



FREEMAN MATHIS & GARY, LLP
Attorneys at Law

Viral Law – Law Enforcement in times of Covid-19

Government Law

CA | CT | FL | GA | KY | MA | NJ | NY | PA | RI

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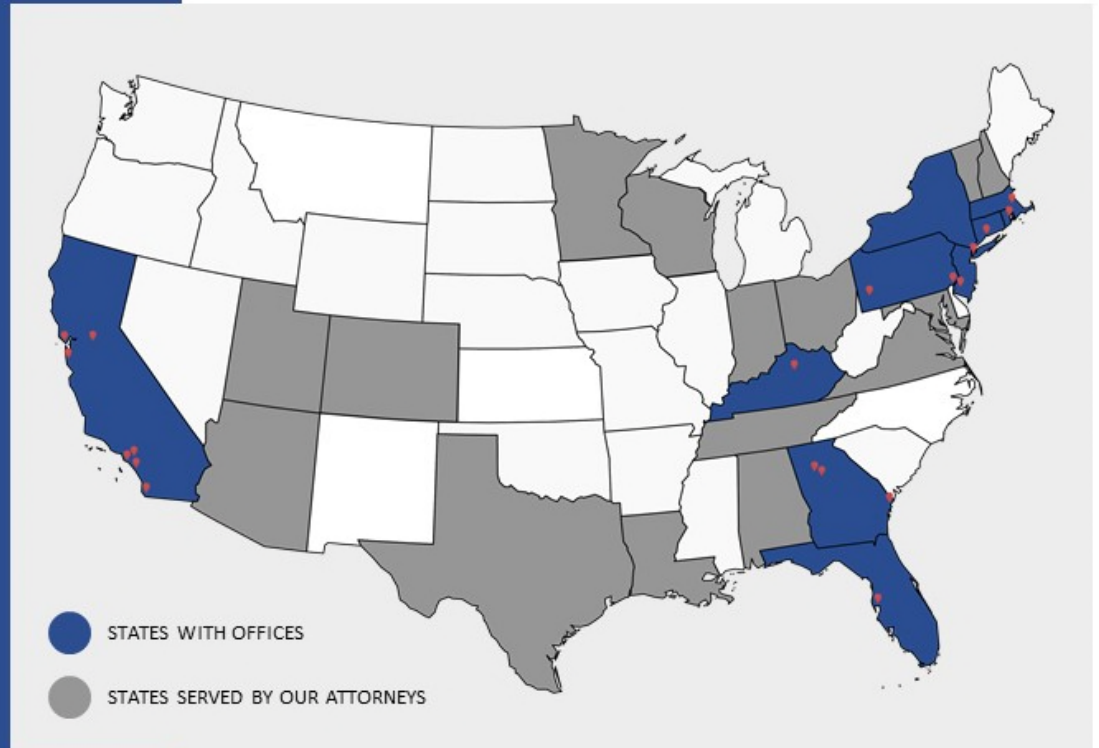
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Upcoming Webinars

WEBINAR SERIES BUSINESS Issues and the Coronavirus

Join us for this webinar series on different business topics.
All will offer a Q&A.

- Friday, April 3: COVID-19 Impacts on the Construction Industry
- Monday, April 6: Key Developments for Navigating Coronavirus Employment Issues
- Tuesday, April 7: COVID-19: Real World Impact of Business Restrictions and Stimulus Package for Service Contractors
- Wednesday, April 8: Education Claims In the Wake of COVID-19

What is COVID-19?

- **What is COVID-19?**

- A novel Coronavirus is a new Coronavirus that has not been previously identified. The virus causing Coronavirus disease 2019 (COVID-19), is not the same as the coronaviruses that commonly circulate among humans and cause mild illness, like the common cold.
- A diagnosis with Coronavirus 229E, NL63, OC43, or HKU1 is not the same as a COVID-19 diagnosis. Patients with COVID-19 will be evaluated and cared for differently than patients with common coronavirus diagnosis. <https://bit.ly/3bl4O6r>

- **Why is it called COVID-19?**

- On February 11, 2020 the World Health Organization announced an official name for the disease that is causing the 2019 novel Coronavirus outbreak, first identified in Wuhan China. The new name of this disease is Coronavirus disease 2019, abbreviated as COVID-19. In COVID-19, 'CO' stands for 'corona,' 'VI' for 'virus,' and 'D' for disease. Formerly, this disease was referred to as "2019 novel Coronavirus" or "2019-nCoV".
- There are many types of human coronaviruses including some that commonly cause mild upper-respiratory tract illnesses. COVID-19 is a new disease, caused by a novel (or new) Coronavirus that has not previously been seen in humans. The name of this disease was selected following the World Health Organization (WHO) best practice for naming of new human infectious diseases. <https://bit.ly/3bl4O6r>

How does COVID-19 Spread?

