



BJA Bureau of
Justice Assistance

Bureau of Justice Assistance *BJA Briefing Paper Series*

Justice System Response to a Pandemic: Addressing Human Resource Issues

OVERVIEW

As part of its justice system pandemic preparedness initiative, the Bureau of Justice Assistance's (BJA's) National Training and Technical Assistance Project has instituted a *Briefing Paper Series* designed to address core areas of pandemic preparedness planning that justice agencies should perform both internally and as part of the larger justice system in which they function. The goal of the *Briefing Paper Series* is to help strengthen the capability of justice agencies to continue to perform their system-critical tasks in the event of a pandemic or other public health emergency, as well as ensure the continuity of the justice system and the rule of law. The *Briefing Paper Series* is intended to be multidisciplinary in focus, drawing on the perspectives of courts, law enforcement, and the corrections community.

A pandemic emergency presents special issues not generally addressed in traditional Continuity of Operations Plans (COOPs) that have been established for other types of emergencies. These special issues include:

- *Potential for a wider geographic area to be affected compared with the more localized operational disruptions that occur with earthquakes, hurricanes, and fires.* For example, an impacted court or jail may not be able to turn to nearby locations or neighboring justice systems for assistance with supplies, equipment, or staff shortages. As a result, pandemic planning will need to include preparation for a greater level of self-sufficiency.
- *Potential for greater periods of disruption, since pandemics are generally long in duration and can come in waves, rising and declining until they are contained.*
- *Potential disability of a significant proportion of the justice system's workforce. For the courts, the disabilities of the litigants, jurors, prosecutors, defense counsel, and others involved in the court process also will affect how court hearings are conducted.* For corrections and law enforcement agencies, this will involve not only the sworn officers, but also the support staff.
- *Potential need to compile sensitive and often confidential health information of individuals.* Questions will likely arise about the handling of sensitive health information between justice and public health agencies, as well as within the justice agencies themselves. For example, how will protected health information be managed to protect individual privacy yet, at the same time protect others with whom these individuals may come in contact? What extraordinary measures may be needed to protect people with special health conditions such as suppressed immune systems? And how will these people be identified?
- *Required interagency planning and coordination among agencies that are not usually involved with the justice system emergency planning for natural disasters.*

- *Likely need for the justice system to develop alternative strategies for face-to-face contact, as well as strategies for when face-to-face contact is required.* Special procedures also will need to be developed to protect the individuals involved from being exposed to possible infection.
- *Likely need for the justice system to deal with a range of substantive and due-process issues, particularly those relating to quarantine and isolation orders and habeas corpus motions.* Because of the interdependent nature of justice agency functions, these and other special issues that may likely arise in the event of a pandemic require that justice agencies collaborate among themselves and with public health and other agencies in their planning to ensure that they can individually perform their mission-critical functions and collectively maintain continuity of the justice system and the rule of law.

Briefing Paper # 1: Human Resource Issues

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A significant distinction between general COOP critical incident planning and pandemic planning for justice system agencies is the effect an outbreak would have on the human resources of all local agencies. With up to 40-percent reductions in staffing projected¹, all local, state, and Federal agencies must plan accordingly. The justice system, however, would be particularly affected since its functioning is dependent on the inter-relationships of a number of agencies working together; no justice agency functions in isolation of the system as a whole. To create a pandemic response plan that will ensure adequate personnel systemwide to perform the mission-critical tasks of agencies involved in the administration of justice requires interagency coordination and collective, as well as internal agency planning.

CRITICAL COMPONENTS OF ESSENTIAL HUMAN RESOURCE PLANNING FOR LOCAL JUSTICE SYSTEMS

The critical components of the planning process should include:

1. INITIATING AND CONTINUING A COORDINATED PLANNING PROCESS FOCUSED ON THE ENTIRE JUSTICE SYSTEM AND THE PERSONNEL REQUIRED TO ENSURE ITS CONTINUED OPERATION

The pandemic response planning process should be focused on the entire justice system and what it will take to preserve the rule of law. Effective planning cannot be done by one agency at a time,

nor can it have executive branch agencies only at the table. All justice agencies working together are critical to maintaining the rule of law, within the system of separation of powers created by the Constitution.

