

The Scale of the COVID-19-Related Jail Population Decline

Proof that rapid decarceration is possible and evidence that more decarceration is necessary to mitigate future outbreaks inside jail and out

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August 2020

Summary

From mid-March to mid-April 2020—the first month of rapid spread of COVID-19 in the United States—there was an unprecedented reduction in the number of people held in local jails. Analysis conducted by the Vera Institute of Justice (Vera) of the most comprehensive jail data available shows that the number of people in jail in the United States fell by one quarter, mainly over the course of that month. Jail bookings dropped as people who would otherwise have been arrested stayed home, and police and sheriffs made fewer arrests they deemed unnecessary.¹

Simultaneously, many judges and prosecutors used their broad discretion to facilitate the release of people they deemed safe, while public defenders filed thousands of motions to secure the release of their clients.² Although some highly visible judges and prosecutors continued to stand in the way of decarceration—even while the deadly virus spread quickly through jails and prisons—the overall

impact was a rapid reduction in the sizable population of jailed people whose incarceration had no clear public safety rationale.³

But as the United States faces continued outbreaks of COVID-19, it is crucial to recognize that decarceration has still been inadequate, from both a public safety and a public health perspective. Future COVID-19 responsive policies should focus on facilitating the release of much broader categories of people and avoiding arrests and bookings that would refill jails. In the immediate term, further reducing jail populations would help to slow or stop the continued spread of the virus inside and outside jail facilities, and it could also help reduce correctional spending as state and local budgets shrink. In the long-term, this could enable an enduring shift of resources away from law enforcement and punishment and toward public services and responses. Such a policy approach would move the country toward ending both mass incarceration and the social and economic harms it inflicts on poor, Black, and brown communities.

Scale and timing of the decline

Vera collected jail population data for March through June 2020, from 1,309 jail jurisdictions in 1,278 counties. (See “Methods” below.) Collectively, these jails hold the majority of the United States jail population—55 percent of the country’s jail population in 2017. This suggests that nationally

there may have been approximately 200,000 fewer people in jail at the beginning of June than in mid-March. That extrapolation would mean that the United States reduced its jail population by a quarter in a matter of months. This reduction represents about 10 percent of the nation’s total incarcerated population when the number of people in jails and prisons are considered together. In contrast, the number

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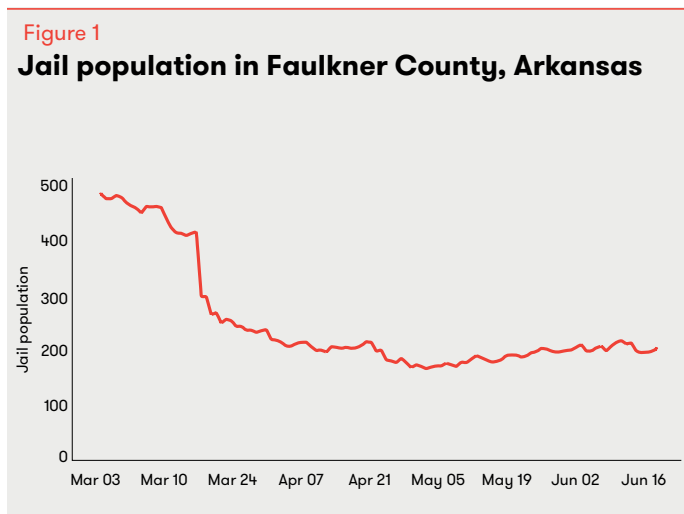
of people in state and federal prisons has declined only modestly since the COVID-19 crisis began, down 4.5 percent through the end of April.⁴

The data shows that the bulk of the jail population reduction occurred between March 15 and April 15, with a 22 percent decline during that month. That period was preceded and followed by relatively insignificant changes to the number of people in jail: between January 1 and March 15, the national jail population fell by only 1 percent. Between April 15 and June 1, jail populations declined by less than 5 percent. In May, as many states and counties began allowing businesses to reopen, the jail population started to tick upward.

