



# EPIDEMICS AND THE CALIFORNIA COURTS

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OCTOBER 2006



ADMINISTRATIVE OFFICE  
OF THE COURTS

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EMERGENCY RESPONSE AND SECURITY



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EMERGENCY RESPONSE AND SECURITY

Judicial Council of California  
Administrative Office of the Courts  
Emergency Response and Security Unit  
455 Golden Gate Avenue  
San Francisco, California 94102-3688  
415-865-8048

To obtain copies of this report, please e-mail Jennifer Buzick at [jennifer.buzick@jud.ca.gov](mailto:jennifer.buzick@jud.ca.gov) or download from <http://serranus.courtinfo.ca.gov/programs/security>

### **Administrative Office of the Courts Staff Contributors**

EMERGENCY RESPONSE AND SECURITY UNIT  
Malcolm Franklin, *Senior Manager*

Jennifer Buzick, *Security Analyst, Report Author*

NORTHERN/CENTRAL REGIONAL OFFICE  
Jody Patel, *Regional Administrative Director*

Jackie Escajeda, *Senior Court Services Analyst*

### **Special Thanks to the California Department of Health Services**

Division of Communicable Disease Control  
Office of Legal Services



October 2006

Dear Friend of the Courts:

One of the greatest emerging threats to California's courts in 2006 is the possibility of an epidemic—an outbreak of a disease occurring in a short period of time in a defined region. Epidemics and pandemics (epidemics that occur on a worldwide scale) have the potential to significantly affect court operations and the health and safety of court personnel, jurors, and the public. While most emergency planning to date has addressed the court's physical infrastructure, perhaps the most important planning yet to be accomplished addresses the health and safety of human lives during the challenges of an epidemic.

*Epidemics and the California Courts* is a resource for courts as they create and continue to enhance their continuity of operations plans and emergency protocols. This guide provides important information that California's judges and court administrators should know about epidemics and pandemics, describes how the courts may be affected, and details the measures that can be taken to prepare and respond effectively.

Each of us plays a vital role in controlling, containing, and mitigating the effects of an outbreak. California courts now have an opportunity to prepare to fight this potentially devastating disaster. The crucial first step for each court is to discuss these topics and create strategies to address them, one at a time. The Administrative Office of the Courts will provide additional information as it becomes available and planning efforts progress. We look forward to working in cooperation with you to prepare and to protect our courts and all those who work in and use them.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Vickrey', with a long horizontal flourish extending to the right.

William C. Vickrey  
Administrative Director of the Courts





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## EXECUTIVE SUMMARY

Epidemics, which are outbreaks of a disease that occur within a short period of time and in a defined region, have the potential to significantly affect court operations and the health and safety of court personnel, jurors, and the public. While many diseases could result in an epidemic, and could lead to a pandemic<sup>1</sup> (an epidemic that occurs on a worldwide scale), this report places particular emphasis on preparedness for outbreaks of influenza that could arise from avian influenza. For a complete list of terms and definitions used throughout this report, please see Appendix A.

In *Epidemics and the California Courts*, the Administrative Office of the Courts' Emergency Response and Security Unit, in collaboration with the State of California Department of Health Services' Division of Communicable Disease Control, identifies key information that California's judges and court executives should know when confronted with an epidemic. It also describes how the courts may be affected, and what measures can be taken to mitigate those effects. In addition to education, this report provides guidance on developing a course of action should an outbreak occur.

Although we are currently at phase 3 in the World Health Organization's six-phase pandemic alert protocol (see chart in section 2.2), which could extend for several years, courts have an opportunity now to develop and implement strategies essential to maintaining court functions and to inform court employees and other stakeholders that the courts are actively involved in planning for pandemic preparedness.

Short-term and long-term strategies for maintaining court functions during an epidemic, when absenteeism among employees could be as high as 50 percent, will require enhanced continuity of operations plans that include extensive workforce planning to perform mission-critical functions with reduced staff levels. Seven planning elements are provided in Chapter 6 to assist courts in accomplishing their short-term and long-term strategies, which will require continuous monitoring of recent developments as well as flexibility in implementation and response.

*It is only a matter of time before an avian flu virus—most likely H5N1—acquires the ability to be transmitted from human to human, sparking the outbreak of human pandemic influenza. We don't know when this will happen. But we do know that it will happen.*

—Lee Jong-Wook  
Director General of the  
World Health Organization

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<sup>1</sup> Unless otherwise noted, all references herein to epidemics also refer and apply to pandemics.





Unlike other disasters in which the period of disruption may last from weeks to months, an epidemic has the potential to disrupt court operations from months to several years. The public health response to an epidemic will directly affect court personnel and will require strong partnerships with other local and state agencies, the cooperation of the public, and the leadership of the California courts.



# **1** INTRODUCTION

## **1.1 HISTORY OF EPIDEMICS**

Throughout history, human populations have endured epidemics. In the United States today, the population has developed some level of immunity to most pathogens, whether bacteria or virus, through natural exposure or immunization. Although a large number of people may become ill during an epidemic, such as during “flu season,” most recover without lasting effect.

From time to time, however, a pathogen for which the population has little or no immunity evolves or is introduced. If that pathogen is highly communicable, or easily transmitted from person to person, and virulent, causing severe illness or death in a significant percentage of persons, an epidemic can become a worldwide pandemic, infecting millions of people and potentially causing destabilizing social disruption.

California has not experienced an extensive epidemic since 1918, when the “Spanish flu” pandemic swept the nation and the world. The Spanish flu of 1918 was not a highly virulent pathogen in terms of mortality—only 2.5 percent of those infected died—but it was highly communicable. As a result, a large percentage of the U.S. population fell ill, approximately one-half million Americans died, and during the waves of the pandemic essential public services were threatened.

## **1.2 EPIDEMIC TRANSMISSION**

Communicable diseases can be transmitted to humans in several ways. The pathogen can be transmitted directly person-to-person, from an animal or a plant, or through contact with food, water, or inanimate objects contaminated by the pathogen. Some forms of transmission, such as vector-borne, blood-borne, or sexual transmission, do not have a strong potential of affecting a court or court operations. (Refer to Appendix A for definitions of terms.)

Other forms of transmission, including person-to-person droplet, airborne, and contact transmission, do carry the potential to affect courts and court operations. Additionally, contact transmission through contaminated inanimate objects is possible in a court environment.



