

COVID-19 FREEDOM EFFORTS MUST INCLUDE PEOPLE WHO COMMIT VIOLENCE

If you knew you could prevent someone from near certain death from COVID-19 would you do so? Would you first ask if they've been convicted of a violent crime? At Common Justice, we believe our humanity is at stake in our answers to these questions.

Across the country, both longstanding and rapid response campaigns to free people in the midst of the COVID-19 pandemic are taking hold with a force that stands not only to save lives in this moment, but to lay the groundwork for sustainable change. However, if we fail to include people who commit violence in these efforts, we will not only limit our reach now, we will set ourselves up to constrain the scope of change we can demand in the long term, and ultimately put lives at stake.

In our [Building a Narrative to Address Violence in the US](#) memo with the Opportunity Agenda we provided guidance for engaging strategic audiences in conversations about how to address violence and those who have been accused of or convicted of violence in the U.S. As we navigate this critical moment together, we are offering our perspective about why and how it is both important and possible to include people convicted of violence in our campaigns.

COVID-19 doesn't distinguish by charge.

The virus is pervasive, and the gravity of harm it causes is indifferent to the nature of the person's offense.

- If we understand that COVID-19 has turned nearly any sentence into a potential death sentence, then we are faced with a crisis of both arbitrary and excessive punishment—a situation in which people are being subject to a consequence that exceeds what any court envisioned when it imposed sentence.
- This degree of harm by its nature exceeds and distorts the fundamental intent and function of the law and sentences that have been imposed, and it does so regardless of the underlying offense.
- Those with the power to correct this distortion in the interest of justice—whether judges, prosecutors, governors, parole commissioners, legislators—should aim to be as indifferent to the underlying offense as the virus is.

Prison doesn't produce safety.

A primary argument to distinguish by offense—even in response to circumstances as extreme as an exceedingly contagious, often fatal virus spreading in places that make it impossible for people to protect themselves and their lives—is that releasing people who commit violence poses a risk to public safety.



THIS ARGUMENT

presumes that a person's underlying offense accurately predicts the likelihood that they'll hurt others again—and that's just not the case.



LENGTHENING SENTENCES

has been demonstrated to deliver virtually no positive contribution to public safety—and sometimes even has a criminogenic effect (meaning that being in longer is worse, rather than better, for ensuring a person's desistance from violence or other harmful behavior).¹



SUBSETS OF PEOPLE

coming home from prison for violent crime, including even rape and murder, exhibit some of the lowest recidivism rates for anyone.²



DESPITE THE WAYS IN

which prison undermines people's healthy and natural development, people everywhere, even in prison, age out of violence: people convicted of violence were always more than the violence they committed, and they, like all of us, continue to grow and change over time.³

Prison's supposed utility is at best limited and brief, and at worst (and this is our understanding and belief) generative of greater harm. In the vast majority of cases being considered for release, any contribution prison could have possibly made to the public safety is already long made, and all that remains is punishment for its own sake. However, unlike prison, communities do have capacity to continue to ensure safety for the long term. It is critical in these debates that we not underestimate or understate our collective capacity to produce safety outside of prisons—including, most centrally, in relationship and community with people who have caused harm.

¹Francis T. Cullen, Cheryl Lero Jonson, and Daniel S. Nagin, "Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science," *Prison Journal* 91, no. 3 supplement (2011): 48S65S, tpj.sagepub.com/content/91/3_suppl/48S.abstract; Paul Gendreau, Claire Goggin, Francis T. Cullen, and Donald A. Andrews, *Forum on Corrections Research* 12, no. 2 (2000): 10–13; Paula Smith, Claire Goggin, and Paul Gendreau, "The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences," *Public Works and Government Services Canada*, 2002, JS42-103/2002, 20–1; Patrice Villettaz, Martin Killias, and Isabelle Zoder, "The Effects of Custodial vs. Noncustodial Sentences on Re-Offending

²Patrick Langan and David Levin, "Recidivism of Prisoners Released in 1994," U.S. Department of Justice, Bureau of Justice Statistics, 2002, 1, bjs.gov/index.cfm?ty=pbdetail&iid=1134; Tracy Velazquez, "The Pursuit of Safety: Sex Offender Policy in the United States," Vera Institute of Justice, 2008, 6, storage.googleapis.com/vera-web-assets/downloads/Publications/the-pursuit-of-safety-sex-offender-policy-in-the-united-states/legacy_downloads/Sex_offender_policy_with_appendices_final.pdf; R. Karl Hanson and Monique T. Bussiere, "Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies," *Journal of Consulting and Clinical Psychology* 66, no. 2 (1998): 357; Patrick Langan, Erica Schmitt and Matthew Durose, "Recidivism of Sex Offenders Released from Prison in 1994," U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2003, 13–14, bjs.gov/index.cfm?ty=pbdetail&iid=1136.

³Dana Goldstein, "Too Old to Commit Crime?," *The Marshall Project*, March 20, 2015, themarshallproject.org/2015/03/20/too-old-to-commit-crime#.qvKnV700l.

Survivors' desires for accountability are distorted or disregarded.

The degree to which we are attached to leaving people in prison in the name of their survivors is not, on the whole, representative of what survivors want.



IN THIS PANDEMIC,

as more and more sentences of any length functionally become death sentences because of COVID-19, survivors are left to struggle with the brutality of the one option our criminal legal system has made available to respond to their pain. For those of us who survive violence, we often have great difficulty with what is done in our names to the people who harmed us.



SURVIVORS WANT TO BE

safe. But that does not always mean they want prison. And it certainly does not always mean they want the people who hurt them threatened with death on a daily basis. Some survivors will be satisfied with the suffering this virus inflicts on those who harmed them; that is their right. However, for many the pandemic will only exacerbate the feeling that all the system could produce from their pain was more pain when what they wanted was to heal.



SURVIVORS' NEEDS ARE

not opposed to those of incarcerated people: all benefit when we build alternatives to prison, including not only options that prevent incarceration in the first place, but also mechanisms for compassionate, early, or supervised release that actually deliver accountability, healing, power, and options. Only when such options are prevalent will survivors stop having to choose between nothing or horrors carried out in their names.

Messaging Matters.

Sometimes we will lose efforts to free people regardless of charge. That is the reality. However, the realities of political compromise should not translate into narrative compromise.

- Whatever our opposition may do, we do not need to invoke the distinction between violent and non-violent crime in how we talk about people who are incarcerated or how we fight for the liberty or survival of incarcerated people.
- Invoking a violent versus non-violent distinction, particularly in a moment when release decisions are very concretely and imminently life-or-death, conveys a narrowness with regard to whom we believe has a right to be safe. Doing so not only limits our current efforts, it is also detrimental to our collective, long-term work for transformative change.
- Pitting people and campaigns against each other, feeds the deficit-driven mindset we are all otherwise so determined to dismantle. And in doing so, we set up the very barriers we will have to fight to surmount when the next fight comes around and the win we are tasked with achieving involves people charged with or convicted of violence.

There is no question COVID-19 is upending business as usual. We have an opportunity to steer into this period of rapid and extraordinary change in part by leaving behind the violent/non-violent distinctions that have characterized and constrained our collective work up until this point, and to emerge from this current crisis with those limitations squarely left behind.