

The Sentencing Project

Criminal Justice Issues and Prisoners' Rights

<https://www.sentencingproject.org/publications/letter-examining-best-practices-incarceration-detention-covid-19/>

Policy Issue Resources

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June 2, 2020

Re: Hearing on Examining Best Practices for Incarceration and Detention During COVID-19

Dear Chairman Graham and Ranking Member Feinstein:

Thank you for holding today's hearing to examine the impact of COVID-19 on incarcerated populations and how best to prevent the spread of infection and save lives. The Sentencing Project is deeply concerned that despite warnings from public health experts, including the Centers for Disease Control and Prevention, regarding the heightened risk that incarcerated people face from COVID-19 due to overcrowded and unsanitary conditions of confinement, officials at every level of government have not done enough to protect the lives of incarcerated people and correctional workers.

According to The Marshall Project, at least 34,584 people in prisons alone tested positive for COVID-19 as of May 27. The federal prison system reports the highest number of cases among correctional systems, exceeding 5,000. Despite the high number of cases and the strong likelihood of increased infections in these settings, public health guidelines for physical distancing and sanitation are not adequately followed. Since March, experts in public health and correctional medicine have called for immediate steps to limit the risk posed by mass confinement, including releasing those detained on bail, along with elderly prisoners who pose little danger to the public.

The federal Bureau of Prisons, which has a population of 174,000 and has been operating overcrowded prisons for decades, is a stark case in point. To end overcrowding system wide, and thereby allow increased opportunities for social distancing, at least 11,000 people must be released from federal facilities. Since March 26, when Attorney General William Barr issued his first directive to prison officials on expediting home transfers, only 3,545 people have been transferred to home confinement. As of June 1, 68 people have died in federal prisons.

Congress granted the Department of Justice new authority in the CARES Act to help reduce the federal prison population by expediting transfers to home confinement. The Attorney General severely limited the effect of this new authority, however, by creating a long list of eligibility criteria, including that individuals must have a PATTERN risk score of minimum, have completed at least 50 percent of their sentence, and reside in a low- or minimum-security facility. As a result, a very narrow class of people has been determined to qualify for transfers, and even then, few are benefiting.

The Sentencing Project regularly corresponds with an individual confined at the prison camp at FCI Cumberland in Maryland which is a dormitory style low security housing unit where large groups of men sleep three feet apart from one another in bunk beds. Dozens of people share a bathroom. Unfortunately, despite this individual's history of chronic asthma and approval from the warden for transfer to home confinement, the Bureau of Prisons has denied his request because he has not completed 50 percent of his sentence. These arbitrary criteria for home confinement, which are not uniformly enforced as exemplified by the recent transfer of Paul Manafort, are not required under the law and jeopardizes the health of vulnerable people who present a limited threat to public safety. The Sentencing Project urges this Committee to use its oversight authority for the Bureau of Prisons to ensure that the CARES Act's expansion of home confinement is implemented as Congress intended.

The Department of Justice's limited strategy to reduce crowding also ignores research that finds older people in prison have very low rates of recidivism upon release regardless of their offense type or history of violent behavior. Known as aging out of crime, this phenomenon has been long established and should be considered in decisions to determine whether or not an individual presents a threat to public safety and is suitable for release.

U.S. District Judge M. Casey Rodgers applied this evidence in granting a petition for compassionate release for Andre Williams, 78, who

was serving a life sentence for bank robbery and weapons possession. The judges order stated, given Williams age, serious health problems, the substantial amount of time he has already served and his exemplary prison record the court finds that the risk of him engaging in further criminal conduct is minimal. The court ordered Williams release on April 1. While still in custody on April 5, Williams tested positive for COVID-19. He died April 12, still a prisoner.

It is this Committees obligation to ensure that the Department of Justice and the Bureau of Prisons do everything in their power to protect the lives of people incarcerated in federal facilities, which includes expediting releases and transfers of elderly and vulnerable people in their custody who do not present a credible threat to public safety during this health crisis. The potential consequence of failing to take significant action to reduce the spread of infection is staggering.

In conjunction with colleagues from the Justice Roundtable, The Sentencing Project has endorsed these recommendations to reduce incarceration levels to end facility overcrowding and limit the spread of COVID-19. I hope this Committee will consider them and support their passage. Please contact Kara Gotsch, Director of Strategic Initiatives at The Sentencing Project, at kgotsch@sentencingproject.org if you need additional information.

Sincerely,

Marc Mauer
Executive Director

Increase in U.S. jail & prison population in the last 40 years

COVID-19

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