

COVID-19 JAIL DEPOPULATION IN COLORADO

An Unexpected Path Forward

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ACLU
Colorado



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I. Executive Summary

As COVID-19 cases are on the rise in Colorado, the virus remains a serious threat to the health and lives of people living and working behind bars, and surrounding communities. Jails are the ideal breeding ground for COVID-19 due to the heightened vulnerability and health challenges of incarcerated people, the close confinement and lack of social distancing, limited availability of quality healthcare, and dangerous overcrowding. Even with incomplete data, we know that there have been thousands of cases of COVID-19 among incarcerated people and staff, with serious outbreaks in at least seven Colorado jails.¹ The risk of sickness or death by COVID-19 is particularly cruel for people held in jail given that most of them are held pre-trial, have not been convicted of a crime, and remain behind bars only because they cannot afford the money bond to get out.

COVID-19 Jail Depopulation

- **46%** decrease in jail population statewide
- **6,000** fewer people in jail every day
- **20,000+** more people living free in community every month
- **47%** average jail occupancy (down from **81%**)
- **\$210 million** taxpayer dollars saved annually if jail populations stayed low
- Despite widespread depopulation, statewide crime rates have not changed since 2019 and pretrial misconduct remains low
- **WARNING:** Jail populations have risen by **17%** from July to September

Public health experts across the country and here in Colorado have urged that the only way to protect incarcerated people and correctional staff from the virus is to reduce the incarcerated population so that social distancing is possible, especially for the disproportionately large number of medically vulnerable people living behind bars.

In an unprecedented move to protect public health, Colorado sheriffs, judges, district attorneys, public defenders and prosecutors have worked together to dramatically decrease Colorado's jail population. As a result, Colorado's jail populations

fell by, at the most, 46% statewide since March.² At the peak of depopulation, around 6,000 fewer people were sleeping in jail every night. Given that an average jail stay is two to nine days, that translates to upwards of 20,000 fewer people incarcerated in Colorado jails every month. As a result of population reduction, Colorado's jails are now, on average, at 47% capacity, compared to 81% before the pandemic.³

Colorado's jail populations fell by 46% between March and May. At the peak of depopulation, around 6,000 fewer people were sleeping in jail every night.

Decreasing jail populations has undoubtedly saved lives. We need only look to the devastation COVID-19 wreaked in Colorado nursing homes to understand how deadly and harmful the virus can be in any congregate care setting. Even early in the pandemic, when Colorado jails had depopulated by an estimated 31%, experts opined that over 1,000 lives had already been saved by reducing the number of people incarcerated.⁴

Even as jail populations are down, crime rates have stayed the same. While there has been a reported uptick in some violent crime in a few Colorado cities, that uptick has not been attributed to jail depopulation, but instead to multifaceted social factors related to the challenges of this moment.

Jail depopulation in Colorado has been smart, safe, and thoughtful, with a clear focus on reserving jail beds for people who pose a threat to others. This report explores the policies that have driven the drop in jail populations, including:

- **Active management of county jail populations.** Sheriffs took proactive measures to reduce their jail population and reserve jail beds only for people who posed a threat to others, including by setting custodial arrest standards and identifying incarcerated people who should be considered for early release or bond reduction. Likewise, judges, often with support from public defenders and prosecutors,

reconsidered sentences, modified bonds to allow for release, and granted additional powers of release to sheriffs.

- ***Increased use of summons and heightened arrest standards.*** Many law enforcement agencies adopted policies mandating increased use of summons and decreased custodial arrests for a wide variety of offenses. These policies were aimed at reserving jail beds for people who pose a risk of harm to others. As a result, Colorado saw a 48% drop in the number of people jailed pretrial on misdemeanor charges.⁵
- ***Increased use of personal recognizance bonds.*** In the first six months of 2020, 80% of counties increased the use of personal recognizance bonds, which allow for pretrial release without the payment of money.⁶
- ***Changes in probation, parole and pretrial services.*** People were less often incarcerated for non-criminal infractions, including technical violations of bond or probation, or for a simple missed court appearance.

There can be no true silver lining to a deadly pandemic. But the tragedy of this moment is worsened if we fail to learn the lessons COVID-19 has taught us about our bloated and harmful carceral system. Even as COVID-19 continues to spread behind bars, Colorado's jail population has begun to creep back up in recent weeks. We must not accept a return to the "normal" that contributed to making this pandemic so much worse. Colorado has an opportunity to save lives, save money, save families, save jobs, and honor the promise of our Constitutional presumption of innocence. The bold, smart, lifesaving actions of sheriffs, judges, public defenders, and district attorneys can and should be memorialized into law; so that Colorado's jail population never returns to pre-pandemic numbers that needlessly and harmfully imprisoned tens of thousands of Coloradans every month. The time to act and build a better Colorado is now.

