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CALIFORNIA PROSECUTORS MUST DO MORE TO PROTECT THEIR COMMUNITIES FROM CORONAVIRUS: *Policies & Polling*

Jody David Armour *Roy P. Crocker Professor of Law, University of Southern California*

Kyle C. Barry *Senior Legal Counsel, The Justice Collaborative*

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EXECUTIVE SUMMARY

In recent weeks, the humanitarian disaster that doctors and public health experts predicted has turned into reality: coronavirus has reached prisons and jails in California and across the country, sparking outbreaks that threaten the lives of incarcerated people, staff, and surrounding communities.

California's elected prosecutors—the district attorney in each county—are uniquely positioned to address this crisis. We know that the best and most urgent solution is releasing people from incarceration, creating space inside these cramped facilities to comply with social distancing guidelines, and preserving scarce medical resources. Some counties in California have started this process through the cooperation of sheriffs, prosecutors, and judges, but it hasn't been sufficient to slow the spread. Prosecutors have the power to do more by agreeing to quickly and safely release people from custody, both in local jails, and, thanks to a new law that gives prosecutors the discretion to revisit prison sentences, the state prison system.

Because prosecutors are elected and generally serve the public—and do not serve any particular government agency or law enforcement unit—the public's views should provide guidance for the professional conduct and performance of prosecutors. We polled likely California voters and found strong bipartisan support for prosecutors working to release more people from incarceration in response to the coronavirus epidemic:

- ▶ A majority of California voters support district attorneys reducing prison populations by agreeing to the early release of anyone who is within 12 months of their release date.

- ▶ 63% of voters, including 54% of Republicans, support district attorneys reducing the local jail population by agreeing to release anyone who is held pretrial and who does not pose an unreasonable safety risk to the community.
- ▶ 57% of voters, including 51% of Republicans, support district attorneys agreeing to hold all new state prison sentences if doing so wouldn't pose an unreasonable safety risk.
- ▶ 68% of voters, including 62% of Republicans, support district attorneys agreeing to release all people serving a misdemeanor local jail sentence who are within six months of release.
- ▶ 61% of voters, including 51% of Republicans, support district attorneys agreeing to the release of all people held on probation and parole technical violation detainees or sentences.

INTRODUCTION

It fits an emerging pattern we have seen in jails around the country: The numbers start small and sound manageable, then quickly spike, multiplying daily while the contagion, thriving in a crowded, unsanitary space, spreads like wildfire. In just two days last week, the number of confirmed coronavirus infections inside Alameda County's Santa Rita Jail, the fourth-largest jail in the country, jumped 400 percent, from 3 to 12. As of the date this report is published, the total number is at least 15, and more than 20 including suspected cases.

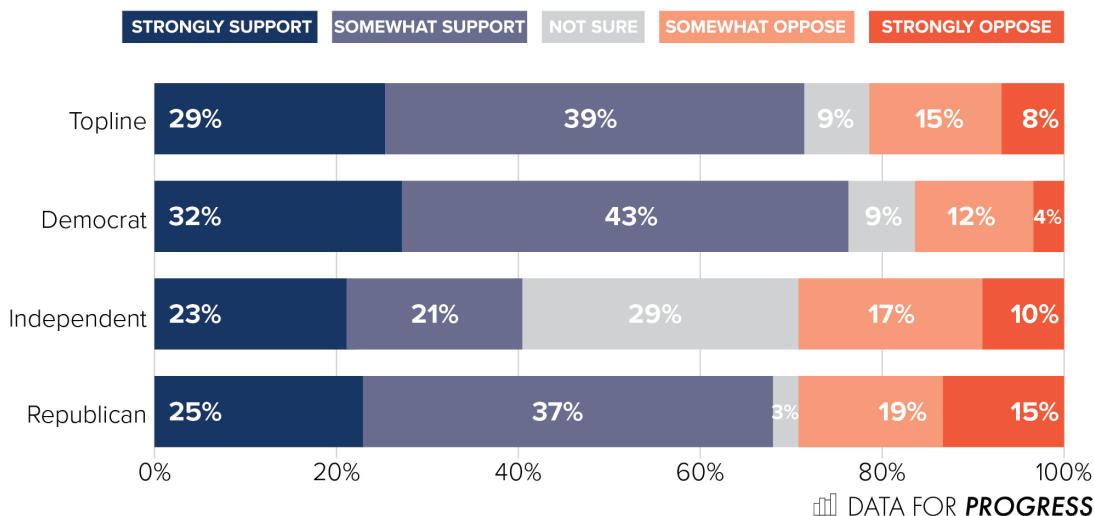
In response, Alameda County Public Defender Brendon Woods called for the immediate release of more than 100 people who have less than six months to serve, noting that about 60 of them are already set for release by the end of May. “We’ve been sounding the alarm for more than three weeks, and now we’re on the verge of the virus sweeping through the jail,” Woods said in a statement. “I don’t think prosecutors have gotten the message about how serious this is.”

