

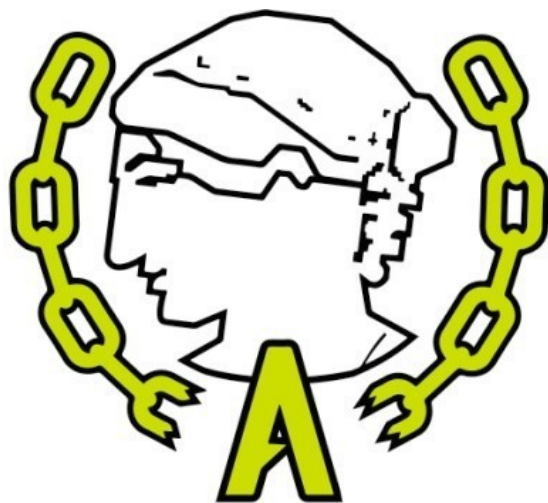
ANTIGONE

Anno XV
N. 1

**Have prisons learnt from Covid-19?
How the world has reacted to the pandemic
behind bars**



ANTIGONE



ANTIGONE
Per i diritti e le garanzie nel sistema penale

RIVISTA «ANTIGONE»

Semestrale di critica del sistema penale e penitenziario

Sito: <http://www.antigone.it/rivista/>

a cura dell'associazione Antigone onlus

SEDE LEGALE E OPERATIVA: via Monti di Pietralata n. 16, 00157 Roma

Tel.: 06 4511304; - Fax: 06 62275849

Sito: www.antigone.it; e-mail: segreteria@antigone.it

ANTIGONE EDIZIONI

ISSN 2724-5136

DIRETTORE RESPONSABILE: Claudio Sarzotti (Università di Torino)

CO-DIRETTORE: Stefano Anastasia (Università di Perugia)

COMITATO SCIENTIFICO: Cecilia Blengino (Università di Torino); Giuseppe Campesi (Università di Bari); Amedeo Cottino (Università di Torino); Alessandro De Giorgi (San José State University); Luigi Ferrajoli (Università di Roma Tre); Paolo Ferrua (Università di Torino); Carlo Fiorio (Università di Perugia); Francesco Maisto (Magistrato); Alberto Marcheselli (Università di Torino); Antonio Marchesi (Università di Teramo); Pio Marconi (Università di Roma La Sapienza); Luigi Marini (Magistrato); Dario Melossi (Università di Bologna); Giuseppe Mosconi (Università di Padova); Mauro Palma (PC- CP, Consiglio d'Europa); Livio Pepino (Associazione Studi Giuridici Giuseppe Borrè); Tamar Pitch (Università di Perugia); Ivan Pupolizio (Università di Bari); Franco Prina (Università di Torino); Eligio Resta (Università di Roma Tre); Iñaki Rivera Beiras (Universitat de Barcelona); Marco Ruotolo (Università di Roma Tre); Alvise Sbraccia (Università di Bologna), Francesca Vianello (Università di Padova), Loïc Wacquant (University of California, Berkeley).

REDAZIONE

COORDINATORI: Daniela Ronco, Giovanni Torrente

CORPO REDAZIONALE: Costanza Agnella, Perla Allegri, Rosalba Altopiedi, Carolina Antonucci, Federica Brioschi, Chiara De Robertis, Giulia Fabini, Valeria Ferraris, Patrizio Gonnella, Susanna Marietti, Simona Materia, Michele Miravalle, Claudio Paterniti Martello, Benedetta Perego, Simone Santorso, Vincenzo Scalia, Alessio Scandurra, Daniele Scarscelli, Valeria Verdolini, Massimiliano Verga.

IN COPERTINA: Immagine del Carcere di Milano San Vittore realizzate da Pietro Snider per Next New Media e Antigone nell'ambito del progetto Inside Carceri, <https://www.flickr.com/photos/insidecarceri/8197490558/>

N. 1/2020 HAVE PRISONS LEARNT FROM COVID-19? HOW THE WORLD HAS REACTED TO THE PANDEMIC BEHIND BARS

edited by Susanna Marietti and Alessio Scandurra

TABLE OF CONTENTS

<i>Preface</i> , Susanna Marietti, Alessio Scandurra	7
PART ONE - A PRISON WORLD OVERVIEW with the contribution of the European Prison Observatory and the American Civil Liberties Union	15
BELGIUM - <i>So far, so good? Health and prisons in Belgium during Covid-19 pandemic</i> , Elena Gorgitano, Adriano Martufi	17
BRAZIL - <i>Covid-19 and prisons in Brazil: conditions and challenges</i> , Bruno Rotta Almeida, Elaine Pimentel, Patrick Cacicedo	27
BULGARIA - <i>Covid-19 and the prison system in Bulgaria</i> , Krassimir Kanev	34
FRANCE - <i>The pandemic crisis and opportunities for lasting change in French prisons</i> , Cécile Marcel	40
GERMANY - <i>Covid-19 shows substantial problems in the German prison system</i> , Melanie Schorsch, Christine Graebisch	47
GREECE - <i>Isolation for protection. Facing the Covid-19 pandemic in Greek prisons</i> , Ioanna Drossou, Nikolaos Koulouris, Theodora Pantelidou, Sophia Spyrea	55
HUNGARY - <i>Much ado about nothing. Banning visitation did not prevent the virus spreading into Hungarian penitentiaries</i> , Zsófia Moldova	62
ISRAEL - <i>A matter of absence: the Ministry of Health and Covid-19 in Israel's prisons</i> , Anat Litvin, Dana Moss	68
ITALY - <i>Coronavirus and Italian prisons: a success story?</i> , Federica Brioschi	75
PORTUGAL - <i>The management of Covid-19 in Portuguese prisons</i> , Vera Silva	85
SIERRA LEONE - <i>Covid-19 responses to mitigate the impact of the virus in Sierra Leone's prisons: an overview</i> , Lydia W. Kembabazi, Isabella Cordua	91

