

A Ticking Time Bomb: the Impact of COVID-19 on the Incarceration System

Advocacy, Policy, and Politics

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Spring 2020

ACKNOWLEDGMENTS

We extend our deepest gratitude to Starting Over Inc. for welcoming us into their organisation over the course of the semester, and especially want to thank Executive Director Vonya Quarles and Policy Associate Jordanna Wong-Omshe for the incredible mentorship they offered us throughout this experience.

We would also like to offer a heartfelt thank you to Jemma, Tessa, and Jessica, for their continued support and fantastic teaching over the course of the semester. The CASA Program has been the source of more academic stimulation, deep personal reflections and human connectedness than either of us could have hoped for.

Finally, we would like to thank our CASA classmates who have helped bring joy and laughter to our tumultuous journey this semester. We would like to extend a special thank you to Sandra, Indira, Keely, and Professor Jemma who provided thoughtful and insightful feedback throughout the writing process. You folks are the best.

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INTRODUCTION

The Mission and Structure of Starting Over Inc.

Starting Over Inc. is a 501(c)(3) non profit corporation based in Corona, Riverside County, and it has served Los Angeles and Riverside Counties since 2004. The organisation strives to provide a “holistic approach to reentry,”¹ and specializes in providing transitional housing and reentry services, while fostering self-reliance and helping to build strong communities through personal recovery, civic engagement, leadership development and economic advancement. According to the organisation’s mission statement, Starting Over Inc. aims to show people “the way out.” the organisation helps low-income men, women and children transition from homelessness by addressing the immediate root causes of the “associated cycles of poverty, drug abuse, mental illness, and recidivism.”² Since its inception, Starting Over has helped over 900 men, women, and families. 

As an umbrella organisation, Starting Over Inc.’s various branches provide an extensive array of assistance: peer support, tutoring services, path to Staffing Employment and Economic Development (SEED), family reunification support, post-conviction relief, legal document aid, and 2020 Census outreach.

Riverside All Of Us Or None (RAOUON) represents Starting Over Inc.’s public policy advocacy branch, advocating for the rights and the needs of currently and formerly incarcerated population in their efforts towards successful reentry. RAOUON is a local chapter of All of Us Or None, a national grassroots civil rights organizing initiative of prisoners and formerly incarcerated people uniting to end mass incarceration and the discrimination faced by formerly incarcerated people. The thought process underlying their work is explained by the Executive Director of Starting Over Inc., Vonya Quarles: “if I’m not hurting anyone today, [...] I don’t feel that I should be facing barriers that impact my life, my children’s’ lives, my grandchildren’s’ lives.”³

As interns for Starting Over Inc., we were both able to observe and experience the organisational culture of care that is practised by the staff. The members of Starting Over Inc.

are diverse in their life experiences but are all system-impacted either directly or via a family member, and many of the organisation's volunteers are individuals who went through the Starting Over programs themselves and subsequently became alumnis. The range of ages within the staff is large and enables intergenerational knowledge surrounding the impacts of incarceration. Because the members of the organization are intimately connected to the work they are doing and have a plethora of lived experience knowledge, they are able to effectively advocate for and aid the communities they target.

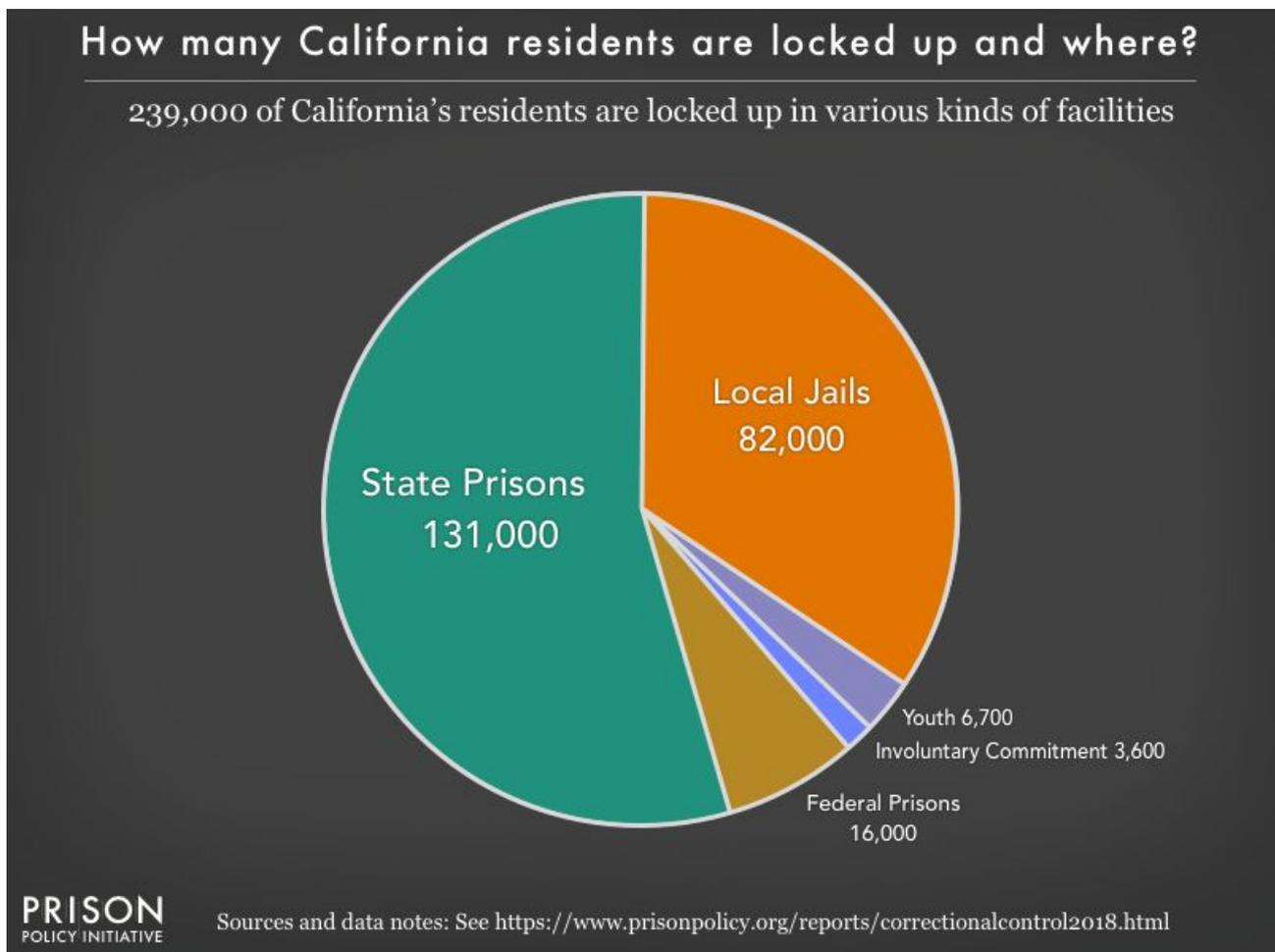
The Face of Incarceration in California's Counties

According to the Prison Policy Initiative,⁴ California has an incarceration rate of 581 per 100,000 people (including prisons, jails, immigration detention, and juvenile justice facilities). The state locks up a percentage of its population over 4 times higher than that of  Canada or the United Kingdom. As of December 31, 2016, the United States Department of Justice reported that “the California prison population was 130,390, located in 35 prisons, with a staff of 3,152 employees and a budget of \$1.06 billion,” and that local county jails represented an additional 114 carceral facilities in the state.⁵

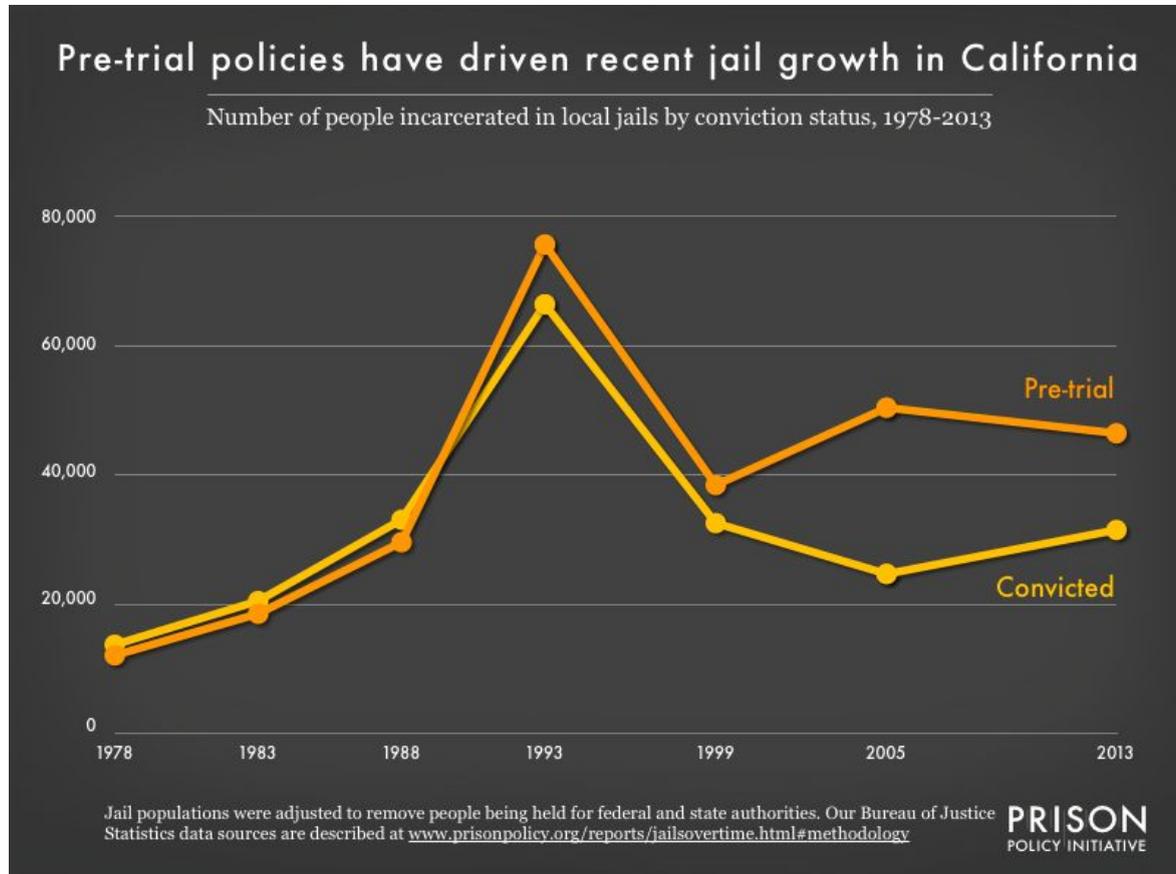
No differently than on the national scale, the Prison Industrial Complex (PIC) in California disproportionately affects black and brown bodies. In 2017, the year of most recent data collection, the imprisonment rate for African American men in California was ten times that of white men, and the imprisonment rate for Latino men was close to three times that of white men.⁶ Women of color are also drastically overrepresented in the state prison population:⁷ 25.9% of women currently incarcerated by the state are African American, whereas they represent only 5.7% of the state's adult female residents. This disproportionate representation of communities of color within the world of incarceration particularly informs the work of organisations akin to Starting Over Inc: organisations that work in diverse local counties such as Los Angeles and Riverside, where communities of color account for nearly $\frac{2}{3}$ of the overall county populations.⁸

