

National Lawyers Guild: Mass Defense Steering Committee
Recommended Legal Observer® COVID-19 Safety Protocols
Last Updated: May 12, 2020

Note: This document may not reflect the rapidly evolving pandemic or best recommendations for preventing its spread. Please contact Tyler Crawford, Director of Mass Defense, tyler@nlg.org and Pooja Gehi, Executive Director, director@nlg.org, to discuss options/recommendations for your specific circumstances.

Background

To slow the spread of COVID-19, states and municipalities began issuing “stay at home” or “shelter-in-place” orders in March, 2020. The current restrictions vary widely. Some orders strictly prohibit gatherings, punishable with jail time, while other state and local orders are mere recommendations. Some orders are issued by state executives such as governors, while others are issued by public health agencies. The orders do not typically address the question of whether first amendment activity is prohibited or allowed. Some states, such as California, have moved to proactively ban protests, as the California Highway Patrol has done in Sacramento. In some states like New Hampshire and Michigan, stay-at-home orders are being challenged in court as violating the First Amendment, but courts are upholding orders for now, based on their temporal nature and necessity. It is unclear how courts will re-approach these orders as they become more permanent and potentially stricter in response to a prolonged pandemic. We are still witnessing the adaptation of protest methods to the evolving health crisis, which increasingly include the use of socially distant protests and car caravans.

The NLG published several in-depth discussion of these issues as well and other resources on its website:

- [NLG Statement on COVID-19: Solidarity in Times of Crisis.](#)
- [NLG Know Your Rights During COVID-19.](#)
- [May Day 2020 and the State of Protests During the Pandemic.](#)

Legal Observer Recommendations

During the current public health emergency, free speech activity is continuing in response to worsening economic conditions, uneven enforcement of orders targeting communities of color, and the increasing criminalization of marginalized communities. During this time, we believe that legal observers (LOs) can provide an important function in monitoring repressive law enforcement activity targeting activists, the unhoused, and other vulnerable populations; however, COVID-19 is highly contagious and the risk of transmission is extremely high. If your chapter believes it is currently equipped to and capable of dispatching LOs with a reasonable amount of risk mitigation, the following are minimum essential guidelines that we believe will help to protect the health and wellbeing of LOs, the people they live with or otherwise come into

contact with regularly, and their communities at large. These are only recommendations and each individual and chapter should make their own risk assessment.

Health and Safety

The World Health Organization (WHO) has issued the following recommendations for the general public to avoid the risk of becoming infected with COVID-19: 1) wash hands frequently with soap and water for 20 or more seconds; 2) maintain a distance of at least 6 feet from others while in public; and 3) avoid touching eyes, nose, and mouth. WHO does not recommend the use of a mask for healthy individuals, but these guidelines are currently in the process of being reconsidered as studies show that even basic masks can filter up to 60% of airborne particles, with N95 masks filtering over 95%.

Recommendations for Legal Observing

1. **LO Availability.** We recommend that LOs determine and communicate their availability based not just on schedule but also on potential risk factors. LO coordinators are encouraged to have direct conversations with LOs prior to committing to provide LOs at events and/or dispatching LOs. The following is an incomplete list of situations that may increase risk factors for LOs and increase the potential that they could become inadvertent carriers to those in high-risk groups:
 - a. If the LO or member(s) of their household are 65 and older.
 - b. If the LO or member(s) of their household have underlying health issues (past or present); chronic health issues (e.g., asthma, chronic obstructive pulmonary disorder [COPD], diabetes, cardiovascular conditions, etc.); or immunocompromised health considerations
 - c. If public transit is the LOs only means of getting to an event.
2. **Protective Gear.** The National Office and most NLG chapters are not set up to distribute personal protective equipment (PPE) at this point in time; however, we recommend LOs bring the following gear to events. It should be noted that substitute gear only reflects our best information that is available at this time, and are not a replacement for adequate equipment:
 - a. Gloves. Disposable exam gloves are preferable, but dishwashing gloves can be used as well.
 - b. Hand sanitizer. LOs should develop their own hand washing/sanitizing practice, such as keeping hand sanitizer, soap and water, or antibacterial hand wipes in their cars.
 - c. Face masks/coverings. N95 masks are preferable, but surgical masks can be used as well. Note that many medical professionals and organizations are

appealing to the public to reserve N95 masks for frontline medical professionals who are at extreme risk of transmission. A bandana or other two or three layered fabric mask across the face and nose is insufficient and will not prevent virus transmission, although some medical professionals suggest that they can help remind people not to touch their faces or provide comfort.

