

Summary of Recommendations for Taking on Disparities and Protecting Equal Rights

Compiled and edited by the Editorial Committee

The editors asked the authors to provide their best recommendations for legal action in response to COVID-19. Recommendations for *Taking on Disparities and Protecting Equal Rights* address persistent equity gaps that have been exposed by the pandemic. These recommendations include both calls for urgent action now, as well as longer term changes that reflect the way the pandemic has highlighted deeper problems in American law and policy. We have organized the recommendations into federal, state, local and Tribal guidance.

Each recommendation is referenced back to its author(s). Please refer to specific chapters for a complete list of recommendations on a particular topic.

Action at the Federal Level

- Congress and the White House should jointly convene an independent commission or National Academies committee to examine the causes of racial and ethnic disparities in COVID-19 infections and associated harms (Anderson and Burris, *Is Law Working*)
- Congress should dedicate and increase resources to federal agencies to coordinate with civil rights and public health organizations to inform, enforce, and further civil rights protections in the COVID-19 response (Harris and Pamukcu, *Civil Rights*)
- Agencies should develop guidance for the use of “targeted universalism” (combining universal objectives and programs with targeted corrective justice projects) as a policy and planning frame in order to benefit all populations while specifically addressing the harms of racism (Harris and Pamukcu, *Civil Rights*)
- To promote equitable access to broadband internet service during COVID-19 and beyond,
 - o Congress should
 - Amend Title 47 of the United States Code to classify broadband as a telecommunications service, or otherwise provide needed oversight that could help increase competition and eliminate the digital divide
 - Amend Title 47 of the United States Code to prohibit state preemption of local broadband markets and decision-making
 - Enact federal legislation requiring broadband infrastructure to be built in conjunction with other government funded construction projects
 - Appropriate additional funding for libraries, community anchor institutions, and schools for the purchase of mobile hotspots that can be loaned to individuals or used to benefit underserved and unserved communities
 - o The FCC should
 - Issue an order authorizing the use of E-rate funding to support offsite broadband access on school buses, at community anchor institutions, and at student homes; and waiving the E-rate funding penalty for schools that provide off-site broadband services. FCC should revise its regulations, 47 C.F.R. § 54.500 et seq, to codify these changes and expand the E-Rate program
 - Revise its Lifeline regulations, at 47 C.F.R. § 54.400 et seq., to increase the amount of the Lifeline discount
 - Work with other federal agencies to bundle Lifeline enrollment with enrollment in other federal programs
 - Collect data on affordability and availability of broadband service throughout the United States, including demographic data such as language, race and ethnicity (Lawton, *COVID-19*)
 - o Congress by statute or the Federal Communications Commission by rule should prohibit states from preempting local governments from building or expanding access to municipal broadband (Haddow et al, *Preemption*)
- To protect incarcerated persons, staff and their communities,
 - o The Federal Bureau of Prisons should:
 - Continue decarceration efforts while ensuring reentry services are expanded accordingly
 - Restore that gave cell phones to those who cannot afford a phone line (1) for communication with family, employers, and social services and (2) as a way to check in with parole/probation, register for benefits, contact social workers, and schedule appointments with health care
 - Ensure access to shelter upon release, including providing temporary housing (e.g., hotels) to individuals who need assistance or a safe space to quarantine post-release

