

No One Deserves to Die of Covid-19 in Jail

But more than 100 inmates already have.

By The Editorial Board

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On March 28, Patrick Jones became the first inmate in a federal prison known to have died of Covid-19. He was a worker at a prison textile factory at the Oakdale Federal Correctional Complex in Louisiana, where he was serving time for a nonviolent drug offense. By the third week of April, seven more inmates at Oakdale had died. Meanwhile, prison factories around the country have stayed open, subjecting inmates who work there to packed conditions even as the virus spreads.

Social distancing in prisons is nearly impossible. The size of the inmate population in federal prisons exceeds their rated capacity by 12 to 19 percent, according to a report this year from the Justice Department.

No one deserves to die of Covid-19 in prison or jail. But more than 100 inmates already have, and thousands more could if prisons and elected officials do not take steps to protect the incarcerated now. A report from the American Civil Liberties Union predicted that an explosion of cases in jails could cause the total death count in the United States to double.

Two weeks ago, Cook County Jail in Chicago was the nation's top hot spot for coronavirus cases, according to The Times. More than 230 inmates and 115 staff members had tested positive, even as the majority of inmates had not been tested. This week, the Marion Correctional Institution in Ohio became the largest reported source of virus infections. There, 2,011 inmates, about 80 percent of the prison's population, have tested positive. In addition, 154 members of the 350-person staff tested positive. In total, at least 2,400 inmates in Ohio's prison system have tested positive. Ten have died in Ohio's Pickaway Correctional Institution, which houses minimum- and medium-security inmates.

Infection hot spots appearing in prisons is not a fait accompli. The spread of the virus can be curbed if prisons send home eligible inmates. The federal government and 49 states already recognize some form of compassionate release for the elderly and very ill. If ever there were a time to show compassion to vulnerable, nonviolent inmates, it is now. Parole boards in states with indeterminate sentencing also have the power to assess the list of inmates set to be paroled in the next six months and to consider releasing many of them as soon as possible.

Some states have already taken action to free inmates. Gov. Jay Inslee of Washington this week commuted the sentences of 293 inmates whose release was set to come within 60 days. In Washington, another 600 inmates are reportedly being considered for a "rapid re-entry program" that would allow freed inmates to re-enter the community with electronic monitoring. Governors across the country should evaluate ways to use their clemency powers to save lives.

Releasing these prisoners during this crisis is not just an act of mercy to protect prisoners' health, and the health of the prison staff. Fewer sick inmates means less strain on the already burdened prison hospital system. The system was ill equipped to provide proper care to the elderly and sick even before this crisis. A 2016 report from the Department of Justice found that 17 percent of medical positions in prison hospitals were unfilled, and that 12 Bureau of Prisons facilities were so understaffed that they were at "crisis level." Releasing high-risk inmates will free up limited

resources within the prison health care system to better treat those who remain.

A 2016 study from the Brennan Center for Justice found that there was no compelling public safety reason to incarcerate 39 percent of the inmates in state and federal prisons, about 576,000 people. Elderly Americans are especially unlikely to commit further crimes once released. The United States Sentencing Commission found in 2017 that offenders over the age of 65 had just a 13.4 percent chance of being rearrested in an eight-year period after release, compared to a 67.6 percent chance for those under age 21. The report concluded that “recidivism measured by rearrest, reconviction, and reincarceration declined as age increased.” There are more than 10,000 people over the age of 61 in federal prison. Many elderly inmates have been in prison for decades after receiving long sentences in the tough-on-crime 1990s. Many would be good candidates for compassionate release now.

If prisons are unwilling to release some inmates outright, they could send eligible people into home confinement, at least for the duration of this crisis. Attorney General William Barr has the authority under the Coronavirus Aid, Relief and Economic Security Act to expand the authority of the Bureau of Prisons to send people into home confinement. He has already ordered the Bureau of Prisons to make more inmates at federal facilities eligible for home confinement, prioritizing those at federal facilities with outbreaks of the coronavirus in Louisiana, Connecticut and Ohio. State and local prisons should follow suit.

State officials should also work together to limit the number of new inmates entering prisons during this crisis. Prosecutors can turn their focus away from low-level crimes. The police can issue citations for nonviolent crimes instead of arresting people. Governors can issue moratoriums on cash bail, ensuring that people do not get placed in overcrowded facilities just because they cannot afford to pay. That is a bad policy in normal times, and possibly a fatal one during this crisis.

When the pandemic has passed, there will be an opportunity for broader criminal justice reforms. But in the very short term, while inmates and staff members are dying, prisons need to release people immediately.