2. DEFINING MISSION-CRITICAL FUNCTIONS THAT EACH AGENCY MUST SUPPORT AND THE STAFFING REQUIRED TO PERFORM THEM

Once the mechanism for a coordinated, multiagency planning process has been developed, the first step in the management and planning for workforce protection and maintenance is to articulate and provide clear definitions of the *mission-critical functions* the justice system must perform in the event of a pandemic—not just for one agency, but across the justice system as a whole. Through this process, it may be determined that to ensure performance of the mission-critical functions of the justice system essential to maintaining the rule of law, some agencies may need to prioritize functions and temporarily suspend those that are not deemed critical.

For a corrections agency, for example, is maintaining work release programs and/or minimum security detention centers deemed *mission-critical functions* when a systemwide planning process looks at the justice system’s critical needs that the corrections agency must perform to sustain the rule of law? These programs may need to be curtailed or suspended so that available personnel, such as those in a dispatch unit in the Sheriffs Department, can be

ⁱ See Pandemicflu.gov.

deployed to support more critical functions. Similarly, a court may need to consider whether a traffic court component can be maintained at full operation or whether the traffic court judges may need to be redeployed to other more critical court functions, such as arraignments or other time-sensitive, statutorily, or constitutionally required functions.

The planning process for personnel deployment must take into account that almost all justice agencies are dependent on each other in carrying out their missions. Courts depend on law enforcement services and vice versa. During a pandemic or other public health emergency, the justice system components will be unable to conduct their individual mission-critical tasks without coordinated and collaborative planning. In addition, special demands that are not normally part of justice agencies' traditional operations may be placed on them. For example, a criminal court's mission-critical functions likely will not be limited to criminal matters, but also could include ruling on public health orders, orders regarding the custody and care of children whose parents have died from the outbreak, and even orders for patient care or medical procedures. Law enforcement will not only have to continue enforcing traditional criminal laws, but also may have to enforce movement restrictions and other public health orders. Corrections agencies will have to take special measures to provide safe and secure confinement and monitoring of their populations in the event of an outbreak. All of these functions will have to be accomplished with significant reductions in human resources. And all of these functions will require special training and cross-training. Collaborative interagency planning is essential to meet this challenge.

3. REVIEWING EXISTING SYSTEMS FOR CLASSIFYING PERSONNEL AND DELEGATING AUTHORITY

After determining how a pandemic or other public health emergency might potentially affect the availability of the justice system workforce, planning officials should review current systems and provisions for classifying personnel and delegating authority to perform critical tasks. Agencies will need to address these tasks, both internally and collaboratively. The review should include both the classification of individuals

employed and the levels of authority required for each position in the agency or court. In a public health emergency that will last a period of time, with illness levels rising and falling in waves, provisions for personnel substitutions to replace those who cannot work will need to be addressed in the planning process. The identification of personnel who have the skill sets and necessary legal authority to perform duties ordinarily performed by someone else who is unable to report for work is an essential part of the planning activity. Executive branch practices and policies will need to be addressed, as will policies and practices of the judicial branch, to ensure that courts can function during an emergency. Examples of the potential delegation issues that may arise include:

- A law enforcement employee who is not a sworn officer will not have arrest powers. What measures should be considered to ensure that adequate personnel are available to make arrests?
- Who has authority to perform judicial functions? Who will have the legal authority to appoint a temporary judge if a sitting judge(s) is not available?
- When and how are elected officials such as clerks of the courts and sheriffs removed or replaced in the event they are unable to perform their duties?
- Who determines when the warden is unable to perform his or her duties?

For those who work under contracts—union or nonunion—compliance with the contract terms will have to be built into the planning process.

The answer to most of the questions presented above lies in the provisions applicable to the appointment/election and selection process for employment of the individuals who will be expected to respond to and follow the interagency plans as prepared. The justice system workforce has many different classifications for those who work in the system. Any single agency will have to plan for the response of individuals during an emergency or outbreak, taking into account how these personnel are classified and the work rules governing their classification and position.

