

# Guidance for reducing jail populations to mitigate the impact of COVID-19 in Washington, DC

---

July 7, 2020

**F**our months into the COVID-19 pandemic, the risk of illness and death has yet to dissipate in Washington, DC. In fact, the number of people infected increases every day. As of June 29, 2020, there have been 10,327 confirmed cases and 551 deaths.<sup>1</sup> To curb the spread of the virus, the mayor ordered people to stay at home and generally limit their contact with others.<sup>2</sup> But there's one place where social distancing and other practices known to contain COVID-19 simply cannot happen: the DC jail.

Jails are veritable petri dishes for COVID-19—and people incarcerated in them are not only some of the most vulnerable to contracting the virus, but they are often overlooked, too. Hundreds of people are incarcerated in close proximity to each other, numerous staff enter and exit the facilities daily, and basic protective measures like hand sanitizer are prohibited as contraband. As DC federal judge Colleen Kollar-Kotelly recognized, the “risk of infectious diseases, such as COVID-19, is higher in jails and prisons because they are congregate settings which ‘allow for rapid spread of infectious diseases that are transmitted person to person.’”<sup>3</sup> Kollar-Kotelly’s emergency order set forth a variety of demands—medical and safety measures—which at the time, in mid-April, was among the first stories about correctional facilities’ responses to COVID-19 to break national news. Since then, correctional facilities have become nine of the top ten COVID-19 hotspots in the country.<sup>4</sup> And in DC, the infection rate for people in the jail is more than 11 times higher than for the local community.<sup>5</sup>

## Consequences of COVID-19 in jails

There may be devastating consequences—for those inside the jail and in the broader community—unless DC takes significant actions to reduce the spread of the virus at the jail. Incarcerated people are at greater risk of harm if infected because they are disproportionately more likely to have chronic health problems, and correctional health

care can be difficult to access.<sup>6</sup> These conditions also put people who work within the jail at greater risk. But an outbreak at the jail will not only affect people who reside and work in the facility; it will also impact the broader community as staff bring the infection with them back into the community and sick people from the jail consume scarce medical resources. Research suggests that higher jail incarceration rates are associated with “significant increases” in community rates of infectious disease deaths.<sup>7</sup> This finding is particularly concerning for DC, which has a jail incarceration rate more than five times higher than the international average.<sup>8</sup>

Moreover, these consequences will disproportionately harm DC’s Black community. Although Black people compose less than half of the District’s population, they account for 92 percent of people incarcerated in the jail and 75 percent of COVID-19-related deaths in the community.<sup>9</sup>

## DC must continue to reduce the number of people behind bars

The urgency of the COVID-19 crisis requires far greater action from DC’s criminal justice stakeholders than the steps that have been taken to date. Though DC has already made some progress on reducing the jail’s population—which declined from 1,854 people on March 18, 2020, to 1,265 people on June 29, 2020—the District can and must do much more—and do it quickly. DC lags behind decarceration efforts in other cities. Prior to the COVID-19 crisis, DC’s jail incarceration rate (263 per 100,000) was substantially higher than both San Francisco’s (124 people per 100,000) and New York City’s (65 people per 100,000). Yet, despite their significantly lower incarceration rates, both New York City and San Francisco have reduced their jail populations at nearly the same rate or higher than DC: New York City has decreased by 27 percent; San Francisco by 35 percent; and DC by 32 percent.<sup>10</sup> Indeed, across the country, the typical jail has reduced its population by more than 30 percent.<sup>11</sup> DC’s jail incarceration rate still remains far too high—with a rate more than twice that of San Francisco and four times higher than New York City.

