

2020

PUBLIC HEALTH LAW
**VIRTUAL
SUMMIT**

**COVID-19 Response
and Recovery**

September
16-17

COVID-19, Incarceration, and the Criminal Legal System

(Chapter 31 of *Assessing Legal Responses to COVID-19*)

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The first known COVID-19 death of a prisoner was in Georgia when **Anthony Cheek** died on March 26. Cheek was 49 years old. [1]



Source: The Atlanta Journal-Constitution (2020)

At least ***1,016 other prisoners have died*** of COVID-19–related causes.

Sequential Intercept Model:

Reducing Harm at Each Point of Contact



Chapter Recap

- Contact with the criminal legal system at ***all*** points perpetuates health harms → necessitates reduced interactions at ***all*** points, particularly in carceral institutions where COVID-19 spread is most acute
- Toxic effect of correctional settings is ***illustrative*** of broader carceral system harms
- More than 4 out of 5 of all U.S. COVID-19 hotspots are in correctional institutions, resulting in an ***infection rate that is nearly 6X higher behind bars than in the overall population***

Jails & Prisons are Structurally Designed to become Hotspots

- “Overcrowding, insufficient sanitation, poor ventilation, and inadequate healthcare in prisons contribute to enabling these institutions as breeding grounds of infectious disease outbreaks” [2]
- “Shared lavatories, limited medical and isolation resources, daily entry and exit of staff members and visitors, continual introduction of newly incarcerated or detained persons, and transport of incarcerated or detained persons in multiperson vehicles for court-related, medical, or security reasons”
→ further contribute to uncontrolled spread [3]

Carceral Hotspots & Outbreaks

- “By Sept. 8, ***at least 121,217 people in prison had tested positive for the illness***” (5% increase from the week before) [4]
- Reported COVID-19 cases in persons who are incarcerated or detained [5]:
 - 491 (10%) COVID-19–associated hospitalizations
 - 88 (2%) deaths
- “Mass testing resulted in a median ***12.1-fold increase*** in the number of ***known*** infections among incarcerated or detained persons in these facilities, which had previously used symptom-based testing strategies only” [6]



STATE	TOTAL CASES ▼	PER 10,000 PRISONERS	NEW CASES OVER TIME
Texas	21,399	1,723	
Florida	15,740	1,828	
Federal	13,539	902	
California	11,388	1,109	
Ohio	5,977	1,329	
Arkansas	5,752	3,655	
Michigan	5,398	1,543	
Tennessee	4,986	2,590	
New Jersey	3,009	1,897	
Virginia	2,972	1,111	

