



PENNSYLVANIA INSTITUTIONAL LAW PROJECT

718 Arch Street, Suite 304S
Philadelphia, PA 19106
T: 215-925-2966
F: 215-925-5337
www.pailp.org

Managing COVID-19 Behind Bars: Lessons for the Future of Correctional Health

Outline by

Su Ming Yeh, Esq.

Executive Director of Pennsylvania Institutional Law Project (PILP)

smyeh@pailp.org

1. Prisons and jails are the epicenter of COVID-19 spread throughout the United States.¹
 - a. The COVID-19 case rate for prisoners is 5.5 times higher than the US population.²
 - b. The adjusted death rate in the prison population was 3.0 times higher than would be expected if the age and sex distributions of the US and prison populations were equal.³
 - c. Centers for Disease Control (“CDC”) have noted the “unique challenges for control of COVID-19 transmission” in jails and prisons and warned of the likelihood of jails and prisons becoming “the epicenter of the pandemic.”⁴

¹ Amanda Konsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, If Inaction Continues*, The New York Times (Mar. 12, 2020), <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html>.

² Brendan Saloner, PhD; Kalind Parish, MA; Julie A. Ward, MN, RN; et al, *COVID-19 Cases and Deaths in Federal and State Prisons*, Journal of American Medical Association (July 8, 2020) <https://jamanetwork.com/journals/jama/fullarticle/2768249> (statistics from March 31, 2020 to June 6, 2020, where there had been 42,107 cases of COVID-19 and 510 deaths among 1,295,285 prisoners. The COVID-19 case rate was 3,251 per 100,000 for prisoners, which was 5.5 times higher than the US population, which had a case rate of 587 per 100,000).

³ *Id.*

⁴ See U.S. Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (“CDC Guidance”) (March 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>; see also Amanda Konsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, If Inaction Continues*, THE NEW YORK TIMES (Mar. 12, 2020), <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html>.

- d. Prison deaths tied to COVID-19 have risen 73 percent since mid-May.⁵
- e. First death of an incarcerated person in Pennsylvania was on April 13, 2020 at SCI Phoenix.⁶

2. Reasons for High Risk Of COVID-19 Spread in Prisons

- a. Congregate living
 - i. Cellmates in small cells, or dorm-style housing
 - ii. Shared common areas, meal areas, recreation
- b. Challenges or impossibility of social distancing
- c. Access to soap and masks.
 - i. Many have a hard time getting soap and masks.
 - ii. Earlier on, masks were difficult to obtain.
- d. Cleaning and sanitation
 - i. Many have challenges in having access to cleaning supplies and being able to clean and sanitize their living spaces.
 - ii. Common touch areas require regular cleaning and sanitation.
- e. Medical vulnerabilities: Many incarcerated people have underlying medical conditions that may decrease their ability to quickly recover, or increase their chances of dying from the virus.
- f. Pennsylvania has many old buildings
 - i. Difficult to clean and sanitize
 - ii. Poor ventilation systems and difficult to upgrade
- g. Prisons are not sealed facilities
 - i. Staff, contractors, and others come in and out daily
 - ii. Due to courts being closed, many people were unable to be released through the normal process when their criminal case proceeds
 - iii. Now a rising population and have new people being incarcerated

⁵ Timothy Williams, Libby Seline, Rebecca Griesbach, *Coronavirus Cases Rise Sharply in Prisons Even as They Plateau Nationwide*, The New York Times, June 16, 2020), <https://www.nytimes.com/2020/06/16/us/coronavirus-inmates-prisons-jails.html>.

⁶ Steph Yin, *First person to die of COVID-19 in PA prisons was fighting for innocence*, WHYY (PBS) (April 14, 2020), <https://whyy.org/articles/coronavirus-update-growth-of-pa-cases-continues-to-slow-police-urge-asian-americans-to-report-hate-crimes/#:~:text=The%20first%20person%20to%20die,He%20was%2067>.

