

### The CARES ACT

1. Expands types of proceedings that can be conducted by video/telephone conferencing (VTC).
2. Expands BOP home confinement authority.
3. Allows AG/BOP to provide free video/telephone visitation.

### Expanded Home Confinement: § 12003(b)(2)

During “covered emergency period” (CEP), if AG finds that “**emergency conditions will materially affect the functioning of the Bureau,**” the BOP Director may lengthen the maximum amount of time a prisoner spends in home confinement “under the first sentence of section 3624(c)(2),” as the Director “determines appropriate.”

### Video/Telephonic Visitation: § 12003(c)(1)

It is *possible* for BOP to provide free video and telephonic visitation if:

1. The AG finds that emergency conditions will materially affect the functioning of the Bureau; *and*
2. The BOP Director promulgates rules regarding the ability of inmates to conduct visitation through video teleconferencing and telephonically, free of charge to inmates, during the “covered emergency period.”

### Video or Telephone Conferencing § 15002

**What:** Judicial Conference has emergency authority to permit VTC (video preferred) during “covered emergency period” (CEP). Video is preferred unless it is not “reasonably available.”

**How:** emergency authority requires two actions:

1. Judicial Conference finding that COVID-19 emergency conditions “will materially affect federal courts generally” *or* in “a particular district court;” *and*
2. Chief judge/designee of covered district must authorize VTC on “application of” the AG/designee, *or* “a motion of a judge or justice.”

**Consent Required:** VTCs may “only take place” with the “consent of the defendant . . . after consultation with counsel.”

#### **Covered Proceedings (see Act for details)**

Detention Hearings & Pretrial Release Revocation ● Initial Appearances ● Preliminary Hearings ● Waiver of Indictments ● Arraignments ● Probation/SR Revocations ● Rule 40 Appearances ● Federal Juvenile Delinquency Act Proceedings\* ● Felony Pleas & Sentencings\*\*

\*Some exceptions

\*\*Allowed *only* if all 3 conditions met:

1. Judicial Conference finding (see above);
2. Chief district judge finds (on own motion or application of AG), that R. 11 pleas and R. 32 sentencings “cannot be conducted in person without seriously jeopardizing public health and safety,” *and*
3. Presiding judge finds that the plea or sentence cannot be further delayed without “serious harm to the interests of justice.

**Termination:** Emergency authority ends on earlier of: (1) last day of the CEP; *or* (2) a Judicial Conference finding that CEP conditions no longer “materially affect the functioning” of Federal Courts.