Three types of person-to-person transmission can occur:

- Droplet transmission occurs when the pathogen is suspended in aerosolized droplets or mist expelled when an infected person coughs or sneezes. These tiny droplets can travel 3 to 6 feet and be inhaled by other persons, or can deposit themselves on mucous membranes around the eyes or mouth of uninfected persons.
- Airborne transmission occurs when a pathogen is suspended in the air in inhalable-sized particles that remain infectious and are subsequently inhaled through the nose or mouth. Such pathogens can also be transmitted by droplet transmission or contact transmission.
- Contact transmission occurs when an infected person has physical contact (e.g., shakes hands) with an uninfected person.

Contact transmission through contaminated inanimate objects can also occur:

- Infectious respiratory droplets can be deposited on objects that other persons would likely touch with their hands (e.g., arms of chairs, door handles, documents, exhibits, restroom fixtures, desks, countertops, stair rails, elevator buttons). When uninfected persons touch the contaminated surfaces or items and then rub their nose, mouth, or eyes, transmission may occur.
- Similarly, if infected persons rub or wipe their nose, or sneeze or cough into their hand, then touch one of these common surfaces or objects, the surface or object can become contaminated. For example, if a person coughs, covering his or her mouth, then exchanges money, the pathogen can be transmitted on the money to the court clerk. If the clerk becomes ill or begins shedding the pathogen, the pathogen can then be transmitted to every person to whom the clerk provides change.

### **1.3 EPIDEMICS OF CONCERN**

Of the many diseases of concern, public health experts, lawmakers, and the general population are perhaps most concerned about the risk of an influenza pandemic arising from the current avian influenza epidemic that has been affecting domestic and wild birds in Asia and spreading rapidly to other parts of the world.

In addition to influenza, a number of other communicable diseases could significantly affect court operations and society as a whole. If there emerges a highly communicable and virulent human pathogen to which there is little or no immunity and for which there is no reliable and available treatment or vaccine, the only way



to avoid large numbers of cases of serious disease or death is to prevent or minimize transmission within the population, including within court facilities.

While the communicable diseases discussed below are not an exhaustive list, they provide an understanding of other types of diseases that could affect court functions beyond influenza.

### **1.3.1 Influenza**

Chapter 2 focuses specifically on influenza and the unique challenges that pandemic influenza could pose to our communities and to the function of normal court operations.

### **1.3.2 Plague**

Plague is a disease caused by the bacterium *Yersinia pestis* found in some rodents and their fleas around the world, including in California. It has been responsible for some of the most devastating epidemics in history, including the Black Death that swept Europe starting in 1347. Plague takes two forms, bubonic and pneumonic. Both forms are caused by the same pathogen, but their transmission and symptoms differ.

Naturally acquired plague is rare and is usually in the bubonic form. Persons with bubonic plague, characterized by chills, fever, vomiting, diarrhea, and swelling of the lymph nodes, may subsequently develop the pneumonic form, which is similar to pneumonia. Pneumonic plague can be readily transmitted person-to-person by airborne or droplet transmission. Aerosolized dissemination of plague bacteria as a deliberate act of bioterrorism would likely manifest primarily as pneumonic plague.

Both forms of plague are treatable with antibiotics if treatment commences promptly. Nevertheless, the mortality rate for treated plague is approximately 14 percent. Untreated plague would most likely result in death.

### **1.3.3 SARS**

Severe acute respiratory syndrome (SARS) is a respiratory illness caused by a virus. SARS was first reported in Asia in February 2003. Over the next few months, a total of 8,098 people worldwide became sick; of these, 774 died (approximately 10 percent). SARS is spread by airborne route, by droplet transmission, and by close contact. No vaccine exists and no effective treatment has been found, although many therapeutic efforts have been made. In the United States, only eight people had laboratory evidence of SARS infection. Currently, there are no known SARS transmissions anywhere in the world.



### 1.3.4 Smallpox

Smallpox is caused by the variola virus and is a serious, sometimes fatal, infectious disease, with an overall fatality rate of 30 percent. Smallpox was eradicated after a successful worldwide vaccination program. The last case of smallpox in the United States occurred in 1949, and in the world in 1977. In the 1970s, routine vaccinations against smallpox ended, resulting in large numbers of Americans' now lacking immunity. The routes of transmission include airborne, droplet, and contact transmission. Historically, no specific treatment for smallpox existed, and the only prevention was vaccination. Although eradicated, stocks of the virus are known to exist in two approved laboratories in the United States and Russia. Smallpox could potentially be a significant weapon if developed and utilized for bioterrorism. The United States maintains a secure supply of smallpox vaccine sufficient to vaccinate every person in the country, should an outbreak occur.<sup>2</sup>

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<sup>2</sup> Centers for Disease Control and Prevention, *Frequently Asked Questions About Smallpox* (Feb. 2006).



## 2 PANDEMIC INFLUENZA

Health officials worldwide are concerned that the H5N1 virus, or avian flu, which is currently infecting bird populations in Asia, Africa, and Europe, could be the next pandemic influenza strain. Although the number of human cases to date has been relatively small and attributable to close human contact with birds, the death rate among reported cases has been as high as 50 percent. If the virus further mutates into a strain that is easily transmissible between humans, it could cause very high levels of severe illness and death worldwide.

Researchers believe the world is now closer to another influenza pandemic than at any other time. This belief is not based simply on our being “due” for another pandemic, although history does provide a strong indicator to that effect, but rather on the fact that the current avian influenza strain is:

- Endemic in several countries and is continuing its global spread;
- One of the few strains that has the capacity to jump the species barrier to infect humans; and
- Already causing human illnesses and deaths, albeit on a limited scale.<sup>3</sup>

Influenza, also known as the flu, is a disease that attacks the respiratory tract in humans and differs from a viral “cold” in that it usually comes on suddenly and includes fever, headache, tiredness, dry cough, sore throat, nasal congestion, and body aches.<sup>4</sup>

The U.S. Department of Health and Human Services has created plans based on the following assumptions about pandemic disease:

- Susceptibility to the pandemic influenza subtype will be universal.
- The clinical disease attack rate will be 30 percent in the overall population. (California’s 2006 estimated population is 37,172,015,<sup>5</sup> meaning that 11,151,604 Californians could fall ill.) Illness rates will be highest among school-aged children (about 40 percent) and decline with age. Among working adults, an average of 20 percent could become ill during a community outbreak.

