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**Data, Deference, and Non-
Disclosure: Shedding Light on
Louisiana's Deaths Behind Bars
from 2015-2019**

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**DATA, DEFERENCE, AND NON-DISCLOSURE:
SHEDDING LIGHT ON LOUISIANA’S DEATHS BEHIND BARS FROM 2015-2019**

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I. INTRODUCTION

Incarceration and the conditions within jails, prisons, and youth detention centers, are the least transparent aspect of the criminal legal system.¹ This lack of transparency serves to hide and obscure the experiences of people forcibly confined in these spaces; people who are blamed for society's ills and therefore deemed less worthy of protection and rights.² The disproportionate incarceration rates of Black, Indigenous, and Latino communities,³ the harsh and extended sentences for low-level property and drug crimes,⁴ the volatile and often unconstitutional conditions inside carceral facilities,⁵ and the continued rate of violent crimes during the most heightened season of mass incarceration⁶ undermine claims that the criminal legal system produces fair and impartial justice.⁷

Carceral spaces are also historically associated with death. Prison staff, not judges, jury members, or prosecutors, administer the actual execution of people sentenced to death.⁸ Even for those not sentenced to execution, incarceration is still deadly. Interactions with the carceral system can increase a person's risk of premature death.⁹ Public health scholars have documented higher rates of infectious diseases, chronic medical conditions, substance use, and mental health disorders for people in prisons compared to the non-incarcerated population.¹⁰ Yet, these same carceral spaces, at least in theory, should be safer and healthier environments, due to the unique authority government actors possess to protect against certain types of harms and maintain a secure setting free of weapons and substances that plague some free communities.

¹ See generally, Andrea C. Armstrong, *No Prisoner Left Behind: Enhancing Public Transparency of Penal Institutions*, 25 STAN. L. & POL'Y REV. 435 (2014).

² For a discussion about pacification as a strategy for blaming vulnerable populations for societal ills see *Criminalization of Immigration: Contexts and Consequences*, chapter 2 "The Problematization of Immigration as a Pacification Strategy" by Michelle Sanchez, Rich Furman & Alissa R. Ackerman.

³ Avlana K. Eisenberg, *Incarceration Incentives in the Decarceration Era*, 69 VAND. L. REV. 71, 80 – 81 (2016).

⁴ Mugami Jouet, *Mass Incarceration Paradigm Shift?: Convergence in an Age of Divergence*, 109 J. CRIM. L. & CRIMINOLOGY 703, 716 (2019) (discussing the popular "three-strikes law" that mandates life sentences for the third occasion that someone is convicted of a non-violent, low level offense such as stealing less than \$200.); Earl Smith, Angela J. Hattery, *Incarceration: A Tool for Racial Segregation and Labor Exploitation*, 15 RACE, GENDER & CLASS, 79, 91 (2008) ("We argue that the drug laws that require the long-term incarceration of non-violent, mostly African American men, are in place at least in part to ensure a pool of labor that can be "cordoned off" and then exploited: their surplus value extracted by multinational corporations and private prison companies.").

⁵ Andrea Craig Armstrong, *The Missing Link: Jail and Prison Conditions in Criminal Justice Reform*, 80 LA. REV. 1, 16 (2019).

⁶ Danielle Sered, *Until We Reckon: Violence, Mass Incarceration, and a Road to Repair*, 7 N.Y. PRESS (2019).

⁷ See Edward Rubin, *Just Say No to Retribution*, 7 BUFF. CRIM. L. REV. 17, 67-68 (2003); Danielle Sered, *Until We Reckon: Violence, Mass Incarceration, and a Road to Repair*, 3 (2019).

⁸ See S. Frank Thompson, *I Know What It's Like to Carry Out Executions*, THE ATLANTIC (Dec. 3, 2019), <https://www.theatlantic.com/ideas/archive/2019/12/federal-executions-trauma/602785/>.

⁹ As local jail populations increase, so do the death rates attributed to infectious disease, chronic lower respiratory disease, drug use, and suicide. Sandhya Kajeepeta et al., *Association Between County Jail Incarceration and Cause-Specific County Mortality in the USA, 1987–2017: A Retrospective, Longitudinal Study*, LANCET PUB. HEALTH 240, 247 (Feb. 2021), <https://www.thelancet.com/action/showPdf?pii=S2468-2667%2820%2930283-8>.

¹⁰ Christopher Wildeman & Emily A Wang, *Mass Incarceration, Public Health, and Widening Inequality in the USA*, LANCET 1464, 1467 (Apr. 2017), https://www.hivlawandpolicy.org/sites/default/files/Wildeman_Mass%20incarceration%2C%20public%20health%2C%20and%20widening%20inequality%20in%20the%20United%20States.pdf.

This Article presents the first in-depth study of carceral deaths in Louisiana.¹¹ The data and analysis focus on deaths that occurred in jails, prisons, and youth detention centers. There are important differences, and similarities, among these different types of institutions. Nationally, jails, prisons, and youth detention centers typically hold different populations, though in Louisiana, this distinction is less clear. In general, jails confine three categories of people: people accused of a crime, but who are denied or cannot afford to post bail; people who have been convicted of misdemeanor crimes with sentences of one year or less; and people who are accused of violating judicially set conditions of their release through probation or parole after a conviction. In contrast, prisons typically only hold people who are serving a sentence for a felony crime after their conviction. In Louisiana, however, approximately 50% of people convicted of felony crimes serve their sentence in a local jail, instead of a state operated prison.¹² Youth detention centers include those operated by the state for youth convicted of crimes and those operated by local authorities for youth accused, but not yet adjudicated for a crime, as well as those serving sentences. These institutions also differ in the types of services and care provided, based on the general population they serve. Jails hold people for shorter amounts of time and tend to offer fewer programming and educational opportunities than prisons, which are designed for longer-term incarceration. Similarly, jails may not provide certain types of long-term medical care, such as for chronic conditions such as kidney disease, while prisons often contain significant populations of people requiring these types of medical services. Regardless of the category of population housed, all of these carceral spaces also benefit from extended judicial deference for their policies and practices.

All jails, prisons, and youth detention centers are also obligated under the U.S. Constitution to provide the health and safety of the people remanded to their respective institutions. The legal standards governing violation of these obligations may differ, however, depending on the type of institution. In general, the Due Process Clause of the Fourteenth Amendment governs conditions for people held pretrial¹³ and the Eighth Amendment’s prohibition of “cruel and unusual punishment” applies to people held pursuant to a conviction.¹⁴ For youth held in detention centers, a majority of circuit courts have held that the Due Process Clause of the Fourteenth Amendment is the appropriate legal standard.¹⁵

Despite these differences, all of these institutions are designed to be secure facilities. Staff and visitors are subject to searches to prevent the introduction of contraband, such as drugs, weapons, and cell phones, to the facility. People who work in these facilities and have contact with incarcerated populations receive training on security and safety as a condition of their employment. Movement within the facility is usually tightly controlled and often requires passage through additional security doors within the facility itself. Areas are patrolled by security

¹¹ Data analyzed in this report are also presented visually in the policy report *Louisiana Deaths Behind Bars 2015-2019* (June 2021), <https://www.incarcerationtransparency.org/wp-content/uploads/2021/06/LA-Death-Behind-Bars-Report-Final-June-2021.pdf>. The dataset used for this analysis is also available for download at:

https://www.incarcerationtransparency.org/?page_id=3837. All statistics on deaths in Louisiana prisons, jails, and detention centers from 2015-2019 in this report are based on original research and analysis based on this dataset.

¹² La. Dep’t of Pub. Saf. & Corr., Briefing Book, 19 (July 2021), <https://s32082.pcdn.co/wp-content/uploads/2021/10/0m-Full-Briefing-Book.pdf>.

¹³ *Bell v. Wolfish*, 441 U.S. 520 (1979) (applying Fourteenth Amendment).

¹⁴ *Estelle v. Gamble*, 429 U.S. 97 (1976) (applying Eighth Amendment).

¹⁵ Rudy Estrada & Jody Marksamer, *The Legal Rights of Young People in State Custody*, 5, 13 n. 28 (June 2006).

staff and often guards are assigned to patrol specific “beats,” or areas of the facility. In these highly-controlled and regulated environments, deaths should be the exception, and not the norm. Thus, when deaths do occur, they deserve attention and analysis.

When a person dies behind bars, their family may have questions, including how and why their loved one died. As a society that collectively remanded their loved one to a jail, prison, or youth detention center, we owe those families an answer. But transparency and accountability can also serve other important purposes. Internal facility analysis may reveal inadequate policies or practices and may prevent future deaths. Externally, the transparency of the facility’s actions and their review may enhance the legitimacy of the institution as a whole, as well as provide for broader accountability to family members and tax-paying residents. Part I of this Article connects judicial deference for carceral administrators to the deaths of incarcerated people. Part II describes recent efforts by law students at Loyola University New Orleans College of Law to collect data about deaths in custody across Louisiana. Further, an initial review of the data reveals 786 known deaths in prisons, jails, and youth detention centers throughout Louisiana from 2015-2019. This Article concludes with recommendations about enhancing safety for incarcerated people and creating more transparent reporting mechanisms.

A. Legal and Policy Deference to Carceral Administrators

Courts have gone on a winding journey to determine what level of deference the judiciary should give to carceral officials’ actions. On the one hand, judges assume that carceral staff, as representatives of government authority, are committed to respecting the constitutional rights of incarcerated people.¹⁶ On the other hand, judges also recognize that “judicial intervention is indispensable if constitutional dictates are going to be observed in our nation’s prisons.”¹⁷ From this point of view, carceral facilities are unruly places that must be monitored in order to ensure constitutional mandates are protected behind carceral walls. However, over time, the Supreme Court has concluded that judicial review of carceral actors should not be too exacting and that a rational basis standard appropriately recognizes the expertise of carceral administrators.

Carceral officials have unique power and control over nearly every aspect of an incarcerated person’s life and death. Officials control when people eat, who they can talk to, when they sleep, what they wear, and so much more.¹⁸ Despite this unique authority over individuals, courts grant officials significant leeway by relying on a high standard of deference when reviewing carceral officials’ actions. “[F]ar from achieving a balance between appropriate deference and appropriate constitutional enforcement, the Court’s prisoners’ rights case law seems instead to be a jurisprudence of evasion, justified by talismanic reference to the need to defer.”¹⁹

¹⁶ Melvin Guttermann, *Prison Objectives and Human Dignity: Reaching a Mutual Accommodation*, 1992 B.Y.U. L. REV. 857, 904 (1992).

¹⁷ *Id.* at 903 (citing *Rhodes v. Chapman*, 452 U.S. 337, 354 (1981) (Brennan, J., concurring in the judgment)).

