

# Seizing the Moment: Policy Advocacy to End Mass Incarceration in the Time of COVID-19

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## Abstract

The mass human and economic casualties wrought by the COVID-19 pandemic laid bare the deep inequities at the base of the disproportionate losses and suffering experienced by diverse U.S. populations. But the urgency and enormity of unmet needs requiring bold policy action also provided a unique opportunity to learn from and partner with community-based organizations that often are at the frontlines of such work. Following a review of Kingdon's model of the policy-making process, we illustrate how a partnership in a large California county navigated the streams in the policy-making process and used the window of opportunity provided by the pandemic to address a major public health problem: the incarceration of over 2 million people, disproportionately African American and Latinx, in overcrowded, unsafe jails, prisons, and detention centers. We highlight tactics and strategies used, challenges faced, and implications for health educators as policy advocates during and beyond the pandemic.

## Keywords

mass incarceration, policy advocacy

The COVID-19 pandemic cast into sharp relief the deep and worsening inequities in health and health care, access to food, safe and affordable housing and other “resources for living,” as well as the role of race/ethnicity and racism, social class, gender, immigration status, and other factors contributing to these inequities. In this context, community-based organizations (CBOs), in partnership with health educators and other public health professionals, are using the window of opportunity provided by the pandemic to work on more boldly moving the policy dial on a wide range of issues deeply rooted in the social determinants of health.

We provide an overview of Kingdon's (2003) model of the policy-making process and illustrate how a coalition of recently and currently incarcerated people, a justice-focused nonprofit public health organization, and CBO allies worked in each stream to push for bold policy changes to address a major public health problem made even more serious by the pandemic: the incarceration of 2.1 million, predominantly African American and Latinx people in America's jails, prisons, and detention centers (Wagner & Kopf, 2015; Wallace et al., 2020). We explore the policy change targets, strategies and tactics employed, successes and challenges faced, and implications for health educators and other practitioners working for bolder, more effective policy change during the pandemic and in a new and uncertain postpandemic world.

## Conceptual Framework: Kingdon's Model of the Policy-Making Process

Although policy making occurs in a nonlinear fashion and is deeply embedded within changing sociopolitical contexts (Cacari-Stone et al., 2014), several policy steps “shape the content, course, pace, and development of policy” (Breckwich Vásquez et al., 2007). These include identifying problems, creating awareness, considering different policy options and deciding on one to pursue, negotiating a win, and implementing the process. Although not always included in the list of steps, monitoring processes and outcomes also is critical, an area in which health educators have played an important role (Minkler et al., 2018).

Kingdon's (2003) model of the policy-making process combines these steps into three streams: the *problem stream*, convincing policy makers that a problem exists and getting on the agenda; the *politics stream*, proposing feasible, politically attractive solutions; and the *policy stream*, negotiating the

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politics to get approval of a proposed measure. Kington further notes that when positive developments occur in all three streams, a “window of opportunity” opens, increasing the likelihood of success.

### *Fighting for Decarceration During a Pandemic*

The United States holds the unfortunate title of the incarceration capital of the world, with some 2.1 million people, the vast majority African American and Latinx, in the nation’s jails, prisons, and detention centers (Sawyer & Wagner, 2020). The public health consequences of incarceration have been well documented and include elevated rates of both acute and chronic conditions (Gaber & Wright, 2016), and suicide as the leading cause of death in jails nationwide (Noonan & Ginder, 2015). Living in neighborhoods with high rates of incarceration also puts residents at elevated risk for depression and related disorders, even if they personally have never been incarcerated (Hatzenbuehler & Pachankis, 2016).

For many years, currently and formerly incarcerated people and their allies have been “shining a spotlight on the harmful, dehumanizing and unsanitary conditions of confinement in jails, prisons, and detention centers” (Piatt, 2020), and the promise of community-based alternatives to incarceration to address issues that are largely social, political, or economic in nature.

