

It's Time to Consider Releasing Incarcerated Persons Convicted of Violent Crimes

We should not only consider early release for incarcerated persons convicted of nonviolent crimes to slow the spread of Covid-19 but also those convicted of violent crimes like murder. When it became clear that Covid-19 would affect the United States on a large scale there was no denying that once the virus entered a prison population it would spread rapidly. The fear was that once the virus took hold, prisoners would end up with a de facto death sentence. One effort to mitigate this; to spare the incarcerated and communities was early release. Discussed and instituted, though not widely, for only non-violent offenders. Only non-violent offenders were considered for this program because of the belief that they posed less of a risk to public safety. Upon closer inspection the opposite may actually be true.

Shortly after the Covid-19 Pandemic struck the U.S., several historians responded by creating [The Journal of the Plague Year](#), a crowd sourced, digital archive, gathering stories and responses about regular people, in real time. One of the collections that arose from this effort covered the plight of America's incarcerated people. The collection highlighted three conditions particular to correctional facilities and Covid-19. One, the architecture, structure, and overcrowding in correctional facilities make social distancing impossible. Two, outbreaks inside correctional facilities effect the larger community. Three, Correctional facilities in the U.S. are not set up to deal with a pandemic disease. These circumstances make it clear that early release may be the only option to prevent incarcerated persons from receiving a defacto death sentence.

Lifers Have Lower Recidivism Rates Than Non-Lifers

While collecting items for the Incarceration Collection one researcher spoke with [Philip Melendez](#), a formerly incarcerated person. He told researchers during an oral history interview that he believed we should not only be considering non-violent offenders for early release, but also violent offenders because they have a much lower recidivism rate and therefore do not pose a public safety risk.¹

The research supports Melendez's point. Those convicted of violent crimes and sentenced to life have a recidivism rate of 1-3% while non-life sentenced persons have rates above 50%. In Maryland in 2013, [200 inmates with life sentences were released](#). All were convicted prior to 1981 and their sentences were commuted due to the use of unconstitutional jury instructions during their trials. Their recidivism rate was 3%, compared to a national rate for non-life sentenced person of 66%, with half of them returning to incarceration.² In Pennsylvania 158 lifers were released in 2016 after their sentences were deemed unconstitutional. None were convicted of new crimes (though five were incarcerated again for parole

¹ Phillip Melendez, "Philip Melendez Oral History 2020/07/24," interview by Chris Twing, The Journal of the Plague Year, Arizona State University, July 24, 2020. <https://covid-19archive.org/s/archive/item/24598>

² Samantha Melamed, "Study of 200 Released Elderly Lifers Reveals 3 Percent Recidivism Rate," Corrections 1, Lexipol, December 12, 2018, <https://www.corrections1.com/elderly-inmates/articles/study-of-200-released-elderly-lifers-reveals-3-percent-recidivism-rate-kwgboHRBMJog8N8T/>.

violations.)³ The overall recidivism rate in California is 50% while further examples of groups of [lifers who were released show a rate of less than one percent](#).⁴ The lower recidivism rate for inmates with life sentences is similar across the nation.

Why are people sentenced for violent crimes less of a public risk? Several factors are at play. One is age. The average age of a lifer at parole is 51.⁵ This begs the question, is it time served or age that acts as a catalyst for change? A second factor is preparation for release, be it through programs designed to teach the necessary skills for life outside of prison or programs meant to rehabilitate the individual both during and after incarceration.⁶

Why Should Any Inmates Be Released Early?

But why is releasing inmates or lowering the prison population even necessary to slow the spread of Covid-19? There are currently 2.3 million people in the nation's correctional facilities and many of those facilities are operating at or above 100% capacity.⁷ Overcrowding, safety protocols, and funding make it impossible to follow the three key steps to combat the virus; social distancing, wearing a mask, and frequent hand washing.

