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A Pandemic Behind Bars

Camila Kaplunov
Loyola University Chicago School of Law

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A Pandemic Behind Bars

Camila Kaplunov

"'He was a short, bald, dark-skinned Black guy, and I am tall, and very white. But, we were inseparable,'" Anthony Ehlers wrote about his cellmate, James Scott, who he had met while incarcerated at Stateville Correctional Center. "'He and I were a big odd couple to be best friends . . . Guys used to make fun of us. We didn't care.'"2

While at Stateville, Scott was diagnosed with stage 4 lymphoma.3 He also suffered from a slew of other health ailments, such as asthma and diabetes.4 But Scott was a fighter.5 At Scott’s memorial service, Ehlers shared that “[Scott] had to fight his whole life . . . And in his last days, he fought for his breath.”6

Scott is among the millions of Americans whose lives were unjustly taken by the coronavirus, and he is one of 12 inmates in Stateville alone to die from it.7 Ehlers shared that he had fallen ill just as IDOC placed Stateville under a two-week lockdown.8 “[T]hey left [Scott and I] in the cell together on lockdown . . . They should have quarantined me, took me apart from him . . . he may not have caught it . . . How do you deal with it knowing that he didn’t have to die if these people had just done the bare minimum and moved him?”9 By the time Scott tested positive for COVID-19, it was too late—Ehlers would never see his best friend again.10

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2 Id.
3 Id.
4 Id.
5 Id.
6 Id.
9 Id.
10 Id.
PRISONS ARE NOT EQUIPPED TO HANDLE THE SPREAD OF THE VIRUS

Preventing the spread of COVID-19 is difficult everywhere. But prisons are among the hardest places to protect. In minimum security prisons, where people are living in dorms with 20 beds, two feet apart, there is no space for self-quarantine and isolation. Even in maximum security prisons like Stateville, where prisoners are confined to cells that one federal judge called “shockingly small . . . a metal box where there is barely enough room to use the toilet,” a huge amount of contact occurs between prisoners and staff. And if there is no contact, there is isolation, which creates an environment laden with violence and mental distress.

When Governor Pritzker’s stay at home order went into effect, some prisoners were stuck in their cells for nearly 24 hours a day and were not afforded any yard time. This continued throughout the summer months, even when it was sweltering inside the prison. Such dire living conditions pushed Governor Pritzker to issue an executive order temporarily suspending all new prison admissions from county jails. This, unfortunately, was not enough to curb the spread of the virus. Once COVID-19 breached the prison’s walls, it

12 Id.
13 Id.
16 Parker, supra note 14.
17 Meisner, supra note 7.
18 McDonald, supra note 15.
21 Id.
was no longer a matter of whether the virus would infect the people inside, but when.²²

“It’s like a symphony of coughs at night,” said one Stateville inmate, describing the conditions of the prison at the outset of the pandemic.²³ “Men curl up in their beds, aching from chills and fevers, while others attempt to wash their cell walls using dirty rags and hotel-sized bars of soap that they will later use to wash their bodies.”²⁴

**IDOC’S FAILURE TO MITIGATE THE SPREAD OF COVID-19**

According to the spokesperson for IDOC, inmates were monitored daily for their symptoms.²⁵ They were also given masks, antibacterial soap, and cleaning supplies.²⁶ Those held in custody, however, said otherwise, claiming that they were only provided with dirty rags, watered down bleach, and “hotel-sized” soap bars.²⁷ Even worse is that fact that the soap bars were being replenished once a week, sometimes once every other week, and were expected to be used for showering, hand washing, and cleaning clothes.²⁸ People in IDOC custody blamed the rapid spread of the virus on the lack of cleaning supplies afforded to them.²⁹ When public health guidelines tell people to wash their hands every 20 minutes and sanitize highly-touched surfaces, it is ludicrous to believe that one soap bar or a dirty dish rag is sufficient to prevent transmission.³⁰

In addition to the overall lack of cleaning supplies, inmates received only a handful of single-use face masks over the course of several weeks, even though IDOC said they would receive new KN95 masks each week.³¹ One person locked in Stateville reported receiving a total of three single-use face masks

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²⁴ Mendoza, supra note 22.

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ Id.

³⁰ Parker, supra note 14.