<sup>3</sup> Mercer Human Resource Consulting, *The Emerging Global Pandemic: Human Resource Implications*, p. 4.

<sup>4</sup> California Department of Health Services, *Pandemic Influenza Preparedness and Response Plan* (Jan. 2006), p. 3.

<sup>5</sup> California Department of Finance, *E-4 Population Estimates for Cities, Counties and the State, 2001–2006 with 2000 Benchmark* (May 2006).



- Of those who become ill with influenza, 50 percent could seek outpatient medical care.
- The number of hospitalizations and deaths will depend on the virulence of the pandemic virus. Estimates differ about tenfold between more severe and less severe scenarios.
- Risk groups for severe and fatal infections cannot be predicted with certainty. During annual fall and winter influenza season, infants and the elderly, persons with chronic illness, and pregnant women are usually at higher risk of complications from influenza infections.
- The typical incubation period for influenza averages two to three days. It is assumed this would be the same for a novel strain transmitted between people by respiratory secretions.
- Persons who become ill may shed virus and can transmit infection for one-half to one day before the onset of illness. Viral shedding and the risk for transmission will be greatest during the first two days of illness. Children will shed the greatest amount of virus, therefore are likely to pose the greatest risk for transmission.
- On average, about two secondary infections will occur as a result of transmission from someone who is ill. Some estimates from past pandemics have been higher, with up to about three secondary infections per primary case.
- In an affected community, an outbreak will typically last about 6 to 8 weeks. At least two pandemic disease waves are likely. Following the pandemic, the new viral subtype is likely to continue circulating and contribute to seasonal influenza.
- The seasonality of a pandemic cannot be predicted with certainty. The largest waves in the United States during 20th-century pandemics occurred in fall and winter.<sup>6</sup>

## 2.1 IMPACT

The impact of an actual pandemic cannot be accurately predicted, as it depends on multiple factors, including virulence of the virus, rate of transmission, availability of vaccines and antivirals, and effectiveness of containment measures.<sup>7</sup>

<sup>6</sup> U.S. Department of Health and Human Services, *HHS Pandemic Influenza Plan* (Nov. 2005), pp. 18–19.

<sup>7</sup> California Department of Health Services, *Pandemic Influenza Preparedness and Response Plan* (Jan. 2006), p. 3.



An influenza pandemic could last from months to several years, with at least two peak waves of activity. According to the U.S. Department of Health and Human Services, the characteristics of an influenza pandemic that must be considered in strategic planning include the following:

- The ability of the virus to spread rapidly worldwide;
- The fact that people may be asymptomatic while infectious;
- Simultaneous or near-simultaneous outbreaks in communities across the United States, limiting the ability of any jurisdiction to provide support and assistance to other areas;
- Enormous demands on the health-care system;
- Delays and shortages in the availability of vaccines and antiviral drugs; and
- Potential disruption of national and community infrastructure, including transportation, commerce, utilities, and public safety, due to widespread illness and death among workers and their families, as well as concern about ongoing exposure to the virus.<sup>8</sup>

Absenteeism across multiple sectors related to personal and family illness, fear of contagion, or public health measures to limit contact with others could all threaten the functioning of critical infrastructure, the movement of goods and services, and operation of institutions such as the courts.<sup>9</sup>

## **2.2 WORLD HEALTH ORGANIZATION PANDEMIC PHASES**

The World Health Organization (WHO) described six phases of increasing public health risk associated with the emergence of a new influenza virus that could pose a pandemic threat. Each phase recommends actions for national authorities and outlines measures to be implemented by the WHO, allowing for greater predictability of actions to be taken during the various phases of a pandemic. As of June 2006, the WHO lists the pandemic phase as phase 3. The following table provides a description of each phase and the corresponding action.

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<sup>8</sup> U.S. Department of Health and Human Services, *HHS Pandemic Influenza Plan* (Nov. 2005), p. 5.

<sup>9</sup> White House Office of Homeland Security, Homeland Security Council, *National Strategy for Pandemic Influenza* (May 2006), p. 1.





## PANDEMIC PHASES DESCRIBED BY THE WORLD HEALTH ORGANIZATION<sup>10</sup>

INTERPANDEMIC PERIOD		
<b>Phase 1</b>	No new influenza virus subtypes have been detected in humans. An influenza virus subtype that has caused human infection may be present in animals. If present in animals, risk of human infection or disease is considered to be low.	Strengthen influenza pandemic preparedness at the global, regional, national and subnational levels.
<b>Phase 2</b>	No new influenza virus subtypes have been detected in humans. However, a circulating animal influenza virus subtype poses a substantial risk of human disease.*	Minimize the risk of transmission to humans; detect and report such transmission rapidly if it occurs.
PANDEMIC ALERT PERIOD		
<b>Phase 3</b>	Human infection(s) with a new subtype, but no human-to-human spread, or at most rare instances of spread to a close contact.**	Ensure rapid characterization of the new virus subtype and early detection, notification and response to additional cases.
<b>Phase 4</b>	Small cluster(s) with limited human-to-human transmission but spread is highly localized, suggesting that the virus is not well adapted to humans.**	Contain the new virus within limited foci or delay spread to gain time to implement preparedness measures, including vaccine development.
<b>Phase 5</b>	Larger cluster(s) but human-to-human spread still localized, suggesting that the virus is becoming increasingly better adapted to humans, but may not yet be fully transmissible (substantial pandemic risk).	Maximize efforts to contain or delay spread, to possibly avert a pandemic, and to gain time to implement pandemic response measures.
PANDEMIC PERIOD		
<b>Phase 6</b>	Pandemic: increased and sustained transmission in general population.	Minimize the impact of the pandemic.

\*The distinction between **phases 1 and 2** is based on the risk of human infection or disease resulting from circulating strains in animals. The distinction is based on various factors and their relative importance according to current scientific knowledge. Factors may include pathogenicity in animals and humans, occurrence in domesticated animals and livestock or only in wildlife, whether the virus is enzootic or epizootic, geographically localized or widespread, and/or other scientific parameters.

\*\*The distinction between **phases 3, 4, and 5** is based on an assessment of the risk of a pandemic. Various factors and their relative importance according to current scientific knowledge may be considered. Factors may include rate of transmission, geographical location and spread, severity of illness, presence of genes from human strains (if derived from an animal strain), and/or other scientific parameters.

