

Pro Se

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COVID 19 SPECIAL EDITION

Protect Yourself and Your Facility from COVID-19

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Introduction

The novel coronavirus is now a global pandemic and is widespread in the United States, causing a disease called COVID-19. It is likely that a majority of the population will eventually become infected with this virus. Here is some information about the coronavirus and some thoughts about taking care of yourself and your facility during this pandemic. Recommendations are changing daily as the virus spreads more widely. Try to get newer information from trusted sources such as the Centers for Disease Control (CDC), the World Health Organization (WHO) or your state Department of Health. Don't trust rumors. False information is widely circulating already.

Residential institutions with congregate living like boarding schools, mental hospitals, homeless shelters and prisons or jails bring together a large number of people into a very small space for prolonged periods of time. Communicable diseases are readily introduced from outside and spread more easily where people live in close quarters.

Coronavirus is coming to all of us in the free world. Prisons and jails will likely be hard hit, with rapid spread inside when the disease becomes widespread in the local community or home communities. Prisoner representative councils should try to work with facility administration to develop the institutional response to COVID-19. Some jurisdictions are trying to release prisoners to reduce populations and allow people to survive the epidemic with family in the free world.

COVID-19 illness takes different forms. The majority of people who become infected may have no symptoms, may be unaware that they are infected, and recover fully. Nevertheless, they are infectious to others.

Some people develop symptoms. The disease caused by the novel coronavirus is called "COVID-19" which stands for Corona Virus Infectious Disease-19. Of those who develop symptoms, the majority have mild symptoms like a common cold, including runny nose, sneezing, mild cough and possibly some nausea, vomiting or diarrhea. On average, symptoms develop about 5 days after infection, but patients are infectious to others starting 2 or 3 days *before* symptoms start.

Therefore, people who are feeling well can still be infectious and spread the virus to others.

Some patients develop more severe disease with symptoms such as fever, cough, shortness of breath, and pneumonia. People with more severe disease may need hospitalization for supportive medical and nursing care. In some cases, the lungs are unable to move oxygen into the blood and carbon dioxide waste out of the blood. Those people need mechanical breathing with a respirator in intensive care.

Anyone at any age may develop more severe disease. However, some people are more likely to have severe disease because their bodies are weaker due to age or chronic illness. People over 60 in the general population are at higher risk. I have observed that people who have lived hard lives age faster and show the effects at a younger age, so prisoners may be at higher risk starting at age 50. People at higher risk for more severe disease due to chronic illness include those with lung disease (such as COPD, chronic bronchitis, emphysema, or asthma), heart disease (such as congestive heart failure or poorly controlled hypertension), weak immune system (such as *untreated* HIV infection, chemotherapy, prolonged corticosteroid treatment), diabetes, cancer, or any other chronic disease with organ damage such as kidney, liver or intestinal diseases. Everyone needs to be careful not to spread infection to these people. People at higher risk of severe disease should be released if at all possible.

Only a small fraction of those who are infected will develop severe disease. However, when a lot of people are infected, even a small percentage of them is a very large number. In February in northern Italy so many people became infected quickly that the hospitals were overwhelmed with severely ill patients. There is concern that the same thing is occurring in the U.S. as the virus spreads rapidly. Some estimates are that we are only two or three weeks behind Italy. If that is correct, if nothing is done, by mid-April the health care system will be overwhelmed in some regions.

Slow down the spread of infection

There is currently no vaccine to help prevent infection with the novel coronavirus. The first vaccine trial has started, but there is no evidence yet that it is safe or effective. There is currently no treatment for COVID-19. Several drug trials have started around the world to see if existing medicines may be helpful to cure the virus or reduce the severity of the lung disease. Those trials have just started. We don't know yet if any of these drugs will be effective. Treatment at present is simply care needed to support the patient while their body's immune system responds to cure the virus.

The WHO and the CDC have issued guidelines for prevention and management of COVID-19 disease. The basic idea behind these guidelines is to slow down the spread of the disease so the health care system is not overwhelmed, and necessary services can be maintained even though many people are sick.

