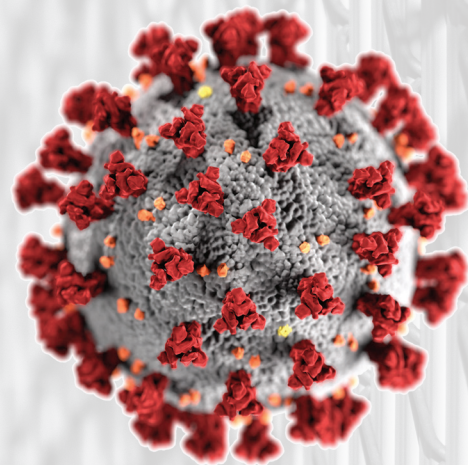


# LOCKED OUT, LOOKING IN:

HOW CORRECTIONAL  
OVERSIGHT AGENCIES  
ARE ADAPTING DURING  
THE COVID CRISIS

Michele Deitch and William Bucknall



The University of Texas at Austin  
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of Public Affairs



COVID, Corrections,  
and Oversight Project

## **COVID, Corrections, and Oversight Project**

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# Locked Out, Looking In: How Correctional Oversight Agencies are Adapting During the COVID Crisis

Michele Deitch and William Bucknall\*

## Introduction

Prisons and jails are hotspots for the spread of coronavirus, making it both more difficult and more vital for oversight organizations to investigate what is happening behind the walls of correctional institutions. The physical conditions of confinement and the inability of people inside to socially distance or protect themselves make correctional facilities “petri dishes” for COVID-19. Beyond that, many incarcerated people have poor health or underlying conditions that put them at particularly high risk of serious consequences from the virus. Additionally, there is a natural churn of people that occurs in jails, and to a lesser extent in prisons, which contributes to the spread of the disease. Staff, visitors, and volunteers enter and exit prisons daily, and there is a regular transfer of incarcerated people between facilities.

In response to these risks, most correctional agencies have imposed significant restrictions on the entry of anyone other than staff to the facilities. Family members, program providers, volunteers, and, in some cases, oversight practitioners have been prohibited from coming into the prisons and jails to prevent the risk that they may inadvertently bring the virus inside. While many of these entry restrictions are reasonable measures to contain the disease, they have further obscured what is happening inside of an already opaque system.

The lack of transparency and routine contact between incarcerated people and outside observers may lead to an increase in the violation of the rights of incarcerated individuals, at a time

when these individuals are at especially high risk and when conditions are worsening. In addition to concerns about the health and safety of people in custody, agencies’ management of the COVID crisis appears to be resulting in increased use of cell restriction, limitations on access to programs and service, lack of family contact, and a rise in untreated medical and mental health issues.<sup>1</sup> Not only are everyday problems such as these going unreported by external observers, but the lack of outside eyes on the situation also creates the potential for increased misconduct or neglect at the hands of corrections officials who can act, or fail to act, with more impunity in this closed environment.

Moreover, the pandemic creates significant challenges for independent correctional oversight bodies that typically rely on having physical access to the prisons and jails. Some oversight entities have been denied access during this period, while others have the authority to enter the facilities but need to weigh the risks involved in deciding whether and under what circumstances to go on-site. And for those oversight practitioners who have been able to access prisons and jails, their typical monitoring methodology may have been disrupted by the ongoing operational changes and restrictions.

This report asks how the monitoring responsibilities of correctional oversight bodies have been affected by the pandemic, and how these organizations are adjusting their work to meet these challenges so that they can continue to protect people in custody and shine a light on what is happening inside prisons and jails during this unprecedented time.

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1 Shapiro, Joseph, “As COVID-19 Spreads In Prisons, Lockdowns Spark Fear Of More Solitary Confinement,” NPR, June 15, 2020, <https://www.npr.org/2020/06/15/877457603/as-covid-spreads-in-u-s-prisons-lockdowns-spark-fear-of-more-solitary-confinemen>; McCullough, Jolie, “Texas prisons, youth lockups cancel visitation after coronavirus disaster declaration,” The Texas Tribune, March 13, 2020, <https://www.texastribune.org/2020/03/13/texas-prisons-cancel-visitation-coronavirus/>; Thompson, Christie, “For Mentally Ill Defendants, Coronavirus Means Few Safe Options,” The Marshall Project, May 15, 2020, <https://www.themarshallproject.org/2020/05/15/for-mentally-ill-defendants-coronavirus-means-few-safe-options>.

The report starts by describing the structure and function of different correctional oversight agencies before the coronavirus pandemic. Then, it describes the challenges that the pandemic has either created or exacerbated for correctional oversight bodies. Next, the report details various creative ways in which correctional oversight organizations have been conducting their work during these challenging times, as well as some of the decision-making that led to these approaches. Finally, it offers recommendations to assist other oversight organizations that might be struggling with similar challenges.

## How did Organizations Provide Oversight before COVID?

Each correctional oversight organization is as different as a fingerprint. They have different structures, mandates, and powers granted to them by local, state, or federal governments. These differences impact the ways in which they conduct oversight work, both prior to and during the coronavirus pandemic.

Correctional oversight more broadly refers to the fight for transparency and accountability in correctional facilities. In this report, however, our use of the term “correctional oversight organizations” refers specifically to established bodies independent of the correctional agency whose work focuses on “the conditions faced by the prisoners, the state of facilities, the quality of services provided to the inmates, or the physical operations of the institutions”<sup>2</sup> and that have a formal or informal right of access to the facilities and to the people who live and work behind the prison walls.

This report is addressed specifically to a U.S. audience, and therefore focuses on American oversight organizations; however, it also examines the experience of some international correctional oversight bodies to highlight examples of innovations in oversight during the coronavirus pandemic. The coronavirus has a sustained spread

in the United States that is longer and more extensive than any other country in the world. Since there is no clear end to the coronavirus in the United States, American correctional oversight organizations must put into place strategies that can be used in the longer term compared to international oversight organizations that, often correctly, worked under the assumption that such disruptions to oversight would be temporary.

Below is a brief overview of how different types of oversight organizations are designed to operate.

## Functions of Oversight Organizations

The concept of correctional oversight should be viewed as an umbrella term for a variety of functions carried out by organizations in the pursuit of transparency and accountability. These functions include, but are not limited to, regulation, audit, accreditation, investigation, legal, reporting, inspection/monitoring, and data collection.<sup>3</sup> Of these listed functions, this report focuses largely on inspection/monitoring and investigation. While all the functions of correctional oversight are essential to providing transparency and accountability, these two specific functions are particularly impacted by the challenges to oversight created or exacerbated by the coronavirus pandemic. Additionally, while some of the oversight organizations examined in this report engage in other functions of oversight, all engage in monitoring and/or investigation.

“Investigation” involves an effort to follow up either on a specific complaint from an incarcerated person or on a set of allegations of facility-wide misconduct or problematic conditions. “Monitoring” refers to the practice of routinely inspecting all correctional institutions in a jurisdiction in order to assess and report on the facility conditions and treatment of incarcerated individuals.<sup>4</sup> Investigations are reactive and involve reviews of past incidents, whereas monitoring is a proactive process meant to identify concerns in conditions and treatment before they reach a critical point. Both functions require open access

2 Deitch, Michele, Independent Correctional Oversight Mechanisms Across the United States: A 50-State Inventory, 30 Pace L. Rev. 1754, 1757 (2010), available at: <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1764&context=plr>.

