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LETTING GO

Who should stay locked up during the pandemic? Who can go?

For Police Issues by Julius (Jay) Wachtel. A [new study](#) confirms that keeping one's distance is *the* key preventive to the transmission of coronavirus. That's a tough prescription for inhabitants of densely-populated places like New York City to follow. Actually, apartment and condo dwellers everywhere are at risk. Ditto students who live in dorms or labor in packed classrooms. It's why campuses closed and education moved online. Heck, they've even shut down the Vegas strip!

But jails and prisons can't simply close. So what can be done to protect prisoners? Staff? In response to [an inmate lawsuit](#), a Texas Federal judge ordered "widespread testing" at a prison unit housing older, high-risk inmates. He also required that this vulnerable subset receive hand sanitizers and masks and that social distancing rules be followed during their movement. Yet his decision was overruled by an appeals court, which [held that it interfered](#) with the State's "rapidly changing and flexible system-wide approach" to managing the pandemic.

Just what approaches *should* jails and prisons follow? [Extensive guidelines](#) issued by the Centers for Disease Control recommend screening incoming inmates, isolating those with symptoms and quarantining any, symptomatic or not, who had close contact with an infected person. Improvements in hygiene and social distancing are thought especially important. Conceding that "not all strategies will be feasible in all facilities," the CDC suggests working towards a goal of keeping prisoners six feet apart by, among other things, staggering meal hours, removing and rearranging seating and bunks, and closely managing the use of recreational areas.

State correctional authorities have announced a host of measures (for Texas click [here](#), for California click [here](#), for New York click [here](#).) It's apparent that these well-intentioned plans address physical distancing mostly by prohibiting visiting and suspending group activities. Some tweaks are possible. For instance, [California relocated several hundred inmates](#) from dorms "where prisoners are bunked as close as two feet apart with shared sinks and showers." (One surmises that the "fix" involved using areas formerly reserved for recreation.)

Of course, prisons weren't built with distancing in mind. As the CDC's "not all strategies..." observation implicitly acknowledges, crowding *is* the norm. Measures that reduce correctional populations are providing some breathing room during the

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pandemic. California, for example, temporarily [suspended](#) accepting new prison inmates from local jails. It also “[expedited](#)” the release of 3,500 inmates who were serving time for “non-violent” crimes and had two months or less left on their terms. (According to [a recent report](#) at least three of this group subsequently tested COVID-19 positive.) Meanwhile the Federal Bureau of Prisons, which has [just under 150,000 inmates](#), placed an additional 1,751 inmates it considered sufficiently trustworthy [into “home confinement.”](#)

There’s of course a catch. Prisons house persons convicted of serious crimes, so their release – particularly, their early release – brings into question the issues of adequacy of punishment and, naturally, public safety. Our recent post on point, “[Must the Door Revolve?](#)” offers some stark warnings. Consider, for example, the New York City mother [who was found strangled](#) last October 16 (her body was discovered by her two small children.) Her alleged assailant had been paroled from a manslaughter conviction three years earlier.

Recidivism is undeniably a major problem. According to [a Federal study](#), a full *eighty-three percent* of the 401,288 state prisoners released in 2005 were rearrested an average of *five times each* during their first nine years back on the street. And it wasn’t just addicts “doing drugs again”: more than seventy-five percent of released narcotics offenders were re-arrested for a non-drug crime. That’s why the Attorney General’s [directive authorizing home confinement](#) calls for the careful assessment of potential releasees. It’s why despite COVID’s sobering toll [on California corrections](#) (as of April 28, 194 prisoners and 132 staff members have been infected, and one prisoner has died) the ostensibly liberal State has ignored activist demands for mass releases. (A Federal court [recently refused](#) to force the state to loosen up because of the virus.)

Fine. But even if one agrees that a mass release of *prison* inmates isn’t a good idea, what about city and county lockups? Their “clientele” constitutes a far lesser threat. Right?

Maybe, maybe not. Jails hold misdemeanants who will remain within the local system. But they’re also a way-station for felons on their way to state prison. [According to BJS](#), local jails held 738,400 inmates at midyear 2018. Two-thirds were yet to be adjudicated. *Sixty-eight percent* faced at least one felony charge.

