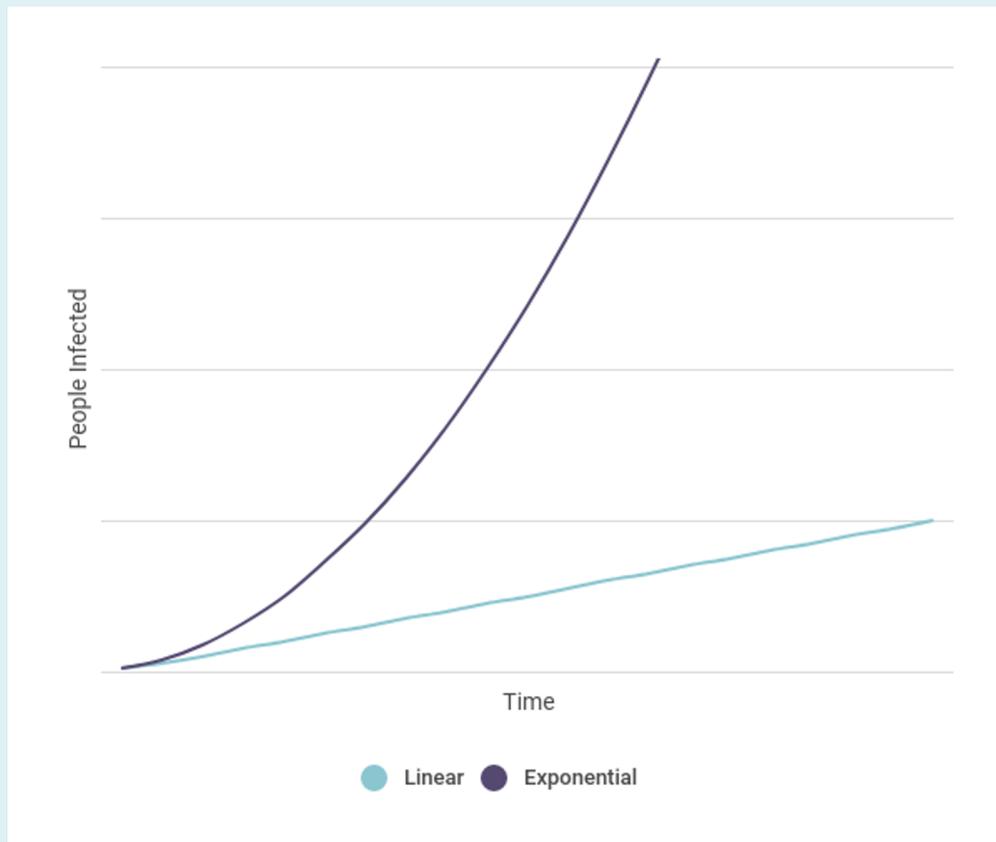
Respiratory droplets from the nose and mouth are thought to be the primary mode of transmission of COVID-19.<sup>9</sup> Physical distancing guidance is based on this mode of transmission. While the majority of transmission occurs via respiratory droplets, smaller respiratory secretions, called aerosols, can be suspended in the air and can also spread the virus. Aerosols may be the source of transmission in some super-spreading transmission events. It may also be possible to transmit COVID-19 by touching surfaces contaminated by the virus and then touching one's own mouth, nose, or eyes, although there are no specific reports that have directly demonstrated such transmission and some scientists believe its risk may be exaggerated.<sup>10</sup>

Infected people who do not yet exhibit symptoms of COVID-19 can still transmit the virus.<sup>11</sup> The CDC estimates that 50% of new infections are from persons who had not yet exhibited symptoms.<sup>12</sup> In addition, infected people who never exhibit symptoms of COVID-19 can also transmit the virus. The CDC estimates that 40% of COVID-19 infections are from asymptomatic individuals, who are approximately 75% as infectious as symptomatic individuals.<sup>13</sup>

### COVID-19 Symptoms

Symptoms may appear between two and 14 days after exposure (the average is four to five days).<sup>14</sup> A report on more than 373,000 U.S. cases indicated that patients experienced cough (50%), fever (40%), muscle aches (36%), headaches (34%), and shortness of breath (29%).<sup>15</sup> The spectrum of illness for COVID-19 ranges from asymptomatic infection to severe pneumonia with acute respiratory distress syndrome and death, with a majority of cases classified as mild. In a cohort of more than 72,000 symptomatic cases, 81% of reported cases were mild, 14% were severe, and five percent were critical.<sup>16</sup> Critical cases included respiratory failure, septic shock, and/or multiple organ dysfunction or failure. The dose of COVID-19 exposure is likely to play a significant role in whether an exposure leads to asymptomatic infection, mild disease, more serious disease, or death.<sup>17</sup> Age and underlying medical conditions, such as heart and lung disease and diabetes, are also significant factors in predicting the severity of the illness.

**FIGURE 3: EXPONENTIAL VS. LINEAR GROWTH**



*Note: Graph displays an exponential growth rate of 2.5 and a linear growth rate of 2.5.*

### COVID-19 Exponential Growth

Many people mistakenly believe that the number of COVID-19 cases grows in a linear manner, underestimating the potential of the virus for exponential growth.<sup>18</sup> The average estimated number of new infections that a sick person will cause while infectious is known as the basic reproduction number of a disease. If that number is significantly above one, the disease is likely to grow exponentially. Estimates of the reproduction number for COVID-19 vary, but the CDC currently estimates that the number is 2.5.<sup>19</sup> According to this estimate, one sick person is predicted to infect 2.5 people, who will in turn infect approximately six people, in turn infecting approximately 16 people, in turn infecting approximately 39, and so on. As a result, the virus can grow quite slowly at first and quickly thereafter.

The reproduction ratio is not a given and can be lowered by changes in behavior and proactive planning. Specifically, exponential growth of COVID-19 can be controlled using the combination of strategies described below.<sup>20</sup>

# COVID-19 CONTROL STRATEGIES

## Physical Distancing

Physical distancing is a scientifically proven strategy for containing the spread of the virus. Respiratory droplets fall quickly to the ground after they are expelled, typically within three feet of the source. Physical distancing guidance is based on this mode of transmission.<sup>21</sup> Physical distancing of one meter (about 3.3 feet) is associated with reduced transmission of the virus, while distancing of two meters or more is associated with even lower transmission.<sup>22</sup> The U. S. has adopted six feet of distance as its protective standard.

While this level of distance is likely to protect against respiratory droplet spread (the most common mechanism of transmission), smaller particle aerosols are likely causing some level of disease transmission. Aerosols are capable of spreading across greater distances, most likely in indoor settings with little ventilation.

## Proper Ventilation and Filtration

The risk of transmission is higher in indoor environments, particularly for those who are enclosed in spaces with recirculating air and little opportunity for physical distancing.<sup>23</sup> Generally, enclosed, poorly ventilated spaces with recirculating air are considered to pose a higher risk for COVID-19 transmission.

The CDC has provided guidance on improving ventilation in enclosed spaces such as office buildings.<sup>24</sup> Measures to improve air quality and flow include, but are not limited to, moving activities and operations outside whenever possible, as well as using natural ventilation (such as opening windows), and improving central air filtration to increase outside airflow and optimize air exchange rates.

Air cleaners and filters are designed to filter pollutants or contaminants out of the air that passes through them.<sup>25</sup> When used properly, they can help reduce airborne contaminants, including viruses. By themselves, cleaners and filters cannot eliminate exposure to COVID-19, but when used in combination with other measures, they can be part of a plan to protect people when indoors.

