

Guidelines for Pandemic Emergency Preparedness Planning: A Road Map for Courts

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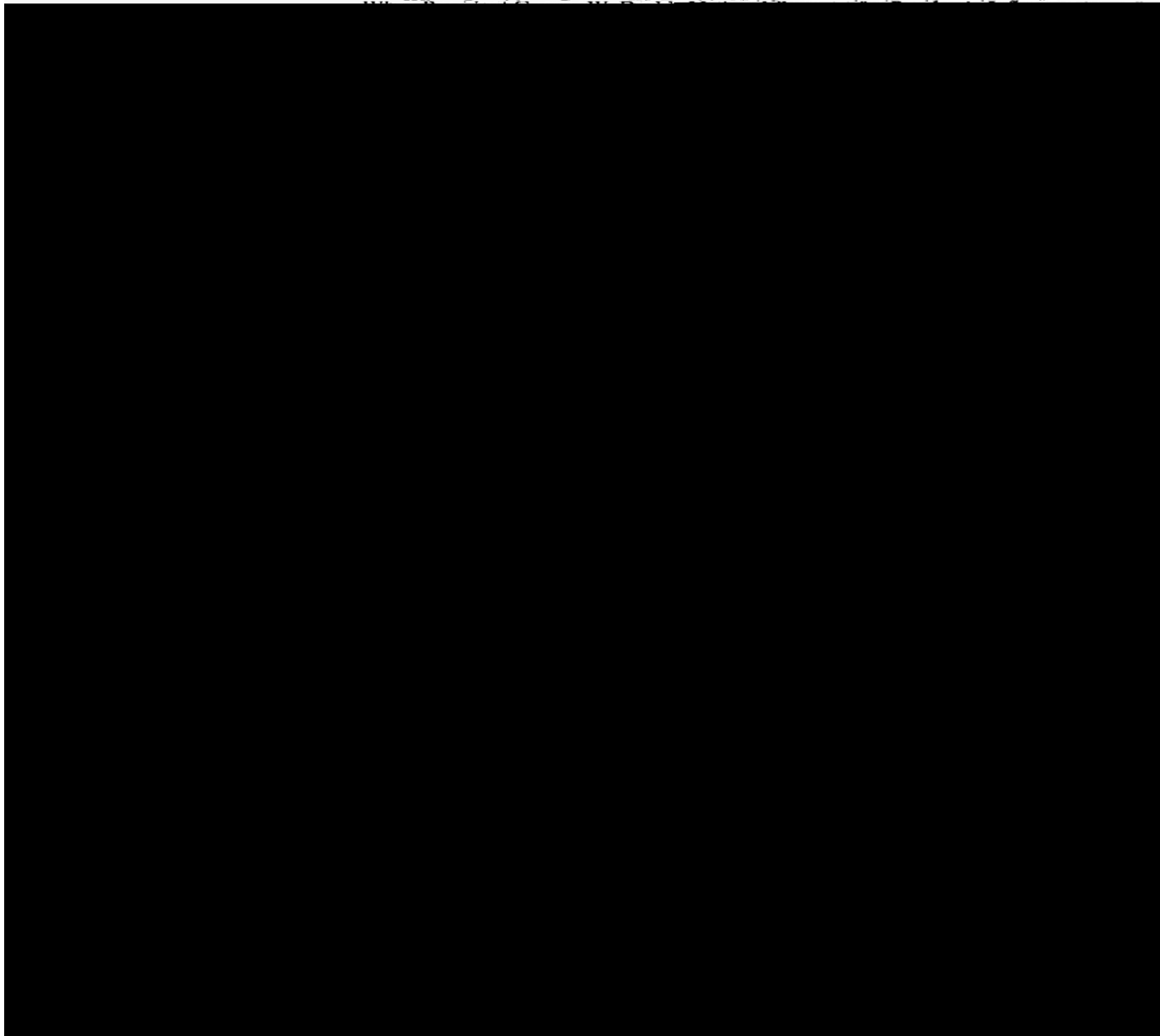
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Guidelines for Pandemic Emergency Preparedness Planning: A Road Map for Courts

I. NATURE OF THE CHALLENGE

Of the many scenarios that may have a tremendous impact on the administration of justice, one of the least studied or planned for is that of a pandemic. However, with the recent outbreak of severe acute respiratory syndrome (SARS) in Canada and elsewhere, and the serious concern about the possible transfer of avian flu¹ to human populations, the subject is now being addressed at the highest levels.²

Should a pandemic occur, it will impact the very essence of society. Businesses will close. Government institutions will be crippled. Health systems will be overwhelmed. It should not come as a surprise, then, that the operation of the courts, like all government agencies, will be seriously affected. It is estimated that some 40 percent of the workforce will be unable or unwilling to report to work.³ When applied to the court system, this estimate cuts across the entire court structure from judges and court executives to clerks, court reporters, bailiffs, and office staff. Such a reduction of available human resources could be catastrophic to the continuation of court services.

