

# Medical Ethics in the Carceral Setting

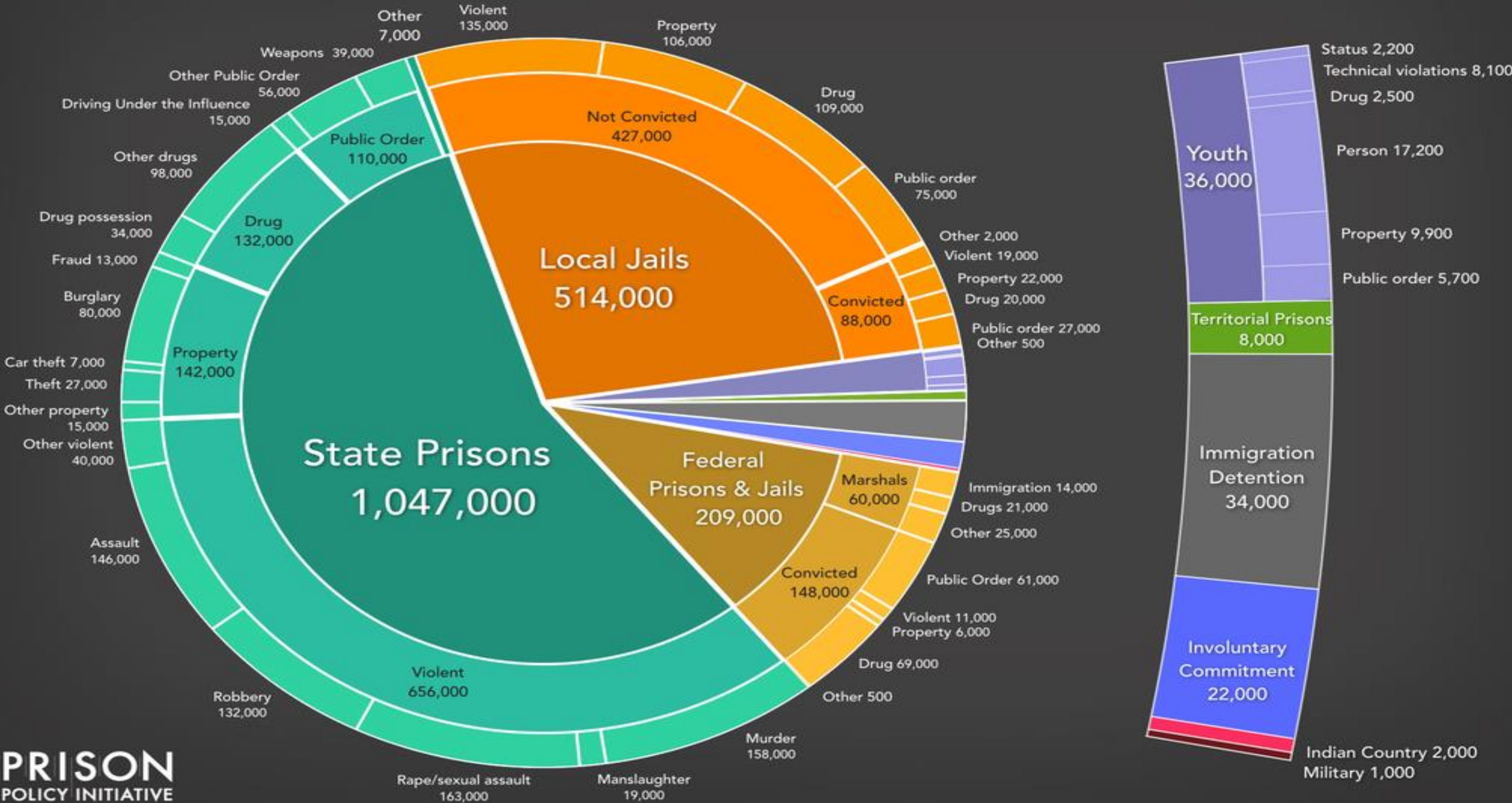


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# Key Differences Between Jails and Prisons