Between 2001 and 2019, thanks in part to such organizing, some important victories were won, including a significant decline in the prison population, and many states directing funds away from new prison construction and toward evidence-based programs and services (Devuono-Powell et al., 2018).

But even within this more positive context, America continued to lock up more of its residents per capita than any other nation, and when the pandemic took hold, the real and projected future costs to the public’s health were staggering. In mid-April, Chicago’s Cook County Jail reported ~600 exposed individuals—the largest source of infections in the country until about a week later when an Ohio state prison reported 1,828, or close to 75%, of its prison population testing positive (Bates, 2020; “Cases Surge in an Ohio Prison,” 2020). Most alarmingly, a modeling study conducted by epidemiologists, academic researchers, and American Civil Liberties Union (ACLU) Analytics projected that without major improvements in protective measures in American prisons and jails and rapid reductions in their populations, close to 100,000 additional people could die of COVID-19 (ACLU, 2020).

Even before these figures were released, however, the rapid spread of the virus among incarcerated persons and staff was a game changer, and pressure for change mounted. Currently and formerly incarcerated persons, CBOs, and public health organizations seized the moment to redouble their advocacy to end, or at least radically weaken, mass incarceration in diverse parts of the country. We turn now to one of the largest of these efforts, based in Alameda County,

California, to illustrate how advocates have been navigating the three streams in the policy-making process and taking advantage of a window of opportunity to help effect change.

### *Social Justice Movements to Advance “Health Instead of Punishment” in Alameda County*

Well prior to COVID-19, California was recognized as a leader among states in attempts to reform its criminal legal system. Incarcerated and formerly incarcerated people and their families, CBOs, and public health and legal institutions had worked tirelessly to shift public opinion and right-size state laws that criminalize people, including through popular policies such as Proposition 47 (2014) and Senate Bill 136 (2020), which reduced the time people would have to serve in jail or prison. Yet, despite such victories, realities on the ground remained bleak. Of particular concern in Alameda County were conditions inside its dilapidated and severely overcrowded Santa Rita Jail, the third largest jail in the state and the fifth largest in the country. Current and former Santa Rita residents and their supporters declared that the jail had reached a “crisis point,” with grossly inadequate cleaning supplies, the spread of lice and HIV/AIDS, staph infections, and untreated health and mental health emergencies.

*Problem Stream.* To shine a spotlight on these conditions, community organizations in the Free Santa Rita Jail Coalition (the Coalition), for example, the Ella Baker Center for Human Rights and Causa Justa, laid out demands including decarcerating jails, prisons, and detention centers, starting with the most vulnerable; ending Immigration and Customs Enforcement raids; and terminating practices such as money bail and pretrial incarceration. The Coalition’s major public health ally in this work was the Oakland-based nonprofit, Human Impact Partners (HIP), which uses community-partnered research, capacity building, and policy advocacy to support grassroots, community and public health organizations in efforts to address mass incarceration and other justice issues.

The Coalition’s demands had already received some media attention when the threat of a coronavirus outbreak in the jail created a new gravity for moving forward. Although HIP typically plays a support role for social justice movements and campaigns, given the centrality of public health in the COVID-19 pandemic, community groups urged the organization to step out in front and use its authority to uplift the call for decarceration with new urgency. The demands laid out by the Coalition thus became the centerpiece of a statement crafted by Amber Akemi Piatt, health educator and Director of HIP’s *Health Instead of Punishment Program*, and used as the basis for multiple letters to policy makers in California, Nevada, Utah, and beyond.