Three different trajectories

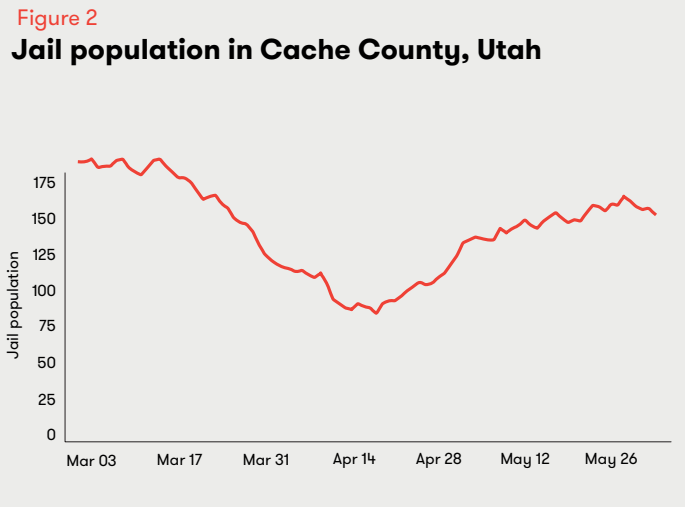
By June 2020, as governors and local officials lifted shelter-in-place orders, courts expanded their operations, and the police began to arrest more people, jail population trajectories could be grouped into three broadly defined categories.

1. In 527 counties, the number of people in jail declined rapidly and remained stable in the following weeks. For example, Faulkner County, north of Little Rock in Arkansas, eased restrictions on public gatherings during April and May, but the jail population did not rebound. (See Figure 1 below.)



2. In 270 counties, the jail population initially decreased, but then increased quickly, approaching previous levels of incarceration. In Utah, for example, Cache County's jail population went from 187 people in jail on March 15, 2020, to 85 people on April 18. But as of May 23, the

jail population had risen 88 percent, to 160 people. (See Figure 2.) Even big city justice systems that achieved highly visible jail population reductions in early 2020 reversed course and began to incarcerate more people. New York City, which cut its jail population by 30 percent—reaching its lowest number on April 27—had added more than 150 people as of June 1. In some jurisdictions—for example, cities like Louisville, Kentucky; Minneapolis, Minnesota; and Chicago, Illinois—a rise in jail population can be specifically tied to arrests made during mass protests.



3. In 454 counties, the jail population never decreased substantially. The jail population of Yazoo County, Mississippi, for example, remained stable from March until June. (See Figure 3.)⁵