3 Deitch, Michele, Distinguishing the Various Functions of Effective Prison Oversight, 30 Pace L. Rev. 1438 (2010), available at: <http://digitalcommons.pace.edu/plr/vol30/iss5/3>.

4 Ibid.

to correctional facilities as well as easy and confidential communication between oversight practitioners and officials, staff, and incarcerated people, but both physical access to facilities and confidential communication have been severely impacted by the pandemic.

### ***The Importance of Routine Access to Correctional Facilities***

For oversight bodies that serve an investigative or monitoring function, the ability to routinely enter any correctional facility in a specific jurisdiction is paramount. It is more difficult for problems to be overlooked or hidden when oversight officials are there to see them. For example, monitors can observe routine interactions between staff and residents; they can note physical conditions that require remediation; they can determine whether programs and services are taking place as intended; they can review logs to get a sense of everyday movements within the facility and the frequency of supervision checks on people on cell restriction; they can check on food quality; and they can review grievance files. In-person access also provides opportunities for oversight officials to speak privately and confidentially with incarcerated people and staff. Such access allows the oversight bodies to follow up on complaints they have received, and it provides a vehicle for the oversight officials to hear other concerns. Also, simply being visible within the facility acts as a reminder to staff that there are checks on their behavior, and it reassures residents that they have rights that must be respected.

The extent to which oversight bodies have access to prisons and jails varies significantly depending on the source of their authority. For some oversight bodies, their right of access to prisons or jails is formally codified in the law; in other cases, an informal right of access is granted to these oversight organizations by correctional agencies because of historical precedent or collaborative relationships between the two entities. The statutes and arrangements also vary in their requirements: in some cases, visits need to be approved in

advance, while other organizations have the right to make unannounced visits. All the oversight bodies discussed in this report had some kind of right of access (whether formal or informal) pre-pandemic.

The distinction in the level of access oversight bodies have is important as it impacts the autonomy of these oversight bodies. Oversight bodies that do not have a right of access under the law or that have more limited access may be more wary about offending corrections agencies out of a fear of retaliation in the form of having their access further restricted. This is not an idle concern; some oversight agencies have reported that they experienced a decrease in access or difficulties in communications with corrections officials or people in custody after publishing unflattering findings about corrections agencies.

### **Challenges of Oversight During COVID**

Oversight bodies typically face difficulties in their efforts to ensure the safety of incarcerated people and to report on the conditions of prisons and jails. Even under ordinary circumstances, many of these organizations report that they need to cope with uncooperative corrections officials, their lack of a formal right of access, or their significant underfunding. The coronavirus pandemic, however, creates unprecedented challenges for the oversight entities, and exacerbates many of the pre-existing difficulties. This section describes some of these challenges.

#### ***Spread of COVID in Prisons and Jails***

Few sectors of society have been hit by the coronavirus pandemic as hard as corrections: at one point, 44 of the top 50 coronavirus clusters in the United States were in correctional facilities.<sup>5</sup> As of November 13, 2020, at least 186,681 people incarcerated in a U.S. prison have tested positive for the coronavirus, and there have been 1,378 reported deaths of people incarcerated in prisons. Additionally, there have been 38,241 prison staff who have tested positive for the coronavirus, and

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5 The New York Times. "Coronavirus in the U.S.: Latest Map and Case Count," The New York Times, Updated September 6, 2020, 1:33 A.M. E.T., <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html?action=click&module=Top%20Stories&pgtype=Homepage> (Accessed September 6, 2020).

75 staff deaths from the coronavirus.<sup>6</sup> This does not include positive cases and deaths in U.S. jails, for which comprehensive data is not available at the national level. Even given the large absolute number of cases in deaths in prisons, the rates of infection and deaths far outpace those in the free community. An analysis of data from March 31, 2020 to June 6, 2020 found that people in U.S. prisons are 550% more likely to contract the coronavirus and 300% more likely to die from it when compared to non-incarcerated persons.<sup>7</sup> And the virus has hit some states' prison systems especially hard. A recent report we co-authored ("COVID and Corrections: A Profile of COVID Deaths in Custody in Texas") found that the Texas prison system has an infection rate 40% higher than the national prison population average, and a rate of reported COVID deaths 35% higher than the national prison population average.<sup>8</sup> One Texas prison, the Duncan Unit, which holds primarily geriatric and medically vulnerable individuals, lost a stunning 6% of its total population to COVID.<sup>9</sup>

The high risk of spread of coronavirus in prisons and jails complicates the work that correctional oversight organizations do. These oversight bodies want to know what is occurring inside these facilities during such a crucial time when incarcerated people are facing unprecedented risks to their health and safety, but oversight professionals must weigh their decision to enter facilities against the risk of unknowingly bringing coronavirus in with them. There is also the personal risk to the oversight practitioners who are conducting this on-site work. In order to ensure the safety of incarcerated people and the conditions of prisons and jails, and to protect their own health,

oversight officials must either find ways to do their work without entering facilities or mitigate the risk of spread during site visits.

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**"The situation inside the nation's jails and prisons amid the Covid-19 pandemic has become the stuff of nightmares."**

– New York Times Editorial Board,  
"The Coronavirus Crisis Inside Prisons  
Won't Stay Behind Bars," June 25, 2020

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### *Restrictions on Access to Prisons and Jails*

At the start of the pandemic in March 2020, prisons and jails began restricting the entrance of non-staff members into the facilities. The majority of prisons and jails canceled in-person visitation.<sup>10</sup> Additionally, in-person programs and services that required outside support staff to enter the facilities were halted or disrupted.<sup>11</sup> Many state prison systems also halted transfers from local jails into their facilities early in the pandemic, though many have since resumed such admissions.<sup>12</sup>

The impact such restrictions have on independent oversight organizations depends on the organizations' legal authority to make in-person site visits. Some oversight organizations, such as the Pennsylvania Prison Society or the Office of the Corrections Ombuds in Washington State, cannot be barred from entering corrections facilities

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6 The Covid Prison Project, "National COVID-19 Statistics," The Covid Prison Project, <https://covidprisonproject.com/data/data-v2/> (Accessed November 13, 2020).

7 Saloner B, Parish K, Ward JA, DiLaura G, Dolovich S., COVID-19 Cases and Deaths in Federal and State Prisons. JAMA. 2020;324(6):602-603. Available at: <https://jamanetwork.com/journals/jama/fullarticle/2768249?resultClick=1>.

8 Deitch, Michele, Welch, Alycia, William Bucknall, & Destiny Moreno, COVID and Corrections: A Profile of COVID Deaths in Custody in Texas, Lyndon B. Johnson School of Public Affairs, The University of Texas at Austin, November 2020, p. 11, available at: <https://repositories.lib.utexas.edu/handle/2152/83635>.

9 Ibid., p. 15.

10 "How Prisons in Each State Are Restricting Visits Due to Coronavirus," The Marshall Project, March 17, 2020, <https://www.themarshallproject.org/2020/03/17/tracking-prisons-response-to-coronavirus>.

11 See, e.g., McCullough, Jolie. "Many Texas prisoners have been approved for parole but can't walk free yet. Advocates say coronavirus should change that," The Texas Tribune, April 14, 2020, <https://www.texastribune.org/2020/04/14/coronavirus-alters-texas-prisoners-parole-programs-required-release/>.