On February 1, 2007, the U.S. Department of Health and Human Services' Centers for Disease Control and Prevention (CDC) issued guidance on several nonpharmaceutical measures that might be taken to reduce the harm caused by an influenza pandemic. The guidance introduced, for the first time, a Pandemic Severity Index, which uses a case fatality ratio as the critical factor in categorizing a pandemic's severity. The index, available at www.cdc.gov/od/oc/media/pdf/MitigationSlides.pdf, is modeled after the five levels of severity used for hurricanes and designed to help officials determine whether to take steps such as advising employers to promote telework, closing schools, or limiting public gatherings. It ranks the severity of a pandemic by the number of fatalities it causes, ranging from a Category One pandemic (90,000 deaths) to a Category Five pandemic (1.8 million deaths).

Depending on the severity of an imminent pandemic, local governments are expected to implement all or portions of their pandemic plans as appropriate, including pandemic mitigation interventions set forth in CDC's guidance.

While it may be difficult for court managers to envision the impact of a pandemic on court operations and to plan for such a scenario, it is imperative that such planning take place before such an event occurs. To "wait and see" if such a pandemic will actually occur is to risk the future operation of the court at a time when it would be most needed. The purpose of this "Road Map" is to suggest some of the potential impacts a pandemic outbreak may have on the

the follow-up

people entering the court; reviewing and modifying sick leave and compensation policies; and providing employee training and support regarding hygienic measures that need to be taken during a pandemic outbreak.

III. RELATIONSHIPS OF THE COURTS AND PUBLIC HEALTH AGENCIES IN A PANDEMIC EMERGENCY

Relationships of Local and State Public Health Agencies

The United States' first local board of health was created in the City of Baltimore in 1793 in response to a yellow fever epidemic. The first state law authorizing the creation of local boards of health was enacted in Massachusetts in 1797. Massachusetts also created the first state board of health in 1869, and every state has subsequently followed suit.¹²

Over the past 200 years, the relationship between local and state health departments has continued to evolve. Direct public health services are typically furnished through local agencies, while state agencies are more likely to publish regulatory standards and control the distribution of available funds. Some local health departments may offer direct clinical services such as immunization clinics, tuberculosis treatment, and other interventions to minimize the disease burden in a local community. State agencies often maintain statewide disease registries and coordinate disease outbreak investigations.

The legal structure for public health authorities varies widely depending on the state's constitutional and statutory framework. A state may choose to

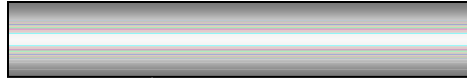
necessary to enforce the application of health policy, particularly in the event of public health threats. In regard to the first component, in recent years courts have worked increasingly with public health agencies to address substance abuse and other public health problems presented by defendants and other court litigants. However, in regard to the second component, most courts have had little experience working with public health agencies on requisite legal actions—actions that will likely occur in the event of a pandemic.

During an influenza pandemic, interaction between the judiciary and executive branches of government will be vital. Local and state courts will rely on clinical experts from local and state health departments. The manner in which this relationship is managed will have a significant impact on the court's ability to effectively respond to the crisis.

Thus, the court's pandemic emergency plan should ensure consistent interactions between the courts and public health agencies for extended periods of time. This joint planning will enable the two branches to perform their respective functions in a timely and effective manner, balancing the best interests of society with the individual civil liberties guaranteed by law. Understanding the respective roles of each of these branches of government must be part of that planning. As an example, the following page provides a diagram summarizing the caseflow process for public health matters in Indiana's justice system.

2. Role of Public Health Agencies During a Pandem

Example: Public Health System/Judicial System Interaction in the Issuance of Isolation and Quarantine Orders in Indiana*



The exercise of the state's police powers may be challenged in court, especially with the first quarantine and isolation orders. However, as the pandemic continues, other public health measures and public safety issues also may be the subject of judicial proceedings.

reasons, including proper venue for the hearing or the laws being unfamiliar to the court. The nature of the emergency also may present issues relating to health and security threats, intergovernmental relationships, and scientific evidence in hearings that are anything but routine. In addition, in many jurisdictions the public health authority may be a relatively unknown entity.

