

Pandemic PLANNING

2016

Be Prepared

Purpose of this Presentation

- To Use the Maine experience to let everyone know how important it is to have a plan and be prepared!
 - Share the Kaci Hickox story as an example of why we all need to be prepared.
- To introduce “Preparing for a Pandemic: An Emergency Response Benchbook and Operational Guidebook for State Court Judges and Administrators”

Overview

- The Jurisprudential Role during a Pandemic
 - Chief Judge LaVerdiere
- The Administrative Role during a Pandemic
 - Court operations
 - Planning
 - Resources

Background

- Pandemics are not new
 - Middle Ages — Black Plague
 - World population was approximately 450 Million — 75 million died — 1/2 of the population of Europe
 - 1918 — Spanish Flu
 - U.S., Europe, and Asia — 75 million died in 9 months
 - 2013-2014 — Ebola
 - West Africa — 28,000 cases — 11,300 deaths

Background *cont'd*

- Other Pandemics in 20th and 21st Century
 - Bird Flu — affected millions
 - Cholera — killed millions in multiple epidemics
 - Asian Flu — 2 million died
 - HIV/Aids — 30 million died
 - Dengue Fever — Thousands affected
 - Zika

Background *cont'd*

- The World is a Smaller Place
 - Over 100,000 international, commercial flights each day

Setting the Stage

- October 30, 2014
- Height of Ebola Crisis
 - Thousands dying in West Africa
 - Several people in U.S. being isolated and treated
 - Every news cycle was focused on epidemic
 - Maine teacher story

Setting the Stage *cont'd*

- Election in 6 days
 - Governor
 - Legislature
 - Congress

Setting the Stage *cont'd*

- General public was confused and frightened

Kaci Hickox



The Most Important Lesson Learned

**You need to be prepared for this type
of matter BEFORE it hits!!!**

One Certainty Surrounding a Pandemic:

- Life as we know it will not be the same and business as we know it will not be the same.

Need for Immediate Decision

Fast & Unexpected

- Normal day shattered and forced to make life or death decisions immediately
- Immediate decision was crucial
 - Respondent was planning to go into general population that night
 - No decision was in fact a decision with potentially deadly consequences
- Interim hearing necessary

Four Major Areas of Concern

1. Logistics
2. Media
3. Substantive Law
4. Public Opinion and Politics

Logistics

Do not underestimate time and work dealing with logistics

- **Location:** Presents special issues
 - Fort Kent is a small Town on Canadian border
 - 4.5-5 hours from Augusta
 - Nearest commercial airport —Bangor, 3.5 hours
 - Courtroom holds 25 people
 - Judge 1 or 2 days/week & a total of 1.5 clerks

Logistics *cont'd*

- **Parties**

- 2 Attorneys in New York
- 1 Attorney in Portland
- AGs in Augusta
- Media from all over the world
- Respondent in Fort Kent

Logistics *cont'd*

- **Parties cont'd**
 - Testify by video? How?
 - Filings/Service/Recordings
 - Clerks and marshals reluctant

Media

- First words from one attorney —
“We want media present for everything!”
- In Maine, as in many states, statute calls for confidentiality
 - Needed release — from defendant or Attorney —
in writing

Media *cont'd*

- **Media was in frenzy**
 - Dumpster diving
 - Calling court posing as others
 - Thousands of calls to 1.5 clerks
- **Parties feeding media in violation of Court orders**

Media *cont'd*

- **Used our “High Profile Case Protocol”**
 - Website with all public documents, schedules, and information

Substantive Law

It took hours of research to determine:

- Maine Statutes were confusing and contradictory
- No Maine cases on point
- Burden of proof issues
- National cases were old and not on point

Public Opinion/Politics

- **Be ready for consequences**
 - Protests
 - Death threats/mail
 - Political fallout

Administrator's Role

- As Administrators, our job is to ensure we maintain Access to Justice for those we serve
- In addition, we must protect the health and safety of judges, staff, litigants, attorneys, jurors, and all who visit our court facilities

