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Conselho Nacional de Justiça

RECOMMENDATION Nº 62, 17 MARCH 2020.

Recommends to the Courts and judges the adoption of preventive measures to spread the infection by the new coronavirus - Covid-19 within the scope of the criminal justice and socio-educational systems (juvenile justice).

THE PRESIDENT OF THE NATIONAL COUNCIL OF JUSTICE, in exercise of his legal and regimental attributions;

CONSIDERING that the National Council of Justice is responsible for the inspection and regulation of the Judiciary and of the acts performed by its bodies (article 103-B, § 4, I, II and III, of the FC);

CONSIDERING the competence of the Department of Monitoring and Inspection of the Prison System and of the System of socio-educational measures (juvenile justice) - DMF to monitor and propose actions related to the prison and socio-educational systems;

CONSIDERING the public declaration of pandemic situation regarding the new coronavirus by the World Health Organization - WHO on March 11, 2020, as well as the Declaration of Emergency in Public Health of International Importance of the World Health Organization, on January 30, 2020, from the same WHO, the Declaration of Emergency in Public Health of National Importance - ESPIN issued by Ministerial Ordinance nº 188/GM/MS, on February 4, 2020, and the provisions of Federal Law nº 13. 979, of February 6, 2020, which establishes the measures to address the public health emergency of international importance due to the new coronavirus;



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CONSIDERING that the risk group for infection with the new coronavirus - Covid-19 comprises elderly people, pregnant women and people with chronic, immunosuppressive or respiratory diseases and other pre-existing comorbidities that may lead to a worsening of the general health status from contagion, with special attention to diabetes, tuberculosis, kidney diseases, HIV and co-infections;

CONSIDERING that maintaining the health of persons deprived of their liberty is essential to ensure collective health and that a scenario of large-scale contamination in the prison and socio-educational systems produces significant impacts on the safety and public health of the entire population, extrapolating the internal boundaries of the detention facilities;

CONSIDERING the need to establish procedures and rules for the prevention of infection and the spread of the new coronavirus particularly in confinement spaces, in order to reduce the epidemiological risks of virus transmission and to preserve the health of public agents, persons deprived of liberty and visitors, avoiding large-scale contamination that could overload the public health system;

CONSIDERING the high rate of transmissibility of the new coronavirus and the significant worsening of the risk of contagion in correctional and socio-educational detention facilities, taking into account factors such as the agglomeration of people, the insalubrity of these units, the difficulties in ensuring compliance with minimum procedures of hygiene and rapid isolation of symptomatic individuals, insufficient health teams, among others, characteristics inherent to the "unconstitutional state of affairs" of the Brazilian prison system recognized by the Supreme Court in the Claim of non-compliance with a fundamental precept nº 347;

CONSIDERING the obligation of the Brazilian State to ensure preventive and curative health care for people deprived of their liberty, understanding their rights to be permanently informed about their state of health, family assistance, free health treatment, as well as full respect for dignity, human rights and their fundamental freedoms, under the terms



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of the Federal Constitution of 1988, Article 14 of the Criminal Execution Law - LEP - Law nº 7. 210, of July 11, 1984, of Decree nº 7.508, of June 28, 2011, of Interministerial Ordinance nº 1 of January 2, 2014 - PNAISP, of the Statute of the Child and Adolescent - ECA - Law nº 8. 069, of July 13, 1990, of Article 60 of the National Social and Educational Care System Law - SINASE - Law nº 12.594, of January 18, 2012, of Ordinance of the Ministry of Health nº 1.082, of May 23, 2014 - PNAISARI, in addition to international commitments;

CONSIDERING the mandatory implementation in the prison and socio-educational systems of the protocols for identification, notification and treatment of the public health emergency arising from the new coronavirus, under the terms determined by the health authorities;

CONSIDERING that the adequate handling of the public health emergency resulting from the new coronavirus is of fundamental importance for the assurance of internal order and security in prison and socio-educational detention facilities, in order to avoid conflicts, riots and rebellions and preserve the integrity of the people in custody and of the public agents working in these institutions;

