



**POSITIVE WOMEN'S NETWORK**  
USA

Positive Women's Network - USA  
436 14<sup>th</sup> Street, Suite 500  
Oakland, CA 94612  
510.698.3811 **phone**  
[www.pwn-usa.org](http://www.pwn-usa.org)  
@uspwn  
[www.facebook.com/pwnusa](https://www.facebook.com/pwnusa)

April 10, 2020

The Honorable Jerrold Nadler  
Chairman  
House Committee on the Judiciary  
U.S. House of Representatives  
Washington D.C. 20515

The Honorable Jim Jordan  
Ranking Member  
House Committee on the Judiciary  
U.S. House of Representatives  
Washington D.C. 20515

The Honorable Lindsey Graham  
Chairman  
Senate Committee on the Judiciary  
U.S. Senate  
Washington D.C. 20515

The Honorable Dianne Feinstein  
Ranking Member  
Senate Committee on the Judiciary  
U.S. Senate  
Washington D.C. 20515

Dear Chairman Nadler, Ranking Member Jordan, Chairman Graham, and Ranking Member Feinstein:

We, the undersigned organizations, are dedicated to the health, safety, and dignity of Black, Indigenous and People of Color (BIPOC), people living with HIV, people involved in the sex trade, substance users, people who access harm reduction services, migrant populations, lesbian, gay, bisexual, transgender and queer (LGBTQ) people, disabled people, and no- and low-income people. We write today to urge local, state and federal authorities to refrain from using laws punitively in response to the novel coronavirus (COVID-19) pandemic. Such laws and their enforcement invariably and incommensurately target and harm our communities.

Federal, state and local officials have called for new guidance in response to COVID-19 and increasingly harsh enforcement of public health guidance. However, communities already heavily surveilled, policed, and criminalized will likely bear the brunt of COVID-19 related surveillance, policing, criminal charges and/or penalty enhancements. A response rooted in policing and criminalization not only undermines public health and human rights, but jeopardizes the long-term survival of our communities.

While we, representing communities that disproportionately suffer from poor health outcomes, share a desire to ensure that the response to COVID-19 is effective, we exhort Congress to prioritize human rights, safety, health, and well-being of marginalized constituencies in making decisions. It is critical that every level of government prioritize the safety, health, and well-being of marginalized communities.

## **I. Criminalization of COVID-19**

As of April 9, 2020, 30 states have issued shelter-in-place orders, except for essential services.<sup>1</sup> While the purpose of the orders is consistent—to slow the transmission of COVID-19 and ease the burden on health care providers and systems—their scope, duration and punishments for violating vary. For example, in Virginia, the shelter-in-place order will run until June 10 and a violation is a class 1 misdemeanor, punishable by up to 12

<sup>1</sup> Sarah Mervosh, Denise Lu, and Vanessa Swales, *See Which States and Cities Have Told Residents to Stay at Home*, N.Y. Times, Apr. 7, 2020, <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html>

months in jail, a \$2500 fine, or both.<sup>2</sup> In Colorado, the shelter-in-place order will run until April 11 and is punishable by up to 12 months in jail, a \$1000 fine, or both.<sup>3</sup>

The variation does not stop at the state level. Orders often differ county-to-county, even within states that have shelter-in-place orders. They also frequently change, and the terms of the orders can be unclear or subject to interpretation. For instance, what is “exercise” and how long can you be outside doing it before violating a state order? This patchwork of orders leads to confusion for many on what they are allowed and required to do and leaves them vulnerable to punishment.

Enforcement of these orders has increasingly involved criminalization, ticketing and arrests of individuals for alleged violations. Since the advent of shelter-in-place orders, Maryland has arrested fourteen people<sup>4</sup> and there have been 9 arrests in Honolulu, Hawaii alone.<sup>5</sup> Officials are also increasing fines. For instance, in New York State, Governor Cuomo increased fines for violating the PAUSE NY Executive Order from \$500 to \$1000 last week.<sup>6</sup> People who are homeless and housing unstable will be especially impacted by punishment for violations because they do not have the option to shelter-in-place, and will increasingly move to more unsafe and precarious areas to avoid arrest.