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- **Jails house persons awaiting trial or serving sentences up to one year; jail populations turnover, on average, 50% rate per week; the average time served in jail was 28 days in 2020. (Minton, BJS, 2021)**
- **Prisons house persons with sentences normally longer than 1 year; average time served is 2.7 years (Kaeble, BJS, 2021)**



# ***Applying Ethical Principles to Carceral Health Care***

**Non-maleficence** (mitigating inherent harms of incarceration)

**Beneficence** (maximizing opportunities for health promotion)

**Autonomy** (promoting health literacy and shared decision-making)

**Justice** (supporting equitable allocation of limited resources)



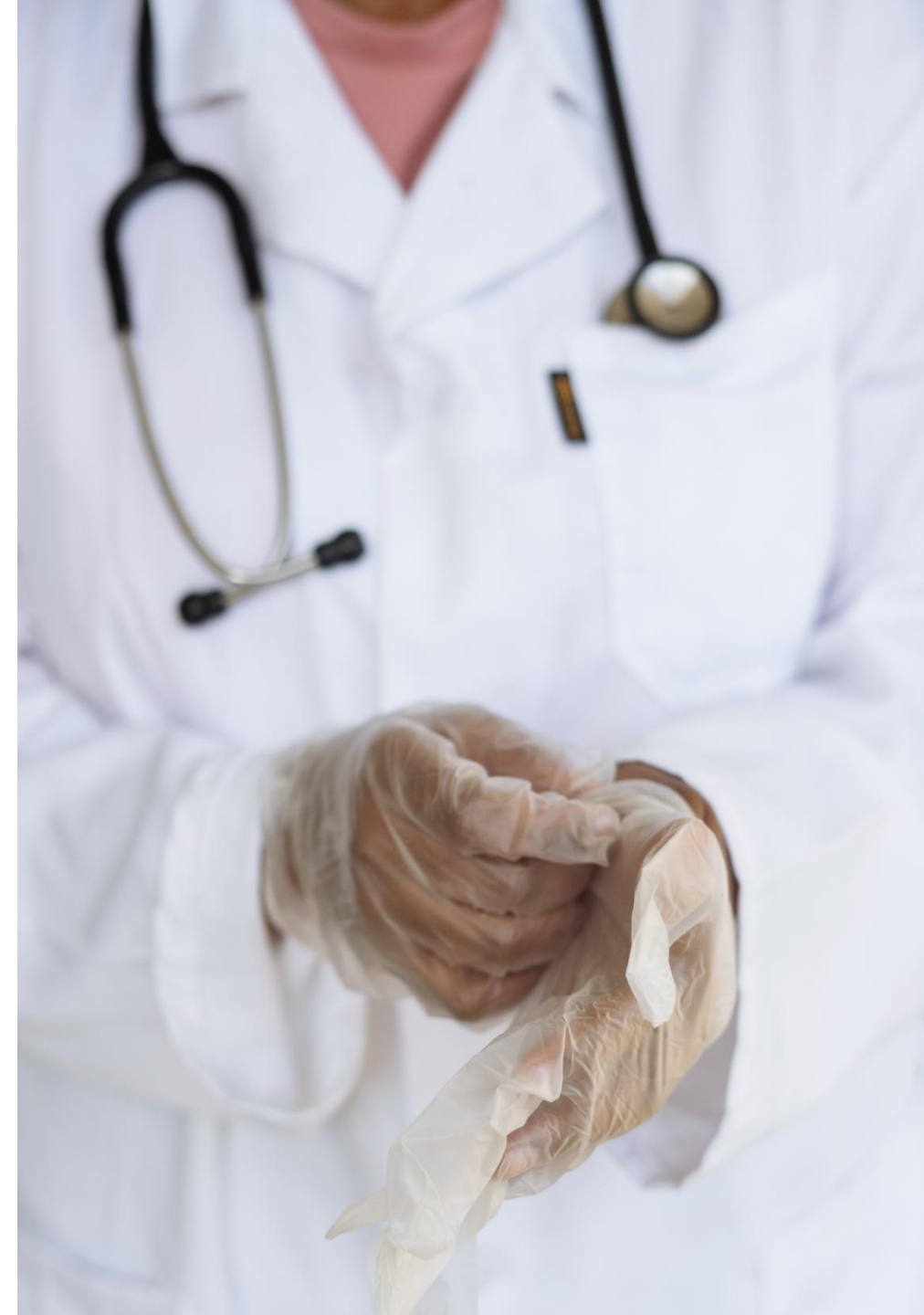
# A Constitutional Right to Carceral Health Care