CONSIDERING the importance of ensuring conditions for the continuity of judicial services, preserving the health of judges, public agents and persons in custody;

DECIDES:

Art. 1º Recommend to the Courts and judges **the adoption of preventive measures regarding the spread of infection by the new coronavirus - Covid-19 in the detention facilities of the prison system and of the socio-educational system.**

Sole paragraph. The recommendations have as specific purposes:

I - the protection of life and health of people deprived of their liberty, judges, and all public servants and agents who integrate the criminal justice system, prison and socio-educational systems, especially those who are part of the risk group, such as the elderly, pregnant women and people with chronic, immunosuppressive or respiratory diseases and



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other pre-existing comorbidities that may lead to a worsening of the general health status from the contagion, with special attention to diabetes, tuberculosis, kidney diseases, HIV and co-infections;

II - reduction of the virus propagation factors, through the adoption of sanitary measures, reduction of agglomerations in judicial, prison and socio-educational facilities, and restriction to physical interactions in the performance of procedural acts; and

III - ensuring the continuity of judicial services, observing individual rights and guarantees and due legal process.

Art. 2º Recommend to the **judges competent to rule on the determination of infraction acts in the Courts Poles of Childhood and Youth** the adoption of measures aimed at reducing epidemiological risks and in accordance with the local context of dissemination of the virus, the **preferential application of socio-educational measures without freedom restraint and the review of the decisions that determined the provisional detention, especially in relation to adolescents:**

I – who are pregnant or breastfeeding, mothers or guardians of children up to twelve years of age or persons with disabilities, as well as indigenous people, adolescents with disabilities and other adolescents who fall into risk groups;

II - who are provisionally confined in socio-educational units with a capacity exceeding the projected, considering the parameters of the decisions issued by the STF in *Habeas Corpus* nº 143.988/ES;

III - who are temporarily interned in socio-educational facilities that do not have a health staff assigned to, are under interdiction order, with precautionary measures determined by an agency of the international jurisdiction system, or with facilities that favor the spread of the new coronavirus; and

IV - that are interned for the practice of infraction acts committed without violence or serious threat to individuals.

Art. 3º Recommend to the **judges competent to rule on the execution of juvenile socio-educational measures** the adoption of actions aiming at the reduction of epidemiological risks and in accordance with the local context of dissemination of the virus, especially:



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I – re-evaluation of socio-educational measures of internment and semiliberty, for the purpose of eventual replacement by measures without freedom restraint, suspension or remission, especially of those:

a) applied to pregnant and breastfeeding adolescents, mothers or guardians of children up to 12 years of age or persons with disabilities, as well as indigenous people, adolescents with disabilities and other adolescents who fall into a risk group;

b) executed in socio-educational units with capacity exceeding the projected, considering the parameters of the decisions issued by the Federal Supreme Court in *Habeas Corpus* nº 143.988/ES; and

c) executed in socio-educational facilities that do not have a health staff assigned to, are under interdiction order, with precautionary measures determined by an agency of the international jurisdiction system, or with facilities that favor the spread of the new coronavirus;

II - re-evaluation of the decisions that determined the application of internment-sanction, established in art. 122, III, of the Statute of the Child and Adolescent.

Art. 4º Recommend to the judges competent to rule on criminal cognizance phase, in order to reduce the epidemiological risks and in accordance with the local context of virus dissemination, to consider the following measures:

I – re-evaluation of pre-trial detentions, in accordance with Art. 316 of the Code of Criminal Procedure, with priority to:

a) pregnant women, breastfeeding women, mothers or persons responsible for children up to twelve years of age or for persons with disabilities, as well as the elderly, indigenous people, persons with disabilities or who fall into the risk group;

b) persons imprisoned in penal detention facilities that are overcrowded, that do not have a health staff assigned to, that are under prohibition order, with precautionary measures determined by an agency of the international jurisdiction system, or that have facilities that favor the spread of the new coronavirus;

c) preventive detention that has exceeded the period of 90 (ninety) days or that is related to crimes committed without violence or serious threat to individuals;



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II - suspension of the duty to appear in court periodically for individuals in provisional release or in conditional suspension of the process, during 90 (ninety) days;

III - the maximum exceptionality of new orders of pre-trial detention, taking into account the protocol of the health authorities.