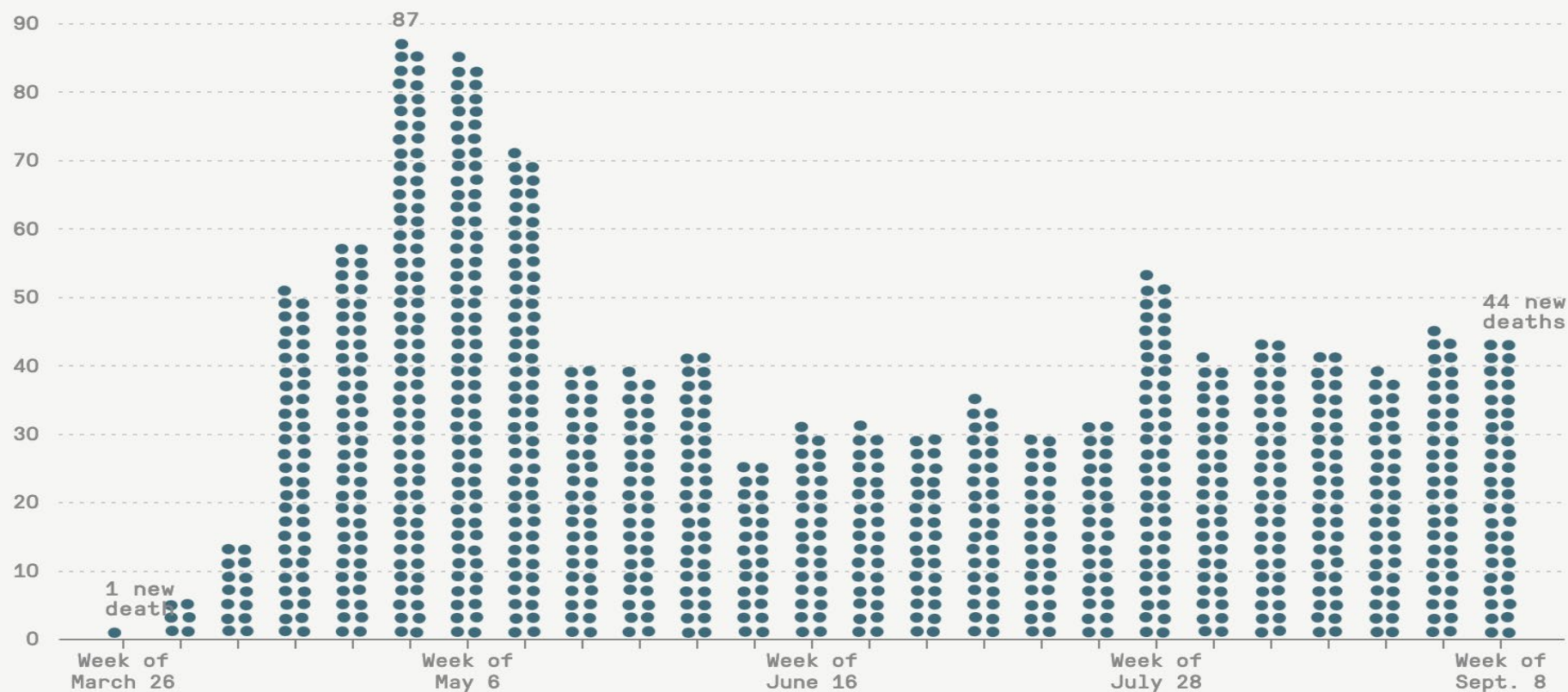


There have been at least

1,017 deaths

from coronavirus reported among prisoners.

Each ● represents one new death





March 26

May 6

June 16

July 28

Sept. 8

STATE

TOTAL DEATHS ▼

PER 10,000
PRISONERS

NEW DEATHS OVER TIME

Texas

145

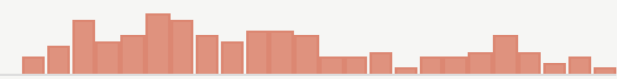
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Federal

126

8



Florida

114

13



Ohio

91

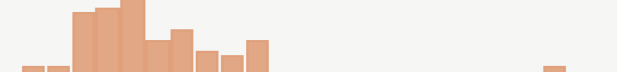
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Michigan

69

20



California

59

6



Georgia

54

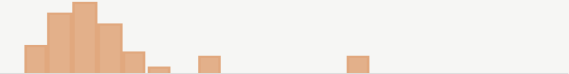
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New Jersey

49

31



Arkansas

39

25



Arizona

27

7



The Social Gradient of Incarceration

- **Racial inequality:** in 2015, the incarcerated population was 56% Black and Latinx
 - Disturbingly high rates of incarceration +
Harsher sentencing and other factors =
Decreased chances of success post-release
- At least 400,000 persons with some type of **mental illness** are incarcerated (~18%)
- **Poverty:** a significant role in incarceration rates [7]
 - 40% of crimes attributed to poverty
 - 80% of incarcerated persons self-identify as low-income

The Racial Gradient of COVID-19

Massachusetts Data (Brigham & Women's) [8]:

- COVID-19 infection rate in jails & prisons nearly 3X that of general population

Racial disparities:

Over-representation of BIPOC in prisons & jails

+

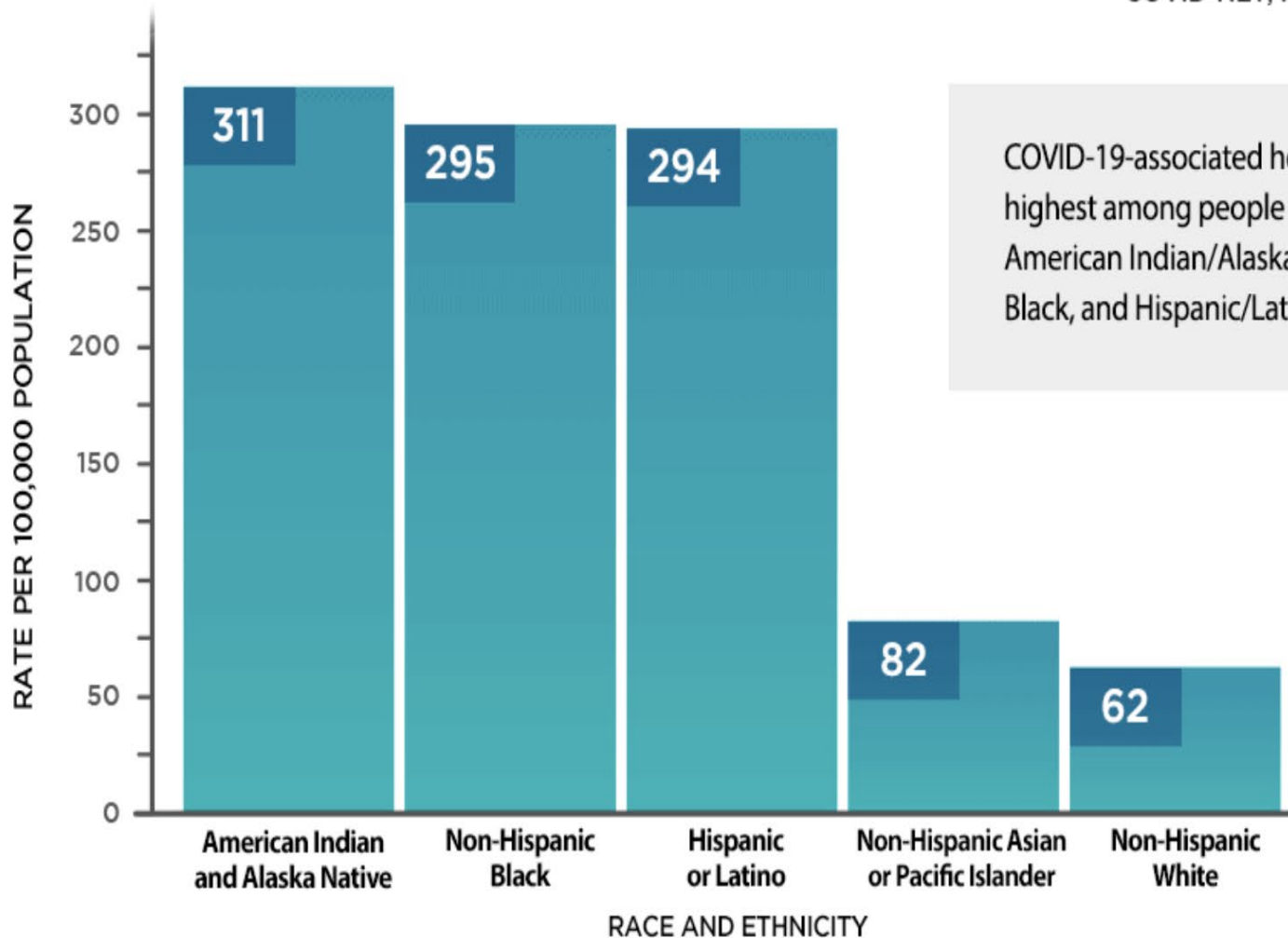
Higher overall COVID-19 rates among BIPOC

=

Disproportionately higher COVID-19 rates among BIPOC in carceral institutions

Age-adjusted COVID-19-associated hospitalization rates by race and ethnicity

COVID-NET, MARCH 1 - AUGUST 8, 2020



cdc.gov/coronavirus



CS317869

Rates are statistically adjusted to account for differences in age distributions within race/ethnicity strata in the COVID-NET catchment area. Rates are based on available race and ethnicity data which is now complete in 94.3% of cases from COVID-NET sites. COVID-19-associated hospitalization rates for American Indian and Alaska Natives may be impacted by recent outbreaks among specific communities within this population and the small numbers of American Indian and Alaska Natives cases included in COVID-NET.