If everyone gets sick at once, there will not be enough hospital beds and breathing machines to support all the sick people. There will not be enough healthy people to maintain critical services like fire, police, nursing home care, food transport and yes, even correctional facility staffing.

On the other hand, if the disease spreads slowly over a period of months instead of days or weeks, fewer people will be severely ill at one time and there could be enough hospital beds and respirators to handle the case load. That is the goal of the public health interventions that are being recommended now for all Americans.

The recommended behaviors for all Americans to slow the spread of coronavirus infection include protecting yourself (personal cleanliness), keeping away from other people (social distancing), and disinfecting environmental surfaces (environmental cleanliness). The same approach applies to people in prisons and jails, adapted to the high-risk environment of a residential institution.

How does it spread?

Pandemic coronavirus spreads from person to person. When an infected person coughs, sneezes, yells or even sings loudly small droplets of saliva or mucus teeming with viruses are ejected from the mouth into the air.

Someone else inhales those droplets and gets infected. Or possibly a droplet lands on a hard surface, sits there for a while and then someone else touches that surface, picks up the virus on a finger, later touches his face and transfers that virus to his eye, nose or mouth and gets infected. Or an infected person may have virus on his hands and touches a hard surface, which deposits virus there. Later another person touches that hard surface and then his own eye, nose or mouth and gets infected. In general, close contact with an infected person will result in infection unless very careful precautions are taken.

Efforts to prevent spread focus on personal cleanliness, especially careful and frequent handwashing to keep the hands from getting contaminated. Prevention also requires efforts to keep the hands away from the face and to suppress infectious droplets by covering coughs and sneezes. Social distancing keeps people separate to avoid close contact, and environmental cleanliness disinfects hard surfaces that may harbor virus.

Personal Cleanliness

1. Keep a clean cell: The virus can survive on hard surfaces for days. A droplet with virus in it can float around for hours and finally land somewhere in your cell. Disinfecting surfaces regularly helps prevent the spread of disease from contaminated hard surfaces to hand to face. Disinfectants can be hard to get in prison. Maybe some commissaries carry disinfectant wipes. Soap and warm water are better than nothing. Household bleach diluted 1/3 cup to a gallon of water is a pretty good disinfectant. Household hydrogen peroxide is somewhat effective as a disinfectant but may not kill coronavirus. Some facilities use a disinfectant soap for mopping floors and cleaning toilets and showers, but it is usually not available for use in the cell. Maybe the facility administration could mandate that officers send around a bucket of sanitizer solution twice a day for cell disinfection. Or maybe pass around a disinfectant spray bottle twice a day.

2. Hand washing: You may become infected by germs that get onto your hands. You may spread infection to others on your hands. Wash your hands often. Hand washing with soap and warm water for 20 seconds actually kills the virus. *Hand washing done well is as effective as hand sanitizer.* Hand sanitizer is more convenient than washing, but not better.

Of course, always wash your hands after using the toilet. Wash your hands when you get up in the morning. Wash your hands after you cough or sneeze anywhere near them. Wash your hands before you leave your cell. Wash your hands when you return to your cell.

Soap must be available for effective hand washing in your cell and in public bathrooms. Stock up at commissary for yourself. If you don't already do so, try to keep a 3-month supply of hand soap. Facilities must make soap available at public bathrooms, distributing daily if necessary. Don't take and hoard soap from public bathrooms. Everyone needs soap to be there.

3. Hand sanitizer: You need hand sanitizer when you are out of your cell moving around the facility in contact with people and hard surfaces that may harbor the virus. The common hand sanitizers with alcohol are generally banned in correctional facilities due to fire prevention standards and risk of using it as a weapon. Nevertheless, the practical solution to the immediate problem is to put hand sanitizer wall dispensers in positions where they can be closely observed and thereby make sanitizer available to all people moving about the facility. If it becomes available, use it when you enter an area; use it again when you exit. Disinfectant wipes work and cannot be easily weaponized but are expensive compared to sanitizer gel.