<sup>10</sup> World Health Organization, Department of Communicable Disease Surveillance and Response, *WHO Global Influenza Preparedness Plan* (2005), p. 6.



## 2.3 VACCINES AND ANTIVIRALS

Until the human-to-human H5N1 virus strain emerges, it is unlikely that an effective vaccine can be developed and distributed in a timely manner. Researchers at the National Institute of Allergy and Infectious Diseases are, however, making progress toward an avian flu virus vaccine.<sup>11</sup>

The California Department of Health Services (CDHS) has established a pilot survey for prioritizing vaccine administration during an outbreak. Its goal is to minimize health consequences, social disruption, and economic loss. The survey results will allow the CDHS to select the best priority and strategy for vaccine allocation.

Antiviral medications may reduce morbidity and may be useful in limited attempts to contain or slow the spread of small outbreaks of the influenza virus.<sup>12</sup> It is difficult, however, to test whether existing antiviral drugs will offer any significant treatment or prophylactic benefits. Current federal recommendations for treating suspected cases of H5N1 suggest administering antivirals as early as possible and within 48 hours of the onset of symptoms.

The status of vaccines and antivirals is directly correlated with the WHO pandemic phases as follows:

**Phases 1 and 2:** No or limited vaccine is available. Antiviral drugs may be available in the private sector and in the public sector from the Strategic National Stockpile, and possibly from a CDHS antiviral stockpile.

**Phases 3 and 4:** No or limited vaccine is available. Antiviral drugs may be available in the private sector and in the public sector from the Strategic National Stockpile, and possibly from a CDHS antiviral stockpile.

**Phase 5:** Vaccine may still not be available or may exist only in limited supplies and CDHS will begin facilitating procurement, coordination, and distribution of any available vaccine. Local and regional supplies of antiviral drugs will likely begin to be depleted.

**Phase 6:** Vaccine may become more widely available. CDHS will begin facilitating procurement, coordination, and distribution of any available vaccine. Local and regional supplies of antiviral drugs will likely be depleted.<sup>13</sup>

<sup>11</sup> U.S. Department of Health and Human Services, National Institutes of Health, *Progress Toward Avian Flu Virus Vaccine* (Apr. 2006).

<sup>12</sup> California Department of Health Services, *Pandemic Influenza Preparedness and Response Plan* (Jan. 2006), annex 6, pp. 21–23.

<sup>13</sup> *Id.* at annex 7, pp. 7–11.





# **3** STRATEGIES AND RESPONSE

## **3.1 NATIONAL STRATEGY FOR PANDEMIC INFLUENZA**

The President of the United States has developed the *National Strategy for Pandemic Influenza* to guide the country’s preparedness and response to an influenza pandemic, with three goals: (1) stopping, slowing, or otherwise limiting the spread of a pandemic to the United States; (2) limiting the domestic spread of a pandemic, and mitigating disease, suffering, and death; and (3) sustaining infrastructure and mitigating impact on the economy and society’s functioning.

The strategic principles of the *National Strategy* guiding federal, state, and local health agencies include:

**Preparedness and Communication:** Activities that should be undertaken before a pandemic to ensure preparedness, and the communication of roles and responsibilities to all levels of government, segments of society, and individuals.

**Surveillance and Detection:** Domestic and international systems that provide continuous “situational awareness,” to ensure the earliest warning possible to protect the population.

**Response and Containment:** Actions to limit the spread of the outbreak and to mitigate the health, social, and economic impacts of a pandemic.

Further, the *National Strategy* also states that department pandemic plans should include such additional considerations as protecting employees, maintaining essential functions and services, and ensuring effective communication about pandemic planning and response between departments or agencies and their constituents or stakeholders.<sup>14</sup> Chapter 5 discusses each of these topics in detail.

## **3.2 PUBLIC HEALTH RESPONSE TO DISEASE OUTBREAKS**

Each of California’s 58 counties, and also a few cities, has a health officer. Appendix B provides a directory of public health officers by county and three cities. Health

<sup>14</sup> White House Office of Homeland Security, Homeland Security Council, *National Strategy for Pandemic Influenza* (May 2006), p. 18.



officers are required by law to observe and enforce the statutes, ordinances, orders, and regulations of the State Department of Health Services pertaining to public health. Their responsibilities can include the power to take “such measures as may be necessary to prevent the spread of disease or occurrence of additional cases” and to isolate and quarantine infected persons.<sup>15</sup>

Any public health response to a disease outbreak will depend on the nature of the pathogen involved: its virulence, mode of transmission, communicability, and the availability of vaccines and treatments. For diseases capable of either droplet or airborne transmission, prevention measures typically include:

- Surveillance of the incidence of disease by medical care providers and laboratories through disease reporting systems;
- Investigations, including examinations and testing of potentially infected persons or animals;
- Isolation of human cases; and
- Quarantine of individuals or groups that have been exposed.

Other measures that a public health official might implement include:<sup>16</sup>

- Mandatory treatment or vaccination;
- Mandatory hand and respiratory sanitation requirements (e.g., hand washing, wearing masks, covering coughs);
- Closure or evacuation of public and private buildings, areas, or events where the potential for transmission between people exists, which could include temporary courthouse closures;
- Disinfection or destruction of contaminated property; and
- Rationing of vaccines or preventive drugs.

In extreme circumstances, a state of emergency could be declared, under which the Governor could commandeer equipment, facilities, and personnel. Individuals could be drafted as disaster service workers. Curfews could be established to prevent interaction.

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<sup>15</sup> Health & Saf. Code, §§ 120175, 120220, 120210(a), 120215(a), 120130(c), and 121365(g); Cal. Code Regs., tit. 17, §§ 2516, 2518, and 2520.

<sup>16</sup> This is not meant to suggest that each of these actions would be authorized by law—only that these are measures that a health officer might opt to implement. Whether any particular measure is a legally permissible exercise of a health official’s authority would have to be determined in the appropriate forum, on a case-by-case basis.