Let's look at these points individually beginning with overcrowding. Most inmates share a cell with another person. The average size of a cell in the U.S. is six by eight feet. When shared by two people the confined space makes it impossible to social distance and many inmates are spending 23 hours per day in their cells on lockdown to prevent circulation of inmates and slow the virus's spread.⁸

³ Samantha Melamed, "Study of 200 Released Elderly Lifers Reveals 3 Percent Recidivism Rate," Corrections 1, Lexipol, December 12, 2018, <https://www.corrections1.com/elderly-inmates/articles/study-of-200-released-elderly-lifers-reveals-3-percent-recidivism-rate-kwgboHRBMJog8N8T/>.

⁴ Christopher Zoukis. "California Lifers Paroled in Record Numbers," Prison Legal News, April (2016): 16, <https://www.prisonlegalnews.org/news/2016/mar/31/california-lifers-paroled-record-numbers/>.

⁵ Christopher Zoukis. "California Lifers Paroled in Record Numbers," Prison Legal News, April (2016): 16, <https://www.prisonlegalnews.org/news/2016/mar/31/california-lifers-paroled-record-numbers/>.

⁶ Christopher Zoukis. "California Lifers Paroled in Record Numbers," Prison Legal News, April (2016): 16, <https://www.prisonlegalnews.org/news/2016/mar/31/california-lifers-paroled-record-numbers/> and David Valdez, "Criminals Least Likely to Reoffend? Lifers on Parole," Prison Writers, Prison Writers, accessed August 1, 2020, <https://prisonwriters.com/lifers-on-parole/>.

⁷ "State Prison Capacity, Overcrowded Prisons Data," Governing, accessed August 6, 2020, <https://www.governing.com/gov-data/safety-justice/state-prison-capacity-overcrowding-data.html>.

⁸ Christopher Zoukis. "Coronavirus in Prison: The Cruel Reality," Prison Legal News, August (2020): 1, <https://www.prisonlegalnews.org/news/2020/aug/1/coronavirus-prison-cruel-reality/> and Joseph Shapiro, "As Covid-19 Spreads in Prisons, Lockdowns Spark Fear of More Solitary Confinement," National Public Radio, June 15, 2020, <https://www.npr.org/2020/06/15/877457603/as-covid-spreads-in-u-s-prisons-lockdowns-spark-fear-of-more-solitary-confinemen/>.

While wearing face masks has been proven across the globe as an effective means to slow the spread of the virus, wearing a mask in a correctional facility presents unique problems. Inside a prison or jail the primary objective is to maintain control by following safety and security protocols.⁹ Masks, though now permitted in some facilities, are not allowed in all facilities because they obstruct the inmates face and make them difficult to identify potential conflicts. Additionally, there are logistical concerns.

