

# LOCAL OFFICIALS SHOULD QUICKLY REDUCE JAIL POPULATIONS TO SLOW THE SPREAD OF THE CORONAVIRUS

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# EXECUTIVE SUMMARY

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As the number of cases of COVID-19 in the United States continues to sharply increase, and as city, state, and federal officials take increasingly aggressive moves to contain the virus's spread, it is critical to understand the significant role our nation's more than 2,800 county jails may play in spreading the disease, not just within the facilities, but to vulnerable communities more broadly.

In short: more than five million people cycle in and out of our jails each year; over a quarter of million just through the jails in New York State alone. Most spend only a few days or weeks behind bars, but while detained they are confined in close proximity to others and with poor medical care. Moreover, those in jails are not only disproportionately vulnerable to COVID-19 themselves, but they come from—and thus return to—communities with disproportionately vulnerable populations. All these factors combine to make jails powerful vectors of disease.

The coronavirus has already reached American jails, and there is a growing outbreak on Rikers Island, New York City's notorious jail complex that houses more than 5,000 people; as of today, Rikers has the highest rate of COVID-19 infection of any place in the world. It is thus essential that policy makers work quickly to reduce the number of people confined in jails, in order to help reduce the spread of COVID-19 both within and outside of the jails. Fortunately, there are several steps that local officials can take to accomplish this, and recent polling conducted by The Justice

Collaborative and Data for Progress indicates that such actions command broad bipartisan support both nationally and among New York voters.

- ▶ Nationally, over 50% of the public, including nearly 50% of Republicans, favors releasing *anyone* in jail whose offense is not one that threatens public safety.
- ▶ A significant majority of voters—57% of voters in New York and 56% of voters nationally—favor releasing people who have less than six months left on their sentences. That includes a majority of Republican voters nationally and 50% of Republican voters in New York.
- ▶ Significant majorities also support releasing elderly populations, including 58% of voters nationally and 56% of voters in New York. Fifty-three percent of Republicans nationwide support releasing elderly populations.
- ▶ There is broad bipartisan support nationally—63% of all voters and 60% of Republicans—for a policy to reduce unnecessary jail admissions by encouraging law enforcement to use alternatives to arrest such as a summons or ticket. Fifty-nine percent of New York voters also support such a policy.
- ▶ Nationally, 66% of voters—including 58% of Republicans—believe that officials should be considering ways to reduce jail and prison populations as a response to the coronavirus.

# JAILS V. PRISONS

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To understand why jails pose a unique threat to public health during the current COVID-19 pandemic, it is important to appreciate how they differ from prisons. As a general matter (there are a few exceptions), prisons hold people who have already been convicted of a felony and sentenced to spend at least one year behind bars. Jails, on the other hand, are used to detain (1) those who are awaiting trial and either cannot raise the funds to make bail or have been denied bail outright and (2) those who have been convicted of misdemeanors or other minor offenses and generally sentenced to under a year in confinement.

Jail populations, in other words, are defined by “churn”: by people spending short stints in them before returning to their homes. In New York City, for example, nearly 10% of those admitted to city jails are discharged the same day, 40% within a week, and nearly half within two weeks. And New York City is not an outlier. The average length of stay at the Erie County Holding Center outside Buffalo, NY, is three days for pre-trial detainees and forty for those convicted. In Monroe County (Rochester) the average stay for those convicted and awaiting trial is about four weeks, and it’s about the same in Onondaga County (Syracuse) as well.

In this respect, New York is no different than the rest of the country. In Los Angeles, the average length of stay of a pre-trial detainee is just six days; in San Diego, just twelve. For people convicted of crimes, the average jail stay is 62 days in Los Angeles and 72 in San Diego. Cook County, Illinois, has created a “rocket docket” to try to help people leave Cook County jail within thirty days; even prior to the existence of the rocket docket, the average time spent in Cook County jail was under two months.

By ignoring the amount of short-term churn in jail populations, we systematically understate their size. The most common statistic we hear about jails is that they hold about 750,000 people nationwide—but that is the number of people in jail on the average day, not the number of people churning through over the course of the year. The number of annual *admissions* is something on the order of ten million, with estimates suggesting that these ten million admissions are made up of five million unique people. In New York State alone, it’s about 267,000 unique people every year. That is nearly 2% of the entire adult population for both the US as a whole and New York State entering—and almost immediately leaving—jails every year.

## ***Do you support or oppose releasing prisoners when safe and necessary in order to prevent the spread of the coronavirus?***



DATA FOR **PROGRESS**

Once we realize that what defines jail populations is churn, two immediate implications jump out:

First, and most obvious: churn turns jails into powerful vectors for spreading disease. This is nothing new—tuberculosis rates in jails are about ten times the national average, and jails have long been seen as places where STDs can spread. But the severity and lethality of COVID-19 make this feature of jails all the more deeply problematic right now.

Second, and perhaps less immediately obvious: churn means that scaling back jail populations will likely have little to no impact on (non-COVID-19 related) public safety. The common brief stints in jail provide little to no deterrence, and they obviously do not incapacitate in any real way. Proponents of pre-trial detention may argue that it is the only way to ensure appearance or safety in the absence of bail, but this seems unlikely. In New York City, for example, over 75% of all those arrested in 2018 were released without any bail, and over 85% of those released without

bail appeared in court—suggesting that bail is not in any way central to ensuring lawful behavior. In fact, recent data suggests that being confined in jail due to bail may actually increase the long-run risk of rearrest.