# **4 CALIFORNIA COURT CONSIDERATIONS**

## **4.1 CALIFORNIA COURT GOALS**

Although the circumstances described above paint a dark picture, our courts, to the best of their ability, must continue to provide Californians with equal access to the courts and equal ability to participate in court proceedings, and must ensure that all parties are treated in a fair and just manner. California’s courts must maintain a leadership role in our communities and continue to uphold the mission of the judiciary:

*The judiciary shall, in a fair, accessible, effective, and efficient manner, resolve disputes arising under the law and shall interpret and apply the law consistently, impartially, and independently to protect the rights and liberties guaranteed by the Constitutions of California and the United States.<sup>17</sup>*

## **4.2 IMPLICATIONS FOR THE CALIFORNIA COURTS**

The exercise of the local health officer’s powers during an epidemic may impinge on personal liberties or affect property rights that members of the public normally enjoy. During large epidemics, courts may experience an increase in caseload, if affected individuals or communities seek judicial relief from restrictions imposed by health authorities.

A secondary challenge for the courts will be to assist appropriate public health officials in protecting court personnel, jurors, and the public from transmission within the courthouse. Given the large numbers of individuals who enter court facilities each day, those facilities—like other public facilities in which large numbers of persons interact and congregate—could themselves become a spreading center for the disease.

This raises a number of considerations for courts, including:

- Significant numbers of persons who are necessary to the court’s mission-critical functions (e.g., judges, court staff, court security personnel, jurors) may be unavailable because of illness or death, possibly reaching from 30 to 50 percent of the workforce;

<sup>17</sup> Judicial Council of California, *Strategic Plan: Leading Justice Into the Future* (Mar. 2000), pp. 14–15.



- Face-to-face contact between judges, attorneys, litigants, clerks, sheriffs, court administrators and staff, and jurors necessary for performing mission-critical functions may be dramatically limited or unavailable; and
- Facilities, infrastructure, utilities, and services may all be affected by a lack of adequate staffing caused by isolation, quarantine, illness, or death of those persons necessary for maintaining operations.<sup>18</sup>

Depending on the severity of the epidemic, court administration may come under pressure as the disease causes attrition among court employees, court security personnel, jurors, witnesses, counsel, litigants, and maintenance personnel. To the extent that courts rely on their local sheriffs for security services, an additional concern is the possibility that, during an outbreak, sheriff's deputies may be reassigned to other critical law enforcement duties, thus resulting in a shortage of deputies available to serve the courts.<sup>19</sup>

In addition, the county public health officer or CDHS itself could close a court facility, or could quarantine or isolate court personnel. Such measures could, however, be subject to constitutional challenge, if they were determined to materially impair the exercise of fundamental judicial functions (e.g., deciding disputes among parties).

Finally, depending on the nature and severity of the circumstances confronting it, a court may need to request a Judicial Emergency Order, as detailed in the next section.

### 4.3 REQUEST FOR JUDICIAL EMERGENCY ORDERS

Government Code section 68115 authorizes the Chair of the Judicial Council (the Chief Justice of California) to issue judicial emergency orders when war, insurrection, pestilence, or other public calamity, or the danger thereof, or the destruction of or danger to court buildings, renders it necessary, or when a large influx of criminal cases resulting from a large number of arrests within a short period threatens the orderly operation of the courts.<sup>20</sup> Most requests for emergency orders are received

<sup>18</sup> Florida Court Emergency Management Group, *Florida State Courts Strategy for Pandemic Influenza* (Mar. 2006), p. 8.

<sup>19</sup> In such an instance, a court may be able to turn to non-sheriff security providers to meet its security needs. Whether a court may do so will depend on a number of factors—including, but not limited to, the terms of any memorandum of understanding the court may have with its sheriff—and would need to be evaluated on a case-by-case basis.

<sup>20</sup> The text of Gov. Code, § 68115, current as of the publication date of this document, is in Appendix C; because code sections are sometimes amended, we recommend consulting the most current version of the code before requesting an emergency order.



from courts that face a large influx of criminal cases resulting from mass arrests, or from courts affected by earthquakes, floods, serious fires, or other circumstances that threaten or result in the full or partial destruction of the courthouse.

In an emergency order, the chair of the Judicial Council can authorize a court to do one or more of the following, depending on the circumstances:

- Hold sessions anywhere within the county;
- Transfer civil cases pending in the court to a court in an adjacent county;
- Declare a holiday for purposes of computing time under certain statutes;
- Extend the duration of a temporary restraining order;
- Extend the period for the holding of a preliminary examination; and
- Extend the period within which a criminal trial must be held.

If the President or the Governor has declared a state of emergency, then the emergency order can also include authorization for the court to:

- Extend the period within which a defendant charged with a felony offense must be taken before a magistrate;
- Extend the period within which a minor must be given a detention hearing;
- Extend the time period within which an adjudication on a juvenile court petition must be held.
- The specific procedure for requesting Judicial Emergency Orders is provided in Appendix C. Up-to-date information on requesting emergency orders is maintained on the Serranus Web site.







# 5 CALIFORNIA COURT STRATEGIES

Unlike other emergency situations, an influenza epidemic could seriously disrupt court operations for an extended period, lasting approximately from months to several years. Therefore, both short-term and long-term strategies are necessary to manage the potential extent and duration of the impact.

Each court's continuity of operations plan (COOP) should address the basic response to any disaster or emergency situation. Courts lacking a continuity of operations plan can download a template plan specific to pandemic influenza on Serranus at: <http://serranus.courtinfo.ca.gov/programs/security>.

Given the unique challenges posed by an epidemic, the information and strategies discussed below are not exclusive, but rather are designed to enhance courts' current emergency protocol.

## 5.1 SHORT-TERM STRATEGY

In the first 90 days of COOP activation, each court should have the capacity to:

1. Perform all mission-critical functions as defined in each court's COOP; and
2. Address all emergency matters and cases generated by issues associated with quarantines, isolation, civil liberty challenges, and other public health-related cases.

The above functions may need to be performed with limited staff, and when little to no face-to-face contact is possible for an extended period. Judges, attorneys, litigants, jurors, sheriffs, and court staff alike will be significantly affected by illness or even death.<sup>21</sup>

As soon as possible, courts should transition to full operations. If full operations cannot be initiated within 90 days of COOP activation, courts should implement the long-term strategies described below.<sup>22</sup>

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<sup>21</sup> The Administrative Office of the Courts' Office of the General Counsel is currently researching what legal options a court might have for sharing resources with a sister court in the event of an epidemic. That guidance, once completed, will be provided as a supplement to this publication.