3. Humane Living Conditions In Prisons During COVID-19

- a. Many incarcerated people have been living under severe challenges that raise constitutional concern
- b. Response has varied. Some prisons did not implement social distancing.
- c. Many prisons have implemented severe lockdowns
 - i. Being in a cell for 20+ hours. Many report being let out for only 15 minutes a day, which is the only opportunity to shower or call family and friends
 - ii. Impacts people's physical and mental health
- d. Access to necessary services restricted or stopped
 - i. Medical care
 - ii. Recreation (indoors and outdoors), and ability to exercise
 - iii. Programming
 - iv. Access to courts and counsel
 - v. Ability to observe and practice their religion

4. Racial Justice Impact

- a. Due structural racism, mass incarceration of disproportionate numbers of Black and Latinx people
- b. COVID-19 impacting people of color disproportionately.⁷
- c. Compounded effect of COVID-19 on incarcerated people.
- d. More data should be collected.⁸

⁷ CDC, *Health Equity Considerations and Racial and Ethnic Minority Groups*, July 24, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>; *Assessing differential impacts of COVID-19 on black communities*, Gregario A. Millet, et al., *Annals of Epidemiology* vol. 47 pp. 37-44 (July 2020), <https://www.sciencedirect.com/science/article/pii/S1047279720301769>

⁸ Joseph Darius Jafaari, *Review of COVID-19's effect on communities of color largely ignores Pa. inmates*, *Spotlight PA* (Aug. 21, 2020), <https://www.inquirer.com/health/coronavirus/spl/pa-prisons-jails-coronavirus-releases-task-force-20200821.html>; By Maurice Chammah, Tom Meagher, *Is COVID-19 Falling Harder on Black Prisoners? Officials Won't Tell Us.*, *The Marshall Project* (May 28, 2020), <https://www.themarshallproject.org/2020/05/28/is-covid-19-falling-harder-on-black-prisoners-officials-won-t-tell-us#:~:text=When%20COVID%2D19%20swept%20several,died%20in%20the%20state%20over all.>

5. Steps Prisons Should Take

- a. CDC Guidelines of July 22, 2020, updated on October 7, 2020
 - i. <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>
- b. Provide incarcerated people easy ability to maintain hygiene and sanitation
- c. Frequent leaning and sanitation of common areas
- d. Consistent recreation in smaller groups
- e. Consistent access to outdoor recreation
- f. Prompt testing and regular mass testing⁹
- g. Free and easy access to phone calls and video visits with family and friends
- h. Maintain all necessary services, including medical care, access to courts and counsel, religious services and accommodations
- i. Proper use of quarantine and medical isolation
- j. Use of cohorts and contact tracing
- k. Transparency to the public.¹⁰

6. Pennsylvania

- a. Based on universal testing at Montgomery County Correctional Facility, Philadelphia Department of Prisons, and George W. Hill Correctional Facility (Delaware County), large numbers of incarcerated people who tested positive for COVID-19 were asymptomatic.¹¹

⁹ CDC, *Serial Laboratory Testing for SARS-CoV-2 Infection Among Incarcerated and Detained Persons in a Correctional and Detention Facility — Louisiana, April–May 2020* (July 3, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6926e2.htm?s_cid=mm6926e2_w (“Early detection and isolation of persons with COVID-19, along with testing of close contacts, can slow the transmission of SARS-CoV-2 in correctional and detention facilities. Serial testing, particularly for close contacts of patients, is important for complete identification of cases and prompt public health response in congregate settings.”)