4. Hand protection: Try to avoid contaminating your hands on public hard surfaces. If you can, avoid touching handrails. Try not to touch doorknobs. Maybe most doors could be propped open so there is no need to touch them? Use hand sanitizer if it is available after touching public hard surfaces like handrails and doorknobs.

5. Don't touch your face: By touching the eyes, nose or mouth with contaminated fingers the virus can enter the body and spread. Avoid touching your eyes, nose and mouth at all times. Face masks are uncomfortable to wear, but sometimes a face mask can help you avoid touching your mouth and nose.

6. Cover coughs and sneezes: Cover coughs and sneezes to prevent droplets from being expelled into the air. Even if you think you are not sick you should cover. You may be infectious already but not showing symptoms. Model the best behavior for others to learn and follow. You are protecting each other. Use tissue to cover the nose and mouth if you can, throw it away and wash or sanitize your hands. Cough or sneeze into the crook of your elbow or upper arm if no tissue is available.

7. Face masks: You see a lot of pictures of people wearing face masks. Public health is currently recommending face masks only for people who are sick. This helps prevent them from coughing infectious droplets into the air. Public health generally does not recommend face masks for healthy people to prevent infection because masks are not very effective for that purpose. Air and infectious droplets can rush in around the edges of a typical disposable mask. There is an acute shortage of masks and they are desperately needed for sick people and health care workers.

On the other hand, something is better than nothing. A face mask may block some of the larger infectious droplets that are floating in the air. And a face mask can help people avoid touching the mouth and nose. A very basic face mask can easily be made from the sleeve of a T-shirt and two rubber bands, or from a pleated paper towel with the ends tied by rubber bands.

Face masks may be banned in many general population settings. Facility administrations should be encouraged to allow face masks when appropriate for disease control. They will likely insist on following current public health recommendations that masks are only appropriate for sick people.

Social Distancing

The idea behind social distancing is to reduce close contact between people to reduce disease spread. This has the greatest effect on the epidemic if it is implemented early and more intensely from the beginning. Americans are having a hard time waking up to the fact that stricter isolation needs to be implemented right now, not later. By the time you read this in April, the epidemic likely will have exploded already. Even so, these prevention measures are still important.

1. Hand shaking: Virus can be passed from one person to another by shaking hands. Then it enters the body by touching the eyes, nose or mouth. Avoid hand shaking. Use alternatives: bump elbows, touch feet, whatever. Don't touch hands.

2. Group activities: When groups of people are together in a room there is an increased risk of disease transmission due to infectious droplets in the air, touching contaminated surfaces or touching hands. Group activities should be reduced in size to 10 or less, or eliminated entirely. Avoid all social gatherings if at all possible on the unit, in the yard, at meals, etc. If you must gather in a group, keep well apart. Don't touch anything or each other. Wash or sanitize before and after.

If possible, do not go to meals in the cafeteria, but if you must, try to maintain a safe six-foot distance from other diners. If you must go to work, maintain six-foot separation from others working there. Don't go to the medical clinic unless you are really sick. If you are required to go to medical to get your medicine, try to maintain safe six-foot separation with other people in line. Do not go to assemblies, movies, gym, religious services or anywhere else that people gather. Facilities have probably stopped all such group activities already. Single person outdoor activities are safer. Group activities like sports are risky: too much close contact, yelling, touching, probably coughing too.

3. Keep well apart: When people do come together for any reason, they should stay at least 6 feet apart. This helps reduce the risk of inhaling aerosol droplets spread by another person. It also helps ensure no direct contact that might result in spread of virus from one person to another.

4. Healthy stay in your cell: People who are not sick should stay in to maintain the maximum social separation possible. It may be hard to isolate yourself like that, but it will definitely slow down spread of the virus. The facility may even impose a lock down at some point just to slow or prevent spread of disease. If you are able, be prepared to self-isolate or be locked down by obtaining a good supply of food, soap, toothpaste and other personal hygiene items from commissary. Prisoners I have worked with said they generally maintain a three-week supply of food even in the best of times in case they miss a commissary day due to lockdown.