<sup>22</sup> Florida Court Emergency Management Group, *Florida State Courts Strategy for Pandemic Influenza* (Mar. 2006), p. 9.



## 5.2 LONG-TERM STRATEGY

Within 90 days of COOP activation, courts should have the capacity to perform all criminal matters: conduct jury trials, address all emergency civil matters, and perform all other mission-critical functions when little to no face-to-face contact is possible for an extended period. Judges, attorneys, litigants, jurors, sheriffs, and court staff alike will be significantly affected by illness or even death.

When developing its specific response to an epidemic, a court should consider these issues:

- Cases filed may increase if individuals or communities seek judicial relief from restrictions imposed by health authorities.
- Operations may be significantly impacted for months to several years.
- Local court officials, with assistance from the Administrative Office of the Courts, should be prepared to cooperate with appropriate public health personnel on response and recovery efforts. Because state and federal resources may be stressed during an epidemic, courts should be prepared to operate with only minimal support from state and federal agencies.
- Each court should ensure that it has the capacity to perform its mission-critical functions, deal with all emergency matters and cases associated with the quarantine and isolation of individuals, and handle other cases brought by public health officials for the first 90 days of COOP activation.<sup>23</sup>
- If full operations cannot be restored within 90 days, each court in the interim should ensure that it has the capacity to:
  - ▶ Conduct arraignments.
  - ▶ Hear juvenile dependency and delinquency cases.
  - ▶ Issue restraining and protective orders.
  - ▶ Perform other mission-critical functions as best it can.

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<sup>23</sup> *Id.* at pp. 9–10.



### 5.3 POST-EPIDEMIC RECOVERY

Recovery from an epidemic begins when a court determines that it has adequate staff and resources to resume normal business functions. Once normal operations resume, the impact of the epidemic on court operations, staff, and other stakeholders should be assessed and an after-action evaluation of the court's response should be drafted. Such an evaluation can assist courts in updating their continuity of operations plans as well as other emergency response plans, as appropriate.

### 5.4 MISSION-CRITICAL FUNCTIONS

Each court's continuity of operations plan should already have identified mission-critical functions. With the unique impact that an epidemic presents, a court should further identify those key processes and functions that pose significant risk for infection (e.g., extensive public interaction, cash management) and begin plans to mitigate such risks. Several safety measures are discussed in Chapter 6 for courts to consider in refining their specific response plans.

While mission-critical functions may vary from court to court, several mission-critical functions are likely to be common to all courts. These include, but are not limited to:

- Conducting arraignments;
- Hearing juvenile dependency and delinquency cases;
- Issuing restraining orders and protective orders;
- Assisting litigants with court filings, and processing paperwork and requests;
- Managing all court calendars, including criminal, civil, family law, probate, small claims, traffic, and juvenile calendars;
- Summoning jurors for selection, and empaneling juries for civil and criminal cases;
- Hearing criminal and civil cases;
- Processing traffic citations; and
- Processing small claims filings.

Courts lacking a continuity of operations plan can download a template plan specific to pandemic influenza on Serranus at: <http://serranus.courtinfo.ca.gov/programs/security>.



## 5.5 WORKFORCE PLANNING

Because an epidemic may not spread evenly through the employee population, courts should consider creating a skills inventory for those positions that are essential to continuing their mission-critical functions. Courts should then consider cross-training and skill development for employees who can assume responsibility for carrying out those functions, which may lie beyond their normal scope of responsibility. Should key personnel fall ill, critical functions would then continue with minimal impact. Employees should also be informed that they may be asked to exercise authority or perform duties outside their typical job responsibilities.

When developing a skills inventory, courts should pay particular attention to those positions for which cross-training is not feasible, such as those that require specialized training or qualifications (e.g., court interpreters, court reporters, mediators). The court should consider having a contingency plan in place, should the personnel in those positions be unavailable. This may include identifying, in advance, possible sources for temporary replacement personnel.



## **6** CALIFORNIA COURT PLANNING

Effective advance planning by the California courts is essential to their ability to respond quickly to the outbreak of an epidemic. Below are seven planning elements that will assist courts in achieving the short-term and long-term strategies discussed in Chapter 5. A checklist has been provided in Appendix D to assist courts in their planning efforts.

### **6.1 KEY STATE AND LOCAL RELATIONSHIPS**

The *HHS Pandemic Influenza Plan* advises that the first step in planning for state and local governments should be establishing a coordinating committee to oversee epidemic preparedness planning and ensure integration with other emergency planning efforts.<sup>24</sup> Courts that choose to form such a committee may want to include a cross-section of employees, rather than executive leadership exclusively. In the event that some or all of the executive team falls ill, the committee could still function, providing critical leadership and real-time decision making.

In addition to a cross-section of employees, including those responsible for employee health and safety, courts may wish to include sheriffs, local bar associations, and other criminal justice partners, as a way of alerting them to the court's plan and soliciting their input. Assuming the courts remain open, it is essential that key partners be fully aware of the court's efforts to ensure that all parties work together in accomplishing the court's mission-critical functions.

A coordinating committee would prove crucial in providing leadership, ongoing planning and preparedness, and flexibility of approach and implementation due to rapidly changing circumstances and events throughout an epidemic or pandemic cycle.

Regardless of whether courts have the personnel or resources to form such a committee, establishing contact with local public health officials is essential for local planning efforts. Again, each county's (and several cities') public health officer is listed in Appendix B. These officials should be contacted to:

- Ensure that the courts are aware of and possibly involved in current local preparedness and planning efforts;

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<sup>24</sup> U.S. Department of Health and Human Services, *HHS Pandemic Influenza Plan* (Nov. 2005), p. 1-4.



- Ensure that courts are kept informed of current local efforts; and
- Ensure that courts are locally prepared to respond to and recover from an epidemic.<sup>25</sup>

In addition, advance contact with the appropriate health authorities will increase the likelihood that those authorities are aware of the courts' mission-critical functions, and the resources that will be required to carry out those functions. This, in turn, may lessen the possibility that a later-enacted health measure (e.g., a court facility closure or a quarantine of court personnel) will jeopardize a court's ability to carry out those functions.

The AOC's Emergency Response and Security Unit (ERS) has established a working relationship with the California Department of Health Services, allowing the AOC to remain engaged in statewide developments. ERS will forward all critical information to the courts.

