

VIEWPOINT

HEALTH AND THE 2024 US ELECTION

Criminal Justice Reform Is Health Care Reform

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As corrections professionals, we have known for decades that we are a health care organization.

Colette S. Peters, Director, Federal Bureau of Prisons, statement before the US Senate, September 13, 2023

The US imprisons more of its population than almost any other nation, a phenomenon known as “mass incarceration.” Of the 2 million incarcerated Americans, more than 157 000 are held by the Federal Bureau of Prisons, the largest corrections agency in the nation. This agency is under federal regulation, responsive to federal legislation, and directed by a presidential appointee who oversees not only correctional care but also the health care of individuals in this system. Policies and procedures established in the Federal Bureau of Prisons influence practices in carceral facilities at the state and local level, where the remaining incarcerated persons are confined.

Mass incarceration has roots in slavery and subsequent laws following the Civil War designed to enforce racial segregation, with modern efforts to police and control excluded populations accelerating dramatically and intentionally in the late 1970s with the War on Drugs. Since then, a decades-long removal of community social infrastructures (eg, mental health care, substance use treatment, affordable housing), overpolicing in communities of racial and ethnic minority groups, and structural racism in sentencing has fueled mass incarceration.¹ The resulting incarcerated population is disproportionately composed of Black and Latino men and other racial and ethnic minority groups who experience a higher burden of chronic medical conditions and shorter life expectancy relative to the nonincarcerated population.²

In a country with such high rates of imprisonment, all of us are closely connected to mass incarceration. Half of American adults have an immediate family member currently or previously incarcerated.³ The adverse health impacts of mass incarceration then extend to children exposed to parental incarceration and people with incarcerated family members, causing intergenerational health-related harms to affected communities.⁴ Even for those without a personal relationship to an incarcerated person, what occurs inside carceral facilities does not stay there. For example, during the recent SARS-CoV-2 pandemic, the cycling of individuals through jail was associated with the spread of the disease to the area surrounding the correctional facility.⁵

Incarceration itself has been described as a chronic health condition associated with excess morbidity and mortality,⁶ including an estimated 2-year decline in life expectancy for each year served in prison.² Put simply, prior to the next presidential election, Americans in the federal prison system alone stand to lose upwards of 300 000 years of life as a function of their incarceration.

Here we review legal provisions guiding health care delivery for incarcerated individuals, describe the impact of the First Step Act of 2018 on the health of those in federal custody, and examine future federal criminal justice reform that could be affected by the 2024 election. Although the focus of this article is on the health of incarcerated individuals, there is similarly critical work needed to improve the health of affected communities outside the carceral walls.

Health Care While Incarcerated

Federal law mandates provision of health care for incarcerated persons. In 1976, the US Supreme Court ruled in *Estelle v Gamble* that “deliberate indifference to serious medical needs of prisoners constitutes the ‘unnecessary and wanton infliction of pain,’” prohibited under the Eighth Amendment. Subsequent cases established that incarcerated individuals must receive access to medical care, enactment of ordered care, and treatment without bias to their incarcerated status.⁷

Such court decisions establish rights and responsibilities, but do not fund or oversee health care delivery. Community health care oversight, such as the Joint Commission, does not apply to prison health care. When access to quality care is inadequate, incarcerated patients must resort to lawsuits to advocate for change—a right curtailed by the Prison Litigation Reform Act of 1996, which limited prisoners’ ability to file suit in federal court.

Despite Eighth Amendment guarantees, simply entering the criminal-legal system carries profound personal health risks: violent living conditions result in traumatic injuries, housing in congregate settings predisposes to the spread of infectious diseases, and exceptions to physical comfort, health privacy, and informed decision-making occur during medical care delivery.⁷ These factors compound existing health disparities commonly found in the incarcerated population.

The First Step Act

Signed under then-president Trump, the First Step Act of 2018 (FSA) was a bipartisan criminal justice reform bill designed to reduce the federal prison population while also protecting public safety. The legislation aimed to decrease entry into prison, provide rehabilitation during incarceration, improve protections for medically vulnerable individuals, and expedite release.