Planning

A. Macro level of administration

- Establish team of relevant stakeholders across all branches of government

B. Micro level of administration

- Plan on how to perform core functions when staff, judges, jurors, attorneys and security officers are unavailable due to illness

Planning

- Your respective State Health Departments will be the primary source of information, oftentimes including when the pandemic plan should be activated
- Plan should center on establishing processes to transition the judiciary from “normal operations” to mission essential functions for as long as the pandemic lasts, including plans to have staff work from home

Benchbook

- Guide is to serve as a template upon which each state can build its own model
- It is designed for the following:
 - Focus on planning BEFORE a pandemic
 - Implementation of measures DURING a pandemic
 - Allows for assessment AFTER an event

Building the Benchbook

- Benchbook must include the authority of the state's chief justice to facilitate the continuity of court operations throughout the crisis
- If your state has an existing COOP plan, develop supplemental sections to address pandemic scenarios

Building the Benchbook

- Current and comprehensive appendices are a must, including names and contact information for key stakeholders

Building the Benchbook

- Appendices to consider:
 - Public health primers
 - Public health glossaries
 - State and local health unit directories
 - Emergency health-related statutes
 - Provisions of state health code
 - Selected case law
 - Selected court forms and orders
 - Selected court rules

Key Elements

- Topical areas of concern:
 - The appearance of individuals before the court who may pose a threat to public health and the alternative means of taking testimony
 - Limiting the public's physical access to courts
 - Creating juror management provisions
 - Maintaining clear lines of communication between courts and key stakeholders
 - Anticipating likely increased demand on technology-related functions

Logistical Concerns

- The service and filing of court documents
- The recording of Proceedings
- Holding open sessions of court when possible
- The form of the court record to be captured
- Use of communication equipment
- Expedited review procedures
- Composition & transmittal of lower court recs
- Issuance of orders and opinions

Logistical Concerns (cont.)

- Juror management
 - Reduce jury trials by postponing civil and other jury trials where there is not a speedy trial issue
 - Look to increase number of jurors called to address higher excusal request rates
 - Be prepared to be more lenient on excusals

Planning Focus

Communication & Technology Tips

1. Communication

- Designate individuals at the affected court(s)
- Designate a point of contact at state and local level
- Use one voice to communicate what info, to whom, and how communication takes place
- Your message must be consistent and uniform
- Provide frequent updates to media and public
- Maintain a theme of a continuous functioning judiciary that's available to hear and resolve critical matters in a timely fashion

Planning Focus

1. Communication (cont.)

- Control the message
- Provide frequent updates to judges, staff, attorneys, and litigants on special court processes, procedures, and changes to court schedules
- Use the media to help get updates out

Planning Focus

2. IT Concerns

- Cross-train IT staff in anticipation of a decreased number of available staff during a pandemic
- Plan on an increasing need and use of IT during pandemic to decrease face-to-face interaction
- Increase capabilities in telecommunication, remote appearances, and video conferencing
- Enhance Virtual Private Network (VPN) capabilities system-wide

Seven Key Steps

1. Establish team of relevant stakeholders.
Subcommittees should be tasked with working on “finer points” and making recommendations to a standing committee.
2. Review existing emergency plans and ensure they are current, with drills and tabletop exercises held periodically to keep staff fresh.

Seven Key Steps

3. Develop assumptions of potential events to better plan and help measure the effectiveness of the plan when implemented.
4. Review current statutes and court rules to ensure necessary authority and processes are in place during a pandemic.

Seven Key Steps

5. Review current statutes and court rules.
6. If a COOP Plan exists, develop supplemental sections to address pandemic scenarios.
7. Continuously educate and train all stakeholders involved in the process.

Pandemic and Emergency Response Task Force

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Resources

The *Preparing for a Pandemic: An Emergency Response Benchbook and Operational Guidebook for State Court Judges and Administrators* is available at: <http://ncsc.contentdm.oclc.org/cdm/ref/collection/facilities/id/194>