## Masking

Along with the importance of handwashing and other hygienic habits, mask wearing has been widely recommended for reducing viral transmission from individuals with COVID-19, whether symptomatic or asymptomatic, to others. Consistent mask wearing both reduces transmission and protects against larger dose exposures. In one study of a large healthcare system in Massachusetts, a policy of universal masking for patients and employees was associated with steady declines in positive COVID-19 tests among healthcare workers.<sup>26</sup> An evaluation of state policies showed greater declines in daily COVID-19 cases after issuing mask mandates compared with states that did not have mandates.<sup>27</sup> In addition to the

substantial evidence of benefit to the general public of wearing cloth masks, there is evidence that surgical masks provide even greater protection.<sup>28</sup>

As of August 13, statewide orders mandating face coverings had been issued in 33 states and the District of Columbia.<sup>29</sup> While the sovereignty of each state to deal with its own unique conditions and issues is acknowledged, given intrastate and interstate travel, the lack of uniformity and consistency in mask mandates has proven to be an obstacle to progress on containment of the virus.<sup>30</sup>

## Testing

Diagnostic testing for COVID-19 is rapidly evolving. The U.S. Food and Drug Administration has issued 158 Emergency Use Authorizations for 193 tests used in diagnosis and recognition of COVID-19 infection; these include 158 molecular tests, 33 antibody tests, and two antigen tests.<sup>31</sup>

Molecular-based tests are considered the most accurate type of test for COVID-19, but these tests are not 100% accurate.<sup>32</sup> People who have been infected and are incubating the disease in the days before the onset of symptoms might still test negative, so the effectiveness of testing depends heavily on timing.

Antigen tests are less expensive and faster than molecular tests; they can be used at the point-of-care and provide results in about 15 minutes. Antigen tests are generally less accurate than molecular-based tests, however, with some antigen tests producing as much as 20% false negative results, and others with much lower false negatives and characteristics approaching molecular testing.

Finally, antibody tests detect antibodies that are produced by the immune system in response to COVID-19; they do not diagnose current infections but can detect past infections.

Despite their lower accuracy, antigen tests are indicated for the screening of asymptomatic individuals in settings like prisons and jails, with the CDC urging confirmatory testing using molecular-based diagnostics if an antigen test produces a positive result.<sup>33</sup> CDC guidance states that “rapid antigen tests can be used for screening testing in high-risk congregate settings in which repeat testing could quickly identify persons with COVID-19 to inform infection prevention and control measures, thus preventing transmission throughout the congregate setting.”<sup>34</sup>

## Immunity

While there is still some uncertainty, the emerging consensus among scientists is that antibodies are a good indication of at least temporary immunity for previously infected people.<sup>35</sup> The durability and duration of immunity that occurs following infection remain unknown, largely because of the short time that the virus has been in circulation. Current research suggests that in most cases, COVID-19 immunity will last at least three months.

## Vaccines

Vaccines represent the best way to prevent COVID-19.<sup>36</sup> While no vaccines have yet demonstrated adequate safety and efficacy, an unprecedented global development effort is underway to find a viable vaccine. According to the WHO, 191 COVID-19 vaccine candidates were in development at the time of this report's publication, including 40 in clinical trials.<sup>37</sup> While it is difficult to predict, some experts expect that a limited number of vaccines will become available in the winter of 2020 and that this supply will subsequently scale up. If and when a safe and effective vaccine is approved, the number of doses will likely be limited initially. Because of this scarcity, the federal government will need to develop an allocation strategy to determine who will be prioritized for immunization.

## COVID-19 TRENDS AND IMPACTS

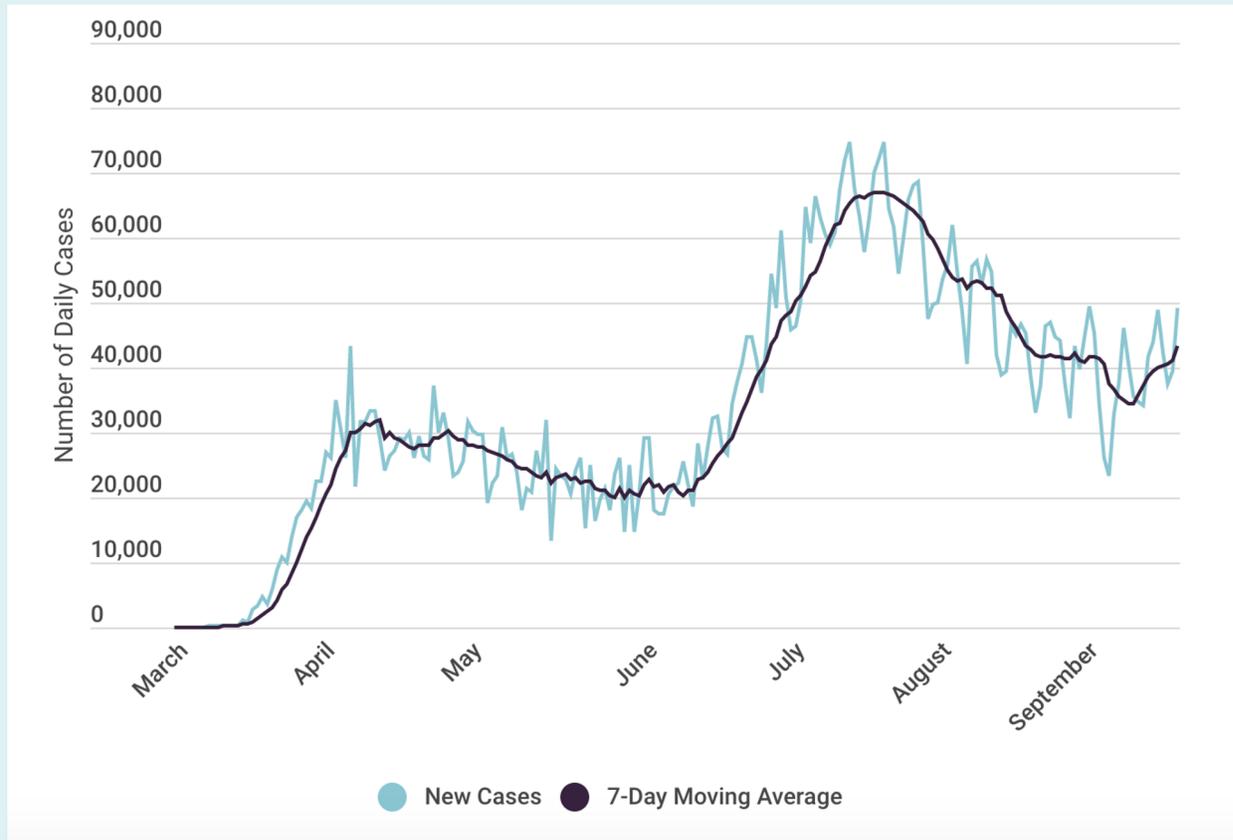
### COVID-19 Trends

COVID-19 infections and deaths in the U.S. grew slowly at first, then escalated sharply in March and April.<sup>38</sup> Daily infection counts then slowed, continued to decline through June, and then rose sharply again. In mid-July, the number of daily new infections peaked and declined through mid-September, at which point the number began to grow slowly. As of the time this report was released, daily infection numbers continued to grow.

There is significant uncertainty about how the COVID-19 pandemic will unfold over the next three to 12 months.<sup>39</sup> In some countries, like New Zealand, transmission has been reduced so significantly that the virus has been virtually eliminated from the local population. In other countries, like the U.S., efforts to slow viral spread through stay-at-home orders and business closures were initially undertaken, which improved the trajectory of the outbreak but did not bring it under control.

The future of the COVID-19 pandemic depends heavily on the willingness of government leaders at the national, state, and local levels to control transmission through a series of interventions, and the willingness of people to adhere to recommended prevention measures.<sup>40</sup> This will require a combination of population-level interventions, including masking and physical distancing orders as well as other measures to identify cases through rigorous testing, isolation of infected people, and quarantine of contacts of cases to break chains of transmission.

**FIGURE 4: CORONAVIRUS CASES IN THE U.S.**



Source: Centers for Disease Control and Prevention. Data as of September 28, 2020.

