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Faced with COVID-19, Californias Overcrowded Prisons Relied on Solitary and Transfers, Not Mass Decarceration. Incarcerated People Paid the Price.

by [Juan Moreno Haines and Katie Rose Quandt](#) | June 30, 2021

Last December, 71-year-old Ernie Stevens was called to the nurses station at San Quentin State Prison in California, where he was told that he would soon be transferred to another facility. I was told that Im high-risk medical and because I didnt have Covid, they said they want to move me for my safety, said Stevens, who had so far managed to avoid Covid-19 as the prison became one of the worst hotspots in the country, killing 28 incarcerated people and one correctional officer. Stevens has been tested every Wednesday since May, he said, and is among the 25 percent of the prisons population who have not yet tested positive.

Stevens was given the option to stay in the facility if he signed a liability waiver, which he did; San Quentin is known for its wide variety of rehabilitation programs that are not necessarily available at other facilities. Despite signing the waiver, he was told by a counselor just two days later that he was up for transfer. But then months went by. As of April, Stevens still remained in San Quentin, alongside other men who were similarly told to prepare for transfer months ago.

Since the beginning of the pandemic, medical experts and advocates have been clear: Prisons and jails should lower their populations. Fewer people behind bars would mean those left behind can spread out and socially distance. In the past year, the California Department of Corrections and Rehabilitation (CDCR) has in fact achieved some modest reductions: Since March 2020, the states overall prison population dropped about 22 percent, from [122,409](#) to [96,079](#). (Notably, the population is already slightly on the rise from its low of [94,306](#) this past February.) This reduction was achieved in part by [granting early release to 19,000 people](#), many on medical grounds, as well as through an order by Gov. Newsom to [limit intakes](#) from jails.

However, this 22 percent reduction is not nearly enough to make California prisons safe. Pre-pandemic, the states prisons were extremely overcrowded, holding *130 percent of their intended capacity*. Even with todays smaller populations, they are operating at 104 percent. In other words, California continues to incarcerate more people than its prisons are operationally designed to hold. Instead, CDCRs response to Covid-19 has been to lock people down in their cells. For over a year now, the men of San Quentin have been locked in (mostly double-occupancy) cells for more than 23 hours a day; the only exceptions are the 200 or so who work in select essential jobs. Everyone else leaves their cell every other day for 90 minutes, one tier at a time, during which they may shower in one of the racially segregated community showers, go to the prison yard, or make a 15-minute telephone call if sign-up slots are available.

But locking people down in their cells does not stop the spread of viruses. Multiple shifts of workers cycle in and out of the prison each day, potentially bringing disease into the unventilated, enclosed buildings. Long before the current pandemic, crowding, poor air flow, and inadequate access to hygiene supplies in prisons and jails led to regular outbreaks of the flu, scabies, chicken pox, staph infections, and other contagious diseases. This ever-present danger is especially high for older people like Stevens, who is finishing his 24th year of a 25-year-to-life sentence. San Quentin holds a particularly high share of lifers, many of whom have already spent decades behind bars, but the [US prison population as a whole is aging](#). In California prisons, the [percentage of people aged 50 and older](#) quintupled from 2000 to 2017, from 4 to 23 percent. The pandemic has brought into sharp relief the dangers of our overcrowded prison system, and the immediate need for serious reductions to prison populations.

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For these very reasons, some courts have ordered decarceration. In fact, the confusing messaging given to residents of San Quentin like Ernie Stevens likely stemmed from an October California State Appeals Court ruling, ordering CDCR to [reduce San Quentins population](#) to 50 percent of its September 2020 level of 3,462. The judges recommended that CDCR accomplish some of this reduction by expediting release for people over 60 who have served 25 years and are parole-eligible. However, they also noted another way to reduce San Quentins population: transfers, specifically noting that 11 male state prisons were officially below capacity and could serve as potential transfer locations.

Since the ruling, CDCR has somewhat reduced San Quentins population, to [2,384 by May](#) although the population remains above the judges order of 1,775.

While the judges suggestion to transfer was well-intentioned, shuffling people from prison to prison during a pandemic is dangerous. In fact, the San Quentin outbreak can be traced back to transfers in the first place, according to a [February report](#) by the state Office of the Inspector General. The OIG found that San Quentins outbreak happened after CDCR responded to an earlier outbreak at the California Institution for Men by transferring people from that facility *into* San Quentin. Within a month, San Quentin went from zero positive COVID-19 cases to nearly 1,200, creating what the October court order called the worst epidemiological disaster in California correctional history. The OIG report noted that the transfers were deeply flawed and risked the health and lives of thousands of incarcerated persons and staff.