Art. 5º Recommend to the judges with jurisdiction over criminal execution that, in order to reduce the epidemiological risks and in accordance with the local context of dissemination of the virus, **consider the following measures:**

I - granting early permission to leave from closed and semi-open conditions, under the terms of the guidelines established by the Binding *Summula* (restatement of case law) nº 56 of the Federal Supreme Court, especially with regard to:

a) pregnant women, breastfeeding women, mothers or persons responsible for children up to twelve years of age or for persons with disabilities, as well as the elderly, indigenous people, persons with disabilities or who fall into the risk group;

b) persons imprisoned in detention facilities that are overcrowded, that do not have a health staff assigned to, that are under prohibition order, with precautionary measures determined by an agency of the international jurisdiction system, or that have facilities that favor the spread of the new coronavirus;

II - alignment of the schedule of temporary permission to leave with the contingency plan established in Article 9 of this Recommendation, assessing the possible need to extend the period of return or postponement of the benefit, ensuring, in the latter case, the rescheduling of temporary permission to leave after the end of the period of health restriction;

III - granting of house arrest to all persons imprisoned serving in open and semi-open conditions, under terms defined by the execution judge;

IV - placing under house arrest persons detained with a suspect or confirmed diagnosis of Covid-19, based on a report from the health staff, in the absence of adequate isolation area in the detention facility;

V - temporary suspension of the duty of regular presentation in court of persons in execution of a sentence in the open conditions, house arrest, penalties restricting rights, suspension of the execution of the sentence (*sursis*) and conditional release, for a period of 90 (ninety) days;



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Sole paragraph. In case of postponement of the granting of the benefit of temporary permission to leave, the decision shall be communicated in advance to the prisoners and their relatives, being informed, as soon as possible, the date rescheduled for the benefit, considering the guidelines of the health authorities regarding epidemiological risks and in accordance with the local context of dissemination of the new coronavirus.

Art. 6º Recommend that **judges with civil jurisdiction consider placing under house arrest persons detained for not paying alimony debts**, in order to reduce epidemiological risks and in accordance with the local context of dissemination of the virus.

Art. 7º Recommend to the Courts and judges with criminal jurisdiction to **prioritize the reassignment of hearings in cases in which the defendant is at liberty and, in cases in which the person is deprived of liberty**, their holding by videoconference, in order to reduce the epidemiological risks and in accordance with the local context of dissemination of the virus.

Paragraph 1. In the event that hearings are maintained, the following measures are recommended:

I - temporary restriction of the presence of visitors of the general public in the room during the solemnity;

II - holding the hearing in extended or open spaces, such as rooms destined to the jury plenaries and auditoriums, allowing greater distance between the people present;

III - temporary replacement of judges and public agents who belong to the risk group;

IV - adoption of hygiene and prevention measures, such as provision of running water and liquid soap, use of masks, alcohol gel and other products that may reduce the risk of contamination and thorough cleaning of surfaces;

V - ensuring healthiness and isolation measures, when necessary, in the jail adjacent to the courtroom;

VI - exceptional use of handcuffs, which must be sanitized with antiviral material;

VII - reduction of the time spent in the jails of the Forums.



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Paragraph 2. The provisions of paragraph 1 apply, as far as applicable, to the Children and Youth Courts.

Art. 8º Recommend to the Courts and judges, in an exceptional manner and exclusively during the period of health restriction, as a way to reduce the epidemiological risks and in observance of the local context of dissemination of the virus, to consider the Covid-19 pandemic as a suitable motivation, in the manner provided by art. 310, paragraphs 3 and 4 of the Code of Criminal Procedure, for not holding custody hearings.

