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Reimagining public defense advocacy in times of Covid-19: lessons from a task force

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ABSTRACT

In March 2020, the Contra Costa Public Defenders Association (CCPDA) established a task force to counter the injustices and dangers experienced by clients in custody during the Covid-19 pandemic. The purpose of this commentary is to describe the background and work of the task force, discuss the lessons learned and finally, to identify opportunities for reshaping the criminal justice landscape. In response to the humanitarian crisis in jail, the task force fought for systematic reform, including decarceration. However, while faced with increasingly divergent challenges arising from the pandemic, the task force became overextended, reverting its focus onto membership. The task force's main lesson is that alliances with other organizations are essential to propel political and legislative change. The Covid-19 task force provided a platform for CCPDA to publicly protest the treatment of incarcerated people, while also providing an opportunity to rethink its role as a political organization. Moving forward, public defenders can, in collaboration with other organizations, play an essential role in criminal justice reform. To prevent future deaths of people in custody during this and future pandemics, we must find alternatives to the current correctional system.

KEYWORDS

Covid-19; jails; labor union; public defenders; task force.

Introduction

The Covid-19 pandemic has unveiled enduring social, economic, racial, and health inequities in the United States, where few have suffered more than the carceral population. Incarcerated people often lack access to quality healthcare (Wilper et al., 2009) and hygiene care items, such as soap, while other protective methods like alcohol-based hand sanitizers are considered contraband. They also reside in overcrowded jails, which prohibits social distancing. The incarcerated populace is heavily overrepresented by Black and Brown men, and geriatric men are among the fastest-growing demographics; risk-groups that have been hit hard by the pandemic (Laurencin & McClinton, 2020). In concurrence with unsanitary and cramped living conditions, high-risk groups create the perfect storm for Covid-19 outbreaks to erupt. The Covid-19 crisis at San

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Quentin State Prison highlights the fear of incarcerated people now facing the possibility of severe illness and death.

The conditions in United States jails and prisons have, by and large, been driven by agencies and interest groups, which have dramatically transformed the penal field. Prison officers' unions have, for example, been successful in facilitating the politicization of imprisonment (Page, 2013). Although gaining traction in the last decade, actors, including public defenders, challenging systemic inequities in the criminal justice system have faced more difficulties in winning political support (Buskey, 2007). Although fighting social justice is one of the motivations for public defenders to remain on their job (Bačák, Lageson, & Powell, 2020), understaffed and underfunded public defender's offices have limited ability to engage in political advocacy. They also represent marginalized communities, and without the power of wealth, there is little prosperity in moving criminal justice reform (Taylor-Thompson, 1999).

The Covid-19 pandemic has created an opportunity for public defenders to rethink their role as political advocates. For instance, the National Organization for Public Defence (NAPD, 2020) has created a public Covid-19 resource page on the national level. A local level example is the Contra Costa Public Defenders Association (CCPDA) task force in California, which was established in March of 2020 to tackle injustices facing incarcerated clients. The purpose of this commentary is to describe the background and work of the CCPDA task force, discuss the lessons learned and finally, to identify opportunities for reshaping the criminal justice landscape.

Background and work of the task force

In mid-March of 2020, courthouses across California shut down in an attempt to curb the spread of Covid-19. As statewide orders (Judicial Council of California, 2020) suspended criminal trials and allowed for delays in court proceedings, clients lost their rights to speedy arraignment and trial. Rather than arraignments taking place within 48 hours, some people were held in custody for up to a week awaiting charges and bail information. The jail also instituted mandatory quarantines resulting in people being held for more than two weeks without a courtroom appearance. The delays trapped clients in unsanitary and overfilled jails in which the spread of Covid-19 could thrive. The wait further impacted the local community, as some clients faced job losses and evictions while waiting to be released.

Despite the state government's push for face masks and hand sanitizer usage, Contra Costa County jails handed out only one bar of soap and one reusable mask per incarcerated person. The jails also continued double-bunking people, with little ability to socially distance. While some clients were more likely to contract the virus, others were more vulnerable because of the lockdown procedures. Incarcerated people were refused family visits, and phone calls were decreased to two five-minute calls daily, which exacerbated the physical and mental well-being of socially isolated people who also lived in fear of contracting the virus. Subsequently, public defenders were on the phone, sometimes late into the night, acting as lifelines between incarcerated clients and their loved ones.

