

Crimes of Conviction Should Not Drive Prison Health Policy

When it comes to health, the underlying crime does not matter.

By **Martha Rayner** | May 27, 2020 at 10:00 AM

Gov. Andrew Cuomo, when asked at his daily press conferences about the health and safety of people locked-up in his state prisons, claims all necessary steps are being taken. That's not true. Although the governor directed that those over age 55 and within 90 days of completing their sentences will be released early, he has exempted those of the same age and the same mere months from release, if the underlying crime is deemed a "violent offense" or "sex crime."

The policy recognizes that this prison demographic faces increased risk during the COVID-19 crisis and release is necessary to protect them, correctional staff and stop the spread in state prisons. The policy hardly goes far enough in protecting older prisoners, but then carving out an exception that does not advance public health or safety is irrational.

The “violent offender” exception is deeply baked into criminal justice policy-making. Programmatic and legislative change aimed at reducing mass incarceration almost always excludes those convicted of violent offenses. This permits politicians to tout reform without appearing soft on crime. It has greatly hampered efforts to end mass incarceration. But, whatever one’s view on those who have been convicted of violent crimes, this knee jerk thinking has no place in the context of reducing risk in prisons during a health crisis.

Here, the governor’s modest early release directive does not seek to mitigate mass incarceration—it is a public health imperative. The governor seeks to mitigate the risk of severe illness or death among the incarcerated and those who guard them. But, in drawing the line where he did, he determined that those who have the same health risks will not be given the same health protection based *solely* on the crime of conviction. It’s little different than the governor withholding hand soap from those convicted of violent crimes.

The exception is irrational because extending early release does not undermine public safety. Those exempted from the governor’s health protection policy will be released. Let me say that again—they will be released. They will be released because the imposed sentence has been served and the law requires release. Or, for most, because the Parole Board, which denies release to most applicants, determined release is appropriate based on a strong prison record and evidence of remorse, insight and rehabilitation. And, those released after serving time for violent offenses will be monitored by a parole officer. These releases would be hardly early

at all—the reductions are minuscule—and they would be implemented in line with public safety protocols.

The governor can easily rebut any claim that reducing sentences by mere weeks or months signals he is soft on crime. An early release would not mean anyone is getting off lightly. These men and women have served almost the entirety of long, retributive sentences. The full brunt of punishment has been exacted; shaving off a negligible fraction of these sentences does not signal soft on crime.

The governor seeks to be a beacon of leadership during the COVID-19 crisis. He has urged decision making based on science and facts and has preached compassion and kindness. But, in making decisions to protect men and women in his prisons he has reflexively reverted to being guided by the fear of appearing weak on violent crime. The science is clear—prisons are dangerous places during this crisis, particularly for those over age 55. His policy acknowledges this. The facts are clear as well, releasing those convicted of crimes deemed violent, a mere 90 days early, does not pose a danger to the public. Releasing these men and women who have earned parole and will be closely monitored is politically easy—it just takes a leader to know the facts and step up and say: When it comes to health, the underlying crime does not matter.

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