BIG TAKE-AWAY:

COVID-19 is *easily* spread from person to person.

- Coronaviruses are generally thought to be spread from person-to-person through respiratory droplets. It may be possible that a person can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes, but this is not thought to be the main way the virus spreads.
- Currently there is no evidence to support transmission of COVID-19 associated with food.
- Many have COVID-19 and do not know.
- Important term – RO – pronounced “R naught.” The expected number of new cases any one active case causes. The RO for seasonal flu is 1.3 and COVID-19 is 2.5

COVID 19 INFECTION NUMBERS

WORLD CASES	US CASES
926,095	209,071
TOTAL DEATHS	TOTAL DEATHS
46,252	5,113
Source: WHO, CDC, ECDC, NHC	

Prevention of COVID-19

- 14 day quarantine
- Handwashing - frequently and for at least 20 seconds (twice through “Happy Birthday”)
- Do not touch your face with your hands
- Social Distancing - Stay 6 feet from individuals
- No Crowds – Keep groups to less than 6 to 10 (depending on governmental orders in your jurisdiction)
- If you are sick, stay home!
- Cough into your elbow
- Avoid close contact with people who are unwell

Most states have orders in place relating to

1. Travel
2. Curfew
3. Congregations – public and church
4. Business closures

WHO ENFORCES THESE ORDERS?

YOU



Limiting Exposure for Officers and the Public

- Consider limiting operations to calls of a serious nature where there is an immediate need for investigation:
 - Perhaps limit it to murder, rape, robbery, arson, kidnapping, domestic assault, assault in progress, anything where there is a threat of injury to a person and serious property crimes in progress.
 - There is no exhaustive list that is right for every jurisdiction. But leaders should weigh limiting officer exposure with the need for investigation.



- Consider limiting pro-active enforcement activities:


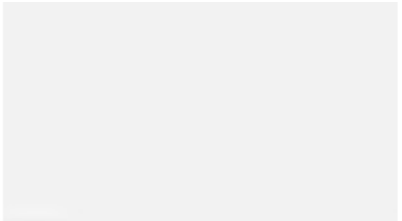
- Every person to person contact potentially exposes officers to persons who are contagious. In every traffic stop, every pedestrian stop, and any other contact, the officer will be in close proximity to the subject and may be handling items, i.e. license and registration, that the subject just handled.
- Officers can become exposed and be placed under a 14-day quarantine or worse. These events limit the overall numbers of public safety personnel available, leaving fewer officers available to handle serious public safety needs.
- Compare to natural disasters where it is common practice to place officers in a fixed position where they do not respond to most calls for service during the heightened phase of the event. Our current storm is COVID-19 and a similar approach makes sense.

- Consider handling calls where no one is in danger telephonically.
 - Reports of thefts, property, damage, and even minor vehicle accidents can be taken over the telephone.
 - Agencies with school resource officers could utilize SROs for this function since schools are not in session in most places.
- Consider instructing officers to exercise discretion and avoid arrests for minor offenses that do not endanger others, including property crimes.
 - A major concern for law enforcement is the spreading of COVID-19 to officers, corrections personnel, and other persons housed in the jail.
 - With courts throughout the country being closed, these arrests will only further backlog the system.
 - Limiting the number of persons housed in a jail or correctional facilities also plays a role in reducing the potential spread of COVID-19 in jails.

- If charging is necessary, consider citing and releasing the individual rather than taking the subject to a lockup facility.
- Consider transportation:
 - Due to the responsibility law enforcement has to the health and safety of arrestees, it must be recognized that vehicles must be disinfected after the transport of a prisoner so that the next arrestee will not be exposed.
 - Limiting the number of transports by discouraging non-essential arrests reduces the number of exposures.

OTHER BEST PRACTICES

- Consider the temporary use of single use flex-cuffs in place of handcuffs. One of the most common spread points being cited is by hand-to-hand contact, and handcuffs have long been recognized as a breeding ground for germs.
- Officers should be provided with and directed to use latex gloves on all calls for service that they respond to and be provided with a trash receptacle in their vehicle where the gloves can be disposed following each call.
- Officers should be directed to maintain safe distances during interviews and other contacts with victims, witnesses, suspects, and citizens.
- Officers who are assigned to duties in the station should be directed to disinfect their work area at the start and completion of each shift. This should include telephones, computer keyboards, and any surfaces the officer touches.
- Agencies should limit the use of shared workspaces during this emergency.