³¹ Mendoza, supra note 22.
from the time the pandemic started in March all the way to the end of April.\textsuperscript{32} Jamal, who was incarcerated at Stateville and worked in the prison’s kitchen, said that even though he was exhibiting symptoms of the virus, such as a dry, “phlegmy” cough and a fever, he still had to go to work—without a mask.\textsuperscript{33} “[Stateville] has taken little to no precaution when we prepare the food . . . We do wear food service grade gloves, but none of us are wearing masks.”\textsuperscript{34} Jamal was also not tested for the virus, even though he was experiencing symptoms.\textsuperscript{35} Many other people in IDOC custody who also reported COVID-like symptoms were denied testing.\textsuperscript{36} In interviews and letters, inmates reported that when they complained to prison staff of COVID-like symptoms, most were sent back to their cells.\textsuperscript{37} One lawsuit filed against IDOC argues that the department only tested about 2\% of its prison population.\textsuperscript{38} Meanwhile, state records indicate that the department had enough tests available to test about 6\% of its inmates and staff.\textsuperscript{39} Another factor that facilitated the rapid spread of the virus was IDOC’s failure to isolate people who were infected, exhibiting symptoms consistent with the virus, or awaiting their test results.\textsuperscript{40} According to IDOC, the department was appropriately quarantining and isolating people.\textsuperscript{41} However, with more than 37,000 people incarcerated in Illinois—many of them sharing a cell—social distancing is virtually impossible.\textsuperscript{42} This is worsened for people forced to live in dormitory-style settings with well over 100 other people, which has become increasingly common during the pandemic.\textsuperscript{43} Although last seen in 2016, the F-House, or “roundhouse” as some like to call it, has been resurrected after being shut down for “safety and operational hazards.”\textsuperscript{44} In a 2011 report published by the John Howard Association, an

\textsuperscript{32} Mendoza, supra note 22.
\textsuperscript{33} Gaines, supra note 23.
\textsuperscript{34} Gaines, supra note 23.
\textsuperscript{35} Id.
\textsuperscript{36} Id.
\textsuperscript{37} Mendoza, supra note 22.
\textsuperscript{38} Patrick Smith, Democrats and Republicans are Critical of Pritzker’s Handling Of COVID-19 In Prisons, WBEZ (June 29, 2020, 6:00 AM), https://www.wbez.org/stories/democrats-and-republicans-are-critical-of-pritzkers-handling-of-covid-19-in-prisons/d4c77f32-e437-4677-8765-8b0e53120b09.
\textsuperscript{39} Id.
\textsuperscript{40} Mendoza, supra note 22.
\textsuperscript{41} Id.
\textsuperscript{42} Id.
\textsuperscript{43} McDonald, supra note 15.
\textsuperscript{44} Mendoza, supra note 22.
independent organization that monitors prisons, the F-House was said to be infested with cockroaches and plagued with substandard ventilation systems, poor sanitation, and malfunctioning plumbing. Today, it cages people who test positive for the virus or are awaiting test results.

The IDOC claims that the F-House complies with social distancing guidelines. People who are incarcerated in F-House, however, argue that the deplorable conditions the house was once notorious for still persist today. Juan Rodriguez, incarcerated at Stateville, was moved to the F-House after testing negative and then positive for the virus. He was convinced that the test rendered a false-positive and that it was the overcrowded nature of the F-House that caused him to actually contract the virus. But Rodriguez wasn’t the only one harboring such a theory. Nearly everyone in the F-House reported testing positive for the virus only after they were moved there. When Rodriguez asked to see a written copy of his test results, IDOC refused to give him one, saying that the test results were only communicated verbally.

It is not only IDOC’s cramped living spaces that make prisons a petri dish for the virus. Simple things like phones, showers, and toilets create a breeding ground for infection, especially when they are only being cleaned once a day. One inmate said that the phone is the filthiest thing in the prison. ‘Guys breathe into it, cough on it, everyone touches it, and we are not given anything to clean the phones or our hands with after touching it.’ With little to no cleaning supplies, prisoners are unable to properly sanitize their phones. This leaves them with no safe way to contact their family or friends, and with the pandemic suspending in-person visitation indefinitely, not being


46 Mendoza, supra note 22.
47 Mendoza, supra note 22.
48 Id.
49 Id.
50 Id.
51 Id.
52 Id.
53 Id.
54 Id.
55 McDonald, supra note 15.
56 Mendoza, supra note 22.
57 Id.
58 Id.
able to call loved ones makes the isolating nature of prison almost unbearable.\textsuperscript{59}

