



Alabama's Staton Correctional Facility in Elmore County. Overcrowded jails are a breeding ground for the coronavirus. (Mike Cason | mcason@al.com)

THE FUTURE OF What's Happening Now

## What a Pandemic Can Teach Us About the Future of Criminal Justice

Driven by the deadly conditions in our jails, we're beginning to see a way forward for reforms that can produce safer and healthier communities. We need to build on it for the future.

Alex Busansky, Impact Justice | May 5, 2020 | Opinion

In the race to curtail the deadly coronavirus, nowhere is the outlook more grim than inside America's correctional facilities. As of April 19, for example, the rate of COVID-19 infection among people confined in New York City's Rikers Island jail complex appeared to be six times higher than in the city overall, a dynamic playing out to differing degrees in lockups across the country.

Confinement creates conditions ideal for the spread of any contagion, and the underlying health conditions that can make it impossible to survive COVID-19 are far more prevalent among incarcerated people, as those conditions are among poor and black and brown Americans generally. Not only is the death toll behind bars poised to be exponentially higher, but it will also drive up the overall number of fatalities as released inmates and correctional staff take the virus home with them; the barrier between correctional facilities and the community is more porous than many Americans realize.

So in the midst of a public-health crisis far more frightening than the fear of change, public officials have begun doing what under other conditions would have been dismissed as a reformist's fantasy: dramatically dialing down the punitive machinery of the criminal-justice system. Many police departments have stopped arresting people for lower-level, nonviolent crimes. In Los Angeles County, for example, where the sheriff's department had been arresting an average of 300 people a day, as of mid-March the daily tally had dropped to fewer than 60. Meanwhile, many prosecutors and judges have begun working in lockstep to depopulate jails.

That's not trimming around the edges of enforcement; that's cutting at the core. Roughly 80 percent of arrests nationwide are for low-level offenses such as drug abuse and disorderly conduct, while less than 5 percent are for serious violent crimes. And people arrested for low-level offenses today are far more likely to land in jail than they were years ago, when rates of all crimes were higher.

Suddenly, that's changing, and dramatically. All around the country, jail populations are contracting. Los Angeles County's inmate count, for example, had dropped by 28 percent as of April 18, simply by focusing on people who pose no serious threat to anyone and don't belong in jail. It's not nearly enough, and we haven't yet seen any meaningful reductions in prison populations, where the virus among the long-term incarcerated and prison staff [is spreading rapidly and extensively](#). But it suggests what's possible when people in power feel compelled to act.

Why it took a pandemic to spark perfectly safe, commonsense restraint in the use of arrest, prosecution and jail is a valid question, but even more important is what police, prosecutors, judges and others in the criminal-justice system will do once the virus subsides — and what the public will demand of them. While government at all levels must invest heavily in the country's recovery and to prepare for other crises to come, how can we continue to dump billions of tax dollars annually into oversized criminal-justice systems that fail to deliver either safety or justice? In what future is it still acceptable for the "justice" system to be a major driver of infectious disease, intergenerational poverty and entrenched inequality?

The stopgap measures we're taking now in the midst of this crisis should push us out of old habits and toward new ones. We not only have to reel in the long arm of the law and soften its force, but our future decisions should also reflect one of the most important lessons in the field: that many so-called criminal-justice problems demand something other than a criminal-justice solution. The path to greater safety and justice for us all runs through communities themselves.

For the past several years, my organization has been working with a small but growing number of counties around the country, including four in our home state of California, where prosecutors are turning over cases to community-based organizations trained in restorative justice. The mostly young people of color at the center of these relatively serious cases, who would otherwise be driven deeper into a legal system stacked against them, instead have a chance to mature and be truly accountable for their actions — something the criminal-justice system doesn't promote. Prosecutors in San Francisco found that [only 13 percent](#) of young people accused of crimes who completed a local restorative-justice program went on to commit new crimes over the next two years, compared to a 53 percent recidivism rate for youths in the traditional justice system. And it's not only young people who can be accountable and change if given a real second chance.

By investing more in communities, coupled with the kind of restraint in law enforcement we're seeing now, we could stop wasting the greatest resource we have: human potential. This very difficult time in American life is also a time machine to a possible future — providing a glimpse of the kind of right-sized, humane and restorative approaches to justice that people and their communities can undertake together in better days to come.

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