Criminalization does not end with shelter-in-place order violations. Law enforcement is utilizing existing criminal statutes to charge individuals with low-level misdemeanors and felonies for such things as coughing, sneezing, licking objects, or spraying fluids. In Michigan, a man was charged with three felonies after intentionally touching multiple shopping carts at a local grocery store while claiming to have COVID-19.<sup>7</sup> In Illinois, a man was arrested for “reckless conduct” after coughing in the direction of a front desk where three police officers were standing at a Chicago Police Department.<sup>8</sup> In Pennsylvania, a woman who called police for help removing a man from her house was arrested for assault on a police officer after they claim she coughed in their direction, charged with terroristic threats, simple assault, disorderly conduct and public drunkenness, held over the weekend, and eventually released on \$5000 bail.<sup>9</sup>

On March 24, the U.S. Department of Justice issued a memo to heads of law enforcement agencies, heads of litigation departments, and U.S. attorneys, providing, in part, that people who intentionally transmit COVID-19

<sup>2</sup> Virginia Governor Ralph Northam Issues Stay At Home Order, (2020), <https://www.governor.virginia.gov/newsroom/all-releases/2020/march/headline-855702-en.html> (last visited April 9, 2020).

<sup>3</sup> Colo. Dep’t of Health & Environment, *Amended Public Health Order 20-24 Implementing Stay at Home Requirements* (2020), [https://drive.google.com/file/d/1IzfYUaxEf-UFSVAzkY\\_b9CfIOMPOdlxH/view](https://drive.google.com/file/d/1IzfYUaxEf-UFSVAzkY_b9CfIOMPOdlxH/view).

<sup>4</sup> Bryna Zumer, *14 Arrests Made, 600+ Warnings Issued for Violating COVID Orders in Maryland*, Fox Baltimore, Apr. 7, 2020, <https://foxbaltimore.com/news/coronavirus/14-arrests-made-600-warnings-issued-for-violating-covid-orders-in-maryland>.

<sup>5</sup> Leila Fujimori, *Honolulu Police Make 9 Arrests, Issue 1,500 Warnings and 180 Citations for Emergency Law Violations*, Star Advertiser, Apr. 1, 2020, <https://www.staradvertiser.com/2020/04/01/hawaii-news/honolulu-police-chief-reports-numbers-on-arrests-and-citations-for-violations-of-the-emergency-proclamation/>.

<sup>6</sup> *Amid Ongoing COVID-19 Pandemic, Governor Cuomo Announces NYS on Pause Functions Extended for Additional Two Weeks*, Apr. 6, 2020, <https://www.governor.ny.gov/news/amid-ongoing-covid-19-pandemic-governor-cuomo-announces-nys-pause-functions-extended-additional>.

<sup>7</sup> Cassidy Johncox, *Mt. Morris man charged after attempting to infect others with COVID-19 at grocery store, police say*, Local 4, Mar. 28, 2020, <https://www.clickondetroit.com/news/local/2020/03/28/mt-morris-man-charged-with-multiple-felonies-after-claiming-to-have-covid-19-attempting-to-infect-others-at-grocery-store/>.

<sup>8</sup> *Man Enters CPF Station, Coughs on Officers*, CBS 2 Chicago, Mar. 25, 2020, <https://chicago.cbslocal.com/2020/03/25/man-enters-cpd-station-coughs-on-front-desk-staff/>.

