

# **PANDEMIC INFLUENZA BENCH BOOK FOR VIRGINIA'S COURT SYSTEM**



**PREPARED BY:  
SUPREME COURT OF VIRGINIA'S  
PANDEMIC FLU PREPAREDNESS COMMISSION**

**REVISED July 2017<sup>1</sup>**

<sup>1</sup> Revisions made by the Office of the Executive Secretary to update citations to the Code of Virginia. Other links were not updated and may have been substantially changed or no longer exist.

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## PREFACE

### I. MESSAGE FROM THE CHAIR

This bench book is a remarkable compilation of material for use by the courts of the Commonwealth in the case of a pandemic. The Pandemic Flu Preparedness Commission began its work in April of 2009 and its stated objective was “to ensure, in the event of a pandemic, that the Judicial Branch is able to fulfill its mission to provide an independent, accessible, responsive forum for the just resolution of disputes in order to preserve the rule of law and to protect all rights and liberties guaranteed by the United States and Virginia constitutions.” It is the result of the foresight of Chief Justice Leroy Rountree Hassell, Sr. who recognized the need for these planning materials and who built this Commission with some very dedicated public servants.

As Chairman of the Commission, I have been privileged to meet some extraordinary people who have worked diligently to complete this project so that our Courts would have this information as soon as possible.

While the entire Commission is to be commended, I would like to thank personally the committee chairs, Judge Joi Jeter Taylor, Judge Marcus D. Williams, Judge Janine M. Saxe, Judge Lucretia A. Carrico, and Judge Thomas D. Horne, and the staff of the Supreme Court of Virginia, particularly Pat Davis and Amy Bradshaw, for their tireless efforts in bringing this project to such a successful conclusion. Each member of the Commission has worked to ensure that our judicial system provides an efficient and safe environment for the citizens of Virginia.

Judge Westbrook J. Parker, Chairman  
Pandemic Flu Preparedness Commission

## **II. HOW TO USE THIS BOOK**

This Bench Book is written with two purposes in mind: to serve as a reference tool for Virginia's judges, and as a planning tool for Virginia's courts, including clerks' offices.

### **A. Reference – Part One**

The first several chapters of the book address legal issues that may arise in the event of flu pandemic, and they are intended to assist the judge in his or her role as an adjudicator.

### **B. Planning – Part Two**

The remaining chapters contain information to assist judges and clerks in operational aspects of the business of running a court, with materials on communication, security, and human resources issues. There are also numerous planning worksheets that courts may utilize in creating their own individual pandemic influenza plans. Judges and clerks are encouraged to work together and in conjunction with local entities to create a plan that will help them address the challenges posed by a serious pandemic.

A template that courts may use in developing their plans is found at the end of the Introduction. It is also included as Appendix F. Relevant worksheets are found at the end of each chapter. All worksheets are also included as Appendix G.

## **III. CAUTION TO USERS**

Much of the information in this book is available through Internet-based sources. Because statutes and rules of court are amended with regularity and much information related to influenza changes as strains evolve and health officials' recommendations are amended, we have provided links to Internet websites throughout the Bench Book rather than including certain specific information, which may be out of date when the Bench Book is actually utilized. In order to make the Internet material easier to access, the Bench Book will be available electronically on Virginia's Judicial System Website. The websites referenced were last viewed in February 2010. Users of the Bench Book are strongly encouraged to check the sources referenced for up-to-date information.

#### **IV. ACKNOWLEDGEMENTS**

The Commission recognizes the excellent examples provided by pandemic planning efforts in other states, the federal courts, and the Virginia Department of Health and Virginia Department of Emergency Management. Their work helped shape the form and content of this Bench Book. In particular, the Commission relied on planning documents from the National Center for State Courts and the Florida and California courts, referenced in Appendix B, and from the Virginia Department of Emergency Management; in particular, the Pandemic Influenza Annex Worksheets for Continuity of Operations Planning.

The Commission's work was also informed by the various bench books that are referenced in Appendix B, and by Guidelines for Pandemic Emergency Preparedness Planning: A Road Map for Courts, produced by the Bureau of Justice Assistance. The Report of the Social Distancing Law Project, undertaken by the Virginia Department of Health and the Office of the Attorney General, which is included in the Bench Book as Appendix A, was an invaluable resource to the Commission.