A number of nationally respected models are regularly updated to forecast COVID-19 deaths. An ensemble model combines many of these independently developed individual forecasts into one aggregate forecast. That model forecasts more than 218,000 deaths nationally in the next four weeks (through approximately October 26). While this model and others provide short-term predictions, there are no models that reliably predict what will happen multiple months from now.<sup>41</sup>

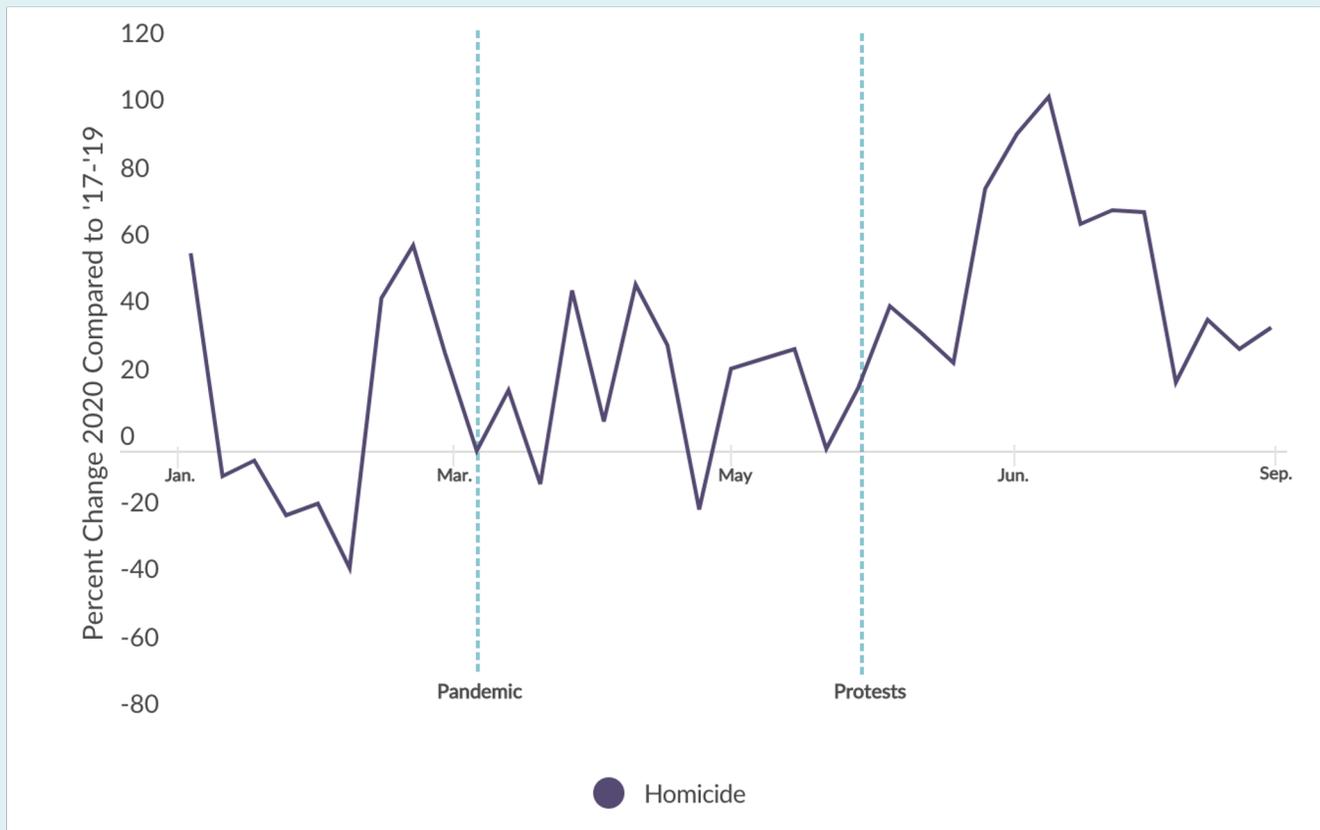
### Crime Trends

According to studies produced for the Commission, there was little change in violent crime rates during the early months of the coronavirus pandemic.<sup>42</sup> In late May, however, rates of homicide and aggravated assault began to rise dramatically and remained at elevated rates for June, July, and August. Compared to the summer of 2019, homicide rates rose 53% and aggravated assault rose 14%. Gun assaults rose during the same period, but the increase was not significantly greater than the previous year.

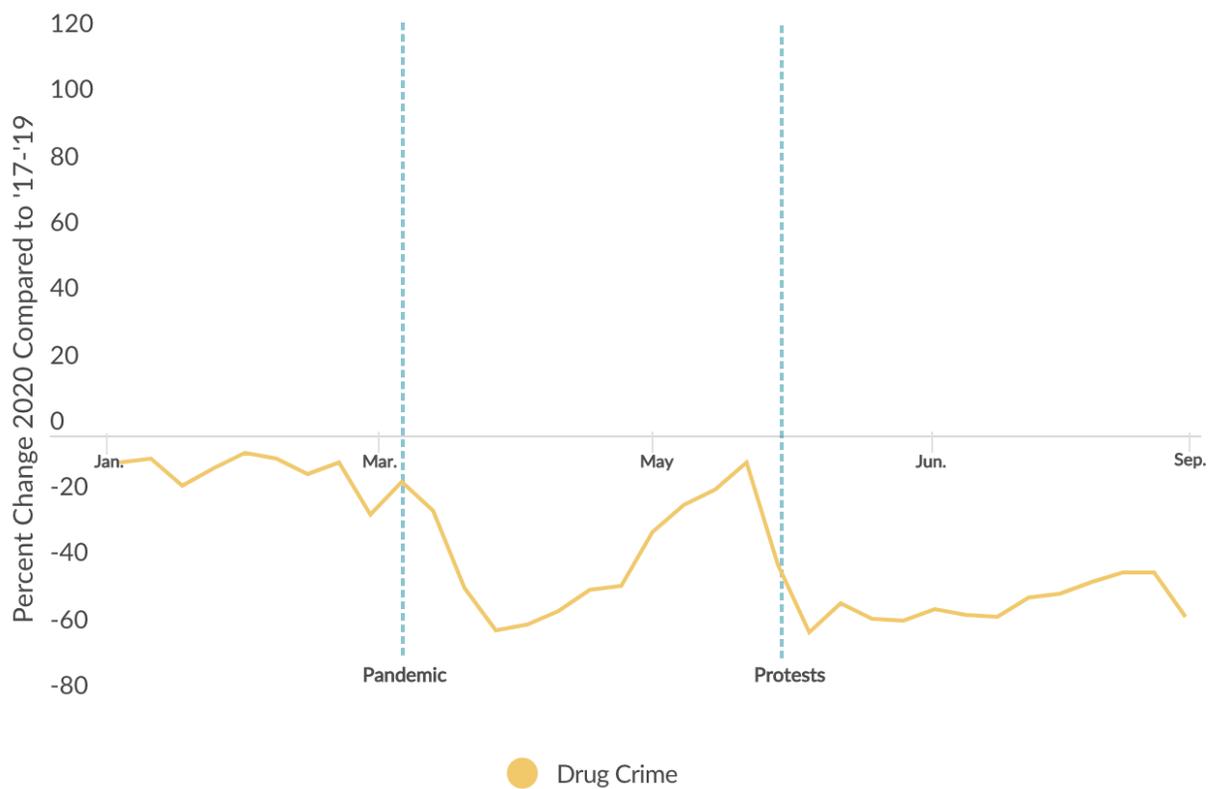
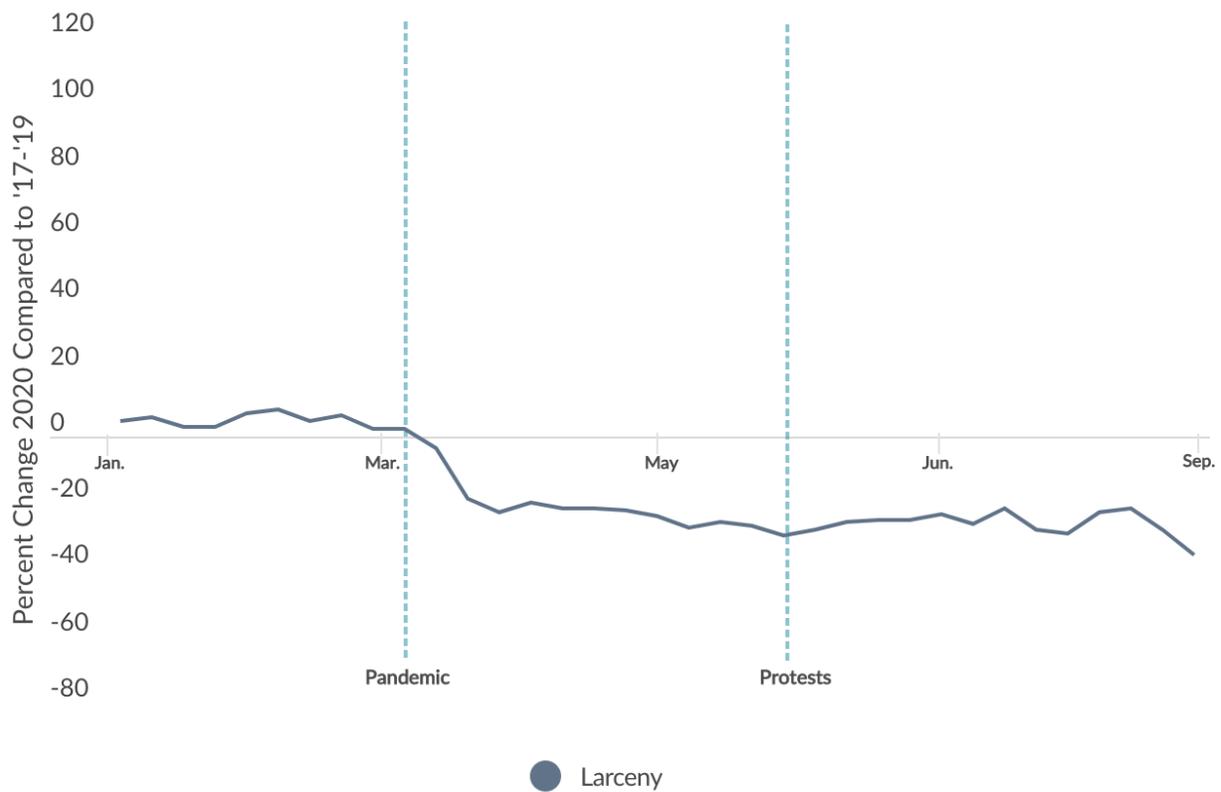
Such heightened violence may be due to a combination of “de-policing,” e.g., a pullback by law enforcement, and “de-legitimizing,” a pullback by disadvantaged communities of color due to breached trust and lost confidence in the police.<sup>43</sup> Evidence-based strategies are available to address the increase in violence, but addressing the coronavirus pandemic may be a necessary condition for success, as physical distancing requirements greatly inhibit the ability of police, service providers, and outreach workers to perform the face-to-face outreach on which many successful anti-violence strategies rely.