As demonstrated in the figure below from the Prison Policy Initiative, the critical role served by local jails in the state of California is not to be overlooked. A considerable number

of California's incarcerated population is held in local facilities operated by county authorities. Jails and prisons are different correctional facilities as jails are locally-run correctional institutions that typically hold incarcerated individuals who are awaiting sentencing or trial, as well as people who have been convicted of a misdemeanors and were given a sentence of a year or less. Prisons, on the other hand, state or federally operated correctional facilities generally hold incarcerated individuals who have sentences that are longer than a year.



Jails are one of the components of California's PIC that Starting Over Inc., and especially Riverside All Of Us OR None, target most in their public policy advocacy work. As shown in the following figure by the Prison Policy Initiative, amongst those incarcerated in local jails, an exceedingly large percentage are being held pre-trial and have not been convicted of any offense.



Research Focus

The landscape of incarceration has been thoroughly transformed by the breakout of COVID-19. “Prison health is public health,”⁹ because “The risk of prisoners transmitting disease is high as they are in constant contact with the general community through visitors, staff and because a considerable proportion of them can cycle in and out of prison.”¹⁰ The outbreak of the virus suddenly gave rise to a variety of policy responses on the issue of

incarceration at the local, state, federal and international level, leading to the emergence of a much-needed public debate on the rights and well-being of incarcerated individuals. There have also been new protocols put in place favoring alternatives to incarceration in lieu of sending citizens to correctional facilities. In recent years prior to the outbreak of COVID-19, this debate and these measures have been largely absent.

It is therefore critical to assess how community organisations and policy groups doing anti-incarceration work can position themselves to further their cause under these new circumstances, both in order to fight back against the unjust conditions in which many incarcerated populations have been left, and in order to capitalize on the alternatives to incarceration which have emerged for others.

We have accordingly chosen to design our research project to reflect the pressing issue of the times in the world of incarceration: COVID-19. Our research focus sought to highlight the variety of advocacy, political, and policy responses to the plight faced by all incarcerated individuals in the U.S amidst this pandemic.

LITERATURE REVIEW

Our literature review seeks to explain the landscape of COVID-19 and the U.S. incarceration system, specifically focusing on the current state of advocacy, policy and politics in response to the pandemic. In order to achieve this, we start by reviewing the specific risk factors that make carceral facilities particularly susceptible to the ravages of epidemics, thereby illustrating the urgency of the matter at hand. We then discuss the advocacy efforts that have influenced public opinion and mobilized political action on COVID-19. We also explore the local, state and federal responses to the exponential crisis faced by incarcerated populations. Finally, we focus on the international response to COVID-19's impact on the incarceration system and the larger human rights issue at stake in this crisis, as well as the ethical implications of political and media responses to it. The literature review concludes with an evaluation of the literature gaps we identified. 

The Amplified Dangers of COVID-19 in Correctional Facilities

As of April 21st, 2020, “4,893 inmates had been diagnosed with COVID-19 [...] and 88 had died. Staff members accounted for 2,778 cases and 15 deaths.”¹¹ As the world is battling a global health crisis, many correctional facilities are facing their own unique wars.

As scholarly work indicates, a variety of converging factors make carceral facilities particularly susceptible to the devastation caused by epidemics. Long before the outbreak of the COVID-19, many correctional facilities in the U.S. were considered seriously overcrowded. As *New York Times* staff writers state, “Correctional facilities are frequently crowded and unsanitary, [...] social distancing is impossible and sanitizer is widely banned because of its ability to be turned into alcohol.”¹² Incarcerated individuals lack the freedom to

social distance, avoid crowds, or disinfect to their desire. Historically speaking, the health profiles of incarcerated individuals have also consistently been underreported and/or poorly tracked. A study that was published in 2004 states that “Scarce information [...] exists on the overall infectious disease profile of inmate population.”¹³ Like many other places in the U.S. today, the statistics that are being reported out of carceral facilities are “almost certainly an undercount,” given a lack of testing and the virus’s rapid spread.¹⁴

This is a health and moral disaster. Incarcerated populations have experienced and continue to experience numerous factors that make them more susceptible to the propagation of the virus and make them more likely to die from it. Correctional facilities are “filled with an aging population of often impoverished people with a history of poor health care, many of whom suffer from respiratory problems and heart conditions.”¹⁵ The risk factors that are operative before incarceration include “low socioeconomic status, poor access to health care, poorly sanitized living conditions, high-risk sexual behaviors, and injection drug use,” and “following incarceration, additional risk factors, including psychological stress, crowded living conditions, sexual assault, poor ventilation systems, and increased concentration of immunosuppressed cohabitants, may all contribute to a further increase of infectious disease risk.”¹⁶

Preventing and limiting the spread of the coronavirus is exceptionally important in jails, because the populations there are more migratory than populations in prisons. Flagg and Neff articulate this point: “Jails are transient. Most there have been charged with crimes but not convicted. Many are waiting to pay bail to be released until trial or can’t afford bail. The rest have misdemeanor convictions with sentences counted in months instead of years.”¹⁷ As a result, “both in large jails located in virus hotspots like New York and Seattle and in smaller jails across the country, the churn of people moving in and out threatens to accelerate the spread of the disease, endangering the incarcerated, the staff and the larger community.”¹⁸

Advocacy Efforts:

Incarcerated folks are acutely aware of the dangers they are facing. This has led “to hunger strikes in immigrant detention centers and demands for more protection from prison

employee unions.”¹⁹ In the face of COVID-19, many policy groups and anti-incarceration advocacy organisations such as the Reform Alliance, the Marshall Project and the Brennan Center for Justice have published reports emphasizing the growing threat to incarcerated populations, and have worked to mobilize the public. The Reform Alliance organised a virtual calling campaign entitled “Tell your Governor to take action to prevent a prison pandemic!” in order to spread the impact of their new SAFER plan advocating for “smart alternatives to incarceration” and large scale prisoner releases.²⁰ Advocates have been hard at work, pressuring officials to take fast and sweeping measures. For instance, on April 7th, “in the midst of a ban on gatherings in Chicago, protesters drove around the jail, honking horns and demanding the release of their loved ones.”²¹

Local, State and Federal Responses Throughout the U.S.

Albeit slow and late, political decisions started emerging for helping contain the virus in carceral facilities. Some state and local officials spontaneously and sporadically started taking action to address the threat the pandemic posed to their incarceration facilities.

Since March 12th, the legal system in Cleveland has been cutting the county jail population in half, to about 1,000 people.²² In New York, by April 5th, “Mayor Bill de Blasio said the city had released at least 650 people [...] from Rikers Island, the city’s main jail complex” and “hundreds more were under review for possible release.”²³

Throughout the country, prosecutors have also been trying to reduce the amount of individuals coming into the system and being sent to live behind bars. In Baltimore, the chief prosecutor Marilyn Mosby “announced that she will decline to prosecute certain low-level cases, including trespassing, drug possession, prostitution and urinating in public, during the coronavirus outbreak.”²⁴ Explaining her reasoning, Prosecutor Mosby stated:

We believe that no longer prosecuting individuals for substance-use disorder or sex work — that’s not going to increase crime. The thing that we’re concerned with is public safety, and we don’t want to prescribe someone with substance-use disorder to a death sentence.”²⁵



Announced on March 26, 2020, Attorney General William Barr finally released a memo on April 3rd encouraging early release programs and triggering a provision of the federal stimulus law signed by President Donald Trump last month to expand the group of inmates eligible for early release.²⁶ This memo came after a prolonged period of alternating silence and pushback from the federal government on this critical issue, with President Donald Trump notably responding to state releases of prisoners by saying “We don’t like it. The people don’t like it and we’re looking to see if I have the right to stop it in some cases,” as ABC News reported. Devolving federal power to state and local facilities, on April 3rd, Barr ordered local officials to enforce these releases. However, Barr only ordered an assessment of at-risk nonviolent inmates, particularly those who have served much of their sentence, “but it was unclear how many would qualify under a complex list of criteria.”²⁷ The federal memo has accordingly received considerable backlash from social justice advocacy groups such as the Marshall Project:

a large part of the federal prison population will be excluded from consideration for home release because the plan bars anyone convicted of a violent crime from participating in the program — and because the system the Bureau of Prisons (BOP) will use to adjudicate risk (an algorithm called Pattern) is heavily biased toward white people, according to a DOJ review.²⁸



The Marshall Project states that in this DOJ report²⁹ “Only 7 percent of black men in federal prisons would be considered low-risk enough to get out using PATTERN—compared with 30 percent of white men, according to an internal assessment conducted by the Justice Department last year.” Additionally, Mr. Barr also cautioned that the review would not result in immediate transfers because of the need to ensure that prisoners would not spread the virus once freed,³⁰ making this federal memo an overall flawed effort towards achieving the release of incarcerated populations.