*"We have seen jail populations fall across the state, and the sky has not fallen. **We are reserving jail beds for those who absolutely should be off the street.** But we are erring on the side of letting others stay home with their families. We aren't using our jail facilities to manage homelessness and drug addiction, which often compounds the problem.*

*Sheriffs across the state, regardless of political leanings, are finding smart ways to safely reduce their jail populations. **Many of us see that we can have big reductions in jail populations and keep people safe at the same time.** That's good for all Coloradans."*



Sheriff Joe Pelle
Boulder County,
where jail populations
fell by 43%

II. A Legacy of Mass Incarceration

The United States incarcerates more people, both in absolute numbers and per capita, than any other country in the world.⁷ Over two million Americans spend each night behind bars, denied the opportunity to work, care for their children, go to school, and participate in our democracy.⁸ Communities are stripped of people who work, volunteer and pay taxes. Millions of children grow up without their parents. Mass incarceration is an unbearable burden that traumatizes incarcerated people, families and communities. And this trauma falls heavily and disproportionately upon communities of color, and especially on Black families.⁸ Such a brutal and costly response to crime should be the last option, with jail and prison cells reserved solely for people who pose a real public safety threat. Locking up our neighbors has instead become a first response to many of society's complicated problems.

The U.S. did not always incarcerate so many people. America's incarcerated population has increased by 700% since 1970, far outpacing population growth and crime.⁹ Jails throughout the country are bursting at the seams, with thousands of people incarcerated each night — many of whom are legally innocent. While each

year, over 600,000 people go to prison, 10.6 million people go to jail.¹⁰ Colorado is no exception to the massive growth of our carceral system. In the last 50 years, even as crime has trended down, Colorado has seen an eight-fold increase in the jail population, from 1,500 in 1970 to over 13,000 in 2017.¹¹ Before COVID-19 depopulation, the statewide jail population was expected to exceed 16,000 by 2025 and 17,500 by 2030 — far beyond the capacity of Colorado's county jails.

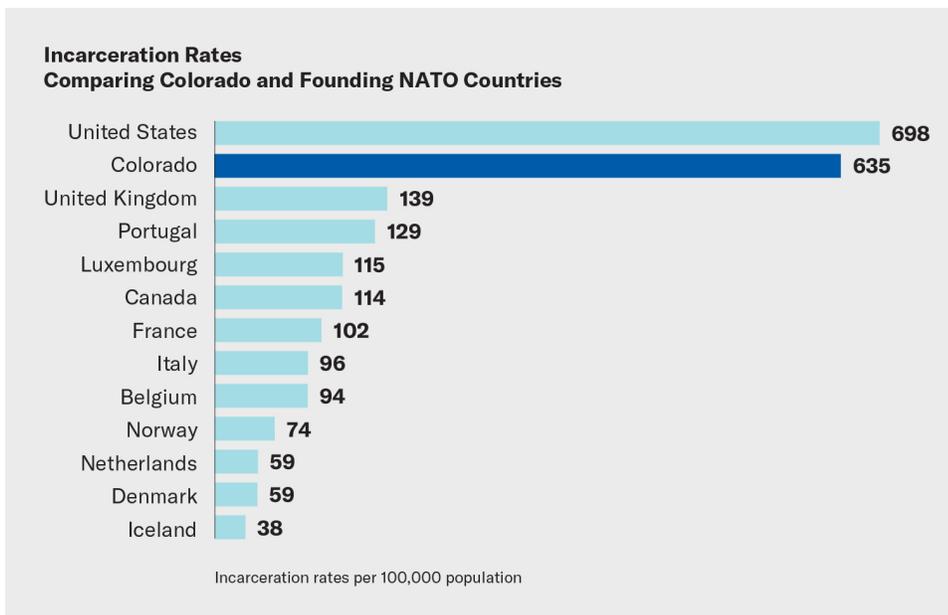


Figure 1. Colorado incarcerates people at a higher rate than any other Western democracy. Data: <https://www.prisonpolicy.org/profiles/CO.html>

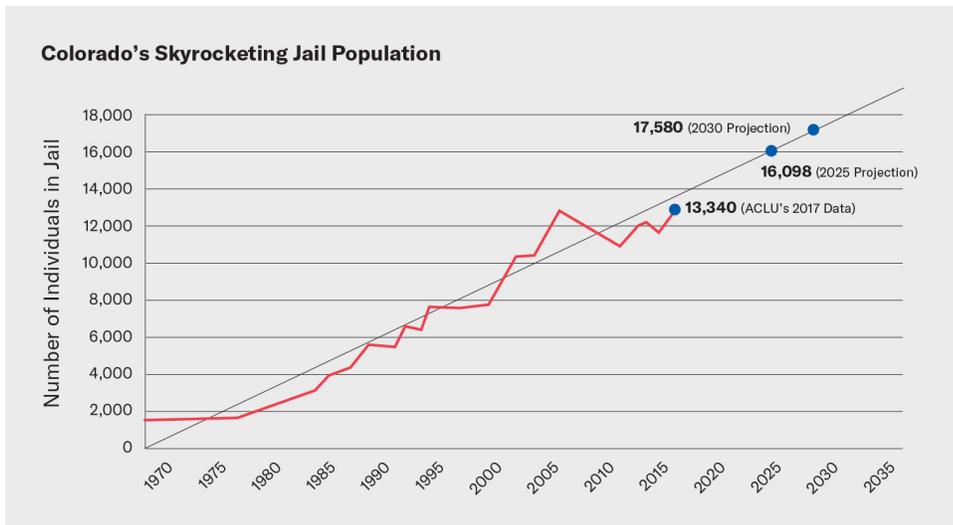


Figure 2. Graph showing Colorado's historic jail population with growth as projected pre-pandemic.

