

"WE THE PEOPLE" MEANS ALL OF US

A BLUEPRINT FOR COVID-19
RELIEF IN SOUTH CAROLINA

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ACLU
South Carolina

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As we all do our best to protect the health and well-being of family and friends in this unsettling time, the need for a government response guided by public health experts has become more urgent than ever.

The ACLU of South Carolina is working to ensure the burdens of the outbreak do not unfairly fall on our most vulnerable communities. We are also urging decision makers to ensure that responses are rooted in science and public health, not stigma or bias, and are no more intrusive on civil liberties than absolutely necessary.

This blueprint outlines our recommendations for COVID-19 relief in South Carolina that address the needs of those at greatest risk for disproportionate negative impact. In this and all times of crisis, it is critical that “We The People” truly means all of us.

Recommendation 1: Protect Incarcerated People

Over the past 40 years, the number of incarcerated people in the United States per capita has more than quadrupled, resulting in systemic overcrowding of prisons and jails.¹ This is the result of policy decisions — not an increase in crime — including the overuse of pre-trial detention, “war on drugs,” mandatory minimums, three-strikes laws, and other measures justified with “tough on crime” rhetoric.

Incarcerated people are housed in close quarters, are often in poor health, are unable to engage in social distancing practices recommended by the CDC,² and thus are at heightened risk of becoming infected with and dying from COVID-19. Right now, seven of the ten places in America with the largest COVID-19 outbreaks are correctional institutions.³ Government models predicting the pandemic’s death toll fail to account for the impact of the virus on incarcerated populations, who will be infected and die at higher rates. An immediate statewide response to the COVID-19 crisis is essential to save lives and slow the spread of the pandemic for incarcerated people, corrections staff, and the public.

Black people are disproportionately represented throughout South Carolina’s criminal justice system, including in its prisons and jails. For example, Black people make up 59

¹ “Overcrowding and Overuse of Imprisonment in the United States.” American Civil Liberties Union, May 2015. <https://www.ohchr.org/Documents/Issues/RuleOfLaw/OverIncarceration/ACLU.pdf>.

² “Social Distancing, Quarantine, and Isolation.” Centers for Disease Control and Prevention, May 6, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>.

³ “Coronavirus in the U.S.: Latest Map and Case Count.” The New York Times, March 3, 2020. <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

percent⁴ of the prison population in South Carolina yet make up just 27 percent⁵ of the state's adult population. As a result, outbreaks of COVID-19 in South Carolina's prisons and jails will disproportionately harm Black people.

This is not a hypothetical concern in South Carolina. At least 126 prison staff and incarcerated people have tested positive for COVID-19 in South Carolina's prisons alone, and at least two incarcerated people have already died from COVID-19.⁶

Policy recommendations:

Reduce the Jail Population

South Carolina's jails have too often become our society's solutions for people struggling with homelessness and mental health or substance use disorders. Our jail logs are a daily reminder that our criminal justice system incarcerates Black people at staggering rates compared to white people.

With COVID-19, our failings as a society leave each of the approximately 10,000 people incarcerated in South Carolina's jails facing a potential death sentence.

For months, public health experts have been urging policymakers to do everything in their power to substantially reduce prison and jail populations to safeguard the lives of those who work and live there. The findings outlined in a new report by the ACLU amplify the need to reduce South Carolina's jail populations immediately.

The report focuses on a new epidemiological model that shows COVID-19 could claim the lives of approximately 100,000 more people nationwide than current projections stipulate if jail populations are not dramatically and immediately reduced. These projections hold even if communities across the United States continue practicing social distancing and following public health guidance.⁷

⁴ "Profile of Inmates in Institutional Count as of June 30, 2019." South Carolina Department of Corrections. http://www.doc.sc.gov/research/InmatePopulationStats/ASOF_FY19_Institutional_Count_Profile.pdf.

⁵ "U.S. Census Bureau QuickFacts: South Carolina." Census Bureau QuickFacts, Accessed May 16, 2020. <https://www.census.gov/quickfacts/SC>.