¹⁸ See generally, *La. Dept. of Public Safety and Corrections Basic Jail Guidelines* (April 2019).

<https://www.incarcerationtransparency.org/wp-content/uploads/2021/10/Basic-Jail-Guidelines-as-of-April-2019.pdf>

¹⁹ Sharon Dolovich, *Forms of Deference in Prison Law*, FED. SENT’G REP., Vol. 24, No. 4, 245, 249 (2012).

In modern judicial doctrine, courts began deferring to carceral officials when the Supreme Court decided *Turner v. Safley* in 1987. In *Turner*, the Supreme Court lowered the standard it used to analyze prison rules from intermediate scrutiny²⁰ to rational basis.²¹ *Turner* concerned a challenge by an incarcerated person to a prison policy that prohibited him from sending certain mail to people incarcerated in other facilities, as well as a policy that restricted marriage by an incarcerated person.²² The Court rejected applying a more exacting strict scrutiny standard because it would “seriously hamper [carceral officials’] ability to anticipate security problems and to adopt innovative solutions to the tractable problems of prison administration.”²³ In lieu of intermediate scrutiny, the Court outlined a lower rational basis standard for analyzing constitutional challenges to prison rules: a carceral regulation is reasonable when (1) it is rationally related to a legitimate government interest; (2) no “alternative means of exercising the right” exists; (3) the accommodation of the right will have a limited impact on guards, inmates, and “prison resources generally;” and (4) there are no reasonable alternatives to the regulation.²⁴ With its new four-part test, the Supreme Court translated carceral official deference into a rational basis test.²⁵

However, *Turner*’s holding was not uncontested. Justice Stevens, joined by Justices Brennan, Marshall, and Blackmun, concurred in part and dissented in part, reminding us that “if the standard can be satisfied by nothing more than a ‘logical connection’ between the regulation and any legitimate penological concern . . . it is virtually meaningless.”²⁶ Stevens recognized that the prison officials actually had little expertise to justify the ban on communication between incarcerated people across facilities.²⁷ In fact, when an administrator of the prison system testified that he was, “certain” prisoners would communicate about overthrowing the prison, he later had to admit that he was merely speculating about the content of mail between incarcerated people.²⁸

Later in *Thornburgh v. Abbott*, the Supreme Court reaffirmed the *Turner* reasonableness standard as the appropriate deference with which to review carceral officials’ actions.²⁹ Applying the *Turner* test, the Court determined that the federal Bureau of Prisons provided “facially valid”³⁰ reasons for its rejection of certain outside publications within the prison upon a finding that the material threatened the security of the facility.³¹ Fearing arbitrariness in prison

²⁰ *Procunier v. Martinez*, 416 U.S. 396, 400, 409-09 (1974) (applying an intermediate scrutiny test to prison rules surrounding mail coming into and leaving the prison, relying on free people’s First Amendment Right to free speech to avoid the issue of whether incarcerated people on their own hold robust freedom of speech guarantees).

²¹ Jennifer A. Manna, *The Proper Approach to Prison Mail Regulations: Standards of Review*, 24 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 209, 215 (1998) (citing *Turner v. Safley*, 482 U.S. 78 (1987)).

²² *Turner v. Safley*, 482 U.S. 78, 81-82 (1987). The court upheld the restrictions on correspondence but found the marriage policy to be overbroad. *Turner v. Safley*, 482 U.S. 100-01 (1987).

²³ *Id.* at 89.

²⁴ *Id.* at 89-91.

²⁵ Sharon Dolovich, *Forms of Deference in Prison Law*, FED. SENT’G REP., VOL. 24, NO. 4, 245, 246 (2012).

²⁶ *Turner v. Safley*, 482 U.S. 78, 100 (1987) (J. Stevens, concurring in part, dissenting in part).

²⁷ Stevens’ suspicion that carceral officials lack expertise can be seen in our research outlined below. *Infra* I.B.3

²⁸ *Id.* at 109.

²⁹ *Thornburgh v. Abbott*, 490 U.S. 401, 419 (1989).

³⁰ *Id.*

³¹ *Id.* at 403.

officials' findings, Stevens again dissented, noting that the *Turner* standard is "manipulable,"³² and gives carceral officials too much leeway to relegate prisoners' and others' rights.³³ Though the majority opinion claims the *Turner* standard is "not toothless,"³⁴ the reasonableness standard introduced in *Turner* has shifted the balance between fundamental rights for incarcerated people and carceral discretion to maintain security and order in favor of carceral administrators.

More recently, in *Beard v. Banks*, the Supreme Court considered a challenge to a prison rule that restricted certain prisoner's access to newspapers, books, and other reading material when in a segregation unit,³⁵ more commonly known as solitary confinement.³⁶ The incarcerated plaintiff argued that the rule would not survive the rational basis test put forth in *Turner* because it "[bore] no reasonable relation to any legitimate penological objective."³⁷ The prison defended its restrictions as a way to incentivize good behavior: prisoners could earn access to the luxuries such as newspapers if they behaved.³⁸ The court granted the defendant prison official's motion for summary judgment, dismissing the case, and rejected the Court of Appeal's position that the prison official needed to prove that his "deprivation theory of behavior modification had any basis in real human psychology, or had proven effective."³⁹ Instead, the Supreme Court concluded that the appellate court's opinion gave "too little deference to the judgment of prison officials about such matters."⁴⁰ Even at the summary judgment stage, when a court is meant to view the facts in the light most favorable to the non-moving party,⁴¹ the lower level of scrutiny allowed the Supreme Court to ignore the prison official's lack of actual evidence to instead focus on his penological interests.

When the judiciary doctrinally defers to carceral officials, it may actually be deferring to sometimes harried and subjective decision-making. Lower-level prison staff may be under-trained to address the complexity of issues that arise in carceral spaces.⁴² Shifts may be short-staffed, due to difficulties in recruiting, training, and retaining entry level staff.⁴³ The decisions made by individual guards may not be subject to internal oversight or review.⁴⁴ In some cases,

³² *Id.* at 427 (Stevens, dissenting).

³³ Stevens was also concerned about the First Amendment rights of the publishers of the rejected material and that of the free people sending mail into the facility. *Id.* at 430 (Stevens, dissenting).

³⁴ *Id.* at 414.

³⁵ *Beard v. Banks*, 548 U.S. 521, 527 (2006).

³⁶ Hope Metcalf et al., *Administrative Segregation, Degrees of Isolation, and Incarceration: A National Overview of State and Federal Correctional Policies*, 2-3, (June 2013), [https://law.yale.edu/sites/default/files/area/center/liman/document/Liman_overview_segregation_June_25_2013_TO_POST_FINAL\(1\).pdf](https://law.yale.edu/sites/default/files/area/center/liman/document/Liman_overview_segregation_June_25_2013_TO_POST_FINAL(1).pdf) (providing overview of nomenclature).

³⁷ *Banks*, 548 U.S. at 527.

³⁸ *Id.* at 530.

³⁹ *Id.* at 535.

⁴⁰ *Id.*

⁴¹ *Id.* at 555 (Ginsberg, dissenting).

⁴² Melvin Guttermann, *Prison Objectives and Human Dignity: Reaching a Mutual Accommodation*, 1992 B.Y.U. L. REV. 857, 900 (1992) ("Prison administrators relinquish supervisory control to guards who deal with inmates intimately on a daily basis. As a result, subordinate custodial personnel, often undereducated and undertrained, exercise independent and sometimes capricious discretion in meting out severe disciplinary sanctions.").

⁴³ *Id.*

⁴⁴ *Id.* (quoting Philip J. Hirschkop & Michael A. Millemann, *The Unconstitutionality of Prison Life*, 55 VA. L. REV. 795, 811-12 (1969)).

the judiciary may be deferring to staff at facilities that otherwise fail to promote transparency⁴⁵ and accountability⁴⁶ independent of judicial oversight.

Even when deaths behind bars are public knowledge, there are additional barriers for accountability beyond judicial deference to carceral officials. In Colorado, for example, advocates have criticized the delays in prosecutorial charges for homicides behind bars, even in cases in which video surveillance footage of the homicide exists.⁴⁷ Even when a court is actively involved, litigation to address the causes of death can be complex and may take years to resolve.⁴⁸ In 2015, a class action lawsuit was brought against Louisiana State Penitentiary (“LSP”) documenting years of medical neglect that lead to preventable deaths.⁴⁹ In 2021, the District Court ruled that LSP’s medical care violated the Eighth Amendment because the medical care was so egregious that it constituted cruel and unusual punishment.⁵⁰

For deaths behind bars that are preventable, these daily decisions by carceral staff and administrators, and the deference accorded to those decisions, matter. The conditions in which deaths occur (i.e. the access to and availability of health care, solitary confinement, housing and work assignments) are accorded significant judicial deference, even when these conditions may contribute to a preventable death. By reducing judicial oversight over decisions by carceral administrators, which in some cases may be linked to deaths of incarcerated people, we also reduce opportunities for reform and improvement of death outcomes behind bars.

B. Deaths As Signifiers

When someone who has not been sentenced to death dies in government custody, it represents a failure in our system of incarceration. In addition to that individual’s family and community losing someone they loved, families often have little recourse and are usually provided with very little information about how their loved one died. More broadly, communities who seek information about those who have died in jails and prisons face a number of hurdles in obtaining it. Often, the information about people who died in custody is only reported to the federal government and used for statistical purposes. Academic attempts to obtain a deeper examination and understanding of why and how people die in custody have faced a number of hurdles, including a lack of cohesive and sustained federal reporting, a lack of accountability for

⁴⁵ Only 89.7% of jails in Louisiana submitted data to the BJS for its 2019 census of jails. New Jersey, Arkansas, Mississippi, New Mexico were the only states with worse response rates. See, *U.S. Dep’t of Justice, Bur. of Justice Statistics, Census of Jails*, 49 (2005-2019), <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cj0519st.pdf>.

⁴⁶ Dr. Raman Singh, Chief Medical and Mental Health Director of Louisiana Department of Corrections recommended that staff not “dig too deep” into the deaths of incarcerated people in order to avoid liability. Coupled with the inadequately investigated death reports presented, the district court judge found credible an expert witness’s testimony that staff had “misrepresented the facts of the patient’s death.” *Lewis v. Cain*, No. 3-15-CV-318, 2021 U.S. Dist. LEXIS 63293, *60 (Mar. 31, 2021).

⁴⁷ See Jordan Steffen, *Slow Prosecution of Prison Murders Worries Defense, Experts*, THE DENVER POST (Feb. 22, 2014), <https://www.denverpost.com/2014/02/22/slow-prosecution-of-prison-murders-worries-defense-experts/>.