While there is a debate about the “goal” of incarceration, whether it is to rehabilitate or to justly punish, it has become increasingly difficult to argue that the current system of mass incarceration is serving either of these goals.

There is a growing consensus that mass incarceration is an ineffective, harmful and costly response to society’s problems. A bipartisan push across the states and at the federal level has advocated for prison and jail depopulation with some success. In the last decade, prison populations declined by about 10%.¹² Yet, before COVID-19, advocates for safe depopulation believed it would take decades to bring incarceration rates down to the level it was before the era of mass incarceration. Instead, it took a deadly pandemic for Americans to finally confront the harms of incarcerating millions of people in prisons and jails for so long.

III. The Threat of COVID-19 Behind Bars

COVID-19 hit an overcrowded and overburdened system that was never designed to withstand the terrible spread of a highly contagious disease. Thanks to decades of mass incarceration, correctional facilities are crowded, highly populated environments where the virus can quickly spread.¹³ Before the pandemic, Colorado jails were operating, on average, above 80% capacity, with five jails operating above 100% capacity.¹⁴ Staff and incarcerated people have close, daily contact where people sleep, eat, and use the toilet within a few feet of one another. Under these circumstances, social distancing is impossible.¹⁵ Many underfunded and overcrowded county jails have minimal and uncertain access to hygiene products and extremely limited access to medical care.¹⁶ Further, in overcrowded jails, quarantining more than a small number of sick inmates is impossible.¹⁷ Mass incarceration has created ideal conditions for the pandemic.¹⁸

Mass incarceration also contributed to a jail population more vulnerable to this deadly virus than individuals living free in the community. While there is no state-wide data on the health of Colorado’s jail population, the prison population serves as a strong comparison point. One-fifth of Colorado’s prison population are over 60-years-old and around 35% have moderate to severe medical issues.¹⁹ By incarcerating older people and people

living in poverty, who are more likely to have underlying health conditions, we have created an environment where incarcerated people are uniquely vulnerable to serious sickness and even death in the face of this pandemic.²⁰

“THEY TOLD ME: ‘YOU ARE OKAY, JUST RUNNING A TEMPERATURE AND DRINK MORE WATER,’ AND GAVE ME TYLENOL.”

Anthony Griego
Died from COVID-19
in the Weld County Jail

COVID-19 also remains a serious threat to the thousands of correctional staff that work in the almost 60 county and city jails in Colorado. Given the inevitably close and sustained contact between jail staff and prisoners, an outbreak in any jail inevitably affects incarcerated people, correctional staff, their families and the community at large.²¹ While Coloradans may assume that incarcerated people are isolated from the general public, the reality is that every day, they have close contact with the public. Correctional staff, attorneys, and medical providers interact closely with incarcerated people and then go home to interact closely with family and community members. And hundreds of people are released from Colorado jails into the community every day.²² For people incarcerated pretrial, which accounts for over half of the jail population, a short jail stay of two – nine days is the norm before release.²³ Many people are arrested and make bail within hours or days of incarceration.



Incarcerated people sleep on the floor of the over-crowded Pueblo County jail. Photo: March 2018. © CPR, Sam Brasch.

In short, jails are a revolving door with the community, and there is no line – thin or otherwise – between the health of incarcerated people, jail staff, and the surrounding community.

Most Colorado jails have not performed comprehensive testing, but – for those that have – the results are alarming. According to data from the Colorado Department of Public Health and Environment, between April and September, at least seven Colorado jails experienced COVID-19 outbreaks, meaning that inmates or staff passed the virus to one another within the jail.²⁴ During the peak of the outbreak in Colorado’s jails on August 26, there were 802 cases among incarcerated people and staff.²⁵ As of September 2, there remain active outbreaks at the Denver County Jail, the Van Cise-Simonet Detention Center and the Weld County jail with a total of 682 COVID-19 cases among incarcerated people, and 43 cases among staff.²⁶ Given that testing in jails is extremely limited, these numbers are certainly a dramatic undercount of the actual number of cases.²⁷

The double scourge of mass incarceration and COVID-19 will likely prolong the time needed to bring the virus under control. Colorado’s existing medical capacity inside jails is being pushed to its limits and has caused widespread suffering among incarcerated people, who disproportionately include populations the Center for Disease Control has identified at increased risk of mortality from COVID-19. To mitigate the massive spread of the virus through Colorado’s jails, public health experts have joined the existing calls urging for a substantial and safe reduction of the jail population in order to allow for social distancing.²⁸ The public agrees. In a recent poll, 66% of likely voters, including 59% of those who identify as “very conservative,” said that elected officials should consider measures to reduce overcrowding in correctional facilities as a response to COVID-19.²⁹



Mickey Howard hugging Elisabeth Epps, founder of the Colorado Freedom Fund, after she paid \$85 to buy his release from the Denver Jail. All charges against Mr. Howard were dropped. Photo: July 2018. © Denver Post, Joe Amon.

