



Actions to Prevent the Spread of COVID-19 in the Criminal-Legal System: Decarceration Recommendations & Resources

At this crisis point, decarcerating jails and prisons is a legal, moral, and humanitarian imperative. We recommend that government officials immediately take the following actions. See [this list](#) for decarceral actions that officials nationwide have already taken.

Using all available powers, including the powers of clemency, furlough, parole, and compassionate release, dramatically reduce the prison population.

- Stop all new detentions of individuals, except where law enforcement can justify in writing that the government interest in criminal prosecution outweighs the *extreme mortality and infection risk of spreading COVID-19 within correctional facilities*. Designate many offenses, including any offenses related to nonpayment, as *categorically ineligible for arrest, prosecution, and detention*.
- Institute a release protocol for all people who are detained in prison. Ensure that such protocol includes (1) categorical release for *as many people as possible* and (2) a public health-conscious process that facilitates the release of individuals who are *not* within these broad categories.
- When developing the broad categories for immediate release, ensure that these categories include *at a minimum* the following:
 - The elderly and medically vulnerable, including individuals who are pregnant or who have asthma, chronic illness, diabetes, lung disease, heart disease, or any condition that suppresses the immune system;
 - Anyone within 18 months of his/her release date; and
 - All people held on a probation or parole-related detainer, including anyone incarcerated for a technical violation.
- Ask parole boards to release all individuals who are currently on parole and develop an emergency process that can expedite parole hearings.

End jail admissions to the maximum extent possible.

- Use [cite-and-release](#) for all individuals who are eligible for cite-and-release.
- Do not set bond or impose pretrial detention in any cases.
- Do not impose post-conviction detention in any cases.
- If the court is nonetheless considering pretrial or post-conviction detention in some cases, ensure that (1) such detention is unavailable for most people, by making many groups categorically ineligible, and (2) all individuals who are *not* categorically ineligible have a hearing that addresses the public health-related exceptional circumstances.
- If the court is nonetheless considering custodial detention in some cases, advocate that all new incarcerations be house arrests.
- If the court imposes custodial detention in any context, ask the court for a written explanation regarding why the government interest in custodial detention outweighs the *extreme mortality and infection risk of spreading COVID-19 within correctional facilities*.

Decarcerate the local jail(s).

- Institute a release protocol for all people who are detained pretrial and post-conviction. Ensure that such protocol includes (1) immediate, categorical release for *as many people as possible* and (2) all

individuals who are *not* categorically ineligible have a hearing that addresses the public health-related exceptional circumstances.

- When developing the broad categories for immediate release, ensure that these categories include *at minimum* the following:
 - The elderly and medically vulnerable, including individuals who are pregnant or who have asthma, chronic illness, diabetes, lung disease, heart disease, or any condition that suppresses the immune system;
 - All individuals being held pretrial;
 - All people serving misdemeanors and a set list of felony offenses, which list includes the vast majority of felonies;
 - All individuals within six months of their release date;
 - All primary caregivers;
 - All people held on a probation or parole-related detainer; and
 - All individuals being held for other agencies, including ICE.
- If custodial detention is nonetheless maintained, require a written explanation regarding why the government interest in custodial detention outweighs the *extreme mortality and infection risk of spreading COVID-19 within correctional facilities.*