12 See, e.g., McCullough, Jolie. "Texas prisons will accept county jail inmates again, three months after the coronavirus halted intake," The Texas Tribune, June 16, 2020, <https://www.texastribune.org/2020/06/16/texas-prisons-jails-coronavirus/>.

during the pandemic because these organizations have a statutory right of access. This leaves the decision to enter corrections facilities with the oversight organization rather than the corrections agency. Some other organizations, however, including the Correctional Association of New York, are subject to whatever rules the corrections agencies impose regarding their ability to access the facilities. When oversight organizations are unable to visit in-person, whether by choice or by agency restriction, these organizations must find alternative ways to ensure protection for incarcerated people who are particularly vulnerable at this time. There have been examples of egregious allegations of conditions inside facilities or abuses of against people in custody that have been difficult or impossible to investigate because of these restrictions.<sup>13</sup>

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**“In some of these places we now have no idea what’s going on inside...There is little ability to flag the person who is not getting treatment for a serious medical condition or to investigate an allegation of brutality.”**

– Michele Deitch

In Blakinger, “As COVID Measures Grow, Prison Oversight Falls,” *The Marshall Project*, March 17, 2020

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### ***Limitations on Phone Calls and Other Forms of Communication***

Prisons and jails also restricted movement within their walls to stop the spread of coronavirus. Many corrections agencies have largely placed incarcerated people on cell restriction and some have even instituted lockdowns; as a result, many people in custody have only extremely limited access to telephones or video visitation equipment.<sup>14</sup> Many also cannot access the

commissary to buy stamps or writing materials. Thus, the flow of information from incarcerated people to oversight organizations has been seriously disrupted by the restrictions on movement.

Families of incarcerated people are also an important source of information for some oversight organizations. Families can provide information incarcerated people might not be willing or able to share directly, and they can provide frequent updates on what is happening inside between site visits. This is particularly helpful for oversight bodies that have only informal or intermittent access to correctional facilities. Restrictions on in-person family visits and cell restrictions that lead to decreased access to phones and video visitation hamper families’ ability to communicate with their loved ones inside, which ultimately reduces the flow of valuable information to oversight bodies.

### ***Relationships Between Corrections Agencies and Oversight Bodies***

There is a natural and appropriate tension between oversight organizations and corrections agencies, but in some cases the relationship can be truly adversarial. Adversarial relationships between these two types of organizations almost always result in less effective oversight, particularly if the oversight body in question has limited statutory authority. Furthermore, if an adversarial relationship existed before the pandemic, then it is easy to see how corrections agencies might take advantage of the pandemic to erect further barriers to oversight.

Some corrections agencies have stifled oversight during the coronavirus pandemic by limiting physical access to the prisons or jails, refusing to share data, and restricting communications between oversight officials and corrections officials or people in custody. Some agencies, such as the California Department of Corrections and Rehabilitation, have fought back against even straightforward requests that would allow the oversight body to conduct some measure of oversight and assess the safety of people

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13 Blakinger, Keri, “As COVID Measures Grow, Prison Oversight Falls,” *The Marshall Project*, March 17, 2020, <https://www.themarshallproject.org/2020/03/17/as-covid-19-measures-grow-prison-oversight-falls>.

14 Blakinger, Keri, “What Happens When More Than 300,000 Prisoners Are Locked Down?” *The Marshall Project*, April 15, 2020, <https://www.themarshallproject.org/2020/04/15/what-happens-when-more-than-300-000-prisoners-are-locked-down>.

inside.<sup>15</sup> In other cases, agencies such as the Hawaii Department of the Attorney General, have refused to provide the oversight body with even basic information about the spread of COVID within the facilities.<sup>16</sup> This is especially true of local jails, where sheriffs can make the decision on whether to collect and publish data about coronavirus testing cases and deaths.

Even when such jail data about COVID is made available at the facility level it is almost never reported in aggregate at the statewide level. The only statewide jail oversight bodies that are publishing data about COVID in jails are the Texas Commission on Jail Standards (TCJS) and the California Board of State and Community Corrections (BSCC). And the BSCC did not begin collecting and publishing coronavirus data until July 2020 following pressure from advocates and the media.<sup>17</sup> There are issues with both of these states' data collection efforts, however. Both TCJS and BSCC are requesting data from counties, but they are not requiring the counties to provide this data. In the case of BSCC, not all counties are complying: notably, the Sacramento sheriff has refused to provide the jail's coronavirus data to the BSCC.<sup>18</sup> Additionally, TCJS is requesting data only from counties that have confirmed positive cases of the coronavirus in their jail, regardless of whether the other counties' jails are even testing for the virus. This results in TCJS reporting data from only about 30 of the 254 counties in Texas in its daily coronavirus reports.<sup>19</sup>

The lack of data transparency and cooperation in certain jurisdictions represents a striking contrast to many other states where the correctional agencies have been remarkably open about providing this same information on a public-facing website, often after advocacy efforts on the part of the state's

oversight organization or with the oversight body's direct assistance.<sup>20</sup> We will be publishing a separate policy brief focused on data and transparency that highlights the steps that correctional agencies are taking to release information about the spread of COVID in their facilities.

## Adaptive Oversight During the Pandemic

Given the challenges described above, correctional oversight organizations have had to adjust the ways in which they do their work during the pandemic. This section offers examples of some of the adaptive strategies that these oversight bodies have employed, and they are summarized in Table 1 (note that this information was accurate as of early summer 2020, but is rapidly changing). In lieu of routine inspections to assess facility conditions and meet with incarcerated people, monitors have come to rely more heavily on methods such as:

- Less frequent in-person site visits with use of additional safety measures
- Review of video surveillance footage
- Remote inspections
- Surveys of the incarcerated population, families, and staff
- Virtual communication with people in custody via video conferencing or electronic messaging
- Dedicated avenues for collecting COVID-related complaints
- Audits of supplies
- Review of medical records and logs
- Data collection and analysis

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15 "COVID-19 Review Series Part One: Inconsistent Screening Practices May Have Increased the Risk of COVID-19 Within California's Prison System," State of California Office of the Inspector General, August 2020, <https://www.oig.ca.gov/wp-content/uploads/2020/08/OIG-COVID-19-Review-Series-Part-1-Screening.pdf>.

16 Dayton, Kevin, "AG Won't Release Information On COVID-19 Outbreak At Hawaii Jail," Honolulu Civil Beat, August 27, 2020, <https://www.civilbeat.org/2020/08/ag-wont-release-information-on-covid-19-outbreak-at-hawaii-jail/>.

17 Texas Commission on Jail Standards, <https://www.tcjs.state.tx.us/>; Pohl, Jason, "Five months after outbreak, California to publish COVID-19 data on local jails," The Sacramento Bee, July 15, 2020, <https://www.sacbee.com/news/coronavirus/article244252932.html>.

18 Pohl, Jason, "Sacramento sheriff refuses to share COVID-19 case information with state oversight board," The Sacramento Bee, August 14, 2020, <https://www.sacbee.com/news/coronavirus/article244945102.html>.

19 TCJS COVID-19 Jail Report, Texas Commission on Jail Standards, <https://www.tcjs.state.tx.us/>.

20 See, e.g., Pennsylvania Department of Corrections, "COVID-19 and the DOC," <https://www.cor.pa.gov/Pages/COVID-19.aspx#Testing>; NYC Board of Corrections, "NYC Board of Correction and COVID-19," <https://www1.nyc.gov/site/boc/covid-19.page>.