IV. Colorado Jail Populations Drop to Historically Low Levels

Until COVID-19, the story of Colorado's jail population has been one of exponential growth. COVID-19 reversed that trend, bringing jail populations to historic lows. When outbreaks in Colorado jails were first detected in March, jail populations rapidly dropped by nearly 30%.³⁰ By April, the average daily population of statewide county jails dropped by 42%. In May, Colorado's jail populations dropped by 46%.

In a matter of three months, jail populations dropped to levels not seen in almost 30 years.

From January to May, we saw the jail population drop from nearly 13,000 people to just under 7,000. That meant, at the peak of depopulation, around 6,000 fewer people were sleeping in jail every night. Given that an average jail stay is two to nine days, that translates into upwards of 20,000 fewer people incarcerated in Colorado jails every month. The last time the jail population reached this level was 26 years ago in 1994.

Jails across Colorado have seen a significant drop in the number of people incarcerated. The ten largest jails in Colorado house around 80% of the jail population or around 10,000 people. These largest jails have reduced their jail population almost in half. It is not just the biggest jails that have reduced their populations. Fifteen jails, ranging from the Jefferson County jail to the Moffat County jail, have seen their jail populations drop by over 50%. In fact, every single county in Colorado except for Otero, Grand, Yuma and Saguache has seen a significant drop in their jail population. The minimum drop in jail population was over 20%. In a matter of months, sheriffs, defense attorneys, prosecutors, judges and other actors in the criminal legal system successfully reduced jail populations in a way that years and years of reform efforts have been unable to achieve.

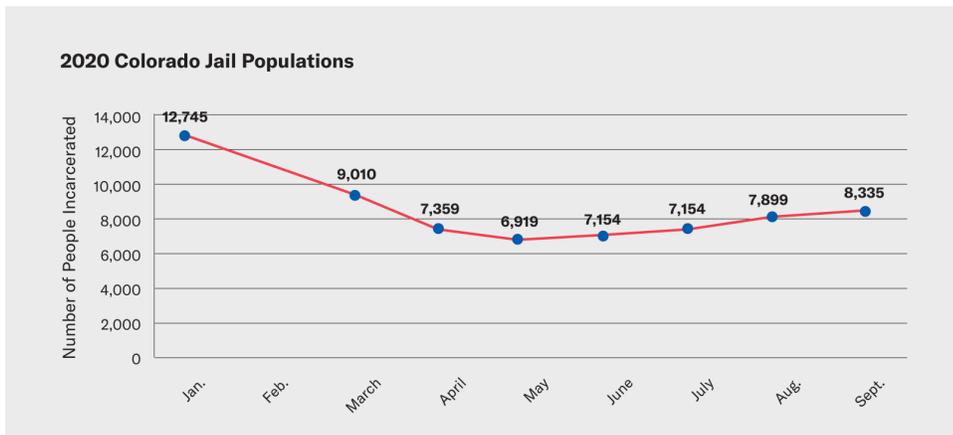


Figure 3. Graph showing the 2020 average daily population in Colorado jails.

Colorado Statewide Jail Populations Over Time



Figure 4. Colorado's jail population over time including post-pandemic depopulation.

“IF I HAD THE ABILITY TO DECREASE THE JAIL THAT QUICKLY, AND THERE WERE PEOPLE IN JAIL THAT CAN GO OUT INTO SOCIETY THAT QUICKLY, **MY QUESTION IS THIS** — AND I CONTINUE TO ASK THIS QUESTION EVERY DAY — **WHY DID WE HAVE THEM IN JAIL IN THE FIRST PLACE?**”³¹



**Director of Public Safety
Murphy Robinson**
City and County of Denver,
where jail populations
fell by 47%

With fewer people incarcerated, Colorado's jails are at a lower occupancy, making them safer for both incarcerated people and staff. Colorado's jails are now, on average, at 47% capacity, compared to 81% before the pandemic, when five jails were at over 100% capacity. Overpopulation undermines any rehabilitative goals of jails, since it can lead to the increased use of double and triple bunking, waiting lists for education and drug treatment programs, limited meaningful work opportunities, and increased inmate-to-staff ratios.³² During a pandemic, overpopulation makes it hard to safely quarantine incarcerated people with COVID-19 symptoms and almost impossible to stop the spread of COVID-19 once there is an outbreak. Thus, COVID-19 related jail population reductions not only make jails safer for incarcerated people and jail staff, but allow for the creation of healthier, more rehabilitative environments.