Work status classifications of justice system officials commonly entail the following categories, some of which overlap:

- Elected officials.
- Appointed officials.
- Exempt salaried personnel (exempt FLSA status).
- Salaried personnel.
- Hourly personnel.
- Personnel who work under a union contract (and the requirements of the contract).
- Personnel who do not work under a union contract.
- Volunteers (Sheriff's Reserve, for example).
- Retired personnel, such as someone who serves as a senior judge, and other "Reserve" staff.

4. DEVELOPING A COMPOSITE STAFFING TABLE ILLUSTRATING CRITICAL TASKS AND STAFF AVAILABLE TO CONTINUE JUSTICE SYSTEM OPERATIONS

The definition of the classes of personnel employed by local justice agencies and the nature of their respective authority will provide the framework for identifying the staffing potentially available to perform mission-critical functions essential to maintaining continuity of the justice system and the rule of law. Key leaders in the local justice system should develop, collegially, a composite summary of essential staff and functions that lists and prioritizes the mission-critical tasks for maintaining the rule of law across the local justice system—not just the mission-critical tasks for each individual agency. This summary should show the staffing capacity systemwide, how that staff is currently deployed, and how that staffing capability can potentially be deployed across all agencies to preserve the rule of law in the event of a pandemic or other public health emergency.

The staffing summary should:

- Answer questions such as:
 - *How many personnel can be redeployed to accomplish high-priority tasks?*
 - *Can personnel from agencies with low-priority, mission-critical tasks be shifted to work in other agencies that need staff to perform high-priority, critical tasks?*

- *What situations may develop in which individual justice agencies may need to mandate their own personnel policies to maintain their essential operations?*

- Account for different levels of absence in the local agencies; and
 - Provide the framework for planning for the effects of these absences on other justice system components and their performance of mission-critical tasks required to maintain the rule of law.
5. REVIEWING AND REVISING LEAVE POLICIES, AS NECESSARY

In light of the potential workforce implications of a public health emergency on the capacity of the justice system to maintain even a minimal capability for essential functioning, policies regarding annual, sick, administrative, emergency, and other leave need to be reviewed and amended, as appropriate, to accommodate the leave that may be needed in the event of a pandemic or other public health emergency. To ensure that this process is adequately addressed, local and state departments of labor and unions, as appropriate, should be consulted on an ongoing basis and, as appropriate, be part of the planning team. Each justice agency should review its policies regarding when leave may be cancelled or denied and determine a process to put into place when an emergency occurs. Development of policies and procedures governing how the agencies will respond systemwide—not just within an individual agency—should be part of the planning process.

The policies that may be affected include:

- Sick leave;
- Vacation leave;
- Family care leave (FMLA)ⁱⁱ;
- Compassionate leave;
- Emergency leave;

ⁱⁱ Synopsis of Law (www.dol.gov/esa/whd/fmla)
[Covered employers](#) must grant an [eligible employee](#) up to a total of 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons: for the birth and care of the newborn child of the employee; for placement with the employee of a son or daughter for adoption or foster care; to care for an immediate family member (spouse, child, or parent) with a serious health condition; or to take medical leave when the employee is unable to work because of a serious health condition. See: www.dol.gov/esa/whd/fmla.

- Administrative leave; and
- Bereavement leave.

6. ADDRESSING OTHER MEDICAL ISSUES RELEVANT TO PERSONNEL POLICIES

Adequate planning for replacement and substitutions of current personnel in the event of a pandemic or other public health emergency also will require that accommodation be made for disabilities they may have, including health conditions and/or physical limitations of existing staff that may increase their vulnerability to an infectious disease. Immune suppressed conditions, for example, that may result from medications the individual is taking may require special accommodation. It also is critical that the planning process be conducted within a framework that recognizes that information relating to medical documentation and health status of employees, while important for supervisors to have available, must be afforded privacy protection. Documentation of the protected health information will require a consent process from employees, as well as the proper storage of the information in secure files to protect it from unauthorized viewing.

Other medical-related issues relevant to personnel policies also will need to be addressed, including policies regarding payments for healthcare and retirement for disability.