Alameda County District Attorney Nancy O’Malley rebuffed Woods’s demand for immediate release. Prosecutors previously took a small step toward making jails safer when they agreed to release people with 45 days or less to serve, freeing about 250 people. Since then, Woods said, releases have been negotiated case-by-case, a process that cannot keep pace with a highly contagious

disease. Ignoring that each day of delay means the number of people exposed to this deadly virus will continue to grow, O’Malley was unmoved, saying it’s “very disappointing that the Public Defender has chosen this time of crisis to grandstand and to make politically divisive and disingenuous statements.”

But according to our statewide poll, Woods’s urgent call to release more people is hardly divisive. To the contrary, we found overwhelming bipartisan support for his proposal: 68% of California voters, including 62% of Republicans, support district attorneys asking for the release of all people serving a misdemeanor jail sentence who are within six months of release—one among several popular tactics prosecutors can use to lower jail populations and prevent the spread of coronavirus.

Do you support or oppose the release of all people serving a misdemeanor sentence who are within six months of their release date to reduce jail populations?



CALIFORNIA PROSECUTORS MUST LEAD ON DECARCERATION

Prosecutors have enormous power to reduce jail populations. They can dismiss charges. They can agree to conditions of release that allow people waiting for trial to return home. They can agree to suspend new jail and prison sentences. In California, a new law empowers prosecutors to petition courts to reduce criminal sentences “in the interests of justice.”

According to well-established rules of professional conduct, the prosecutor serves the public interest and should seek to increase public safety both by pursuing appropriate criminal charges, and, importantly, by exercising discretion to not pursue criminal charges when the public welfare requires it. When exercising discretion to initiate, decline, or dismiss a criminal charge, prosecutors should consider the impact on public health and safety, including the impact of collateral consequences to prosecution—including the possibility of exposing people to an infectious disease in jail.

As public health experts predicted, local jails have become powerful and dangerous vectors for transmitting coronavirus. Jails are like more crowded, less clean versions of cruise ships and nursing homes. Once a virus gets inside, it will almost inevitably lead to outbreak, further straining already inadequate medical services. And make no mistake: an outbreak inside a jail puts surrounding communities at risk. Jails do not sit apart, entirely isolated from the outside world; instead, there is a constant “churn” of people who enter and leave—most people sent to jail spend only a few days or weeks inside before returning to their communities, and staff members, including guards and other personnel, come and go everyday.

National numbers from last week showed at least 1,324 confirmed cases of coronavirus tied to jails and prisons, including at least 32 deaths. Those numbers are surely higher today. In New York City’s jail system, including the city’s notorious jail complex on Rikers Island, nearly 600 cases have been reported among incarcerated people and staff. In Chicago, the number of cases in Cook County Jail jumped from 3 to more than 350 in a little over two weeks. The jail is now the nation’s largest single source of coronavirus infections, according to data from The New York Times.

California has not been immune. In addition to confirmed cases in Santa Rita Jail, at least eight people incarcerated in Los Angeles County jails, in addition to more than 40 staff, have been infected. In Riverside County, at least 80 people incarcerated in the local jail have been infected with coronavirus—up from 13 cases as of April 3. And there are more than 140 confirmed cases among staff and incarcerated people throughout the state’s prison system.

Further, the spread of coronavirus in jails and prisons have rendered the conditions of confinement for incarcerated people so unsafe that they constitute the unnecessary and wanton infliction of pain contrary to contemporary standards of decency. The Supreme Court of the United States has held that it is cruel and unusual punishment to hold prisoners in unsafe conditions that expose them to serious health risks from infectious diseases. Prosecutors should not exercise their discretion in ways that contribute to cruel and inhumane conditions of confinement.