## INTRODUCTION

### I. WHAT IS INFLUENZA?

Influenza is a contagious respiratory illness caused by a virus. Typically, influenza (“flu”) spreads through droplet transmission. It can be transmitted through sneezing or coughing by a person with the illness in close proximity to another person, such that the droplets land on the other person’s mouth or nose. It can also spread by droplets left on a surface, which are touched by a person who subsequently touches his mouth or nose.<sup>1</sup>

### II. WHAT IS PANDEMIC FLU?

Pandemic flu is a term referring to global influenza outbreak. This occurs when a new influenza virus emerges, for which there is little existing immunity in the world human population, and there is easy transmission from human to human.<sup>2</sup> The novel H1N1 virus that appeared in Spring 2009 caused the World Health Organization (WHO) to raise its pandemic alert phase to level 6 on June 11, 2009, not because of the relative severity of H1N1 flu, but because of its widespread transmission.<sup>3</sup> The WHO pandemic alert phases are as follows:

#### WHO Alert Phases:

Phase	Description
1	Low risk of human cases
2	Higher risk of human cases
3	No or very limited human-to-human transmission
4	Evidence of increased human-to-human transmission
5	Evidence of significant human-to-human transmission
6	Efficient and sustained human-to-human transmission

At the time this document was written, influenza has not caused major disruption of our court system. However, it is important to be aware that viruses can mutate into more virulent strains, which could have such an effect.<sup>4</sup>

<sup>1</sup> <http://www.cdc.gov/flu/about/disease/spread.htm>

<sup>2</sup> [http://whqlibdoc.who.int/publications/2009/9789241547680\\_eng.pdf](http://whqlibdoc.who.int/publications/2009/9789241547680_eng.pdf) at 16

<sup>3</sup> See “Statement to the Press by WHO Secretary-General Dr. Margaret Chan,” June 11, 2009, [http://www.who.int/mediacentre/news/statements/2009/h1n1\\_pandemic\\_phase6\\_20090611/en/index.html](http://www.who.int/mediacentre/news/statements/2009/h1n1_pandemic_phase6_20090611/en/index.html)

<sup>4</sup> For information regarding avian flu, see [http://www.who.int/csr/disease/avian\\_influenza/en/](http://www.who.int/csr/disease/avian_influenza/en/)

### **III. WHY DO WE NEED TO PLAN?**

Pandemics have the potential to be very disruptive. For several years, the WHO and the United States Department of Health and Human Services (HHS), as well as agencies of the Commonwealth of Virginia, have been planning for the eventuality that a pandemic will occur that could cause widespread severe illness and death, leading to disruption of business and governmental functioning.

The courts have a vital function to play in maintaining the rule of law in the Commonwealth. The public relies on the courts to remain open to resolve disputes and protect the rights of people, while also protecting the health of its employees and those who visit the courthouse. The judiciary must do its best to ensure that the courts handle their essential functions to the greatest degree possible, even during the adverse situation a virulent pandemic would create.

Other jurisdictions have similarly viewed this as an important issue, and have created reference materials and planning tools for their courts. A number of these resources are listed in Appendix B.

### **IV. PUBLIC HEALTH TERMINOLOGY IN VIRGINIA**

With regard to influenza, two terms used in the Code of Virginia are likely to come into play, in ways described more thoroughly in later chapters of this Bench Book. They are “communicable disease of public health significance” and “communicable disease of public health threat.”<sup>6</sup>

#### **A. Communicable Disease of Public Health Significance**

“‘Communicable disease of public health significance’ means an illness of public health significance, as determined by the State Health Commissioner, caused by a specific or suspected infectious agent that may be transmitted directly or indirectly from one individual to another.” Va. Code § [32.1-48.01](#).

#### **B. Communicable Disease of Public Health Threat**

“‘Communicable disease of public health threat’ means an illness of public health significance, as determined by the State Health Commissioner in accordance with regulations of the Board of Health, caused by a specific or suspected infectious agent that may be reasonably expected or is known to be readily transmitted directly or

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<sup>6</sup> See Appendix A, [An Overview of the Commonwealth of Virginia's Statutory Authorities Relevant to Social Distancing](#), Virginia Department of Health and Virginia Office of the Attorney General, July 31, 2007, at 12-14 (hereinafter “Report of the Social Distancing Law Project”).

indirectly from one individual to another and has been found to create a risk of death or significant injury or impairment. . . ." Virginia Code § [32.1-48.06](#).

