

Vera Institute of Justice

Criminal Justice Issues and Prisoners' Rights

<https://www.vera.org/blog/four-ways-the-pandemic-made-us-rethink-our-criminal-legal-system>

Public Facing Advocacy Writing

The COVID-19 pandemic exposed the [public health risks that overcrowded jails and prisons pose](#).

As state and local governments scrambled to contain the virus, the punitive policies and practices that have characterized the nations criminal legal system became untenable. And as a result, some policymakers enacted measures that advocates have long urged. They [released people from jails and prisons](#), reduced admissions, and took steps to make facilities safer. People like [Kendrick Fulton](#), who had served 17 years of a 28-year prison sentence for selling crack cocaine, suddenly had the unexpected opportunity to go home. Since then, Fulton has been able to get much-needed knee surgery and a job at a wholesale auto glass distributor.

But many others remained locked up in cramped, unsanitary facilities. [Efforts to decarcerate did not go far enough](#), and, ultimately, [jails and prisons became epicenters of the virus](#). More than 2,600 incarcerated people and 200 staff died in prisons alone, where data collection has been more robust than in local jails. But in most places now, moves to decarcerate have been abandoned. A report released by Vera on Monday shows that [jail populations increased 13 percent](#) from mid-2020 to spring 2021, after reaching their lowest point in two decades last year.

Still, the fledgling steps taken by local officials showed that there are ways to downsize jail and prison populations, and that [we can keep our communities safe](#) without relying on overincarceration. As the vaccine is made widely available, policymakers must resist the inclination to go back to business as usual.

Here are four changes policymakers implemented during the pandemic that we can and should carry forward.

In some jurisdictions, police pulled over significantly fewer people, following guidance issued by law enforcement associations like the International Association of Chiefs of Police (IACP) to consider limiting traffic enforcement for non-critical concerns. In Texas, [traffic stops by police were down 35 percent](#) in 2020, and, in Connecticut, [police gave out more than 34 percent fewer tickets](#).

These practices should continue. [Most stops](#) are for minor traffic violations, and [some of those](#) are pretextual: [police stop drivers for a minor infraction](#) but then seek evidence of a more serious crime. [Evidence shows](#) that pretextual stops, fueled by racial bias, [are one of the drivers of racial disparities](#) in the criminal legal system: people of color are stopped, questioned, and searched [at higher rates than white people](#). Eliminating unnecessary traffic stops is one step toward ending these harms.

Some jurisdictions took positive steps to [alleviate the heavy burden](#) that court fines and fees impose on millions of people. In March of last year, [Maine](#) vacated all 12,420 outstanding warrants for unpaid fines and fees. [Oregon](#) passed a bill last June to end drivers license suspensions for unpaid fines and fees. And last month, [Dane County, Wisconsin](#), [eliminated fines and fees debt](#) for people currently and formerly incarcerated, totaling \$149,828 (it also eliminated a number of other judiciary fines and fees in December 2020, amounting to more than \$1 million).

But not all the news was good. Some places increased fines and fees, and [Colorado even intercepted stimulus checks for unpaid court debt](#).

The need to relieve such debt and to stop funding the criminal legal system through fines and fees persists even absent a pandemic. These [practices harm low-income people and people experiencing poverty](#) most. A 2018 [study in Alabama](#) found that more than 80 percent of people gave up things like food, rent, medical bills, car payments, and child support to pay down their court debt. People who cant pay fines and fees can incur further charges, have their drivers license suspended, and even face jail time for their inability to pay.

Some district attorneys declined to prosecute low-level cases during the COVID-19 pandemic to stem the flow of people in and out of courtrooms and jails. [Baltimore stopped prosecuting](#) drug possession, prostitution, trespassing, and other low-level offenses, a move that the states attorneys office actually made permanent in March this year. The district attorneys office in Brooklyn [suspended prosecution of nonviolent offenses](#) like driving without a license and shoplifting, while Chicago [stopped prosecuting minor drug possession cases](#). The changes [may still be made permanent in Chicago](#), but the Brooklyn district attorneys office has [already rolled back many of its policies](#).

Although these measures were introduced to slow the spread of the COVID-19 pandemic, there are other reasons it makes sense to stop prosecuting people for low-level, nonviolent offenses (which make up about 80 percent of arrests): doing so [promotes public safety](#) and reduces the [disproportionate and devastating harm](#) our criminal legal system inflicts on people of color and people who experience poverty, mental health conditions, and substance use. The Suffolk County district attorney in Massachusetts implemented a decline-to-prosecute policy for several low-level offenses well before the pandemic and recently released a groundbreaking study on the impact of that decision. [Declining to prosecute people](#) for misdemeanors like disorderly conduct and shoplifting [substantially reduced their probability of future involvement](#) with the criminal legal system. In other words, continuing to prosecute people for low-level crimes the status quo in most counties in the United States is a poor investment in public safety and [can actually lead to more crime](#).

On any given day, most of the [nearly half a million people](#) held pretrial in jail are there simply because they can't afford bail. A [number of cities and states](#) changed bail and pretrial detention policies during the pandemic to reduce the number of people awaiting trial behind bars. [Jail populations in California dropped](#) after the state issued an emergency rule that reduced bail to \$0 for people accused of low-level crimes. Although the state's judicial council [rescinded the emergency measure](#) in June 2020, at least 31 California counties [kept the measure in place](#) past that date.

People detained pretrial have not been convicted of a crime; they are simply waiting for their day in court. But they are more likely to plead guilty, be sentenced to jail or prison, and to have future contact with the criminal legal system [compared to their counterparts](#) who were released or made bail. Incarceration for even a few days can mean losing one's job, housing, children, and access to education. And it's not making communities safer: even a few days in jail is so destabilizing to people's lives that it makes it [more likely they will be arrested again](#) in the future.

Amid a global pandemic, officials found ways to decarcerate overcrowded jails and prisons; decriminalize minor offenses; and reduce and even eliminate fines, fees, and cash bail. But the initial momentum has [long since slowed](#). And soon, many of the people who have been released [could be headed back to serve the remainders of their sentences](#). Fulton, who has spent the last year in Round Rock, Texas, now faces the prospect of having to leave his job to go back to prison.

It shouldn't take a pandemic to expose the fissures in a system that in less dire times puts punishment before people's safety and well-being. It also shouldn't take a pandemic to achieve the kind of decarceration we saw in 2020, when the overall jail and prison population in this country [dropped for the first time in decades to under 2 million](#) 1.8 million, to be exact. Overpolicing, overcriminalization, and mass incarceration have become mainstays of our criminal legal system. The pandemic proved policymakers can do things differently. We can't afford to go back.

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