SPAIN - <i>Coronavirus management in Spanish and Catalan prisons</i> , Alejandro Forero Cuéllar	99
UNITED KINGDOM - <i>Covid-19 in prisons: the view from England and Wales</i> , Matt Ford	106
UNITED STATES OF AMERICA - <i>United States' failure to respond to the Covid-19 crisis in prisons and jails</i> , Udi Ofer	116
PART TWO - THE PANDEMIC AND PRISON: REFLECTIONS AND INSIGHTS	126
<i>The Covid-19 pandemic: the urgency to rethink the use of pre-trial detention</i> , Laure Baudrihayé-Gérard	128
<i>The Covid-19 pandemic highlights the urgent need to decriminalise petty offences in Sierra Leone and beyond</i> , Isabella Cordua, Joseph Bangura	139
<i>Pandemic and democracy: for a global constitutionalism</i> , Luigi Ferrajoli	151
<i>Assessing strategies to prevent and control Covid-19 in prisons in the initial emergency phase of the pandemic</i> , Matt Ford	160
<i>How the pandemic has aggravated the gendered impacts of drug policies on women who use drugs and incarcerated women for drug offences in Mexico</i> , Corina Giacomello	171
<i>The social revolution of fraternity against the virus of identitarian ideology</i> , Patrizio Gonnella	190
<i>Policy responses to Covid19 in prison. Testing the (in)action of European institutions during the pandemic</i> , Adriano Martufi	198
<i>Health and prison</i> , Aldo Morrone	212
<i>University and prison. A complex but unavoidable (more than ever in time of Covid-19) institutional and cultural interweaving</i> , Iñaki Rivera Beiras	225
<i>Prisons, health and drug control in the time of Covid-19</i> , Gen Sander	242
<i>In the United States, the Coronavirus devastated prisons and jails, exposing the violence and indifference of the country's mass incarceration system</i> , Alice Speri	257
AUTHORS	272



In the United States, the Coronavirus devastated prisons and jails, exposing the violence and indifference of the country's mass incarceration system

Alice Speri¹

1. Introduction²

There is a fundamental flaw in the models that officials have used to project the curve of the coronavirus outbreak as it rips across the United States. Those models were based on other countries' experiences with the virus — from China to Italy — and do not account for a uniquely American risk factor: mass incarceration.

There are currently 2.3 million people incarcerated in Us jails and prisons. The Us accounts for 4 percent of the world's population and 21 percent of its prisoners. While incarcerated people have been released in trickles across the country as the Us has become the global epicenter of the pandemic, those releases are hardly making a dent in the density of prisons and jails, and they pale in comparison to the tens of thousands of people freed by other countries with far lower incarceration rates. As of the end of September, at least 995 men and women in the Us have died after contracting the virus behind bars — a figure that is climbing by the day³ and remains

“dramatically underreported”, according to experts who have been tracking it. The official number of positive cases reveals little beyond how few incarcerated people were being tested as the virus tore through the country. In the handful of facilities with higher test rates, most people were found to be positive. Early on in the pandemic, eight of the 10 largest outbreaks in the Us were in prisons and jails.

But mass incarceration is not only causing people to die of Covid-19 behind bars. As corrections facilities become hot spots, the virus is also rapidly spreading into the surrounding communities. A model released in April by the American civil liberties union (Aclu) suggests that when jails are accounted for, estimates of the death toll are off by at least 100,000. And that's for jails alone—not prisons or immigration detention facilities.

It's not hard to imagine why prisons and jails have quickly become the epicenter of the epicenter.

“There's no such thing as social distancing in prison”, a man incarcerated in a New York

state maximum security facility wrote to me. “How can an incarcerated individual maintain social distancing in a population of over 2,000?”, he added. “With 240 men to a block, minus the guards? With every man dwelling on all sides of one another, constantly?”

“This is a time bomb”, another incarcerated man wrote. “The mess halls and lines traveling to and from, among other places, are areas of mass density. They have cut down the amount of people per table, but we’re still less than 2 feet apart”.