<sup>9</sup> Sarah M. Wojack, *Intoxicated Bethlehem Woman Tells Police Boyfriend Has Coronavirus, Then Coughs on Officer Who Responds, Court Papers Say*, The Morning Call, Apr. 2, 2020, <https://www.mcall.com/news/police/mc-nws-bethlehem-woman-coughs-on-police-20200402-jog4vkhjjbkrp5lf7wsqt26kq-story.html>.

may be charged under existing federal terrorism laws, such as the “use of a weapon involving a biological agent.”<sup>10</sup>

The above practices will only perpetuate current disparities in BIPOC people’s rates of incarceration. For example, Black people are already incarcerated in state prisons at five times the rate of whites.<sup>11</sup> The disparity is more than 10 to 1 in Minnesota, New Jersey, Vermont and Wisconsin—all states with shelter-in-place orders and documented arrests of individuals violating the orders.<sup>12</sup> To make matters worse, communities that have historically faced systemic discrimination and increased criminalization are already bearing the brunt of the pandemic. For example, consider the case of Michigan:

“In Michigan, Blacks make up 15% of the state population but represent 35% of people diagnosed with COVID-19. This means that Blacks in Michigan are 133% more likely to contract the novel coronavirus relative to their percentage of the state. With a death rate hovering near 4% in Michigan, Blacks are also over-represented for deaths related to COVID-19, accounting for 40% of all deaths statewide. For comparison, Whites represent 25% of people diagnosed with COVID-19 and 26% of deaths. Whites make-up over 75% of the state population.”<sup>13</sup>

Marginalized communities are also more likely to be excluded from receiving the \$1,200 stimulus check due to factors like immigration status, tax filing history, and housing status. Steps must be taken to mitigate these disparities in the federal, state, and local responses to the pandemic, particularly in protecting against increased criminalization.

## **II. Criminalization Compromises Health**

Criminalization compromises public health in many ways. Experience shows us that the surveillance, policing, and criminalization of stigmatized populations leads to negative health outcomes, and discrimination in health care settings, which further encourages people to avoid interacting with the health care system. When a person's health is criminalized, they avoid testing and treatment to avoid police, criminal penalties, and stigma. The situation will be no different with COVID-19. Articles have already documented widespread fears in the immigrant community that seeking care will lead to deportation for people who are undocumented. People who are legal permanent residents fear that accessing needed care will violate newly intensified public charge rules.

It also creates an environment where people could be punished for doing activities that the state requires. For example, some states require people living with HIV who rely on the Health Resources and Services Administration's (HRSA) Ryan White HIV/AIDS Program for necessary services and medication certify and recertify in-person -- even though this is not a federal requirement.<sup>14</sup> Where a state still requires in-person certification or recertification, if that state or a county within it has a shelter-in-place order, individuals seeking certification are at an elevated risk for interaction with law enforcement.

<sup>10</sup> U.S. Dep't of Justice, Office of Deputy Att'y. Gen. (2020, Mar.) Department of Justice Enforcement Actions Related to COVID- 19 (Memorandum) Retrieved from the Department of Justice Web site: <https://www.justice.gov/file/1262771/download>.

<sup>11</sup> Dr. Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, The Sentencing Project (June 14, 2016), at 14, <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>

<sup>12</sup> *Id.* at 3.

<sup>13</sup> Rashawn Ray, *Why Are Blacks Dying At Higher Rates from COVID-19?*, Brookings Institute (Apr. 9, 2020), <https://www.brookings.edu/blog/fixgov/2020/04/09/why-are-blacks-dying-at-higher-rates-from-covid-19/>.

<sup>14</sup> Health Resources and Service Administration, *Coronavirus Disease 2019 (COVID-19) Frequently Asked Questions 2020*, <https://hab.hrsa.gov/coronavirus-frequently-asked-questions#providing-hiv>.