Moreover, on the issue of quarantining within incarceration facilities, the Bureau of Prisons (BOP) announced late on April 1st that all individuals in federal carceral facilities would be under quarantine for 14 days.³¹ However being quarantined in a prison or jail is fundamentally different than being quarantined at home, both for psychological and sanitary reasons. Jails are often overcrowded and dependent on communal spaces for operation,

making it much harder to execute social distancing. Living in a prison cell does not compare to living in a furnished home with loved ones: the levels of comfort are worlds apart. Additionally, this federally-mandated quarantine only applies to federal facilities, and as a result, different policies are being enacted across the U.S. Williams and Ivory write that “some facilities have placed inmates with fevers in solitary confinement, while some federal prisons and certain state facilities have kept prisoners locked inside their cells for more than 22 hours a day to restrict movement and possible transmission. Still others are shipping prisoners who test positive to hastily established micro prisons.”³² Complicating the issue, “Barr has argued ‘many inmates will be safer in BOP facilities where the population is controlled and there is ready access to doctors and medical care.’”³³

International Responses to COVID-19 and the Political Stakes

Because many organizations across the world are aware of the petri-dish-like qualities of carceral facilities, several international institutions have spoken out about the larger human rights issue which is at stake during the COVID-19 pandemic. The Commissioner for Human Rights under the Council of Europe came out with a statement that demanded governments “ensure that during the COVID-19 pandemic[,] the human rights of all those who remain in detention are upheld.”³⁴ In this statement, Commissioner Strasbourg also stated that any restrictions placed on incarcerated individuals need to be “non-discriminatory, necessary, proportionate, time-limited and transparent.”³⁵ Incarcerated individuals “should continue to have access to information, legal assistance and independent complaint mechanisms.”³⁶ As in-person visitations become impossible, the Commissioner for Human Rights urges member states to protect incarcerated populations’ fundamental right to contact by organising extended access to other types of communication. Additionally, because not all freed individuals have guaranteed access to housing on the outside, “those released from detention who need support should be given appropriate access to emergency accommodation and basic services, including health care.”³⁷

The political stakes are extremely high for the management of this global crisis, and policy decisions on incarceration are fertile ground for public controversy. Arimatéia da Cruz and Rich speak to the politically fraught complications that arise when governments allocate

resources to incarcerated individuals; those who do provide resources “could be seen as being ‘soft on crime’ and may have to ‘justify’ providing scarce health care resources to populations that some may deem ‘undeserving.’”³⁸ On the other hand, “because prisoners are disproportionately affected by infectious disease, prevention and treatment are moral and public health imperatives. No population should bear a higher burden of disease or be unfairly targeted or excluded in surveillance and treatment efforts.”³⁹

Media Responses to the Crisis

Akin to the political sphere, there are also high stakes and many ethical implications of the media portrayal of incarcerated populations’ experiences of the COVID-19 crisis. As of now, mainstream media have continued to center its reports on the growing threat the pandemic poses to the incarceration system around specific cases of prominent individuals who are currently incarcerated. A US News piece focused on such people: “among those pleading for compassionate release or home detention are the former head of the Cali drug cartel [Gilberto Rodríguez-Orejuela], President Donald Trump's former personal attorney Michael Cohen, Ponzi schemer Bernard Madoff,” and “the once high-flying lawyer” Michael Avenatti.⁴⁰ Similarly, BBC News focuses on Harvey Weinstein in its discussion of the release of individuals from Rikers Island prison, and also mentions the “high-profile convicts” that are Cohen, Madoff and Rodríguez-Orejuela.⁴¹ Many news outlets are fixating on the big names, instead of in-depth focus on the policies drastically affecting large numbers of incarcerated people and the human rights which are being violated.

Literature Gaps

As this is being written, the U.S. is only in its second month of orchestrating federal and state policy reactions to the COVID-19 crisis. As a result, while there are past studies that have looked at how infectious diseases proliferate in carceral facilities, there is little to no academic research published on the current pandemic. In the specific context of COVID-19, there is currently no large body of analytical work reporting much more than the daily changing facts and policies. Nor have we found any pieces discussing the societal and ethical contention points underlying the current situation, or ones that look ahead towards the

theoretical long-term effects of the pandemic on the American criminal justice system. Furthermore, there is little research being done that spotlights the voices and personal experiences of incarcerated people and families during COVID-19. Additionally, although there is an abundance of academic work being published on the impending economic crisis, we were unable to find any that spoke directly to how the economic crisis is projected to affect the criminal justice system. As a result, advocates of prison reform are faced with much uncertainty regarding what funding and reform opportunities for alternatives to incarceration will present themselves after the crisis. 

The Path Forward in the Aftermath of COVID-19

Considering how much is changing everyday in the U.S. and around the world in response to the coronavirus pandemic, there is actually a fair amount being done in response to the critical threats facing our incarceration system. That being said, action is far from being comprehensive throughout the U.S and the situation is deeply chaotic; there is no clear leadership on this issue from the White House, and some states have yet to make any significant releases or procedural changes when it comes to prosecution. After the peak of COVID-19 has been surmounted, there will be two drastically different paths to follow: we could set into motion sweeping progressive prison reform across the country, or the pandemic could lead to the long-term implementation of inhumane policies such as the eradication of in-person visitation for incarcerated populations. Complicating this situation is the federalist nature of the U.S., as these trajectories and future realities may be entirely dependent on geography.

Despite the potential for this crisis to end in the large-scale implementation of regressive social policies for incarcerated folks, that is not the only option. Academic research can be mobilized by policy groups and anti-incarceration advocates to try and uncover how they can use this situation as a springboard for further criminal justice reform. Working towards broadening popular understanding of who “vulnerable” individuals who deserve care and release are, is a specific aspect of this situation which holds strong potential for the future. Similarly, academic work can seize on this new reality where “police departments are incarcerating fewer people, prosecutors are letting non-violent offenders out early and judges are postponing or finding alternatives to jail sentences” in order to enrich

and enlarge the narrative in favour of alternatives to incarceration.⁴² Furthermore, the care for incarcerated people's lives and wellbeing which is currently being demonstrated in the U.S. and across the world should prompt us to question why the new standard could not be the new normal, and suggests to us that there could be a movement for advocating for more humane treatment of incarcerated people, always.

METHODS

We have designed our research project to reflect one of the most pressing issues for carceral facilities today: COVID-19. Our focus is on highlighting the variety of advocacy, political, and policy responses to the plight faced by all carceral facilities in the U.S amidst this pandemic. The questions guiding our research are the following: (1) how are prison and jail releases being organized on local, state and federal levels? (2) how can the processes that have led to releases of prisoners and new policing policies be used to advocate for a more humane vision of incarceration in the future?

We gathered data from policy memos, public advocacy reports, and campaigns, as well as ongoing media coverage. At the same time we noted the absence of academic sources on the subject, and try to consistently inform our research with personal accounts of those incarcerated individuals who are impacted by the ravages of the virus. It is especially important to us to highlight the experiences of those who are currently incarcerated or have lived through changes to their sentence due to COVID-19 responses. We aimed to provide research that is considerate of first-hand knowledge of this topic and does not employ a harmful outsider-looking-in perspective. We will do this by including sources that have interviews with individuals who were incarcerated when COVID-19 hit correctional facilities.

As a part of this research, we completed a small-scale comparative case study on the responses to the COVID-19 pandemic in Riverside County and Los Angeles (LA) County of California. We decided to focus on Riverside County because Starting Over Inc. is based there, so we have a baseline knowledge of its responses because of our internship. We chose to compare Riverside County with LA County because of the geographic proximity, demographic similarities, and magnitude of response differences. In each respective county, we studied how the Sheriff, the Board of Supervisors, and the community organizations responded to the outbreak. By comparing these responses, we aimed to compile information to illustrate the factors and tools that lead to effective further anti-incarceration efforts.

As we conduct this research there are several aspects of our own identity that are informing our methodology. We are both white, cis college-educated females who have never personally spent time incarcerated. Therefore, we are not able to fully contextualize and understand the extent of the impact of coronavirus on carceral facilities as well as individuals who are more personally connected to the justice system.

Because this research is related to a highly infectious disease, we did not conduct any in-person studies. The majority of the data that we collect, is from online sources. Additionally, because we are currently in the middle of the pandemic, there is an abundance of reports and journalism about the matter, but little to no academic scholarship on the matter. This will directly affect the type of information we collect and how we collect it. Although we do not imagine that this paper will provide any revolutionary solutions, we hope to write a piece that amplifies the concerns of those most marginalized by the current situation and outline some of the best practices that carceral facilities and community organizers have access to moving forward. With this as our aim, our intention is to have our research as asset-based as possible, focusing on the progressive movements happening in the U.S. and suggesting how those policies could spread both geographically and temporally.

FINDINGS

ANALYZING THE PATTERNS IN POLICY RESPONSES:

Competing institutions, rationales, and processes for releases

Although several counties and a few states had already taken measures towards decreasing prison populations amid the threat of COVID-19, the Federal Memorandum issued by Attorney General William Barr on March 26th, 2020 provided basic guidelines and criteria to be implemented in the process of organising carceral releases.

The memo outlined the following list of (“non-exhaustive”) discretionary factors to be considered while assessing which inmates were eligible for home confinement:⁴³

- the age and vulnerability of the inmate to COVID-19
- the security level of the facility currently holding the inmate
- the inmate’s conduct in prison
- the inmate’s score under the “risk-assessment” algorithm PATTERN⁴⁴
- whether the inmate has a demonstrated and verifiable re-entry plan, which will prevent recidivism and maximise public safety
- the inmate’s crime of conviction, and assessment of the danger posed to the community (some offenses, such as sex offenses, will make an inmate ineligible for home detention).