“I am sure you can imagine that the jailhouse is in the worst state it has been in anyone’s memory”, added the man, who has spent the last 25 years in prison. “In this particular warehouse, it seems like every day we hear of someone in the cell sick, taken to a section of cells for the sick, placed in the medical department’s isolation, or taken to an outside hospital”. The prison had finally started to provide inmates with face coverings, though not real masks, and hand sanitizer, he noted. Hand sanitizer is usually banned in prisons as contraband, a lawyer said on call with journalists, “because it has alcohol in it, and I guess they think that people are going to drink it”. The fact that some prisons have since relaxed the rule is a sign of how dire the situation got, and how little officials actually did to stop the virus.

The psychological toll, too, is even more staggering behind bars. “I haven’t been this stressed out since I was on trial”, a third man wrote to me, before listing all the loved ones who were falling ill as he sat in prison unable to be with them. “It’s the fear of calling home and finding out someone else I held close to the heart

passed away. It’s the fear of never being able to see someone I love ever again and not being able to pay my proper respects”.

2. Everything is an undercount

For the past six months, Sharon Dolovich and a team of volunteers have been tracking the *tsunami* sweeping through the country’s prisons and jails. Early on in the Us outbreak, when prisons’ first response to the threat was to shut down visits, Dolovich, a professor at the University of California, Los Angeles School of Law, started a spreadsheet to keep track of each facility’s Covid-19 policies. Prisoners’ rights lawyers were scrambling to help their clients. Dolovich made the document public “so people don’t reinvent the wheel”, she told me. “People were writing demand letters and starting to do court filings to go to court and try to get people released. Not everybody had to do it for themselves—I could share”.

As the virus spread, the spreadsheet quickly grew into a more ambitious project — and the most complete picture we have of how the crisis is impacting jails and prisons across the country. Dolovich started hearing from former students, advocacy groups, and strangers offering to monitor releases, juvenile detention centers, and requests filed with each facility, among other information. When state corrections departments began to post regular updates about positive cases and deaths, many in response to mounting public pressure, a group of volunteers started recording the data daily to track the growth of cases over time. They also scoured news reports and tapped into other resources to provide data that was sometimes more up to date than the official tallies.

“Everything we are seeing is undercounted”, Dolovich emphasized. “It’s in the interest of the prison systems to pretend these people are not dying from Covid”.

Born as a crisis response tool, the project also aims to document the pandemic in the country’s prisons and jails before officials have an opportunity to rewrite its history. “One of the things that we’re predicting is that after the initial emergency has passed, the number of people who died during this period and the number of people who are reported to have died from Covid are going to be very different”, Dolovich said. “I think jails and prisons are going to pretend that people died from other things”.

As incomplete as the data might be, Ucla’s Covid-19 behind bars project is breathtaking for the scale of the catastrophe it captures. It is also an indictment of a criminal justice system that both enables so much death and fails to account for it. In addition to 995 deaths, the Ucla project has documented at least 131,929 coronavirus cases among incarcerated people, as well as at least 27,421 cases, and 42 deaths, among corrections staff. At least 17 people have died in the custody of Us Immigration and customs enforcement, though critics suspect the agency is severely underreporting virus-related deaths. No government agency has compiled or made public this collective data.

Part of the reason there’s no official comprehensive dataset tracking the impact of the coronavirus in the Us prison system is because there is no unified system, but rather a tangle of federal, state, and local jurisdictions. “It’s always been a

decentralized fight, state by state, county by county”, said Dolovich.

That presents both a massive challenge and an opportunity, added Dolovich. Because there is no centralized body overseeing Covid-19 responses in prisons and jails, advocates have been lobbying hundreds of officials across the country, while armies of lawyers have been working around the clock on behalf of individual clients and entire classes of people. They have filed motions with dozens of courts arguing for relief that can range from diversion to lower sentences to compassionate release. “The level of advocacy effort and involvement is actually astonishing and inspiring right now”, Dolovich said. “There’s no easy levers. So people are basically slamming their heads against the wall and trying to see if there’s any kind of weakness they can take advantage of to help their clients”.

“We’ve had 40 years of a legal system that’s been crafted with the effect of making it extremely hard to provide any kind of meaningful constitutional relief for people”, she added. “We respond to any kind of social crisis with incarceration, and what we’re seeing now is the fruits of those efforts”.

The fragmentation of the Us criminal justice system — a sprawling, decentralized bureaucracy with thousands of jurisdictions and powerholders — has long served to hide the full cost of mass incarceration. Comprehensive data on those the Us deprives of their freedom is virtually impossible to obtain in a timely fashion, if at all. The coronavirus crisis has laid bare this systemic failure more than ever. The country’s more than 3,000 jails, in particular, function like fiefdoms.

While state corrections departments oversee prisons, and the Bureau of Prisons runs federal facilities, jails operate under the authority of thousands of local officials. Only a handful of states collect data from their jails.

“There isn’t centralized reporting, responsibility, or accountability”, said Insha Rahman, director of strategy and new initiatives at the Vera institute of justice, which has long sought to fill in the gaps in official data and launched a tracker monitoring Covid-19 responses across the jail system. “It’s actually literally going county by county to get that information”.