⁴⁸ See e.g., *Brown v. Plata*, 563 U.S. 493, 514-517 (2011) (recounting history of litigation); *Jones v. Gusman*, 515 F. Supp. 3d 520, 526-538 (E.D. La. 2021) (recounting history of litigation).

⁴⁹ The Court discussed seven such preventable deaths, *Lewis v. Cain*, No. 3-15-CV-318, 2021 U.S. Dist. LEXIS 63293, *19, *26, *34, *36, *38, *43, *44 (March 31, 2021), and alluded to others. *Id.* at *112.

⁵⁰ *Id.* at *102.

agencies who fail to report, and, in practice, opposition from state and local law enforcement agencies to release the information under public records laws.

Within this context of judicial deference and carceral secrecy, deaths behind bars can be a key indicator to better understand and address conditions of confinement in jails, prisons, and other detention settings.⁵¹ As an initial matter, people who die behind bars were not judicially sentenced to death, thus the majority of deaths behind bars are not an expected or predictable consequence of their criminal sentence.⁵² This is especially true for people who died in jails before their guilt or innocence was determined by a court. Approximately 20% of deaths of people in jails and state and federal prisons nationally were of people detained pretrial from 2001-2018.⁵³ In addition, deaths behind bars are particularly noteworthy because mortality rates for incarcerated people are generally lower than the general population.⁵⁴ Moreover, incarcerated people are highly dependent on the carceral facility to provide for their basic needs, as incarcerated people are not free to access the services or resources they require on their own. Thus, when deaths do occur behind bars, it is critical to understand how these deaths occurred and their implications for the broader obligation of carceral spaces to maintain a humane and safe custodial environment.⁵⁵

Mortality rates for incarcerated people are generally lower than the general population for two reasons. First, the confinement of incarcerated people limits their exposure to certain causes of death in the free world. Accidental unintentional injuries were the third highest cause of the death in the U.S. in 2019.⁵⁶ Within this category, two of the three most prevalent causes of death—accidental poisoning, motor-vehicle traffic, and falls⁵⁷—are less likely for incarcerated populations. Carceral spaces, by definition, are highly controlled areas that regulate the

⁵¹ See Margaret Noonan & Scott Ginder, *Understanding Mortality in State Prison: Do Male Prisoners Have an Elevated Risk of Death?*, 16 JUST., RSCH, & POL'Y 65, 66 (2016).

⁵² People sentenced to life without parole are not technically sentenced to death, but their sentence is also in effect, a death sentence. See generally, Judith Lichtenberg, *Against Life Without Parole*, 11 WASH. U. J. REV. 39 (2018).

⁵³ According to the Bureau of Justice Statistics, from 2001 to 2018, 86,173 people died nationwide in jails and federal and state prisons, of which 18,299 died in local jails. National death data was compiled from the following three resources: see E. Ann Carson, *Mortality in State and Federal Prisons, 2001-2018 - Statistical Tables*, 1 (Apr. 2021), <https://bjs.ojp.gov/content/pub/pdf/msfp0118st.pdf>, at 1 (reporting 67,874 deaths in federal and state prisons); E. Ann Carson, *Mortality in Local Jails, 2000-2018 - Statistical Tables*, 12 (Apr. 2021), <https://bjs.ojp.gov/content/pub/pdf/mlj0018st.pdf>, at 6 tbl.1 (reporting a total of 11,106 deaths from 2008–2018). For the years 2001–2007, 7,193 people died in custody in jails. Margaret Noonan, Bureau of Just. Stat., U.S. Dep't of Just., *Mortality in Local Jails 2000–2007*, 7 tbl.8 (2010), <https://bjs.ojp.gov/content/pub/pdf/mlj07.pdf>. [<https://perma.cc/8CZX-Q9R7>] (listing total number of deaths 2000–2007). Thus, the total number of deaths in jails 2001–2018 is 18,299.

⁵⁴ E. Ann Carson, U.S. Dep't of Justice, Bureau of Justice Statistics, *Mortality in State and Federal Prisons, 2001-2018 - Statistical Tables*, 2 (Apr. 2021), <https://bjs.ojp.gov/content/pub/pdf/msfp0118st.pdf>, (“State prisoners had a lower overall mortality rate (319 per 100,000) than did adult U.S. residents (419 per 100,000) in 2018 when the data were adjusted for differences in age, sex, and race or ethnicity between the two populations.”).

⁵⁵ See e.g. *Farmer*, 511 U.S. at 832 (noting the U.S. Constitution “imposes duties on these officials, who must provide humane conditions of confinement; prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must take reasonable measures to guarantee the safety of the inmates.”) (internal citations omitted).

⁵⁶ Jiaquan Xu, Sherry L. Murphy, Kenneth D. Kochanek, & Elizabeth Arias, *Deaths: Final Data for 2019*, 70 *National Vital Statistics Reports* 1, 1 (July 26, 2021), <https://www.cdc.gov/nchs/data/nvsr/nvsr70/nvsr70-08-508.pdf>.

⁵⁷ *Id.* at 43 (Table 7 indicating subcategories of accidental death).

movement and behavior of people within them.⁵⁸ For people who visit, work, or live in these secure facilities, entrance and exit from the facility is monitored and subject to search, limiting their ability to bring contraband items inside the facility.⁵⁹ Contraband is broadly defined in carceral spaces and includes items that would be legal to possess if not incarcerated. For example, contraband in Louisiana includes drugs and weapons, but also includes alcohol, cell phones, electronic equipment, unauthorized food or clothing, and money, among other items.⁶⁰ Accidental poisoning deaths, which was the leading cause of accidental unintentional injuries generally in the U.S.,⁶¹ includes deaths related to drug overdoses from legal and illegal narcotics and poisoning due to alcohol, carbon monoxide, and pesticides. All of these items would constitute contraband in most detention facilities and therefore should be unavailable to incarcerated people. Similarly, incarcerated people are less likely to be involved in motor vehicle accidents causing death. The National Safety Council estimates that over 42,000 people died in the U.S. in 2020 due to motor vehicle accidents.⁶² However, as a deliberately contained population that does not have freedom of movement, incarcerated individuals are less likely to encounter the safety hazards of road travel.

Second, as self-contained, supervised, and continuously operated facilities, assistance (medical or security) is more physically proximate than for the general population; thus, incarcerated people also may have lower mortality rates. Prisons, jails, and most detention centers operate continuously, twenty-four hours a day, seven days a week, three hundred and sixty-five days a year. These carceral facilities, particularly for larger prisons, centralize services and resources that may be far-flung or difficult to access in free communities. For example, a free person experiencing medical distress is likely geographically further away from life-saving equipment than an incarcerated person in a facility with a medical unit behind bars. Dixon Correctional Institute in Louisiana,⁶³ a state operated prison, includes a dialysis unit, but even smaller facilities, like Lincoln Parish jail contain basic life-saving equipment, such as defibrillators.⁶⁴ Similarly, a free person violently attacked is likely geographically more distant

⁵⁸ See John J. Gibbons & Nicholas de B. Katzenbach, *Confronting Confinement: A Report of The Commission on Safety and Abuse in America's Prisons*, VERA INST. FOR JUST., 445 (June 2006), <https://www.vera.org/publications/confronting-confinement>.

⁵⁹ See *Florence v. Bd. of Chosen Freeholders of Cty. of Burlington*, 566 U.S. 318, 326-329 (2012) (discussing rationale and case law on contact visits & searches of people admitted); *Walter Pavlo Corrections Officers Often Key to Contraband Introduced Into Prison*, FORBES (Sep. 30, 2021), <https://www.forbes.com/sites/walterpavlo/2021/09/30/corrections-officers-often-key-to-contraband-introduced-into-prison/?sh=4d818b41ce4a>.

⁶⁰ La. R.S. 14:402.

⁶¹ Jiaquan Xu, Sherry L. Murphy, Kenneth D. Kochanek, & Elizabeth Arias, *Deaths: Final Data for 2019*, 70 NAT'L VITAL STAT. REP. 1, 2 (July 26, 2021) <https://www.cdc.gov/nchs/data/nvsr/nvsr70/nvsr70-08-508.pdf> (noting "unintentional poisoning has been the leading mechanism of injury mortality since 2011.").

⁶² National Safety Council, *Motor Vehicle Deaths in 2020 Estimated to be Highest in 13 Years, Despite Dramatic Drops in Miles Driven* (Mar. 4, 2021), <https://www.nsc.org/newsroom/motor-vehicle-deaths-2020-estimated-to-be-highest>.

⁶³ Andrea Armstrong, Bruce Reilly, & Ashley Wennerstrom, *Study Brief: Adequacy of Healthcare Provided in Louisiana State Prisons*, 2 (May 2021), <https://www.incarcerationtransparency.org/wp-content/uploads/2021/05/Adequacy-of-Healthcare-Provided-in-Louisiana-State-Prisons.pdf>.

⁶⁴ See *Staff Report, Man Dies in Lincoln Parish Detention Center*, NEWS STAR (Sep. 9, 2016), <https://www.thenewsstar.com/story/news/local/2016/09/09/man-dies-lincoln-parish-detention-center/90143126/> (discussing use of defibrillator prior to transfer of Mr. Willie Bias to the hospital and eventual death). Notably, this

from security assistance by police than an incarcerated person from the nearest correctional officer. While there may be other barriers to accessing medical care or security assistance, such as staff training and facility policies, physical proximity would suggest that incarcerated people are at least closer to potentially life-saving assistance than non-incarcerated people.

Within these controlled spaces, where exposure to death is more limited, incarcerated people may also be uniquely vulnerable to death. First, people in prisons and jails are fully dependent on the facility for the provision of basic goods and services. Incarcerated people are not free to seek their own healthcare⁶⁵ or other goods and services beyond those offered by the facility. Thus, if the facility fails to deliver adequate services, particularly in the realm of healthcare, death may result. In addition, incarcerated populations often have significant health issues and are a uniquely vulnerable population. Scholars, policy officials, and advocates all agree that incarcerated populations often have significant medical and mental health needs, in some cases higher than non-incarcerated people. “Among people in U.S. prisons and jails, chronic conditions such as hypertension, diabetes, heart disease and asthma are two to three times more prevalent, and rates of serious mental health problems are three to four times higher as well.”⁶⁶ Suicide rates are also higher for incarcerated people compared to non-incarcerated people.⁶⁷

In Louisiana, 40% of individuals incarcerated for a conviction have experienced mental illness and 20% of the convicted population has been diagnosed with a serious mental illness.⁶⁸ For the approximately 15,000 incarcerated people housed in a state prison “in [fiscal year] 2020, roughly 6,000 people had hypertension, over 400 had heart disease, about 1,200 had been diagnosed with diabetes, roughly 1,600 had COPD, and about 300 had cancer. In terms of communicable disease, over 400 people were HIV positive, and about 1,500 had Hepatitis C.”⁶⁹ Beyond diagnoses, nationally and in Louisiana, excessive and/or mandatory sentences have contributed to an increasingly elderly prison population, who often have higher health care needs. The average age of the prison population in Louisiana in 2020 was 40.5 years old, compared to 34.9 years old in 2010.⁷⁰ And 25% of the Louisiana prison population are over 50 years old. Thus, the medical and mental health needs of people incarcerated are likely to increase in the future.

death was not provided to students seeking death records from this jail, who only received a single record for a death in 2018.