- *Estelle vs Gamble* – 1976 Supreme Court Ruling
- Estelle, a Texas prisoner, complained that his orthopedic injuries were not adequately cared for by the state of Texas
- Estelle lost on appeal, however, the Supreme Court established the concept that deliberate indifference to an incarcerated person's serious medical needs was an 8<sup>th</sup> amendment violation

## ***What Scope of Health Care Services for Incarcerated Patients is Clinically Appropriate?***

- *A legally mandated level of care per Estelle v. Gamble?*
- *The community standard of care?*
- *Evidence-based care?*
- *Some other standard?*



# Health as a Human Right: A Position Paper from the American College of Physicians (ACP)

Ann Intern Med. 2023;176:1516

- ***“The ACP views health as a human right based on the intrinsic dignity and equality of all patients. Health as a human right is a moral or ethical claim – separate from its legal status.”***
- ***Providing health as a human right requires evidence-based health care and optimizing social/structural determinants of health***



***As the Medical Director of a State prison system, how would you provide evidence-based health care for the following patients in 2024?***

***Patients with Opioid Use Disorder***

***Patients with Hepatitis C***

***Patients who identify as transgender***







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***Historical approach to treatment OUD in the carceral setting:***

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***Discontinue methadone upon admission even if in jail for days to weeks***

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***Symptomatic treatment of withdrawal for opioids***

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***Referral to methadone clinic upon discharge***

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## ***Considerations for treating OUD in the carceral setting in 2024:***

- *Marked risk of overdose/death upon discharge from prison*
- *Risks of withdrawal during incarceration (e.g. suicide)*
- *Treatment with FDA-approved medication is accepted evidence-based recommended treatment*
- *Legal rulings citing ADA/8<sup>th</sup> amendment violations*
- *Public safety factors: security, operational, and regulatory*



# Treatment Considerations for Hepatitis C in the Carceral Setting

- *HCV infection causes liver disease with a slowly progressive, largely unpredictable risk of cirrhosis*
- *Medications are curative in most patients with few adverse effects*
- *Treatment promotes public health*
- *Treatment is expensive, although costs are decreasing*
- *Carceral health requires population health perspective*



## Hepatitis C Treatment in Prisons – Incarcerated People's Uncertain Right to Direct-Acting Antiviral Treatment

Daniels AM. *NEJM*. 2020;383:611

- *Access to expensive curative medications for hepatitis C for incarcerated patients varies across correctional systems with court opinions in conflict over the constitutional right for universal treatment.*
- *Is it ethical to prioritize curative treatments for incarcerated patients with hepatitis C?*





# ***Gender-affirming Care, Incarceration, and the Eighth Amendment.***

*AMA J of Ethics. 2023;25:E407*

- Challenges caring for transgender patients in the carceral setting:
- Lack of consistent health care coverage in the community, e.g. (Medicaid)
- Evolving legal landscape in community/carceral settings
- Access to competent clinical care





## ***What Gender-Affirming Health Care Services Should be Provided to Transgender Patients in the Carceral Setting ?***

- Hormonal therapies
- Gender-affirming surgeries, e.g. vaginoplasty, mammoplasty, mastectomy
- Voice training
- Hair removal
- Facial feminization surgery