Property and drug crime rates fell significantly during the spring and summer of 2020.<sup>44</sup> Between March and August of 2020, residential burglary rates declined 25.3% compared with the same six-month period the year prior. Larceny rates decreased by 24%. Drug offenses dropped dramatically, by 41%. Nonresidential burglary rates spiked by 124% during the first week of June 2020, coinciding with mass protests in response to police violence, but then rates quickly returned to normal.

**FIGURE 5: TRENDS ACROSS U.S. CRIME CATEGORIES**



Source: Impact Report: COVID-19 and Crime, Report to Commission by Richard Rosenfeld and Ernesto Lopez. Data as of September 5, 2020.



Source: Impact Report: COVID-19 and Crime, Report to Commission by Richard Rosenfeld and Ernesto Lopez. Data as of September 5, 2020.

According to the study, these reductions reflect significant changes in activity patterns on the part of both the public and the police. For example, when residents stay at home they reduce the opportunities for burglars. When businesses close there is no shoplifting. When police prioritize other matters, drug enforcement activities may decline.

According to a separate analysis presented to the Commission, the COVID-19 pandemic led to a 9.7% increase in domestic violence calls for service to police during March and April, starting before state-level stay-at-home mandates began.<sup>45</sup> Applied nationally, this finding suggests there were approximately 1,330 more domestic violence calls for service per day across the U.S. during the study period. An analysis of the location of calls indicates that many originated from households that previously had not reported domestic violence.

### **Budget Trends**

States project that their revenues will be \$200 billion lower than originally expected – down by \$75 billion in fiscal year 2020 and \$125 billion in fiscal year 2021, or roughly five to ten percent of all state-generated revenue. Past relationships between unemployment and government finances suggest that combined state and local budget shortfalls could climb as high as \$1 trillion over three years, according to an analysis presented to the Commission.<sup>46</sup>

Unlike the federal government, state and local governments must balance their budgets. This means officials will need to increase taxes or cut spending. To close the gap, state and local governments have already eliminated 1.5 million public jobs since February, reducing state and local public employment to levels not seen since 2001.<sup>47</sup>

More and deeper cuts are likely, especially if additional federal aid is not forthcoming. Governors from a range of diverse states—including Colorado, Kentucky, Ohio, Oregon, and Wyoming—are calling for across-the-board cuts exceeding ten percent in the current fiscal year.<sup>48</sup> A National League of Cities survey found that three-fourths of municipalities have already made spending cuts, with many resorting to across-the-board reductions.<sup>49</sup>

While it is difficult to predict how these large budget cuts will affect smaller community-based programs, several cities have cut programs such as youth services that likely include community-based safety and crime-reduction programs.<sup>50</sup>

### **Substance Use Trends**

According to the American Medical Association, more than 40 states report increases in opioid-related fatalities since government officials began implementing COVID-19 responses.<sup>51</sup> The Overdose Detection Mapping Application Program reports an 18% increase in overdoses nationwide since the beginning of the pandemic.<sup>52</sup> A national laboratory service reports increases in positive drug tests for non-prescribed fentanyl (32%), methamphetamine (20%), and cocaine (10%).<sup>53</sup>

According to an analysis produced for the Commission, COVID-19 has significantly altered the delivery of substance use disorder (SUD) treatment in the justice system.<sup>54</sup> Mandatory

lockdowns, restrictions on movement, physical distancing guidelines, orders limiting access to facilities for non-essential workers, and the unavailability of in-person treatment have created gaps in the system's ability to identify and monitor the needs of people with SUDs, and to intervene when they are in distress. Experts warn that the stress of the pandemic, combined with new barriers to treatment, have greatly elevated the risk of SUDs both inside and outside the criminal justice system. Early reports of relapses and overdoses seem to confirm these fears.

Justice-involved populations with SUDs have been impacted by the pandemic in multiple ways.<sup>55</sup> Enhanced restrictions intended to reduce the introduction or spread of COVID-19 within correctional facilities, for instance, have negatively impacted the delivery of SUD medications and treatment. Those who participate in drug courts are under strain as agencies transition from face-to-face to remote services. Many under community supervision lack access to the technology needed for virtual appointments, and thus face interruptions in treatment that are likely to result in adverse health effects.

Ensuring access to evidence-based treatment proven to reduce the risk of fatal overdose is challenging in a pandemic – though not impossible. A systematic review of substance use, treatment retention, and feasibility of SUD treatment via video conference concluded that telemedicine was an encouraging option, especially when treatment retention was an important outcome.<sup>56</sup> Telemedicine provides behavioral and/or physical health care via telephone, mobile apps, web-based treatment supports, and video conferencing, although justice-involved populations often face challenges in accessing such technologies.