⁶⁵ See e.g. *Gamble*, 429 U.S. at 103 (noting “[a]n inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met.”).

⁶⁶ William Lee Vail et al., *Bringing it all Back Home: Understanding the Medical Difficulties Encountered by Newly Released Prisoners in New Orleans, Louisiana – A Qualitative Study, Health and Social Care in the Community*, 1, 2 (2017).

⁶⁷ For prison suicide rates, see generally Shaoling Zhong, Morwenna Senior, et al., *Risk Factors for Suicide in Prisons: A Systematic Review and Meta-Analysis*, LANCET PUB. HEALTH, 164 (Mar. 2021), <https://www.thelancet.com/action/showPdf?pii=S2468-2667%2820%2930233-4>. For jail suicide rates, see Tom Meagher & Maurice Chammah, *Why Jails Have More Suicides than Prisons*, THE MARSHALL PROJECT (Aug. 8, 2015), <https://www.themarshallproject.org/2015/08/04/why-jails-have-more-suicides-than-prisons>.

⁶⁸ Rebecca Atkinson et al., *Study Brief: Severe Mental Illness among Louisiana’s Incarcerated*, LSU HEALTH SCI. CTR. - NEW ORLEANS 2 (Mar. 2021).

⁶⁹ Armstrong, Reilly, & Wennerstrom, *supra* note 63 at 2.

⁷⁰ La. Dep’t of Safety and Corr., Briefing Book, 20 (July 2020) (listing average age at 40.5 years), La Dep’t of Safety and Corr., Annual Report 2009-2010, 12 (2010).

Deaths are also expensive for facilities. Settlements and legal judgments for preventable deaths behind bars can cost millions of dollars, in addition to the significant expenditures to defend against these wrongful death cases. In one of the largest settlements for wrongful death behind bars in California, Alameda County and Corizon Health Inc, the private health care provider, agreed to pay 8.3 million dollars for the death of Martin Harrison.⁷¹ Insurance premiums for facilities may also increase where there is evidence of prior wrongful deaths. A study of deaths in East Baton Rouge Parish Prison found that insurance premiums for that facility, in which 44 people died from 2012 to 2020, increased by 71% from 2011 to 2018.⁷²

Last, patterns in deaths behind bars may signal broader challenges in carceral conditions. For example, if suicides tend to occur in certain jail cells, such as segregation cells, this could be an indication that those cells may be less observable from the guard station in a direct observation unit. In response, facilities could increase their required patrols in those areas or arrange for people on suicide watch to be housed closer to medical personnel. Similarly, if facility administrators see a pattern of heart disease deaths at younger than average ages, this may have implications for the food and exercise allowed for incarcerated people.

C. Federal Death Data Collection

Facility-level data and detailed information about who dies in government custody is a difficult undertaking. Currently, there is no single national source for data by facility. While there is federal data collection, authorized by Congress, and analysis by state, these efforts have been dogged by non-compliance and vague definitions, providing at best, a broad overview of the causes of death. Recent changes internally by the U.S. Department of Justice (DOJ) on which bureau collects the data has also complicated data collection efforts.

In 2000, Congress passed the Death in Custody Reporting Act (DCRA) of 2000, which: required recipients of Violent Offender Incarceration/Truth-in-Sentencing Incentive grants to submit data to DOJ on the death of any person who is in the process of being arrested, en route to be incarcerated, or incarcerated at a municipal or county jail, state prison, or other local or state correctional facility (including juvenile facilities).⁷³

Although the Act technically expired in 2006,⁷⁴ the DOJ Bureau of Justice Statistics continued to collect and analyze the data. Then, in 2014, Congress passed the DCRA of 2013.⁷⁵ This law

⁷¹ Henry K. Lee, *\$8.3 Million Settlement in Death of Alameda County Inmate*, SFGATE.COM (Feb. 10, 2015), <https://www.sfgate.com/bayarea/article/8-3-million-settlement-in-death-of-Alameda-6073319.php>.

⁷² Andrea Armstrong & Shanita Farris, *Dying in East Baton Rouge Parish Prison*, 22 (2018), <https://static1.squarespace.com/static/5fe0e9cce6e50722511b03cc/t/600895d13eeffa64a65bbc53/1611175377849/Dying-in-East-Baton-Rouge-Parish-Prison-Final.pdf>.

⁷³ 42 U.S.C. 13704 (2000) (P.L. 106-297); Nathan James & Kristin Finklea, *Programs to Collect Data on Law Enforcement Activities: Overview and Issues*, CONG. RSCH SERV., 6 (Mar. 11, 2021), <https://crsreports.congress.gov/product/pdf/R/R46443>.

⁷⁴ *Id.* at 6.

⁷⁵ 42 U.S.C. 3750 & 3791 (2014) (P.L. 113-242).

requires states to submit data to DOJ regarding the death of any person who is detained, under arrest, in the process of being arrested, en route to be incarcerated, or incarcerated at a municipal or county jail, a state prison, a state-run boot camp prison, a boot camp prison that is contracted out by the state, any state or local contract facility, or any other local or state correctional facility (including juvenile facilities).⁷⁶

Federal agencies are also required to report under this law. If states do not provide the data under the DCRA, they face a 10% reduction in their funding through the Edward Byrne Memorial Justice Assistance Grant (JAG) Program. Following the DCRA's passage, the government made little progress toward implementing it. A 2018 Office of Inspector General Report found that "if implemented as planned, the state DCRA data collection will duplicate other Department efforts, which is an inefficient use of resources, creates confusion, and may yield incomplete data."⁷⁷

This inefficiency stems from how the different agencies within the Department of Justice collect death in custody data. Prior to 2020, the Bureau of Justice Statistics (BJS) collected death in custody data through its Mortality in Correctional Institution (MCI) series. However, state participation in this data collection is voluntary. BJS began the MCI data collection in 2000 in response to the passage of the DCRA of 2000, and "collects many, but not all, of the elements outlined in the DCRA reauthorization, but because MCI is collected for statistical purposes only, it cannot be used for DCRA enforcement."⁷⁸ Under the 2000 DCRP, BJS collected form CJ-9 for local jails and form CJ-10 for private or multi-jurisdictional jails for quarterly reporting.⁷⁹ Forms CJ-9A and CJ-10A are summary forms that were used for reporting at the end of each calendar year. Historically, the delay between data collection and publication of analysis averaged two years. For deaths in custody that occurred during the 2019 calendar year, BJS does not expect to publish the results until the end of 2021.⁸⁰

Separate from BJS, beginning with fiscal year 2019, the DOJ began requiring state and local law enforcement agencies to report their death in custody data quarterly to the Bureau of Justice Assistance (BJA) under the 2013 DCRA.⁸¹ BJA is a separate unit within the DOJ, which administers grants for states and localities. Those who fail to provide the quarterly information are subject to a 10% reduction in their Byrne JAG funding.⁸² However, there is no public information about which agencies have been subject to the penalty for failing to report death data. Generally, "[s]tates are responsible for establishing their own policies and procedures to

⁷⁶ James & Finklea, *supra* note 73, at 7.

⁷⁷ Michael E. Horowitz, *Review of the Department of Justice's Implementation of the Death in Custody Reporting Act of 2013*, DEPARTMENT OF JUST. OFF. OF INSPECTOR GEN. (Dec. 2018), <https://oig.justice.gov/reports/2018/e1901.pdf>.

⁷⁸ Bureau of Justice Statistics, *Mortality in Correctional Institutions (MCI) (Formerly Deaths in Custody Reporting Program (DCRP))*, <https://www.bjs.gov/index.cfm?ty=tp&tid=19> (internal citations omitted).

⁷⁹ Bureau of Justice Statistics, *Death in Custody Statistical Tables: Methodology*, <https://www.bjs.gov/content/dcrp/methodology.cfm>.

⁸⁰ E. Ann Carson, *Mortality in Correctional Institutions (MCI) (Formerly Deaths in Custody Reporting Program (DCRP))*, U.S. DEP'T OF JUST., BUREAU OF JUST. STAT., <https://bjs.ojp.gov/data-collection/mortality-correctional-institutions-mci-formerly-deaths-custody-reporting-program#methodology-0> (last visited Oct. 25, 2021).

⁸¹ James & Finklea, *supra* note 73, at 7; *see also id.* at 30, <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/jag-faqs.pdf>.

⁸² *Id.*

ensure they collect and submit complete data.”⁸³ Further, rather than individual prisons and jails reporting directly to the federal government, “[s]tate departments of corrections and local jails now report their death information on a quarterly basis to centralized state agencies, which compile and submit these data to BJA.”⁸⁴ Further, the DOJ is not required to publicly publish the state data reported to BJA—unlike the annual reports that BJS would publish annually—but the BJA data is maintained internally and “may be subject to Freedom of Information Act requests.”⁸⁵ Further complicating the reporting requirements for states, in 2018, BJS indicted it would continue to collect data through the MCI program “because it complements BJS’s overall correctional research, which includes a broader analysis of the nationwide prison population.”⁸⁶ However, in 2021, BJS informed facilities that it would be closing its online portal for data collection.⁸⁷

The data collected by BJA will ultimately be less helpful in understanding deaths behind bars in the United States. The BJA has published the data collection instrument⁸⁸ for individual deaths, though submissions will be online and facilities do not need to fill out individual forms for each death. The data collected will differ significantly from the data collected previously by BJS and in many instances, will result in less specific information on deaths in custody. First, the BJA questions do not ask for the facilities average daily population, making it difficult to calculate a facility’s mortality rate. Second, because the state collects and submits the information, the BJA data will not include facilities where there are zero deaths in a calendar year. This omission is particularly problematic, since on average, according to historic BJS data, 75-80% of jails do not have a death in a calendar year. For advocates looking to understand best practices, this omission will make it more difficult to identify those facilities with strong policies and practices that reduce the possibility of death. Third, the BJA data simply does not collect a series of data points previously collected by BJS, including: decedent offenses, trial status, mental health stays, location of deaths and incidents leading to death, medical examiner review, pre-existing conditions, and types of medical care received for illness related deaths. Fourth, the BJA data as to cause of death will be much less specific, particularly for illness-related causes of death. BJA does not disaggregate deaths due to AIDS, unlike BJS. More broadly, BJA allows facilities to identify “natural causes” as the cause of death, without requiring any additional information on the specific disease, illness, or issue actually causing death. In contrast, using the BJS data, analysts can assess prevalence and outcomes for certain illnesses, such as cancer, pneumonia, and heart or kidney disease, for incarcerated populations versus non-incarcerated populations. Considering that illness-related deaths are the leading cause of death behind bars,

⁸³James & Finklea, *supra* note 73, at 7 (citing U.S. Department of Justice, OJP, Bureau of Justice Assistance (BJA), *Death in Custody Reporting Act, Performance Measurement Tool, Frequently Asked Questions*, 2 (Feb. 2020), https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/DCRA-FAQ_508.pdf).