In the best of times having even a minor criminal record can prove daunting. Still, persons under supervision who cooperate with their probation officers, participate in post-release programs and work assiduously to reverse bad habits can ultimately do well. Pandemics, though, seem a poor time to test anyone’s mettle. Rehabilitation programs and job opportunities may be unavailable. Ditto probation officers, who may

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be struggling to avoid infection while dealing with the increased caseloads brought on by largescale releases.

Such as in California. On April 13 its court system imposed [State-wide zero-dollar bail](#) with some exceptions for violent crimes. One day later [a State memo](#) reminded County Sheriffs and Chief Probation Officers of their [undisputed authority](#) to release inmates in response “to any existing or imminent emergency endangering the lives of inmates in any county jail, juvenile detention center, or other correctional institution.”

Local officials jumped at the chance to thin out their jails. Even as he voiced concern about a possible “crime surge,” Sheriff Alex Villanueva [released 4,276 inmates](#) from the Los Angeles County Jail, one out of every four. [Alameda County started out](#) by releasing 314 inmates, about twelve percent of its jail population. [Within a few days](#) that number jumped to 600, with more on the way. But emptying out the jail though, as activists heatedly demanded, was thought impossible. According to sheriff’s Sgt. Ray Kelly, “ninety percent of those individuals are in here for serious violent crimes, including homicides, sexual assault, crimes against children and other crimes of serious public concern.”

It’s not just about the pandemic. California jail and prison populations have been affected by a series of easings that began more than a decade ago:

- [A 2009 Federal appellate decision](#) required that the State cut its prison population so that it would not exceed 137.5 percent of its “combined design capacity” ([an estimated cut of 40,000](#) from a population of about 150,000)
- [The Public Safety Realignment Act of 2011](#) transferred “non-serious, non-violent [and] non-sex” offenders from state to local supervision
- [The Safe Neighborhoods and Schools Act of 2015](#) reduced many crimes to misdemeanors
- [The Public Safety and Rehabilitation Act of 2016](#) facilitated earning release credits and gaining early parole

As we discussed in “[The Blame Game](#)” these moves were roundly criticized for an increase in crime. Given the chronic problem of recidivism, there are no shortage of examples. Say, the February sexual assault of a Sacramento-area woman by a 22-year old man only [one day after](#) his early release thanks to the 2016 Act (he was serving time for violating his probation for felony assault.)

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What prior laws *didn't* do was zero out bail altogether. [That move](#), which is applicable to most non-violent crimes, happened on April 6 thanks to the virus. And just like Sheriff Villanueva might have forecast, stuff started to happen. We settled on three examples from Alameda County (for case information check the links):

- [Owen Aguilar](#). Aguilar's known entanglements begin in April 2013 when he was charged with felony drug possession and misdemeanor battery (case no. F13912136). Aguilar pled guilty to a misdemeanor drug charge and was ordered into treatment.

Four years later Aguilar faced two felonies: attempted robbery and criminal threats (case no. F17903965.) He pled guilty to the latter and got three years. Aguilar was released on parole in June 2019.

He was back in trouble in March 2020, charged with felony animal cruelty (case no. F20902123.) Bail was set at \$107,000, which he couldn't make. But on April 13 jailers released Aguilar because of the COVID-19 emergency.

Four *days* later [he went on an arson spree](#). His targets included a tent occupied by a homeless person and several commercial dumpsters. A brush fire broke out. [Officers soon collared Aguilar. A witness confirmed](#) that Aguilar was indeed the firebug, and he also reportedly confessed. Aguilar's parole was revoked. In addition to the cruelty charge, Aguilar faces seven counts of felony arson (case nos. F20902589 and P209000461).

- [Rocky Lee Music](#). Music's Alameda County court record begins in October, 2013 when he was charged with two counts of first-degree residential burglary (case no. F13912136.) Two months later his plea of no contest to one count earned him three months in jail and five years probation (case no. H55198.)