### **Racial and Other Disparities**

The disparate negative impacts of the criminal justice system on poor people of color, especially Black people, are well documented. People of color also experience higher rates of disease and illness and are almost twice as likely to be uninsured as White populations.<sup>57</sup> In addition, poor people of color face elevated infection and mortality rates from COVID-19. Even when controlling for income, counties with large non-white populations have significantly higher infection rates.<sup>58</sup> Within counties, federal data shows that Latino and Black residents are three times as likely to contract the virus as their white neighbors.<sup>59</sup>

According to an analysis produced for the Commission, few criminal justice agencies are collecting and reporting COVID-19 data according to race.<sup>60</sup> The absence of such data makes it difficult to reach strong conclusions concerning the impact of COVID-19 on racial disparities in the criminal justice system. Despite this, there is emerging information that some criminal justice responses to the coronavirus pandemic may disproportionately impact certain groups. For example, as jails reduced incarcerated populations after the onset of the pandemic, there were increases in the proportion of people in jail who were booked on felony charges, who were male, who were 25 or younger, and who were Black.<sup>61</sup>

## GENERAL RECOMMENDATIONS

The Commission recommends that the following actions be carried out by leaders across all sectors of the criminal justice system.

- 1. Go beyond CDC guidance to stop exponential growth.** Given the speed and ease of transmission, the uncertainty of future projections concerning the spread of COVID-19, and the seriousness of the disease, go above and beyond normal measures in responding to the virus and improving readiness. The CDC produces and regularly updates several documents to guide officials in preventing the spread of COVID-19 in criminal justice facilities and populations.<sup>62</sup> Follow such guidance, and ensure that policies meet – but, ideally, exceed – CDC guidelines. In addition, take measures to ensure full compliance with relevant public health guidelines.
- 2. Communicate transparently about COVID-19 response plans, policies, and data.** Clearly, quickly, and repeatedly communicate COVID-19 plans and policies to staff, justice-involved populations, and the public. Collect and report COVID-19 infection, morbidity, and mortality data for justice-involved populations and staff by race and ethnicity, including testing schedules and results, to produce a full picture of how the virus has impacted all groups in the justice system.
- 3. Adopt universal masking requirements for all staff and impacted populations when indoors and in close contact with others.** Such policies are warranted given the proven effectiveness of masking in limiting the transmission of COVID-19, the heightened risks associated with criminal justice institutions, and the critical need for such institutions to maintain ongoing operations. Customize such requirements and make exceptions where necessary, but aim for broad compliance. In addition, given their superior protection in relation to cloth masks, and the higher risks faced by staff and justice-involved populations, surgical masks are preferred.
- 4. Widely and frequently test staff and justice-involved populations for COVID-19 using the most reliable methods available.** Given the rapidly shifting science on various testing technologies, monitor developments in order to ensure access to the best testing mechanisms widely available. At this time, molecular testing remains the preferred method of testing people who have symptoms or have been exposed to COVID-19. If inexpensive widespread rapid antigen testing becomes available, this form of testing could be used to frequently screen asymptomatic staff and incarcerated persons in an effort to detect and contain outbreaks as early as possible. Positive antigen tests should be confirmed by a molecular test. Jails and prisons, like other high-risk settings such as nursing homes, should be given priority access to such tests when they become available.

5. **Limit contact, maximize distance, and reduce density.** Given the risks associated with contact with the criminal justice system during the pandemic, take measures to limit person-to-person contact, maximize distances between individuals, and reduce density wherever possible. Subject to public safety considerations, such measures may include limiting custodial arrests; reducing admissions to jails and prisons and increasing releases from such facilities; and moving indoor operations and activities outside, among others.
6. **Allocate resources strategically.** When facing difficult budget decisions, prioritize targeted, strategic reductions over across-the-board cuts to avoid unintended consequences. For example, reducing workforces according to seniority could undermine prior reforms aimed at diversifying the workforce. Avoid past policies such as relying on excessive fines and forfeitures to increase revenue. Preserve funding for evidence-based programming with a high net return on investment and solutions that provide equitable access to justice in the pandemic.
7. **Actively engage and consider impacted communities in all decision-making.** Provide regular opportunities for input from directly impacted groups and assess implemented measures to ensure equitable impacts.

# Sector-Specific Findings and Recommendations

## POLICING

By March 23, just a few weeks after the outbreak and lockdowns began, COVID-19 had substantially changed law enforcement agency operations. According to an International Association of Chiefs of Police survey, 57% of responding agencies had experienced significant declines in their calls for service, with 14% of respondents reporting more than a 50% reduction.<sup>63</sup> Seventy-two percent of agencies had activated telephone, internet, or teleconference systems to respond to calls for service and take reports remotely. Three out of four agencies had provided formal guidance to officers to reduce their reliance on physical arrests for minor offenses.

At the time this report was released, 3.5% of police personnel had been exposed to COVID-19, 1.2% were unable to work, and 36.3% of police agencies lacked sufficient personal protective equipment, with particulate respirators in particularly short supply.<sup>64</sup> At least 114 police officers have died from COVID-19 since the start of the pandemic.<sup>65</sup>

The economic upheaval caused by the pandemic, combined with calls to “defund the police” in the wake of recent police killings of civilians, are affecting the budgets of many law enforcement agencies. Nearly half (48%) of agencies of all sizes report that their budgets have been decreased or likely will be decreased in the next fiscal year.<sup>66</sup> Another 27% said their budgets would be unchanged, and only 16% expected budget increases. That said, among the 50 largest cities that have adopted fiscal year 2021 budgets, only New York, Los Angeles, and a few others had made deep cuts to police departments by the time of this report’s publication, while most had increased spending or held it constant.<sup>67</sup>

## RECOMMENDATIONS

- 1. Protect personnel and the public they serve from COVID-19.** Provide officers with adequate training and appropriate protective gear to minimize health risks to themselves and those with whom they interact. Consistent with CDC guidance, require officers to wear surgical masks indoors and when interacting with the public outdoors.<sup>68</sup> N-95 masks, eye protection, and latex gloves may also be appropriate for encounters involving an elevated risk of transmission. Strictly enforce the wearing of personal protective gear.

Adopt aggressive testing protocols, secure access to testing facilities for those with symptoms of COVID-19 or contacts of people with COVID-19, and explore testing

options for screening asymptomatic personnel on a regular basis with rapid antigen testing. Consider establishing a dedicated first-responder testing site.

Adopt policies to physically distance officers from one another when possible. Agencies should consider the use of pods, working groups, and split shifts in order to minimize exposure. They should also promote remote work arrangements while avoiding large in-person events.

Protests and demonstrations during the coronavirus pandemic present unique challenges. Modify preexisting strategies for facilitating such events to protect the health and well-being of police officers, participants, and the public at large. Considerations should include physical distancing, masking, minimizing in-custody arrests, and other preventive measures. Consider utilizing a harm-reduction approach, as recommended by the National Governors Association, for policing such mass gatherings.<sup>69</sup>

- 2. Support personnel in relation to COVID-19.** In addition to taking the measures above, provide personnel with accessible and reliable information concerning COVID-19 and support those exposed to the virus. Establish counseling services and wellness units to address officers' mental, emotional, and physical health concerns. Provide alternative housing arrangements for those who must isolate or quarantine. Consider, as a number of states have done, issuing orders or passing legislation to establish that when an officer becomes infected with COVID-19, that infection is presumed to have occurred in the line of duty. This presumption is typically rebuttable and may be controverted by other evidence.
- 3. Limit in-person contacts between police and citizens.** Minimize in-person, face-to-face interactions in order to reduce the likelihood of COVID-19 transmission. Non-urgent calls for service, including calls for lost property, minor vehicular accidents with no injuries, and nonviolent misdemeanor offenses where the offender is not present and there is no recoverable evidence, may be handled over the phone or via an online reporting system.

Consider fuller use of referrals to non-police service providers, such as street outreach workers, mental health professionals, or social workers. Proper protocols and training should be in place to ensure coordination. Also consider deploying non-sworn, unarmed community service officers for nonviolent, non-serious incidents.