⁸⁴E. Ann Carson, *Suicide in Local Jails and State and Federal Prisons, 2000–2019 – Statistical Tables*, Department of Justice, Bureau of Justice Statistics, 31 (Oct. 2021), <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/sljsfp0019st.pdf>.

⁸⁵James & Finklea, *supra* note 73, at 7.

⁸⁶Horowitz, *supra* note 77, at 14.

⁸⁷U.S. Dep’t of Justice, Bur. of Justice Statistics, *Mortality in Correctional Institutions (MCI) (Formerly Deaths in Custody Reporting Program (DCRP))*, <https://bjs.ojp.gov/data-collection/mortality-correctional-institutions-mci-formerly-deaths-custody-reporting-program>.

⁸⁸*Death In Custody Reporting Act Reporting Form*, DEP’T OF JUST., BUREAU OF JUST. ASSISTANCE (Jul. 2019), https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/DCRA-Performance-Measure-Questionnaire_508.pdf.

the omission of more specific information beyond “natural causes” undermines the usefulness of the entire data series. Though this is the first year of BJA implementation, without significant changes, implementation of DCRA 2013 will result in less, instead of more, transparency on deaths behind bars.

Since 2000, the federal government has attempted to track death in custody data for statistical purposes through the DOJ. Submitting this data was largely voluntary and there was no mechanism for holding facilities accountable for failing to report their deaths in custody. In 2013, when Congress attempted to enforce the reporting of deaths in custody, it inadvertently made data reporting simultaneously more complex (by changing the forms that facilities use to report and the reporting agency) and less specific (by collecting less and more generalized data). Further this change in reporting did not go into effect for state and local governments until fiscal year 2019, leaving the 2013 DCRA an unenforceable mandate for over five years. Today, although jurisdictions are subject to a reduction in federal funding if they fail to report to the BJA, there is no evidence that the DOJ has used this enforcement mechanism. Further, reporting to the BJA is not publicly available, making it difficult for the public to hold these facilities accountable.

D. Practical Challenges in Data Collection

In practice, law students seeking to obtain records about deaths in custody in Louisiana under the Public Records Law have faced numerous challenges from state and local officials. During the Fall 2019 and Fall 2020 semesters, thirty-two Loyola Law students filed public records requests with 132 facilities, including all prisons, jails, juvenile detention centers (state and locally operated), and federal facilities within the state. During that process, 69% of facilities responded. Of the remaining facilities, students faced a number of challenges including: (1) facilities not honoring the requests, (2) facilities not maintaining formal records or having incomplete records of deaths, (3) a lack of consistent coding or categorization of death data, and (4) facilities incorrectly claiming that state or federal privacy laws preclude them from releasing the data.

First, although students were able to obtain responses from the majority of the 132 facilities that they submitted public records requests to, thirty-eight of those facilities, or 29%, did not respond despite repeated requests over two years. Most notably, none of the federal facilities have provided records to date, which were requested under federal public records law, the Freedom of Information Act. Lasalle Corrections, which is a private corporation and operates several local facilities in Louisiana, has also failed to consistently provide records. Under Louisiana Public Records Act, once a custodian receives a public records request, they are required to either provide the records, provide a basis for not making them available within five days, or provide a reasonable timeframe in which they will gather and produce the records.⁸⁹ In some cases, students educated local staff on their obligations under the Act, which then produced the requested records.

Second, alternative sources of information when facilities fail to report are not comprehensive or consistent. For example, students requesting records from Webster Parish Jail

⁸⁹ La. R.S. § 44:32-35.

did not receive a response to their requests. However, the state agency, Louisiana Department of Public Safety and Corrections, provided a 2017 death record for an individual legally under DPSC custody, but who was housed at Webster Parish Jail.⁹⁰ Additionally, students found two news articles that reported on deaths that occurred at the facility in 2018 and 2019.⁹¹ While these news articles serve as proof that individuals died while incarcerated, they do not provide any official documentation from the facility. Reliance on news sources also means that for some records, we have incomplete data entries since not all of the data elements consistently appear in each news report. News reports are simply not a reliable alternative to formal government reporting. Media reports do not have comparable specificity on the causes or circumstances of death and may not be comprehensive of all deaths occurring behind bars in a particular facility.

Third, even when facilities do report their data to BJS, they do not have uniform functional definitions for cause of death or other information reported, creating inconsistencies or differences in the data between facilities. Thus, while we can analyze the data as produced by facilities, we must also be clear that the data may contain errors or even bias in the categorization of deaths. For example, an incarcerated person who overdosed and had a seizure then ultimately died, may be reported as “Drugs” in one parish or as “Medical” in another. Neither one is technically incorrect, but the coding inconsistency can impact data analysis.

Last, some facilities have cited state or federal privacy laws, or the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) privacy rules, in its rationale for failing to provide death in custody data via a public records request. While HIPAA does protect incarcerated individuals’ protected health information for up to fifty-years after their deaths,⁹² there are exceptions to the HIPAA rules that would allow disclosure of this information.⁹³ For example, carceral facilities may disclose protected health information for research purposes when, among other things, the researcher affirms that the information will be used for the research.⁹⁴ Additionally, the protected health information of decedents may be revealed to researchers when the disclosure is necessary for research purposes.⁹⁵ Such research includes

⁹⁰ <https://www.incarcerationtransparency.org/wp-content/uploads/2021/03/2017-Webster-Parish-Jail-Webster-CJ9s.pdf>

⁹¹ <https://www.incarcerationtransparency.org/wp-content/uploads/2021/03/2018-Webster-Parish-Jail-Webster-Articles.pdf>; <https://www.incarcerationtransparency.org/wp-content/uploads/2021/03/2019-Webster-Parish-Jail-Webster-Articles.pdf>

⁹² <https://www.hhs.gov/hipaa/for-professionals/faq/1500/do-hipaa-protections-apply-to-the-health-information-of-individuals/index.html>

⁹³ 45 CFR § 164.512(i)(1)(iii) (“Release of medical reports and information to a routine user requires a written request stating the reason for the information; however, the inmate’s consent is not required. Routine uses for physical and mental health records have been published in the Federal Register, 67 FR 11712 (5/14/02).”); Charles E. Samuels, Jr., *Program Statement: Health Information Management*, DEP’T OF JUST., FED. BUREAU OF PRISONS, 5 (Mar, 2, 2015) https://www.bop.gov/policy/progstat/6090_004.pdf.

⁹⁴ 45 CFR 164.512(i)(1)(ii) (“(ii) Reviews preparatory to research. The covered entity obtains from the researcher representations that: (A) Use or disclosure is sought solely to review protected health information as necessary to prepare a research protocol or for similar purposes preparatory to research; (B) No protected health information is to be removed from the covered entity by the researcher in the course of the review; and (C) The protected health information for which use or access is sought is necessary for the research purposes.”).

⁹⁵ 45 CFR 164.512(i)(1)(iii) (“(iii) Research on decedent’s information. The covered entity obtains from the researcher: (A) Representation that the use or disclosure sought is solely for research on the protected health information of decedents; (B) Documentation, at the request of the covered entity, of the death of such individuals;

research “designed to develop or contribute to generalizable knowledge.”⁹⁶ Furthermore, researchers do not need to obtain pre-approval before asking for personal health information when conducting secondary research sourced for a separate primary purpose.⁹⁷ While there are important ethical questions about the release of cause of death information for specific individuals, facility administrators, who may also be held legally liable for preventable deaths, may have a conflict of interest in making these determinations.

Despite these challenges with data collection and analysis, the data that is newly available through the efforts of Loyola Law students offers a picture about who has died behind bars and how they are dying.

II. THE DATA

From 2015 to 2019, at least 786 incarcerated people died behind bars in prisons, jails, and detention centers across Louisiana. This report is the first comprehensive collection and analysis of deaths behind bars in Louisiana, based on public records requests filed with 132 facilities across the state.

Black men ages 55-60 serving a sentence post-conviction are the largest impacted population by deaths behind bars, comprising 11% of all known deaths. None of the 786 known deaths were judicially sentenced to death row. All were either detained before their trial, serving a judicially determined sentence for a set number of years or life, or were detained for a parole or probation violation. The overwhelming majority of people died of medical causes, with the highest rates for heart disease and cancer. Approximately half of known medical deaths were related to a pre-existing medical condition, indicating that half of medical related deaths were due to conditions first diagnosed by prison or jail medical staff. Though suicides were only approximately 6% of deaths, they were more likely to occur in parish jails and within those jails, almost half occurred in segregation, more commonly known as solitary confinement.

A. Project Overview

Louisiana leads the nation in incarceration.⁹⁸ We hold more people, per capita, than any other state in the South, easily outpacing our neighboring states. Our state and federal government are constitutionally obligated to provide safe and humane conditions for incarcerated people, including constitutionally adequate healthcare.⁹⁹ These obligations arise from the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution and Article I §§ 2 and 20 of the Louisiana State Constitution.

and (C) Representation that the protected health information for which use or disclosure is sought is necessary for the research purposes.”).

⁹⁶ 45 CFR 164.501.

⁹⁷ *Recommendations on the Interpretation and Application of § 104(d)(4) the “HIPAA Exemption”*, HHS.GOV, <https://www.hhs.gov/ohrp/sachrp-committee/recommendations/attachment-b-december-12-2017/index.html>

⁹⁸ Emily Widra & Tiana Herring, *States of Incarceration: The Global Context 2021*, PRISON POL’Y INITIATIVE (Sep. 2021), <https://www.prisonpolicy.org/global/2021.html>.