To achieve these goals, the FSA included prospective and retroactive sentencing reforms, most notably expanded relief from mandatory minimum sentences for drug distribution offenses that disproportionately affect Black individuals in the US. The FSA additionally called for the use of evidence-based tools, such as the Prisoner

Assessment Tool Targeting Estimated Risk and Needs, to facilitate release decisions.⁸

The legislation also addressed medical scenarios commonly encountered by professionals providing care to incarcerated persons, including prohibitions on shackling pregnant patients, deescalation training for correctional officers when encountering people with psychiatric illness or cognitive deficits, easing access to compassionate release for those with advanced age or life-limiting illness, and mandatory reporting on the use of medication-assisted treatment for opioid use disorder. With opioid overdose being the leading cause of postrelease mortality, the latter requirement has been particularly important for those transitioning out of correctional settings.

During the recent COVID-19 pandemic, FSA amendments expanding incarcerated individuals' access to the courts led to a marked increase in successful petitions for early release from prison.⁸ Decarcerating those individuals most medically at risk during the public health crisis reduced the spread of viral illness associated with prison overcrowding,⁹ protecting both incarcerated individuals and those working in carceral settings.

Political Perspectives on Reform

Although criminal justice reform was once a bipartisan effort, recent posturing by conservative candidates threatens progress made since 2018. Governor DeSantis, former Vice President Pence, and Governor Hutchinson have argued in their campaigns that the FSA promoted the release of thousands of unsafe individuals without offering objective evidence to support such claims.

During his presidency, President Biden has expedited implementation of the FSA and the transfer of eligible incarcerated people to supervised release programs, residential reentry centers, and home confinement. He also permitted a subset of medically vulnerable individuals, released to home confinement under exceptional circumstances during the COVID-19 pandemic, to remain out of prison.

Bipartisan groups have introduced 3 future acts to build on the FSA. The First Step Implementation Act (S1014, 2023) would

extend mandatory minimum sentencing relief to those sentenced prior to FSA passage, realigning sentences with what similar offenses would receive today and allowing courts to consider sentence reduction for people who committed crimes as youth.⁸ The Safer Detention Act (S1248, 2023) would correct an arbitrary FSA exclusion of the oldest individuals in federal prison (those convicted prior to 1987), allowing an aging prison population to access compassionate release and home detention programs. The Eliminating a Quantifiably Unjust Application of the Law Act (S79, 2023) would prospectively and retroactively eliminate persistent federal sentencing disparities between crack and powder cocaine offenses, which drive racial disparities in sentencing.

The next federal election cycle will impact ongoing FSA implementation, the progress of these future proposals, and additional reforms such as the creation of meaningful and transparent correctional health care oversight.

Conclusions

Given the burden of medical needs in the carceral setting and the profound health risks associated with incarceration itself, criminal justice reform and health care reform are inextricably linked. The FSA reduced entry into a carceral system associated with excess morbidity and mortality through rational adjustments to sentencing mandates, encouraged compassionate treatment of incarcerated people with serious medical needs, and expedited return of individuals to their communities using evidence-based risk assessment tools.

Although federal legislation does not directly alter state prison or county jail practices, it does establish norms across the country and illuminate a path for reform. With the national election approaching, shared advocacy between those directly affected by the criminal-legal system, federal policymakers, correctional leaders, public health experts, and health care professionals is necessary to continue the positive, bipartisan change witnessed these past 5 years. When we view incarceration as a chronic and life-threatening condition affecting individuals in the carceral system, their families, and our communities, sensible criminal justice reform becomes a clear and urgent health care platform.

ARTICLE INFORMATION

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Conflict of Interest Disclosures: Dr Williams reported being a co-chair of the San Quentin Transformation Advisory Council for Governor Gavin Newsom and founder of her organization, Amend at UCSF, which brings a public health lens to reduce harm and improve humanity dignity and human rights to improve the health and well-being of people who live or work in prisons. No other disclosures were reported.

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