As a response to the challenges related to Covid-19 in jails, the CCPDA quickly created a task force. The task force aimed to (1) propel systemic reform related to bail, decarceration and jail conditions and (2) ensure member and client safety during the

pandemic. The task force divided the work into the following areas: social media, data analysis and external alliance-building. The social media campaigns raised emergency bail funds and urged juvenile hall closure by highlighting the impact on children's mental health and jail conditions. Other task force members compared Sheriffs' booking data with public defender clients lists and created spreadsheets to identify groups in urgent need of release, such as elderly and medically vulnerable people, people held on minor non-violent offenses, and those with a release date within 90 days. Public defenders then used the information to negotiate plea deals and early release. The task force also built alliances with the Contra Costa County Office of the Public Defender's management team, the Sheriff's department, the District Attorney's Office (DA), and Contra Costa County Labor Relations Unit. Through negotiations, public defenders requested in-person visits, telephone installation, and increased client-family contact at jail. While public defenders were granted in-person visits, those meetings took place while separated by plexiglass with ventilation holes. Consequently, advocates and clients yelled, sometimes pulling down masks and leaning into the ventilation holes to be heard, potentially increasing the risk of Covid-19 spread. The plexiglassed rooms also left attorneys and clients concerned about being overheard discussing sensitive case matters, which prompted the task force to request installation of telephones in the visiting room. The task force also urged increased family contact and socially distanced visits with case experts. Subsequently, tablets were purchased for incarcerated people to have virtual meetings with experts, family and other loved ones. While the use of tablets may seem optimistic, families without access to smart technology continue to receive only two short daily telephone calls, revealing how impoverished people continue to be hit the hardest during the pandemic. Finally, the task force created a Legal Observer Unit where members appeared as neutral observers of law enforcement at demonstrations facilitated by local grassroots organizations. The observers documented law enforcement conduct and communicated what they experienced with the organizers. The aim was to hold law enforcement accountable and build trust with local activists who may be suspicious of public defenders as enforcers of an unjust system.

Lessons from the task force

When CCPDA created the task force in March 2020, regular public defender work had ceased, creating a space to explore political advocacy and taking on new challenges. As Contra Costa County courts reopened in May, with some proceedings taking place virtually, public defenders faced a case backlog while also being assigned new cases. New concerns for individual safety and questions about how masks, virtual court and social distancing would impact the judicial process also arose. Hence, the CCPDA task force was met with a litany of unexpected challenges, pulling it in many different directions. As a result, task force members shifted focus from systematic reform to case work.

Similar to previous research (eg, Buskey, 2007), the main lesson from the task force is that alliances with other organizations are essential to driving political and legislative change. Page (2013) has, for instance, shown that the success of prison officer unions flowed from its partnership with punitive crime victims' groups. The CCPDA task force worked on alliance-building with other government agencies but collaborated mainly with non-governmental grassroots organizations on legal observation at local

demonstrations starting in July of 2020. Had the task force connected with grassroots organizations sooner, more lasting reform could have been achieved. As an extension of CCPDA, the task force found it challenging to achieve systematic reform given its mandate to provide services to its members first. While the Public Defender's Office churns within the bureaucratic system that feeds the DA's office and the Sheriff's Department, it is reliant on and obligated to both county legislation, county budget and local rules. As the CCPDA is closely tied to the Public Defender's Office, it is affected by similar restrictions. Like most governmental agencies, budget cut fears due to economic downturns are substantial; thus, the CCPDA must focus on membership employment and safety first. The union could also face retaliation from the public, media and local government for engaging in matters outside its mandate, which may impact an already vulnerable Public Defender's budget. By building alliances with other grassroots organizations, a labor bargaining unit's limitation can be lifted to afford a discussion on alternatives to current carceral politics while also pursuing and lobbying for more radical policy reforms.

While some incremental reforms were implemented during the pandemic, such as reduced bail and early release, those were temporary measurements stemming from the need of decarceration during the pandemic. The partnership between CCPDA and Contra Costa County governmental agencies has mostly stopped, and few, if any, clients are receiving reduced bail and early release. As such, none of the pandemic improvements will have a lasting effect on the lives of incarcerated people.

The impact of the changes taking place in courts and jails during the Covid-19 pandemic are yet unknown and will be studied in the years to come. For example, how do virtual courts impact the privacy, report-building and fair and equal protection of clients? Will jail phones replace contact visits that require meetings behind plexiglass or virtual visits quoting public health concerns? These questions are difficult to answer while we are still battling the pandemic.

Opportunities for reshaping the criminal justice landscape

The Covid-19 pandemic provided CCPDA with a platform to expose and critique the inhumane treatment of incarcerated people, as well as the government's unwillingness to protect them. While the government put in place regulations of social distancing, increased sanitation and virtual options for other members of society, it refused the mass release of people from correctional institutions. By suspending the rights of the incarcerated during a public health crisis, we underscore the class differentiation in society in which poor and marginalized clients continue to face harm at a higher rate. To prevent future pandemic-related deaths, we must find alternatives to the current carceral system. While the long-term consequences of Covid-19 are unknowable, we can with certainty say that current policies present a substantial risk to incarcerated people, which makes it difficult to flatten the curve for everyone.

The pandemic also brought public defenders an opportunity to reimagine their roles as political advocates. While working more holistically and approaching broader issues of decarceration in collaboration with other organizations, Contra Costa County temporarily experienced changes including decreased in-custody bail and early release considerations. Moving forward, public defenders can, in collaboration with other organizations

play an essential role in criminal justice reform. By highlighting client experiences, and underlining the deficits in the U.S. penal system, public defenders can bridge policy and reality. Ultimately, hearing the voices of those impacted by incarceration may sway the public's and legislators' opinions on correctional policy.

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