V. Depopulation Saves Taxpayer Dollars

Jail depopulation has the added benefit of creating substantial potential savings for counties and taxpayers. The average daily cost of incarceration in Colorado is \$98.83 per person.³³

If Colorado were able to sustain the **46%** drop in jail population, it would save at least **\$210 million** taxpayer dollars statewide per year.

With fewer people incarcerated, there would be no need to build costly, new, taxpayer funded jails. In 2019 alone, Arapahoe, Larimer and Mesa Counties considered jail expansion projects in response to their overcrowded jails. Arapahoe's proposal was struck down on the ballot, Larimer County commissioners approved a \$75 million jail expansion project and Mesa County's jail expansion is now on indefinite hold due to COVID-19 jail depopulation.³⁴ The Mesa County Sheriff, District Attorney and County Commissioner all hope to maintain some of the changes and policies put in place as a response to COVID-10 so that even after the pandemic has passed, jail populations will stay low. Widespread and continued jail depopulation will save taxpayers millions which could be better spent on improving conditions in jails, expanding services for victims' families, or addressing the root causes of violence.

*“Before COVID-19, our population was running high 500’s to 600’s. I have a completed jail expansion design sitting in my cabinet now. We were weighing going to our voters to ask for funding to build a larger jail. **If we keep our jail numbers down, we don’t need a larger jail.**”*

*Frankly, I didn’t want to build a larger jail in the first place. I don’t want to be a community that incarcerates 700 people. **We can keep working together to help people who aren’t a threat stay out of jail and manage them in the community.** We shouldn’t go back to overcrowded jails. We can do better.”*



Sheriff Matt Lewis
Mesa County,
where jail populations
fell by 40%

VI. No Correlation Between Depopulation and Crime

Even as jail populations are half what they were in 2019, crime has not increased as a result. The ACLU sought and received comparative crime data from April to June in 2019 and 2020 from the fourteen largest Colorado counties, which account for 81% of Colorado’s population.

There was an overall 4% drop in crime in the largest fourteen counties in Colorado, with almost 3,000 fewer incidents in 2020 compared to 2019.

*“In August three years ago, we had 1,830 inmates. **Today we are at 1,200, and the community is no less safe.** We should take this moment and make lasting changes that will make jails safer and keep people who are not a danger to others in their jobs or home with their families.”*



Sheriff Bill Elder
El Paso County,
where jail populations
fell by 40%

While all fourteen counties saw substantial depopulation, the change in crime rates varied somewhat. Some counties experienced the same level of crime as in 2019; some counties saw a small uptick in crime; and some counties saw a sharp decrease in crime. In El Paso, Arapahoe and Boulder, crime decreased. In Jefferson, Adams, Pueblo, Mesa, Larimer, La Plata, Washington and Logan, crime rates were the same in 2019 and 2020. In Denver, Douglas and Fremont crime increased slightly. As Figure 6 shows, variations in crime rates bore no correlation to the level of reduction in the jail population. In other words, Colorado does not have to choose between public safety and public health.

The lack of correlation between crime rates and depopulation in Colorado is reflected in national trends as well. For example, Michigan has seen its jail population drop nearly by half during the pandemic.³⁵ Yet, as in Colorado, Michigan law enforcement did not report an uptick in crime by people released pretrial. While in Colorado a few cities reported a small uptick in some violent crimes, there was no correlation to jail depopulation. Indeed, a national ACLU study of COVID-19 jail depopulation data from across the country found “the reduction in jail population was functionally unrelated to crime trends.”³⁶

Additionally, any uptick in crime has not been attributed to jail depopulation, but instead to complicated, multifaceted social factors that are destabilizing communities, including a global pandemic, economic shutdowns, severe job losses, school closures, an extreme and growing wealth gap, and unrest over racial injustice and police brutality.³⁷

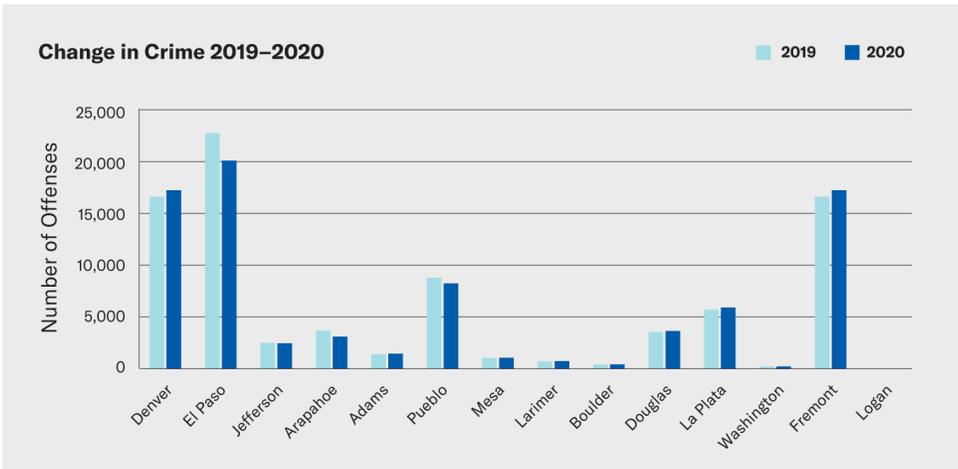


Figure 5. Graph comparing crime in April – June 2019 and April – June 2020 in the 14 largest county jails, which account for 81% of Colorado’s population. In total, crime decreased 4% over this time.