In Alameda County, the Coalition moved quickly from creating awareness of the problem to specific actions policy makers could take. Since multiple government offices and

individuals had the capacity to make change, HIP—backed by ~50 CBO supporters—emailed a letter to policy targets including the Sheriff's Office, District Attorney, Superior Court, Nor Cal Immigration and Customs Enforcement, and the Board of Supervisors. Sent on March 17, just a day after the county began to shelter in place, the letter included powerful quotes about conditions in the jail (Piatt, 2020), information about the public health risks of incarceration in general, and the impossibility of following the governor's social distancing guidelines in the jail. It then spelled out four demands for County officials, outlining ways in which the various targets could meet these demands. Finally, since getting on the policy makers' agenda also meant gaining public support, the letter was shared widely with the media, with stories appearing in venues including a local radio show popular with county officials (<https://kpfa.org/episode/upfront-march-18-2020/>, March 18, 2020) and five local newspapers.

**Politics Stream.** Media advocacy around the Coalition's demands and action steps for achieving them continued to play an important role during the politics stream, as the Coalition continued to promote policies that, while not all "feasible and politically attractive," did appear far more so in the time of the pandemic. For example, while the overarching goal of having the county "stop incarcerating people" was not viewed as achievable, specific policy demands under that goal (e.g., ending money bail) appeared both feasible and politically acceptable, especially in this progressive county. Similarly, some of the policy actions under the goal of "investing in the assets that make our communities healthy" (e.g., ending court-ordered evictions or those carried out by the Sheriff's Office) were considered more seriously given their appeal in a time of mass unemployment and their potential for building alliances and political capital with a liberal Board of Supervisors and its constituents. Although a countywide end to evictions has not been achieved to date, the advocates did successfully push the City of Oakland to pass a 2-month moratorium on commercial and residential evictions (BondGraham, 2020).

**Policy Stream.** In the continuing uncertainty that is life during a pandemic, "negotiating the politics" to get approval of many of the proposed measures supported by the Coalition and other advocates continues to unfold on a weekly and sometimes daily basis. Yet several examples of positive negotiation and subsequent adoption of key desired policy changes can be highlighted, to which the powerful and well-publicized testimony of currently and formerly incarcerated people, and HIP and its allies' carefully targeted letters, virtual news conferences, op-eds, and other media, contributed. Also helpful was a "messaging tool kit" specifically for decarceration during the pandemic (Community Justice Exchange & Public Health Awakened, 2020) and its inclusion of responses to common questions and "pushback" that advocates often face

when pressing for mass release and other controversial policies.

Key among the victories achieved during the policy steam negotiations were several major steps toward downsizing the country's fifth largest jail, culminating in a reduction from ~2,650 residents before the outbreak to 1,929 by the second week of April (Altman, 2020; Bay City News Service, 2020). Advocates also successfully pressured the District Attorney's Office to adopt additional precautions to protect undocumented people during and beyond the pandemic. After a series of facilitated conversations between the District Attorney and community organizations, the county agreed to suspend a policy that requires longer jail or probation periods in exchange for modification of an immigration-neutral plea agreement—a policy that had harmed, solely on the basis of their citizenship status, immigrants who were caught up in the county criminal legal system. The Sheriff's Office also instituted changes, for example, increasing provision of sanitation materials and personal protective equipment for people who remain incarcerated, including giving each person three additional ounces of soap per week. While this was not nearly enough to address the need and left in place a larger pattern of negligence, it did demonstrate traction within a department that had long resisted improvements in conditions for people in custody.

**Window of Opportunity.** The opening of Kingdon's (2003) policy "window of opportunity" was best illustrated in strategies and tactics that took place in each stream of the policy-making process with respect to changing conditions in the large and notorious Santa Rita County Jail. The spotlight shown on these conditions just prior to COVID-19, and the substantial media and public outcry following that exposé (problem stream); the advocates' identification of targets and the feasibility of specific actions each of them could take to address problems in their jurisdiction that had been greatly magnified by the pandemic (problem and politics stream); and the advocates' effectiveness in helping negotiate approval of measures from early release to ending a policy unfairly targeting undocumented immigrants with longer sentences and probation (policy stream), all worked together to make important, if still clearly inadequate, improvements in the nation's fifth largest jail.