**Table 1: Adaptive Oversight by Selected Oversight Bodies During COVID-19**

| Organization   | On-site visits? |                 | Other approaches  |
|--|-----------------|-----------------|---|
|  | Yes             | No              |   |
| California Board of State and Community Corrections        |                 | X               | Remote inspections<br>Collection of COVID data from jails                                     |
| California Office of the Inspector General                 | X               |                 | Survey of corrections staff   |
| Correctional Association of New York                       |                 | X               | Survey of families of people in custody   |
| DC Corrections Information Council                         |                 | X               | Survey of people in custody<br>Virtual communication  |
| Indiana Department of Corrections Ombudsman                |                 | X               | Video surveillance  |
| Inspector General of the Nebraska Correctional System      |                 | X <sup>21</sup> | Video surveillance<br>Intake and management of COVID-related complaints                       |
| John Howard Association of Illinois                        |                 | X               | Survey of people in custody<br>Survey of corrections staff                                    |
| Los Angeles Office of Inspector General                    | X               |                 | Video surveillance<br>Review of medical records and logs                                      |
| New York City Board of Correction                          | X               |                 | Video surveillance<br>Audits of supplies<br>Intake and management of COVID-related complaints |
| Pennsylvania Prison Society                                | X               |                 | Survey of people in custody<br>Virtual communication<br>COVID data interactive map            |
| Texas Commission on Jail Standards                         | X               |                 | Video surveillance<br>Collection of COVID data from jails                                     |
| U.S. Department of Justice Office of the Inspector General |                 | X               | Survey of corrections staff<br>Remote inspections<br>COVID data dashboard                     |
| Washington Office of the Corrections Ombuds                | X               |                 | Intake and management of COVID-related complaints   |

<sup>21</sup> The Inspector General of the Nebraska Correctional System conducted two on-site visits in August 2020 after suspending visits starting in March 2020, but since then the spread of the coronavirus in Nebraska prisons has caused yet another suspension of on-site inspections.

## ***In-person Site Visits***

Several oversight organizations, both in the United States and in other countries, have made the decision to continue site visits during this time, albeit less frequently in most cases. Some of these organizations initially halted on-site visits before determining how they would resume inspections in a limited or amended way. For correctional oversight bodies during the pandemic, the most important consideration when conducting in-person visits is to follow the “do no harm” principle.<sup>22</sup> The British Prison Inspectorate (HMIP) developed health and safety guidelines (see Table 2) to help oversight bodies conduct their work safely and responsibly during this challenging time. While this is not an exhaustive list, those oversight organizations that have been conducting at least some on-site visits during the pandemic include:

**California Office of the Inspector General (OIG):** OIG staff visited 5 prisons run by the California Department of Corrections and Rehabilitation (CDCR) to review COVID-19 screening practices for individuals entering a California prison. OIG chose these 5 prisons based on the prevalence of COVID-19, the geographic locations of the prisons, the physical layout of the prisons and the prevalence of incarcerated people with underlying health conditions. These prisons include California Health Care Facility, California Institute for Men, California Institute for Women, California State Prison, Los Angeles County, and San Quentin State Prison. During these on-site visits, OIG staff spoke with corrections management and staff and observed facility operations. Supplemental to these on-site inspections, OIG staff collected and reviewed CDCR COVID-19 policies, documents from CDCR’s COVID-19 operations center, and legal filings surrounding class-action lawsuits filed against CDCR for their handling of the coronavirus crisis. Additionally, OIG staff conducted a survey of CDCR staff responsible for the screening of staff members and visitors entering the 5 facilities, as well as a broader survey of all staff at the facilities.

The OIG published a report based on the findings from these visits and supplemental information in August 2020.<sup>23</sup>

**New York City Board of Corrections (BOC):** The BOC suspended its in-person daily jail monitoring visits in mid-March 2020. In early May, the BOC made the decision to resume on-site inspections, but only in a limited, targeted fashion as a way to supplement the remote oversight work the organization is doing.<sup>24</sup> In addition to using PPE while entering facilities, BOC staff have to wait 10 days between visits or get a COVID-test after 5 days and then are allowed to enter again pending a negative result.

**Los Angeles Office of Inspector General (OIG):** Pre-pandemic, OIG staff would go into Los Angeles jails 2-3 times a week to monitor conditions and follow up on complaints. Facility visits were canceled in March 2020, and then in May, the OIG resumed visits on a limited basis using full personal protective equipment. The OIG treated these visits as a method of last resort in investigating complaints after they used remote investigative tools available to them; only seven on-site visits occurred during May and June. The OIG is using these visits to speak with incarcerated individuals about specific allegations. Additionally, the OIG uses these visits to view the conditions of the facilities, and will also regularly check the availability of cleaning products.

**Pennsylvania Prison Society (PPS):** The Pennsylvania Prison Society relies on a network of volunteers known as Official Visitors who conduct monitoring in Pennsylvania prisons and jails pursuant to statutory authorization. Although PPS could have continued with its visiting program, the organization decided to largely stop visits during the coronavirus pandemic out of concern for the safety of their volunteers as well as the incarcerated population. PPS has made a few exceptions to this rule for Official Visitors in good health who were willing to take extra precautions.

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22 “Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic,” European Committee for the Prevention of Torture or Inhuman or Degrading Treatment or Punishment (CPT), Council of Europe, March 20, 2020, <https://rm.coe.int/16809cfa4b>.

23 “COVID-19 Review Series Part One: Inconsistent Screening Practices May Have Increased the Risk of COVID-19 Within California’s Prison System,” State of California Office of the Inspector General, August 2020, <https://www.oig.ca.gov/wp-content/uploads/2020/08/OIG-COVID-19-Review-Series-Part-1-Screening.pdf>.

24 New York City Board of Correction COVID-19 Monitoring,” New York City Board of Corrections, May 12, 2020, [https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/2020.05.04%20-%20BOC%20Monitoring%20Background\\_final.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/2020.05.04%20-%20BOC%20Monitoring%20Background_final.pdf).

**Washington Office of the Corrections Ombuds (OCO):** The OCO has continued facility visits throughout the coronavirus pandemic, conducting thematic inspections to determine how prisons are responding and adapting to the crisis. OCO staff conducted these visits, using personal protective equipment, in response to concerns in specific prisons about COVID-related conditions and the implementation of safety and sanitation procedures. The first inspection after the COVID breakout took place on April 10, 2020, following a mass disturbance resulting from tensions surrounding fear of the spread of the virus. The OCO has published reports on each of the facility visits, including its findings about the disturbance and the steps the agency is taking to protect incarcerated people during the COVID crisis.



*Washington State Office of the Correctional Ombuds, Monitoring Visit to Monroe Correctional Facility, Medical isolation unit with COVID-positive individuals, April 10, 2020 (used by permission of Washington OCO)*

**Texas Commission on Jail Standards (TCJS):** TCJS continued to have on-site inspections occurring until early April, when the oversight body's leadership decided to temporarily suspend inspections until May 1, 2020, to ensure that inspectors had an appropriate supply of PPE. TCJS has since resumed its regular inspection process, relying on in-person inspections supplemented by surveillance footage and access to supplementary documents.