⁶ "COVID-19 Information." South Carolina Department of Corrections, Accessed May 16, 2020. <http://www.doc.sc.gov/covid.html>.

⁷ "Flattening the Curve: Why Reducing Jail Populations Is Key to Beating COVID-19." American Civil Liberties Union, Accessed May 16, 2020. <https://www.aclu.org/report/flattening-curve-why-reducing-jail-populations-key-beating-covid-19>.

South Carolina's unfortunate embrace of mass incarceration makes this problem even more dire. We're talking about approximately 10,000 people in South Carolina's jails alone.

Some South Carolina counties have reduced their jail populations amid COVID-19,⁸ proving that it is possible to immediately address overcrowding. While this swift response is critical, COVID-19 has amplified the need for lasting repairs through meaningful policy change.

Here are three things that South Carolina can do to substantially reduce its jail population.

1. **Review all people currently held pretrial and immediately release on a personal recognizance bond all but the very few people where pretrial detention is absolutely necessary to ensure the person's return to court or public safety.** Approximately 75 percent of the over 10,000 people in South Carolina's jails are being detained pretrial and have not been convicted of a crime.⁹ They are presumed innocent but remain incarcerated simply because of an inability to pay bail, a hallmark inequity of South Carolina's two-tiered justice system which produces vastly different outcomes based on economic status. While detained pretrial, many people face significant collateral damage, such as the loss of jobs, housing, and children or interrupted education. Right now, they also face the threat of becoming critically ill or dying from COVID-19. As we work to end our state's discriminatory cash bail structure, South Carolina criminal justice system actors can immediately protect incarcerated people by limiting pretrial detention to the rare case where a person poses a flight risk or serious, clear threat to another person.
2. **End the war on marijuana.** South Carolina has the second highest rate of marijuana possession arrests in the country. Every 15 minutes somebody is arrested for possessing marijuana in South Carolina - a substance that is legal or decriminalized for personal use in 26 states and the District of Columbia.¹⁰ As we

⁸ Shore, Jake. "Beaufort County Courts Rush to Release Nonviolent Offenders as Coronavirus Spreads." Hilton Head Island Packet, April 2, 2020. <https://www.islandpacket.com/news/coronavirus/article241556756.html>.

⁹ "Blueprint for Smart Justice South Carolina." American Civil Liberties Union, October 2019. <https://www.aclusc.org/sites/default/files/sj-blueprint-sc.pdf>.

¹⁰ "A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform." American Civil Liberties Union, April 20, 2020. https://www.aclusc.org/sites/default/files/field_documents/tale_of_two_countries_racially_targeted_arrests_in_the_era_of_marijuana_reform.pdf.

work toward statewide legalization of marijuana, our local leaders, from solicitors, to city and county leaders, to police chiefs and sheriffs, can immediately stop enforcing South Carolina’s marijuana possession laws. That’s a reduction of around 34,000 arrests each year.¹¹

- 3. Prohibit the use of arrests unless necessary to prevent imminent and serious bodily harm to another person and all non-incarceration alternatives have been exhausted.** Specifically, South Carolina law enforcement should stop arresting people for anything but the five percent of crimes defined as most serious by the FBI — including murder, rape, and aggravated assault. This would not only reduce unnecessary incarceration, but also strengthen trust in law enforcement - a key component to advancing public safety. As the Vera Institute of Justice noted, in “communities where distrust in police is high, people are less likely to report a crime or offer witness testimony, which impedes effective policing.”¹²

Incarceration should not become a death sentence. The ACLU model shows that a larger catastrophe can be prevented if governors and all system stakeholders drastically reduce their incarcerated populations.

Reduce the Prison Population

South Carolina’s prisons are grossly unequipped to protect people in custody. For years, the South Carolina Department of Corrections (SCDC) has been plagued by a chronic staffing shortage which created conditions that led to a deadly riot at Lee Correctional Institution in 2018. A 2019 report by the S.C. General Assembly Legislative Audit Council clearly states that SCDC is unequipped to maintain safe operations and deliver necessary medical care and programs to incarcerated people on an average day, much less during a deadly pandemic.¹³ SCDC Director Stirling, himself, has acknowledged that his agency “cannot hire [its] way out of” the state prison staffing shortage, meaning that unless there is a significant population reduction, SCDC will remain unable to ensure safety and sufficient medical care to those in its custody. Because of these dangerous conditions and the severe threat associated with COVID-19 rapidly

¹¹ibid.