**PANDEMIC INFLUENZA TEMPLATE FOR  
CONTINUITY OF OPERATIONS PLANNING  
IN VIRGINIA'S JUDICIAL BRANCH**



## TEMPLATE STRUCTURE AND INSTRUCTIONS

In each section of the template, there are *instructions*, sample language, and references to worksheets that might be helpful in gathering data necessary to develop the Pandemic Flu Plan.

The worksheets are available online on the Judicial Branch Intranet site.

- Instructions are in ***bold and italics*** to distinguish them from other parts of the template. **These instructions should not appear in the final Plan.**
- Sample language is provided to assist in developing the Plan. The sample language provided in the template should be expanded, deleted or modified as necessary to fit the needs of the individual court using the template. This includes tables, charts, checklists or other tools within the template.
- The worksheets were created to help identify information needed in the development of the Plan. It is not mandatory to include the worksheets in the Plan. If you do choose to use them, you may include the actual worksheet(s) as attachments to the Plan or enter a summary of the information from the worksheets into the Plan.
- You may add to these worksheets as necessary.

Please customize the template as determined by your court. Do not forget to take out (*insert name of court*) throughout the template, as that was put in to help tailor the template to the court.

**Pandemic Influenza  
Continuity of Operations Plan for  
*(insert name of court)***

**Created on *(insert date)***

***(insert names of Chief Judge, Judges, and Clerk)***

## **Pandemic Influenza Continuity of Operations Plan (*insert name of court*)**

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### **Supplies and Vendors**

### **Implementation**

## INTRODUCTION

***This section of the Plan is optional. The introduction describes the purpose and focus of the Plan. Sample language is provided below.***

The purpose of this Plan is to enable the *(insert name of court)* to respond to and mitigate the effects of a loss of workforce and, more specifically, loss of workforce due to pandemic influenza. The focus of continuity of operations planning for pandemic influenza is effective and efficient human capital management to foster the continued performance of essential functions and services. This Plan might have applications beyond that of pandemic influenza for other highly communicable diseases of public health consequence, or any other event that results in workforce reductions for extended periods of time.

## ASSUMPTIONS

***This section provides general and court-specific assumptions for pandemic influenza planning. Planning assumptions are statements identified to guide each department in the development of its pandemic influenza Plan. Below are examples that can be utilized in this Plan.<sup>1</sup>***

### General Assumptions

- *(Insert name of court)* has an up-to-date, comprehensive COOP that has been maintained and exercised on a regular basis. ***Delete if inapplicable.***
- Susceptibility to pandemic influenza will be universal, or nearly so, impacting Judicial Branch employees at the same rate as the general population. This means judges, clerks, and supervisors might be among those who are absent from work due to illness or family care needs.
- Pre-event planning is critical to a prompt and effective response to pandemic influenza, as its spread will be rapid, probably reoccurring (in multiple waves), and difficult to stop once it begins.
- Workforce absenteeism may be as high as 40 percent at the height of a given pandemic wave for periods of about two weeks.
- Additional resources that might be accessed through mutual aid agreements, contracts, and the emergency management system including state and federal resources may not be available for a widespread event.
- Telecommunications connectivity might be limited.
- Individuals that recover from a pandemic virus, with or without treatment, will likely have a significant degree of immunity and can serve in key positions.

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<sup>1</sup> Examples are taken from the Virginia Emergency Operations Plan Influenza Pandemic (Non-Health) Plan

- To control the spread of disease, measures such as isolation, quarantine, and social distancing might be implemented which will impact the court's ability to conduct business activities.
- Schools, child care, and adult day care centers may be closed.

## PLANNING AND EMERGENCY MANAGEMENT RESPONSIBILITIES

***This section provides information about the identity of the Emergency Coordinating Officer and Public Information Officer, as well as the Pandemic Planning Team and Emergency Management Team, as applicable. (See Bench Book Chapter 5 and Worksheets 2, 2A, and 7 through 9)***

The *(insert name of court)* has designated the following positions and teams to be responsible for planning and emergency management responsibilities in the event of a pandemic:

Emergency Coordinating Officer: \_\_\_\_\_

Public Information Officer: \_\_\_\_\_

Pandemic Planning Team (see Attachment \_\_\_\_)

Emergency Management Team (see Attachment \_\_\_\_)

Chain of Command and Orders of Succession within *(insert name of court)* are documented in Attachment \_\_\_\_.

