



April 3, 2020

RE: Law Enforcement Response to COVID-19 Related Executive Orders

Dear South Carolina Law Enforcement Leaders,

Governor McMaster has issued eleven Executive Orders in response to the COVID-19 outbreak. Among the responses outlined in these Executive Orders is a series of provisions that expand police powers. These expanded powers lack clear definition and have raised serious concerns from vulnerable community members.

While individual rights may give way to the greater good during a disease outbreak, the use of any measure that deprives individuals of their liberty must be scientifically supported and proportional. Some provisions of Governor McMaster's Executive Orders fail to meet this basic test.

Many of these provisions ask law enforcement officers to enforce criminal laws without clear guidance and/or proper training. For example:

- Executive Order 2020-13 provides individual law enforcement officers with discretion to disperse and criminally charge groups of three or more people. But, this does not apply to all groups of three or more people, just groups the individual officer, who is not required to be a trained public health professional, determines to be “a threat to public health.”
- The press release accompanying Executive Order 2020-13 says the order “does not apply to private businesses nor to responsible South Carolinians continuing to make the best out of this situation.”¹ The term “responsible” is not a defined legal term.
- Executive Order 2020-11 “direct[s] any and all law enforcement officers of the state, or any political subdivision thereof, to do whatever may be deemed necessary to maintain peace and good order during the state of emergency,”
- Executive Orders 2020-13, 2020-14, and 2020-15 all provide law enforcement with the power to arrest and criminally charge any person who “‘refuse[s] to disperse upon order of a law enforcement officer,’ ‘wilfully fail[s] or refuse[s] to comply with any lawful order or

¹ Press Release, *Gov. Henry McMaster Issues Executive Order 2020-13*, Mar. 23, 2020, available at <https://governor.sc.gov/news/2020-03/gov-henry-mcmaster-issues-executive-order-2020-13>.

direction of any law enforcement officer,' or otherwise violates any provision of any Order issued by the undersigned in connection with the State of Emergency.”

As you know, trust between law enforcement and the community is 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.”² We have heard from community members who are deeply concerned about how the recent expansion of police powers may be enforced. As we face the COVID-19 crisis together in South Carolina, it is essential that law enforcement refrain from any actions that could undermine community trust in law enforcement and increase tensions that already exist because of this pandemic.

In addition to strengthening trust between community members and law enforcement, limiting the use of the criminal sanctions provisions would better align your community’s COVID-19 response with public health experts’ recommendations, specifically, the need to reduce the public health risks of unnecessary incarceration. Because of the grave risks of COVID-19 exposure for people in custodial settings,³ the use of custodial arrest to enforce these restrictions is not an appropriate public health measure and should almost never be the outcome of these enforcement efforts.⁴ Such arrests should be prohibited unless necessary to prevent imminent and serious bodily harm to another person and all non-incarceration alternatives have been exhausted.

We urge you to publicly commit to supporting these positions.

Finally, as we wrote in our letter to you dated March 18, 2020, we urge you to publicly commit to:

- Drastically limit the number of people who are arrested and then detained, even if just for a short time, in close proximity to other people or in spaces where maintaining hygiene becomes difficult.
- Cease arrests for low-level offenses including but not limited to possession of small amounts of marijuana, possession of drug paraphernalia, and laws that disproportionately harm unhoused people (e.g., littering, public urination).
- Issue citations or tickets in lieu of arrest for offenses not covered above so that people can return home, balancing the need for arrest with the overwhelming public safety concerns presented by COVID-19 and limiting the risk of bringing someone who may have the virus into a station and potentially infecting other personnel or first responders.

² Jim Parsons, *Policing*, Vera Institute for Justice, available at <https://www.vera.org/centers/policing/learn-more>.

³ Timothy Williams, et al., ‘*Jails Are Petri Dishes*’: *Inmates Freed as the Virus Spreads Behind Bars*, NY Times, Mar. 31, 2020, available at <https://www.nytimes.com/2020/03/30/us/coronavirus-prisons-jails.html?auth=login-email&login=email>.

⁴ Vera Institute for Justice & Community Oriented Correctional Health Services, *Guidance for preventive and responsive measures to coronavirus by police and law enforcement*, Mar. 18, 2020, available at <https://www.vera.org/downloads/publications/coronavirus-guidance-police-law-enforcement.pdf>.

Thank you for your time. We hope that you will heed our call and ensure that your response to COVID-19 protects the health, safety, and civil liberties of all in your community.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frank Knaack', written in a cursive style.

Frank Knaack
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