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Overall Recommendations

1. Accelerate decarceration, using variety of administrative and executive tools
2. Ensure effective reentry support, including access to shelter upon release, including providing temporary housing (e.g., hotels)
3. Conduct frequent (daily or weekly) COVID-19 testing on ***all*** individuals and staff in federal, state, and local carceral institutions
4. Reduce institutionalization and other contact with carceral systems

Federal Recommendations

- **Federal Bureau of Prisons** should restore the Obama-era program giving cell phones to those who can't afford a phone line
- **HHS** should continue to encourage states to use emergency 1135 waivers, which allow states to use Medicaid funds for housing and moving expenses
- **Congress** should eliminate the “inmate exclusion” in Medicare and Medicaid, opening the door for the use of federal health dollars in correctional settings
- **Legislators** should change laws, including controlled substances and other statutes criminalizing health and economic vulnerability, to shrink the criminal legal system's footprint

State Recommendations

State correctional officials:

- Provide financial assistance upon release
- Provide temporary ID cards to those without a valid ID upon release

Legislators and appropriate agencies:

- Ensure individuals are not barred from seeking public assistance for housing due to having a criminal record
- Relax probation/parole conditions mandating employment, SUD treatment, housing, or education
- Repeal criminal record bans for health care licensing for those otherwise qualified

Legislators should mandate and fund:

- Virtual job counseling and access to online classes (and technology resources)
- Services to reduce COVID-19 spread post-incarceration, including:
 - Provision of medications during and after incarceration
 - Provision of naloxone (opioid overdose antidote) to individuals with SUD
 - Assistance with re-enrolling in Medicaid to those who qualify

Local Recommendations

City and county jail officials:

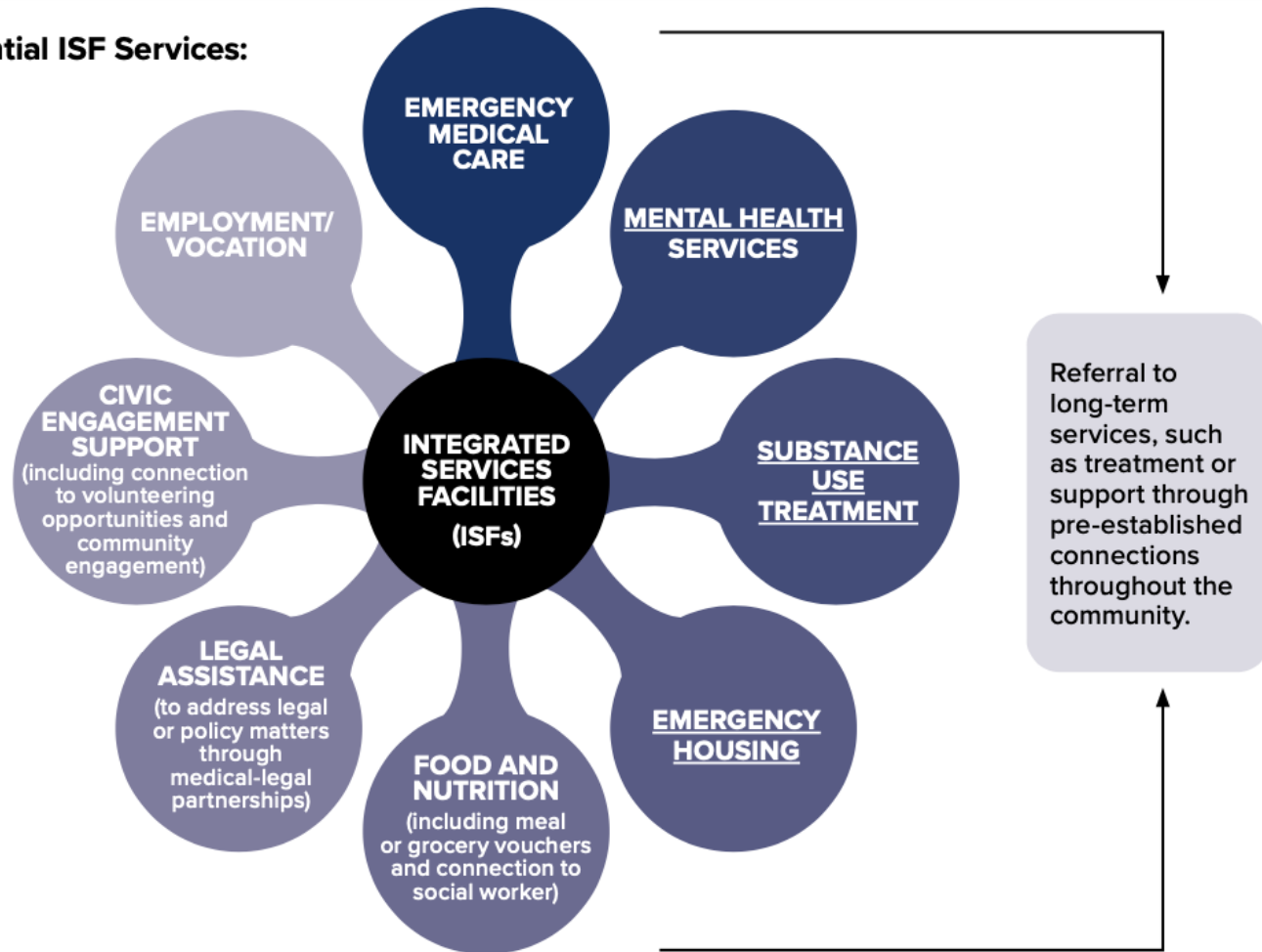
- Provide financial assistance upon release
- Enact “ban the box” policies that prohibit employers from asking applicants about their criminal record