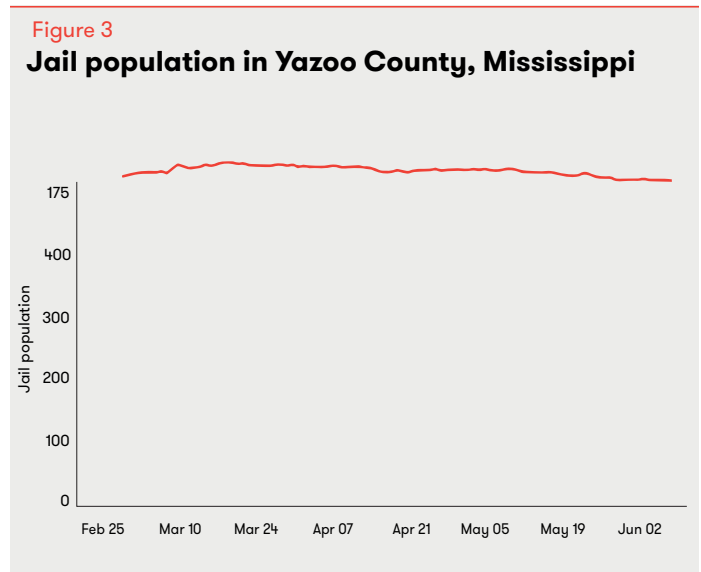
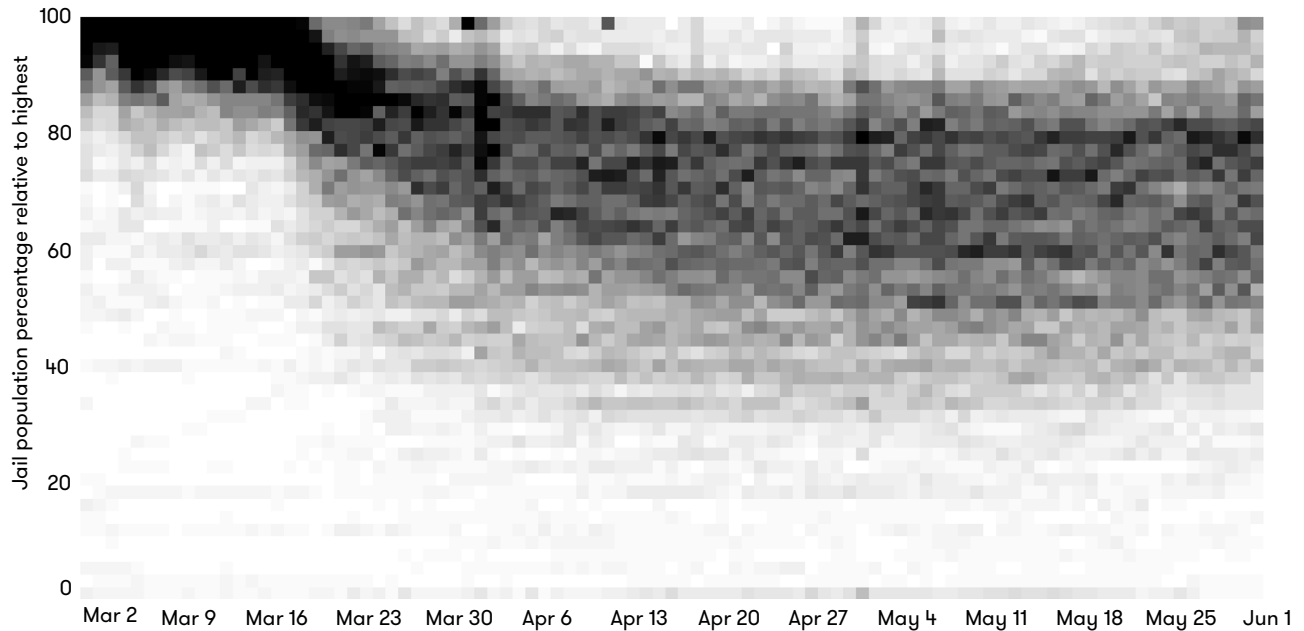


Figure 4 represents the percent change in jail population from March 1 to June 1 in all the jurisdictions Vera

Figure 4

Jail population percentage relative to highest



measured. The gray level of each pixel indicates the number of jurisdictions that fall within the corresponding percent change of the jail population on that date, compared with the maximum jail population in that jurisdiction over the period.

Why it matters

Nationally, decisions about who would be released as COVID-19 spread were made based on an uneven and varying set of criteria around charges, criminal history, sentence length, status, and identified underlying health conditions. This patchwork facilitation of releases echoes the often irregular administration of criminal legal systems from state to state, county to county, and courtroom to courtroom that emerges when law enforcement, prosecutors, judicial actors, and others are granted such broad discretion to punish and incarcerate.

Some states and counties continued to hold people who were charged with relatively minor offenses, resulting in preventable deaths.⁶ In contrast, other states saw more uniform and aggressive jail population reductions, either through a broad coordination of local efforts or as a result of explicit directives or policies put into place by the courts. Central to all of these decisions was the notion that the spread of the virus in overcrowded jails would be catastrophic, lead to legal liabilities, and push local health systems to a breaking

point. Still, most written state and local policies also focused explicitly or implicitly on nonviolent and/or nonsexual charges.⁷

The exclusion of people charged with or convicted of more serious offenses from releases during the pandemic speaks to the ways that criminal justice policy remains limited by tough-on-crime political considerations. Even as the country faces the unprecedented and tragic consequences of COVID-19, criminal justice policies do not reflect serious concern for public health, nor do they address the root causes of violence and harm.

Policies and public spending meant to promote public safety would be better directed at measures that are more strongly associated with violence reduction—including education, employment, increased wages, and decreased detention.⁸ Rural areas in particular have experienced significant disinvestment in social services and basic infrastructure, which, coupled with expanded jails and policing, have left the people who live there vulnerable to the COVID-19 pandemic.⁹ The recent murders of George Floyd, Breonna Taylor, Tony McDade, and so many other Black people by police have led to calls to defund police departments and shift resources into communities. Now is the time to reckon with enduring investments in jail incarceration that have similarly stripped funding from community resources and services.