Unlike other cases judges usually hear, questions of jurisdiction will arise in cases relating to public health emerg. B5 10.c s 697.2f0 0 10.98 226.7332 68653.41798 570.721t65isdiction w

- Ø Will the court issue “duty to warn” notices?
- Ø How will the court handle agreements for disclosure of medical information with medical care providers, who are governed by the Health Insurance Portability and Accountability Act (HIPAA)?
- Ø What are the state privacy laws, and how do they regulate disclosure of medical information?
- Ø What are the state’s laws protecting public access to public records?

4. Operation of the Courts Amid Public Health Threats

By their very nature courts must be open to all members of the public. Nevertheless, most courts have instituted screening mechanisms to identify people seeking entry who pose public safety threats. In the event of a pandemic, people seeking entry to the courthouse who have been exposed to the virus may pose an equally serious threat to public health. What mechanisms can courts use to reduce the risks of exposing the judicial workforce and all who use the courts to such a public health threat? Issues to plan for include the following:

- Ø Will or should the court allow individuals who pose a potential threat to public health to appear before court?
 - Ø Can someone appear by means other than in person?
 - Ø Can the court limit the access the press and other members of the public have to the courtroom?
 - Ø What are the statutory and constitutional requirements for the court’s location?
 - Ø Will the court be able to empanel juries, and if so, be able to implement procedures to help them
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Restriction of court access

the court, already hampered by staff shortages and the other difficulties, will be required to respond.

Some of the claims that will likely be made as a result of the pandemic emergency are listed below. In all of these cases, the court planner should identify how such matters will be handled during the possibly prolonged course of the pandemic.

- **Allegations of public nuisance.** Public health authorities may attempt to alleviate conditions deemed hazardous by declaring them public nuisances, at which time the court will be obligated to determine the validity of such claims and issue and enforce orders of abatement. Courts should anticipate that large numbers of such cases will be brought forth during a pandemic and, in turn, iden

course of a pandemic. For example, in the interest of public health, it may

to perform essential functions of other positions in the event of staff shortages.

9. Other Essential Justice Agencies During a Pandemic

Clerk of the court. In many jurisdictions, the clerk of the court operates as the administrative arm of the judicial system, with responsibility for filing papers, retrieving documents, managing vital records, and providing courtroom support. Often, the public's primary connection with the court is through the clerk's office. Court planners must work closely with (m)Tj10.98 0 0 10.98 190.58618 558.06142 Tm(u)Tjim

- Review of constitutional provisions and pertinent authority under state law and regulations relating to actions that can be taken in the event of a pandemic outbreak and identification of the legal issues that need to be addressed.
- Consideration of technological and other capabilities needed to continue operations, including possible measures that will need to be instituted to limit face-to-face interactions and rules that will need to be drafted to provide for remote proceedings.
- Establishment of a stockpile of needed supplies and equipment, including sanitation items and routine supplies that may be inaccessible during a pandemic.
- Creation of special management teams to address operational functions and human resource issues and establishment of back-ups for staff who may be absent.
- Education of judicial and other agency staff regarding hygienic and other measures and precautions they should use to reduce the threat of infection and/or its spread.
- Development of internal and external communication components of the plan for meaningful communication within the court and to stakeholders and the public.
- Orientation and ongoing training of all court, justice system, public health, and related agency staff to assure that they understand the intent of the plan and their roles in the event of a pandemic.

Ultimately, a plan's effectiveness during a pandemic will depend on how knowledgeable each participant is about the plan's provisions and his or her respective responsibilities. Judicial training programs that reflect a priority for practical, essential responses to a pandemic outbreak can be very useful in meeting this need. To assist state and local courts and sheriffs' offices in implementing the suggested components provided in this Road P2bB, Bp998 0 0 1c16 8 876..0780.9936 Tm274.26koi

designed for use in the medical community. To
access any of this information, simply

people have some immunity, and a vaccine is available. See www.pandemicflu.gov.

2. *National Strategy for Pandemic Influenza: Implementation Plan*, Homeland Security Council, May 2006, see www.whitehouse.gov/homeland/pandemic-influenza-implementation.html.