Paragraph 1. In the cases provided for in the caput, it is recommended that:

I - control of the imprisonment be carried out through the analysis of the arrest record in *flagrante delicto*, with a decision being made to:

a) render illegal detention without effect;

b) grant temporary permission to leave, with or without bail, considering as an extrinsic basis, including the need to control the factors of propagation of the pandemic and protect the health of people who are part of the risk group; or

c) exceptionally, convert the arrest in *flagrante delicto* into preventive detention, in the **case of a crime committed with the use of violence or serious threat to individuals**, provided that the requirements of art. 312 of the Code of Criminal Procedure are present, in the specific case, and that the circumstances of the fact indicate the inadequacy or insufficiency of the precautionary measures other than the arrest, observing the protocol of the health authorities.

II - conduct the forensic medical examination (*corpus delicti*) by health professionals on the date and in the place where the person is arrested, **complemented by photographic record of face and entire body**, in order to document any evidence of torture or ill-treatment.

Paragraph 2. In cases where the judge, after analysis of the arrest record in *flagrante delicto* and of the forensic medical examination (*corpus delicti*), finds evidence of torture or ill-treatment or deems it necessary to interview the arrested person, he may do so, exceptionally, by telecommunication tools.

Paragraph 3. **In cases where it is feasible to hold custody hearings during the period of health restriction related to the Covid-19 pandemic, the following**



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measures shall be observed in addition to those already contemplated in Resolution CNJ 213/2015:

I - before the custody hearing, psychosocial and health care team attendance for the identification of symptoms and risk profiles, in order to provide subsidies for the judicial decision and adoption of necessary health referrals;

II - during the interview with the arrested person, provided for in Article 8 of CNJ Resolution nº 213/2015, the judge will inquire about any symptoms typical of Covid-19, as well as the exposure to risk factors, such as travel abroad, contact with contaminated or suspect persons, among others;

III - when a person is arrested with the symptoms associated to Covid-19, the following procedures shall be adopted:

a) immediately provide the person with a surgical mask;

b) adoption of the procedures determined in the action protocols established by the public health system;

c) in case of conversion of the prison in *flagrante delicto* in preventive detention, referral to the health network for diagnosis, communication and assistance prior to entry into the prison, subsequently notifying the competent court for the trial of the case.

Art. 9º Recommend to the judges that, in the exercise of their duties of supervising prison establishments and socio-educational units, ensure that a contingency plan is drawn up and implemented by the prison administration, which must provide for the following measures, as a minimum:

I - implementation of information campaigns about Covid-19, health education actions and prevention and treatment measures for public agents, persons deprived of their liberty, visitors and all those who need to enter the establishments;

II - screening procedures by health staff at the entrances to prison and socio-educational facilities, in order to identify persons suspected of being diagnosed with Covid-19 and to prevent contact with the imprisoned or interned population;

III - adoption of preventive hygiene measures, such as increasing the frequency of cleaning of all circulation spaces and permanence of persons in custody and



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deprived of their liberty, with special attention to the sanitization of metal structures and handcuffs, installation of alcohol gel dispensers in circulation areas, among others;

IV - supply of medicines and compulsory supply of food and basic hygiene items by the Public Administration and the expansion of the list of permitted items and the maximum amount of authorized entry of medicines, food and cleaning and hygiene materials supplied by relatives and visitors;

V - uninterrupted supply of water to persons deprived of their liberty and public agents of the units or, if this is not possible, extension of the supply to the maximum installed capacity;

VI - adoption of measures to avoid the shared transportation of persons deprived of liberty, ensuring the maintenance of a minimum distance and the salubrity of the vehicle;

VII - designation of medical staff in all prison or socio-educational facilities for the reception, screening, medical examinations, laboratory tests, collection of clinical samples, vaccination, referral to a reference health unit and other prophylactic measures or specific medical treatments, observing the protocol determined by the health authority;

VIII - provision of individual protection equipment for public agents of the penitentiary and socio-educational administration; and

IX - preventive planning for the hypotheses of public agents with suspicion or confirmation of diagnosis of Covid-19, in order to promote their temporary removal and substitution, considering the possibility of revision of scales and adoption of special duty regime.