5. Sick stay in your cell: People who are mildly ill should choose to stay in their cells as much as possible during their illness. Wear a mask if you can to prevent droplet spread. Cover coughs and sneezes with tissue or cough into your elbow. If you can, avoid the medical clinic so you don't risk spreading the disease to others who must be there. However, a patient's condition can deteriorate fairly quickly. If you feel short of breath, pain or pressure in your chest, confusion or excessive sleepiness, or notice bluish lips, face or fingertips you need prompt medical care to evaluate your condition. You may need oxygen and hospitalization urgently.

6. Protect caregivers: In some correctional systems prisoner volunteers assist in care of sick prisoners, such as hospice programs. Volunteer caregivers who work with people who may be sick with COVID-19 should be provided with appropriate personal protective equipment such as gloves, gown, and N-95 mask fitted to their face. Since there is a shortage of N-95 masks this is unlikely to occur. Any mask, even a bandana, is better than no mask when working directly with sick people.

7. Help the sick: Facility health services are responsible for medical care for the sick. They have to figure out how to best manage the mildly ill; whether they can stabilize the moderately ill in an infirmary setting; and when to transfer out to community hospitals for more advanced medical care. Please keep an eye on the people in your unit who are sick in their cells. If they develop shortness of breath or worsen in any way, they need access to the clinic for further medical evaluation. Others on the unit who recognize the seriousness of their condition must help them obtain access to the facility medical clinic.

Facility Cleanliness

Environmental cleanliness is crucial to prevent rapid disease spread with so many people living and working together in a prison. Facility administration should take responsibility for organizing environmental cleanliness activities including making needed soap and disinfectant available at no cost. But if they do not do so, it will be up to prisoners to do what needs to be done to protect themselves and each other, and the officers and staff who work with them.

1. Hand sanitizer available: Hand sanitizer stations should be available throughout the public spaces in a facility and in dormitories. Work with facility administration to try to get this implemented.

2. Masks permitted: Masks should be permitted for people who are sick while in their cells or, when movement is necessary, when sick people move about in the facility. Others who wish to wear masks should also be permitted to wear them.

3. Disinfect public hard surfaces: Facility administration should plan to disinfect hard surfaces in public spaces at least twice a day. Prisoners should support and encourage these efforts if possible. The primary focus should be on things people touch routinely like doorknobs and handrails. Also, floors and walls within reach should be disinfected regularly.

4. Disinfect group cells and dorms: Facility administration should institute a policy of at least twice daily disinfection of floors, walls, doorknobs, handrails, and all other hard surfaces in common areas of group cells, unit day rooms, dormitories and bathrooms. Or at least make disinfectant available to prisoners to do so themselves.

5. Disinfect single cells: Facilities should make disinfectant available to prisoners to disinfect their single cells at least twice a day.

6. Doors propped open: Where doors can be safely propped open without compromising security it should be done to reduce contact with doorknobs.

Efforts to slow the spread of coronavirus focus on:

Personal cleanliness:

- Keep the hands from getting contaminated with coronavirus.
- Keep the hands away from the face.
- Suppress infectious droplets by covering coughs and sneezes.

Social distancing:

- Keep people separate to avoid close contact.

Environmental cleanliness:

- Regularly disinfect high contact hard surfaces that may harbor virus.

These are the behaviors that will slow down the spread of coronavirus infection in your facility. They are no different from the new behaviors that everyone is being urged to do. It is harder in a prison, but even more important there because so many people are together living and working in a partially closed environment. We can do this, and we will get through it together.

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**MESSAGE FROM THE STAFF OF PRISONERS' LEGAL SERVICES OF NY
REGARDING THE COVID-19 PUBLIC HEALTH EMERGENCY (4/21/20)¹**

The staff of Prisoners' Legal Services is extremely concerned about your health and safety and the health and safety of everyone in DOCCS custody during this pandemic. PLS, other prisoners' rights advocacy organizations and Legislators have been in regular contact with DOCCS, the Board of Parole and Governor Cuomo's office about our concerns, particularly with respect to reducing the prison population by selectively releasing people who are close to their release dates, medically compromised or in custody due to technical parole violations.