As many experts warn of continued COVID-19 outbreaks after reopening—especially in rural and resource-poor parts of the country—holding fewer people in jail is more important than ever.¹⁰ Maintaining recent reductions and further reducing jail populations will make communities safer in the coming months and years by reducing the likelihood and severity of future outbreaks and enabling reinvestment of state and local dollars into community-based services and resources that support public health and public safety.

Methods

Vera gathered jail population data for March 1 through June 1, 2020, from several sources using a mixture of automatic and manual methods. The bulk of the data (1,174 counties) is automatically collected from online government resources, such as county jail websites and oversight body reports, as part of an ongoing effort, started in 2018: data for 525 of these counties was collected using Vera software, which was developed in a collaboration among Vera, Google.org, and Recidiviz; data for 237 counties was collected and processed by the NYU Public Safety Lab for its Jail Data Initiative (JDI); and data for 412 counties was collected using a mixture of both mechanisms depending on the dates available from those two sources. Because JDI releases data at the county level, Vera integrated JDI data only when researchers were able to confirm which jurisdiction in a county the data represented and when the pre-COVID jail population counts were similar in magnitude to the count latest reported to the Bureau of Justice Statistics (BJS). In addition, Vera researchers collected information by hand from an additional 66 counties and from another 38 counties using a mixture of automatic and manual collection.

Vera estimated the proportion of the national jail population covered by the counties included in this sample by looking at the most recent date for which total national jail population numbers are available—June 2017—as reported to BJS and contained in Vera’s Incarceration Trends dataset.¹¹ However, as the method by which BJS collects this data differs from Vera’s approach, Vera took steps to validate the estimate. To do so, Vera compared jail population data collected via the data sources described above on or near June 28, 2018, against the jail population reported by each jurisdiction to the BJS as part of the American Survey of Jails (ASJ) for that same date.¹² Of the 381 jurisdictions included in both data sets, Vera identified small discrepancies for 27 jurisdictions

and investigated the sources of the disparities. Vera then adjusted its estimate of the proportion of the total jail population represented by this study’s sample to account for these differences.

Vera categorized county jail population trajectories based on an analysis of the relationship between three measures: the “early maximum,” which is a county’s maximum jail population in 2020 before March 15; the “middle minimum,” which is the minimum jail population between March 15 and May 1; and the “late maximum,” which is the maximum jail population after May 1. A county was in trajectory one (dropped and stayed low) if the middle minimum population was 25 percent lower than the early maximum, and the late maximum was less than 25 percent higher than the middle minimum. A county was in trajectory two (dropped, then rose) if the middle minimum was 25 percent lower than the early maximum, and the late maximum was more than 25 percent higher than the middle minimum. A county was in trajectory 3 (never dropped) if the middle minimum was greater than 75 percent of the early maximum.