Criminalization brings police officers, who have some of the highest rates of infection, dangerously close to people they are questioning, ticketing, and arresting, and places people who are arrested in much more dangerous situations than arrests are ostensibly being effected to prevent. It also leads to more incarceration. Under typical circumstances, the correctional health care infrastructure fails to meet basic health care needs, let alone prevent or contain seasonal flu outbreaks. Efforts are being made across the country to release incarcerated people and end low-level prosecutions because of the limited ability of those who are incarcerated to practice the preventative measures outlined by the Centers for Disease Control and Prevention (CDC) within restrictive and/or overcrowded facilities. As of April 9, there are over 1,300 confirmed COVID-19 cases in U.S. prisons and jails.<sup>15</sup> A reliance on police to enforce these orders, potentially funneling community into police cells, jails and prisons undermines those efforts.

### **III. Misuse of Surveillance and Law Enforcement**

Law enforcement officers are not equipped to respond to issues of health -- their tools are coercion, physical force and arrest. Public health problems require public health responses. Law enforcement are ill-equipped to be at the forefront of any type of health intervention and their presence can be counter-productive. Yet, all levels of government are heavily relying on law enforcement to enforce public health guidance aimed at stemming the spread of the greatest pandemic of our lifetimes. State and local law enforcement across the nation are being emboldened to continue and expand criminalization of communities already disproportionately targeted for policing during the pandemic. For example, New York Governor Andrew Cuomo's executive order states, "Fire Department of the City of New York, the New York City Police Department, the Department of Buildings, the Sheriff, and other agencies as needed to immediately enforce the directives set forth in this Order in accordance with their lawful enforcement authorities"<sup>16</sup> Granting broad discretion to law enforcement to enforce broad orders will result in the disproportionate criminalization of marginalized communities.

There is a long history of medical surveillance under the pretext of protecting public health that has driven criminalization, policing, and punishment of stigmatized populations and health conditions instead of improvements in health. Failure to disclose one's HIV status can lead to criminal penalties in 29 states.<sup>17</sup> For sex workers, forcible STI testing requirements have existed for decades, and are often drivers or consequences of increased policing and criminalization. Sex workers are also disproportionately impacted by HIV criminalization laws; the names, faces, addresses and HIV status of sex workers who are living with HIV have been made public by public health authorities, ostensibly out of concern for public health. In the current pandemic, both domestic and international media outlets have called the sex trade a "vector of disease" and called for a focus on policing and prosecution of people in the sex trades -- instead of encouraging adopting financial and other supports that will promote safety for all.

As recently emphasized by the American Public Health Association, responses to public health crises must be decoupled from any type of law enforcement and surveillance.<sup>18</sup> Unfortunately, many states have issued orders and passed emergency legislation and policies rooted in surveillance. For example, Alabama and Massachusetts passed legislation requiring that the Departments of Health provide law enforcement with the addresses of

<sup>15</sup> Timothy Williams and Danielle Ivory, *Chicago's Jail is Top U.S. Hot Spot as Virus Spreads Behind Bars*, N.Y. Times, Apr. 9, 2020, <https://www.nytimes.com/2020/04/08/us/coronavirus-cook-county-jail-chicago.html>.

<sup>16</sup> <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-103.pdf>

<sup>17</sup> Center for HIV Law and Policy, *HIV Criminalization in the United States*, <https://www.hivlawandpolicy.org/sites/default/files/CHLP%20HIV%20Crim%20Map%20030119.pdf>.

<sup>18</sup> End Police Violence Collective, *COVID-19, #endpoliceviolence* (Apr. 2, 2020), <https://www.endingpoliceviolence.com/covid19>.

people who have tested positive for COVID-19.<sup>19</sup> Although these laws are intended to protect first responders, they create a false sense of safety, are outdated in their understanding of the coronavirus and violate an individual's privacy. In Kentucky, courts have ordered the use of GPS ankle monitors to track individuals with coronavirus who have violated quarantine orders.<sup>20</sup> The use of ankle monitors are not only dehumanizing for the individual but jeopardizes their safety.

We need an entirely different approach to supporting people living in the U.S. in following critical public health guidance, one rooted in evidence and the highest principles of public health:

“The American Public Health Association urges federal, state, tribal, and municipal governments to “fund programs that meet human needs, promote healthy and strong communities, and reduce structural inequities,” including by diverting resources from law enforcement agencies (see Action Steps 4 and 7 of policy statement). We must align with this guidance now more urgently than ever.