In a subsequent Department of Justice press conference, the Attorney General synthesized this list of criteria by stating that the new policy would prioritize “at-risk” and “non-violent” inmates, and particularly “those older prisoners who have served substantial parts of their sentences and no longer pose a threat and may have underlying conditions that make them particularly vulnerable.”⁴⁵

The best interest and safety of carceral populations is put forward as the rationale behind this policy directive, recognizing that the Bureau of Prisons has an “obligation to protect [...] the people in BOP custody.”⁴⁶ The stated concern is that of questioning where inmates might be “safer,” and ensuring that prison administrations “protect the health and safety” of inmates.⁴⁷ Attorney General Barr also justified his office’s memorandum by explaining that “of the 146,000 inmates currently serving time in federal prison facilities, one third are believed to have pre-existing medical conditions and roughly 10,000 are over the age of 60 years old.”⁴⁸ These inmates are thus particularly susceptible to the threat of COVID-19. Towards this stated purpose of prioritizing inmates’ health, the federal list of discretionary factors to be considered for home confinement eligibility also emphasize the need for “verification that the conditions under which the inmate would be confined upon release would present a lower risk of contracting COVID-19 than the inmate would face in his or her BOP facility.” The logic behind the Department of Justice’s actions is clearly also that of “protect[ing] the health and safety of BOP personnel.”⁴⁹

Finally, the Attorney General’s Office mentions the need to balance these pre-existing rationales with the Bureau of Prisons’ duty to ensure public health and public safety: “while we have an obligation to protect BOP personnel and the people in BOP custody, we also have an obligation to protect the public,” and accordingly “we cannot take any risk that will contribute to the spread of COVID-19 or put the public at risk in other ways.”⁵⁰ However this federal memorandum does not see these two interests as excluding one another, and other judicial institutions have similarly put forward a holistic picture of public health rights being interconnected with inmates’ health rights in justifying their support for early release policies.

On April 6th, the Judicial Council of California adopted a set of emergency rules among which was stated the need to lower jail populations. Chief Justice Tani G. Cantil-Sakauye justified these new policies by stating that “I’m confident we can preserve the rule of law and protect the rights of victims, the accused, litigants” alike, and that “no need and no right will be overlooked” in the Council’s efforts to “balance the health and safety needs of their local community with the civil and constitutional rights and liberties of

individuals and groups from our communities.”⁵¹ In this pandemic, the fundamental priority is “to minimize illness and death,”⁵² and that implies taking measures to protect all lives.

When it comes to the enactment of decarceration policies, many states followed the pattern of reasoning put forward by the federal government. The fact that an inmate is non-violent and within a short amount of time from completing their sentence were the principal requirements put forward by the governors or Department of Corrections of the states of Washington,⁵³ Kentucky,⁵⁴ Virginia, Maryland, Ohio, Colorado, Massachusetts, California, Georgia, Utah, Rhode Island, and North Dakota.⁵⁵ The given meaning of “early” release was understood in various ways by these different states: the policy responses ranged from considering eligibility for early releases for those non-violent inmates who were to be released from their facilities within 4 years (Rhode Island), within 1 year (Virginia), within 9 months (Pennsylvania), within 180 days / 6 months (Colorado, Georgia, California, Kentucky), within 4 months (Maryland), within 90 days (Utah), within the end of the months of March or April 2020 (North Dakota).⁵⁶



Only a few states deviated from the standard eligibility factor of non-violence. For instance, the state of Michigan announced it would consider the eligibility for early releases of “nonviolent offenders who are older than 60 with health issues, though no offenses are off-limits.”⁵⁷ Pennsylvania’s policy response outlined the possibility of early releases for nonviolent inmates within 9 months of the end of their sentence, or at-risk inmates within 12 months of the end of their sentences.⁵⁸ Illinois facilitated the enforcement of early releases through a modification of its standard policy regarding the awarding of days of earned sentence credit for “good conduct”, pursuant to the Illinois Unified Code of Corrections, 730 ILCS 5/3-6-3(a)(3).⁵⁹

On the other hand, early releases have also been opposed by many state politicians or carceral administrations – either through overt statements or negligent lack of action. In these cases, public safety and inmates’ healths and rights are seen as two interests which are inherently irreconcilable, and the safety of those on the outside should be prioritized over forgiving those on the inside who have yet to fulfill their debts to society.

In Oregon, Governor Katie Brown has stated that she is opposed to any large scale early release of inmates amid COVID-19, and will only proceed to consider a few specific case-by-case releases of critically at-risk inmates.⁶⁰ The reason behind this policy choice is the continual pressure received by Governor Brown from the Oregon District Attorney Association, who opposes a mass release of “convicted criminals” because it is potentially damaging to crime victims and public safety, despite overwhelming health concerns within carceral facilities.⁶¹

Alternatively, some states whose governors have officially approved early release policies are stalling their proper implementation. In Louisiana for instance, as of April 30th the review panel created to evaluate qualifying inmates had voted against early releases for almost 80% of the 249 inmates currently being considered for furlough from prison.⁶² Originally, upon announcing their coronavirus furlough plan, the Louisiana Department of Corrections had estimated about 1,200 inmates would be eligible. Similarly, as of April 28th in New Jersey, less than 3% of the people considered eligible for release under Governor Murphy’s April 10th executive order have effectively been released from prison to emergency medical-home confinement.⁶³ At the federal level, the Bureau of Prisons has equally stalled the rightful implementation of Attorney General Barr’s memorandum of March 26th, 2020.

Indeed, over the three weeks after the release of the memo, the Federal Bureau of Prisons’ early release results were minimal; over the entire country, “the number of people allowed to serve the rest of their sentence in home confinement went up by only 1,027 under the new guidance set out by the attorney general—about half of 1 percent of the more than 174,000 people in the bureau’s custody at the start of the month.”⁶⁴ Among those 1,027 prison-to-home transfers, many were not in fact approved by the Bureau of Prisons but ordered by judges. Federal prosecutors recently unsuccessfully opposed the release of an inmate from Oakdale prison in Louisiana, arguing in court that the Bureau was taking sufficient care of its prisoners within its facilities, although the death toll of COVID 19 within Oakdale prison had already climbed to 5 inmates. The guidelines that the BOP initially posted for families and incarcerated folks, on April 14, 2020,⁶⁵ were retracted just days later. “Some prisoners and their families have said people have been placed in quarantines for release, only to be sent back to the general prison population a few days later” and as a result



of these deeply confusing maneuvers, “some federal judges have even resorted to ordering prison officials to define their policy in writing.”⁶⁶ Ultimately, the Chief Federal Public Defender in the New York City area, David Patton, says that the BOP’s lack of proper implementation is willful and principled: “They don’t want to let people out. It’s not in their DNA.”⁶⁷

FURTHERING THE CHANGE :

Utilizing COVID-19 policy processes to advocate for a more humane vision of incarceration in the future

The landscape of incarceration has been thoroughly transformed by the breakout of COVID-19, and the field of community organising around anti-incarceration work has been fundamentally altered by the pandemic. It is therefore critical to assess how community organisations and policy groups can position themselves to further their cause in these new circumstances, both in order to fight back against the unjust conditions in which many incarcerated folk have been left by policy failures, and in order to capitalize on the emergence of a new incarcerated rights discourse and alternatives to incarceration.

Anti-incarceration advocacy currently has a window of opportunity for national criminal justice reform to be achieved. Today the BOP is facing a political reckoning in Washington. As we have described, the Bureau failed to act swiftly and decisively in the face of the pandemic, and it is now facing a fair amount of backlash due to the fact that many see the considerable federal prison outbreak as a failure on the behalf of the director of the BOP. Indeed, on May 1st, “The Bureau of Prisons (BOP) [...] said that 70% of the inmates the Bureau has tested have come back positive for COVID-19.”⁶⁸ And while the BOP adamantly contends that this percentage is not representative of its entire federal prison population, the data that has been collected paints an unflattering image for the Bureau.

This scandal has garnered political attention and prompted swift legislative reaction on both sides of the political aisle. Republican Congressman Fred Keller from Pennsylvania

introduced a bill that proposes making the director of the BOP Senate-confirmed. Keller said the following:

After years of out-of-control spending and actions that run counter to institutional safety, especially during the COVID-19 pandemic, it is abundantly clear that increased oversight of the BOP is long overdue. While the wardens and staff at BOP facilities have been nothing short of heroic in their service, the same cannot be said for BOP leaders in Washington.⁶⁹

The confusion caused by the BOP's erratic decisions have also prompted a bipartisan request from Sen. Chuck Grassley, an Iowa Republican, and Sen. Dick Durbin, an Illinois Democrat for an investigation of the Bureau to be conducted.⁷⁰ The two Senators asked for "the Department of Justice's Inspector General to investigate whether the Bureau is quickly transferring all vulnerable inmates to home confinement, and whether the department has been transparent and accurate when communicating with Congress and the public."⁷¹

Congressional attention to the issue of incarceration must be capitalized upon by anti-incarceration advocates, to enable advocacy for a post-COVID-19 reform agenda: fighting for in-person visitation, achieving bail reform, and changing the narrative of incarceration and rehabilitation.

Top priority is ensuring that the rights temporarily removed from incarcerated populations during the crisis, such as in person visitation (IPV), are fully restored to them in a timely manner. While some states are choosing to reopen some non-essential businesses and lift their stay at home orders, many estimates from public health experts predict that we will be continuing to deal with "periodic resurgences of disease over the next 2 years."⁷² If these estimates are correct, it is not certain that carceral administrations will have the incentive to reinstate in-person visitation anytime soon. Currently, "Prisons in every state now ban regular visitors," in "15 states even lawyers are blocked," and staff and volunteers who provide "education, therapy and other services" are also being asked to stay away.⁷³ Therefore, legislators, judicial actors, and advocacy groups need to ensure that efforts to reinstate IPV are accelerated when it is deemed safe, that COVID-19 is not used as a reason to evaporate policies that safeguard IPV, and that all incarcerated populations have access to free video

calling in this time. The Bureau of Prisons stated that in federal prisons, “starting on April 9, all phone calls from inmates would be free of charge and the monthly call limit has been increased to 500 minutes.”⁷⁴ The extension of this policy to all correctional facilities could prove to be of immense benefit to the mental health of incarcerated populations and their families. Therefore, community based advocacy groups should take action to pressure their legislators to implement similar policies.

Moreover, beyond working to reinstate visitation rights to their pre-COVID-19 status, advocacy efforts should also seek to extend COVID-19 discourse on social distancing. The period of isolation and generalized social distancing induced by the outbreak of COVID-19 has prompted this nation, and the world, to deeply reflect on the fundamental importance of social relations and connectedness. The realities of social distancing have drastically affected every individual's social life, wellbeing, and general mental health. Anti-incarceration advocacy should seek to capitalize on this new-found popular awareness to point out that to some communities, social distancing is no novelty. Social distancing is the plight that is handed to every individual who gets sent to a carceral facility where in-person visitation is not provided. The hardship felt by most American families in having to connect with their loved ones in a solely virtual manner is the same one faced by thousands of incarcerated individuals and their own families in non-pandemic times.