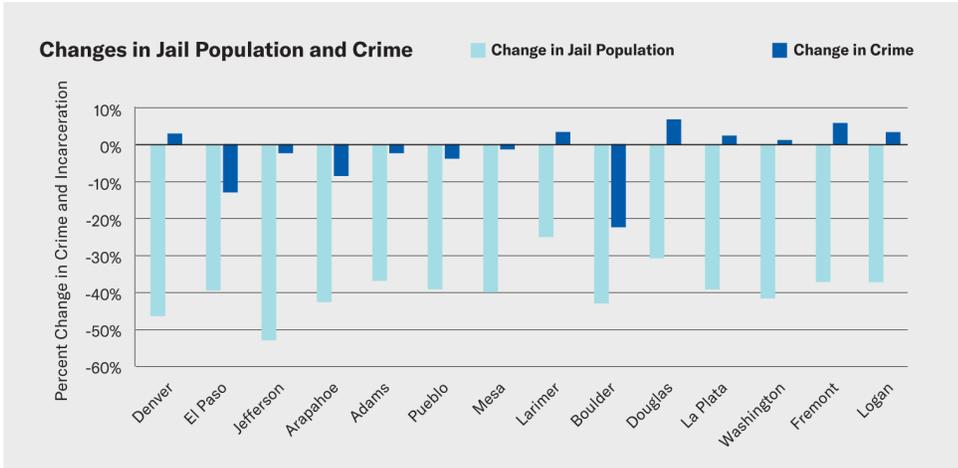


Figure 6. Graph showing change in jail population and crime rates during COVID-19 compared to 2019 in the 14 largest county jails, and reflecting no correlation between jail depopulation and crime.

VII. COVID-19 Jail Depopulation Left People of Color Behind

Even the laudable, widespread depopulation prompted by this public health emergency has still failed to offset a legacy of mass incarceration in Colorado. While jail populations are the lowest they have been for decades, they remain too high with thousands of people still incarcerated pretrial solely because they cannot afford to pay money bond, with some still incarcerated for minor offenses. Even as hundreds of Black and Latinx Coloradans have been released from incarceration, racial disparities persist and have even grown. As depopulation was occurring, it benefited white people more than people of color. In January, before depopulation, 13% of Colorado's jail population was Black and 22% was Latinx. In July, after months of depopulation, these numbers rose to 15% and 31%.³⁸

Despite considerable depopulation, white people disproportionately benefited from release and people of color were disproportionately left behind.

VIII. Policies that Led to Colorado's Smart Jail Depopulation

The historic drop in jail population was the only safe, appropriate and necessary response to the dangerous threat of COVID-19. To understand the policies and practices that facilitated smart jail depopulation in Colorado, the ACLU conducted over two dozen interviews with sheriffs, public defenders, district attorneys, and pretrial services providers. We gathered daily jail population numbers from the largest 15 counties, which hold more than 86% of Colorado's jail population. We gathered weekly jail population numbers from all Colorado county and city jails. We also sent records

requests to the 15 most populous counties to gather comparative crime data, COVID-related policies, and information regarding COVID-19 infections and quarantine among incarcerated people and staff.

From this research emerged a clear picture: the safe depopulation of Colorado's jails was the result of an unprecedented, collaboration by sheriffs, public defenders, prosecutors, probation and parole officers, pretrial services and judges across the state with the goal of protecting public health and public safety by lowering jail populations and reserving jail beds only for people who pose a risk to others.

Based on our research, the following policies emerged as driving forces behind Colorado's smart jail depopulation.

1. *Active management of county jail*

populations. One of the biggest factors driving jail depopulation was the leadership of sheriffs who were empowered to actively manage their jail populations. On Tuesday, March 24, Governor Polis issued guidance to Colorado counties, municipalities, local law enforcement agencies and detention centers, emphasizing the need to incarcerate fewer people in the wake of the COVID-19 public health crisis. The Governor's Guidance correctly emphasized the need to incarcerate fewer people by urging that law enforcement rely on summonses rather than arrest, and to limit arrests only to situations in which the individual poses a "clear risk of physical harm to others or the community."³⁹ Sheriffs took this charge seriously. Sheriffs worked to limit jail beds to people who pose a public safety threat and worked to release people with low-level offenses, people whose crime was solely associated with poverty and addiction and people whose misconduct was not criminal such as people incarcerated for failure to appear.