- Conduct frequent (daily or weekly) COVID-19 screenings on all staff and individuals incarcerated in federal facilities
 - o The Department of Health and Human Services should continue to encourage states to use emergency 1135 waivers, which allow states to use Medicaid funds for housing and moving expenses
 - o Congress should
 - Eliminate the “inmate exclusion” in Medicare and Medicaid, opening the door for the use of federal health dollars in correctional settings
 - Change laws, including controlled substances and other statutes criminalizing health and economic vulnerability, to shrink the footprint of the criminal legal system (Bresler and Beletsky, COVID-19)
- To assure that COVID-19 response respects the rights and well-being of people with disabilities, federal agencies should provide clear, ongoing legal guidance. Specifically:
 - o The HHS Office for Civil Rights should continue to enforce and provide COVID-specific guidance on the requirements of the Americans with Disabilities Act, Rehabilitation Act, and Section 1557 of the ACA for health care providers, institutions, and systems regarding medical allocation policies, hospital visitor policies, and other policies that impact care for people with disabilities
 - o Following the example of the Equal Employment Opportunity’s guidance for private employers, the Department of Justice should provide similar guidance on the requirements of the ADA and Rehabilitation Act in COVID-related policies adopted by state, local, and retail and other business entities, including mask-wearing policies (Pendo, Protecting the Rights of People with Disabilities; see also Gable, Crisis)
- To minimize the risk of the spread of COVID-19 to immigrants, staff, communities and globally,
 - o ICE should
 - Declare that it will not enforce immigration laws within any health care facility, and that it will not use any information obtained from health or public health workers, including from contact tracers This declaration should be widely messaged, in multiple languages, to immigrant communities
 - Suspend immigration raids during the pandemic, except where they are necessary to prevent an imminent risk to public safety A pandemic is not the time to time to add to fear and distrust in immigrant communities
 - Further depopulate immigration detention facilities, holding only immigrants who pose an immediate risk to public safety ICE should ensure that detainees who remain receive language-appropriate health information, adequate health care, and the means to practice good hygiene and social distancing (Parmet, Immigration)
 - o USCIS, or Congress if USCIS does not act, should repeal the public charge rule, or at least, suspend it for the duration of the pandemic (Parmet, Immigration)
 - o Congress should extend unemployment benefits to undocumented workers (Terman, Protecting Workers)
- Congress should ensure that organizations that provide direct relief and services, including LGBT organizations, are eligible for funding under CARES Act and future emergency support measures (Konnoth, Supporting LGBT Communities)
- Consistent with the Supreme Court’s recent decision in *Bostock v Clayton County*,
 - o HHS should issue a regulation affirming that Section 1557 of the Affordable Care Act prohibits discrimination based on sexual orientation and gender identity
 - o HUD should withdraw its proposed rule reversing the Obama Administration’s Equal Access Rule, which required that Housing and Urban Department programs, including certain shelters, were open to all eligible families and individuals “without regard to actual or perceived sexual orientation, gender identity, or marital status” (Konnoth, Supporting LGBT Communities)
- HHS, DOJ, and other relevant agencies should clarify that the Religious Freedom Restoration Act and other religion-related protections do not justify discrimination against LGBT individuals (Konnoth, Supporting LGBT Communities)
- FDA should remove all vestiges of its ban on blood donation by men who have sex with men from its blood donation guidance, so that the LGBT community is not excluded from assisting in the COVID-19 relief effort (Konnoth, Supporting LGBT Communities)

Action at the State Level

- To sharpen a focus on equity and instigate action in state government, governors should
 - o Instruct public health officials to incorporate equity considerations and address the needs of vulnerable populations in all COVID-19 orders, policies and programs (Jacobson et al, Executive Decision Making)
 - Population measures to increase physical distance must be complemented by risk reduction measures to support people who are required by their jobs or economic necessity to work, travel on public transportation, and spend time in congregate settings
 - These may include provision of high-quality PPE appropriate to the physical situation, hazard pay, paid sick leave, health insurance, and redesign of work procedures and settings (Anderson and Burris, Is Law Working)
 - o Require and support agencies to develop guidance on the use “targeted universalism” (combining universal objectives and programs with targeted corrective justice projects) as a policy and planning frame in order to benefit all populations