GOVERNOR PRITZKER’S SECOND EXECUTIVE ORDER ALLOWING MEDICAL FURLOUGHS FOR IDOC INMATES VULNERABLE TO THE VIRUS

With his first executive order doing little to curb the spread of the virus, Governor Pritzker signed a second executive order, but this time expanding inmates’ eligibility for medical furloughs.\textsuperscript{60} By doing this, Pritzker authorized IDOC to allow medically vulnerable inmates to temporarily leave its facilities when necessary and appropriate.\textsuperscript{61}

As of June 1, 109 individuals have received medical furloughs.\textsuperscript{62} Nevertheless, prisoners’ rights advocates and family members of incarcerated loved ones have been pressing the governor to issue even wider reforms, saying that there is more that can be done, given the essentially limitless clemency power of the executive office.\textsuperscript{63}

Around the time Pritzker signed his second order, only about 4,000 inmates had been released from IDOC facilities.\textsuperscript{64} This number would have likely been the same regardless of the pandemic.\textsuperscript{65} In 2019, for example, during the months of March, April, and May, the IDOC reported 3,011, 2,907, and 2,958 exits, respectively.\textsuperscript{66} For the same months in 2020, the IDOC reported 3,032, 3,772, and 2,948 exits.\textsuperscript{67} Although there was a slight uptick in

\begin{thebibliography}{99}
\bibitem{59} Mendoza, supra note 22.
\bibitem{60} Smith, supra note 38.
\bibitem{61} Id.
\bibitem{62} Mendoza, supra note 22.
\bibitem{63} Id.
\bibitem{64} Smith, supra note 38; \textit{see also} IDOC List Shows Nearly 4,000 Prisoners Released Since March 1, WAND (Apr. 28, 2020), https://www.wandtv.com/news/idoc-list-shows-nearly-4-000-prisoners-released-since-march-1/article_c6d63813e-89b9-11ea-ad06-0b3284da6e40.html#:~:text=since%20March%202019%20%2C%20almost%204%2000%20held%20on%20violent\
\noindent %20crimes%20charges.
\bibitem{65} Black, supra note 11.
\end{thebibliography}
April 2020, the number of exists in March and May stayed relatively the same.\textsuperscript{68}

It is estimated that about 9,000 state prisoners with lower-class felonies and 90 days left on their sentence could have been added to the list of released inmates.\textsuperscript{69} An Illinois Law states that:

A person serving a sentence for a conviction of a Class 1 felony, other than an excluded offense, may be placed in an electronic monitoring or home detention program for a period not to exceed the last 90 days of incarceration.\textsuperscript{70}

There were clearly statutory pathways that the governor and the director of IDOC could have used to release more people from custody.\textsuperscript{71} Their failure to do so sheds light on the unnecessary suffering and death that prisoners have been subjected to amid the pandemic.\textsuperscript{72}

In addition to the significantly underused statutory pathways, Alan Mills, the Executive Director of the Uptown People’s Law Center, says that the governor has the right to commute anybody’s sentence he wants to, with no paperwork or anything else, but he hasn’t.\textsuperscript{73} “He can just say you’re free to go.”\textsuperscript{74} Kim Foxx, the Cook County State’s Attorney, said that her office has been working with the governor to review cases of clemency or sentence commutation for people who are serving time in prison where they may be eligible for some type of relief.\textsuperscript{75} “We’ve been dedicating a staffer to look at clemency petitions on the state level so that we can make recommendations for people to be released from the Illinois Department of Corrections.”\textsuperscript{76}

\section*{PEOPLE WITH CHRONIC HEALTH ISSUES SHOULD BE RELEASED FROM PRISON}

Although Governor Pritzker said he wanted to prioritize early release for prisoners serving time for nonviolent crimes or that fell into high-risk catego-
ries for COVID-19,\textsuperscript{77} IDOC’s records failed to spell out whether any of the released inmates were actually released because of the virus.\textsuperscript{78} Furthermore, among the prisoners that were released, most were not part of the medically vulnerable population.\textsuperscript{79}

Illinois has a disproportionately older prison population.\textsuperscript{80} As of June 2020, there were 6,933 incarcerated people in Illinois, or 21.6\% of the IDOC prison population, who were 50 years of age and older.\textsuperscript{81} One Stateville inmate said he was particularly worried about older inmates with preexisting health conditions making it through the pandemic.\textsuperscript{82} “They can’t even handle having an asthma attack . . . I believe if COVID-19 really, really hits, a lot of these older guys are gonna die.”\textsuperscript{83}