To achieve this, many Sheriffs met regularly with local law enforcement actors, including the district attorney, public defender, judges,

and pretrial services to regularly review the jail population and determine who could be safely released, whether through early release or a bond modification. Some judges granted Sheriffs additional authority to release pretrial defendants on a personal recognizance bond. Sheriffs exercised this “command” personal recognizance authority to release many pretrial defendants. Others used existing statutory authority to grant time credits to facilitate the early release of incarcerated people nearing the end of their sentence.

COVID-19 forced actors in the criminal legal system to reconsider the sentences and bond amounts keeping so many people incarcerated. Jail sentences were converted to in-home detention or shortened, and people were released early. Some people jailed pretrial on low monetary bonds saw their bonds lowered or converted to a personal recognizance bond. In some counties, sheriffs put together a list of people who were high-risk or close to the end of their sentence. Public defenders relied on these lists to file motions in these cases, judges granted personal recognizance bonds to people on the list and district attorneys agreed to dismiss some of the cases for the people on the list. At the beginning of the outbreaks, the criminal legal system came together to find creative ways to reduce the number of people incarcerated without negatively impacting public safety.

*“Necessity is the mother of invention, so you get into these situations and you’re forced to change. **The goal here is to cut down the number of people going through the jail doors.** Just because we arrest somebody doesn’t mean we necessarily need to hold them. What’s really driven the jail numbers is the average length of stay, it’s not that there’s more cases.”*



**District Attorney
Dan Rubinstein**
Mesa County,
where jail populations
fell by 40%

2. Increased use of summons. Another key factor driving the drop in jail population was an increased use of summons. Many sheriffs, police chiefs and chief judges across the state issued guidance to local law enforcement mandating summons and release for many offenses. Many sheriffs refused to accept new jail admissions that were not in compliance with the arrest standards, refusing to allow their jails to continue to be used to warehouse people experiencing homelessness, drug addiction, mental illness and people who pose no threat to others. While arrest standards varied between jurisdictions, most prohibited custodial arrest for municipal offenses, the majority of misdemeanor offenses, and lower level felonies. These heightened arrest standards had an immediate impact. Statewide, there was a 48% drop in the number of people held for pretrial misdemeanors and the increased use of summons was likely a substantial contributing factor to this drop.⁴⁰

3. Increased use of personal recognizance bonds. Another factor driving a drop in the jail population was an increased use of personal recognizance bonds. Colorado saw at least a 31% drop in the pretrial population due to COVID-19 depopulation.⁴¹ Judges were more willing to grant non-monetary bonds to keep jail populations low in response to the public health emergency. Some judges were motivated by the public health risk a certain defendant faced, while others were more willing to grant personal recognizance bonds for low-level offenses. When judges did require bond, many set smaller bond amounts. Many district attorneys' offices were more willing to stipulate to personal recognizance bonds. Some adopted a policy which standardized a presumption of personal recognizance bonds in a wide variety of cases including misdemeanor offenses, other than mandatory arrest offenses, and many low-level felonies. As a result, 80% of counties increased the use of personal recognizance bonds in the first six months of 2020 compared to the same period in 2019,

with 15 seeing at least a 25% increase.⁴² Despite this increase in the number of people released, the Division of Criminal Justice reports that between January and May of 2020, only 12% of cases incurred a new case filing within 30 days of release, representing only a slight uptick from 10% of cases in 2019.⁴³ The vast majority of these new case filings were for traffic or misdemeanor offenses. Additionally, new filings in 2020 decreased by 21% compared to the same time period in 2019, due primarily to a decline in drug charges.⁴⁴

4. Decreased jailing for non-criminal conduct. During COVID-19, many arrest standards and judicial guidance discouraged custodial arrest of individuals accused of non-criminal misconduct, including failing to appear for court, or a technical violation of pretrial, probation or parole. A large number of jail beds are usually taken up by people accused of technical violations, even though such conduct is non-criminal and does not pose an inherent public safety risk. For example, in 2004, Jefferson County reported that 25% of its jail population was incarcerated solely for failure to appear on minor offenses.⁴⁵ In a six-month period ending December 2017, Arapahoe County spent \$311,512 housing defendants held solely for failure to appear.⁴⁶

5. Changes in pretrial services. Changes in probation, parole and pretrial services also lead to a drop in the jail population. Probation officers were more selective in bringing cases back through the system. They also agreed to resolve cases without a hearing and provided a chance for people to come into compliance before arrest. In several counties, probation violations dropped and fewer people were brought in on parole revocations. Additionally, several county jails stopped accepting parole violations unless there was a qualifying felony that accompanied the parole violation. The same standard also applied for all Community Corrections regressions. COVID-19 forced a more creative approach to pretrial, probation and parole as these agencies worked to reduce the number of people they are managing daily and reward clients who are doing well.