Communities are facing unprecedented hardship and guaranteed homes, income, and job security are the things that will enable us to stay home and stay safe. Without this, punitive measures will not increase people's compliance with shelter-in-place orders, but will continue to put people at increased health risk. The health harms of policing will exacerbate the burden to the healthcare system's financial and human resources. Responding to this crisis by investing in punishment when so many have lost their jobs and can't pay for rent or groceries is a gross misuse of resources.

We need a public health approach to this pandemic, one that is compassionate and inclusive. We need to invest in community health, housing, and job supports that not only help people shelter-in-place, but also help them weather and recover from the long-term economic impacts of COVID-19.”<sup>21</sup>

We urge local, state, and federal levels of government to swiftly end their reliance on policing, surveillance, and criminalization during the COVID-19 pandemic, and instead adopt and invest in measures designed to support everyone in staying safe and healthy, as described below.

### **Recommendations for Congress:**

- Awards of federal funding to states and local governments should prohibit the adoption and enforcement of laws criminalizing the potential for or actual transmission of COVID-19.
- All legislation responding to the pandemic must include an explicit prohibition on the use of federal funds for law enforcement to criminalize actual or perceived violations of public health orders around COVID-19. Federal relief packages must invest in testing, treatment, care, and community support; not criminalization.
- All legislation responding to the pandemic must include language prohibiting discrimination by recipients of federal funds on any basis other than need or eligibility, such as (but not limited to) age, disability, sex (including sexual orientation and gender identity), race, color, national origin, immigration status, employment or housing status, or religion.

<sup>19</sup> Liz Landers, *Alabama and Massachusetts Are Handing the Addresses of People With Coronavirus Over to Police*, Vice, Marc. 31, 2020, [https://www.vice.com/en\\_us/article/jge938/alabama-and-massachusetts-are-handing-the-addresses-of-people-with-coronavirus-over-to-police](https://www.vice.com/en_us/article/jge938/alabama-and-massachusetts-are-handing-the-addresses-of-people-with-coronavirus-over-to-police).

<sup>20</sup> Nexstar Media Wire, *Kentucky is Putting Ankle Monitors on Coronavirus Patients Who Ignore Self-Isolation Order*, Tristate, Apr. 2, 2020, [https://www.tristatehomepage.com/news/kentucky-is-putting-ankle-monitors-on-coronavirus-patients-who-ignore-self-isolation-order/?fbclid=IwAR3\\_9vmPoJTgXN7cVjV7lm3J1rEXCDdCROGjVTa7l-\\_HE-ixBzgh92aaICg](https://www.tristatehomepage.com/news/kentucky-is-putting-ankle-monitors-on-coronavirus-patients-who-ignore-self-isolation-order/?fbclid=IwAR3_9vmPoJTgXN7cVjV7lm3J1rEXCDdCROGjVTa7l-_HE-ixBzgh92aaICg).

<sup>21</sup> End Police Violence Collective, *supra* note 18.

- Explicitly bar the creation of a database of people who have tested positive for COVID-19 or who carry antibodies to COV-2.
- Data sharing should be limited to federal, state, and local public health agencies engaged in fighting the spread of COVID-19 pandemic. For example, patient information should not be shared with ICE.
- Explicitly ban the use of GPS and cell phone data to monitor or track movements of people who are suspected of or have tested positive for COVID-19, and of applications relying on assigned or perceived risk to regulate access to public and private spaces and institutions.
- Ban the use of COVID-19 funding to law enforcement agencies for surveillance of individual health status and biometrics, including temperature and heartbeat data.
- The CDC and Health and Human Services Agency must disclose to Congress, including the newly created Select House Committee on the Coronavirus Crisis and PRAC, about plans to use emergency powers created in any coronavirus-related bill. Oversight should focus on ensuring privacy protections are not violated by corporations or health agencies.