3. **Social Distancing and Critical Communications.** We recommend that LOs maintain a distance of at least 6 feet from activists, other LOs, and law enforcement. Some critical communication, however, may require distance less than 6 feet. One recommendation from the Los Angeles NLG chapter is the “side head” technique and should be understood by those using it prior to the event. Steps are as follows:

- a. Assess the situation and determine if it is safe to approach the activist. For example, if the police are about to use pepper spray on a detained activist or others nearby, it may not be safe to approach in that moment. If the situation seems reasonably safe, then proceed to the following steps.
- b. Request permission to approach the other while maintaining the 6 feet distance.
- c. If allowed, approach them face to face, but slightly to the side.
- d. Place head to the side of the ear of the listener; do not face their head or face.
- e. Speak briefly, facing to the back of the listener, using sufficient volume so that only they can hear.
- f. Confirm receipt of the message and step back.
- g. Do not engage in face-to-face contact within 6 feet.

4. **Car Caravan Legal Observing.** As social movements increasingly make use of car caravans as a form of socially distant protesting, some chapters are now choosing to dispatch LOs to caravans with the use of their own vehicles. The steering committee of the MDC and the National Office are currently developing door magnets to be used on vehicles used by LOs so that activists and other cars will be able to identify them. The following guidelines are recommended for LOs attending car caravans:

- a. LOs should prioritize safe driving practices at all times.
- b. LOs should check their vehicles for expired tags, brake lights, seat belts, and other common issues which may form the basis for stops by law enforcement. LOs should also remove items from their car that may be considered illegal by law enforcement, such as weapons, drugs, or spray paint. LOs should have their license, car registration, and proof of insurance. They should also do their best to remain the proper appearance of neutrality, and not post protest signs on their car windows or on the exterior of the car. LOs should also consider removing

bumper stickers and other political insignia. If on a bicycle, LOs should consider wearing a helmet and bringing lights, to avoid bike-related traffic citations.

- c. If far-right, fascist, or unmasked “open state” factions are likely to be present or targeting the action, LOs should follow traditional guidelines for minimizing the threat of doxxing in relation to arriving and departing at actions.
 - d. LOs should not affix a legal observer magnet or otherwise mark their car in ways that identify them as an LO before the start of the action; this is to prevent being an early target of law enforcement or counter-protesters.
 - e. LOs should remove any identification from their vehicle, such as magnets or markings, before departing from an action; this is in order to minimize the risk being targeted or followed home after the conclusion of an action.
 - f. LOs should follow traffic laws to the best extent possible while providing useful observation. LOs may find it difficult to be ideally positioned to observe a protest as well as to avoid getting in the way of activists as they perform their action, due to the flow of traffic. LOs should use their best judgment in following normal LO guidelines: remain as much as possible at the periphery of the action, while being able to observe any critical interactions with law enforcement.
 - g. LOs should not call, text, or write down LO notes while driving in a car caravan unless they are using a hands free device or are stopped in a safe manner.
 - h. LOs should only leave their cars when it is essential to observe any arrests or other critical events taking place during the demonstration. LOs should only leave their car when the caravan/motorcade is at a complete stop and it is safe to do so. LOs should not remain outside of their cars for longer than is necessary.
 - i. LOs are normally advised to “buddy up” with another LO. We recommend that LOs consult each other and their Coordinators while maintaining distance.
 - j. LOs should do their best to work with organizers and activists to identify any statutes cited for traffic tickets or violations. In the case that this information is difficult or impossible to obtain during the course of the action, LOs should confer with their LO coordinators on a strategy to contact organizers in order to obtain this information where necessary.
 - k. If an LO’s chapter operates a jail hotline, the LO should consider distributing permanent markers in bulk so that activists can write the numbers on their arms without needing to give the marker back and risk virus transmission.
5. **Fourth Amendment concerns.** Under the Constitution, private citizens have a reasonable expectation of privacy which limits the ability of law enforcement to do warrantless searches and seizures of people and their belongings; however, individuals

have been found under the Fourth Amendment to have a reduced privacy in vehicles due to their mobile nature.