Due to the danger of widespread Covid-19 infection in institutions which rely on congregate housing, there have been numerous lawsuits in state and federal courts seeking the release of prisoners serving sentences imposed by state court judges. To date, the courts have uniformly denied the relief sought. The analysis used by these courts to deny relief varies but is rooted generally in various procedural and substantive

¹ The coronavirus public health emergency and the actions being undertaken in response to it are continuously and rapidly changing. PLS can only represent that as of April 21, 2020, the information in this message is current and accurate.

legal hurdles. Lawsuits seeking more tailored relief, for example the release of pre-trial detainees and people charged with technical parole violations, have been more successful.

In New York, Governor Cuomo, through clemency grants, has the power to release sentenced individuals in DOCCS custody. PLS has therefore focused its effort on pressuring the Executive and Legislative branches of government to address the situation. Along those lines, PLS has urged the Governor's office to follow the lead of the New Jersey and Pennsylvania Governors who recently issued Executive Orders mandating release of certain categories of individuals from prison. PLS is also working closely with various Legislators to advocate for the release of vulnerable at-risk individuals. This approach appears to be working: First, on March 27, Governor Cuomo announced that DOCCS would be releasing 1,100 technical parole violators and on April 14, Governor Cuomo announced that DOCCS would begin reviewing for release incarcerated non-violent felony offenders who are 55 years of age or older and within 90 days of a release date.

These administrative advocacy efforts, however, do not preclude the possibility of bringing a lawsuit down the road. As you all know, we are in uncharted, rapidly changing waters and, because of that, we are constantly re-evaluating the situation and closely watching what is happening in courts across the country. Our goal is to take whatever action we believe is the most likely to result in protecting, to the greatest extent possible, the health and safety of the incarcerated population.

We have also demanded that DOCCS take immediate measures to reduce the spread of the virus in the prisons by providing regular access to soap, clean towels, cleaning supplies, and hot water.

We asked DOCCS for the protocols that the Department adopted to 1) screen staff for the virus, 2) advise staff with respect to the actions they should take if they become infected, and 3) provide more transparency in its reporting of COVID-19 cases within the prison and urged DOCCS to create a COVID-19 dedicated webpage to provide detailed and updated information related to COVID-19. We learned on Friday, April 10, 2020, that we were successful in these efforts when DOCCS went live with its COVID-19 webpage. See: <https://doccs.ny.gov/doccs-covid-19-report>.

Posted on DOCCS' COVID-19 website is a listing, updated daily, of COVID-19 positive cases for incarcerated individuals, parolees and DOCCS staff, as well as the health and safety measures DOCCS has taken to-date, many of which were included in the PLS recommendations:

- Providing and permitting correction officers, parole officers, and civilian staff to wear face masks while on duty.
- Supplying incarcerated individuals subject to isolation and quarantine with surgical-type masks to further reduce the risk of secondary transmission of COVID-19.
- Allowing the incarcerated population to use state-issued handkerchiefs as masks.
- Displaying posters with information on COVID-19 and safety tips throughout DOCCS facilities and offices statewide.
- Regularly showing a video to the incarcerated population and staff at the facilities on proper handwashing.
- Issuing enhanced cleaning/sanitizing measures and disinfecting procedures for office surfaces and devices consistent with the Centers for Disease Control and Prevention and New York State Department of Health guidelines.

The Department also announced that:

- Incarcerated individuals who have been exposed to an individual who has tested positive for COVID-19 will be quarantined for 14 days and given a surgical-type mask.
- Incarcerated individuals who show symptoms of COVID-19 will be tested.

- Individuals who test positive for COVID-19 will be placed in isolation rooms in the facility medical unit.
- Individuals who need medical care beyond that which can be provided in a facility will be transferred to local hospitals.