¹² Neusteter, Rebecca, Leah PopeAaron Stagoff-Belfort, Aaron Stagoff-Belfort, Frankie Wunschel, Abdul RadWenshu, Monica Yang, Jim Parsons, Two Sigma Data Clinic, and CNN. “Centers and Programs: Policing.” Vera Institute of Justice, May 15, 2020. <https://www.vera.org/centers/policing>.

¹³ “A Limited Review of the S.C. Department of Corrections.” South Carolina General Assembly Legislative Audit Council, August 2019. https://lac.sc.gov/sites/default/files/Documents/Legislative%20Audit%20Council/Reports/A-K/SCDC_2019.pdf.

spreading throughout our prisons, public health experts have recommended swift release from custody of those who are most vulnerable.

South Carolina must act urgently to reduce the prison population.

In South Carolina and across the country, prisons are overcrowded with people who do not pose a threat to public safety. South Carolina's prison population is rapidly aging, in large part due to longer average sentence lengths, truth-in-sentencing legislation, sentencing enhancements, and lack of access to parole stemming from a reliance on non-professionals to make parole decisions. Research has conclusively shown that by age 50 most people have significantly outlived the years in which they are most likely to commit crimes. For example, arrest rates drop to just over 2% at age 50 and are almost 0% at age 65.¹⁴ Yet, in South Carolina, people over 55 comprise 11% of the prison population.¹⁵ Research also indicates very low recidivism rates for those saddled with serious medical conditions, yet 1% of those incarcerated in South Carolina have severe medical conditions and 21% have medical conditions warranting work restrictions. Additionally, South Carolina imprisons people who have not committed crimes but have violated conditions of community supervision. Nearly 17% of people incarcerated in SCDC in 2019 were there for revocations of community supervision, not on convictions for new crimes committed.¹⁶

South Carolina can safely and immediately reduce its prison population by releasing the following classes of incarcerated people:

- People over the age of 50;
- People who have serious underlying medical conditions that put them at particular risk of harm or death from COVID-19;
- People with serious developmental disabilities or mental conditions who are unable to maintain good hygiene habits or take medications as directed;
- People within six months of their anticipated release date who qualify for home detention;
- People who are eligible for parole and have been disciplinary free for the past year; and
- People in custody for technical violations for parole or probation.

¹⁴ "At America's Expense: The Mass Incarceration of the Elderly." American Civil Liberties Union, June 2012. https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf.

¹⁵ "Profile of Inmates in Institutional Count as of June 30, 2019." South Carolina Department of Corrections. http://www.doc.sc.gov/research/InmatePopulationStats/ASOF_FY19_Institutional_Count_Profile.pdf.

¹⁶ "Admissions to and Releases from SCDC Base Population FY19." South Carolina Department of Corrections, June 2019. http://www.doc.sc.gov/research/SystemOverview/ADM_REL_from_BASE_POP_FY19.pdf.

Recommendation 2: Ensure Access to the Vote

South Carolina's June 9 primary elections are fast-approaching, and public health experts predict that COVID-19 will impact our November general election as well. Requiring voters to be physically present at their traditional polling places during the COVID-19 outbreak — where they will be congregating and waiting in line with others in order to vote — is contrary to the advice of public health experts. Additionally, a majority of South Carolina poll workers are in the vulnerable age range for becoming critically ill or dying from COVID-19.¹⁷ As a result, elections officials are projecting a shortage of poll workers which will result in longer lines and reduced capacity to enforce safe social distancing at the polls.¹⁸ Many of South Carolina's voting precinct locations have also voiced an unwillingness to host elections during the pandemic.¹⁹ Consolidating precincts will further compound the issue of overcrowding at the polls.