In her bill proposition SB1157, that sought to implement mandatory in-person visitation in the state of California in 2016, State Senator Holly Mitchell emphasized expert findings stating that video “[v]isiting cannot replicate seeing someone in-person, and it is critical for a young child to visit his or her incarcerated parent in person to establish a secure attachment.”⁷⁵ Research from the U.S. Department of Justice, National Institute of Corrections, has further found that when a person is incarcerated, even for a short period of time, family contact and in-person visits are crucial to maintaining family stability, reducing disciplinary infractions and violence while incarcerated, reducing recidivism, increasing chances of obtaining employment post-release, and facilitating successful re-entry.⁷⁶

Looking forward, advocacy groups should seek to aggressively employ these arguments, framing them within the COVID-19 debate to emphasize the importance of

human connectedness in times of social distancing. Through this, advocacy groups can fight for the wide-spread expansion and development of visitation rights across carceral facilities, something which Starting Over Inc. is taking the lead on in Southern California.

Another carceral policy issue which has gained momentum due to COVID-19, and should thus be targeted by community groups in future advocacy efforts, is how of the dynamics of cash fuel mass-incarceration. As Udi Ofer, director of the ACLU's Justice Division, pointed out to *ABC News* during a recent interview, "the majority of those cases [people in jail amid COVID-19] are people who just can't afford cash bail. As a national average, that's about 66% of the jail population, but in some places, it's like 80% or even higher."⁷⁷ In a recent COVID-19 Alternatives to Incarceration Town Hall organised by community groups Riverside All Of Us Or None and the Justice Table in Riverside County, panelist Terrence Stewart, from Californians for Safety and Justice (CSJ), stated that keeping people in jail who cannot pay cash bail during this pandemic is nothing short of "criminalizing poverty."

The narrative of cash bail has to be seen as necessarily interwoven with that of many other American socio-economic inequalities being exposed by this pandemic. As *Vox* reporter Anna North stated, although some such as New York Gov. Andrew Cuomo (D) may have referred to COVID-19 as the great equalizer, it is astoundingly clear that the virus "is exacerbating the inequalities in American society, taking a disproportionate toll on low-income Americans, people of color, and others who were already marginalized before the crisis hit."⁷⁸ *The Economist* furthers this assessment of COVID-19's impact on inequality by stating that "the already yawning divides in American society are widening," noting "the near-immunity of college educated families" as opposed to the disproportionately "large negative consequences for less-educated families" which is in direct repeat of the Great Recession.⁷⁹ As *The Economist* reveals, "workers who are younger, poorer or lack a university education have disproportionately lost their source of income," and amid this crisis, the Peterson Institute for International Economics think-tank has drawn an estimated unemployment rate of 20% by early summer - a number not seen since the Great Depression.⁸⁰



The health and economic crisis provoked by COVID-19 has propelled a new wave of public and media recognition of American socioeconomic inequalities. The lines that slice our society into different economic stratas, provide us with different workplace protections, and determine access to health care coverage are thickening and darkening. For advocacy groups moving forward, it is important to specifically frame cash bail as another undue burden on the poorest classes, just as losing your job to the crisis is, or not being able to pay rent. California's Judicial Council operated in such a way in a recent set of 11 temporary emergency rules approved on April 6th 2020.⁸¹ In these measures, the Judicial Council set bail statewide at \$0 for misdemeanors and lower-level felonies to "safely reduce jail populations" and suspended eviction and foreclosure proceedings to protect Californians from losing their homes during the COVID-19 pandemic. Looking forward, the question advocacy groups should aggressively pose to the public, the media, and elected leadership, is "should low-income be the reason anyone stays in jail?"

Beyond policy fights related to incarceration, community work in this field should look to reorient current COVID-19 conversations towards the larger narrative of anti-incarceration. Many policy actors have spoken of incarcerated populations as belonging to various distinct categories: "vulnerable" inmates, inmates who have "served their time," "violent" inmates, dangerous "criminals", etc. Under this one-dimensional conceptual framework, some inmates happen to be perfectly rehabilitated individuals fit for early release, while others are violent criminals forever unsuited to rejoin society. Clear efforts at fear mongering and simplifying can be observed in the language used by Attorney General Barr, when he wrote in an April 6th official memorandum that "controlling weight should be given to public safety, and under no circumstances should those who present a risk to any person or the community be released. [...] COVID-19 presents real risks, but so does allowing violent gang members and child predators to roam free."⁸²

This reasoning is highly questionable. First of all, vulnerable people may be individuals who have been violent in their past. Practically speaking, the policy guideline solely considering non-violent inmates for home confinement eligibility is at times proving unworkable in the current crisis, and is preventing large pools of incarcerated individuals from the chance of being considered for early release. In Cook County, Sheriff Tom Dart

recently stated that enacting a coronavirus furlough plan has been “beyond complicated” due to the fact that “roughly 75% of [the] jail's 4,800 inmates at the time had been arrested on suspicion of violent crimes and could not be released into the community.”⁸³ Moreover, we should work to rebut the notion widely adopted by most decision-making authorities in their policy responses: an inmate whose original conviction was for a violent offense should be instantly removed from being considered for early release, no matter their age, no matter their health status and the risk that COVID-19 would pose to them, and most importantly no matter how close they are to the end of their sentence. This holding implies that some crimes are being adjudicated long after an inmate’s courtroom sentencing, not by a jury, not by a judge, but by correctional administrators. Behind this complete aversion to grant early releases for violent inmates, is the underlying assumption that those individuals should never come out. The opinion demonstrated by most of the policy responses we have analyzed is that ultimately these individuals will always pose a threat to the community; in their cases there can never be any truth to the mantra that a sentence well-served translates into rehabilitation and community reentry.

On the other hand, COVID-19 also prompted a welcome development in the national incarceration debate; an emerging recognition of the fact that political leadership has a duty - and we all have a duty - towards our incarcerated communities. As an example of this at the federal level, Attorney General William Barr stated “We take seriously our responsibility to protect those who are in our custody.”⁸⁴

Considering large sections of the incarcerated population to be beyond rehabilitation, yet stating that we have a duty towards them, are two moral judgments which cannot be reconciled. Anti-incarceration advocacy must point out the egregious inconsistencies in this nation’s perspective on incarceration, and provoke a general debate on what results are truly sought from the mass incarceration of thousands of human lives. Capitalizing on the increased mediatic focus on the world of incarceration amid COVID-19, future advocacy efforts must aggressively push for a drastic change in narrative regarding the prison-industrial complex.

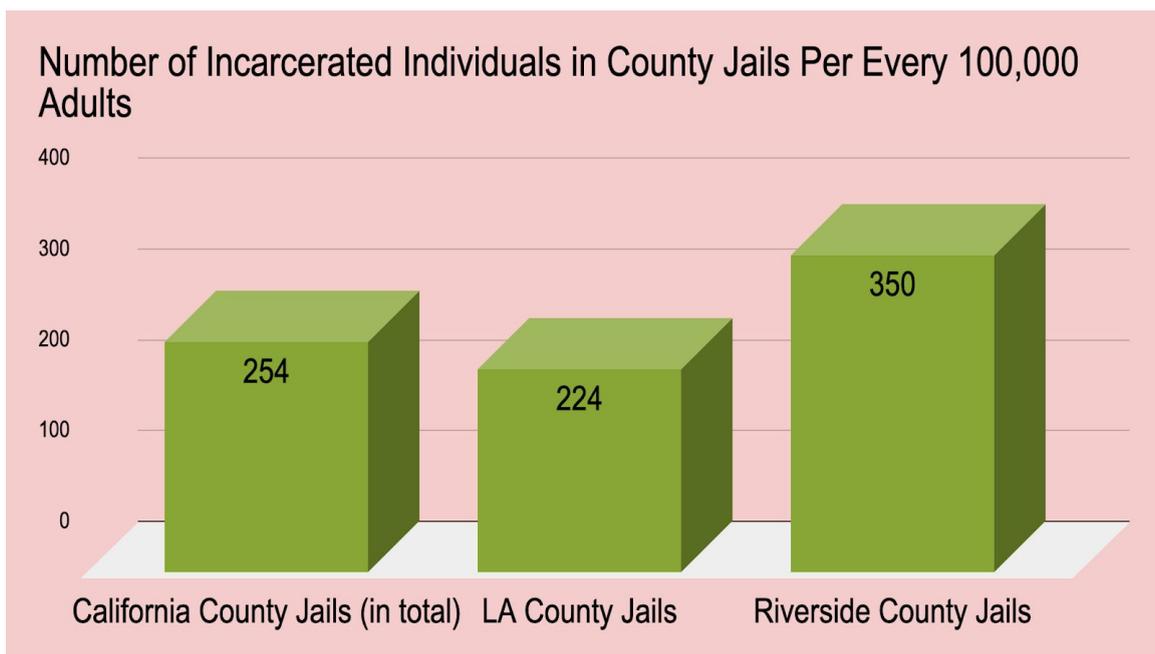
In undertaking the future advocacy efforts outlined above, raising the voices of incarcerated populations themselves is a responsibility we have towards those individuals who are segregated from the rest of society, as well as political debates relating to their own lived experiences. It is also through the telling of stories from inside populations that non-system impacted people and advocacy groups learn of the true conditions within facilities. The Marshall Project currently has a collection of personal stories from individuals who are facing COVID-19 while inside carceral facilities. For instance, an incarcerated individual at the Federal Correctional Institution in Oakdale, Louisiana reported that “he and his fellow prisoners are being ‘jammed together like sardines.’ Another alleges he and other inmates are ‘coughing all night long’ in their bunks, and a third says he wakes up ‘face-to-face’ with two other men incarcerated in a 10-by-15-foot cell.”⁸⁵ Stories like these reinforce the possibility of mobilizing change through our judicial system: these quotes from three incarcerated men were in the court documents filed by the ACLU that seeks “a temporary restraining order against the federal Bureau of Prisons’ plan to blunt the spread of a coronavirus outbreak at the Oakdale prison.”⁸⁶