**Her Majesty's Inspectorate of Prisons for England and Wales (HMIP):** HMIP halted inspections from mid-March through May 2020. HMIP has developed a new approach to visits, known as short scrutiny visits, shortening the length of the visits and focusing only on specific issues, such as safety, care, and basic rights of incarcerated people. HMIP visited 35 prisons, youth correctional facilities, and immigration detention centers using this model, and published 12 reports on their findings. Starting in August 2020, HMIP again changed its visitation model to allow for somewhat expanded visits, known as scrutiny visits, that are still not as comprehensive as full inspections. Scrutiny visits allow inspectors to gather more detailed information and restart surveys of people in custody. HMIP also developed health and safety guidelines for inspectors entering prisons, which are detailed in Table 2: "Health & Safety Guidelines for Entering Correctional Facilities during COVID-19."<sup>25</sup>

**Italian National Authority for the Rights of Persons Deprived of Liberty (Italian NPM):** The Italian NPM continued to visit prisons using personal protective equipment, and inspected certain prisons after riots occurred. The NPM expressed concern over the lack of availability of personal protective equipment for its employees.<sup>26</sup>

**Georgian Public Defender's Office:** The Georgian Public Defender's Office, that country's prison oversight entity, has gone on-site during the pandemic, conducting individual interviews with incarcerated people through a glass barrier.<sup>27</sup>

25 "Adapting to COVID-19: Prison Oversight and Monitoring During a Pandemic," International Corrections & Prisons Association, April 20, 2020, <https://rm.coe.int/expert-network-newsletter-special-issue-5/16809e416a>.

26 Ibid.

27 Ibid.

## **Table 2: Health and Safety Guidelines for Oversight Bodies During COVID: Learning from the Example of HM Inspectorate of Prisons (HMIP)**

### ***Who should be involved in on-site visits?***

- Only two or three inspectors conduct the visit, including a health care inspector
- Inspectors who are high-risk or live with someone who is will not conduct visits
- Inspectors must wait 14 days between visits

***Risk Assessment: HMIP conducts a risk assessment the day before a visit using information provided by the facility to determine whether the visit can safely occur. HMIP inspectors then complete the risk assessment again upon arrival at the facility before beginning the on-site visit.***

### ***Traveling to and from correctional facilities***

- Inspectors should avoid use of public transportation whenever possible
- Inspectors should not carry passengers in their car whenever possible
- Inspectors should always pay at the pump when refueling their cars
- Inspectors will not use hotels

### ***Reducing the risk of transmission during visits***

- Inspectors should wash hands and/or use hand sanitizer frequently
- Inspectors should change their clothes before and after the site visit
- Inspectors should practice social distancing of six feet during the visit
- Inspectors should avoid speaking with people where air flow is limited, instead speaking in open spaces; inspectors should not speak to people through the gaps in their cell doors
- Inspectors should not speak to anyone in isolation whenever possible, opting to communicating in other means, such as a telephone; inspectors must use PPE to speak to someone in isolation, including:
  - Disposable gloves
  - Disposable medical mask
  - Disposable full gown
  - Disposable eye protection such as a face shield or goggles
- If an inspector begins to feel unwell during the visit, they should inform the facility and leave as soon as possible

### ***Post-visit procedure***

- If an inspector develops symptoms after visiting a corrections facility, they must inform their supervisor to ensure HMIP officials can notify the appropriate corrections officials.

Source: "Health and safety guidance for short scrutiny visits during the COVID-19 outbreak," HM Inspectorate of Prisons, <https://www.justiceinspectors.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2020/03/Short-scrutiny-visit-health-and-safety-guidance-for-website.pdf>.

## Use of Video Surveillance

Some oversight bodies increased their reliance on access to recordings of closed-circuit video surveillance systems in prisons and jails, as well as access to body cameras worn by corrections officials or hand-held cameras wielded by corrections officials. Access to these camera systems provide oversight organizations with some visual information about the conditions of facilities, and the footage can help them investigate complaints they receive. The following are some examples of how oversight bodies have been using access to camera systems to monitor conditions and investigate allegations:

### **New York City Board of Correction (BOC):**

Pre-pandemic, the BOC had negotiated for limited access to the NYC Department of Correction's (DOC) surveillance camera system. During the pandemic, the BOC reached an agreement with the DOC to expand the oversight organization's access to this system, allowing the BOC to view any footage from DOC cameras. The BOC used the access to the video surveillance system to monitor compliance with COVID precautions inside the facilities, such as:

- Social distancing
- Use of personal protective equipment among staff
- Use of masks among incarcerated people
- Phone access and cleaning
- How often DOC officials checked on cell units

The BOC published a report relating to the data collected through use of surveillance cameras.<sup>28</sup>

### **Los Angeles Office of the Inspector General (OIG):**

The OIG uses access to surveillance footage to investigate the accuracy of allegations made by incarcerated people to avoid entering facilities when possible. The OIG has access to archived surveillance footage for up to a year, and has access to live footage, though they rarely use it during their work. Officials from the OIG request and review surveillance footage at the correctional

facilities. The OIG reviews all footage related to serious incidents such as death or patrol-related incidents, but also to check the compliance of health and safety guidelines, such as staff wearing masks. The OIG is also using access to surveillance footage to verify medical care, as described in more detail below.

### **Office of the Inspector General of the Nebraska Correctional System (OIG):**

The OIG can request and receive any archived footage regarding a particular incident or issue that they are investigating, including but not limited to: uses of force, fires, staff assaults, or other specific incidences. This includes footage from body cameras of correctional officials, mounted cameras, and handheld cameras.

### **Indiana Ombudsman Bureau:**

The Indiana Ombudsman relies on access to archived surveillance footage to conduct most of their investigations. The Ombudsman will request footage regarding a specific investigation and the Indiana Department of Corrections (IDOC) will either send them still images or archived footage, or request that someone from the Bureau view the footage at IDOC headquarters.

## Remote Inspections

Faced with limitations on in-person access to facilities, oversight bodies that regularly conduct inspections have had to come up with alternative methods to ensure facilities are following regulations and maintaining acceptable conditions. Some oversight bodies have developed methods for conducting "remote inspections" to fill this need:

### **U.S. Department of Justice Office of the Inspector General (OIG):**

The OIG has conducted remote inspections of five federal prisons during COVID to assess how prisons are addressing the public health crisis. Two of the prisons are operated by the Bureau of Prisons (BOP), and three are privately run. The inspection consists of telephone interviews with prison officials, review of documents, the results of an OIG survey issued to all BOP staff, and an analysis of data,

28 "New York City Board of Correction Monitoring COVID-19 Responses in New York City Jails, April 19 - April 30, 2020," New York City Board of Corrections, June 8, 2020, <https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/June/COVID%20Housing%20PUBLIC%20Report%204.19-4.30%20TO%20POST%206.8.20.pdf>.

including COVID data. The OIG did not interview incarcerated individuals as a part of this remote inspection process. The OIG published reports on each of the remote inspections.<sup>29</sup>

#### **California Board of State and Community**

**Corrections (BSCC):** BSCC has stopped making site visits during the COVID crisis to keep staff and people in custody safe and has instead shifted to a desk audit or remote inspection process. This process is completed by requesting documents for local jails and speaking with jail staff and ancillary staff such as medical personnel to ensure that jails are in compliance with standards. The documents that BSCC requests include information about booking and intake, incident reports, grievances, instances when people in custody are placed in a sobering or safety cell, and use of restraints. This remote process does not include interviews with people in custody.

#### **Inspector of Custodial Services, New South Wales,**

**Australia (ICS):** ICS conducted a virtual inspection of a prison using video conferencing to interview incarcerated individuals and access to surveillance footage and other data. ICS interviewed 20 percent of the prison population, ensuring that there was a diversity of factors such as age, employment areas, and unit. ICS also obtained footage from the prison of operations including admissions, head counts, lock-ins, and programs, as well as photos of segregation areas.