“It’s so hard to know what’s happening across the entire country”, echoed Udi Ofer, the director of the ACLU’s Justice division. “We don’t have one criminal justice system in the United States, we literally have thousands of criminal justice systems. It’s so decentralized that every jail, every prison is its own universe”.

The ACLU model attempted to account for the “uniqueness of every jail and community”, said Lucia Tian, the organization’s chief analytics officer, adding that their model was the combination of “over 1,200 individual models with tailored information from those particular jail systems and counties”. The model predicted that, with highly effective social distancing in place, accounting for jails would increase US Covid-19 deaths by 98 percent — from a projected 101,000 to 200,000. With less effective social distancing, jails could bump up the death toll by 188,000, for a predicted total of 1,177,000.

The UCLA project tracks jails too — though only a few jail systems are making coronavirus data readily available to the

public, mostly in larger cities where scrutiny is highest. Those jails have been devastated by the virus. At Rikers Island, in New York City, where at least three inmates and nine corrections staff have died, the reported infection rate at one point reached 10 percent of the jail’s population. At Cook County jail in Chicago, where six inmates and two staff have died, almost 900 inmates and staff tested positive early in the pandemic.

In prison, age is a significant risk factor for tens of thousands of people: there are nearly 200,000 incarcerated people over the age of 55, a number that has spiked by nearly 300 percent over the last 20 years. That’s indicative not just of how many people the US incarcerates, but also for how long. About 40 percent of people in prison have at least one chronic health condition such as asthma or diabetes, which makes those individuals particularly susceptible to serious illness with Covid-19.

But if people in prison tend to be older and sicker, people in jail move in and out at much higher rates, making those incarcerated in jails especially vulnerable to catching the virus and more likely to spread it. There were 10.7 million jail admissions in 2018 alone — and each admission puts police officers, guards, and other staff, in addition to the incarcerated, at risk of exposure. “Social distancing is even worse in jails, because jails are meant to be temporary holding facilities”, Ofer said. “People tend to live in dormitory-style rooms with bunk beds 2 feet apart, if that. There’s absolutely no social distancing in jail, it’s kind of a one-two punch”.

The situation at Rikers and Cook County

offers a bleak foreshadowing of mass deaths to come across the jail system, particularly in rural areas where health care access is already a chronic issue and jails often fill in for a lack of services. A report released in April by Data for progress warned that rural communities are particularly vulnerable in a pandemic. In those communities, jails are often filled with people who have substance abuse problems or are too poor to post bail. Worse, the report warns, rural jails “are frequently located in counties that lack hospital capacity to handle the coronavirus pandemic”. In Mississippi, Montana, North Dakota, and West Virginia, for instance, more than one-third of people held in jails are in counties with no Icu (Intensive care units) beds.

“We know rural America is at least a couple of weeks behind the curve”, said Rahman. “But when it comes, it’s going to be devastating. It will be worse than Rikers”.

3. Death by incarceration

The solution, health experts and prisoners’ rights advocates have been saying all along, is simple: prisons and jails should release far more people as quickly as possible. “Mass incarceration was a public health crisis before Covid-19, but the pandemic pushed it past the breaking point”, said Ofer. “We need governors and prosecutors and judges, and we need the president of the United States, to act immediately and dramatically to reduce jail and prison populations to stop the spread of Covid-19, not only in jails and prisons, but in the broader community”.

But as calls for people to be released have echoed across the country, and some states, like Vermont, have taken decisive

action, many law enforcement officials have resisted what they called the “mass release” of incarcerated people. In general, jails have reduced their population at a much higher rate, about 25 percent, according to analysis by the Prison policy initiative. But prisons, the same analysis found, “have released almost no one”. Some officials have suggested that those incarcerated for *violent* crimes are unworthy of release — a distinction that has long crippled efforts at substantial criminal justice reform, even before the current crisis. “If we don’t tackle the question of people serving time on violent convictions, we can’t meaningfully stop the spread of Covid-19”, said Rahman. “That’s just not going to make a meaningful dent”.

Still, Us officials are hanging on to mass incarceration even as its devastating impact becomes ever clearer. In Louisiana, rather than releasing people, officials have isolated the sick in a section of the Louisiana State penitentiary, commonly known as Angola, that had been shut down following a long history of human rights abuses. In New Jersey, officials promised that hundreds of people would be released — but weeks later only a handful had been freed, and at least 37 people had died in prisons across the state.

One of them was Tiffany Mofield. A 43-year-old woman, Mofield died of coronavirus complications in a New Jersey prison after officials moved her from an area of the prison where she was quarantined for Covid-19 symptoms into solitary confinement even though her symptoms persisted. Her family learned that from me, after another woman incarcerated at the facility contacted me to tell me that she had witnessed her death.

Mofield died on April 29 at the troubled Edna Mahan correctional facility for women after begging to be let out of a locked shower, saying “she could not breathe”; the woman, Michelle Angelina, wrote to me through a prison email service. Mofield had spent about two weeks quarantined in an infirmary after becoming ill with symptoms consistent with Covid-19, but she was moved out even though “she was clearly not better, as she was visibly short of breath and extremely lethargic”, said Angelina, who is housed in the same administrative segregation unit where Mofield died.