Please contact Breanna Diaz with the Positive Women’s Network-USA at [breanna@pwn-usa.org](mailto:breanna@pwn-usa.org), Kate D’Adamo with Reframe Health and Justice at [kate@reframehealthandjustice.com](mailto:kate@reframehealthandjustice.com), and Mateo de la Torre with Black and Pink at [mateo@blackandpink.org](mailto:mateo@blackandpink.org) with any questions.

Respectfully submitted by the undersigned organizations:

9to5, National Association of Working Women  
 A Little Piece of Light  
 Abounding Prosperity  
 AIDS Foundation of Chicago  
 AIDS United  
 All Under One Roof LGBTQ Center  
 American Muslim Health Professionals  
 Anti-Police-Terror Project  
 ASISTA Immigration Assistance  
 Athlete Ally  
 Autistic Women and Nonbinary Network  
 AVAC  
 BiNet USA  
 Black and Pink  
 Center for Constitutional Rights  
 Center for Disability Rights  
 Centro Legal de La Raza  
 Coalition for Juvenile Justice  
 Colorado Organizations and Individuals Responding to HIV/AIDS (CORA)  
 College and Community Fellowship  
 Community Justice Exchange  
 DC Fights Back  
 Defending Rights & Dissent  
 Demand Progress  
 Drug Policy Alliance  
 Empower Missouri  
 Equality North Carolina

Equality Texas  
Family Values@Work  
Freedom Network USA  
GLAA  
Hearts on a Wire  
Helping Out People Equally  
HIV Justice Network  
Human Rights at Home Clinic, UMass Law School  
If/When/How: Lawyering for Reproductive Justice  
Idaho Coalition for HIV Health and Safety  
Immigrant Justice Network  
Immigrant Legal Resource Center  
Innovation Law Lab  
International Association of Providers of AIDS Care  
Jane Doe Inc.  
Juntos  
Justice Roundtable  
Just Futures Law  
Kairos Center for Religions, Rights and Social Justice  
Latino Commission on AIDS  
LGBTQ Allyship  
Migrant Justice/Justicia Migrante  
Missouri HIV Justice Coalition  
Multicultural AIDS Coalition  
Muslim Caucus Education Collective  
Muslim Justice League  
Muslim Public Affairs Council (MPAC)  
National Association of Criminal Defense Lawyers  
National Center for Lesbian Rights  
National Center for Transgender Equality  
National Clearinghouse for the Defense of Battered Women  
National Equality Action Team  
National Health Care for the Homeless Council  
National Immigration Project of the National Lawyers Guild  
National Korean American Service & Education Consortium (NAKASEC)  
National LGBTQ Task Force Action Fund  
National Network for Immigrant and Refugee Rights  
National Organization for Women  
National Partnership for Women & Families  
National Trans Bar Association  
National Working Positive Coalition  
NJ Citizen Action  
NJ Time to Care Coalition  
Oasis Legal Services  
OCA - Asian Pacific American Advocates  
PFLAG National  
Positive Iowans Taking Charge

Positive Women's Network-USA  
Prevention Access Campaign  
Quixote Center  
Reformed Church of Highland Park  
Reframe Health and Justice  
Rian Immigrant Center  
SERO Project  
St. James Infirmary  
The "DIRT" Advocacy Movement  
The Center for HIV Law and Policy  
The Forum for Youth Investment  
The Reunion Project  
The Sankofa Initiative  
The TransLatin@ Coalition  
The Well Project  
Transformations CDC  
Transgender Education Network of Texas (TENT)  
Treatment Action Group  
U.S. People Living with HIV Caucus  
Unitarian Universalist Service Committee  
Unitarian Universalists for a Just Economic Community  
United We Dream  
URGE: Unite for Reproductive & Gender Equity  
Washington State Coalition Against Domestic Violence  
Women & Justice Project  
Women's Foundation of California