The argument for significant cuts to jail populations is thus clear. Jails will be ready vectors of COVID-19, and we can impose real cuts to their populations without jeopardizing public safety.

## **FURTHER HEALTH ISSUES**

The argument for jail reductions becomes even stronger, however, once we appreciate that those in jail, and the communities to which they will return, are at particularly high risk of suffering serious reactions to COVID-19. People detained in jails have rates of high blood pressure, strokes, cardiac problems, asthma, diabetes and tuberculosis at two to ten or more times the

***Do you support or oppose releasing incarcerated people who are within 6 months of completing their sentence in order to reduce the risk of transmitting the coronavirus within jails and prisons?***



national average. These are all conditions that appear to significantly elevate the risk of serious or fatal reactions to exposure to COVID-19.

Moreover, those released from jail—who are disproportionately poor and people of color—return to communities where the rates of these same medical conditions are also well above national averages. Risks of heart conditions and diabetes are much higher in poor communities and among people of color, as are many forms of respiratory illness such as asthma.

Jails, in other words, take people from vulnerable communities, confine them in tight quarters—quarters which are often unsanitary and lack adequate medical treatment—and then quickly return them to those same communities, where they spread the illnesses they contracted there. For a disease such as COVID-19, this is a particularly dangerous and lethal set of conditions.

## POLICY OPTIONS & POLLING

There are, however, steps that jurisdictions can take to address these concerns—although as courts increasingly shut down or scale back activities in efforts to contain the spread of COVID-19, time is of the essence to act. Fortunately, recent polling suggests that many options enjoy broad bipartisan support. Critical political support thus exists at a time when rapid action is essential.

There are several ways to quickly reduce jail populations. To start, prosecutors could simply drop charges against defendants, especially those facing low-level charges. Without a pending case, the department of corrections no longer has the authority to detain someone. Prosecutors could always dismiss without prejudice, which would

***Do you support or oppose releasing anyone charged with an offense that does not involve a serious physical safety risk to the community?***



DATA FOR **PROGRESS**

***Do you support or oppose law enforcement to make use of summons or tickets as alternatives to jail to ensure court appearances where necessary?***



DATA FOR **PROGRESS**

allow them to refile the charges in the future, once the COVID-19 threat has abated.

If prosecutors are unwilling to dismiss charges, they could work with public defenders to put together motions asking judges to reconsider bail decisions for large numbers of vulnerable defendants all at once, as public defenders in [Colorado](#) are trying to do. At the very least, district attorneys could instruct their prosecutors not to oppose any such motions filed by defense lawyers, as is happening in [San Francisco](#). In some cases, judges can even directly authorize sheriffs to release people from jail, as has happened in [Florida](#).

In New York, one further way to cut jail populations across the state would be for the governor to [release](#) all people sitting in county

jails awaiting hearings for parole violations. There are about [5,000](#) such people in New York jails, including over 1,000 in Rikers alone; together they make up about [one-fifth](#) of all people confined in local jails at any one time. The governor just released [about 1,1000](#) at the end of last week, including about 400 from NYC's jails—a positive step forward, if still a relatively small one.

When deciding whether to dismiss charges or eliminate bail, it is essential that prosecutors, judges, and other officials not fall into the trap of thinking just about the vulnerability of the detainees, as [many have](#). In part this is because it seems we may be [underestimating](#) the vulnerability of the young and healthy. More important, however, is that younger, healthier detainees remain powerful vectors for

***Do you support or oppose releasing incarcerated people who are elderly and do not pose a serious risk to public safety?***



transmitting the disease to vulnerable people back in their communities—the focus must be on how the disease *spreads*. And reducing the spread of COVID-19 requires us to push to release more than just those who personally are at high risk.

Fortunately, there is political support for such an aggressive response to COVID-19. Recent polling indicates that, nationally, over 50% of the public, including nearly 50% of Republicans, favors releasing *anyone* in jail whose offense is not one that threatens public safety. Even larger majorities favor releasing people who have less than six months left on their time behind bars. That includes a majority of Republican voters nationally and 50% of Republican voters in New

York. And more broadly, about two-thirds of those polled nationally, ranging from 80% of liberals to nearly 60% of Republicans, agreed that officials should consider at least *some* way to reduce overcrowding in jails.

There is no longer any uncertainty about the serious public health challenges posed by COVID-19. And jails may prove to be powerful vectors for spreading the disease within medically vulnerable communities—and communities that lack access to health care and often the resources for social distancing and other mitigating strategies. Fortunately, the public grasps the challenge that jails pose, giving policymakers the ability to act quickly and decisively here.

# POLLING METHODOLOGY

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From March 26th 2020 to March 27th 2020, Data for Progress conducted a survey of 381 likely voters in New York State, 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  $\pm 5$  percent.

From March 16, 2020 to March 17, 2020, Data for Progress conducted a survey of 2509 likely voters nationally using web panel respondents. The sample was weighted to be representative of likely voters by age, gender, education, urbanicity, race, and voting history. The survey was conducted in English. The margin of error is  $\pm 1.9$  percent.

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