- o while specifically addressing the harms of racism (Harris and Pamukcu, Civil Rights)
- To increase community involvement and voice,
 - o Legislators and governors should realign budgets around preventive health and provide community budgeting participation and oversight
 - o Legislators and agencies should provide funding to supporting community-based organizations working to address the social determinants of health, the racial health gap, and/or anti-discrimination efforts (Harris and Pamukcu, Civil Rights)
- To promote equitable access to broadband internet service during COVID-19 and beyond,
 - o Legislators and agencies should adopt laws and regulations requiring broadband infrastructure to be built in conjunction with other government construction projects.
 - o Legislators should adopt statewide connectivity goals and deadlines (Lawton, COVID-19)
 - o State legislatures should appropriate funds and enact laws to subsidize high-speed, broadband internet for residences and alternative housing, such as homeless shelters or hotels and motels used to provide shelter for those experiencing homelessness (Anderson, A Pandemic)
- To reduce the unhealth effects of incarceration on prisoners, families and communities during COVID-19 and beyond,
 - o State correctional officials should
 - Expand COVID-19 testing of individuals and correctional officers in carceral institutions
 - Ensure transportation, provide financial assistance, and provide temporary ID cards to those without valid ID upon release
 - o Legislators and appropriate agencies should
 - Change statutes, regulations, and institutional policies to ensure individuals are not barred from seeking public assistance for housing and other needs due to their record
 - Change statutes, regulations, and institutional policies to relax conditions of probation and parole that mandate obtaining employment, substance use treatment, housing, or continuing education
 - o Legislators should mandate and fund the
 - Virtual job counseling and access to online classes for those reentering (and technology resources for those who can no longer access places with publicly available resources)
 - Expanded reentry services and virtual capacity to ensure the continuation of such services
 - Services to reduce COVID-19 spread and other health harms post-incarceration, including access to shelter upon release, medications during and after incarceration, testing for COVID-19 upon release, and again two weeks after, provision of naloxone (the opioid overdose reversal drug) to individuals with SUD, and assistance with re-enrolling in Medicaid to those who qualify
- o Legislators should repeal criminal record bans for health care profession licensing for people otherwise qualified and not a risk (Bresler and Beletsky, COVID-19)
- To assure that COVID-19 response respects the rights and well-being of people with disabilities, State agencies should
 - o Enforce and provide COVID-specific guidance on the requirements of state laws that prohibit discrimination based on disability
 - o Review and revise state and local policies related to COVID-19, including medical allocation policies, hospital visitor policies, and mask-wearing policies, to ensure that they comply with requirements of federal and state disability rights law (Pendo, Protecting the Rights of People with Disabilities; see also Krueger, Mental Health)
- To ensure LGBT individuals have access to essential services, state attorneys general should clarify that sex discrimination prohibitions in public accommodation discrimination, present in all 50 states, also prohibit discrimination based on sexual orientation and gender identity (Konnoth, Supporting LGBT Communities)
- To ensure that contract tracing apps and processes do not reflect bias or infringe upon civil liberties and human rights, state governments by legislation or agency rule should ensure that as implemented:
 - o Applications neither (1) intentionally nor disparately burden folks on the basis of race, ethnicity, nationality, sex, religion, immigration status, LGBTQ+ status, or disability, nor (2) document information that implicates users' civil liberties or human rights
 - o Health authorities provide no-cost cellular phones and data packages to individuals who wish to participate but do not have the resources to obtain the underlying technology, devices, and data plans
 - o Health authorities incorporate the use of traditional contact tracers with local connections to vulnerable communities rather than solely rely on automated surveillance to ensure the inclusion of individuals who do not have access to smartphone technology and/or otherwise distrust digital surveillance (Oliva, Surveillance)

Action at the Local Level

- Local governments should
 - o Realign government budgets around preventive health and provide community budgeting participation and oversight
 - o Recognize and address racism as an institutional and systemic issue, by, for example, issuing a declaration characterizing racism as a public health crisis

- o Use “targeted universalism” (combining universal objectives and programs with targeted corrective justice projects) as a policy and planning frame in order to benefit all populations while specifically addressing the harms of racism (Harris and Pamukcu, Civil Rights; see also Krueger, Mental Health)
- o Actively enforce anti-discrimination laws and provide proactive education on antidiscrimination requirements (Krueger, Mental Health)
- To promote equitable access to broadband internet service during COVID-19 and beyond, cities and counties should
 - o require broadband infrastructure to be built in conjunction with other government construction projects
 - o provide free community-wide wireless
 - o promote competition by supporting local public utilities and cooperatives
 - o work with schools, community anchor institutions, and public health departments should develop public private partnerships to support broadband connectivity
 - o develop community wide connectivity goals (Lawton, COVID-19)
- To reduce the unhealthy effects of incarceration on prisoners, families and communities during COVID-19 and beyond,
 - o City and county jail officials should
 - Expand COVID-19 testing of individuals and correctional officers in carceral institutions
 - Ensure transportation upon and provide financial assistance upon release
 - o Local governments should mandate and fund
 - Virtual job counseling and access to online classes for those reentering (and technology resources for those who can no longer access places with publicly available resources)
 - Expanded reentry services and virtual capacity to ensure the continuation of such services
 - Services to reduce COVID-19 spread and other health harms post-incarceration, including access to shelter upon release, medications during and after incarceration, testing for COVID-19 upon release, and again two weeks after, provision of naloxone (the opioid overdose reversal drug) to individuals with SUD, and assistance with re-enrolling in Medicaid to those who qualify
- o Legislators should enact “ban the box” ordinances prohibiting the check box that asks if applicants have a criminal record in hiring applications (Bresler and Beletsky, COVID-19)
- Local governments should review and revise local policies related to COVID-19, including mask-wearing policies, to ensure that they comply with requirements of federal disability rights law (Pendo, Protecting the Rights of People with Disabilities)

Action at the Tribal Level

- Tribal governments should instruct public health officials to incorporate equity considerations and address the needs of vulnerable populations in all COVID-19 orders, policies and programs (See Jacobson et al, Executive Decision Making)