#### **Surveys of the Incarcerated Population and Staff**

Several oversight bodies have surveyed either incarcerated people or their families about issues regarding conditions in prisons and jails during the coronavirus pandemic, and some have also conducted surveys of facility staff. Oversight bodies that have employed surveys include:

**John Howard Association of Illinois (JHA):** JHA, with the assistance of the Illinois Department

of Corrections (IDOC), created and sent out a survey to the entire state prison population, the first of its kind for JHA. JHA used up-to-date facility population numbers and sent surveys in bulk to each IDOC facility. Correctional staff then distributed the surveys to the incarcerated population. Every person incarcerated in an IDOC facility received a survey, an informed consent notice/instruction sheet, and a business reply envelope addressed to JHA. This allowed incarcerated individuals to participate in the survey anonymously and without cost. The survey included questions about access to medical and cleaning supplies; about pandemic precautions related to health and sanitation, such as mask-wearing, social distancing, and cleaning; and about the impact of restrictions imposed as a response to the coronavirus, such as access to the yard or free phone calls. JHA received responses from approximately 50 percent of the state prison population, representing 16,236 incarcerated individuals, and published a report of the results. The published results were also disaggregated by facility, allowing for the comparison of conditions among IDOC facilities.<sup>30</sup> JHA also developed a survey for IDOC employees that was available online. This survey included questions about implementation of safety procedures related to COVID, access to sanitation supplies, and working conditions. JHA received responses from 261 IDOC employees and published a separate report on its findings from the staff survey.<sup>31</sup>

#### **California Office of the Inspector General (OIG):**

OIG staff surveyed CDCR employees from 5 facilities who were responsible for screening employees and visitors as they entered the prisons as part of a review of CDCR COVID-19 screening procedures. Additionally, OIG staff conducted a second, broader survey of corrections staff in 7 CDCR facilities, representing the 5 facilities surveyed in the COVID-19 screening review plus two additional prisons with COVID-19 outbreaks, in order to gain a broader understanding of staff

29 "Remote Inspection of Federal Correctional Complex Tucson," Department of Justice Office of the Inspector General, Pandemic Response Report 20-087, July 2020, [https://oig.justice.gov/sites/default/files/reports/20-087\\_1.pdf](https://oig.justice.gov/sites/default/files/reports/20-087_1.pdf).

30 "COVID-19 Survey: Report on Initial Results of Surveys Collected From People Incarcerated in IDOC Prisons," John Howard Association, <https://static1.squarespace.com/static/5beab48285ede1f7e8102102/t/5f185e96cf47ca4d55a875ef/1595432603358/Final+IDOC+Results+Updated+July+2020.pdf>.

31 "COVID-19 Survey: Report on Initial Results of Surveys Collected From People Who Work for IDOC Prisons," John Howard Association, <https://static1.squarespace.com/static/5beab48285ede1f7e8102102/t/5efd4b2221b737104bb52991/1593658150454/IDOC+Staff.pdf>.

experiences with CDCR COVID-19 directives. For the second survey, OIG staff sent surveys out to over 12,000 staff in these facilities. OIG staff received and analyzed 4,161 replies from the second survey. OIG staff then used these findings as part of a report the OIG published in August 2020.<sup>32</sup>

#### **DC Corrections Information Council (CIC):**

The CIC sent out a survey for DC residents incarcerated in federal prisons through the mail. The survey consists of roughly 20 questions about general demographics, communication, movement, living arrangements, and access to PPE and medical care. The CIC plans to analyze and publish information about the experiences of DC residents in custody.

#### **Correctional Association of New York (CANY):**

CANY similarly sought to survey people about their experiences during the coronavirus pandemic in New York state prisons, sending out 500 surveys to incarcerated individuals. But the oversight organization received only 12 responses, suggesting a significant breakdown in the mail communication system. As an alternative, CANY then sent surveys to its network of families of incarcerated people to ask them about what their loved ones were reporting was happening on the inside. The survey included questions about health concerns, communication, and the prison agency's response to the pandemic. CANY published a report detailing the results of the survey.<sup>33</sup>

**Pennsylvania Prison Society (PPS):** PPS sent out a survey to incarcerated people in Pennsylvania through a special COVID edition of its monthly newsletter. The survey included questions about programming, sanitation, and access to medical care. PPS worked with academic partners to

analyze responses from 345 people in custody in Pennsylvania prisons and released a report of the results.<sup>34</sup>

#### **U.S. Department of Justice Office of the Inspector General (OIG):**

The OIG issued two anonymous, electronic surveys to corrections staff about the concerns, impacts, and immediate needs of staff related to the coronavirus. The OIG sent out the first survey to all 38,651 BOP employees from April 21 to April 29, 2020. The OIG received 10,735 results to this survey. The OIG sent out the second survey to all 2,689 contract prison employees between May 1 to May 11, 2020. The OIG received 774 responses to this survey.<sup>35</sup> The results of both surveys were used as part of the remote inspections the OIG has conducted on specific prisons and published in reports.<sup>36</sup>

### *Using Technology to Facilitate Communication*

Even before the pandemic, some oversight organizations used forms of virtual communication, including email apps such as CorrLinks and video visitation, as ways to remain in direct contact with incarcerated individuals. At a time when in-person visitation may not be possible, the oversight bodies have become even more reliant on these forms of communication. Examples of oversight bodies using technology to remain in contact with people who are incarcerated include:

**DC Corrections Information Council:** CIC relies on the email app CorrLinks to keep in contact with DC residents incarcerated in federal prisons, some of whom are incarcerated across the country.

**Pennsylvania Prison Society:** PPS volunteers have been conducting virtual visits with people

32 "COVID-19 Review Series Part One: Inconsistent Screening Practices May Have Increased the Risk of COVID-19 Within California's Prison System," State of California Office of the Inspector General, August 2020, <https://www.oig.ca.gov/wp-content/uploads/2020/08/OIG-COVID-19-Review-Series-Part-1-Screening.pdf>.

33 "He Has a Home to Go to," Correctional Association of New York, May 2020, <https://static1.squarespace.com/static/5b2c07e2a9e02851fb387477/t/5ed155b10d56e8675537fc7f/1590777273449/CANY%2BCOVID-19%2BReport%2BMay%2B2020.pdf>.

34 "Prison Conditions During the COVID-19 Pandemic: Preliminary Findings from a Survey of People in Pennsylvania State Custody," Pennsylvania Prison Society, September 24, 2020, [https://issuu.com/prisonsociety3/docs/covid-19surveyreport\\_jc\\_9.23](https://issuu.com/prisonsociety3/docs/covid-19surveyreport_jc_9.23).

35 "Remote Inspection of Federal Correctional Complex Tucson," Department of Justice Office of the Inspector General, Pandemic Response Report 20-087, July 2020, [https://oig.justice.gov/sites/default/files/reports/20-087\\_1.pdf](https://oig.justice.gov/sites/default/files/reports/20-087_1.pdf).

36 "Remote Inspection of Federal Bureau of Prisons Contract Correctional Institution Moshannon Valley, Operated by the Geo Group, Inc.," Department of Justice Office of the Inspector General, Pandemic Response Report 20-097, August 2020, <https://oig.justice.gov/sites/default/files/reports/20-097.pdf>.

incarcerated in Pennsylvania state prisons via free video calls through Zoom. Not all county facilities have access to video conferencing technology, so volunteers have also been communicating with people incarcerated in jails by telephone. Volunteers with PPS have had to request the visit and the correctional facilities will determine the time that it will occur. PPS has also been involved in a push to get video visitation access in county jails.

**Australian Capital Territory Inspector of Correctional Services (ACT ICS):** ACT ICS is contacting correctional staff and stakeholders via telephone and audio-visual links. ACT ICS has not had to conduct a review that requires interviewing incarcerated individuals during the pandemic and is weighing whether the use of audio-visual links to conduct these interviews affords sufficient privacy.