- a. Stops. An officer only needs to have 'reasonable suspicion' of a criminal infraction to order an individual to stop their car. Reasonable suspicion is a broad category but it must be more than a mere hunch. This can be any kind of unlawful behavior whether it is reasonable suspicion of a serious crime or even one related to a minor traffic citation.
- b. Pat-downs. An officer may also order individuals to exit the vehicle if they have 'reasonable suspicion' that the driver or passengers may be armed and/or dangerous. They can conduct a pat-down of the individuals and also conduct a limited search for weapons in areas of the car that are in the grab area of the driver or passengers.
- c. Vehicular searches. Law enforcement does not need a warrant to search a car if they have 'probable cause' to believe that there is contraband or evidence in the vehicle. Probable cause must be something more than a mere hunch and there must be some independent evidence of behavior that is unlawful, such as an anonymous tip or informant, visually identified contraband, or any other independent corroborating details. If an officer does have probable cause, they may lawfully search the entire vehicle.

6. Post-Action Protective Measures.

- a. LOs should wear a layer of exterior clothing that can be easily removed before leaving the event. They should transfer their (potentially) contaminated clothes into a plastic bag, or wrap a sheet around them. Upon arriving home, they can wash these clothes or leave them untouched for at least 72 hours.
- b. If an LO develops a fever or symptoms after LOing please contact the other LOs immediately. LOs should wait 14 days before joining another LO team to assure symptoms don't develop that can be transferred to another LO team.

Recommendations for Interacting With Law Enforcement

Due to the ambiguity of many stay-at-home orders currently in place, as well as the lack of guidelines from state and local entities on enforcing these orders, activists and LOs should be prepared to face law enforcement trying to enforce the orders, through either coercion or harassment, and without clear legal grounds.

1. **Review State and Local Stay-at-Home/Shelter-in-Place Orders.** Local chapters and LO coordinators should conduct a review of state and local stay-at-home orders currently enacted in their state. Wherever possible, these orders should be analyzed for specific

prohibitions, enforcement provisions, and any existing ambiguities which may allow First Amendment activity to take place.

2. **Follow State and Local Guidelines for Social Distancing.** LOs should follow any state and local guidelines for social distancing where possible, ex. orders to maintain 6 feet of distance from others while in public.
3. **Obtain the Legal Justification for Any Orders to Disperse.** LOs who are approached by law enforcement and given an order to disperse should be prepared to question law enforcement as to the legal justification for any such order. LOs should obtain names, badge numbers, and any specific statutes cited by the officer. Furthermore, LOs should maintain social distance with law enforcement with particular attention to whether or not law enforcement is equipped with its own PPE.

We also urge mass defense programs to consider what support for arrested or detained LOs should be available, especially considering the unknown risk factors they will be exposed to if moved into a processing center or police precinct. LOs exposed to high-risk environments such as these may need support with housing or other needs to reduce the risk of transmission to housemates, coworkers, or others who they will come into contact with after their arrest.

Select Resources

“Advice for Public.” World Health Organization, World Health Organization,
www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public

Cases in U.S., Coronavirus Disease 2019 (COVID-19) (Accessed April 2nd, 2020)
<https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>

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www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html

“NLG Statement on COVID-19: Solidarity in Times of Crisis.” National Lawyers Guild, 30 Mar. 2020, www.nlg.org/nlg-statement-on-covid-19-solidarity-in-times-of-crisis

NLG Los Angeles Chapter COVID-19 Safety Protocols, pub. March 19, 2020

Order of the Health Officer No. C19-07, Department of Public Health, City and County of San Francisco, 16 March 2020.
<https://www.sfdph.org/dph/alerts/files/HealthOrderC19-07-%20Shelter-in-Place.pdf>

“Severe Acute Respiratory Syndrome Coronavirus 2.” Wikipedia, Wikimedia Foundation, 2 Apr. 2020, www.en.wikipedia.org/wiki/Severe_acute_respiratory_syndrome_coronavirus_2

“U.S. Current Trend: COVID-19 and Civic Freedom.” ICNL, 27 Mar. 2020,
www.icnl.org/post/analysis/u-s-current-trend-covid-19-and-civic-freedom