## Discussion

We have focused primarily on a large jail-based coalition and its community and public health allies as they worked in each stream of the policy-making process to effect equity- and justice-focused change. We further showed how successes in each of these streams contributed to Kingdon's (2003) policy "window of opportunity," through which the advocates could jump in more boldly moving the policy dial. Yet the COVID-19 pandemic also constituted a window of

opportunity in and of itself, as policy makers and elected officials searched for ways to stop the spread of coronavirus. Conditions that were accepted, or at least expected, in prisons and jails could no longer be viewed as simply the way things are. Grossly overcrowded cells, lack of proper sanitation, and many more factors also had to be recognized as a major risk to public health. That risk, no longer solely for incarcerated persons and prison staff, now demanded urgent attention to reduce the role of these facilities as major “hot spots” in the community spread of the coronavirus. In this way, decarceration policy became essential to the public health response to COVID-19.

As the Alameda County case study illustrates, health educators played a key role in sharing not only their tools and skill sets but also, in the case of HIP, their willingness to play a largely supportive role so that the movement’s true leaders—currently and formerly incarcerated people and their families—could remain in front. That some 50 other CBOs also jumped on board as advocates for the demands set forth by incarcerated people was another encouraging sign of the way this movement, and its focus on justice and equity, has spread, particularly with the accelerating force of the pandemic.

There is also cause for optimism in the fact that while efforts to seize the moment of COVID-19 to advocate for bolder systems change in Alameda County were taking place, important changes were also happening in many other parts of the state and the country. In Santa Clara County, California, home to the nation’s first documented COVID-19 deaths, the grassroots organization, Silicon Valley De-Bug, has helped families put together “social biography packets” to humanize their incarcerated loved ones through letters, pictures, and videos, and worked with the public defender’s office on a decarceration campaign that has, to date, resulted in the release of over 1,000 people, most of whom were simply in jail awaiting a trial. In the words of Carson White, a lawyer involved in the campaign, “This moment has flipped the script on mass incarceration. It’s laid bare that caging huge swaths of our society isn’t necessary—it’s just convenient” (Stillman, 2020).

Cumulative state victories also can be seen, for example, with Colorado reducing its jail population by 31% since the pandemic began, and even conservative Kentucky achieving a 28% reduction (ACLU, 2020). Finally, in both Alameda County and others around the country, increasing, albeit largely anecdotal, examples are surfacing of real change in the minds and actions of key players who formerly were adamant in their opposition to weakening criminal legal statutes and actions. One such example can be found in the words of the antireform County Sherriff’s Spokesperson, when asked what might happen to the reforms made when life gets back to normal. His response was both surprising and encouraging:

After we get through this crisis, I think a lot of people will be asking those questions. They’ll be saying, “Well, you did it

during the crisis. And we all, you know, survived. And there was less people in custody. Why can’t we do it now?” As we come out of this thing, I think a lot of those questions will have more merit and validity. (Sergeant Ray Kelly, Sherriff’s Spokesman, Alameda County Sheriff’s Office)

## Conclusion

The incalculable loss and suffering endured during COVID-19 have changed our lives and our world in ways impossible to fully grasp. Yet, along with the loss, we have witnessed the immense strengths of people from the most visible—first responders, medical care providers, and other essential workers—to those working for more humane and progressive public policies during the window of opportunity that the pandemic helped to open. In a time when we are becoming aware of just how connected we are, these policies may find new audiences. And these audiences may come to realize that a society is only as healthy as its sickest and most at-risk members.

Health educators and other public health professionals have been among those working, often behind the scenes, with CBOs and grassroots leaders to move the policy dial on a number of critical issues, among them decarceration and the creation of safer, more humane alternatives for the currently or formerly incarcerated. As we continue to navigate our way through this uncertain and often heartbreaking time, health educators’ skills in interpersonal and mass communication, community capacity building, and participatory research and planning and our passion as policy advocates may help us work as allies in the fight for a better, more just world ahead.

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