### *Intake and Management of COVID-Related Complaints*

Many oversight organizations have been inundated with individual complaints about how corrections agencies are responding to the coronavirus situation, and have had to develop new strategies for handling intake and management of these complaints. These strategies include:

**New York City Board of Corrections (BOC):** The BOC has worked with the DOC's Office of Constituent and Grievance Services (OCGS) to review coronavirus-related grievances. The BOC reviews these coronavirus-related complaints daily and analyzes the aggregate grievance data to search for patterns and issues of concern.<sup>37</sup>

**Washington Office of the Corrections Ombuds (OCO):** The OCO has created a phone hotline that anyone can call into with questions, concerns, or information regarding the Washington Department of Corrections' (DOC) response to COVID-19. OCO is sending these questions or requests for information to the DOC and then

publishing online the responses they receive from the prison agency.<sup>38</sup>

**Inspector of Custodial Services, New South Wales, Australia (ICS):** ICS has created a dedicated phone line and mail system to address concerns about the coronavirus.<sup>39</sup>

**Office of the Inspector General of the Nebraska Correctional System (OIG):** The OIG shares a building with the state's Ombudsman Office, which allows free calls from individuals incarcerated in Nebraska prisons. Prior to the pandemic, the OIG allowed the Ombudsman Office to forward these calls to the OIG on a limited basis so that incarcerated individuals would not have to pay to speak with the OIG. Once the crisis began, the OIG expanded the use and promotion of this practice to offset the lack of in-person interaction that was occurring between the OIG and people in custody.

### *Audits of Supplies*

Oversight organizations are receiving many complaints having to do with the availability of cleaning supplies and PPE, as well as complaints about food quality and quantity. During a time when communication and access to the physical facilities is restricted or risky, documentation about the quantity of supplies facilities are receiving and using can help determine the veracity of these complaints. This is one example of how oversight organizations are using audits to monitor conditions inside facilities during the coronavirus pandemic with respect to cleaning supplies and PPE, but presumably similar strategies could be used for audits of food supplies:

**New York City Board of Correction:** The BOC receives the results of daily audits conducted by the DOC relating to the availability and usage of sanitation supplies and masks for incarcerated people. The BOC has worked with the DOC to develop and improve the audit process. The BOC

37 "New York City Board of Correction COVID-19 Monitoring," New York City Board of Corrections, May 12, 2020, [https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/2020.05.04%20-%20BOC%20Monitoring%20Background\\_final.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/2020.05.04%20-%20BOC%20Monitoring%20Background_final.pdf).

38 "COVID-19," Washington Office of the Corrections Ombuds, March 14, 2020, <https://oco.wa.gov/covid-19-0>.

39 "Adapting to COVID-19: Prison Oversight and Monitoring During a Pandemic," International Corrections & Prisons Association, April 20, 2020, <https://rm.coe.int/expert-network-newsletter-special-issue-5/16809e416a>.



uses data from audits to analyze the sanitation conditions in DOC facilities.<sup>40</sup>

### **Medical Records**

It is imperative that oversight bodies have the means to determine whether incarcerated individuals are receiving timely and adequate medical care. As this example shows, oversight bodies can turn to medical records and surveillance footage to ensure that people in custody are receiving adequate access to treatment:

**Los Angeles Office of the Inspector General:** When someone incarcerated in a Los Angeles jail makes an allegation of poor medical care, the OIG can review medical logs to see if a healthcare provider has seen someone in custody and to assess the results of that medical visit. Additionally, the OIG has begun to verify that providers are not falsifying the amount of time they spend with incarcerated individuals by comparing the amount of time stated in medical logs to what surveillance footage shows.

### **Data Collection and Analysis**

Oversight bodies responsible for systemic reviews of conditions of confinement (as opposed to those that handle only individual complaints) need access to data about key indicators regarding the health, safety, and wellbeing of people incarcerated in prisons and jails. Routine collection and analysis of this data allows for the tracking of trends and the early identification of problems that affect the treatment of people in custody. During the pandemic, it is even more urgent for oversight bodies to be collecting and analyzing this data, since it is a window into what is happening inside the facilities. Oversight practitioners need both COVID-related data, such as information about infections and deaths, and non-COVID data, such as information about use of force, assaults, suicides, and other sentinel events.

Most of the oversight organizations discussed in this report engage in some type of data collection and analysis, so we highlight just three efforts here, each focused on promoting transparency of COVID-related data for public consumption:

#### **The John Howard Association of Illinois (JHA):**

Early in the pandemic, the JHA asked for COVID-19 related data from the Illinois Department of Corrections (IDOC) and encouraged the Department to begin collecting and publishing data about COVID cases in the state prisons on their website. In response to JHA's repeated and public requests, IDOC began to share information via a COVID "dashboard" on the website. This resulted in many other states' prison agencies following suit, showing the national impact of the JHA's advocacy efforts.

**Pennsylvania Prison Society (PPS):** PPS has been tracking the spread of COVID in Pennsylvania's correctional facilities and it presents this data on its website in an interactive map showing which facilities in the state have had confirmed cases of COVID.<sup>41</sup>

#### **U.S. Department of Justice Office of the Inspector General (OIG):**

The OIG collected and analyzed data from the federal Bureau of Prisons (BOP) and the Johns Hopkins University's Center for Systems Science and Engineering about COVID cases in BOP facilities, and the OIG published the data in the form of a COVID dashboard launched in October 2020. The dashboard provides detailed information about COVID cases, deaths, and testing in the BOP. The dashboard also shows how this data has changed over time and breaks down the data by BOP prison.<sup>42</sup> While other jurisdictions have COVID dashboards, this is a rare example where the oversight body itself—as opposed to the corrections agency—has developed and maintains the dashboard.

40 "New York City Board of Correction COVID-19 Monitoring," New York City Board of Corrections, May 12, 2020, [https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/2020.05.04%20-%20BOC%20Monitoring%20Background\\_final.pdf](https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/2020.05.04%20-%20BOC%20Monitoring%20Background_final.pdf).

41 "Spread & Mitigation of COVID-19 in PA Prisons," Pennsylvania Prison Society, <https://www.prisonersociety.org/covid-19>.

42 "Home," Department of Justice Office of The Inspector General, <https://www.arcgis.com/apps/MapSeries/index.html?appid=a3e98be1aab94eadaeaa96ed176f418>.

## Recommendations for Oversight Bodies

Adapting to the many challenges presented by the COVID crisis is critically important for oversight organizations. The usual methods of gathering information are no longer sufficient, and in many cases, these methods have been severely limited. But even in these unprecedented times, it is still possible for oversight bodies to help promote transparency and accountability within our nation's prisons and jails. The recommendations below can help oversight bodies meet the current challenges, especially in situations where there is a cooperative corrections agency.

**Ensure regular and frequent lines of communication between oversight bodies and corrections agencies.** While dynamics may not always support such open lines of communication, there has never been a more important time for oversight practitioners and correctional administrators to establish better relationships and to recognize the mutual benefits that can come from the sharing of information. Issues of concern should be brought to the attention of the administration as quickly as possible, so that any identified issues or complaints can be checked out immediately by someone trustworthy in a leadership position.

**Encourage corrections agencies to publish a website dashboard with daily statistics about COVID in their facilities.** The publication of this data shows a commitment to transparency by the correctional agency, and allows oversight bodies, the media, and families with loved ones inside to stay informed. It also ensures some consistency in how numbers are reported. The failure to provide such data, in contrast, leads to rumors, misinformation, and distrust. The oversight body should work with correctional leaders to ensure that the metrics being reported are meaningful and sufficient to provide an overall picture of what is happening in each facility with respect to the spread of the virus and the number of hospitalizations and deaths.