Fortunately, the South Carolina General Assembly has intervened to make no-excuse voting by mail available during the June primary, but the pandemic will still result in voter suppression unless we put additional preventative measures into place.

Policy Recommendations:

Extend No Excuse Vote by Mail

In May, the South Carolina General Assembly passed legislation temporarily allowing voters to cast an absentee ballot for any reason during the June 9 primary, but the provision will sunset on July 1 unless a state of emergency is in effect. Health experts are warning that reopening South Carolina before a significant reduction in numbers of new cases could cause cases to surge.²⁰ With this increased possibility of a longer and more severe pandemic and elections scheduled from June 9 through December 1 of this year, the only way to ensure that no one has to choose between their health and their right to vote is to extend no-excuse voting by mail to all 2020 elections.

¹⁷ Levine, Carrie. "Elderly Poll Workers Run U.S. Elections. But COVID-19 Will Keep Legions Home." NBCUniversal News Group, May 13, 2020. <https://www.nbcnews.com/politics/2020-election/elderly-poll-workers-run-u-s-elections-covid-19-will-n1205761>.

¹⁸ Marchant, Bristow. "Richland County Is Losing Hundreds of June Primary Poll Workers to Coronavirus Fears." The State, April 29, 2020. <https://www.thestate.com/news/politics-government/election/article242381961.html>.

¹⁹ Schechter, Maayan. "SC Lawmakers to Gavel in as Pressure Mounts to Expand Absentee Voting amid COVID-19." The State, May 9, 2020. <https://www.thestate.com/news/politics-government/article242534246.html>.

²⁰"Top Health Experts Paint Bleak Picture of Pandemic." The New York Times, May 12, 2020. <https://www.nytimes.com/2020/05/12/us/coronavirus-live-news-updates.html#link-231eebea>; see also Emily Bohatch. "Has SC 'flattened' the coronavirus curve? Experts say cases could surge as the state reopens." The State, May 13, 2020. <https://www.thestate.com/news/coronavirus/article242483196.html>.

Waive South Carolina's Absentee Ballot Witness Requirement

While the new legislation provides temporary relief, the legislature did not waive South Carolina's mandate that absentee ballots be signed by a witness. In the midst of a pandemic, the witness requirement puts people's health at risk. Public health officials have repeatedly stated that social distancing is the most effective way to prevent the spread of COVID-19. Proximity to a witness poses a threat to those who are most vulnerable to critical illness or death from the pandemic and live alone or in preventative isolation. Almost 30% of South Carolina residents (about 560,000) live by themselves, and well over 200,000 South Carolinians over 65 years of age, one of the groups most vulnerable to COVID-19, live alone.²¹ In addition to being burdensome, the witness requirement is unnecessary. In a letter to Governor McMaster and other officials, the South Carolina Election Commission confirmed that "the witness signature offers no benefit to election officials as they have no ability to verify the witness signature."²² In fact, this requirement is already waived for members of the military and citizens living abroad. South Carolina must waive this requirement entirely throughout 2020 elections.

Recommendation 3: Minimize Disproportionate Negative Impacts for Historically and Structurally Oppressed Communities

COVID-19 has greatly amplified the structures of inequality that drive health, safety and economic outcomes for people in South Carolina. Workers must choose between their health and a paycheck. Children who lack internet access at home do not receive an equal education. Tens of millions of people are forced to navigate a global health pandemic without health insurance. People who lost their job face the loss of their home. All these harms fall disproportionately on Black, Brown, and Indigenous people and are the continuing legacy of a system of racist policies and economic exploitation that has governed our society since the beginning. It is critical that any COVID-19 relief efforts minimize the negative impacts disproportionately experienced by people who have been historically and structurally oppressed.

²¹ "2010-2018 American Community Survey 1-Year Estimates: Selected Social Characteristics of the United States: South Carolina (2018)." U.S. Census Bureau, Accessed May 16, 2020.

https://data.census.gov/cedsci/table?q=south%20carolina%20single%20person%20households&g=0400000US45&hidePreview=false&tid=ACSDP1Y2018.DP02&vintage=2018&layer=VT_2018_040_00_PY_D1&cid=DP02_0001E.