While law enforcement agencies may require employees to maintain a certain level of fitness to remain on duty, other parts of the justice system generally have no system in place to review their employees' physical fitness for work. With an infectious outbreak such as a pandemic flu, ascertaining the health status of the employee reporting to work and/or being reassigned to critical tasks requires the development of specific procedures. Some healthcare agencies have such procedures in place, and they can provide guidance as to procedures that can be put in place to ascertain the health status of a reporting employee.

7. DEVELOPING A "RAMPING UP" STRATEGY TIED TO THE CDC PANDEMIC SEVERITY INDEX

Adequate planning also should include a "ramping up" strategy that is tied to the Pandemic Severity Index as presented by the Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, in *Interim Pre-pandemic Planning Guidance: Community Strategy for Pandemic Influenza Mitigation in the United States - Early Targeted Layered use of Non-Pharmaceutical Interventions*.ⁱⁱⁱ

Much of this strategy entails applying various degrees of social distancing measures that reduce and/or limit person-to-person contacts. Applying social distancing strategies to the range of justice system functions entailing person-to-person contact will require substantial planning, both within agencies and among them. Addressing these workforce issues will represent a major step in the development of a system wide justice pandemic preparedness plan.

A summary of the CDC's proposed strategies for responding to varying levels of pandemic severity is provided on the following page. These guidelines should be adapted to the justice system functions that are addressed in both the systemwide and individual agency plans that are developed.

ⁱⁱⁱ www.pandemicflu.gov/plan/community/community_mitigation.pdf.

Community Strategies by Pandemic Flu Severity (1)

| Interventions by Setting | Pandemic Severity Index | | |
|---|---------------------------|---------------------|-----------------------|
| | 1 | 2 and 3 | 4 and 5 |
| Home | | | |
| Voluntary isolation of ill at home (adults and children); combine with use of antiviral treatment as available and indicated | Recommend | Recommend | Recommend |
| Voluntary quarantine of household members in homes with ill persons (adults and children); consider combining with antiviral prophylaxis if effective, feasible, and quantities sufficient | Generally not recommended | Consider | Recommend |
| School | | | |
| Child social distancing –dismissal of students from schools and school-based activities, and closure of child care programs | Generally not recommended | Consider: ≤ 4 weeks | Recommend: ≤ 12 weeks |
| –reduce out-of-school contacts and community mixing | Generally not recommended | Consider: ≤ 4 weeks | Recommend: ≤ 12 weeks |

Community Strategies by Pandemic Flu Severity (2)

| Interventions by Setting | Pandemic Severity Index | | |
|---|---------------------------|----------|-----------|
| | 1 | 2 and 3 | 4 and 5 |
| Workplace/Community Adult social distancing | | | |
| –decrease number of social contacts (e.g., encourage teleconferences, alternatives to face-to-face meetings) | Generally not recommended | Consider | Recommend |
| –increase distance between persons (e.g., reduce density in public transit, workplace) | Generally not recommended | Consider | Recommend |
| –modify, postpone, or cancel selected public gatherings to promote social distance (e.g., stadium events, theater performances) | Generally not recommended | Consider | Recommend |
| –modify workplace schedules and practices (e.g., telework, staggered shifts) | Generally not recommended | Consider | Recommend |

ESSENTIAL PLANNING TASKS

Provided below is a list of essential planning tasks that must be taken on at both the state and local level to ensure that the justice system has developed adequate plans to make certain that essential functions of the justice system continue

without interruption in the event of a pandemic or other public health emergency and that each agency has the capability of performing its mission-critical functions.