“She died right in front of my neighbor's door and just diagonally from my door, about five feet away”, said Angelina, who declined my offer for anonymity to protect her from retaliation. “Many inmates are frightened for our lives and safety as a result of us witnessing Ms. Mofield die”.

Mofield's death underscored the devastating impact the coronavirus was having as it spread through prisons and jails, where the health of incarcerated people was often neglected before the current crisis. “They are more concerned about ensuring that inmates serve every day of their punishment than they are about inmates' health and well-being”, said Angelina. “That is why they sent Ms. Mofield back to the unit before she was fully well. Ad-seg is a punitive unit”.

Mofield first passed out in the shower shortly after returning to the unit, said Angelina, who described the shower as a “converted mop closet”. Women are taken to the shower handcuffed to a belly belt and then locked inside, where there is no emergency call button, she said. The night she died, Mofield once again passed out in the shower “after begging for about five

minutes to be let out”, said Angelina. “No staff responded in a timely fashion”. When someone finally did come, Mofield was almost unconscious and was carried to a wheelchair where she became unresponsive. Angelina said that several officers “tried their very best” to revive Mofield, following an automated defibrillator's instructions and performing cardiopulmonary resuscitation until paramedics arrived on the scene. Mofield died “just before they got her on the ambulance gurney”, Angelina said.

“It is the daily flaws in how the facility is operated from an administrative position that caused the circumstances that led to Ms. Mofield's death, not the officers' fault”, stressed Angelina. “Inmates should not be locked in showers, should not be handcuffed to go to and from the shower, and should not be left to wait with no assistance in hearing range in a locked shower, begging for help because they can't breathe”.

At the time of her death, Mofield was nearing the end of a five-year sentence for an attempted bank robbery. She was a mother of three and grandmother of four, whom friends remembered on social media as “the life of the party” and a “neighborhood hero”. Her daughter, Shatifa Cooke, told me that her mother “was very big on family” and that her mother's symptoms “were ignored”. Had her mother been taken seriously, she added, “she would still be here right now”.

“Even while being locked up she still made the best out of her situation, making everyone laugh, helping everyone get through their time away from their family”, Cooke wrote.” Many people look down on people that are in jail thinking they are all bad people or that they did

something really bad — but no, that wasn't my mother”.

“She had people out here that loved and cared about her and we not stopping until we get answers”, she added. “We going to make a change with this one we gone show these people that these inmates are somebody and their health and lives matter too”.

4. Anatomy of a prison outbreak

The story of Tiffany Mofield's death is one of dozens that incarcerated men and women have sent me over messages from prison over the last several months, blowing the whistle on prison conditions at an enormous personal risk. Because officials guard the narrative of what happens inside prisons fiercely, those messages have often been the only way to reconstruct how the Us sprawling mass incarceration system failed so badly to protect the men and women whose lives it controls. The story of how a Kansas prison became one of the largest Covid-19 hotspots in the country captures that failure starkly.

The men incarcerated at the Lansing correctional facility, a state prison in northeastern Kansas, first heard about the Covid-19 pandemic from the news or from relatives on the outside. There were no known cases in the state — but at the prison, dozens of men had begun to fall ill, some severely.

Rachad Austin was counting down the days left in his four-year sentence, but as news of the virus continued to trickle in, he grew increasingly worried. He had a collapsed lung due to a gunshot wound — and sometimes he suffered from chest pains and had difficulty breathing. Dozens of people around him were beginning to

show symptoms, “and next thing you know, they're passed out”, Austin told me on a call from prison. “It was a really scary time. We were all wondering what was going on”.

Sherman Wright was also worried. Like some 40 percent of those incarcerated in the Us, he had asthma and diabetes, making him particularly vulnerable to complications from Covid-19. At 56, he was also one of nearly 200,000 people over the age of 55 incarcerated in the Us — another factor that contributed to his vulnerability. Wright's sister, Cynthia Crawford, at first thought he'd be safe in prison, where Wright was 32 years into a 66-years-to-life sentence over three robberies he had committed in his youth. “I thought, well, they're confined so how can it get to them?”, she told me. “But it did. And when it did, my worry went from 10 to 100, and as it progressed I hardly got any sleep. I worried about him every day, I woke up with him on my mind”.

Worried families soon started calling the prison, but officials did not publicly acknowledge the threat posed by the virus until mid-March, when they shut down visits and encouraged inmates to wash their hands more frequently — hardly the mundane task in prison that it is outside. By the time three staff members tested positive, on March 31, most men incarcerated at Lansing suspected that they, too, had been exposed to the virus — and yet it took prison management nearly a month to start testing them in large numbers. When they did, they found that some units of the prison had as much as a 75 percent rate of positive tests. “We all knew we were positive”, said Austin. “This was not the situation anyone would want

to be in — but we were trapped”.