While proactive policing efforts may be required to address homicides, shootings, felony assaults, and other serious violent crimes, evidence-based strategies exist to both effectively reduce violence and limit unnecessary physical contact between law

enforcement and the public. Tailor efforts to only the highest risk people and places that account for a disproportionately large share of such violence. Focusing solely on stops, searches, and arrests should be avoided, and community-based strategies should be adopted to supplement police efforts.

4. **Limit use of custody.** Absent an immediate and/or serious threat to public safety, issue warnings, summons, citations, or tickets in lieu of arrest. Delay planned or scheduled arrests unless the person to be arrested is considered dangerous. Charge police officers with enforcing public health guidelines only as a last resort; other authorities are able to achieve similar levels of compliance with fewer collateral consequences.
5. **Allocate resources strategically.** Rather than resorting to layoffs that trigger “last hired, first fired” labor contract clauses to reduce payroll, consider alternatives such as attrition, limiting overtime, and offering comp time. Increase the use of civilians to further reduce costs. Use video conferencing and other alternative means of communication to engage community members when face-to-face interaction is not appropriate or advisable.<sup>70</sup>
6. **Communicate clearly with staff, public safety partners, and the public.** Communicate proactively and creatively with personnel via audio and video channels as well as in writing. Convey facts in a clear and candid manner to minimize speculation and confusion. Provide accessible and reliable information concerning COVID-19 using instruments such as 24/7 hotlines and liaisons who are medical professionals.

Communicate proactively with other law enforcement partners, such as prosecutors, to agree on arrest and prosecution guidelines and identify lists of “bookable” offenses. Where possible, coordinate and share data with courts, jails, and other partners.

Clearly communicate with the public concerning COVID-19 decisions, policies, and information. Publicly and quickly release data concerning COVID-19 cases, hospitalizations, and deaths.

## COURTS

In crafting COVID-19 responses, courts face dual challenges to protect both the health and the constitutional rights of the public. As a result, local, state, and federal courts must adopt practices that prevent COVID-19 transmission and maintain access to justice.

The National Center for State Courts reports that the five most common court responses to COVID-19 have been:<sup>71</sup>

1. Restricting jury trials
2. Suspending in-person court proceedings
3. Restricting physical access to courthouses
4. Granting extensions for deadlines, fees, and fines
5. Encouraging teleconferences in lieu of in-person proceedings

According to a survey by the National Association of Pretrial Services Agencies, a majority of jurisdictions reduced custodial arrests (85%), bail amounts (60%), and complaint filings (54%).<sup>72</sup> Meanwhile, most jurisdictions have increased the use of video conferencing for court hearings (90%), releases for those awaiting trial (81%), and cite and release practices (65%). Many jurisdictions have also temporarily reduced or suspended proceedings for technical violations of supervision terms.

Implementation of these policies has not been without complication. Case backlogs are rising as court closures continue into the fall. In Georgia, thousands of felony cases in the Atlanta area were awaiting a grand jury at the time of this report's release.<sup>73</sup> In Harris County, Texas, where trials were suspended, nearly 41,000 felony cases were awaiting trial at the end of July.<sup>74</sup> Moreover, there is some pre-pandemic evidence that video hearings may affect perceptions of witness credibility, result in harsher detention decisions, and lead to other consequences.<sup>75</sup>

Like other sectors of the justice system, courts, prosecutors, and public defense attorneys anticipate dramatic budget cuts in the upcoming fiscal year. In California, the state Assembly proposed a \$150-million cut for the judicial branch, contingent on whether or not states receive additional federal funding.<sup>76</sup>

## RECOMMENDATIONS

1. **Limit in-person proceedings.** Subject to constitutional requirements, establish guidelines to limit jury trials and in-person court proceedings, reserving in-person proceedings for essential cases or when counsel identifies a compelling need. Criteria should prioritize cases that will go to trial and defendants who are incarcerated, among other factors.

When in-person proceedings must occur, ensure, at a minimum, CDC-recommended levels of physical distancing for staff, defendants, victims, witnesses, and juries. Make masks – including transparent ones for witnesses and jurors – mandatory for everyone involved in proceedings and make them available upon request. Adapt courthouse physical space to provide distance or sanitary barriers between individuals. When certain locations or proceedings impede social distancing, consider using alternative larger facilities (e.g., gyms, tented spaces outdoors) where people can maintain adequate spacing. Strictly enforce the use of a CDC-informed screening tool to assess those coming to or from the court. Increase ventilation and filtration in indoor spaces to the extent possible.

2. **Limit public access to court facilities.** Consult with experts, such as state epidemiologists and public health administrators, for guidance on opening or closing court facilities, taking into account air ventilation and filtration systems in courthouses and office buildings, local infection rates, and other factors. Ensure reasonable access to trials – virtually or, as deemed safe, in person – for necessary individuals, such as victims, stakeholders, and government officials. Provide virtual alternatives for the public to access proceedings; subject to constitutional requirements, restrict public access when it would negatively impact the safety or feasibility of proceedings.
3. **Reduce density.** Identify opportunities to reduce population density in jails and other court-related facilities, including: limiting the use of bail for individuals awaiting trial to only those who pose a significant danger to the community or substantial flight risk; reviewing and reconsidering bail decisions for individuals held pretrial who pose a minimal risk to public safety but are unable to pay their bond; and establishing criteria to review individuals near the end of their sentence in local jails for potential release or transfer to alternatives to incarceration. Also consider COVID-19 and other extenuating circumstances in limiting bench warrants or failure-to-appear warrants.
4. **Use technology to deliver essential services.** Establish protocols to use technology to deliver courthouse services and move appropriate cases toward disposition, so long as it does not infringe upon the rights of individuals or hamper the administration of justice. Establish online tools to resolve less serious cases, such as pending municipal cases, ordinance violations, traffic tickets, or minor criminal offenses. Use teleconferences, video hearings, and other technology in lieu of in-person court proceedings. Deliver as many courthouse services (e.g., issuing licenses, records requests, collection of fines and fees) virtually as possible. Use technology, such as text reminders, to communicate about deadline extensions, due dates, fines and fees, and scheduled appearances. Ensure, to the extent possible, the availability of technology in government facilities, so that defendants, victims, and witnesses can participate in proceedings, and so that defendants and their counsel can safely confer.

5. **Extend fees and fines.** Grant extensions for in-person filings or the collection of fees and fines.
6. **Maintain specialty and treatment courts.** Consult with national experts, such as the National Association of Drug Court Professionals, to maintain operation of specialty and treatment courts, either virtually or, as appropriate, in person.
7. **Encourage collaboration.** Encourage collaboration, communication, and cooperation among prosecutors, the defense bar, jail administrators, and the judicial branch. Work collaboratively to identify cases that can be resolved outside of the formal court process. In all roles and decisions, consider the impacts of COVID-19 on defendants and stakeholders, including: the risk of infection or transmission for individuals at high risk based on age or underlying conditions; adverse economic impacts affecting the ability to pay fees, fines, and bail; and limited access to technology.
8. **Execute communication plans.** Communicate proactively with court personnel, litigants, and the public about procedures and protocols, providing facts and information in a clear and candid manner.

## CORRECTIONS

Correctional facilities face enormous challenges caused by the coronavirus pandemic. The most difficult of these is enabling people to maintain safe physical distance in shared spaces that are smaller, on average, than cruise ship cabins or shared bedrooms in nursing homes.<sup>77</sup> Incarcerated individuals are also more likely to suffer from chronic health conditions, such as heart disease or diabetes, which can exacerbate the impact of the disease. Other challenges include limited medical resources as well as a daily churn of staff members, visitors, and newly admitted individuals.

At the time of this report's release, the CDC reported that across 1,225 impacted facilities, there had been more than 168,000 confirmed cases (138,680 residents, 29,903 staff) since the outbreak began and more than 1,000 confirmed deaths (1,007 residents, 54 staff).<sup>78</sup> COVID-19 cases in such facilities increased rapidly in July and August 2020,<sup>79</sup> growing faster than cases in the general U.S. population.<sup>80</sup>

According to a study produced for the Commission, the rate of COVID-19 cases in state and federal prisons is 4.3 times higher than the overall U.S. rate.<sup>81</sup> The COVID-19 mortality rate in these prisons is 2.1 times higher than that of the general population after adjusting for the sex, age, and race/ethnicity of the people who are incarcerated.