## ***Priorities for Carceral Systems in Managing Transgender Residents***

- **Respectful treatment**
- **Ensuring personal safety**
- **Providing access to multidisciplinary, culturally competent and gender-affirming care**
- **Addressing special needs in discharge planning**

# ***Should a full range of contraception options be provided to women in the carceral setting?***

## **Benefits:**

- **Barriers to contraception pre-incarceration are common**
- **High rates of unplanned pregnancy for many patients**
- **Opportunity for patient education and empowerment**

## **Concerns**

- **Inherent lack of patient autonomy**
- **Potential for coercion (*Belly of the Beast* documentary)**



# Contraception in the Carceral Setting

## *How do we counsel our patients?*

### Potential for coercion

- Limited autonomy in everyday environment
- Fear of punishment
- Perception of message that they should not be reproducing
- Sterilization abuses

### Strategies to mitigate

- Focus counseling on reproductive life desires
- Provide access to range of methods
- 2 visit protocol for LARC
- Defer sterilization until after release

# Navigating Dual Loyalty in Carceral Health Care

- *You are a physician in a state prison and asked by the Captain to authorize the use of pepper spray for a calculated use of force in a residential unit housing your patients. How do you respond to the Captain? What are your professional obligations?*

# Involuntary Feeding in the Carceral Setting

*The World Medical Association considers involuntary feeding of prisoners unethical and a violation of human rights.*

*Force-feeding prisoners is wrong. AMA J Ethics. 2015;17:904*

*You were recently hired as a physician with the Federal Bureau of Prisons and were advised during orientation that the federal policy requires involuntary feeding of competent residents who are at risk of death from “hunger strike.” Is it ethical for you to support this policy as a physician caring for incarcerated residents?*



# Involuntary Feeding in the Carceral Setting

## *Applying ethical principles:*

- *Non-maleficance*
- *Beneficence*
- *Patient autonomy*
- *Justice*

## *Prison management strategies:*

*Multidisciplinary team to address hunger striker concerns*

*Involving trained health care professionals who do not have patient-provider relationship and who volunteer to provide feedings*





## Solitary Confinement in U.S. Prisons

- *Conditions of confinement are highly variable in their degree of social isolation, sensory deprivation, programming, and degree of time permitted outside the cell*
- *Psychological impact of short-term solitary confinement is poorly characterized*
- *Should any solitary confinement be permitted in U.S. jail and prisons?*



## Solitary Confinement in U.S. Prisons

- *As a Warden, how do I minimize or eliminate solitary confinement and still protect the residents of my prison from life threatening violence?*
- *As a physician, is it ethical for me to evaluate a resident to screen them for serious mental illness prior to placement in solitary confinement?*
- *As a nurse, is it ethical for me to monitor a patient who is in restraints while in solitary confinement*

**Ending Solitary  
Confinement -  
North Dakota model  
based on Norway  
AMEND training**  
*Health and Justice.*  
2021;9:28

**North Dakota prison system adapted Norway model to reduce restrictive housing:**

**Reduction in solitary confinement of 74%, 2016 to 2020**

- **Limited placement in restrictive housing to more serious (violent offenses)**
- **Mental health screening to prevent placements of people with SMI in RH**
- **Improve officer communication**
- **Behavioral residential unit for highest risk persons**
- **Peer mentors**

# **Covid-19 Vaccine Trials and Incarcerated People – The Ethics of Inclusion**

Strassle C et al. NEJM. 2020;383:1897

## ***Benefits of vaccine trials in carceral setting:***

- ***Access to prevention for vulnerable population***
- ***Option to participate in research available in community***
- ***Advancement of public health***

## ***Concerns of vaccine trials in carceral settings***

- ***Informed consent/coercion***
- ***Correctional systems may lack clinical support/oversight needed***
- ***Access to vaccines (if FDA approved) may not be provided***