## ASSESSMENT OF MISSION CRITICAL AND ESSENTIAL FUNCTIONS

***This section provides information about the prioritization of court functions. (See Bench Book Chapter 7 and Worksheets 4 through 6)***

The *(insert name of court)* has reviewed its functions and has prioritized them as listed on Attachments \_\_\_\_ and \_\_\_\_.

## COMMUNICATION AND EDUCATION

***This section provides information about the communication plan for the court. (See Bench Book Chapter 6 and Worksheet 3)***

The *(insert name of court)* will disseminate information to staff, the public, bar, court support agencies, and others through the information plan contained in Attachment \_\_\_\_\_. The Court's communication efforts should take place in stages: (1) at the onset of a pandemic declaration; (2) during the ongoing pandemic event; and (3) the recovery after the event so that all relevant

audiences are fully and accurately informed of changes to court schedules, policies, and other necessary information. See Attachments \_\_\_\_\_.

The *(insert name of court)* will provide information to staff on personal hygiene, social distancing, and other measures to limit disease transmission.

The *(insert name of court)* will provide training to staff on proper use of Personal Protective Equipment, if provided.

## HUMAN RESOURCES MANAGEMENT

***This section addresses staffing strategies for the efficient and effective management of human resources. Each court has the option to choose which strategies will work best for its working environment. Below is sample language and information that might be used to help guide the development of specific language internally. (See Bench Book Chapter 8 and Worksheets 7 through 10)***

### Cross-training

***This section addresses cross-training gaps, which may not be problematic if the court has a Workforce Plan or other document that addresses this. If used, insert information from Worksheet 10.***

In order to maximize human resources, *(insert name of court)* will ensure that its Workforce Plan addresses staff development and cross-training needs for significant reductions in workforce for extended periods of time. This court will provide cross-training by implementing the following: *(insert additional cross training activities, if applicable or necessary)*.

### Alternate Work Arrangements

***This section addresses alternate work arrangements that a court might implement to maximize the ability of its workforce to continue working during a pandemic. Each court will need to include court-specific policies and procedures for the alternate work arrangements that it elects to use. Courts can choose which strategies they plan to use and include that information in this section. If used, insert information from Worksheet 11.***

To support social distancing and mitigate the spread of disease, employees may be permitted to perform duties at home or off-site. Teleworking and alternate work schedules are strategies for continuing essential services in the event of pandemic influenza.

### Teleworking

Listed below are the functions that might be performed off-site and their associated equipment and remote access requirements.

*(Insert list of functions and personnel.)*

### **Alternate Work Schedules**

Alternate work schedules for staff are listed on Attachment \_\_\_\_\_. This might vary depending on event circumstances.

## **INFECTION CONTROL AND PROTECTION OF STAFF AND COURT VISITORS**

***Each court should decide which infection control measures are appropriate based on its own risk assessment. (See Bench Book Chapter 9) Below are examples that are most likely to be applicable. If used, insert information from Worksheet 12.***

*(Insert name of court)* will implement the following strategies to support social distancing:

- Schedule hearings, where appropriate, via electronic means;
- Allow electronic filing of documents, where appropriate;
- Temporarily adopt a liberal continuance policy;
- Continue jury cases if possible, and adopt jury management techniques that provide maximum social distancing;
- Avoid face-to-face meetings if possible. Meet via phone, internet, or some combination of the two;
- Train employees on cough etiquette and proper hand washing techniques;
- Implement alternate work schedules or other alternative work arrangements; and
- Provide sanitation supplies so employees can clean frequently touched surfaces such as phones and computers, and be able to appropriately wash hands.

## **SUPPLIES AND VENDORS**

***This section includes information on inventory and alternate sources for services or supplies. (See Bench Book Chapter 9) Vendors that provide support services or supplies for essential functions need to be identified along with alternate sources of these services or supplies in the event the primary vendor cannot deliver during a pandemic. If used, insert information from Worksheets 13 and 14.***

*(Insert name of court)* has several services or supplies provided by vendors, other departments, and contractors. *(Insert name of court)* has taken steps to determine that these providers have their own COOPs. In addition, *(insert name of court)* has identified other potential sources for

services or supplies in the event the primary vendor or contractor cannot provide essential services or supplies. See Attachment \_\_\_\_.