National case and mortality rates within prisons conceal a great deal of variance across states.<sup>82</sup> Thirteen states exhibited mortality rates within prisons that were three or more times what would be expected. On the other hand, six states (Colorado, Illinois, Pennsylvania, New York, Missouri, and Mississippi) had prison mortality rates that were lower than those in the general population.<sup>83</sup>

One survey conducted in August found that while nearly all states were distributing masks to staff and incarcerated individuals, only about half of states required mask use by staff, and less than one-third required mask use by those in custody.<sup>84</sup> Testing is also inconsistent across institutions within jurisdictions. Within facilities, broad testing of the population for COVID-19 is more accurate than testing based on displayed symptoms, and also a more helpful tool in controlling transmission. Facilities using mass testing found a median 12.1-fold increase in confirmed cases compared to symptom-based testing alone.<sup>85</sup> This ratio is similar to estimates of actual versus confirmed infections in the general U.S. population.<sup>86</sup>

Large facilities are clearly the most important contributors to the volume of COVID-19 cases in prisons.<sup>87</sup> Large prisons account for 83% of the total cases and 87% of the total number of reported deaths. Small prisons exhibit lower rates of COVID-19 outbreaks, but cases per 100,000 incarcerated people are high on average due to their small population size. There also are indications that the age and architectural design of correctional facilities

**FIGURE 6: CORONAVIRUS IN U.S. STATE PRISONS**

		State	Prison Covid-19 deaths	Prison population	Prison Covid-19 deaths per 100K prisoners	State Covid-19 deaths per 100K residents adjusted	Prison to state deaths ratio adjusted
1		Arkansas	34	15,578	218.3	11.2	19.5
2		New Mexico	4	6,623	60.4	3.8	15.8
3		Kentucky	11	12,290	89.5	6.5	13.8
4		Ohio	86	50,399	170.6	15.3	11.2
5		Delaware	10	5,582	179.1	21.3	8.4
6		Kansas	4	9,938	40.2	9.3	4.3
7		Virginia	13	29,461	44.1	13.5	3.3
8		Indiana	20	26,333	76	23.5	3.2
9		Texas	112	149,777	74.8	23.2	3.2
10		Florida	70	95,693	73.2	22.8	3.2
11		Georgia	34	48,579	70	23.2	3
12		South Carolina	12	18,559	64.7	21.7	3
13		Tennessee	8	19,552	40.9	13.8	3
...							
30		Colorado	3	19995	15	18.7	0.8
31		Illinois	13	39915	32.6	46.9	0.7
32		Pennsylvania	10	46372	21.6	36.7	0.6
33		New York	17	46778	36.3	126.8	0.3
34		Missouri	1	29970	3.3	12.5	0.3
35		Mississippi	1	13278	7.5	34.7	0.2
...							

Source: COVID-19 in State and Federal Prisons, Report to Commission by Kevin T. Schnepel. Data as of August 15, 2020.

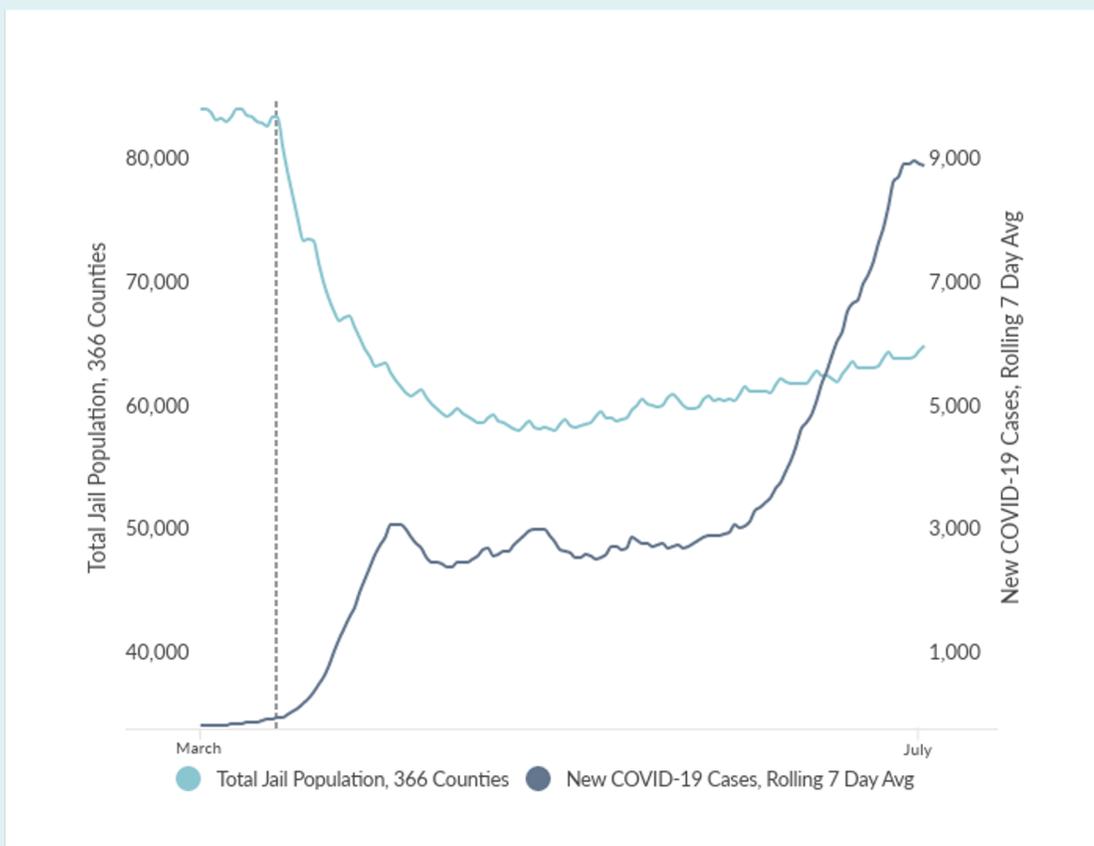
may influence case rates, with factors such as ventilation systems and cells with solid doors versus open bars potentially affecting infection rates.

Jails present a significant risk of community transmission due to high rates of turnover of individuals detained for short periods of time.<sup>88</sup> Despite that risk, case and mortality information is available for only a handful of jails.<sup>89</sup> While the typical prison has reduced populations by approximately five percent, the typical jail, which can collaborate more easily with police and courts to expedite releases and limit admissions, has reduced populations by approximately 30%.

According to another study produced for the Commission, jail populations began to decline immediately after the issuance of the White House Coronavirus Guidelines on March 16, reaching a 31% average decrease by May 2.<sup>90</sup> The reductions were achieved through reduced admissions as well as releases. There were significant differences among jurisdictions in terms of decreases, which ranged from nine to 66%. Between May 2 and July 20, local jail populations rose again, by 12%, on average, despite steep increases in new COVID-19 cases.

The initial jail population declines were accompanied by changes in the makeup of those populations.<sup>91</sup> As the population dropped, there were increases in the proportion of people

**FIGURE 7: CORONAVIRUS IN U.S. JAILS**



Source: COVID-19, Jails, and U.S. Public Safety, Report to Commission by Anna Harvey and Orion Taylor. Data as of July 20, 2020.

in jail who were booked on felony charges, who were male, who were 25 or younger, and who were Black. These changes in the population composition persisted even as jail populations began to rise. After March 16, people released from jail were 34% more likely to be booked on felony charges and had been detained for 71% longer than those released just

prior to that date.<sup>92</sup> Despite these changes, there were no differences in 30-, 60-, or 90-day rebooking rates for those released after March 16, compared to those released earlier. Generally, rebooking rates for jailed individuals released after March 16 remained below pre-pandemic rebooking rates. This was true for felonies as well as misdemeanors.<sup>93</sup>

According to an American Probation and Parole Association survey, 67% of responding community supervision agencies reported having crisis protocols in place prior to the pandemic.<sup>94</sup> Nearly all (90%) established some form of teleworking, although less than half (46%) indicated they had adequate resources to do so. The vast majority of agencies suspended in-office reporting (95%), in-person group activities (87%), and home or field contacts (73%). In addition, many agencies suspended arrests for technical violations (66%).