**Encourage corrections agencies to provide regular (daily or weekly) briefings or Q&A sessions for family members.** Family members of incarcerated people are an important constituency that must be kept informed about what steps the agency is taking to keep their loved ones safe. Also, briefings or Q&A sessions provide an opportunity for families to raise with correctional administrators concerns about specific issues that they are hearing from their loved ones. By facilitating such lines of communication, oversight bodies can help ensure that correctional agencies are aware of urgent issues on the ground in each facility, even when the oversight body is unable to make on-site inspections.

**Request and review the corrections agency's emergency operations protocol.** The oversight body should review all policies and procedures related to how the prison or jail agency is testing, housing, and treating individuals suspected of having coronavirus, as well as policies relevant to precautions such as provision of hygiene and cleaning supplies, movement within the facility, transfers between facilities, and staffing. These protocols should be benchmarked against CDC and WHO guidelines and best practices in other jurisdictions, and where there are discrepancies and room for improvement, the oversight body should offer feedback and recommendations for changes to the emergency plan.

**Develop safety plans for conducting site visits.** If oversight bodies decide to continue with physical inspections, they must consider the safety of both incarcerated people and their own staff. Written safety plans should be based on guidance from public health officials and should include using PPE, testing before and after entering facilities, having inspectors wait at least 14 days between visits, and avoiding visits if they are feeling ill. Furthermore, oversight bodies should avoid site visits if they are able to obtain the information they need in a supplementary manner. HMIP's guidelines (see Table 2) are especially helpful.

**Establish a hotline or other communication method that permits free and immediate contact between incarcerated people and oversight bodies.**

Oversight organizations should negotiate with the corrections agency to install a telephone hotline or to provide residents with no-cost electronic messaging for communications directed to the oversight body. Residents should be able to have regular, daily access to this method of communication, even if they are on cell restriction. Such communication methods should continue beyond the pandemic, once they are in place.

**Stay in regular contact with the families of people in custody.** Family members often have their fingers on the pulse of what is happening inside certain facilities, based on their communication with their

loved ones. This is an important source of information for oversight practitioners to tap into, as the families' complaints can serve as an early warning system when the oversight bodies' inspection activities are limited. Oversight entities should ensure that there is a system established for receiving complaints from family members by phone, email, and online.

**Establish ways for agency staff to communicate confidentially with the oversight body.** Oversight bodies should ensure there is an avenue for facility staff to contact the oversight body without fear of retaliation. The oversight organization should communicate with staff groups (e.g., unions, Facebook groups, etc.) to publicize a hotline number, an email address, and ways that staff can submit concerns confidentially online.

**Collect and analyze operational data relevant to the health and safety of incarcerated people.** Even in the absence of a crisis, corrections agencies should provide oversight bodies with regular data about key indicators relevant to the health and safety of the people in custody, including, for example, data about use of force, assaults, deaths in custody, suicides and suicide attempts, sexual assault allegations, out-of-cell time, and program participation. During the period when access to the facility is limited, this data can and should be provided to the oversight bodies on a much more frequent basis, allowing for tracking of trends or identification of hotspots that may reflect problematic conditions. In this way, if there is a rise in, say, use of force in a particular cellblock or facility (which may well happen due to anxiety, tension, idleness, and enforced cell confinement), the oversight body can immediately bring these developments to the attention of correctional administrators.

**Conduct surveys of incarcerated people and/or their families, as well as surveys of corrections staff.** When access to and communication with correctional facilities is limited, surveys among the incarcerated population can help oversight bodies ascertain what is happening inside. This is particularly important during a crisis such as COVID, when normal operations in facilities are altered the need for public health precautions inside is an imperative. Corrections agencies should work with these oversight bodies to facilitate these surveys. In cases when oversight bodies are unable to conduct surveys inside, they should reach out to family members of people in custody, who often have valuable insight to what is happening inside. Oversight bodies should also seek to conduct surveys of corrections staff.

**Obtain surveillance footage.** Corrections agencies should provide oversight bodies with real-time access to video footage and body camera footage from inside the facility whenever possible, and stored footage if it is not. Such footage can be used to help investigate specific complaints after-the-fact (such as an allegation that involves an officer's presence at a cell at a particular time), or to review the circumstances of an altercation. It can also be used to monitor routine compliance with precautionary protocols, such as whether officers and residents are wearing masks.

**Consider the potential for virtual inspections.** Using technology such as Go-Pro cameras, or even video-conferencing software, oversight practitioners can visually inspect parts of a facility if someone in the correctional administration can operate the equipment with direction from the oversight staffer. For example, the oversight body can request a virtual tour of a particular cellblock or can ask to "see" a cell or area where a particular incident occurred. Conversations with residents and staff would not be feasible through this methodology, however.

**Collaborate with health authorities.** Even if correctional oversight bodies are not going into facilities at the current time, it may be that health authorities are willing and able to do so. Oversight organizations should develop working relationships with these health authorities to encourage them to use their position to help ensure prisons' and jails' compliance with state and local health and safety standards.

**Develop legislation to strengthen the authority of the oversight body and ensure unrestricted access to facilities, to people, and to information.** The pandemic has driven home the fact that having unrestricted statutory authority to access facilities is more important than ever for oversight organizations. While many oversight bodies with such rights of access may not be using that authority at this time, it should be the determination of the oversight entity rather than the correctional agency whether they can continue their efforts to protect the health and safety of incarcerated people through on-site monitoring activities. Similarly, oversight bodies need a statutory right to receive data such as key indicators of safety and health, surveillance camera footage, logs, and grievances. The urgency of the current pandemic may be enough to persuade lawmakers of the critical importance of having this information, since the transparency can help reduce the spread of the virus both inside the facilities and to the greater community.

## Conclusion

Correctional oversight is not easy during the best of times. COVID has complicated this already difficult task by limiting monitors' in-person visits to correctional facilities. This report presents an overview of some of the ways that established oversight bodies are adapting to the constraints posed by the COVID crisis and are continuing to monitor and investigate the conditions inside prisons and jails. While on-site access to facilities provides the most reliable source of information, there are other strategies that can still open a window into the conditions of confinement and create a lifeline for incarcerated people.

While there are challenges for oversight bodies during this time, there are also opportunities. The pandemic creates opportunities to improve working relationships between oversight organizations and corrections agencies; to demonstrate the common interests of incarcerated people and staff in ensuring conditions that promote health and safety; and to expand methodologies for gathering information about what is happening inside the facilities. Health and safety are issues that everyone can agree are critical. Developing a healthy working relationship,

while still keeping the corrections agency at arm's length, can go a long way towards giving oversight bodies a more informal, but deeper, level of access that improves their understanding of conditions of confinement and institutional dynamics.

The recommendations made here will help oversight bodies become better able to withstand a wide variety of challenges in the future. Oversight bodies must become adaptable and nimble. COVID may be with us for some time, and it will hardly be the last disease—or other political development—that disproportionately impacts correctional facilities. Prisons and jails may be an incubator for COVID, but COVID can also be an incubator for new oversight strategies. These ideas could also provide a framework for how other oversight bodies or advocacy organizations that have less authority—especially those lacking the right of access to facilities—could become more effective in their work. The pandemic's impact on correctional oversight, and on prison and jail conditions, is substantial, but transparency and accountability remain critical priorities. These challenging times demand adaptive forms of oversight.