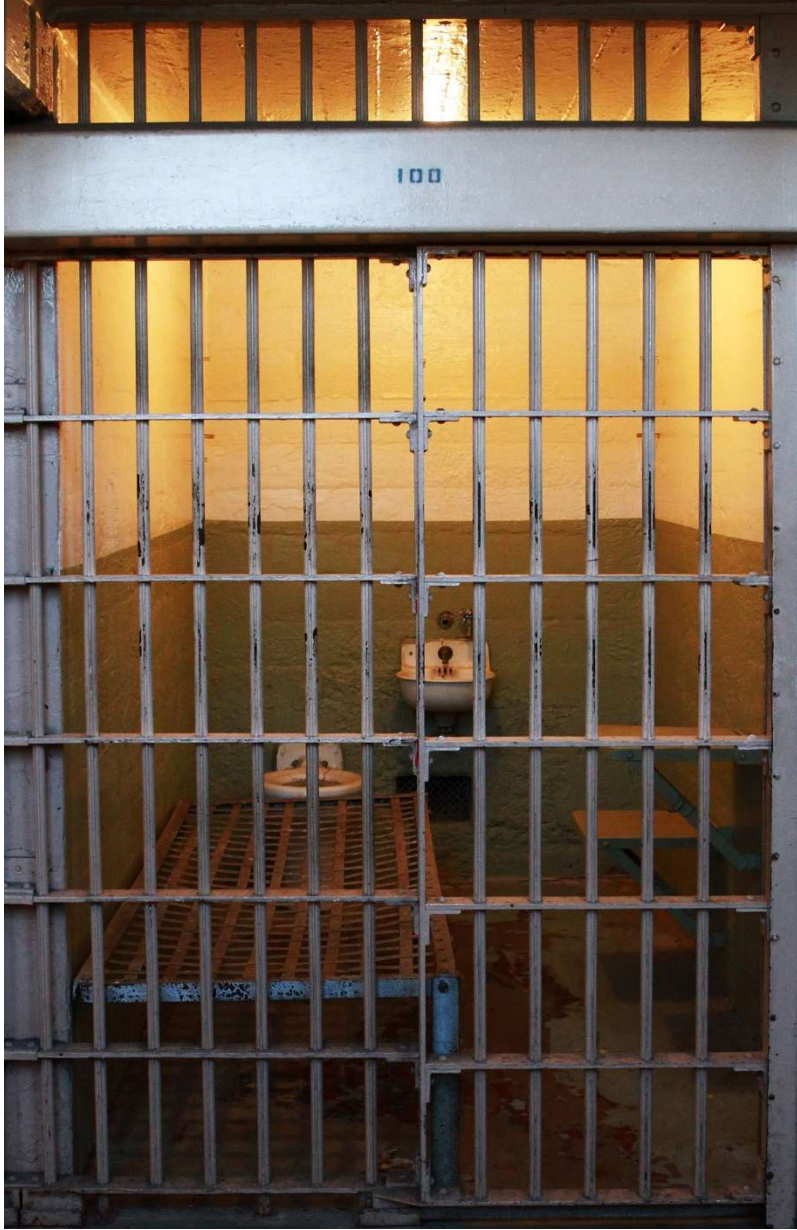
Funding also plays a big role in the spread of Covid-19 in the nation's prisons. There isn't enough money to follow public health protocols. Even if inmates were in cells by themselves and on lockdown 23 hours a day they still have to mix and gather in large groups to get food and medicine and perform many of the jobs that keep the place running. The facilities do not have the funding to replace prison labor with staff, or enough staff to deliver three meals a day to every cell in the building, plus deliver medications.

On top of this, correctional facilities do not operate in a bubble. People from outside are constantly entering the facilities even with visitors and sometimes legal staff no longer being permitted. Correctional staff and officers go home every day and interact with their community. Other people, such as maintenance workers go in and out. This means there is a constant opportunity for the virus to enter a facility. The most pressing point of entry for the virus is facility to facility transfers.

The transfer of inmates from Chino to San Quentin, both California state prisons, has been blamed for introducing the virus to a facility that did not have any active infections. Without the ability to test and get rapid results of inmates prior to transfer, there is no way to ensure the virus isn't transferring with them. To make the transfer process truly safe it would also require testing the corrections officers, getting immediate results, sanitizing transport vehicles, and quarantining new inmates. But, there is no funding to do any of this.

All of these factors have turned what may be a short sentence or hold into a potential death sentence. While some states have been more responsive than others to release for inmates convicted of non-violent offenses, no states have considered early release for violent offenders. But they should because the research shows they actually pose a lower public safety risk.

⁹ Phillip Melendez, "Philip Melendez Oral History 2020/07/24," interview by Chris Twing, The Journal of the Plague Year, Arizona State University, July 24, 2020. <https://covid-19archive.org/s/archive/item/24598>



Caption: Imagine adding another bed, a bunk, and trying to maintain social distancing in this space 23 hours a day.

Photograph by Lisa Redfern, Pixabay.



Caption: Masks have been proven to slow the spread of Covid-19 but in correctional facilities they can pose a safety risk because they obscure identity.
Photograph by Thomas Rudeshiem, Pixabay.