¹⁰ *Compare PA DOC Dashboard to Joseph Jafaari, Bucks County goes to court to shield prison’s coronavirus plan*, PA Post (July 15, 2020), <https://papost.org/2020/07/15/bucks-county-goes-to-court-to-shield-prisons-coronavirus-plan-from-pa-post/>

¹¹ Jeremy Roebuck and Allison Steele, *Montgomery County’s Jail Tested Every Inmate For COVID-19 — And Found 30 Times More cases Than Previously Known*, Philadelphia Inquirer (April 28, 2020), <https://www.inquirer.com/news/coronavirus-testing-montgomery-county-jail-asymptomatic-philadelphia-prisons-20200428.html>; Jeremy Roebuck, *Nearly Half Of Inmates Tested In Delaware County’s Jail Have Had The Coronavirus*, Philadelphia Inquirer (May 12, 2020), <https://www.inquirer.com/news/coronavirus-delaware-county-jail-george-hill-covid-mass-testing-results-serology-20200512.html>; Jeremy Roebuck, *Six Percent of . . . Philly Inmates Tested Positive For COVID-19 As Jails Move To The ‘Yellow’ phase*, Philadelphia Inquirer (June 5, 2020), <https://www.inquirer.com/news/coronavirus-philly-jails-inmates-universal-testing-class-action-lawsuit-settlement-20200605.html> (headline incorrectly noting that

b. Pennsylvania COVID-19 Dashboard

- i. <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx>
- ii. As of October 9, 2020
 1. 162,063 confirmed cases
 2. 5865 suspected cases
 3. 8299 deaths

c. Pennsylvania Department of Corrections

- i. Total population: 42,325.
 1. Daily census available at <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Current%20Monthly%20Population.pdf>
- ii. COVID-19 Dashboard: <https://www.cor.pa.gov/Pages/COVID-19.aspx>
 1. As of October 9, 2020
 - a. 151 active cases of incarcerated people, 71 active cases of staff
 - b. Total cases: 447, plus 534 pending tests

d. Pennsylvania Counties

- i. County Prison Contact Info can be downloaded here:
 1. <https://www.cor.pa.gov/Facilities/CountyPrisons/Pages/County-Prison-Contact-Info.aspx>
- ii. Pennsylvania Prison Society
 1. COVID-19 Landing Page: <https://www.prisonersociety.org/covid-19>
- iii. Philadelphia Department of Prisons
 1. <https://www.phila.gov/programs/coronavirus-disease-2019-covid-19/testing-and-data/#/philadelphia-prisons-covid-19-data>

e. Federal Bureau of Prisons

- i. COVID-19 Dashboard: <https://www.bop.gov/coronavirus/>.
- ii. As of October 9, 2020
 1. FCI Allenwood Medium: 78 positive cases, 9 staff
 2. USP Allenwood: 4 cases, 1 staff
 3. USP Canaan: 5 cases, 1 staff
 4. Federal Detention Center (Philadelphia): 1 case

6% of asymptomatic inmates tested positive, but this was the overall positive test rate, with 18% of the positive tests were from asymptomatic inmates).

7. Litigation in Pennsylvania on COVID-19 in Prisons and Jails

- a. Remick v. Philadelphia, Case No. 20-cv-1959 (E.D. Pa.)
 - i. Class action challenging failures of the Philadelphia Department of Prisons for protecting incarcerated people against COVID-19 and imposing inhumane conditions
 - ii. Litigated by Pennsylvania Institutional Law Project, Kairys, Rudovsky, Messing, Feinberg & Lin, ACLU-PA, and Dechert LLP

- b. Graham v. Allegheny County, No. 2:20-cv-0496 (W.D. Pa.)
 - i. Class action challenging failures of Allegheny County Jail in ensuring safe and humane conditions for incarcerated people relating to COVID-19
 - ii. Litigated by Pennsylvania Institutional Law Project, ACLU-PA, Abolitionist Law Center, and Dechert LLP.

- c. Brown v. Marler, Case No. 20-cv-1914 (E.D. Pa.)
 - i. Class action challenge against the Federal Detention Center relating to COVID-19.
 - ii. Litigated by Public Interest Law Center, Jim Davy Esq., Dilworth Paxson LLP