In normal times, approximately 1,700 inmates would be taken to medical centers outside of Illinois prisons every month for treatment of chronic health conditions, and an average of 200 inmates each month would be hospitalized outside their facilities, and this makes sense.\textsuperscript{84} Studies show that Illinois’ prison population has significantly higher rates of chronic health issues than the general population,\textsuperscript{85} and such health issues can be negatively affected by factors such as overcrowding.\textsuperscript{86} Individuals living in correctional facilities are also three times more likely to have HIV or AIDS.\textsuperscript{87} Older people in particular have higher rates of chronic conditions, such as hypertension, diabetes, and heart disease.\textsuperscript{88} This makes them more vulnerable to complications if they

\textsuperscript{77} Parker, supra note 14.
\textsuperscript{79} Masterson, supra note 71.
\textsuperscript{80} Black, supra note 11.
\textsuperscript{81} \textit{Inmates 50 Years of Age and Older}, ILL. DEP’T OF CORR. (June 30, 2020), https://www2.illinois.gov/idoc/reportsandstatistics/Documents/FY20%2050+%20Fact%20Sheet.pdf.
\textsuperscript{82} Gaines, supra note 23.
\textsuperscript{83} Id.
\textsuperscript{84} Black, supra note 11.
\textsuperscript{85} Id.
\textsuperscript{87} Id.
\textsuperscript{88} Id.
were to contract the virus, which is highly likely given the enclosed set-up of a prison. 89

BALANCING THE RISK OF POSSIBLE NEW CRIMES AGAINST THE LIKELIHOOD THAT JAILS AND PRISONS WILL BECOME INCUBATORS FOR COVID-19

Although older inmates suffer from the most severe health issues, and are thereby the most vulnerable to complications from the virus, it is also the oldest and sickest inmates that have been convicted of the most violent crimes. 90 Taking this into account, do they too deserve to be released? 91 One federal judge says no and that they should stay locked up. 92 “The release of inmates requires a process that gives close attention to detail, for the safety of each inmate, his or her family, and the community at large demands a sensible and individualized release plan—especially during a pandemic.” 93 On the flip side, proponents of releasing medically vulnerable inmates say that those who have been convicted of violent crimes, in many cases, committed them decades ago and are the least likely to reoffend. 94 Studies support this fact, repeatedly showing that older offenders are at a lower risk for reoffending. 95 For example, those released into the community who were below the age of twenty-one had the highest rearrest rate—67.6 percent. 96 Conversely, those that were the oldest at the time of release—over sixty years old—had the lowest recidivism rate, 16.0 percent. 97 “The majority of these guys have been locked up 30 years, 40 years. Some guys are probably on their way out the door, but because of circumstances, they have to spend the rest of their time on a respirator . . . I want people to understand that those guys got locked up for what they got locked up or, but at the same time, there’s people that love [them], and there’s people

90 Id.
91 Id., supra note 89.
92 Meisner, supra note 7.
93 Id.
94 Black, supra note 11.
96 Id.
97 Id. at 23.
that [they] love,” said Willie, a Stateville inmate that lost his friend to the virus.98

While many of those housed in IDOC facilities are serving life sentences for serious crimes, COVID-19 has transformed their already dire sentences into more severe punishments.99 “‘No one in Illinois has been given the death penalty, but if proper actions aren’t taken, for many this will be a death sentence.’”—Alan Mills.100

LOOKING FORWARD

Prison isn’t meant to be a cake walk just as much as it isn’t meant to be a death sentence.101 But with Governor Pritzker’s most recent order allowing for the transfer of inmates from county jails to IDOC facilities, prisons will start to become the latter.102 IDOC has already admitted approximately 2,500 inmates from county jails, and that number will probably continue to rise as time goes on.103 Studies show that the more inmates that are transferred out of county jails and into IDOC facilities, the more outbreaks that will occur.104

If IDOC continues dragging their feet in the face of the pandemic, disastrous consequences will result.105 IDOC needs to start swiftly releasing inmates from its facilities, starting with those that are most vulnerable to the virus.106 From executive acts of clemency to earned discretionary release, every available mechanism should be employed before irreparable damage is done.107

99 Id.
100 Mendoza, supra note 22.
104 Id.
105 Meisner, supra note 7.
106 McDonald, supra note 15.
107 Id.