Art. 10. Recommend the adoption of the following procedure for suspected or confirmed cases of Covid-19 within the prison and socio-educational systems:

I - segregation of a person who has symptoms such as dry cough, sore throat, myalgia, headache and prostration, difficulty in breathing, flapping of the nasal wings or fever, or who has had close contact with a suspected or confirmed case of infection by the virus, as well as immediate referral for implementation of a health treatment protocol provided by the Ministry of Health for suspected cases of Covid-19 and its due notification to the Municipal Health Secretariat;



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II - immediate referral for treatment in a reference health unit of persons with serious respiratory difficulties associated with Covid-19;

III - immediate communication to the competent court to consider the replacement of the prison or social-educational measure of closed conditions by a non-custodial measure, particularly in the absence of adequate isolation space or a health team, under the terms of this recommendation.

Sole paragraph. Persons deprived of their liberty, as well as their relatives and defendants, should be assured the right to be provided with information on the measures taken due to suspicion or confirmation of diagnosis of Covid-19.

Art. 11. As for the rules of visitation in prison establishments and socio-educational units, recommend the judges to ensure that the competent administrators prepare a contingency plan, which should preferably observe the following aspects:

I - prior communication to the competent court about any change in the regime of visits and delivery of items to persons deprived of their liberty, detailing the reasons for the decision, the provisional nature of the measure and the estimated period for its duration or reassessment;

II - prior notification to the legal counsel, family members and visitors of any change in the regime of visits and delivery of items to persons deprived of their liberty, stating the reasons that justified the decision, the provisional nature of the measure and the estimated period of time for its duration or reassessment;

III - obligation to sanitize the visiting spaces and provide masks and items of individual protection to the visitors, according to the sanitary protocol;

IV - prohibition of visitors with fever or respiratory symptoms associated with Covid-19 and referral to the reference health service;

V - priority adoption of splitting visits into different days and times in order to reduce the number of people circulating at the facilities and ensure the maintenance of safe minimum distance;

VI - provision of alternative measures to compensate for restrictions on visits, facilitating the use of other means of communication.



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Sole paragraph. In the event of restricted visits, the supply of food, medicines, clothing, hygiene and cleaning items brought by visitors may not be limited.

Art. 12. Recommend that judges, within the scope of their attributions, inform the National Indian Foundation - FUNAI, the Special Secretariat of Indigenous Health - Sesai, the Federal Prosecution Service and the interested community regarding the adoption of measures that directly affect indigenous people deprived of their liberty, especially regarding the diagnosis of Covid-19 and the granting of provisional liberty or measures without freedom restrain observing the special legal-penal treatment to which they are entitled and the procedures described in Resolution CNJ nº 287/2019.

Art. 13. Recommend to the magistrates that they prioritize the allocation of monetary penalties decreed during the period of public health emergency for the acquisition of cleaning, protection and health equipment necessary for the implementation of the actions provided for in this Recommendation.

Art. 14. Recommend to the Groups of Monitoring and Inspection of the Prison System - GMF and to the Children and Youth Coordinators of the Courts (CIJs) the creation of a committee to monitor the measures to confront Covid-19, open to the participation of representatives of the Public Prosecution Service, the Public Defender's Office, the Brazilian Bar Association, the Health Secretariat, councils and relevant public services and associations of relatives of prisoners or adolescents attending socio-educational measures.

Sole paragraph. The GMFs and CIJs shall be responsible for sharing with the National Council of Justice, through the Department of Monitoring and Inspection of the Prison System and of the System of socio-educational measures - DMF, information regarding the actions adopted for the prevention and treatment of Covid-19 in the prisons and socio-educational facilities located within its scope of operation, under the terms of Art. 6 of Federal Law nº 13,979, February 6, 2020.

Art. 15. The actions established in this Recommendation should be in force for a period of 90 (ninety) days, and the possibility of extension shall be subsequently evaluated.



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Art. 16. The publication and forwarding of a copy of this Recommendation to the Presidents of the Courts is hereby determined so that they may provide broad publicity to all magistrates.

Justice **DIAS TOFFOLI**

President