- Assemble representatives of each justice agency to develop a planning process that will include:
 - Identifying the mission-critical tasks of their respective agencies and the personnel required to ensure their performance.
 - Identifying the mission-critical tasks required to ensure the continuity of the local justice system and the agencies and personnel required to perform them.
- Review relevant state laws, government unit policies, and contracts as they apply to both the executive branch agencies and the judicial branch.^{iv}
- Determine and document the employment status and levels of authority of each employee and determine who has the proper authority to perform the tasks that may need to be delegated, as well as the statutory and contractual requirements applicable to each employee who is the subject of the planning process. This will ensure that the needed substitute or replacement personnel have adequate skills and knowledge.
- Develop a chart that shows the availability of the personnel required to ensure the continuity of the justice system, with a designation of their respective agency affiliation, and determine the relevant personnel policies that may need to be addressed to ensure their availability in the event of a pandemic emergency.
- Determine necessary modifications of existing leave policies to address personnel issues and staff needs that may arise in the event of a pandemic emergency.
- Review and modify compensation policies for pay and overtime.
- Determine potential budget impacts for overtime, as well as possible unusual expenses that may arise from the emergency, such as liability for employees who may be exposed to symptomatic people entering the system at any point (i.e., on-the-job exposure).
- Develop necessary memoranda of understanding among agencies to document agreements regarding personnel deployment in the event of an emergency.
- Test the assumptions made in the staffing chart by holding drills or exercises.
- Determine the health status of current employees and what accommodations may be needed for those with health vulnerabilities. Seek guidance on the application of the Americans with Disabilities Act.
- Provide employee training and support regarding hygienic measures that need to be taken during a pandemic outbreak.
- Address the implications of internal agency personnel decisions on the operations of other justice agencies.
- Consider how the Health Insurance Portability and Accountability Act (HIPAA) may affect the employers' ability to obtain adequate information regarding employee health status. (NOTE: The OCR web site has a new interactive decision tool to provide guidance to emergency preparedness and recovery planners on access to and disclosure of protected health information regarding persons with disabilities permitted by the HIPAA Privacy Rule. The question of what disclosures are permitted for emergency response planning has surfaced in numerous disaster planning forums and documents, leading OCR to develop this tool, working with the Office on Disabilities. The tool has been showcased at a joint U.S. Department of Health and Human Services/U.S. Department of Homeland

^{iv} The justice system planning must take into account the guidance from other government agencies. Such guidance presently includes *Interim Pre-pandemic Planning Guidance: Community Strategy for Pandemic Influenza Mitigation in the United States - Early Targeted Layered use of Non-Pharmaceutical Interventions* from the Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, and *Guidance on Preparing Workplaces for an Influenza Pandemic from Occupational Safety & Health Administration*, U.S. Department of Labor. The challenges include the need to keep the agencies in compliance with governmental policies and laws (e.g., minimum wage) that may or not be applicable to the various state and local agencies (FMLA, ADA, EEOC).

Security “Working Conference on Emergency Management and Individuals with Disabilities and the Elderly.” While the impetus for the tool originated with the specific need of emergency planning for persons with disabilities, the tool is applicable to all emergency planning efforts. The intended audiences for using this decision tool are covered entities and emergency preparedness and recovery planners at the local, state, and Federal level. This new decision tool can be readily accessed on the OCR web site at www.hhs.gov/ocr/hipaa by clicking on the link to “Emergency Preparedness Planning and Response” category. OCR has added a new category of “Emergency Preparedness Planning and Response” to the OCR homepage under “Resources for Consumers, Providers, and Advocates.” In addition to the decision tool, this category brings together additional links of relevance, including the two bulletins on the Privacy Rule released in the days immediately following Hurricane Katrina, as well as links to the U.S. Department of Health and Human Services’ Office on Disability and its web site, DisabilityInfo.gov.)

justice agency has the critical task of planning how that agency will perform in a pandemic outbreak or other public health emergency and how it will use its resources to strengthen the chain and ensure that the rule of law continues and order is maintained in the community. The interlocking nature of the work of the justice system is a critical consideration for justice system pandemic planning. Having an adequate workforce and a workforce protection plan in place within each sector of the system and collaborative planning among sectors will be essential to ensuring that each agency is able to perform its critical functions and maintain the rule of law.

The steps and recommendations offered in this document are designed to serve as a beginning point in the planning process to ensure that the essential justice system workforce is maintained in the event of a pandemic or other public health emergency. The suggestions offered are by no means intended to provide a comprehensive guide on what will be required for individual agencies should a public health emergency occur. Hopefully, however, they will provide a foundation for addressing the range of situations that occur and, through practical experience, a body of “lessons learned” can be developed for the field.

CONCLUSION

The chain of justice agencies protecting the rule of law is only as strong as the weakest link. Each

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