⁹⁹ The U.S. Supreme Court has held that the U.S. Constitution requires the provision of medical and mental healthcare to incarcerated people consistent with the level of care provided in community. *See e.g. Estelle v. Gamble*, 429 U.S. 97 (1976); *Farmer v. Brennan*, 511 U.S. 825 (1994); *Brown v. Plata*, 563 U.S. 493 (2011).

At the same time, prisons, jails, and detention centers in Louisiana operate without independent oversight, mandatory standards, or public transparency. Parish jails are only required to report deaths of people detained pending trial to their local coroner. Prisons, parish jails, and private prisons are only required to report deaths of people serving sentences to the Louisiana Department of Public Safety and Corrections (DPSC) headquarters and the local coroner. Some facilities, but not all, will issue individual press releases when a death behind bars occurs. DPSC publishes limited and generalized data on causes of death for incarcerated people convicted of a crime in its quarterly Briefing Book, but does not provide demographic or facility information. Though most Louisiana facilities annually report deaths in custody to the BJS, federal analysis based on these deaths in custody reports do not provide facility level information or disaggregate state data by race, age, or length of stay.

This project, through collecting and publishing data on deaths behind bars, aims to increase transparency of these public institutions and better understand how and why people die behind bars. Subsequent reports will compare the data collected on Louisiana deaths to national trends, as well as examine issues related to the data collection effort, including differential public records costs, facility and parish compliance, and the use of redactions by responding facilities.

Louisiana is relatively unique in the U.S. for using local jails to house approximately 50% of people serving their state sentence in a local jail. Jails are traditionally operated by local sheriffs and are primarily for people detained pretrial. They are designed for short-term housing and therefore often lack more robust services essential for people serving long term sentences, including appropriate healthcare, recidivism prevention programming, and skills training. Prisons, on the other hand, are operated by the state and are primarily for people serving a judicially determined sentence after being convicted of a crime. As a result of this bifurcated system, the DPSC prioritizes state prison beds for people with longer sentences or serious health needs. Local jails and private operators, such as LaSalle Corrections, house the remaining state population of 50%, in addition to their traditional pretrial populations. Jails and private operators receive a per diem per person per day, which costs the state approximately \$175 million for fiscal year 2019-2020.¹⁰⁰ The per diem rate paid by the state during the time period of this study, 2015 to 2019, was \$24.39.¹⁰¹

Beyond jails and prisons, Louisiana also has a growing immigration detention population, housed in federally or privately operated prisons and parish jails through contracts with local sheriffs. After the legislature enacted significant reforms in 2017 pursuant to recommendations by the Louisiana Justice Reinvestment Initiative Taskforce, Louisiana anticipated a 10% reduction in population within 10 years. As those reforms have been implemented, jails and private facilities have turned to immigration detention to fill the recently emptied beds. There are also four “secure custody” juvenile detention centers operated by the state Office of Juvenile Justice, as well as thirteen locally operated “non-secure custody” juvenile detention centers.

¹⁰⁰ La. Dep’t Pub. Safety & Corr., Briefing Book, 76 (July 2020) (a copy of this source is on file with the editors of the Loyola Journal of Public Interest Law).

¹⁰¹ This rate was increased for fiscal year 2019-2020 to \$25.39 and for fiscal year 2020-2021 and thereafter to \$26.39. Act No. 245, La. Reg. Session (2019) (codified as amended at La. Rev. Stat. 15:824(B)(1)(a)).

B. Methodology

During the Fall 2019 and Fall 2020 semesters, Loyola Law students filed public records requests with 132 facilities, including all prisons, jails, juvenile detention centers (state and locally operated), and federal facilities. Students requested records of deaths in custody, including any records prepared and submitted to the U.S. Department of Justice's Bureau of Justice Statistics (BJS).¹⁰² BJS publishes separate mortality reports for jails and prisons, with their latest reports for each (April 2021) analyzing data from 2000-2018. The data released by BJS, however, does not provide for analysis by facility and state data is not disaggregated by race, age, or length of stay. Students also reviewed news and court litigation databases for their assigned parishes (counties) to identify unreported deaths occurring behind bars.

Of the 132 facilities included in this study, we received responses from 69% of facilities. Twenty-nine percent of facilities (38) did not respond to our repeated public records requests over two years, in violation of Louisiana Public Records Act § 44:1 et seq. The project has also not received any death data from federal agencies operating detention centers in Louisiana, which is particularly troubling as the number of people detained for immigration violations has soared since 2017.¹⁰³ In contrast, the state DPSC, which administers eight state prisons holding approximately 16,000 people, fully responded to our requests, and also sent responses for people legally under their custody but serving their sentence in local jails. All data utilized in this report, including documents actually received, is available for download and more refined analysis at www.incarcerationtransparency.org.

C. Who is Dying?

The demographics of those incarcerated, and further, those who are dying while incarcerated, do not reflect the general population of Louisiana. Namely, Black and brown Louisianans are disproportionately represented in Louisiana's prisons and jails¹⁰⁴ and, as this data indicates, they also disproportionately die while in custody. The same is true for men.

The Equal Protection Clause, which protects against intentional discrimination for certain characteristics such as race and gender, is one of the few constitutional rights that is applied the same, whether a person is incarcerated or not.¹⁰⁵ The Equal Protection clause provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws."¹⁰⁶ To prove an Equal Protection Clause violation, courts review prison or jail official actions under

¹⁰² Forms collected include CJ-9/CJ-9A (jails), NPS-4/NPS-4A (prisons), CJ-10/CJ-10A (private facilities) and NPS-5/NPS-5A (juveniles). Students also received correspondence from some facilities indicating there were zero deaths in that facility.

¹⁰³ See Laila Hlass & Mary Yanik, *No End in Sight: Prolonged and Punitive Detention of Immigrants in Louisiana*, 3, TUL. UNIV. IMMIGR. L. CLINIC (May 2021), <https://law.tulane.edu/sites/law.tulane.edu/files/TLS%20No%20End%20In%20Sight%20Single%20Pages%20FINAL.pdf>.

¹⁰⁴ *Incarceration Trends in Louisiana*, VERA INST. OF JUST., 1 (2019), <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-louisiana.pdf>.

¹⁰⁵ *Prisoners' Rights*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/prisoners%27_rights (last visited Nov. 20, 2021).

¹⁰⁶ U.S. Const. Amend. XIV, sec 1.

strict scrutiny, the highest level of constitutional review.¹⁰⁷ All discrimination claims must show discriminatory intent.¹⁰⁸ However, proving discriminatory intent in the carceral setting can be challenging.¹⁰⁹

1. Race

In Louisiana prisons and jails, the majority of those who died while in government custody are Black. More specifically, of the 786 known deaths from 2015 to 2019, Black people were 58.40% (459) of deaths and white people were 39.69% (312) of deaths. Of the remaining 14 deaths, seven were listed as Hispanic and the remaining were either listed as “other” or “unknown.” When broken down by cause of death, Black people accounted for the majority of medical deaths, drug deaths, deaths by violence, and deaths by “other” means. Conversely, white people made up a majority of deaths that were accidental or by suicide.

More broadly, deaths behind bars in Louisiana reflect other patterns of race in incarceration, with African-Americans overrepresented given their share of the state population. African Americans are 67.5% of people committed to state custody after conviction, compared to whites at 32.1% and “Other” at 0.4%.¹¹⁰ In juvenile settings, African Americans are 81% of youth in secure custody and 75% in non-secure custody.¹¹¹ Demographic data by race of incarcerated people is only available for people serving convictions (whether in prison or jail) and for youth in secure and non-secure care, but is not available overall for locally-operated jails.

2. Sex

Similar to race, known deaths by gender reflect broader incarceration patterns. Excluding people held pretrial or for immigration, adult men comprise 95.3% of people serving their sentence after conviction.¹¹² In juvenile settings, boys are 94% of youth held in secure custody and 84% of youth held in non-secure custody.¹¹³ Of the 786 death records reviewed, 95.42% were for men (750) versus 4.45% for women (35). Medical deaths were the leading cause of death for both men and women, followed by suicide. Deaths as a result of drugs or accidents were exclusively male.

3. Age

¹⁰⁷ *Johnson v. California*, 543 U.S. 499, 515 (2005).

¹⁰⁸ *Id.*; *Ionescu v. Wells*, No. CV 309-089, 2011 U.S. Dist. LEXIS 79955 (S.D. Ga. July 1, 2011).

¹⁰⁹ *Chapter Three: Your Rights in Prison*, JAILHOUSE LAW. HANDBOOK, <https://www.jailouselaw.org/your-rights-prison> (last visited Nov. 20, 2021).

¹¹⁰ La. Dep’t Pub. Safety & Corr., Briefing Book, 19 (July 2020), <https://s32082.pcdn.co/wp-content/uploads/2020/08/Full-BB-Jul-20.pdf>.

¹¹¹ Office of Juv. Justice, *Fiscal Year 2017 Annual Report on Youth Served*, 6 & 10 (2017), https://ojj.la.gov/wp-content/uploads/2018/01/Act499TrendReportFY2017_-finalforwebsite-1.pdf.

¹¹² La. Dep’t Pub. Safety & Corr., Briefing Book, 19 (July 2020) (a copy of this source is on file with the editors of the Loyola Journal of Public Interest Law).

¹¹³ Office of Juv. Justice, *Fiscal Year 2017 Annual Report on Youth Served*, 6 & 10 (2017), https://ojj.la.gov/wp-content/uploads/2018/01/Act499TrendReportFY2017_-finalforwebsite-1.pdf.

Louisiana has one of the oldest prison populations in the nation due to mandatory minimum and multi-bill sentencing laws. For context, if the number of those “serving life sentences without parole in Texas, Arkansas, Mississippi, Alabama and Tennessee in 2017 were added together, the sum would still fall below the number of people serving life in Louisiana that same year.”¹¹⁴ Approximately 25% of people serving sentences in Louisiana are over 50 years old (up from 20% five years ago). The average age of people serving sentences post-conviction in Louisiana is 40 years old for men and women alike, up from 36 years old 5 years ago. Known deaths behind bars in Louisiana range in age from 13-96 years old. Overall, people ages 55-60 years old make up 19.24% of deaths, with people ages 61-66 at 17.13%, and 49-54 at 15.92%.

When we examine age of death by the type of facility, we see the same pattern for DPSC, with the highest percentage of deaths for people ages 55-60 (21.68%), followed closely by 61-66 years old (20.07%) and 49-54 (16.31%). Deaths in parish jails and private facilities skew younger. In parish jails, people ages 37-42 years old have the highest incidence of death (13.02%), followed closely by ages 49-54 (12.50%), then ages 43-48 (11.98%). In private facilities, people ages 49-54 (18.75%) have the highest incidence of death, then ages 37-42 (15.63%).