## **IMPLEMENTATION**

***This section describes activation, notification and implementation procedures for the court, including who has authority to implement this Plan and how to notify employees.***

This Plan might be implemented in part or in whole, by *(insert appropriate court authorities)*.

Employees will be notified by *(insert procedure or reference to plan with notification procedures and contact information for all employees)*.

# **PART ONE: PUBLIC HEALTH LAW IN VIRGINIA**

## CHAPTER1: JURISDICTION IN MATTERS OF PUBLIC HEALTH

In the event of a pandemic, courts will be called upon to rule on some types of cases that they do not typically encounter. Most commonly, these would involve orders of isolation or quarantine<sup>1</sup> to limit the spread of contagious disease. In addition to being unfamiliar, these cases have specific, short time limits that courts need to consider in managing their dockets. Specifics about these proceedings and other aspects of social distancing law are found in Appendix A at 15-50.

The procedure for isolation and quarantine is dependent on whether the State Health Commissioner (Commissioner) has determined that there is a communicable disease of public health *significance* or public health *threat*. (See *Introduction at xi and xii.*)

### I. COMMUNICABLE DISEASE OF PUBLIC HEALTH SIGNIFICANCE

#### A. Isolation

##### 1. General District Courts

Va. Code §§ [32.1-48.03](#) and [32.1-48.04](#): The Commissioner or his designee may petition the district court for an order of isolation. Under certain defined circumstances, this would occur after the Commissioner has issued an emergency detention order. Va. Code § [32.1-48.02](#).

##### 2. Circuit Courts

Va. Code § [32.1-48.04](#): An order of isolation entered by a district court may be appealed to the circuit court.

##### 3. Supreme Court of Virginia

There is no specific provision relating to an appeal regarding isolation of a person with a communicable disease of public health significance. Accordingly, any appeal would be governed by Va. Code § [8.01-670](#).

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<sup>1</sup> *Isolation* refers to the physical separation of a person who is infected, or is reasonably suspected to be infected, with a communicable disease. *Quarantine* refers to the physical separation of a person or persons who have been exposed to a communicable disease, but who do not exhibit symptoms of the disease. Va. Code § [32.1-48.06](#).

## II. COMMUNICABLE DISEASE OF PUBLIC HEALTH THREAT

### A. Isolation

#### 1. Circuit Courts

Va. Code § [32.1-48.012](#): The Commissioner has authority to issue an order of isolation. After issuing the order, the Commissioner files a petition in circuit court, seeking an ex parte review and confirmation of the order of isolation.

Va. Code § [32.1-48.013](#): The isolated person may appeal the order confirming isolation to the circuit court.

#### 2. Supreme Court of Virginia

Va. Code § [32.1-48.013](#): A petition for appeal may be filed from the circuit court order. An expedited proceeding would take place in accordance with Rule [5:41](#).

### B. Quarantine

#### 1. Circuit Courts

Va. Code § [32.1-48.09](#): The Commissioner has authority to issue an order of quarantine. After issuing the order, the Commissioner files a petition in circuit court, seeking ex parte review and confirmation of the order of quarantine.

Va. Code § [32.1-48.010](#): The quarantined person may appeal the order of quarantine to circuit court.

#### 2. Supreme Court of Virginia

Va. Code § [32.1-48.010](#): A petition for appeal may be filed from the circuit court order. An expedited proceeding would take place in accordance with Rule [5:41](#).

## CHAPTER 2: VIRGINIA'S PUBLIC HEALTH STRUCTURE<sup>1</sup>

As stated in Chapter 1, during a pandemic, courts will need to rule on matters involving the public health authorities. This brief explanation provides an introduction to the structure of the public health system in Virginia.

### I. STATE BOARD OF HEALTH

The [State Board of Health](#) is established in Title 32.1 of the Virginia Code. It promulgates regulations related to the implementation of the Code, including those pertaining to the reporting and control of diseases of public health importance and to meet any emergency or to prevent a potential emergency caused by a disease dangerous to the public health.

State Board of Health regulations (12 VAC 5-90-10 et seq.) provide processes and procedures for the uniform reporting of diseases of public health importance occurring within the Commonwealth so that appropriate control measures may be instituted to interrupt disease transmission.