Endnotes

- 1 Shaila Dewan, Vanessa Swales, and Neil Vigdor, “Police Tread Lightly as Pandemic Spreads,” *The New York Times*, March 22, 2020, <https://perma.cc/56TH-VLHL>.
- 2 Fair and Just Prosecution issued an April 2020 brief highlighting strategies that chief local prosecutors were taking in more than 20 jurisdictions across the country to reduce and prevent incarceration. Fair and Just Prosecution, *COVID-19 and the Criminal Justice System: Reducing and Avoiding Incarceration During a Pandemic* (Los Angeles: Fair and Just Prosecution, 2020), <https://perma.cc/FH9B-KP55>. In states including Pennsylvania and Tennessee, judges were directed to develop written guidance and local strategies to reduce incarceration. The Harris County (Texas) misdemeanor court judges overrode the governor’s order limiting releases of people facing violent charges or with past convictions for violent offenses during COVID-19. See Jolie McCullough, “Harris County’s Misdemeanor Judges Won’t Follow Abbott’s Order Limiting Jail Releases During Coronavirus,” *The Texas Tribune*, March 31, 2020, <https://perma.cc/9C88-QTAJ>. The head of Kentucky’s statewide public defender system tweeted that, between March 12 and March 27, public defenders had filed at least 1,596 bail reduction motions. The American Bar Association Journal also documented efforts undertaken by the criminal defense bar in multiple states and cities. See Stephanie Francis Ward, “Where and How Are Criminal Defense Lawyers Making Headway on COVID-19 Bail Motions?” *ABA Journal*, April 6, 2020, <https://perma.cc/ZM3D-3QHA>.
- 3 Judge Anne Marie Coyle, one of seven judges appointed to rule on emergency release motions filed to reduce Philadelphia’s jail population during the pandemic, denied release in every case she heard in the first three days of emergency hearings. The other six judges approved nearly 60 percent of the motions before them, according to data from the Defenders Association. See Aaron Moselle, “Philly Judge Denies All Emergency Motions to Release Prisoners During Coronavirus Pandemic,” *WHYY*, April 15, 2020, <https://perma.cc/E55P-7F52>. Prosecutors from the Orleans Parish District Attorney’s office argued against releases on reduced bond in some cases, saying that freeing people might spread COVID-19 in the community. See Nicholas Chrastil, “As Calls for Release of Inmates Increase, DA’s Office Argues Against Bond Reductions, Saying Defendants Could Spread Virus if Freed,” *The Lens*, March 18, 2020, <https://perma.cc/PNA3-FYZJ>.
- 4 Jacob Kang-Brown, Chase Montagnet, Eital Schattner-Elmaleh, and Oliver Hinds, *People in Prison in 2019* (New York: Vera Institute of Justice, 2020), <https://perma.cc/2TQS-669L>.
- 5 There were 27 counties for which Vera had jail population information only before and after the first weeks of the U.S. COVID-19 pandemic, but not during. For these counties, Vera was unable to categorize a trajectory.
- 6 Michael Tyson, the first person to die of COVID-19 while incarcerated in New York City’s Rikers Island jail, had been arrested on a minor parole violation. See Reuven Blau, Rosa Goldensohn, “First Rikers Virus-Positive Fatality Was Jailed on Technicality,” *The City*, April 6, 2020, <https://perma.cc/AA5Q-9WDV>.
- 7 See the Tennessee Supreme Court’s order to address incarceration of nonviolent offenders, <https://perma.cc/TL7A-4V6Z>; the Ohio Supreme Court’s directive to release people serving nonviolent misdemeanor offenses, <https://perma.cc/GTK6-FZ5X>; and the Kentucky governor’s order conditionally commuting people’s sentences for nonviolent, nonsexual offenses, <https://perma.cc/RV9Y-9NFN>.
- 8 See Paul Heaton, Sandra G. Mayson, and Megan Stevenson, “The Downstream Consequences of Misdemeanor Pretrial Detention,” *Stanford Law Review* 69, no. 3 (2017) and Don Stemen, *Reconsidering Incarceration: New Directions for Reducing Crime* (New York: Vera Institute of Justice, 2007), <https://perma.cc/Q7RH-J2A3>.
- 9 See Kim Skobba, Adenola Osinubi, and Karen L. Tinsley, “What about Rural Blight? Housing and Neighborhood Conditions in Southeastern Small Towns,” *Rural Sociology* 85, no. 1 (2020), <https://perma.cc/JA2V-T77F>; and Oliver Milman, “2019 Was Worst Year for US Rural Hospital Closures in a Decade, Report Finds” *The Guardian*, February 19, 2020, <https://perma.cc/F4G4-EXBS>.
- 10 Reis Thebault and Abigail Hauslohner, “A Deadly ‘Checkerboard’: Covid-19’s New Surge Across Rural America,” *The Washington Post*, May 24, 2020, <https://perma.cc/5W7W-WYT6>.
- 11 In instances when a county’s jail data was not available for June 2017, Vera extrapolated a value based on the most recent data reported by the county prior to that date. For a discussion of this method and the data sources used, see Vera Institute of Justice, “Incarceration Trends, Data Sources,” at <https://perma.cc/C6HY-64SB>. Data available at <https://perma.cc/ET4J-Q35F>.
- 12 U.S. Department of Justice, Bureau of Justice Statistics, “Data Collection: Annual Survey Of Jails (ASJ),” <https://perma.cc/2V7U-XDGT>.