3. Ibid.

4. *National Strategy for Pandemic Influenza*, Homeland Security Council, November 2005, see www.whitehouse.gov/homeland/pandemic-influenza.html.

5. See the special web site BJA developed for pandemic emergency planning, including materials presented at the symposium, at www.ojp.usdoj.gov/BJA/pandemic/pandemic_main.html.

6. There were three waves in the 1918 pandemic. See *The Influenza Pandemic of 1918*, Molly Billings, Stanford University, February 2005 (<http://virus.stanford.edu/uda>).

7. See www.pandemicflu.gov/general, "General Pandemic Information."

8. Billings, February 2005.

9. Florida State Courts Strategy for Pandemic Influenza, *Keeping the Courts Open in a Pandemic*, see www.flcourts.org/gen_public/emergency/bin/panflu_strategy.pdf#search=%22Florida%20Court%20Pandemic%20Plan%22c.

10. An impactd.985292.28.0P292.iTf24920.98 94.66351 29. Florida Sta

or public land at any reasonable time to inspect for pest and vector breeding grounds that have adverse health significance to humans, domestic animals, and/or livestock. IND. CODE § 16-41-33-6(b)(2).

APPENDIX

Tabletop Exercises: Hypothetical Scenarios Relating to th

- Should the courts seek special air handling systems and filters to decrease cross contamination by litigants?
- How should the judge respond if told that Joe could not be released because the jail Joe had been held in was under quarantine?
- What rights do prisoners have if the jail is quarantined?

Scenario 4: All Branches of Government

A Capitol County Court with proper jurisdiction issues a mass quarantine order for Capitol County per the state health commissioner's request. It appears that avian flu has broken the human-to-human barrier, a particularly big concern for the county, given that many of its residents house a large number of fowl in close proximity to humans.

Questions to answer:

- Are the Governor and his or her staff subject to such an order?
- How will the Court of Appeals convene to hear the appeal of the order?
- How will the Supreme Court and the Administrative Office of the Courts continue to function and issue the necessary orders and instructions?
- To what extent will federal facilities obey the order? For example, would the order require anyone landing at the nearby airport to be held until the quarantine ended?
- What will the legislature do if it is in session? Are legislators subject to c 10.98u15392 388.08273 T0 10.98 169.08

- What are the emergency staffing plans in the event of illness?
- What provisions are made for employees with chronic conditions such as asthma?
- Have health experts been identified to advise the court on the transmission of infectious diseases and how to protect the judges and staff?

Scenario 6: Procedure and Evidence

The health commissioner is seeking a quarantine order for those who live in identified sections within a large town.

Questions to answer:

- How will notice be given to those against whom the order is being sought?
- How will the judge and staff be protected from exposure at hearings?
- What is the standard of proof?
- What evidence will be required to make such an order, and where will the physical evidence be safely secured?
- How will the qualifications required to serve as an expert be determined?
- What is the court's role in ensuring quarantined citizens are given adequate food, shelter, and medical care?
- How will the court know what provisions should be made and whether they are realistic?

Scenario 7: Enforcing an Isolation Order from Another Jurisdiction

Mr. Business has been traveling all week and is looking forward to getting home. His daughter has a big ball game, and he can't wait to treat the team to ice cream—win or lose. His plane lands, but it does not taxi to the terminal. Instead, the plane stops; steps are pulled up to it, and a number of people in moon suits enter the plane and inform the passengers that a person who was diagnosed with avian flu has violated an isolation order and is on the plane.

The order for isolation is from another jurisdiction. The allegedly ill person says he did not receive a notice of hearing, nor was he provided an attorney. In response to this emergency, the county health officer has issued an order of quarantine for the nondiagnosed passengers. However, no orders of quarantine have been issued for the crew because they are scheduled to continue the flight to another city.

Questions to answer:

- How enforceable is the order, particularly if the allegedly ill person says he received no order of quarantine and was not provided an attorney?

- What authority does the county health officer have to issue an order of quarantine for nondiagnosed passengers and the crew?
- What procedures are in place for issuing such a quarantine?
- Who will represent the father so he can see his daughter play ball?
- Who will represent the airline?
- Who will represent the allegedly ill person who is on the plane?

NOTES

Bureau of Justice Assistance Information

For more indepth information about BJA, its programs, and its funding opportunities, contact:

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For information about BJA-funded training and technical assistance in support of pandemic planning, contact BJA's partner:

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