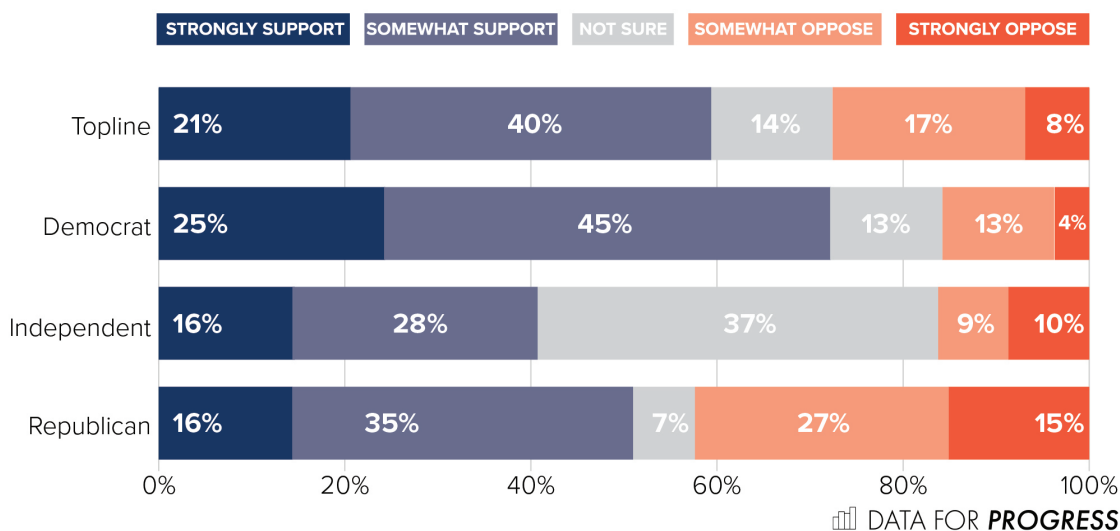
In the face of this growing crisis, some prosecutors have been leading voices in advocating decarceration, using their influence as elected officials and their prosecutorial discretion to reduce jail populations. On March 25, San Francisco District Attorney Chesa Boudin and Contra Costa County District Attorney Diana Becton joined 29 other elected prosecutors across the country to advocate immediate release for certain categories of people, including:

- ▶ People detained because they cannot afford to pay money bail;
- ▶ Elderly incarcerated people;

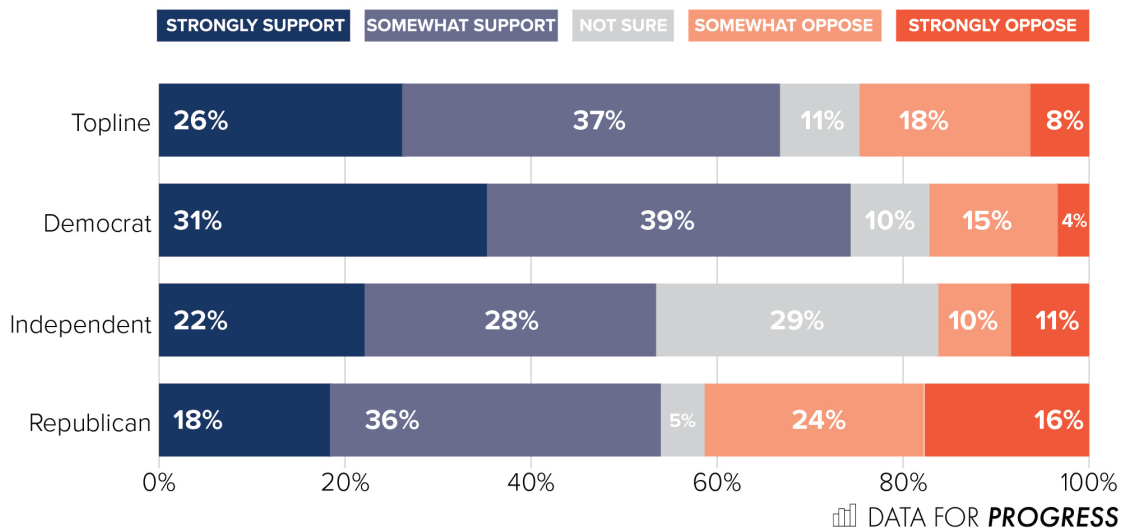
- ▶ People with medical conditions that place them at high risk;
- ▶ People within six months of completing their sentence; and
- ▶ People jailed on technical violations of probation and parole.