Prosecutors and judges can help DC further reduce the jail population by releasing more people pretrial. Under DC law, prosecutors and judges are the primary decision makers on who is detained pretrial, and people held pretrial account for one-third of the jail population.<sup>12</sup> Even though DC’s pretrial system is often lauded as one of the best in the country, a close look at data and research reveals that prosecutors and judges still detain far too many people. Here are two ways they can take a different approach:

### **1. Prosecutors should reduce their requests for detention at initial appearances.**

In DC, if a prosecutor requests detention at the initial court appearance, the person will likely be detained until a judge holds a formal detention hearing 3–5 days later. But 59 percent of people detained at their initial court appearance are subsequently released pretrial—with most people released at their detention hearing.<sup>13</sup> Prosecutors can end the overuse of detention by consenting to release a far greater number of people at the initial court appearance. Three to five days in jail may seem like an inconsequential period of time, but it is enough for someone to lose their job, fall behind on rent, be turned out of their shelter, and, in the midst of this pandemic, be exposed to COVID-19.

## **2. Prosecutors and judges can release more people without impacting public safety.**

Pretrial violence is so rare that it is difficult to predict.<sup>14</sup> But, according to research on pretrial risk assessments, 92 percent of people flagged as “high risk”—those empirically deemed most likely to commit a violent offense—will *not* be rearrested for a violent crime while on release.<sup>15</sup> DC prosecutors and judges frequently rely on a pretrial risk assessment to detain people, even though these tools over-suggest risk. The DC pretrial statute also encourages prosecutors and judges to detain people even when doing so is not necessary. The DC statute allows detention if prosecutors and judges believe a person is *generally* a danger to the community, instead of limiting the consideration of danger to only situations of potential physical harm to another person. This broad standard has two problems. The first is that it encompasses a vague and broad swath of alleged conduct, including allegations of nonviolent and nonthreatening acts that do not actually compromise anyone’s physical safety. The second is that the broad standard invites prosecutors and judges to speculate about conduct that is empirically difficult to predict. As a result, DC detains 56 percent of people charged with *any* felony, despite the low likelihood that a person will be rearrested for a violent offense if released.<sup>16</sup> To bring DC’s rate more in line with research, prosecutors and judges should adopt a narrower framework. Instead of using the general dangerousness standard, they could recommend detention only when the facts of the case suggest that the person poses a risk of physical threat to an identifiable person.

## **Sharing jail data**

Having real-time data on the jail population is a tool that encourages accountability and transparency. The mayor’s office created a COVID-19 website with the capacity to track multiple public health metrics so that residents can see how the pandemic is affecting the District.<sup>17</sup> However, DC lacks a similar platform for residents to see the daily impact

of the criminal legal system and how it has been affected by the COVID-19 crisis, across various metrics, including how many people are in jail.

In contrast, [New York City](#) and [Harris County, Texas](#), for example, have websites that provide daily data on the number of people in jail, why they are detained, and key demographic information. DC should follow suit and also report the number of COVID-19 tests performed and the number of new infections, hospitalizations, recoveries, and deaths—all disaggregated by race, age, sex, and whether an infected person is incarcerated or employed in the facility. That level of daily data transparency could help stakeholders make better informed decisions and assist community members with tracking the District’s continued progress in combatting the pandemic.

In this moment, it has become clear that protecting public health *is* public safety. DC has already adopted a transparent, data-informed approach to combatting the pandemic from a public health standpoint. But it must do the same in its public safety response to effectively contain COVID-19.