## 6.2 LEGAL PREPAREDNESS

The *HHS Pandemic Influenza Plan* has provided two items for legal consideration during a pandemic: (1) the "Checklist of Legal Considerations for Pandemic Influenza" and (2) the "Fact Sheet: Practical Steps for Legal Preparedness." Both these documents can be found on the HHS Web site at [www.hhs.gov/pandemicflu/plan/](http://www.hhs.gov/pandemicflu/plan/).

These documents describe, in very broad and general terms, advance preparations that communities may wish to consider in advance of a possible epidemic outbreak. Such preparations could involve a number of local public entities, including courts. Examples of advance preparations that a court could be called on to participate in are:

- Ensuring that judges are aware of the authority of health officials, as well as of constitutional implications of quarantine, isolation, and court closure;
- Making appropriate court personnel aware of the procedure for requesting Judicial Emergency Orders;
- Considering implementing protocols that address how persons who are subject to quarantine or isolation may continue to access court resources or legal counsel; and
- Working with health officials to develop a plan for hearing cases and appeals in the event of quarantine or isolation.

<sup>25</sup> Florida Court Emergency Management Group, *Florida State Courts Strategy for Pandemic Influenza* (Mar. 2006), p. 13.



The AOC anticipates that, in the event of an epidemic, specific legal questions will arise that are unique to each court’s particular situation. Any such questions should be directed to Emergency Response and Security, which will then work with the AOC’s Office of the General Counsel (OGC) to provide prompt legal guidance. In addition, the OGC will continue to identify the major legal issues that are likely to arise in the event of an epidemic and that lend themselves to broad guidance. As it continues to develop legal opinions and other forms of legal guidance on those issues, the OGC will supplement this publication accordingly.

### 6.3 COMMUNICATIONS

Each court should review its internal and external communications plans to ensure that it is prepared to successfully communicate with judges, attorneys, litigants, jurors, sheriffs, court staff, and the general public under pandemic circumstances.

Having an advance communications plan can help a court provide timely information at critical junctures to court staff, jurors, and the public. As media coverage increases, regular communication with the court’s stakeholders will become essential in mitigating fear, anxiety, and possible misinformation.

Core elements of an effective communication strategy include:

- Frequent and timely communications with employees;
- Communication with the court’s criminal justice partners;
- Accurate explanations of the nature of the threat;
- Clear communication of the court’s capacity to manage the threat;
- Information dissemination through multiple channels; and
- Communication made in a timely manner concerning any change in the level of a pandemic threat.<sup>26</sup>

Court staff should be informed of the court’s epidemic plan to ensure that court functions continue and that employees are aware that their personal safety is of high priority to the courts. Regular communication with staff regarding the court’s planning efforts will allow employees to feel included, informed, and assured that the strategies in place will be effective. As the WHO phases of the pandemic change, regular updates should be provided to court staff and the public.

<sup>26</sup> T. Stephens, Mercer Human Resource Consulting, *The Emerging Global Pandemic: Human Resource Implications* (2006), p. 13.





Courts should also have a strategy in place to communicate with Emergency Response and Security regarding any incidents or developments related to epidemics. ERS can then communicate with other court systems any developments, including effective and ineffective strategies. Courts can call 415-865-8048 to report developments directly to ERS.

## **6.4 EMPLOYEE EDUCATION AND SAFETY**

The health, safety, and well-being of employees are essential for accomplishing mission-critical functions during an epidemic. Employee education and safety are key components in maintaining the health and availability of court employees. Therefore, efforts to educate staff, minimize exposure, and maintain safety at the court facility are crucial to all epidemic planning efforts.

### **6.4.1 Education and Training**

Courts should begin efforts to educate judges, attorneys, jurors, sheriffs, and court staff about the threats posed by pandemic influenza. Educational efforts should include advance preparation as well as preventative and protective measures to be taken once the virus is present in the community. Educational flyers could be posted around the facility or distributed with employee paychecks (see Appendix E).

Courts should consider hosting employee training on how to remain safe during a pandemic. Topics to discuss include:

- The need for sick employees or those with sick family members to remain at home;
- The need for employees to practice good health and hygiene habits, as discussed below;
- The need for employees to stay informed; and
- The need for employees to prepare at home, with plans and emergency items that should include a two-week supply of food and the prevention items listed below in 6.4.3.



### 6.4.2 Health and Hygiene

Employees should be encouraged to pay special attention to health and hygiene practices, including:

- Eating a balanced diet, exercising daily, and getting plenty of rest.
- Covering coughs and sneezes with tissues.
- Washing hands frequently with soap and water for a minimum of 15 seconds.
- If soap and water are not available, a secondary option is gel sanitizers. For gel sanitizers to be most effective, hands must be rubbed together until they are completely dry. The germs are killed when the alcohol evaporates.
- Avoiding touching eyes, ears, nose, and mouth.

The length of time that protective measures may be necessary will vary, depending on the availability of effective vaccines or treatments. For pandemic influenza, an effective vaccine will likely not be available for widespread distribution until months after the onset. Thus, it may be necessary to maintain protective measures for extended periods.

### 6.4.3 Prevention

In the event of an outbreak, courts may want to consider providing employees with the following assistance:

- Seasonal flu shots will protect employees from the seasonal flu and will help to prevent the avian influenza and seasonal influenza strains from further mutation. For other available options to remediate the impact of the flu, individuals should contact their personal physician.
- Particulate respirators or masks: N-95 respirators are effective for preventing inhalation of airborne pathogens if professionally fit-tested on the individual. Surgical or cloth masks that fit loosely over the face can be worn by sick people to prevent the spread of droplets when they cough or sneeze. If worn by a healthy person who is around sick people, masks may capture some droplets but do not effectively prevent inhalation of pathogens because of unprotected gaps between the mask and the face. If any mask is used, employees should be trained on how to remove it properly without exposing themselves to any pathogen on the outside of the mask. For further information, visit [www.fda.gov/cdrh/ppp/masksrespirators.html](http://www.fda.gov/cdrh/ppp/masksrespirators.html).



- Disposable gloves. Gloves should not replace frequent hand washing and should be removed inside out to prevent the contaminated surface from coming in contact with hands. Gloves could be particularly useful for employees handling cash.