To further reduce the spread of COVID-19 DOCCS has taken the following steps:

- Suspended all intake of incarcerated individuals from county facilities.
- Stopped internal transfers of incarcerated individuals, except for medical and other exigent circumstances.
- Released a number of technical parole violators from city, county and state custody.
- Begun the review for expedited release of individuals age 55 or older serving sentences for a non-violent offense who are within 90 days of their earliest release date and have a stable and non-shelter residence available.
- Suspended visitation until April 29.
- Implemented a policy Requiring non-essential staff to remain at home.
- Implemented fever checking and a health/travel questionnaire for staff entering facilities and community supervision offices.

Contact with Loved Ones and Family

As you know, on March 14, DOCCS first suspended all personal visits. In place of visits, DOCCS is now providing:

- Five (5) free stamps per week for use in accordance with Directive #4422, Inmate Correspondence Program.
- Two (2) free secure messages per week via electronic tablet, with additional stamps as part of their bundles, and
- Three (3) free 30-minute phones call per week in accordance with Directive #4423 Inmate Telephone Calls.
- Starting Wednesday, April 15, 2020, for four (4) consecutive Wednesdays, every secure message sent by a friend or family member on Wednesday will be accompanied with a free prepaid stamp that will allow the incarcerated individual to reply to the sender, through May 6, 2020.

PLS continues to urge DOCCS to expand further access to free stamps, emails, and phone calls during the suspension of visits. Specifically, we have called upon DOCCS to provide unlimited postage, emails and phone calls without charge.

Changes in State Court Operations

On March 20, 2020, New York Governor Cuomo issued Executive Order 202.8. **The terms of this order were extended on April 7 and again on April 16.** This Executive Order tolled (stopped the clock running) on **all state court filing deadlines**, including *state* statutes of limitations, **currently through midnight on May 15, 2020.**

Changes in State Statutes of Limitations and Court Filing Deadlines

This includes any state statute of limitation for commencing actions, as well as deadlines for filing and service of motions and other state court filings in pending cases, that are set by Criminal Procedure Law, the Family Court Act, the Civil Practice Law and Rules, the Court of Claims Act, the Surrogate's Court Procedure Act, and the Uniform Court Acts, or by any other statute, local law, ordinance, order, rule, or regulation.

Example: On March 20, you received a decision on a Tier III appeal. The four-month statute of limitation on your Article 78 would normally begin running on March 20. Due to the suspension of statutes of limitation, the clock stopped running on that deadline on March 20 and will recommence running on May 16, 2020. Thus, in

the example, you will have 4 months from May 16, within which to file an Article 78 petition. In effect, the period during which all these deadlines are tolled does not count toward your deadline.

In addition, if you try to file anything with the courts before May 16, **with limited exceptions**, it will likely be rejected. This is because on March 22, Lawrence Marks, the Chief Administrative Judge of the Unified Court System issued an Administrative Order providing that only “essential” filings will be accepted for filing at this time. See list of Essential Proceedings, below. If you try to file any papers relating to matters not on the essential filings list, they will be rejected by the court until further notice.

On April 7, 2020, the Chief Administrative Judge announced that to a limited extent, judges can resume processing already filed non-essential cases. Judge Marks noted that all conferences and appearances will be conducted remotely, that is, using video-conferencing. He anticipates that with respect to non-essential cases, judges will now decide fully submitted motions and conduct conferences to address discovery disputes and other matters that will be helpful in advancing the progress of a case.

Changes to the State Court Appeals Process

Appellate Divisions, All Departments

All departments of the Appellate Division are accepting emergency motions via electronic filing only.

First Department

On April 17, the First Department, which had adjourned matters scheduled for its April term, announced that it was “transitioning to a virtual court until further notice.” The court has resumed calendaring appeals and motions and processing attorney grievance complaints. All calendared matters will be heard on submission or orally argued via Skype.

The court has scheduled two special terms in May and June. The May term runs between May 4 and May 29, 2020. The June term runs between June 1 and June 26, 2020. All calendared matters will be on submission or argued via Skype. There will be no adjournments.

The court continued the suspension of perfection, filing, and other deadlines for the remaining terms of court. The court suspended requirements for submitting paper copies of records, appendices and briefs until further notice. Paper copies are not permitted for the safety of the court’s employees and the public.

