

COVID-19 and Mass Incarceration

Innovations and Solutions at a Glance

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FJP's COVID-19 and Mass Incarceration resources offer insights into trends and promising practices among reform-minded prosecutors responding to COVID-19, as well as answers to frequently asked questions. This “Innovations and Solutions at a Glance” document highlights lifesaving policies implemented by elected prosecutors across the United States, with a focus on decarceration.

Why do elected prosecutors need to take action in response to COVID-19?

Elected prosecutors have an obligation to protect the safety and wellbeing of *everyone* in their community, including those behind bars. The crisis created by overcrowded prisons, jails, and detention facilities poses a grave threat to the health of not only people who are incarcerated, but also the staff who come and go from these facilities, their families and the broader community.

As gatekeepers to the criminal justice system who have broad discretion over who comes into the system, how cases are disposed of, who is incarcerated, and for how long people will remain behind bars, prosecutors can play a critical role in shrinking the number of people currently incarcerated and thereby minimize the threat of rapid infection in densely populated prisons and jails. And as elected leaders in their communities, prosecutors can use their “bully pulpit” to advocate for more holistic and effective system-wide responses by calling on – and working with – other elected officials and policymakers to take action.

How have reform-minded prosecutors been responding to COVID-19 so far?

Reform-minded prosecutors are working to reduce the number of people entering the justice system, reduce the number of individuals behind bars, and improve conditions for people who remain incarcerated.

Narrowing the Front Door

Prosecutors are working to stem the flow of people entering the criminal justice system right now, by declining or deferring new prosecutions and working with police to limit arrests. For example:

- **King County (Seattle), WA Prosecuting Attorney Dan Satterberg** is [only filing charges](#) for serious felonies.
- **Baltimore City, MD State's Attorney Marilyn Mosby** ordered her prosecutors to dismiss charges against, and immediately release, all individuals charged with drug

- offenses and [several enumerated less serious offenses](#) that pose no threat to public safety.
- **Cook County (Chicago), IL State's Attorney Kim Foxx** [stopped prosecuting](#) low-level narcotics cases.
- **20th Judicial District (Boulder), CO District Attorney Michael Dougherty** is [working with police](#) to limit arrests for low-level property and drug crimes.
- **Washington, D.C. Attorney General Karl Racine** [supported the Metropolitan Police Department's move](#) to use citation and release processes for most misdemeanors and worked with the court and police to limit the circumstances under which young people are taken into custody.
- **Kings County (Brooklyn), NY District Attorney Eric Gonzalez** announced that his office would [decline to prosecute](#) low-level offenses that do not threaten public safety.
- **Philadelphia, PA District Attorney Larry Krasner** [called on](#) the Philadelphia Police Department to limit arrests; shortly thereafter Commissioner Danielle Outlaw instructed officers to delay arrests for low-level offenses.

Reducing the Jail Population

Prosecutors are reducing the number of people who are incarcerated. To do so, they have focused on **reducing the number of people detained as they await trial** in local jails due to an inability to afford bail and **identifying other groups of people who can be safely released**. These efforts are having a significant effect on jail populations. For example:

- **San Francisco, CA District Attorney Chesa Boudin** implemented a variety of responses, including immediately releasing those with 60 days or less left on their sentence in certain kinds of cases, reviewing cases of all detained people over age 65 for possible sentence modifications, and only filing new cases where immediate intervention is required. As a result, the jail population [declined nearly 25%](#) during the month of March, and [40%](#) since January.
- **Ingham County (Lansing), MI Prosecuting Attorney Carol Siemon** worked with stakeholders to [release people](#) held pretrial, as well those held on civil non-payment of child support, serving weekends, and on work release. These efforts resulted in a **36% reduction** in the jail population in three weeks, and the jail is at its lowest capacity since the 1980s.
- **Ramsey County (St. Paul), MN County Attorney John Choi** worked with local stakeholders to obtain court orders [enabling the release](#) of all those considered medically vulnerable or serving certain low-level offenses from jail, resulting in a **50% reduction** in the local jail population in two weeks.
- **Durham County, NC District Attorney Satana Deberry** is [working with defense attorneys and judges](#) to identify and evaluate for possible release people who are held pre-trial and do not pose a public safety risk, are over the age of 60, or have health conditions. As a result, the local jail population **dropped by approximately 10%** in one week.
- **Albemarle County (Charlottesville), VA** [jail population is down 28%](#) – and to the lowest point in two decades – after **Commonwealth's Attorney Jim Hingeley** worked with local stakeholders, including **Charlottesville, VA Commonwealth's Attorney Joe**

Platania, to identify people held in jail who have completed the majority of their sentences and can be safely released.