### II. VIRGINIA DEPARTMENT OF HEALTH

The Virginia Department of Health (VDH), directed by the State Health Commissioner, is an agency under the Secretary of Health and Human Resources within the Governor's Cabinet. The State Health Commissioner is the executive officer for the State Board of Health, with the authority of the board when it is not in session. Va. Code §§ [32.1-18](#) and [32.1-20](#).

#### A. Local and District Health Directors

The Virginia Department of Health is functionally composed of [local and district health departments](#) and the central office. Pursuant to Va. Code § [32.1-30](#), each county and city is responsible for maintaining a local department of health, which shall be headed by a local health director. Each local health director is a physician licensed to practice medicine in the Commonwealth. There are 119 local health departments that operate programs to improve the health of the communities they serve. The local health departments are grouped into 35 health districts in Virginia, each headed by a district health director who acts as the local health director for each local department of health in the district. District health directors have significant responsibilities, including the surveillance for, and investigation of, illnesses of public health importance that occur in their jurisdictions.

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<sup>1</sup> This synopsis of the structure of the public health system in Virginia is derived from the [Report of the Social Distancing Law Project](#) (See Appendix B to that report). The entire report is reproduced herein as Appendix A.

District health directors are also responsible for instituting measures for disease control, including implementing the quarantine and isolation orders of the State Health Commissioner. In addition, regional teams are available to augment local/district emergency public health responses in Virginia.

Although some powers granted to the State Health Commissioner may not be delegated to the district health director, many of the activities at the local and district level related to the control of a communicable disease of public health threat will be overseen by the district health director, making local operations critical to disease control and prevention.

## **B. Central Office Functions**

The VDH central office provides technical support and coordination for the district health departments. The Office of Epidemiology is responsible for the statewide surveillance of communicable diseases, for defining and disseminating appropriate disease control protocols for an outbreak situation, for coordinating the investigation of those diseases with the local health director, and for providing direct assistance where necessary. The Director of the Office of Epidemiology ("State Epidemiologist") acts as the State Health Commissioner's designee in reviewing reports and investigations of diseases and recommendations by local health directors for quarantine or isolation. However, authority to order quarantine or isolation resides solely with the Commissioner.

The [Office of Emergency Preparedness and Response](#) (EP&R) within VDH coordinates the overall public health response and provides logistic support during emergencies. In addition, EP&R coordinates VDH's communication with the [Virginia Department of Emergency Management](#) (VDEM) Emergency Operations Center (EOC) and other partners.

### CHAPTER 3: STATE OF EMERGENCY

In the event of a pandemic, it may be advisable, if not necessary, for the Governor or local governing body to declare an emergency, depending on the severity and magnitude of the pandemic. Declaration of a “state of emergency” or “local emergency” would authorize the Commonwealth or a locality, as the case may be, to exercise certain emergency powers, not otherwise available in the absence of such a declaration, related to funding, operational and other issues associated with an event of pandemic influenza. The provisions of the Code of Virginia concerning the declaration of a “state of emergency” or “local emergency” are found at Va. Code §§ [44-146.13](#) through [44-146.28:1](#), collectively entitled “Commonwealth of Virginia Emergency Services and Disaster Law of 2000.”<sup>1</sup>

In 2010, the General Assembly enacted Virginia Code § [17.1-330](#), which allows the Chief Justice of the Supreme Court of Virginia to declare a judicial emergency for one or more jurisdictions. A declaration of judicial emergency would, for a brief, defined period, toll filing and other time limits for the jurisdiction or jurisdictions for which the judicial emergency is declared. For details on the declaration of judicial emergency, see Chapter 7—Operations & Case Management, at 7-21.

#### I. DECLARATION OF STATE OF EMERGENCY

##### A. Governor-declared Emergency

1. Va. Code § [44-146.16](#): *Emergency* is defined, in pertinent part, as “any occurrence, or threat thereof . . . which results or may result in substantial injury or harm to the population . . . and may involve governmental action beyond that authorized or contemplated by existing law because governmental inaction for the period required to amend the law to meet the exigency would work immediate and irrevocable harm upon the citizens . . . of the Commonwealth . . . .”
2. Va. Code § [44-146.16](#): *State of emergency* is defined, in pertinent part, as “the condition declared by the Governor when in his judgment, the threat or actual occurrence of an emergency . . . any part of the Commonwealth is of sufficient severity and magnitude to warrant disaster assistance by the Commonwealth to supplement the efforts and available resources of the several localities . . . in preventing or alleviating the damage, loss, hardship, or suffering threatened or caused thereby and is so declared by him;”
3. A *state of emergency* is declared by the Governor by executive order, and copies thereof must be transmitted to each member of the General Assembly.