Music's lawbreaking continued. Two years into his probation a misdemeanor arrest for disturbing the peace cost him a few days in jail (case no. 152534). Then in 2016 he was charged with assault and grand theft, and in 2018 with burglary. (What happened in those cases isn't mentioned.) He remained a free man until April 19, 2020, when [Oakland police caught him](#) driving a stolen car. Music apparently tried to outrun the cops and nearly drove into a lake. Thanks to COVID-19 rules, as a "non-violent" offender his bail was zero and he was promptly released.

Within a half-hour after walking out of jail Music carjacked one car, abandoned it, then tried to carjack another. When officers caught up the desperado tried to

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break into a building, and it took a police dog to finally bring him down. Now back in jail, he faces a host of felonies, from vehicle theft to assault and carjacking (case no. 20-CR-005177.)

- [Kristopher Sylvester](#). Actually, neither Aguilar nor Music hold a candle to Sylvester. Sylvester's record, which began in 2004 and includes arrests for narcotics, vehicle theft, burglary, felony eluding and felon with a gun, merit *forty* separate Alameda superior court files. He was most recently on probation on two cases for crimes including felon with a gun, burglary, stolen vehicle and felony evasion.

On April 2nd. a police stakeout [caught Sylvester and his cronies](#) burglarizing vehicles. Officers pounced. They found property from prior crimes and a gun, which Sylvester wasn't supposed to have because he was a multiple-convicted felon. Sylvester got a court date for "multiple counts of commercial burglary, committing a burglary during a State of Emergency, possession of stolen property, possession of a firearm, felony evading, and a probation violation" (case no. 20-CR-005177.)

But thanks to COVID-19, his bail was set at zero. *Within a few days* Sylvester and three buds embarked on a vehicle theft and burglary spree that spanned the Bay area. Their haul included cash registers and an improbable *twenty-three cars* taken from a Hertz lot. Three days Sylvester and a partner, Jacob Mauk (he has a record for robbery and felony assault) [crashed their vehicle](#) while being chased by police. They were charged with burglary, possession of stolen property and resisting arrest. The two remaining members of their crew (both were on felony probation) were arrested on similar charges days later in a nearby town.

Thanks to the COVID-19 rule, [everyone was released on zero bail](#). Sylvester's a two-time winner!

No matter their classification as ostensibly "non-violent," it's clear that characters such as Aguilar, Music and Sylvester pose a serious risk to both cops and citizens. And just as we were "going to press," [LAPD Chief Michel Moore complained](#) that zero-bail policies were encouraging repeat offenders such as car thieves. One, Eric Medina, was arrested with a different car four times in three weeks. Another, three times in only two days. And it's not just harmless types. An unidentified zero-bail beneficiary compiled six quick arrests: one was for "brandishing a weapon," another, for trespassing.

Punishment's effectiveness as a deterrent reportedly rests on its [certainty, severity, and celerity](#): whether, how much and how quickly. As *everyone* who labors in the world

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of criminal justice must realize, these values are to some extent undermined by zero-bail and its running mates. As L.A. District Attorney and zero-bail supporter Jackie Lacey concedes, “unfortunately, a few defendants have taken advantage of this public health effort.”

To be sure, coronavirus *is* a serious threat. Places of confinement are a breeding ground, threatening the well-being of those inside *and* outside the criminal justice system. Our website’s [COVID-19 corrections section](#) lists many sobering examples. Riverside County (Calif.) jails presently hold about 3,200 inmates. [As of April 27](#), 136 inmates and 71 employees have tested COVID-19 positive, and two deputies and one inmate have died. [George Gascón](#), an unabashed progressive who is expected to challenge Jackie Lacey in the next election, advocated for zero-bail as San Francisco D.A. He still does:

Does keeping huge numbers of people in custody on small-time offenses pose a greater threat to us all than letting them out? This virus does not care if you’re a prosecutor, victim or a defendant. Innocent or guilty, this virus can still kill you.

So by all means, take the virus into account. COVID-19, though, is not the appropriate vehicle for furthering preexisting political or ideological agendas. Even in our intensely polarized climate, we must dispassionately consider *all* risk, from microscopic and human foe alike. That, in a nutshell, is our message.

And here’s another: stay safe!