Local governments should mandate and fund:

- Virtual job counseling & access to online classes (and technology resources)
- Adopt **Integrated Service Facilities** that bundle assistance for substance use, mental and behavioral health, housing, and other health, legal, and social needs [9]
- Services to reduce COVID-19 spread and other health harms, including:
 - Provision of medications during & after incarceration
 - Provision of naloxone (opioid overdose reversal drug) to individuals with SUD
 - Assistance with re-enrolling in Medicaid to those who qualify

Integrated Service Facilities

Potential ISF Services:



Citations

- [1] The Marshall Project, 2020
- [2] Franco-Paredes et al., 2020
- [3] CDC, 2020
- [4] The Marshall Project, 2020
- [5] CDC, 2020
- [6] CDC, 2020
- [7] FPWA, 2019
- [8] Jimenez et al., 2020
- [9] Wahbi et al., 2020

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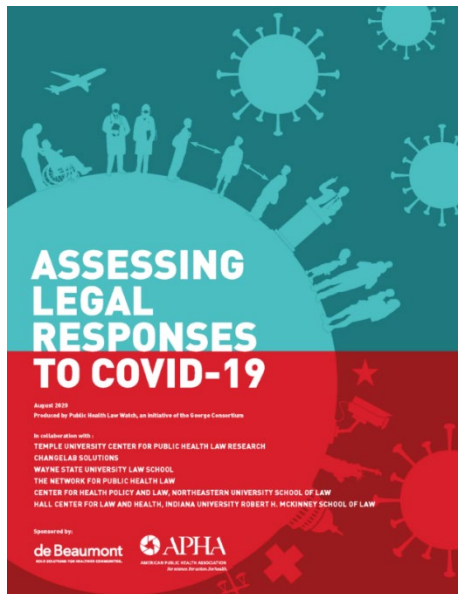
#COVID19PolicyPlaybook

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#COVID19PolicyPlaybook

Access the full *Assessing Legal Responses to COVID-19* report or individual chapters at:
COVID19PolicyPlaybook.org