CASE STUDY

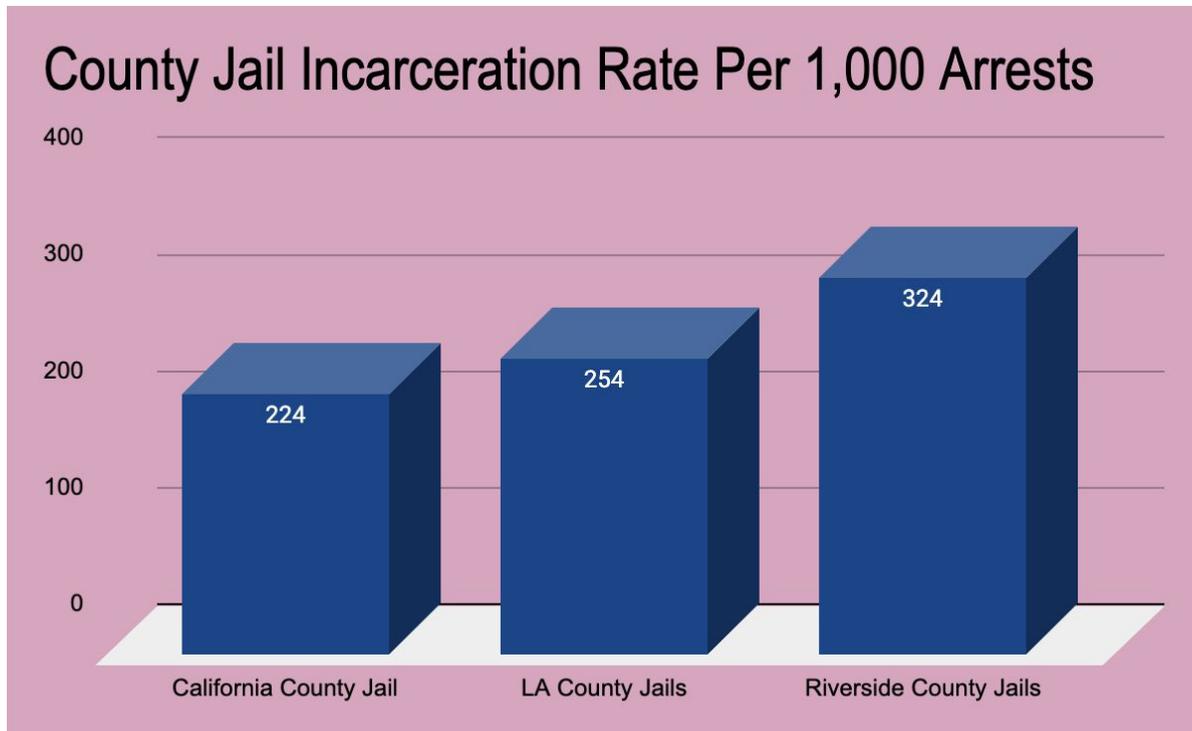
Through our experiences as Public Policy Interns for Starting Over Inc. we were exposed to the actions of public officials in response to COVID-19. As we worked to support the organizing efforts of our internship coordinator, Jordanna Wong-Omshehe, we became acutely aware of the differences between Los Angeles County’s and Riverside County’s responses to COVID-19 in relation to their incarcerated populations. At this time, Los Angeles County has been far more responsive to the pandemic and has demonstrated more concern for its jail population than Riverside County.

Before we dive into analysis, there are some notable differences between the Riverside County jail system and LA County jail system that warrant discussion. When COVID-19 was first detected in these jail systems there were about 17,000 people incarcerated in LA County jails and 3,240 people incarcerated in Riverside County jails.⁸⁷ This large population discrepancy is notable, but is undoubtedly influenced by the difference

in county population. As of 2019, there were 2.471 million people living in Riverside County⁸⁸ and 10.04 million living in LA County.⁸⁹ According to data collected in 2016, the county jail incarceration rate for Riverside County is considerably higher than the state level,⁹⁰ with 324 adults incarcerated per 1,000 adult felony arrests, as compared to 254 adults for all of California’s county jails. Riverside County’s total incarceration rate per 1,000 adult felony arrests is also notably higher than LA County’s. LA County’s is 224 adults incarcerated per 1,000 adult felony arrests.⁹¹ This data is shown in the graph below.



In the state of California, for every 100,000 adults ages 18-69, 254 are incarcerated in a county jail.⁹² In Riverside County, for every 100,000 adults ages 18-69, 350 are incarcerated in a county jail.⁹³ In LA County, for every 100,000 adults ages 18-69, 224 are incarcerated in a county jail.⁹⁴ Therefore, while there are less people in Riverside County and less people in Riverside County jails, the County has higher rates of incarceration, both in total and in jails, specifically. This data is illustrated in the graph below.



LOS ANGELES COUNTY:

The efforts to fight against a COVID-19 outbreak in the LA county jail system began in the beginning of February, which is early when compared to the rest of the U.S. The director of LA County correctional health, Jackie Clark, said her staff as of February was “‘planning for a ‘worst-case scenario’ involving rapid COVID-19 spread in the jails.”⁹⁵ According to Clark, the most effective way to decelerate the spread of the virus is “to release as many people in custody as possible.”⁹⁶ In addition to depopulating correctional facilities, Los Angeles County is working to decrease its intake. Clark states that “Our intake has been a third of what it normally is.”⁹⁷ Clark and her staff are using 42 single beds for patients who

are symptomatic and waiting for results and will be using a different area for positive cases.⁹⁸ Protocols are currently in place for incarcerated individuals who do not feel well: “the inmate dons a surgical mask, and the deputy in charge wears an N95 mask, while a nurse comes to the site.”⁹⁹

Advancing the efforts of the director of LA County correctional health, community organizers in Los Angeles worked together to advocate for more humane policies via the legal system. On Friday, April 24th, a coalition of prisoner rights organizations “sued Los Angeles County and its sheriff’s department, for allegedly failing to protect jail inmates from the threat of the coronavirus.”¹⁰⁰ This action represents two significant actions taken in LA County: (1) coalition building amongst similarly-minded community members and (2) organizing change via legal pathways. The coalition, titled, *JusticeLA COVID-19 Response*, “is a diverse team of more than 40 local and statewide organizations dedicated to fighting for justice and protecting the most vulnerable among us.”¹⁰¹ The coalition’s focus is on “ensuring Los Angeles leaders take immediate action to protect the incarcerated population, employees, and communities from the threat of COVID-19.”¹⁰²

The class-action lawsuit, filed in federal court, “seeks to require the Los Angeles County Sheriff’s Department to comply with guidelines issued by public health agencies to cut down the spread of COVID-19 in the jails and release inmates who are at high risk for serious illness or death in the event of infection due to age and/or underlying medical conditions.”¹⁰³ Importantly, the plaintiffs in this litigation are nine vulnerable incarcerated individuals in LA County.¹⁰⁴ In the lawsuit, the plaintiff alleges that “in Men’s Central Jail and other county facilities, the majority of inmates are forced to live in the same room, where dozens of triple bunk beds are placed less than a few feet apart.”¹⁰⁵ Emphasizing the gravity of the situation in local jails, the plaintiffs cite a study recently created by the American Civil Liberties Union (ACLU) and researchers from Washington State University, University of Pennsylvania, and University of Tennessee. This study found that “COVID-19 could claim the lives of approximately 100,000 more people than current projections stipulate if jail populations are not dramatically and immediately reduced.”¹⁰⁶

To build support for the lawsuit as well as community awareness, JusticeLA has developed a social media campaign. They are using the #SuingToSaveLives to unite all of their digital efforts and escalate their advocacy efforts.¹⁰⁷ 

The Southern California Chapter of the ACLU, on March 12, 2020 sent an email to the Sheriff Alex Villanueva, Assistant Sheriff Bruce Chase, Director of Inmate Correctional Health Jackie Clark and the Board of Supervisors regarding the COVID-19 Policy in Los Angeles County Jails. In the letter, Peter Eliasberg, *Chief Counsel*, and Jacob Reisberg, *Jails Conditions Advocate*, ask to meet with the individuals to whom they directed the letter, in the next two weeks to discuss their plans for the prevention and management of COVID-19 in the Los Angeles County Jail system. In this letter, they address several issues that were not discussed in their March 6th press release. They ask for an immediate release of those assessed to be particularly vulnerable to the virus, as well as individuals who have 30 days or less in their sentence as well as the assurance that individuals in custody are not held past their scheduled release¹⁰⁸ The letter also recommends that “LASD should cite and release all those who are eligible pursuant to Penal Code Section 853.6, rather than booking them and potentially introducing COVID- 19 into the jail system.”¹⁰⁹ Other demands include providing incarcerated individuals with adequate hygiene supplies and informations about the virus, only uses of treatments that are in compliance with “scientifically-based public health protocols,” a development of plans for jail staff, plans for protecting the most vulnerable, and a rigorous collections of data so that the virus is tracked in the jails.¹¹⁰

In the U.S., sheriffs are typically elected and have a broad range of powers. In many states, their power goes relatively unchecked, as they have no supervisors that they report to. “In California, the elected sheriff is enshrined in the state constitution. As a result, county supervisors cannot easily oversee the sheriff in the way that mayors and councils can hold appointed police chiefs accountable.”¹¹¹ As is the case in many places in the U.S., in LA and Riverside County, the Sheriff oversees jails. Therefore, sheriffs play an incredibly important role in the responses to COVID-19 in jails. LA County Sheriff Alex Villanueva, in a public statement, recognized the threat jails in his county were facing, stating “Our population within our jails is a vulnerable population just by who they are, where they are located, so we're protecting that population from potential exposure.”¹¹²

The Sheriff Department in LA has taken precautions to slow the spread of COVID-19 in its jails and its community. In March, the Sheriff released “1,700 people who were nearing the end of their short sentences,” and according to the data released by the “county public defenders’ office, Los Angeles County, California, has reduced the jail population by over 5,000 people (about a 30% decrease) “over the past several weeks.”¹¹³ According to Los Angeles County Public Defender, Ricardo D. García, “Our jail started at the beginning of this with about 17,000 people. That's across all the custody facilities under sheriff control, and now we're down to just slightly above 12,000.”¹¹⁴ Many of these releases are a result of court approval to release individuals who were being held in pretrial, are older, or have pre existing medical conditions that make them more vulnerable to death by COVID-19.¹¹⁵ In LA County, the average daily number of arrests is 300 and as of March 17th, that number had dropped to about 60 because of efforts to reduce arrests in the form of “cite and release practices, delaying arrests, and issuing summons.”¹¹⁶ That marks a 80% decrease in arrests in LA County.