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<sup>1</sup> See Appendix A, [Report of the Social Distancing Law Project](#), at 15-19.

## B. Local Emergency

1. Va. Code § [44-146.16](#): *Local emergency* is defined, in pertinent part, as “the condition declared by the local governing body when in its judgment the threat or actual occurrence of an emergency . . . is or threatens to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship, or suffering threatened or caused thereby . . . .” For purposes of a *local emergency*, the term *emergency* has the same definition set forth above.
2. Va. Code § [44-146.21](#): A *local emergency* is declared by the local director of emergency management with the consent of the local governing body of the affected locality (*i.e.*, political subdivision). If the emergency precludes the governing body from convening (*e.g.*, there are not enough members available to reach a quorum due to several members being stricken with the flu virus), the director alone, the deputy director in the director’s absence, or any member of the local governing body in the absence of both the director and deputy director, may declare the existence of a *local emergency*. If a local emergency is declared in this manner, it must be confirmed by the governing body at its next regularly scheduled meeting, or at a special meeting held within 45 days of the declaration, whichever occurs first.

## II. POWERS AND DUTIES

### A. Governor-declared Emergency

1. Va. Code § [44-146.17](#): The Governor is designated as the Director of Emergency Management for the Commonwealth, and in that capacity, among other powers, he is authorized –
  - a. “[T]o issue such orders as may, in his judgment, be necessary . . . to control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other . . . goods, services and resources under any federal or state emergency services programs.”
  - b. “[T]o direct and compel evacuation of all or part of the populace of any stricken or threatened area if this action is deemed necessary for the preservation of life; implement emergency mitigation, preparedness, response or recovery actions; prescribe [evacuation] routes . . . and control ingress and egress at an emergency area . . . .”
  - c. “To procure supplies and equipment, to institute training and public information preprograms relative to emergency management and to take other preparatory steps including the . . . mobilization of emergency

- management organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces in time of need;”
- d. “To request a major disaster declaration from the President, thereby certifying the need for federal disaster assistance . . . for alleviating the damage, loss, hardship or suffering resulting from the disaster;”
2. Va. Code § [44-146.17](#): Violation of an executive order of the Governor, including an order which declares an emergency and directs evacuation, constitutes a Class 1 misdemeanor whenever the executive order so declares.

## **B. Local Emergency**

1. Va. Code § [44-146.21](#): “Whenever a local emergency has been declared, the director of emergency management of each political subdivision or any member of the governing body in the absence of the director, if so authorized by the governing body, may control, restrict, allocate or regulate the use, sale production and distribution of food, fuel, clothing and other . . . goods, services and resource[s] . . . which fall only within the boundaries of that jurisdiction and which do not impact systems affecting . . . other political subdivisions, enter into contracts and incur obligations necessary to . . . protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster . . . .”
2. Va. Code § [44-146.21](#): When a local emergency has been declared, and a political subdivision elects to exercise the powers set forth above, it may do so without strict compliance with time-consuming procedures which would otherwise interfere with the political subdivision’s ability to respond to the emergency as quickly as it needs to do so. Actions that might need to be taken without being hindered by procedural time constraints include the execution of contracts, the employment of temporary workers, the procurement of supplies and equipment, and the expenditure of public funds.
3. Va. Code § [44-146.20](#): This code section authorizes political subdivisions to act jointly in response to an emergency of local and/or regional impact if they decide that they would be better served by such a joint response. Joint action as contemplated herein would normally be accomplished by a mutual aid agreement approved by the local governing bodies of the participating political subdivisions.

## **III. IMMUNITY**

Va. Code § [44-146.23](#) grants immunity from liability to the Commonwealth, political subdivisions, and their respective employees and representatives for death or injury to any

person, or damage to any property, caused by any emergency services activity in which they were engaged while complying, or attempting to comply, with any rule, regulation or order promulgated pursuant to a declaration of emergency. This Code section also states that any private person who holds a license, certificate or permit and gratuitously renders emergency aid in the form of services covered by such license, certificate or permit shall be immune from liability for death or injury to any person, or damage to any property, caused by the rendering of such aid.

## **CHAPTER 4: RESERVED**

Chapter 4 is reserved for future use.