## RECOMMENDATIONS

- 1. Prevent COVID-19 infections from entering facilities.** Prevent COVID-19 infections from entering correctional facilities by testing, educating, quarantining, and cohorting new admissions; halting/limiting transfers, admissions, in-person visitation, and the use of non-essential staff; and diverting individuals from incarceration for minor technical violations of supervision, minor offenses, failure to appear, non-payment of fines and fees, inability to pay small bail amounts, and other infractions.
- 2. Control COVID-19 infections within facilities.** Control COVID-19 infections inside correctional facilities by implementing a broad testing protocol that includes 100% entry testing, molecular testing of all symptomatic patients and contacts, and screening of all asymptomatic individuals using rapid antigen tests on a frequent basis; implementing a personal protection plan for incarcerated people, including education, free and increased access to soap, hand sanitizer, masks (surgical masks wherever possible), cleaning supplies, and air purifiers, if possible; limiting movement of staff and incarcerated individuals within facilities; subject to public safety considerations, releasing individuals to house arrest or electronic monitoring, paroling at-risk (medically compromised/elderly) individuals when appropriate, and significantly and safely reducing incarcerated populations overall.
- 3. Prevent COVID-19 infections from reentering communities.** Prevent COVID-19 infections from entering the community from a correctional facility by testing and quarantining incarcerated people prior to release; conducting regular testing and health screening of staff; and partnering with community-based organizations to facilitate release and reentry.
- 4. Prevent COVID-19 infections in community supervision.** Prevent COVID-19 infections by reducing in-person contact between community supervision officers and supervised people; providing service and supervision to support successful reentry and limit reoffending by limiting or modifying drug testing; limiting standard conditions;

reducing in-person check-ins by expanding phone and video meetings as needed; and terminating supervision for lower-risk individuals nearing the end of their supervision terms.

5. **Protect rights, dignity, and well-being.** Protect the rights, humanity, dignity, and well-being of incarcerated and supervised people and staff members by using technology such as free and low-cost phone and video calls to allow incarcerated people to maintain access to counsel, family, and friends; to the extent possible, providing on-line alternatives to in-person educational and vocational programming; ensuring that quarantine conditions are not the same as solitary confinement/punitive segregation; providing healthy cooked meals and healthcare for incarcerated people, and waiving all co-pays for COVID-related illness; communicating with victims of crime/survivors and partnering with advocacy organizations; and providing staff with COVID-specific sick time separate from normal PTO/sick time to encourage symptomatic staff to stay home. Ensure that these principles of respect, dignity, and well-being guide the implementation of all other recommendations.
6. **Execute a communications plan.** Implement a COVID-19 transparency and communications plan that provides for regular reporting to state or federal supervisory agencies of the number of infections and fatalities among incarcerated or supervised people and staff and their medical status; the specific status of agency action; and compliance with [CDC recommendations](#). The communications plan should also provide for the prompt notification of family and counsel of an incarcerated person's infection.

## COMMUNITY-BASED ORGANIZATIONS

Community-based organizations include reentry and rehabilitation programs, victim services organizations, community-led violence prevention efforts, and other groups engaged with justice-involved populations.

Formerly incarcerated people face significant barriers as they seek to resume life outside prison or jail. These include finding employment, securing housing, receiving substance use disorder (SUD) and behavioral health treatment, resuming education, and obtaining health care. These barriers have become even more formidable during the pandemic, given rising unemployment and support services strained by growing need. Typically, reentering citizens rely on community-based organizations to help them transition from prison.

Community-based organizations also supply vital assistance to victims and survivors of crime and abuse, including protecting their safety and security, facilitating their understanding of and participation in criminal or other legal processes, helping them recover from victimization and trauma, helping them collect restitution, and responding to other needs. While some victim service providers are embedded with criminal justice agencies, such as prosecutors' offices and probation and parole agencies, many are nongovernmental and based in the community.

Nongovernmental organizations in the community also play an important role in preventing and reducing crime, violence, and justice system involvement. At-risk youth and adults often need help with avoiding poor choices that lead to delinquent or criminal behavior and involvement in the criminal justice system. This assistance can come in the form of mentoring, tutoring, training, education, SUD treatment, counseling, and other forms of support. For example, street outreach organizations engage those at the highest risk for gun violence, offering to mediate disputes and provide other services in order to prevent violent crime. Many of these organizations are now performing a dual function, preventing violence and promoting public health in disadvantaged neighborhoods where both crime and COVID-19 are concentrated.<sup>95</sup>

While little data is available, community-based organizations have been under significant pressure due to COVID-19, the economic downturn, and increased demand for services, among other factors. Unlike law enforcement, courts, and corrections, community-based organizations are rarely permanent and must be periodically reauthorized.<sup>96</sup> Discretionary community-based programming is frequently the first to be cut, but evidence-based community programming often has a large return on investment and is inexpensive in comparison to traditional crime responses. In addition, community-based approaches promote holistic, comprehensive approaches to public safety and may improve the perceived legitimacy of anti-crime efforts.

## RECOMMENDATIONS

1. **Communicate credible information.** Communicate updated CDC guidelines related to personal protective equipment, physical distancing, and remote work measures, and, when/if they become available, COVID vaccines, with an approach based on education and awareness, as opposed to enforcement.
2. **Adopt evidence-based, data-driven practices.** Use evidence-based practices to ensure effectiveness. For instance, with regard to SUD treatment, consider the [American Medical Association](#)'s guidelines for addressing opioid use disorder during a pandemic, as well as other evidence-based policies.<sup>27</sup>
3. **Collect and release data.** Collect community data on COVID-19 infection, morbidity, and mortality, along with information concerning race, ethnicity, and gender. Engage in real-time evaluation of community-based programming, piloting such evaluations in the communities most impacted by the pandemic.
4. **Support reentry.** Support individuals returning home after incarceration through investments in reentry employment and training; transportation and housing; programs that help individuals maintain access to benefits such as SNAP and Medicaid during transitional employment and economic recovery; and by enabling incarcerated and formerly incarcerated people to qualify for stimulus checks.
5. **Develop new partnerships.** Develop partnerships with state and local public health authorities, medical experts, universities, and other trusted health sources.
6. **Leverage trusted voices.** Explicitly and intentionally leverage trusted voices in impacted communities (such as historically Black colleges and universities and nongovernmental organizations led by people of color) to maximize impact, engage in data collection and program evaluation, and communicate effectively.

## Next Steps

With these recommendations, the Commission has provided criminal justice leaders with concrete guidance on immediate measures to contain COVID-19 and improve readiness for future public health emergencies. These cross-cutting and sector-specific recommendations will help inform the efforts of policymakers and practitioners as they work urgently to protect their staff, their communities, and the populations they serve.

The Commission's next task will be just as important: using lessons learned from the coronavirus pandemic to envision a stronger, healthier, and more equitable criminal justice system in a post-pandemic world. Which policies and practices should change, particularly with respect to the churn of people in and out of jails and prisons? Have inequities and racial disparities in the system been exacerbated by the pandemic, and if so, how can they best be addressed? Should new reliance on technology in courts, policing, and other sectors continue? What are the most important research questions that should be answered? By the end of 2020, the Commission will release its final report addressing these and other critical questions.

COVID-19 has been an unexpected, and most unwelcome, visitor. Moving forward, the Commission will continue to work to ensure that the pandemic's heavy toll drives us toward a system that produces better safety, justice, and health for all.

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