²² Letter from South Carolina Election Commission to Governor Henry McMaster, March 30, 2020.

https://www.aclusc.org/sites/default/files/7.4_sec_letter_to_mcmaster.pdf.

Policy Recommendations:

End Wealth-Based Driver's License Suspensions

South Carolina indefinitely suspends driver's licenses for failure to pay traffic tickets -- regardless of ability to pay -- and charges fees to get a driver's license back even after traffic tickets are paid. People who cannot pay tickets and fees are effectively blocked from getting a hearing where they can explain their financial circumstances because additional fees are required to obtain a hearing. Wealth-based driver's license suspensions perpetuate South Carolina's two-tiered justice system and deny people equal justice under law. Black South Carolina residents are disproportionately impacted because they struggle with poverty and unemployment at rates double that of white South Carolinians.²³

The COVID-19 outbreak and corresponding economic crisis place those who are most vulnerable to both the pandemic and to this practice at even greater risk. People need a valid driver's license to access essential jobs and basic necessities while social distancing. They should not be forced to choose between having to drive illegally or using already limited public transportation options, paid rides, or carpools, none of which allow for maintaining public health experts' recommended six feet of distance between people. Even if it were possible to practice safe social distancing on public transportation, such transit is inadequate in South Carolina. Now more than ever, South Carolinians need to lawfully drive to secure testing and treatment for COVID-19, to report to essential jobs, and to obtain necessary supplies such as soap, hand sanitizer, and protective gloves or masks.

In addition, many COVID-19 testing sites only have a drive-through option,²⁴ thus limiting testing access to people with a vehicle. At a time when testing is essential, people should not have to choose between driving illegally or getting tested for COVID-19.

There is no valid public safety justification for wealth-based driver's license suspensions. In fact, COVID-19 has illuminated the ways in which they make us less safe. Ending wealth-based driver's license suspension is critical to ensure poor South

²³ "Poverty Status in the Past 12 Months, South Carolina." American Community Survey, Accessed May 16, 2020. https://data.census.gov/cedsci/table?q=South%20Carolina%20poverty&g=0400000US45&hidePreview=false&tid=ACSST1Y2018.S1701&t=Poverty&vintage=2018&layer=VT_2018_040_00_PY_D1&cid=S1701_C01_001E.

²⁴ Fortier-Bensen, Tony. "Harris Teeter, Kroger Health to Offer Free COVID-19 Drive-thru Testing in Charleston." WCIV, May 14, 2020. <https://abcnews4.com/newsletter-daily/harris-teeter-kroger-health-to-offer-free-covid-19-drive-thru-testing-in-charleston>.

Carolínians can access necessary resources and care and better support their families during COVID-19 and beyond.

Prohibit Evictions and Foreclosures

In the face of staggering unemployment numbers and climbing medical costs, millions of people living in the United States—and 1,473,765 renters in South Carolina—face the imminent threat of losing their homes.²⁵ These consequences risk further spread of COVID-19 throughout South Carolina and undermine efforts to protect public health and well-being. Moreover, the nearly guaranteed wave of evictions would inflict far-reaching and significant economic and social harm on thousands of South Carolina residents—particularly on women, people of color, low-income residents, and other vulnerable communities.²⁶

In light of the widespread and devastating impact of eviction during the pandemic, South Carolina must immediately expand the duration and scope of the current moratorium on evictions and foreclosures to include utility shut-offs and a prohibition on conducting every stage of the eviction process without exceptions. South Carolina must also plan ahead for when the moratorium ends to prevent mass evictions and other enduring housing consequences for tenants hurt by the pandemic.

Specifically, South Carolina must:

- Halt every stage of the eviction and foreclosure process.
- Continue to prevent evictions and foreclosures until after the pandemic, with extensions.
- Apply to all types of tenants and lease violations.
- Prohibit the collection of late fees and protect tenants who assert rights provided by the moratorium.
- Prevent utility shut-offs without exception.
- Prevent mass evictions after the moratorium ends.
- Protect tenants from blacklisting because they face eviction after the moratorium ends.