Our polling shows popular support for these and even more aggressive decarceration policies, including majority support for releasing people with under a year remaining on a jail sentence.

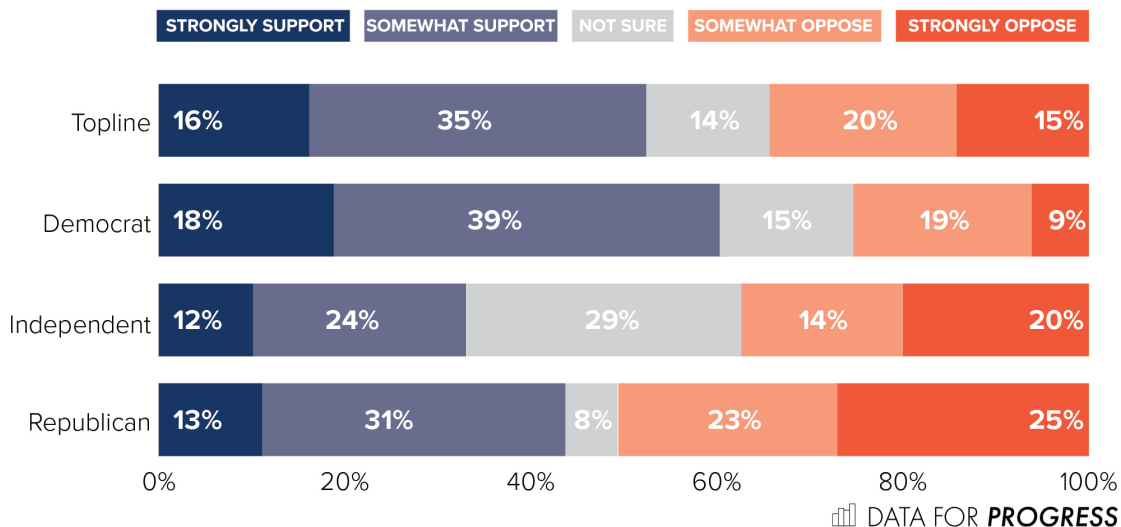
Do you support or oppose the release of all people held on probation and parole technical violation detainers or sentences to reduce the prison and jail populations?



Do you support or oppose the release of anyone who is held pretrial and who does not pose an unreasonable safety risk to the community?



Do you support or oppose the early release of anyone who is within 12 months of their release date to reduce the prison population?



In San Francisco, Boudin has acted on these priorities, and since January he has worked with other officials to reduce the county jail population by 40%—including a 25% reduction in response to the public health crisis—bringing it down to about 750 people. This follows the advice of city public health leaders, who on March 24

recommended that San Francisco keep its jail population between 700 and 800 people to create the physical space required to prevent coronavirus transmission.

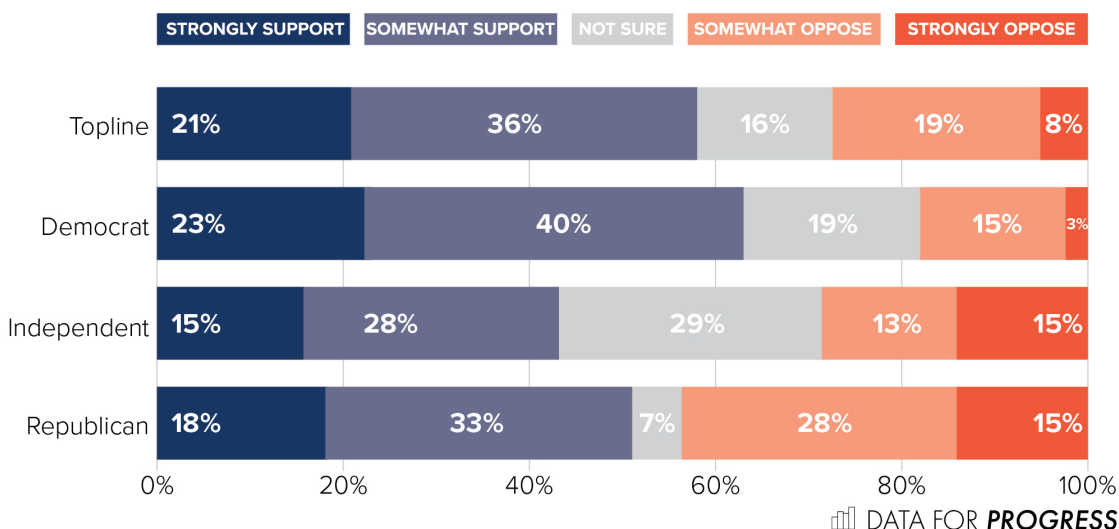
“The most effective strategy to mitigate transmission is social distancing,” Dr. Lisa Pratt, director of jail health services, said in a letter to