# **Covid-19 Vaccine Trials and Incarcerated People – The Ethics of Inclusion**

Strassle C et al. NEJM. 2020;383:1897

## ***Strategies for implementing vaccine trials in the carceral setting:***

- ***Adopt collaborative research model that involves incarcerated persons***
- ***Implement informed consent process specific to the carceral setting***
- ***Establish oversight process to monitor adherence to clinical care standards***
- ***Ensure vaccine access and care after trial concludes***

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- ***Providing health as a human right requires evidence-based health care and [optimizing social/structural determinants of health](#)***



Poverty

Discrimination

Barriers to employment

Food insecurity

***Incarceration is a Major Social Determinant of Health for Millions of Americans and a Driver of Health Care Inequity***

Racism

Incarceration

Fewer educational opportunities

Lack of health care access

**Infectious disease transmission**

**Overdose/Death**

**Hospitalization**

**Suicide**

***The Consequences of Failed Discharge Planning from Jails/Prisons is  
Considerable both for Patients and the Public Health At-Large***

**Violence**

**Recidivism**

**Emergency care**

**Homelessness**

**Wasted health care dollars**

# Discharge Plans for Returning Citizens

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## Policy initiatives:

- Medicaid suspension versus termination
- Medicaid coverage under Section 1115 waiver
- Transition clinics
- Housing and social support services
- Family engagement during incarceration
- Peer navigators





# ***Are Physicians Morally Bound to Advance Public Policies for Patients Involved in the Criminal Legal System?***

- *“Healers are called to heal. When the fabric of communities upon which health depends is torn, then healers are called to mend it. The moral law within insists so.”*
- Berwick DM. The moral determinants of health. *JAMA*. 2020;324:225.





# Health Care During Incarceration: A Policy Position Paper From the American College of Physicians

Newton E. Kendig, Renee Butkus, Suja Matthew and David Hilden for the ACP Health and Policy Committee, *Annals of Intern Med.* 2022;175(12):1742-1745

- ***“The ACP has a long-standing commitment to improving the health of all Americans and opposes any form of discrimination in the delivery of health care services. ACP is committed to working toward fully understanding and supporting the unique needs of the incarcerated population and eliminating health disparities for these persons. In this position paper, ACP offers recommendations to policymakers and administrators to improve the health of well-being of persons incarcerated in adult correctional facilities.”***

# ***Caring and Advocating for Patients Involved in the Criminal Legal System (CLS)***

## ***What Can Physicians Do?***

- ***Learn about the unique health care needs of patients involved in the CLS***
  - ***Engage with patients involved in the CLS and advocacy groups***
  - ***Engage with professional peers to advance research in criminal justice health, Academic Consortium on Criminal Justice Health (ACCJH)***
  - ***Engage with National Commission on Correctional Health Care ([ncchc.org](http://ncchc.org))***
  - ***Engage with the American College of Correctional Physicians ([accpmed.org](http://accpmed.org))***
- ***Advocate for policies that eliminate racial disparities in sentencing and law enforcement***
- ***Advocate for policies that divert patients with SUD and SMI from jail or prison to treatment programs***
- ***Advocate for policies that facilitate Medicaid coverage for patients in the CLS***

# ***Caring and Advocating for Patients Involved in the Criminal Legal System***

## ***What Can Physicians Do?***

- ***Provide evidence-based patient care for incarcerated patients***
  - ***In-person in jails or prison or through telehealth***
  - ***During emergency department visits and inpatient care***
- ***Volunteer for programs that support patients involved in the criminal legal system***
- ***Advocate for patients under community supervision***
  - ***Engage with reentry planning for your incarcerated patients***
  - ***Engage, as appropriate, with parole/probation offices***
  - ***Adopt multi-disciplinary team approach that can address social determinants of health and address barriers to care, including medical-legal partnerships and peer mentors***