By the end of May, both Austin and Wright had indeed tested positive — as had nearly 900 others of the prison’s 1,700 inmates. Four incarcerated men and two staff members had died, and the prison had become the 14th largest cluster of coronavirus cases in the country and the largest in Kansas. As pressure on officials had mounted along with the number of cases, Gov. Laura Kelly had promised in early April that some vulnerable people would be released to home confinement. But weeks into the process, only six inmates in the entire state had been freed, and none from Lansing. Kelly, a Democrat who had campaigned in part on the promise to reform the state’s overburdened prison system, said releasing people “is very complicated, legally” — though critics noted she had the legal authority to do so.

The story of how the pandemic unfolded at Lansing reveals many missteps by state and prison officials who consistently underplayed the threat posed by the virus: delaying testing, transferring and mixing exposed people, and initially failing to distribute and require masks even as cases surged. And the situation at Lansing was made worse by chronic issues in the Kansas prison system, which was already plagued by severe overcrowding and staff shortages. But as was the case in many prisons across the country, the outbreak at Lansing was also largely avoidable, and officials ignored a series of warnings from staff, families, and attorneys and for weeks failed to take significant action to stop the virus.

“It was clear what was going to happen”, Jennifer Roth, a Kansas public defender, told me. “All you had to do was look at

other prisons and jails across the country, and what medical professionals and other scientists were saying. It was clear what could happen, and then it did happen”.

By the time the prison moved to more aggressively contain the spread of the virus — after a riot had broken out in one of its units over a lack of masks — it was too late.

“They took too long”, said Roth.

“I think they honestly just didn’t care what was going on with us because we’re inmates”, said Austin, who was released in July at the end of his sentence. “They didn’t want to deal with it”.

Gov. Kelly’s office did not respond to a request for comment. A spokesperson for the Kansas Department of Corrections did not answer detailed questions, but wrote in a statement that “just as others have around the country, we are facing this unique challenge which placed previously unimaginable stress on our system”.

“The Lansing correctional facility is in the Kansas City metro area where the first cases of Covid-19 were experienced in Kansas”, the spokesperson added. “And being first at a time when public health officials, using currently available science, were not yet aware of asymptomatic persons, masks were not recommended, testing supplies were limited at best, and social distancing was a new concept for everyone factored into our response”.

“As the science and recommended guidelines changed, we adapted quickly and implemented recommended changes”.

5. Intentional ignorance

On March 7, Kansas officials reported the state’s first case of Covid-19 in Johnson

County, not far from Lansing. There are several other prisons and jails in the area, and staff moved frequently between them and around nearby Kansas City.

But nearly a month later, with cases surging in the state and Kansans under a stay-at-home order, very few people were wearing masks at Lansing correctional facility. Kayla Donley, Rachad Austin's fiancée, had called the prison to ask whether she could mail him one, and she told prison staff that she was required to wear a mask at the hospital where she worked, even though her job kept her at a far greater distance from people than inmates and guards were from each other. But the prison staffer she spoke to told her she couldn't mail the mask. Austin could cover his face with a T-shirt, she said the staffer told her, but he might face disciplinary action if he did.

"It's like they didn't even care", said Donley. "I feel like no one knew what was going on at Lansing during this time, and they brushed it off and acted like it wasn't a big deal. None of them took it seriously".

Those incarcerated at the prison weren't the only ones without masks. In the early days of the outbreak, several inmates complained to relatives and attorneys that guards were not covering their faces, even though some had been out sick with apparent Covid-19 symptoms. And David Carter, a Lansing correctional officer who quit his job in April over the prison's mishandling of the virus, said that guards had actually been discouraged from wearing masks by management. "They were told it was going to cause a panic among the inmates", said Carter. "A couple staff members were threatened with disciplinary action for wearing a mask".

Carter, who worked as a correctional officer at Lansing for 15 years, said that staff who had tested positive to the virus were required to show up for work unless they were symptomatic. He shared text messages between prison staff that appear to confirm the policy and suggest that the prison was trying to figure out how to keep staff who had tested positive separate from inmates who had not.

"I have seen a lot of ineptitude over 15 years", said Carter, who since his resignation has publicly blamed the state's corrections officials for the six Covid-19 deaths of Lansing inmates and staff. "But there was a level of intentional ignorance — like they wanted to stay in the dark about Covid-19, they just wanted to stick their heads in the sand".

"They spent about a month, maybe five weeks, just ignoring it completely", added Carter. "They didn't think it was going to be as big as it was because every level of government was science deniers that were basically saying that it's a hoax, and it's not going to happen".

But the "final straw", Carter said, was officials' decision to quarantine inmates who had been exposed to the virus in a new and already troubled facility built by the private prison giant CoreCivic and leased to the state. The move was not expected for months because the prison was not ready and the prison's staff was already stretched thin at the old facility. Then, after a riot broke out at the old facility, officials began to move more inmates to the new facility, exposing them to the virus and causing what Carter described as a very volatile security situation at the new facility, which he said was dangerously understaffed.

“The current and ever-growing atmosphere of *do more with less* has put in danger every single staff member that regularly interacts with offenders”, Carter wrote in his resignation letter. “I can no longer be associated with a facility that is a ticking time bomb”.