#### **6.4.4 Facility Maintenance**

Several preventive measures can be taken by the court and cleaning staff to reduce the risk of infection. Where feasible, courts may wish to consider the following:

- Using damp rather than dry dusting to avoid spreading dust particles;
- Heightening cleaning in offices and common areas, such as frequently wiping doorknobs, railings, telephones, restrooms, and so forth;
- Installing automatic faucets and soap and towel dispensers to minimize transmission in restrooms;
- Moving restroom wastebaskets next to restroom doors so that employees can use towels to open the doors;<sup>27</sup> and
- Placing hand sanitizer in communal locations for court staff and visitors to use.

#### **6.4.5 Travel**

In the event of an outbreak, consider restricting employee travel to only those trips essential for continued operations. In a severe pandemic, travel will most likely be shut down.

### **6.5 HUMAN RESOURCES ISSUES**

As part of the court's Injury and Illness Prevention Program (IIPP),<sup>28</sup> courts should consider staff and human resources issues that may be raised during an outbreak, including:

- Sick leave policies;
- Review of insurance policies, including health, disability, salary continuance, business travel, and life insurance; and
- Crisis support or employee assistance programs.

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<sup>27</sup> N. H. Woodward, "Pandemic" (May 2006) *HR Magazine* 51.

<sup>28</sup> The AOC is working on model language for the courts' IIPP and will provide it to the courts at a later date.



The Administrative Office of the Courts' Human Resources Division can assist courts in developing answers to their questions about these matters.

## 6.6 JURY CONSIDERATIONS

One of the greatest challenges during a pandemic will be conducting jury trials within 90 days of COOP activation. Multiple issues that need to be addressed include:

- Impact on summoning yield;
- How jurors report for service;
- How jurors will be assembled;
- How voir dire will be held and how juries will be selected; and
- How jurors will hear and deliberate on cases.<sup>29</sup>

Depending on the severity of the outbreak, each court will need to determine its capabilities in responding to a lack of full juries. Several options for consideration include:

- Short-term reductions in the number of jurors summoned each day;
- Increased use of Internet and telephone communications; and
- Notifying prospective jurors to report directly to a courtroom, rather than to the jury assembly room.

The Office of the General Counsel is currently researching the jury management options that may be available to courts in emergency situations, and will supplement this publication with additional legal guidance as it becomes available.

## 6.7 TECHNOLOGY PREPAREDNESS

While an epidemic will not compromise the integrity of a court's information technology (IT) infrastructure, a decrease in available court personnel and increased use of technology to reduce face-to-face interaction will affect supporting IT infrastructure components.

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<sup>29</sup> Florida Court Emergency Management Group, *Florida State Courts Strategy for Pandemic Influenza* (Mar. 2006), p. 18.



Technologies required for performing mission-critical functions should be identified and included in the court's technology disaster recovery plans. A court's systems will generally fall into four categories:

- Supported in-house;
- Supported by the county;
- Supported by a third party; and
- Supported by the CCTC (California Courts Technology Center).

In all cases the court needs to ascertain if a technology disaster plan exists. The court then needs to develop a business resumption plan that integrates the technology plan.

Applications hosted at the CCTC include CCMS, SUSTAIN CMS, CARS, and CHRIS. Each has an associated disaster recovery plan in the event that the CCTC in Newark, California, becomes unavailable.

The ability of court staff to connect into their systems from noncourt locations will require support from their telecommunications provider to establish secured connectivity.

As discussed in section 5.5, key IT processes, procedures, and personnel should be identified. Also, to the extent possible, personnel should be cross-trained to assume responsibility of mission-critical functions, which may be beyond their normal scope of responsibility.

In an effort to reduce face-to-face interaction and adapt to employee absenteeism, alternative means of work performance and communication should be explored, which could include:

- Allow staff to telecommute. If a telecommuting policy is implemented, the court should determine the hardware and software requirements for staff working off site as well as the telecommunications protocols and associated security to establish connectivity to the mission-critical applications.



- Use videoconference or teleconference technologies,<sup>30</sup> or both.<sup>31</sup> For planning purposes, assume that most court proceedings included within the mission-critical functions and other tactical objectives can be held by videoconference or teleconference under the emergency conditions described in this document.
- Increased use of video arraignments.

If videoconferencing is identified as a workable technology and the resources are available to a court and its justice partners, efforts should begin to prepare for supporting those IT infrastructure components necessary to perform mission-critical functions by:

- Identifying and documenting all the supporting IT infrastructure components;
- Identifying the custodial entity for all supporting IT infrastructure components;
- Developing and finalizing any memorandum of understanding or other necessary agreements to secure the use of all supporting IT infrastructure components;
- Implementing, training, and exercising all supporting IT infrastructure components; and
- Identifying any fiscal or other resources needed to develop and implement all supporting IT infrastructure components.<sup>32</sup>

If the above technologies are not available, the court should update manual contingencies or develop new strategies that will enable it to perform all mission-critical functions, including those that must be conducted in person.

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<sup>30</sup> Additional network collaboration technologies to consider include Web meetings, conferencing, and whiteboarding.

<sup>31</sup> The use of videoconferencing may not be appropriate in every instance. For legal guidance as to whether videoconferencing is available for a particular type of hearing or proceeding, a court may seek an opinion from the AOC's Office of the General Counsel.

<sup>32</sup> Florida Court Emergency Management Group, *Florida State Courts Strategy for Pandemic Influenza* (Mar. 2006), p. 14.





# **7** APPENDICES

Appendices may be found at <http://serranus.courtinfo.ca.gov/programs/security>.

APPENDIX A—Terms and Definitions

APPENDIX B—Health Officers by County (and City)

APPENDIX C—Requesting Judicial Emergency Orders

APPENDIX D—Planning Checklist

APPENDIX E—Sample Educational Flyer

APPENDIX F—Additional Resources

APPENDIX G—Legal Opinions Addressing Issues of Court Administration That May Arise in the Event of an Epidemic

**For additional resources, appendices, and updates, please contact:**

**Emergency Response and Security Unit, Administrative Office of the Courts**

Telephone: 415-865-8048

E-mail address: [ers@jud.ca.gov](mailto:ers@jud.ca.gov)

<http://serranus.courtinfo.ca.gov/programs/security>







Judicial Council of California  
455 Golden Gate Avenue  
San Francisco, California 94102-3688  
[www.courtinfo.ca.gov](http://www.courtinfo.ca.gov)