Promoting Prison Decarceration

Prosecutors are also **playing a role in reducing prison populations** through their own actions and by encouraging their governors and state correctional departments to take action. For example:

- **New Jersey Attorney General Gurbir Grewal** [worked with other stakeholders](#) to obtain a court order authorizing release of as many as 1,000 people held in local jails, including those serving sentences for low level offenses or probation violations.
- **Baltimore City, MD State's Attorney Marilyn Mosby** and **Kauai County, HI Prosecuting Attorney Justin Kollar** [sent letters](#) to their governors petitioning for release of specified categories of individuals from state prisons, such as those who are over 60 or have health vulnerabilities.
- **Durham County, NC District Attorney Satana Deberry** is [working with local organizations](#) to identify people who were convicted and are currently serving sentences who can be safely released from prison, including those at high risk of illness because of age, those who were convicted of certain types of crimes, and those who are scheduled to be released in the near future. In appropriate cases, her office is consenting to sentence modifications, and is also reviewing modification petitions filed prior to the pandemic to identify more candidates for release.
- **King County (Seattle), WA Prosecuting Attorney Dan Satterberg** supported a recently passed [bill](#) which will allow prosecutors in Washington State to petition a court for review of past sentences and resentencing in the interests of justice.

How are these prosecutors working to protect the safety and rights of people who remain incarcerated?

Promoting Humane Conditions of Confinement

Although prosecutors generally do not have direct control over conditions in jails and prisons, many reform-minded prosecutors are influential criminal justice stakeholders and are using their elected position to advocate for the humane treatment of people who remain incarcerated during this crisis. They are advocating for access to quality healthcare, adequate cleaning supplies, and a humane plan for housing those behind bars who do become ill. They are opposing facility-wide lockdowns, which simply exacerbate trauma, anxiety, and tension. And, importantly, when visitation must be limited, they are calling for facilities to provide free and frequent phone call and videoconferencing opportunities.

Reform-minded prosecutors are also working to ensure that constitutional rights are not sacrificed in this time of crisis. As courts close, these prosecutors recognize the need to ensure that speedy trial guarantees are not eroded and that a defendant's right to counsel and to be present at critical stages of the case are protected. For example:

- **Suffolk County (Boston), MA District Attorney Rachael Rollins** is [working with the defense bar](#) to ensure they have appropriate access to their clients, and with members of the community to ensure that they are able to connect with their loved ones.
- The California Judicial Council [issued a rule](#) preserving the right of criminal defendants to appear in person, when they wish to do so, at critical stages of their proceedings.

What should all prosecutors be doing to respond to COVID-19?

Fair and Just Prosecution published a [joint statement, signed by over 30 elected prosecutors around the country](#), outlining key actions that prosecutors can take – either to change their own practices, or by working in collaboration with other justice system stakeholders – to respond to COVID-19. Key recommendations include:

- Adopting cite and release policies for any offense that poses no physical threat to the community.
- Releasing individuals who are being held because they cannot afford cash bail, unless they pose a risk to public safety.
- Identifying and releasing elderly people, those with medical conditions that make them more vulnerable to infection, and people within six months of completing their sentence or incarcerated on technical violations of probation and parole, unless doing so would pose a serious public safety risk.
- Ensuring humane conditions of confinement – including good medical care and maintaining access to and connections with counsel as well as family and loved ones.
- Preserving the constitutional rights of individuals involved in the criminal justice system, including access to counsel and the right to a speedy trial.

What are some challenges prosecutors face in responding to COVID-19?

While prosecutors have discretion to change how their offices charge and prosecute new crimes, identifying and releasing people who are already incarcerated generally requires cooperation and collaboration with other stakeholders such as the judiciary, police, public defenders, and corrections departments.

Some criminal justice stakeholders have argued that vulnerable people are safer in jail. This simply is [not the case](#) – jails and prisons struggle to provide sufficient care in the best of times, and they are not equipped to deal with a major public health crisis, particularly one that is exacerbated by close quarters and unsanitary conditions. These and other pockets of resistance will need to be overcome if efforts by elected prosecutors to address the pending crisis are fully to take hold.

Does public opinion support changing criminal justice system responses in response to COVID-19?

Yes. A national [survey](#) found that 66% of likely voters, including 59% of those who identify as “very conservative,” said that elected officials should be considering measures to reduce

overcrowding in prisons and jails as a response to coronavirus. It also found that a majority of voters supported releasing people who are within six months of completing their sentence, releasing at-risk populations, and reducing unnecessary jail admissions.

What impact have these reform efforts had on public safety?

These reform efforts do not appear to have had any adverse impact on crime rates. While isolated examples of reoffending may arise, they must be weighed against the dire public health and safety threat resulting from maintaining the status quo and exposing millions of individuals living and working in prisons and jails to the rapid spread of COVID-19 in those facilities.

- Data drawn from NYC, the most heavily impacted US city, indicates that crimes outside the home, including gun crime, [have decreased](#) in the wake of stay at home orders; as families and intimate partners spend increased time together in quarantine, however, there has been a [surge in domestic violence](#) across the globe.
- Crime is also [declining in several other major US cities](#), including San Francisco, where it dropped 42% the week that a shelter-in-place order was issued and even while the local jail population declined [nearly 25%](#) in March.