And the judges suggestion that CDCR transfer people from San Quentin to other state prisons underscores another major problem: There are no prisons in California where men from San Quentin could safely be sent. Most of the 11 prisons noted as below capacity by the appeals court are more than 70 percent occupied. Nearly-full facilities do not have the space to safely handle an influx of transfers especially during the pandemic, when medical experts recommend against double-celling and dormitory-style housing. As of early June, [California continues to cap](#) restaurants and other public spaces at 25 or 50 percent capacity; It is clear that a 70- or 80-percent occupied prison is not a safe alternative.

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Medical experts agree that decarceration in combination with vaccination is the best protection from COVID-19. A [recent article](#) in the New England Journal of Medicine argued that vaccination alone will not be enough to stop outbreaks in prisons and jails, in part because herd immunity is inherently harder to achieve in congregate living spaces. The article also notes that there may be a potentially high rate of vaccine hesitancy among staff, as well as incarcerated people, who have been offered little to no educational material about Covid-19 vaccines and have abundant reasons for distrust, given U.S. carceral facilities long-standing violations of basic human rights and histories of abuse. The fears of staff vaccine hesitancy appear well-founded: An April analysis by the Prison Policy Initiative found that, in most states, [less than half of corrections staff](#) had received the first dose of a COVID-19 vaccine.

The New England Journal of Medicine paper echoes what medical experts have been saying since the beginning of the pandemic. The October court order to depopulate San Quentin was based on a June [urgent memo](#) by Dr. Brie Williams and other medical experts from the University of California San Francisco, which urged: San Quentin is an extremely dangerous place for an outbreak. Everything should be done to decrease the number of people in this environment as quickly as possible.

The memo further noted the dangers of double ceiling, writing that a 50 percent population reduction would allow every cell in North and West Blocks to be single-room occupancy and will allow leadership at San Quentin to prioritize which units to depopulate further, including the high-risk reception center and gymnasium environments.

These suggestions have not been implemented. People remain double-celled throughout San Quentin, including in the 414-cell North Block and 449-cell West Block, which are enclosed in non-ventilated buildings with windows welded shut. Each block consists of five tiers of windowless cells that are roughly four feet wide and 10 feet long smaller than the average parking space and are equipped with a stainless steel toilet, sink, and bars on the front.

Despite the San Quentin lockdowns, and the good intentions of the judges ordering a population reduction, Ernie Stevens and many others expressed concern about the possibility of transferring to a different prison. Beyond the obvious risks, many also fear losing access to the programs they have taken part in for years or decades. (For example, around [one-quarter of the San Quentin population](#) were enrolled in academic rehabilitation programs prior to the pandemic.) Before the lockdowns, Stevens regularly attended a reentry group, Alcoholic Anonymous, and a faith-based 12-step program, while also working as a groundskeep on the prison yard. I feel bad and Im stressed out to the max, Stevens said in December, soon after hearing that he might be transferred. He said he developed a lump on his chest the size of a golf ball. I noticed it after I started stressing about being transferred.

Like Stevens, Wilber Rodgers, Jr., 62, has remained Covid-free and was told to prepare to transfer. Hes been incarcerated 20 years on a Three Strikes sentence of 122-years-to-life. I was called to the nurses office on December 1, and asked to sign a disclaimer, he said. I refused to transfer or sign.

Glen Harder, 59, was also told to prepare for transfer in December. The stress they are causing us is really bad for my compromised immune system caused by HIV, Harder said. Prior to the pandemic, he worked in the prison as a construction laborer. During his off time, he went to church and exercised. Now, during the never-ending lockdown, he studies the Bible in his cell and does lots of laying around.

Harder is serving a sentence of 34-years-to-life for second-degree robbery under Californias Three Strike Law. This year he will qualify for a law that allows people who have served at least 25 years and are 60 or older to appear before the parole board.

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This is not the first time that California has attempted to follow court orders to depopulate prisons by moving people around.

In 2011, in the case *Brown v Plata*, the US Supreme Court upheld a lower court ruling that overcrowding was leading to unnecessary deaths in California prisons, and ordering CDCR to reduce its extreme overcrowding. But instead of requiring every facility to drop below its design capacity, the court ordered that the *overall CDCR population* must fall below 137.5 percent of design capacity within two years. California achieved much of its ensuing prison reduction by transferring people to serve their sentences for certain crimes in local jails instead of state prisons, thereby shifting the dynamics of incarceration while keeping many people locked up. A law review [article](#) later found that, between 2010 and 2012, Californias prison population dropped by 18 percent, while its jail population increased by 12 percent.

Even after that major restructuring of the states incarcerated population, most California prisons remain overcrowded as permitted by the 137.5 percent overcrowding cap enstated by *Plata*. Today, even following a year of modest COVID-19-related reductions, [20 of the states 32 male facilities](#) remain at over 100 percent capacity including 10 above 120 percent.

Even if the share of incarcerated people who are vaccinated continues to increase, prison officials must follow the science and find ways to reduce prison populations. In San Quentin in particular, in the words of the California Appeals Court, failure to drastically reduce populations is morally indefensible and constitutionally untenable.

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