---

## Endnotes

- 1 Government of the District of Columbia Coronavirus Data, accessed June 30, 2020, [perma.cc/KK4J-HYPM](https://perma.cc/KK4J-HYPM).
- 2 DC Office of the Mayor, “Mayor Bowser Issues Stay-At-Home Order,” [perma.cc/58P7-M74R](https://perma.cc/58P7-M74R).
- 3 *Banks v. Booth*, No. 20-cv-00849-CKK, Document 51 \*8 (D.D.C. April 19, 2020).
- 4 “Coronavirus in the U.S.: Latest Map and Case Count,” *The New York Times*, accessed June 30, 2020, <https://perma.cc/NYJ6-TVJY>.
- 5 Justice Policy Institute, “COVID-19 Infection Rates in DC Jail 11 Times That of DC’s General Population,” accessed June 18, 2020, [perma.cc/F2N4-SYMB](https://perma.cc/F2N4-SYMB).
- 6 Alexi Jones and Wendy Sawyer, “Arrest, Release, Repeat: How Police and Jails Are Misused to Respond to Social Problems,” Prison Policy Initiative, August 2019, [perma.cc/3SZR-AE2E](https://perma.cc/3SZR-AE2E).
- 7 Sandhya Kajeepeta and Seth J. Prins, “Why Coronavirus in Jails Should Concern All of Us,” *The Appeal*, March 24, 2020, [perma.cc/QZ3D-AUY6](https://perma.cc/QZ3D-AUY6).
- 8 Vera Institute of Justice, “COVID-19: Criminal Justice Responses to the Coronavirus Pandemic,” accessed May 28, 2020, [perma.cc/G6YY-7Z3H](https://perma.cc/G6YY-7Z3H).
- 9 For DC demographics, see United States Census Bureau, “Quick Facts: District of Columbia,” [perma.cc/5WAM-C45C](https://perma.cc/5WAM-C45C); for DC jail demographics, see District Taskforce on Jails and Justice, “Jails and Justice: A Framework for Change” (Washington, DC: Council for Court Excellence, 2019), 16, available online at [perma.cc/LR2K-MLKT](https://perma.cc/LR2K-MLKT); and for DC coronavirus impacts, see Government of the District of Columbia Coronavirus Data, accessed May 28, 2020, [perma.cc/7A48-9V4Y](https://perma.cc/7A48-9V4Y).

- 10 For March 18 data, see “Inmate Populations Decrease at D.C. Jail Amid Coronavirus Fears,” *The Washington Post*, accessed June 14, 2020, [perma.cc/38UP-9K69](https://perma.cc/38UP-9K69); for June 29 data, see Criminal Justice Coordinating Council, “Justice Statistical Analysis Tool (JSTAT),” accessed June 30, 2020, [perma.cc/X5LT-D6ND](https://perma.cc/X5LT-D6ND).
- 11 Emily Widra and Peter Wagner, “While Jails Drastically Cut Populations, State Prisons Have Released Almost No One,” Prison Policy Initiative, May 14, 2020, [perma.cc/2K8J-UF6L](https://perma.cc/2K8J-UF6L).
- 12 District Taskforce on Jails and Justice, “Jails and Justice: A Framework for Change” (Washington, DC: Council for Court Excellence, 2019), 18, [perma.cc/ME78-J2HA](https://perma.cc/ME78-J2HA).
- 13 Pretrial Services Agency for the District of Columbia, “FY 2019 Release Rates for Pretrial Defendants within Washington, DC,” [perma.cc/82PZ-MAAD](https://perma.cc/82PZ-MAAD).
- 14 Chelsea Barabas, Karthik Dinaka, and Colin Doyle, “The Problems with Risk Assessment Tools: They Give Recommendations That Make Future Violence Seem More Predictable Than It Is,” *The New York Times*, July 17, 2019, [perma.cc/66TT-PU8H](https://perma.cc/66TT-PU8H).
- 15 Ibid.
- 16 Pretrial Services Agency for the District of Columbia, “FY 2019 Release Rates for Pretrial Defendants within Washington, DC,” [perma.cc/A8HM-4VQZ](https://perma.cc/A8HM-4VQZ).
- 17 Government of the District of Columbia Coronavirus Data, accessed May 28, 2020, [perma.cc/6P42-T9KD](https://perma.cc/6P42-T9KD).

---

## For more information

© 2020 Vera Institute of Justice. All rights reserved.

The Vera Institute of Justice is a justice reform change agent. Vera produces ideas, analysis, and research that inspire change in the systems people rely on for safety and justice and works in close partnership with government and civic leaders to implement it. Vera is currently pursuing core priorities of ending the misuse of jails, transforming conditions of confinement, and ensuring that justice systems more effectively serve America’s increasingly diverse communities. For more information, visit [www.vera.org](http://www.vera.org).