Second Department

The court has begun to publish its calendars for April 27 through May 8, 2020. Matters scheduled on these calendars will be marked submitted or orally argued via Skype.

Third Department

As of March 17, 2020, all matters before the Third Department, all perfection, filing and other deadlines set forth by any order of the Third Department, Rules of the Appellate Division, All Departments (22 NYCRR parts 1240 and 1250), Rules of the Appellate Division, Third Department (22 NYCRR parts 806 and 850), or Electronic Filing Rules of the Appellate Division (22 NYCRR part 1245), were suspended indefinitely and until further directive of the Court.

All motions or applications for an extension of time to perfect or file that were pending as of Tuesday, March 17, 2020, were granted to the extent that the time to perfect or file is suspended indefinitely and until further directive of the court.

All matters calendared for the March term were heard on submission only. All matters currently scheduled for the April term are adjourned and will be re-calendared for a later term.

Fourth Department

All matters calendared for the March/April term are to be considered on submission. All matters scheduled for the May term are adjourned and will be re-calendared. In light of advice from public health officials, until further notice, hard copy filings will not be permitted.

Effective March 17, 2020, in all matters pending before the Fourth Department, all perfection, filing and other deadlines set forth in an order from the Fourth Department, the Rules of the Appellate Division (22 NYCRR Parts 1240 and 1250), the Rules of the Fourth Department (22 NYCRR Parts 1000 and 1020) or the Electronic Filing Rules of the Appellate Division (22 NYCRR Part 1245) are suspended indefinitely until further order of the court. All motions or applications for an extension of time to perfect or file that were pending on March 17, 2020 were granted to the extent that the time to perfect or file is suspended indefinitely until further directive of the court. This order does not apply where a deadline is conferred by statute. Such deadlines have been suspended by the Governor's Executive Order through May 15, at 11:59 p.m.

Changes to Federal Court Procedures

The federal courts have not announced comparable tolling provisions. You are still responsible for complying with statutes of limitations and deadlines relating to federal court claims and filings.

Essential Proceedings Administrative Order AO/78/20 March 22, 2020**A. Criminal Matters**

1. Arraignments
2. Bail applications, reviews and writs
3. Temporary orders of protection
4. Resentencing of retained and incarcerated defendants
5. Essential SORA matters

B. Family Court

1. Child protection intake cases involving removal applications
2. Newly filed juvenile delinquency intake cases involving remand placement applications, or modification thereof
3. Emergency family offense petitions/ temporary orders of protection
4. Orders to show cause
5. Stipulations on submission

C. Supreme Court

1. Mental Hygiene Law (MHL) applications and hearings addressing patient retention or release
2. MHL hearings addressing the involuntary administration of medication and other medical care
3. Newly filed MHL applications for an assisted outpatient treatment (AOT) plan
4. Emergency applications in guardianship matters

5. Temporary orders of protection
6. Emergency applications related to the COVID-19
7. Emergency Election Law applications
8. Extreme risk protection orders (ERPO)

D. Civil/Housing Matters

1. Applications addressing landlord lockouts
2. Applications addressing serious code violations
3. Applications addressing serious repair orders
4. Applications for post-eviction relief

E. All Courts

1. Any other matter that the court deem essential

News and Notes

Challenge to E-Stop Law Filed

On March 12, 2020, Prisoners' Legal Services, the New York Civil Liberties Union and the Rutgers Constitutional Rights Clinic filed *Jones v. Stanford and Annucci* in the federal district court for the Eastern

District of New York. The lawsuit is a direct challenge to a state statute and two DOCCS Directives that ban most sex offenders released to community supervision from accessing social media sites, or from possessing or accessing without permission of the parole officer the internet or any internet-connected device.