4. Trial Status

Approximately 85% of known deaths behind bars were of people serving a sentence for conviction of a crime. These deaths occurred primarily within DOC prisons (558 deaths for 70.99% of total deaths), but people with convictions also died serving their sentence in parish jails (76 for 9.67% of deaths), private facilities (31 deaths or 3.94%), and juvenile facilities (2 deaths). Pretrial deaths, i.e. deaths of people who had not yet had a trial determining their guilt or innocence, are 14.38% of all known deaths from 2015-2019, including two juveniles.

D. Where are they dying?

People may be incarcerated in different types of facilities, such as a prison, a jail, or a youth detention center. For adults, where someone is housed while in custody influences whether the incarcerated person has access to educational programming, job training, and—depending on where the facility is located geographically—the ability to have family visits and maintain community ties. However, incarcerated people do not have a constitutional right to be housed in a specific kind of facility or in a specific geographic location.¹¹⁵ This creates a unique problem in Louisiana, where about half of the prison population is housed in parish jails.

Within a given facility, people may be incarcerated in different types of housing units. The largest are general dorms, which include rows of bunkbeds and communal restrooms and showers. People may also be housed in cells, which can also vary in size accommodating usually two to ten people. Segregation cells, on the other hand, incarcerate at most two people, but more often just one, who are not allowed to interact with other people and often are only

¹¹⁴ Julie O’Donoghue, *Louisiana may Look at Changing Medical Release for Sick, Dying Incarcerated People - Again*, LA ILLUMINATOR (May 13, 2021), <https://lailluminator.com/2021/05/13/louisiana-may-look-at-changing-medical-release-for-sick-dying-incarcerated-people-again/>.

¹¹⁵ See generally *Meachum v. Fano*, 427 U.S. 215 (1976); *Olim v. Wakinekona*, 461 U.S. 238 (1983).

allowed to leave the cell for one to two hours a day. Medical facilities both, on site and off site, may incarcerate people while they undergo routine medical procedures like detoxification from drugs or alcohol. People may also experience their incarceration through a work release program or in transit between two other locations. Every location can be deadly.

Additionally, once admitted to a facility, incarcerated people do not have a right to be housed in a specific area or housing unit of the facility. Instead, classification is determined by prison administrators.¹¹⁶ Protective custody, which is housing separate from the general population, is not an affirmative right, although incarcerated people may sue carceral actors for failure to protect them when carceral administrators assign housing without assessing potential threats to the incarcerated person. To prevail on a failure to protect claim in Louisiana, incarcerated people must prove both that carceral actors had “reasonable cause to predict the harm” and that they failed to prevent it.¹¹⁷ However, an “adequate reason to anticipate harm” may not include mere reports of threats when such reports are par for the course inside the facility.¹¹⁸ Thus, incarcerated people may have little decision-making power as to where they are incarcerated even when they report unsafe conditions.

1. Type of Facility

Of the 786 known deaths, the majority occurred within state prisons, though deaths occurred in all types of facilities during the 2015-2019 period of review. More specifically, 71% of deaths occurred in state prisons, 24% of deaths in custody occurred in parish jails, 4% occurred in private prisons or jails, and four juveniles died while in a youth facility—making up less than 1% of deaths overall.

2. Location of Death within Facility

Almost three-quarters of deaths (72.6%) occurred in a medical facility, which is consistent with medical illness being the leading cause of known deaths. While the “unknown” death location appears large at 8.27%, a review of those records indicates the majority of those deaths occurred in medical facilities outside of the prison or jail. Deaths in segregation, which make up 3.18% of all deaths, may indicate challenges for custodial supervision and/or reflect the unique isolation of segregation cells. Segregation, more commonly known as solitary confinement, is usually employed for discipline for rule violations, protective custody, or for close observation/suicide watch. In segregation, a person is typically allowed out of their six by eight foot cell for one to two hours each day, but is otherwise isolated from human interaction and may be deprived of other privileges, including visitation or participation in programming. In addition to these locations, 13.38% of deaths occurred in a cell, 1.40% occurred while the incarcerated person was in transit, 1.15% occurred at work, 0.25% or two deaths occurred at a temporary holding facility, and one death, or 0.13% occurred at a courthouse.

¹¹⁶ *Basic Jail Guidelines: State Offenders Housed in Local Jail Facilities*, La. Dep’t of Corrs. 18 (Apr. 2019), <https://www.incarcerationtransparency.org/wp-content/uploads/2021/10/Basic-Jail-Guidelines-as-of-April-2019.pdf>.

¹¹⁷ *Aucoin v. Larpenter*, No. 2021 CA 0064, 2021 La. App. LEXIS 1294 at *8-*9.

¹¹⁸ *Parker v. State*, 282 So. 2d 483, 486 (La. 1973).

E. Why are they dying?

Carceral facilities have a duty to provide “basic sustenance, including adequate medical care”¹¹⁹ and mental healthcare¹²⁰ to incarcerated people. Courts have repeatedly stated that a failure to do so violates the U.S. Constitution and thus “is incompatible with the concept of human dignity and has no place in civilized society.”¹²¹ The vast majority of deaths (85.75%) were related to medical illness. Contrary to popular culture depictions of prisons and jails, known deaths due to violence are a relatively small percentage, 1.53%, of deaths behind bars. The second leading cause of death at 6.23% are completed suicides. Drug overdoses are third at 3.56% and though a small overall proportion of deaths, these overdoses occurred close in time to admission but also after years of being incarcerated. On average, people were incarcerated for 962 days before ultimately dying due to drug use.

1. Medical

The leading causes of medically-related deaths behind bars are cancer and heart attacks. Approximately 10% of known deaths from 2015 to 2019 were due to respiratory illness. Some of the deaths within the “all other” category concern deaths at facilities that either redacted the medical cause of death, failed to provide descriptive details on the cause of death, or described the deaths as the result of “natural causes.” Additional deaths within this category included deaths due to sickle cell, complications from hernia surgery, Alzheimer’s disease, and gastric ulcers, among others.

A total of 672 medically-related deaths were reported. The largest percentage (41.82%) of medical deaths were attributed to heart diseases. Cancer made up 19.79% of medical deaths, while 10.42% were attributed to respiratory diseases. Liver diseases were 6.85% of medical deaths, followed by brain diseases at 4.46%. Sepsis claimed 3.13% of deaths and AIDS at 2.08%. Kidney and detoxification related deaths held the least percentages with 1.04% and 0.15%, respectively, and 10.27% of medical deaths were described as “all other.”

On average, less than half of known deaths were due to a medical condition that existed prior to detention behind bars, indicating that the medical condition in 53% of cases was initially diagnosed after admission to a carceral facility. Only medical deaths due to three diseases (HIV/AIDS, liver, and kidney diseases) were more likely to be due to a pre-existing condition prior to incarceration. The development of, and death from, other diseases during incarceration is likely related to the length of sentences in Louisiana and may implicate the general lack of preventative health care for incarcerated adults under the age of 50 years old.

Most causes of medical deaths were not pre-existing conditions. Of the people who died from brain diseases, 27% had a pre-existing condition before their incarceration. Forty-one percent of cancer deaths and 48% of heart disease deaths were caused by a pre-existing condition. Of respiratory deaths, 44% died from a pre-existing condition and of sepsis deaths,

¹¹⁹ *Brown*, 563 U.S. at 511.

¹²⁰ *Id.* at 545 (holding that “[t]he medical and mental health care provided by California’s prisons falls below the standard of decency that inheres in the Eighth Amendment.”).

¹²¹ *Id.* at 511.

48% were caused by a pre-existing condition. Of the “all other” medical deaths, 38% were caused by a pre-existing condition. The one detox related death was not caused by a pre-existing condition. Seventy-one percent of HIV/AIDS deaths were attributed to pre-existing conditions. Seventy four percent and 86% of liver and kidney deaths, respectively, were caused by a pre-existing condition.

Notably, the medical and dental care that Louisiana DOC provides to incarcerated people, specifically at Louisiana State Prison, also known as Angola, has been the subject of an ongoing federal lawsuit, *Lewis v. Cain*. In March 2021, a federal judge found that the medical care provided at Angola contained system wide deficiencies that rose to the level of cruel and unusual punishment under the Eighth Amendment. Namely, prison officials were “deliberately indifferent to the serious medical needs of [those incarcerated and failed] to address and/or correct known deficiencies.”¹²²

2. Suicide

Carceral actors also have a duty to prevent incarcerated people’s self-inflicted harm, but only when that harm is foreseeable.¹²³ In these lawsuits, plaintiffs must prove that carceral staff knew or should have known that an incarcerated person was at risk of harming themselves.¹²⁴ Moreover, plaintiffs must prove that carceral staff breached the standard of care typical of the facility.¹²⁵ In Louisiana, a person who attempts suicide can also face additional criminal charges for “self-mutilation,” which carries a consecutive sentence of up to two years.¹²⁶

Almost two-thirds of the completed and known suicides in state prisons occurred in a person’s cell and only 7% occurred in segregation. In contrast, suicides in segregation were more common in youth detention centers and parish jails. Suicides in segregation are of particular concern, since segregation settings usually entail a higher level of individual supervision or observation than general shared cell or dorm settings, combined with more restrictive policies on items allowed in a segregation cell. Forty-three percent of all completed suicides in parish jails occurred in segregation cells, raising questions about the degree of observation performed by custodial and medical staff. All but two of these segregation parish jail suicides were hangings.

In DOC facilities, 64% of suicides occurred in a cell, while 21%, 7% and 7% occurred in a medical facility, segregation, and in transit, respectively. Juvenile facilities saw 67% of its suicides happen in segregation and 33% occurred in a cell. Parish facilities had the most diversity of suicide locations. Forty three percent of suicide in a parish facility occurred in a cell, 43% occurred in segregation, and courthouses, temporary holding cells, transit, and work location saw

¹²² *Lewis*, 2021 U.S. Dist. LEXIS 63293, at *85.

¹²³ *Leonard v. Torres*, No. 2016 CW 1484R, 2017 La. App. LEXIS 1721, *8 (La. App. 1 Cir. Sept. 26, 2017).

¹²⁴ *Id.* at *9.

¹²⁵ *Scott v. State*, 618 So. 2d 1053, 1058 (La. Ct. App. 1st Cir. 1993).