“The line staff are just as concerned about this as the inmates are”, he also told me. “It’s not this us versus them mentality. If there’s an us versus them, it’s the line staff and the inmates versus the ineptitude of the top, really”.

Officials justified the move to the new facility as necessary to isolate inmates. Then weeks later, after a number of positive cases emerged at a work-release facility in Wichita, more than 200 men who had lived there were also moved to Lansing. The transfers proved to be disastrous.

“I really don’t know if these decisions were made at the advice of any public health officials”, said Lauren Bonds, the legal director of the American civil liberties union’s Kansas chapter. “But we do know that there were people from Wichita who got infected because they were kind of thrown into a hot spot at Lansing, when they were really facing a much smaller risk when they were in Wichita”.

“I still to this day don’t know why that decision was made”, she added. “But it definitely has panned out that it was not in the best interest of stopping transmissions and reducing infection rates”.

6. Wasted warnings

Kansas officials were repeatedly warned about the devastating impact a Covid-19 outbreak could have on the state’s prisons and jails.

In the early days of the Us pandemic, a group of Kansas attorneys made fliers explaining what was known about the virus and how people could protect themselves, and asked jails across the state to post them. They had written letters to each of their clients to explain what Covid-19 was and how it spread, and they had promised them that they would do everything in their power to get them released, said Melody Brannon, one of those attorneys.

“The state government was entirely unprepared for this”, Brannon told me, noting that her federal clients, who are held in local jails, continued to be charged for soap for weeks as Covid-19 spread, and that attorneys at her office pitched in out of pocket to put money in the commissary accounts of clients who couldn’t afford to buy it. People who were sick were charged \$8 for requesting a visit at the infirmary, and then \$8 for the actual visit, she added, and that was excluding the cost of any care they might have received. “Even in good times they have such a hard time managing health care within a prison”, said Brannon. “There are so many inequities built in”.

On March 31, a group of attorneys wrote a letter to Gov. Laura Kelly that was “chock-full of science and the experiences of what was going on in other places”, said Roth, the public defender. From the very beginning, she and others called on officials to release as many people as possible, arguing that rapidly reducing the number of incarcerated people was the only meaningful way to curb the spread of the virus.

The correctional officers’ union also raised the alarm, calling on the Department of Corrections to put in place measures to

stop the spread of the virus, according to Carter. “The union was trying to get them to at least have a plan in place”, he said, noting that they weren’t even asking for additional resources like masks or other protective equipment. “They literally were just asking for a *what if* scenario to be put in place. And they refused to even do the planning”.

On April 9, the same day that a riot broke out in one of Lansing’s units, the Aclu of Kansas filed a class-action lawsuit demanding the urgent release of vulnerable inmates and those close to the end of their sentence. The Aclu argued that the prison’s response to the pandemic had been inadequate: inmates were still being charged for soap, most staff weren’t wearing masks even though the prison had finally begun to issue them, and there was no effort to maintain social distancing. “The prison’s response and the state’s response was that some of this is just inevitable in a correctional setting”, said Bonds. “And people are just going to get sick, and we can only do what we can do, and unfortunately this is as much physical distancing as we can provide, this is the best we can do”.

A judge ruled that the Aclu had failed to prove that the state’s response had been inadequate enough to violate the Eighth amendment, which prohibits cruel and unusual punishment, and dismissed the suit. When the suit was filed, there had been between 20 and 30 known Covid-19 cases in the state’s prisons. “That number wasn’t that scary”, said Bonds. “But basically as soon as our case was dismissed, we were starting to hear numbers in the hundreds. That’s how we ended up with close to 900 people testing positive and getting infected—and that’s 900 inmates,

that’s not even including the staff members who tested positive”.

In early April, the governor promised that officials were reviewing a list of inmates with close release dates and “viable plans” for reentry. More than 500 cases were reviewed as part of the process, according to Bonds, but by early May, only six people had been released. By that point, hundreds of people had been infected at Lansing.

What most frustrated Roth is that throughout the process Kelly admitted that the state’s prisons were overcrowded and that too many people were incarcerated. “She said all these things through this process, but still wouldn’t actually move on releasing people”, said Roth, who also blamed the state’s legislature for their failure to do more. “I believe they did not want to wade into having to defend releasing people”.

Kansas was hardly the only state to release a negligible number of people during the pandemic — and despite nationwide calls to reduce the risk of Covid-19 in prison by drastically reducing the number of incarcerated people, very few were actually released. That decision was dictated by politics rather than public health, critics say, partially because releasing people would likely draw further attention to the fact that far too many are incarcerated to begin with.

“If they start releasing people and it works, and there isn’t mayhem in the streets, then it really helps the argument that we are over-incarcerating in the first place”, said Brannon. “If you release people, and they find that there wasn’t a huge surge in crime, then they’re going to have to admit that there really is mass incarceration and

over-incarceration that is unnecessary, and Covid proved it. And as long as they resist and keep people in, you won't have that evidence".