The Los Angeles County Public Defender has been quite active in his response to COVID-19, arguing for many releases in the county’s jail system. Garcia has focused on getting “pre-plea individuals to be released from sheriff custody,” arguing that these are “individuals who have just been charged and are presumed innocent” and “our criminal justice system is based on the foundation that the person is presumed innocent, and that is until the allegations are proven.”¹¹⁷ To strengthen his bail arguments, Garcia emphasizes the reality imposed by COVID-19, stating ““We say, ‘Look, this person is high-risk,’ or ‘If it weren’t for their poverty, they should be able to bail out, and COVID is an additional factor for the court to consider.’”¹¹⁸ Discussing how he pushed large-scale releases through, he said, ““We created large groups of individuals that the [District Attorney] and our office agreed on, gave them to the court, and the court signed a larger release order.””¹¹⁹ Garcia’s goal is to employ

the safest and most efficient and caring way to get individuals out into the communities, back into their homes, so that we reduce the risk of infection and ultimately reduce the risk of a greater public health impact when a sick individual needs to be released from jail.¹²⁰

Garcia is advocating for the health and safety of community members, both the ones inside and the ones who are not.

Along with significantly cutting its jail population and reducing arrests, the LA County jail system has been testing its population with a rigor that has yet to be seen in most other parts of the U.S. In mid-April, officials “started mass testing men who share housing facilities.”¹²¹ It is likely that these protocols are related to the fact that as of April 21st, “California State Prison, Los Angeles County facility had the second largest prisoner outbreak, with 58 inmates and 15 employees testing positive for the virus.”¹²² Beside this county facility, most other medical staff in correctional facilities in the U.S. are primarily testing individuals with COVID-19 symptoms.¹²³

RIVERSIDE COUNTY:

Unlike the LA County jail system, which has an updated website that anyone can visit, to see the breakdown of coronavirus cases amongst staff and the incarcerated population, the Riverside County jail system has provided no systematic breakdown of the cases at each of the jails it runs. On May 5th, data was released that stated that 151 individuals in Riverside County Jails had tested positive for COVID-19.¹²⁴

Prior to this update, the last time the department released new figures on infected employees was April 17th, and at that time 71 people had tested positive for the virus.¹²⁵ Juxtaposed against the transparency of the LA County’s jail system, Riverside County is doing little to keep its constituents informed about the health in its jail systems. In mid-April, a federal judge stated that the department “failed to demonstrate that it is currently taking adequate precautions.”¹²⁶ As things currently stand, it appears as though the judge’s statement has had little effect on increasing the department’s transparency; “The Sheriff’s Department has not made public the plans it submitted after the judge’s order.”¹²⁷ And while the department said that it was already “releasing low-level offenders to ease overcrowding, including those who would otherwise qualify for compassionate release or who are at high risk of contracting the virus” in an earlier court filing, it is still largely unclear what criteria are being used for the release.¹²⁸



Within the county, there seemed to be little coordination between public officials when COVID-19 first started affecting incarcerated populations. Graham Donath, the president of the 115-member Riverside County Criminal Defense Bar Association, “said he learned of the number of inmates and staff infected as of April 11 through the news media, and not the county.”¹²⁹ This statement suggests that there was little communication on the behalf of the Sheriff’s Department to impacted parties. On April 16th, the “Central District of California Chief Judge Virginia A. Phillips ordered the Riverside County Sheriff’s Department to meet with prison advocates and draft a plan that meets agreed-upon conditions for healthcare in the county’s jails.”¹³⁰ This order follows Judge Phillips ruling that the Sheriff’s Department failed to answer questions about the conditions in its jails during the coronavirus pandemic.¹³¹ Instead of suggesting early releases to fix the overcrowding in county jails, Attorneys for the Prison Law Office suggested accelerating the opening of the John J. Benoit Detention Center in Indio and moving people there.¹³²

On April 17th, Judge Phillips ordered a mediation with the county and Prison Law Office. Although “there was no indication that the county agreed during the mediation session to immediately transfer any inmates or release any from custody” on April 24th, the county gave a document to the Prison Law Office.¹³³ In this plan, the Sheriff’s Department intended efforts to combat COVID-19 were described. The department promised the following:

[1] More information on the inmate population, including identifying those who may be at a higher risk of severe illness from COVID-19 because of factors such as age and underlying health conditions.

[2] [to provide] On every Monday, Wednesday and Friday, the number of COVID-19 tests on inmates; the number of confirmed cases among inmates, including names, booking numbers and jail locations; the number of confirmed cases among jail staff; the number of inmates who are on quarantine or medical isolation and their locations; the number of inmates hospitalized because of COVID-19; and the number of deaths among inmates and staff.¹³⁴

This being said, we have yet to discover any reports that suggest that these promises are being met.

While some abolitionist advocates would likely argue that Sheriff Alex Villanuena has not done enough to ensure the safety of incarcerated folks, it is unlikely that they would find Riverside's Sheriff Chad Bianco's actions more satisfactory. "Early on, Sheriff Chad Bianco generally spurned the broad early release orders adopted by other law enforcement agencies to slow the spread of the virus behind bars."¹³⁵ On April 17th, Sheriff Bianco released a video over Youtube that expressed his opinions on the nationwide pattern of releases.¹³⁶ In this video, Bianco expresses his contempt for the enactment of policies that he believes endanger the Riverside County community. He said that

[O]ur judicial system implemented a zero- bail policy for misdemeanor and felony charges. What this means is that we will no longer be able to hold criminals when arrested, and potentially hundreds of current inmates could be released who have already been held on orders of local judges. This was extremely reckless in that it not only encourages criminal behavior, it also limits law enforcement's ability to keep you safe.

Bianco asks the viewers of the video to do several things that he believes are necessary to keep the community safe: (1) reach out to state lawmakers and local politicians and "demand they do everything in their power to stop this reckless release of inmates back into our neighborhoods" (2) share this video on social media. Explaining his call to action, Bianco stated "The last thing we need is for this crisis to be used to further a political agenda of decriminalization, anti-incarceration, and regulations that undermine and compromise the safety of the public."

Thus, it likely comes as no surprise that despite the county's large jail population, Riverside has not altered its jail policies or released inmates early. This decision rests in large part in Sheriff Bianco's hands. He has stated that "Unlike other jurisdictions, I have no intention of preemptively releasing inmates out of fear something may or may not happen," and "I feel very strongly that the inmates we have remaining in custody pose a much greater risk to public safety than the risk this virus poses to them while they are in custody."¹³⁷ As things stand, Sheriff Bianco has the final word. In response to a lawsuit from the ACLU, the state of California insisted that "it cannot usurp the power of local authorities and order the release of more incarcerated inmates and juvenile wards from custody due to the coronavirus threat."¹³⁸

In a news conference on April 2nd, Bianco spoke of the dangers of contracting the virus in jails, stating “If you don't want to contract this virus while you are in custody, don't break the law.”¹³⁹ Oscar Holguin, a man who was released from the Riverside County jail system on April 23, 2020, has been allowed to serve the final six months of his sentence on house arrest after more than a year of [his mother's] repeated requests for his early release, said that Bianco's comments make “inmates feel like Bianco ‘is basically giving us all a death sentence.’”¹⁴⁰

In an interview with a local newspaper, Holguin described the conditions in the facility from which he was released. He said that when he left on Wednesday, April 22nd, “there were 25 inmates in his unit in Indio,” and he counted “16 who were bedridden and appeared to be very sick.”¹⁴¹ Noting the vulnerability of the population he said “It's bad in there, but it's going to get worse,” as “There are guys in there with asthma, guys who take medicine for high blood pressure, they're really worried about their health.”¹⁴² Amongst the incarcerated individuals, because of the health risks associated with the virus and what they view as the sheriff's callous disregard for their health and well-being,” morale is low.

Like LA county, there have been organized efforts by community members for early releases, but they have yet to find success. Starting Over Inc. and Riverside All of Us or None have reached out to the Riverside County Sheriff's Department, Public Defender, District Attorney, and Board of Supervisors for the county, but they have yet to respond to community demands and calls for action repeatedly put forward by local advocacy groups. Persistent grassroots efforts around the issue by community organisations, such as Riverside All Of Us Or None, culminated in the #ReleaseRiverside Campaign, which included a rally of over 30 cars and a petition signed by over 300 community members. Community demands for early releases, responsible reentry, safer sanitary conditions within the jails and greater care of incarcerated populations are no different from the demands that are being met with action in LA County, yet they continue to be met with silence in Riverside County.

COMPARISON:

At this point in time, it is clear that LA County and Riverside County have been responding to the impending threat of COVID-19 the jail systems in completely different ways. The LA County jail system has had a significant decrease in its size, with almost a third of its population being released. And though there have been a few individuals granted early releases in the Riverside county jail system, there has yet to be a large-scale release, or significant reduction in population. This is not the result of a single factor, but instead the result of different political, judicial, and community-based processes. For instance, LA County community organizers, with the help of nine incarcerated individuals, were able to develop a class-action lawsuit against Los Angeles County and its Sheriff's Department. Additionally, the director of LA County correctional health and the Sheriff recognized the frightful path ahead for jail systems if populations were not decreased, and started acting in early February. Sheriff Alex Villeneuve responded to community demands for releases and chose to continue releasing those in the LA County jail system after his initial release of 1,700 people.