¹²⁶ See La. Rev. Stat. § 14:404 (Westlaw through Reg. Sess. And Veto Sess. (2021)). Rocky Chaney was booked with “self-mutilation” while on suicide watch for a previous suicide attempt at Acadia Parish Jail. Ben Myers, *At Acadia jail: No Mental Health Care, Botched Watch Logs and two Suicides in six Weeks*, ACADIANA ADVOCATE (Dec. 11, 2019)

https://www.theadvocate.com/acadiana/news/article_deb89daa-16aa-11ea-bfd3-5722016d439c.html. See also <https://www.incarcerationtransparency.org/wp-content/uploads/2021/01/Chaney-Rocky-Acadia-2019-CJ9.pdf>

3% each. Half of the suicides in privately run facilities occurred in a cell, while the other half occurred in a medical facility.

3. Drugs

The penalty for smuggling drugs and other controlled dangerous substances¹²⁷ in Louisiana is the same for possession or possession with the intent to distribute controlled dangerous substances outside of carceral settings.¹²⁸ Furthermore, in Louisiana, incarcerated people face additional charges if they introduce contraband such as drugs into a carceral facility.¹²⁹ People convicted of introducing contraband while incarcerated must serve their additional sentence consecutively with their original sentence.¹³⁰

Drug overdoses are a relatively small proportion of overall deaths and similar to suicides, are more likely to occur in parish jails than other types of facilities. Drugs causing death included cocaine, heroin, methamphetamines, fentanyl, ibuprofen, synthetic cannabinoids, and inhaled hydrocarbons.

Drug related deaths occurred in different types of facilities after differing average days of incarceration. For DOC facilities, drug related deaths occurred on average after 3,970 days of incarceration. In privately run facilities, 1,253 average days had passed before a drug related death. One hundred eighty one days on average passed before a drug-related death in parish facilities.

Known drug-related deaths appeared to be increasing in number over time. The lowest proportion of drug-related deaths was in 2015 at 1.7% of overall known deaths behind bars. By 2019, drug-related deaths were 7% of overall deaths for the year. All drug overdose deaths behind bars from 2015-2019 were male.

Twenty-eight drug related deaths occurred between 2015 and 2019, and these deaths also increased over time. Three drug related deaths occurred in 2015, and four happened in 2016. In 2017, seven drug related deaths occurred. This number fell to five in 2018, but drug-related deaths peaked in 2019 with nine deaths.

4. Accident

Deaths due to accidents behind bars are not typically actionable in court. Accidents may be caused by a carceral actor's negligence. However, a carceral actor's negligence is not sufficient to bring a claim against them because mere negligence does not constitutionally necessitate compensation in the carceral setting.¹³¹

¹²⁷ La. Rev. Stat. § 14:402(D)1 (Westlaw through Reg. Sess. And Veto Sess. (2021)).

¹²⁸ La. Rev. Stat. § 14:402(D)1 (Westlaw through Reg. Sess. And Veto Sess. (2021)), referencing La. Rev. Stat. § 40:961 et seq.

¹²⁹ *Id.*

¹³⁰ La. Rev. Stat. § 14:402(D)2 (Westlaw through Reg. Sess. And Veto Sess. (2021)).

¹³¹ *Davidson v. Cannon*, 474 U.S. 344, 347 (1986).

Deaths due to accidents behind bars primarily involved head injuries leading to traumatic brain injuries. One death is reported as “accidental” but concerns an officer-involved shooting after the person’s apparent failure to heed the previously fired warning shot. For deaths in cells, three of the accidental deaths were due to head injuries, of which one is described as the result of falling down. The fourth death did not indicate how the injury leading to death was sustained. Of the four deaths occurring as a result of work, two involved drowning (one when a boat collapsed on the Mississippi River); one involved falling from the bed of a truck travelling down a U.S. highway; and one involved an unspecified “accidental injury to self” at work.

Of the fourteen deaths by accident, four deaths each occurred at work or in cells. Three accidental deaths occurred in medical facilities, and two occurred while in transit. One accidental death occurred in segregation.

5. Violence

Deaths stemming from violence within the prison are not as common as movies and television shows generally depict. Nationwide, deaths from homicide amounted to 2.3% of all deaths in local jails between 2000-2018 and, from 2001-2018, amounted to 2% of deaths in state prisons and 3% in federal prisons.¹³² The most recent data from the BJS shows that 2018 saw the most prison deaths since BJS started counting deaths in 2001.¹³³ There were 120 homicides in state and federal facilities in 2018, which was double the rate of homicide of U.S. residents.¹³⁴ In Louisiana, nine people were killed inside state or federal prisons in 2018.¹³⁵ It is also unclear how many of those deaths were investigated by local district attorney’s offices.

The types of legal claims available for violent deaths behind bars will depend in some instances on the trial status of the decedent. For claims of excessive force, if the decedent was convicted, the Eighth Amendment’s Cruel and Unusual Punishment Clause applies.¹³⁶ In these cases, courts apply a more exacting and subjective standard that assesses whether the officer knew the force applied was unreasonable.¹³⁷ In contrast, for those who are held in jail pre-trial, their excessive force claims are governed by the Fourteenth Amendment Due Process clause.¹³⁸ Compared to Eighth Amendment claims, an excessive force claim would only need to show that the force applied was unreasonable, regardless of the knowledge of the officer. For violence between incarcerated people, carceral officials nevertheless have a duty to keep those incarcerated safe, protected, and in humane conditions.¹³⁹ Under the Eighth Amendment, a prison official can be held liable for failing to protect those incarcerated if he or she “knows that

¹³² *Mortality in Local Jails 2000-2018*, supra note 53; *Mortality in State and Federal Prisons, 2001-2018*, supra note 53.

¹³³ *Mortality in State and Federal Prisons, 2001-2018*, supra note 53.

¹³⁴ BJS does not differentiate between homicides caused by other incarcerated people and those caused by staff through use of force. *Id.* at 2.

¹³⁵ *Id.* at 17. Note that this number is for deaths in state and federal prisons, whereas the data in this Article does not include federal prisons.

¹³⁶ *Kingsley v. Hendrickson*, 576 U.S. 389, 400 (2015) (citing *Whitley v. Albers*, 475 U.S. 312 (1986); *Hudson v. McMillian*, 503 U.S. 1 (1992)).

¹³⁷ See generally Margo Schlanger, *The Constitutional Law of Incarceration, Reconfigured*, 103 CORNELL L. REV. 357 (2018).

¹³⁸ *Id.*

¹³⁹ See generally *Farmer*, 511 U.S. at 825.

[an incarcerated person] face[s] a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.”¹⁴⁰

Deaths due to violence were one of the least common forms of deaths behind bars in Louisiana. Twelve deaths due to violence were reported between 2015 and 2019. Only one violent death was reported in 2015, while violent deaths peaked in 2016 with six reports. In both 2017 and 2018, three deaths were attributed to violence. Zero violent deaths were reported in 2019. Two-thirds of deaths due to violence occurred in cells, the majority of which involved assaults and blunt force trauma leading to head injuries. This would seem to indicate that the violence was not a product of contraband or homemade weapons, but does implicate the supervision and observation policies of these facilities. The timing of these deaths was evenly spread across morning, afternoon, evening, and overnight. Notably, two of the three reported violent deaths that occurred in East Baton Rouge Parish Prison happened in the evening.

F. Data Takeaways

While not all deaths behind bars are necessarily preventable, prisons and jails should ideally have lower death rates than the general public due to the physical proximity of medical care behind bars, 24-hour staffing and supervision, and reduced probability of certain types of deaths, such as car accidents, due to incarceration. A person’s risk of death behind bars should not depend on their facility assignment. Although DOC prioritizes placement of people with serious medical needs in select state prisons, such as Louisiana State Penitentiary, medical-related deaths also occurred in parish jails where there are less robust medical systems in place.

Death behind bars can impact anyone incarcerated, regardless of their crime or guilt or innocence. Some incarcerated people died relatively early in their judicially determined sentences. Others died after completing the majority of their sentence while enrolled in work release programs designed to aid their transition home. Fourteen percent of deaths were of people who had only been accused of a crime, without a chance to prove their innocence, or to be found guilty.

Prison, jail, and youth detention administrators can and should use this data to compare the operation of their individual facilities to others. In some cases, the trends identified implicate institutional policies and practices, which should be reviewed with the aim of decreasing deaths behind bars. State and local leaders should officially collect, track, analyze, and publish this data for the public. This data serves as an important baseline for future research and analysis, but continued transparency of our public institutions is needed for sustainable improvements and public support.

III. CONCLUSION

The process of documenting the 786 people who died while in the custody of Louisiana’s prisons, jails, and detention centers from 2015-2019 reveals deep holes in how state and federal agencies respond to and track these incidents. As succinctly stated by Dr. Michael Pulsis in his expert testimony to the court on medical care at Louisiana State Penitentiary, “[i]f you don’t look

¹⁴⁰ *Id.* at 847.

for problems, you don't find them.”¹⁴¹ Further, the current legal landscape surrounding judicial deference to carceral institutions makes it difficult to hold these facilities accountable when a death does occur. Given current precedent and findings from collecting the death in custody data in Louisiana, the following recommendations would improve the government's ability to better document deaths, prevent them, and increase transparency when they do occur.

1. Enhance the safety in carceral institutions through robust changes to prison deference jurisprudence. The terms “order” and “security” are often invoked, but rarely defined in court jurisprudence. Universal definitions will remove ambiguity, clarify the limit to judicial deference, and signal that courts recognize the limitations of deference in the carceral setting.
2. Create more reliable, consistent, and public data by modifying the 2013 Deaths in Custody Reporting Act and developing comprehensive, independent oversight at the state level. At the federal level, Congress should amend the 2013 DCRA to create consistency between the federal agencies that collect this data and ensure that data be made publicly available and in a timely manner at the facility level. At the state level, the Louisiana Legislature should enact legislation to (1) mandate the collection, analysis, and publication of death records statewide at the facility level and (2) create independent oversight over deaths at local jails, state prisons, and other detention facilities to review these results and propose policies and practices that would further prevent deaths behind bars.
3. Release older adults from prisons through existing compassionate release, medical parole, and medical probation programs. Data indicates that nearly all, or 96%, of the deaths from elderly incarcerated people were due to medical illness. Nearly half of those were due to pre-existing medical conditions. Further, the incarcerated population in Louisiana is continuing to age, due to Louisiana's sentencing laws. Only 2.4% of the prison population was incarcerated for a crime that they committed after the age of 55, indicating a low risk of reoffending for this age group if released.
4. Improve medical and mental healthcare in prisons, jails, and youth detention centers. Our data reveals that over half of medical related deaths were exclusively diagnosed and treated while incarcerated. While our analysis did not focus on whether or not medical deaths were preventable or not, improved healthcare may lessen the probability of death behind bars.

¹⁴¹ Jessica Pishko, *At Angola Prisons, 'People are Suffering. People are Dying'*, THE APPEAL, <https://theappeal.org/at-angola-prison-people-are-suffering-people-are-dying/>.