Cynthia Crawford had hoped her brother, Sherman Wright, who had serious preexisting conditions, might be one of those the state would consider for early release. By that point, the families of the men incarcerated at Lansing had started receiving updates from the prison — usually when someone died, said Crawford — and when the governor had said the state was reviewing some inmates' cases for possible early release, "that gave me hope," she said.

Crawford wrote to the governor twice but never heard back. "I wrote to everybody trying to get some help", she said. Wright was serving what amounted to a life sentence because of Kansas's *three strikes* law, after he had been convicted in the 1980s for three robberies during which no one was hurt. Wright claims he stole about \$60 — earning him a sentence of more than a year for each dollar. Since its class-action lawsuit was dismissed, the ACLU of Kansas has launched a clemency initiative, filing dozens of clemency applications on behalf of the most vulnerable people incarcerated in the state, and Crawford now hopes her brother might qualify for early release that way. His first parole hearing is not scheduled until 2026.

"We were very poor", said Crawford, who for years has visited her brother every two weeks, until Covid-19 forced her to switch to video visitations. "Stealing is a crime, ok, do your time. But not your whole life".

7. Second wave

Days after the first Lansing guards tested

positive, the prison switched course on masks, and men incarcerated there began making masks to be distributed to staff first, and then to inmates themselves.

"They're coming out, passing out masks three months after people got sick", said Austin, who had also hoped to qualify for early release, since he had only a few weeks left on his sentence.

It's unclear why, but when the masks arrived to Lansing's C2 block, they were never handed out to the men living there. "They got locked into an office somewhere and ignored", said Carter. "And that's ultimately what set the inmates off". Austin, who didn't live in that block, said that the men there, including several who were sharing their cells with four other people, had also been denied showers. "The guys were frustrated already", he said. "They just wanted to take a shower, and they wanted face masks".

Videos of the riot — which some inmates themselves took with contraband cell phones — went viral. Nobody was seriously hurt, and when officials retook control of the block, they began to move people to the new facility at Lansing, where inmates who were exposed to Covid-19 had already been quarantined. A few days later, a smaller riot also broke out at a different prison, the Ellsworth correctional facility, apparently after a guard who had been working at Lansing was sent to Ellsworth without first quarantining. After the Lansing riot, prison staff there started going around to measure everyone's temperature, said Austin, and the National guard sent in medics to make up for the shortage of nursing staff at the prison, many of whom had also been exposed to the virus.

By that point, most inmates at Lansing were presumed to have been exposed. Those who complained of symptoms were given Tylenol and told to drink water. “They told me that unless my breathing changes, they couldn’t do anything because they knew we were all positive”, said Austin. “They were only taking the worst of the worst to the clinic. Unless you were on the verge of dying, you basically just had to deal with it”.

Austin tested positive for Covid-19 at the end of April. But the prison didn’t tell him until more than a week later, after his fiancée learned of his results during a phone call with a prison official. “They came and tested him and said they would have the results back in 48 hours and they never came back and told him anything”, said Donley. “It’s honestly sickening how inhumanely they treat these guys just because they are in prison”.

8. Conclusions

Long before Covid-19 spread through American prisons and jails, killing 1,122 incarcerated people and 42 corrections staff as of October 28, mass incarceration was already a public health crisis in the United States. With 2.3 million men and women behind bars, more than 20 percent of the world’s incarcerated people live in the Us, including hundreds of thousands who are aging or suffering from health conditions that make them particularly vulnerable to the coronavirus. But the way in which Us officials handled Covid-19 outbreaks at dozens of prisons is emblematic of the way they treat the incarcerated always: with cruelty and deliberate indifference. As prisons became not just hotspots for the virus, but also vectors that helped its spread in the

surrounding communities, the connections between mass incarceration and American life outside prisons were revealed with unique clarity. Yet even as public health experts cautioned that the only way to stop the spread was to release as many people as possible, the system’s devotion to harsh punishment at all costs won out in the end, and only a negligible number of people were released. Perhaps because, quoting again Kansas attorney Melody Brannon, “if you release people, and they find that there wasn’t a huge surge in crime, then they’re going to have to admit that there really is mass incarceration and over-incarceration that is unnecessary, and Covid proved it”.

Notes

¹ **Alice Speri:** is a journalist currently covering criminal justice, immigration, and civil rights for *The Intercept*. Originally from Italy, she has reported from Haiti, Colombia, El Salvador, Palestine, and from across the United States. Alice has written extensively about jails and prisons. She was a 2019 fellow at the Ira A. Lipman Center for journalism and civil and human rights and a 2020 finalist for the John Jay College/Harry Frank Guggenheim awards for Excellence in criminal justice reporting.

² Different versions of this text, gathered herein a single article, have appeared in *The Intercept* during the last months.

³ See the Conclusions here below. The most updated data can be found in the database of the Ucla's Covid-19 behind bars project https://docs.google.com/spreadsheets/d/1X6uJkXXS-O6eePLxw2e4JeRtM41uPZ2eRcOA_HkPVTk/edit#gid=1197647409