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- Officers, particularly with shared vehicles, should be directed to disinfect the passenger compartment of their vehicle at the start and end of each shift. This process should include computer/MDT keyboards, all accessory buttons, door handles, and any other surfaces touched.
 - Every arrest has the potential to expose an officer who will be in close contact with the individual during searching and handcuffing, as well as transport and booking. When officers become exposed or ill due to exposure, they will not be available to handle urgent public safety matters. Thus, exposure and contacts should be limited to serious calls where there is threat to the safety of some individual or the crime is of such a serious nature that it must be immediately investigated.

Legal Considerations

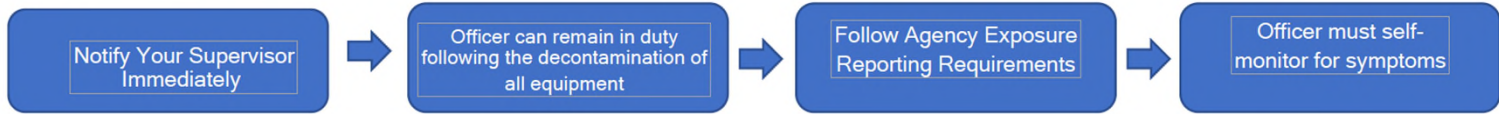
- Much like MRSA and other communicable diseases, COVID-19 can spread by contact with suspects, in-custody persons, and jailed individuals.
- Each group carries the potential for lawsuits. Potential Plaintiffs will be watching to see if positive tests come back from law enforcement departments and jails and will seek to blame deep pockets.
- It is very important for law enforcement departments and jails to have policies and plans to contain and document if employee(s) test positive. BUT, remember that employees have a right to medical privacy.
- Limit exposure as much as possible:
 - For those in custody, limit exposure to others in custody and officers.
 - For jails, separate intake and placement procedures will be key.
 - Taking temperatures morning and night a very good practice. Removing those with temperatures to isolation or medical care until it is determined that they are clear of COVID-19.

- *Gerstein* and *Riverside*'s requirement of a probable cause hearing within 48 hours still applies!!!! ***You must release detainees if no probable cause hearing has taken place within 48 hours of their arrest.***
- ICE detainees – Be very careful.
- Also be aware that suspects are aware of COVID-19 and will attempt to set you up.
- Train officers in using flex cuffs. Claims will be made that by using other than standard cuffs suspects will be injured.
- Carefully watch holding cells or intake rooms. Remove those who appear ill or refuse to accept them so as to limit exposure to those in custody.
- Many governors are allowing departments to bring back retired officers. These retirees are now your responsibility- make sure they are trained on standing orders and procedures. Perhaps utilize retired officers for taking reports or similar activities.
- Limit non-emergency law enforcement activities (i.e. DOT inspections, driver interviews).
- If prisoners complain or display symptoms, you need to have them tested and separated. Deliberate indifference cases are expected to be filed in high numbers.

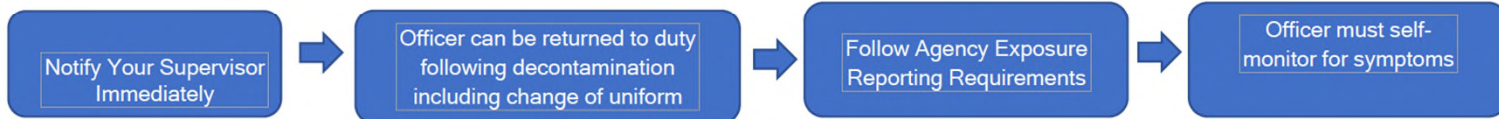
Officer Exposure

Officer is exposed at work and without proper PPE to a potential COVID-19 Patient

Officer has contact with a person with flu like symptoms plus an additional element of COVID-19 concern – such as: travel, or known contact with a COVID 19 patient etc.



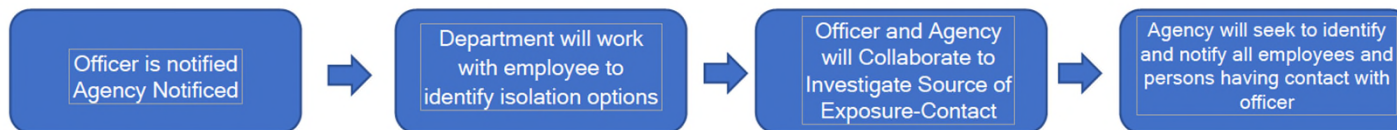
Officer is exposed at work and with proper PPE to a confirmed COVID-19 Patient



Officer is exposed at work (Direct Contact) and without proper PPE to a confirmed COVID-19 Patient



Officer is confirmed positive for COVID-19





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