criminal justice leaders last month. “I urge you to move quickly and creatively to continue to divert people from jail and remove incarcerated people from this dangerous congregate setting as much as possible during this time.”

Los Angeles District Attorney Jackie Lacey should take a similarly aggressive approach. So far, Lacey and County Sheriff Alex Villanueva have reduced the county’s enormous jail population by about 18%—from 17,000 to just below 14,000 as of April 7. That is progress. But they have focused narrowly on people with under 30 days to serve on jail sentences and a small fraction of people held pretrial, leaving behind large categories of people who could be safely released.

If Lacey, and all other California district attorneys, took the steps our polling shows that voters support—agree to release all people within 12 months of release, people held pretrial who do not pose an unreasonable safety risk, and all people held on technical parole or probation violations—it could lead to dramatic reductions in the jail population. In the Los Angeles County Jail, about half of the population is people held pretrial. Such a reduction would not only help protect the people who would be released but also lessen the danger to the people who remain incarcerated, which in turn would protect those who go to work everyday in the jail and the surrounding communities in which they live.

Do you support or oppose holding all new state prison sentences if delaying the sentence would not pose an unreasonable safety risk to the community?



In California, local prosecutors can also play a decisive role in reducing the state's prison population. California's prisons have been overcrowded for decades, and despite recent reductions still operate at near 140% capacity. What's more, one in seven people inside California's prisons is over the age of 55. That's tens of thousands of people who are at high-risk of severe illness from coronavirus based on age alone, even before considering the harsh prison environment. And this is a category of people that due to their age, even before coronavirus, could have been returned to the community without posing an unreasonable risk to the safety of the community. Releasing older people from prison is "one of the least risky ways" to reform our criminal legal system, as less than 7% of people in their fifties or older who are released are ever returned to prison.

Under a law that took effect in 2019, AB 2942, district attorneys can identify people from their county who are unnecessarily languishing in prison—the elderly, the sick, people long ago rehabilitated or sentenced under draconian laws that no longer apply—and petition a court for a reduced sentence and release. In the context of coronavirus, prosecutors could use this tool to reduce overcrowding and get the most vulnerable people out of harm's way. Indeed, one of the law's original authors, former prosecutor and advocate Hillary Blout, has been urging prosecutors to do exactly that.

CONCLUSION

Prosecutors have a duty to protect public safety, and now, in the face of a public health crisis, it is remarkably clear what that duty requires. Public health experts, physicians, advocates, and courts all agree. We are on the cusp of humanitarian disaster, and reducing the number of people crammed into jails and prisons may be the single most important thing we can do to protect the public health. If we do not, Santa Rita Jail could be to Rikers Island and Cook County Jail what the United States was to Northern Italy: just a week or two behind the wave. And failing to act could undermine all the policies and practices California has so far pursued—with apparent relative success—to slow the spread of coronavirus.

There are other officials in the criminal legal system who share in this responsibility—the California Judicial Council's emergency order eliminating cash bail for certain offenses, for example, will also help to reduce jail populations—but prosecutors have unique discretion and ability to identify those in the local jail who can be released and get them out. Voters support this critical strategy. Prosecutors must act.

METHODOLOGY

From April 1 2020 to April 2 2020, Data for Progress conducted a survey of 1511 likely voters in California, using web panel respondents. The sample was weighted to be representative of likely voters by age, gender, education, race, and voting history. The survey was conducted in English. The margin of error is ± 4.1 percent.