Riverside County, like LA County has received a considerable amount of community pressure from grassroots organizers and legal organizations, but has failed to institute any significant changes. Despite pressure from a federal judge, Sheriff Bianco has remained steadfast in his initial statements about his reluctance to release inmates. Because the state of California is unable to usurp the power of sheriffs and Sheriff Bianco is not overseen by any other governing body, there is little that can be done legislatively or judicially at the local level to force Bianco to change his current policies. Therefore, one of the most significant roadblocks that abolitionist advocates are facing in regards to early releases for COVID-19 is Bianco. This may be an enduring problem for Riverside County because as of now, under [California's] state's structure, a sheriff in California can't really be fired.¹⁴³

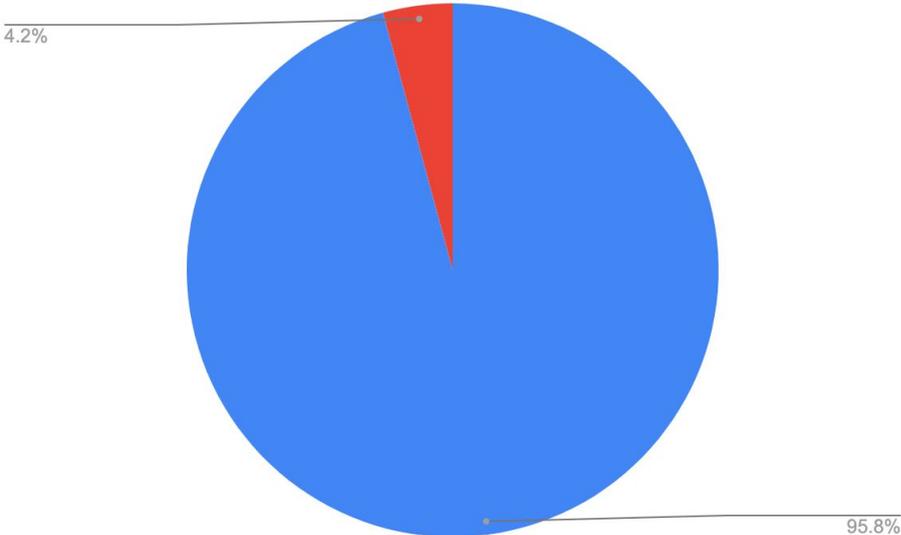
In LA County, the Public Defender has been incredibly active in advocating for early releases and employing the "COVID-19 factor"¹⁴⁴ to argue for large-scale and sweeping changes. At this moment, the situation is markedly different in Riverside County. Starting in late March, coalitions of community based-organizations, such as Starting Over Inc. have

sent letters to the Public Defender and have called numerous times, demanding action to depopulate jail systems. Yet, they still have not received a response.

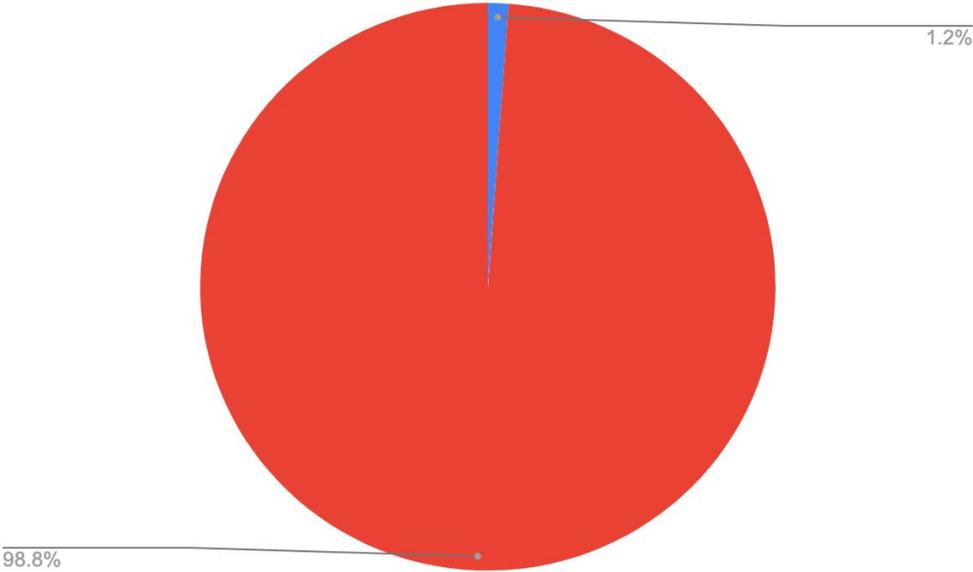
Notably, there were some differences that became apparent in the actual process of research. Firstly, there was a significantly larger amount of media attention directed towards LA County than Riverside County. When the following was searched: “la county releasing inmates covid 19,” Google provided us with about 25,200,000 results. Dissimilarly, when we searched: “riverside county releasing inmates covid 19,” we received only 497,000 results. Put simply, that means Google provided us with over 50 times more hits for LA County than it did Riverside County. The differences in media attention received by LA County and Riverside County are not negligible. That being said, the dissimilar amount of media attention is likely linked, in part, to the significant population differences in the two counties. Secondly, LA County Sheriff’s Department (LASD) has an entire website page dedicated to COVID-19 updates and the number of infected staff members and incarcerated individuals.¹⁴⁵ On this website, The LASD includes the number and location (the according facility) of incarcerated individuals that are quarantined, tested positive, and isolated. The transparency that this website suggests the degree of seriousness with which the LASD is taking COVID-19. Since it was last updated on March 6th, 141 individuals have tested positive for COVID-19 in LA County jails.¹⁴⁶

Despite having approximately 3x the population size of Riverside County Jail System, the LA County Jail system has 10 less reported cases of COVID-19. The graphs below show, in relation to the entire population how many individuals have *tested* positive for COVID-19 in the LA County jail system and Riverside County Jail population.

Riverside County Jail System Proportion of Individuals Tested Positive for COVID-19



LA County Jail System Proportion of Individuals Tested Positive for COVID-19



CONCLUSION

When COVID-19 hit our school community and our community partners, our own lives and the lives of the people in the Starting Over Inc. organization were turned upside down. We are living in what feels like unprecedented times for the generations of people alive today. Because life today and the work of Starting Over Inc. is constrained and determined by COVID-19, we felt that it was only natural that our policy work shifted to reflect the major societal challenge we are now facing. Through our work over the semester we developed our knowledge of California public policy, in-person visitation campaigns, and public officials in Riverside County, and thus decided that this knowledge would be best used to explore public policy responses to the spread of COVID-19 in carceral facilities .

From our research, many things became clear to us, which we hope to have made clear for our readers. (1) Correctional facilities, particularly in the U.S., pose unique challenges to containing the spread of a highly infectious disease, thus action intended to mitigate the spread need to be fast, sweeping, and pre-organized. (2) Research that pertains to the releases of incarcerated individuals and the conditions within correctional facilities needs to be ongoing and rigorous, because the conditions and policies affecting incarcerated folks and their families are largely unknown to people who are non system-impacted. Furthermore, research invites demands for accountability, of which there is a desperate need at several of the political decision-making levels interacting with the world of incarceration. (3) In times of crisis we, as a society, have an opportunity (and arguably an obligation) to care for the most vulnerable. In the case of COVID-19, that means we have the chance to show humanity towards our incarcerated community members and enact policies that ensure they have an equal chance to survive the pandemic as people on the outside do. (4) Advocacy efforts in the field of incarceration have an opportunity to channel the attention which has been brought by COVID-19 to the indignities surrounding the experiences of incarcerated individuals, in order to advocate for large-scale carceral reform on several points of contention raised by the pandemic. On the other hand, one of the limitations of this research is that we have inevitably only painted a partial picture of the impacts of COVID-19 on the incarceration system, considering the fast-pace of the virus, the ever-changing nature of policy responses, the wide

range of political actors and decision-makers involved, and the depth of unreported information regarding the spread of COVID-19 in carceral facilities.

Underlying our research are several tenets of the wider argument surrounding the purposes of correctional facilities. The question is: are correctional facilities for reform or punishment? Punishment has a long history in the U.S. It is a deeply-ingrained cultural phenomenon that is glossed over and often considered to be normal. Yet, we must remind ourselves that the Eighth Amendment of the Constitution prohibits the federal government from enforcing cruel and unusual punishments. Therefore, even if one believes that correctional facilities exist for punishment and not for reform or healing, one must ask: “What level of severity in punishment is justified?” In light of COVID-19, if we do not depopulate our jails and prisons and do our best to institute proper hygiene and social distancing practices, the severity of punishment could be **death**. We must be fully aware that lacking in humanity at this critical time for our nation, amounts to nothing short of handing out death sentences to thousands of undeserving individuals.

Because of the federalist structure of the U.S. government, public policies are rarely streamlined. This means that in times of crises such as COVID-19, a fair amount of decision making power is delegated to individual states and cities. This research has demonstrated the influence of local public officials, and the lack of accountability many enjoy. Although the efforts of community organizers are undoubtedly influential in swaying public opinion, ultimately public defenders and sheriffs have wide-ranging powers to determine the livelihoods of incarcerated populations. Therefore, for meaningful change to occur at the local level around the implementation of more humane policies in correctional facilities, progressive groups need to coalesce around the mission of electing sheriffs that are concerned about the health of incarcerated community members. Furthermore, counties and towns everywhere may benefit from the introduction of sheriff oversight committees. Political organizing around this idea is necessary for it to gain momentum and take hold.

There is no doubt that COVID-19 is causing widespread destruction throughout the world and in our own communities, but it is also providing us with an opportunity to step back and look at the ways that indignities exist in the U.S. and how they are being

exacerbated by the pandemic. This is an opportunity to do better, and to show incarcerated populations that people on the outside value their lives.

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REVIEW OF THE PEER REVIEW

The majority of our feedback focused on the need for stronger organization of our literature review and our findings section. Going into the peer review session, we asked that our peer-reviewers focus on the areas that felt repetitive and the areas where OUR ideas felt jumbled. Therefore, we received suggestions to include headings in the literature review section and to reorganize parts of the findings section so that the flow was more clear. Our peer reviewers also helped us identify areas that repeated information.

While we were writing, because we were so immersed in the data that we have collected, we sometimes failed to properly explain some of the ideas we introduced. For instance, one of our critiques asked us to explain why prison health is public health. We also failed to explicitly differentiate between jails and prisons. The advice given to us, helped us take a step back from our paper and acknowledge that we should be writing in a clearly communicable way so that people without much knowledge of the U.S. incarceration system would understand all of our points.

Along with these bigger structural suggestions, we also received smaller stylistic suggestions. We considered each of the suggestions given and ultimately used most of them. We had a few sections with overly complex sentences, and really appreciated the identification of such areas. Overall, all of the suggestions helped improve the readability of our paper, and because we want our paper to be accessible, the suggestions were gladly welcomed. To us, it was clear that our peers thoughtfully engaged with our work and took the time to read it thoroughly.