6. Changes to work release. Counties adapted their work release programs which resulted in more releases as people on work release were furloughed or their sentences converted to in-home detention. During COVID-19, many jails stopped accepting people on work release sentences. For the people who were on work release when the pandemic hit, some were instead sentenced to jail, some furloughed and others released. Each county responded differently, but the goal was to end work release programs so that people were not moving in and out of the jail. However, concern exists that some work release programs may never open again and some people who would have been sentenced to this less restrictive option will instead serve their sentence in jail.

“CAGES ARE, AND HAVE ALWAYS BEEN, A PUBLIC HEALTH CRISIS. THE FACT THAT **WE WERE ABLE TO SAFELY DECREASE COLORADO JAIL POPULATIONS BY 45% IN A MATTER OF WEEKS** SHOWS US THAT IT ALWAYS WAS DOABLE — THERE WAS A LACK OF POLITICAL WILL, NO LACK OF PROCEDURAL WAY. WE MUST NOW MEMORIALIZE AND INDEED CONTINUE THE DECARCERATION THAT WAS ACCELERATED DURING COVID-19.”



Elisabeth Epps
Founder of the
Colorado Freedom Fund
and ACLU of Colorado
Smart Justice Organizer

IX. Urgent Policy Recommendations: *A Path Forward*

Jail depopulation in the age of COVID-19 has revealed that we do, in fact, know how to quickly, dramatically and safely free thousands of people from behind bars. Colorado has an opportunity, born of this awful pandemic, to meaningfully roll back the harms of mass incarceration, of overcrowded jails, and of a criminal legal system that has not honored the presumption of liberty or protected the right not to be jailed for poverty.

Yet, even as COVID-19 cases are increasing in Colorado, jail population numbers are beginning to tic back up. Since July, Colorado's jail population has increased by 17%. This push to "return to normal" and again fill up our jails with people who are not a threat to others, who are legally innocent, and who are too poor to pay their monetary bond, is alarming. Rather than sliding back into a system in which jail is our state's first response to societal problems, this is a moment to memorialize reforms that reserve jail beds only for people who pose a safety threat to others.

*"I think there is this thought out there that when COVID-19 is over, we will flip the switch, and go back to business as usual. That is my greatest fear. COVID-19 is terrible but there are opportunities to learn. **We have been using jail to try to solve too many problems that cannot be solved by incarceration, like drug addiction and homelessness. I am pushing very hard to not get back to where we were.** We have to find the right balance and ensure we are incarcerating the right people."*

Sheriff Matt Lewis
Mesa County,
where jail populations
fell by 40%

THE ACLU CALLS ON LEGISLATORS TO MEMORIALIZE THE FOLLOWING POLICIES INTO LAW IN 2021:

1. ***Empower sheriffs to actively manage their jail population.***
Sheriffs should have expanded tools to actively manage their jail populations and should be encouraged to use those tools to keep the jail population as low as possible while reserving jail beds for people who pose a true public safety threat.
2. ***Increase discretionary and mandatory use of summons.***
Grant police officers the discretion to issue summons for any offenses, unless arrest is statutorily mandated. Require mandatory summonses for most misdemeanors and low-level felonies unless, for victim's rights offenses, custodial arrest is required to protect the safety of another.
3. ***Mandatory personal recognizance bond for non-criminal conduct.***
Mandate personal recognizance bonds for technical violations of release, and for simple failure to appear in court, unless the defendant has failed to appear three or more times in the case.
4. ***Increase presumptive personal recognizance bonds.*** Presumption of personal recognizance bond for most misdemeanors and low-level felonies when the defendant does not pose a substantial risk of fleeing prosecution or harming another person.

X. Conclusion

COVID-19 has shown us that the carceral systems we rely upon to keep us safe do not work. America would not have faced the same level of a public health crisis if we did not incarcerate so many people. Jail has been our first and only answer to social problems for too long. It has too often been our response to mental illness, to addiction, and to homelessness. As a result, our jails have become needlessly and dangerously bloated. For too many decades, Colorado's policies have been shaped by a tough-on-crime approach that champions harsh sentencing instead of community-based services and care. The decades of expanding jail populations cost taxpayers millions, and destroyed families and livelihoods.

It is tragic that it took a global emergency for actors in Colorado's criminal legal system to work together to reduce the number of people in jail. It would be even more tragic if we walk away from this pandemic having learned nothing. This is the chance for us to build a safer and more just Colorado.

*"I am proud that Colorado has safely reduced the number of people living behind bars in response to the COVID-19 pandemic. Our jails and prisons are not designed to address root causes of crime such as homelessness, problematic drug use, and mental health disorders — and in fact make those problems worse by destabilizing a person's life. The pandemic reminds us that we should only use incarceration when community safety is truly endangered. **A much better way to prevent crime is to provide those most vulnerable in society with the resources they need to escape the circumstances that pressure them into crime in the first place.**"*



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<https://aclu-co.org/campaigns/covid-19-decarceration/>

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