Executive Law § 259-c(15), known as the Electronic Security and Targeting of Online Predators Act (e-STOP), requires that the Parole Board impose a mandatory release condition that, among other things, prohibits an individual from using the internet to access a commercial social networking website. A “commercial social networking website” is defined in the statute as a website that offers access to people under eighteen years of age and permits users to: (1) create a public or user-accessible webpage or profile about themselves; (2) interact with other users over the age of eighteen; and (3) engage in direct or real time communication with other users. Typically, these are on-line platforms like Facebook, Instagram, and Twitter, etc. However, the definition is very broad and includes on-line shopping sites (e.g. Amazon) and media (e.g. New York Times).

The statutory e-STOP condition must be imposed on people serving sentences that require registration under the Sex Offender Registration Act (SORA), where the victim was under 18, or the person is a Level 3 sex offender, or the individual used the internet to facilitate the sex offense. DOCCS and Parole officials also interpret the provision to be required for any person classified as a Level 3 sex offender, even if that person is not currently serving a sentence for a sex offense.

DOCCS Directive 9201 is an administrative policy that requires DOCCS to impose the social network ban on those people identified in e-STOP. On information and belief, DOCCS also relies on Directive 9201 to impose the social network ban on all released sex offenders, including those who 1) are not subject to the statute because they did not have an underage victim, 2) are not Level 3 offenders, and 3) did not use the internet, computers, or other electronic devices to facilitate their crimes.

DOCCS Directive 9201 is much broader than e-STOP. It requires DOCCS staff to impose a release condition on all sex offenders released to community supervision, that the individual, “not own, possess, purchase, or have control of any computer, computer related material, electronic storage devices, communication devices, and/or the internet” without written permission from the individual’s parole officer. The Directive leaves the

parole officers with virtually unlimited discretion on whether to permit any access to a computer. We understand that permission to possess a computer is rarely granted, and if granted is typically permission to have a single device for a specific purpose. Moreover, we have also heard that when such permission is granted, it is typically not in writing, which creates additional risk for the parolee who then has no documentation of such permission.

The Jones v. Stanford and Annucci lawsuit relies substantially on the U.S. Supreme Court decision in *Packingham v. North Carolina*, 137 S.Ct. 1730 (2017). That case was a challenge to a provision that prohibited people on North Carolina’s sex offender registry from accessing social media websites. The Court in *Packingham* found that in the modern 21st century the internet is a core feature and forum for the First Amendment free speech. In striking down North Carolina’s restriction, the Court observed that, “to foreclose access to social media altogether is to prevent the user from engaging in the legitimate exercise of First Amendment rights.” The Court suggested that a social media ban that was only imposed on offenders who used computers or the internet to facilitate crimes might be constitutional but a social media ban imposed on all sex offenders in the absence of any evidence that individuals had a history of abusing computers or the internet could not be upheld.

The present lawsuit seeks declaratory and injunctive relief to prohibit defendants DOCCS and Parole from enforcing the unconstitutional provisions of the e-STOP law and the DOCCS Directives that further ban and restrict internet and social media access.

Prisoners’ Legal Services Opens an Office in Newburgh, New York

Prisoners’ Legal Services is pleased to announce that we have opened a new office in Newburgh, New York. The Newburgh Office handles requests for assistance from Downstate, Fishkill and Green Haven Correctional Facilities. Staffing the Newburgh Office are Managing Attorney Marie-Ann Sennett, Law Graduate Gabriel Fulmore, and Secretary Christine Culbreth. Also working in the Newburgh Office is Immigration Unit Staff Attorney Yuriy Pereyaslavskiy. The address of the office is: 10 Little Britain Road, Suite 204, Newburgh, N.Y. 12550.

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PLS Offices and the Facilities Served

Requests for legal representation and all other problems should be sent to the local office that covers the prison in which you are incarcerated. Below is a list identifying the prisons each PLS office serves:

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NEWBURGH, 10 Little Britain Road, Suite 204, Newburgh, N.Y. 12550

Downstate, Fishkill, Green Haven.

PLATTSBURGH, 24 Margaret Street, Suite 9, Plattsburgh, NY 12901

Prisons served: Adirondack, Altona, Bare Hill, Clinton, Franklin, Gouverneur, Moriah Shock, Ogdensburg, Riverview, Upstate.

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