²⁵ “COVID-19 Housing Policy Scorecard.” Eviction Lab, Accessed May 16, 2020. <https://evictionlab.org/covid-policy-scorecard/>.

²⁶ Park, Sandra. “Unfair Eviction Screening Policies Are Disproportionately Blacklisting Black Women.” American Civil Liberties Union, April 18, 2018. <https://www.aclu.org/blog/womens-rights/violence-against-women/unfair-eviction-screening-policies-are-disproportionately>.

Ensure Access to Equal Education and Privacy

While the rapid movement towards remote learning during this crisis reflects a good faith effort to educate students, in practice, it also represents a significant failure to deliver such an education on equal terms.²⁷ Unfortunately, the burden of this failure has fallen unequally on students who traditionally have struggled to secure an equal, quality education, including students from low income families, students of color, students with disabilities, and students who lack permanent housing.²⁸ Further, the government's failure to implement robust privacy protections around remote learning threatens to exclude even more students from participating. To be clear, this current state of affairs – in which remote learning is fully accessible to some students, partially accessible to others, and inaccessible to many – is not only unacceptable, it is unlawful.

Corrective measures must be taken now to mitigate the inequalities that are plaguing remote learning and the dearth of privacy protections for students trying to learn from home. Every day these issues go unaddressed, countless students are denied their educational rights and, as a result, fall further and further behind. Unquestionably, addressing these disparities will necessitate a direct, significant, and immediate investment of the government's time and resources and likely may also involve seeking assistance from the federal government and private industry.

All students in South Carolina must have access to all of the remote learning tools they need to participate fully and equally, including broadband internet access. Students with disabilities must also be provided with necessary technological accommodations to make learning accessible.

Many of the technologies needed for remote learning, including hardware, software, internet services, and educational learning platforms, are capable of collecting massive amounts of private, personal information on students and/or spying on students using surveillance technologies.²⁹ Students must not be required to surrender their privacy or consent to being spied upon as a condition of receiving a remote education during the COVID-19 crisis.

²⁷ Lucas Daprile, "With third-world internet speeds, some SC rural residents struggle to learn online," *The State*, Apr. 6, 2020, available at <https://www.thestate.com/news/coronavirus/article241683481.html>.

²⁸ Dana Goldstein, Adam Popescu and Nikole Hannah-Jones. "As School Moves Online, Many Students Stay Logged Out." *The New York Times*. April 6, 2020; see also Lucas Daprile, "With third-world internet speeds, some SC rural residents struggle to learn online," *The State*, Apr. 6, 2020, available at <https://www.thestate.com/news/coronavirus/article241683481.html>. <https://www.nytimes.com/2020/04/06/us/coronavirus-schools-attendance-absent.html> [accessed April 15, 2020].

²⁹ "ACLU News & Commentary." American Civil Liberties Union. Accessed May 17, 2020. <https://www.aclu.org/news/privacy-technology/those-free-remote-learning-apps-have-a-high-cost-your-students-privacy/>.

It is important to note that for some students and their families, privacy is not just a preference; it is a necessity. For example, undocumented and first-generation immigrant students may feel the need to forego the use of educational technologies and services if they believe the tech's information gathering or surveillance capabilities will place them and their families at risk. All students must feel safe to learn remotely, and that simply cannot happen if the tools used for remote learning are allowed to collect information simply so those who provide them can use the data to generate future income or for other non-instructional purposes.

This Blueprint is just a starting point.

COVID-19 has made it harder to ignore our failures as a society. These outcomes are the natural result of a system of racist policies and economic exploitation that has governed our society since the beginning.

While the immediate steps that South Carolina must take in the face of COVID-19 are clear, the root problems will continue to destroy the lives of individuals, families, and communities long after this pandemic is under control and life returns to “normal.” Thus, this Blueprint is just the beginning.

To build a just society we must invest in people instead of police and prisons. We must ensure that every child receives a quality public education. That every worker earns a living wage. That every person has a roof over their head. That all people have comprehensive healthcare.

We must finally build a society where “We the People” means everyone.