# **PART TWO: PLANNING FOR PANDEMIC INFLUENZA**

## CHAPTER 5: PANDEMIC PLANNING AND EMERGENCY MANAGEMENT GENERALLY

### I. GENERAL CONSIDERATIONS IN PANDEMIC PLANNING<sup>1</sup>

To promote effective and ongoing judicial functions during a pandemic, each court will need to plan how it will address all of the issues that are likely to arise during a pandemic. Each court should create a continuity of operations plan (COOP) that it will use during a pandemic (Pandemic COOP or Pandemic Plan).

#### **Tip**

A template that courts may use in preparing their unique plans is included as Appendix F. *Worksheet 1—Pandemic Influenza COOP Checklist* is also included to assist the courts in this process.

The planning process should include the following key components:

- Form a planning committee composed of court personnel and stakeholders to coordinate local planning efforts between the courts and all entities of the local justice system.
- Designate responsibilities for developing the plan and its components.
- Schedule meetings, with assigned tasks, timeframes, and milestones that clearly define what is to be accomplished and establish the urgency of the effort.
- Consider technological and other capabilities needed to continue operations, including possible measures that will need to be instituted to limit face-to-face interactions.
- Establish a stockpile of needed supplies and equipment, including sanitation items and routine supplies that may be inaccessible during a pandemic.
- Create special management teams to address operational functions and human resource issues and establishment of back-ups for staff who may be absent.
- Educate judicial and other court staff regarding hygienic, social distancing, vaccinations, and other measures and precautions they should use to reduce the threat of infection and/or its spread.

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<sup>1</sup> Much of the language in this section is excerpted from [Guidelines for Pandemic Emergency Preparedness Planning: A Road Map for Courts](#). Bureau of Justice Assistance. Criminal Courts Technical Assistance Project. American University, March 2007, at 14–15.

- Develop internal and external communication components of the plan for meaningful communication within the court and to stakeholders and the public.
- Orient and train all court, justice system, public health, and related agency staff to help them understand the intent of the plan and their roles in the event of a pandemic.

## II. AUTHORITY AND PROTOCOLS

The various courts in a locality should work together and with justice system entities to plan how decisions about court and clerk's office closure will be handled and communicated. Courts are strongly encouraged to meet with other entities such as the sheriff's office, police, local bar groups, probation officers, community corrections, magistrates, court services units, local health departments and providers and users of court services to identify steps to be taken at each level and to coordinate efforts.

Courts should establish a clear understanding of which individuals have the authority (and responsibility) for activating and terminating the Pandemic COOP, altering operations, communicating with internal and external groups, and developing other planning, response, and recovery activities.

To do this, the following steps are recommended:

- Appoint Emergency Coordinating Officer, Pandemic Planning Team, and Court Emergency Management Team (details below).
- Establish chain of command in courts within the locality  
Circuit Court, General District Court, Juvenile and Domestic Relations District Court. (*See Worksheet 7—Authority and Procedures, and Worksheet 8—Orders of Succession*)
- Obtain information about chain of command in justice system entities such as:
  - sheriff's department
  - commonwealth's attorney's office
  - public defender's office
  - police department
  - community corrections/court services
  - probation/parole
  - magistrate's office/intake office

- Draft, approve and execute documents identifying and authorizing those in chain of command to act.
  - Specify what actions may be taken.
  - Clearly state limitations on authority and actions that may be taken.

### III. COURT PLANNING AND MANAGEMENT RESPONSIBILITIES

#### A. Emergency Coordinating Officer

The chief judge or the judges collectively of each court should designate a member of the court's leadership to coordinate the development and execution of its emergency plans. (One of the judges, the clerk, or the clerk's designee are likely choices.)

The appointment of this **emergency coordinating officer (ECO)** should be communicated to the court's personnel as well as the other courts in the locality and justice system entities.

#### B. Planning and Emergency Management Teams

The court should identify a structure or structures to support the person charged with developing and executing the court's emergency plans, including that for pandemics. One such structure is an internal emergency **pandemic planning team (PPT)**, composed of managers and employees with defined roles and responsibilities (e.g., Management, Information Technology, Human Resources, Communications, Operating Units, etc.),<sup>2</sup> whose responsibility will be to prepare the plan. The team will review existing emergency plans and draft the plan. (*See Worksheet 2—Pandemic Planning Team*)

#### Tip

A pandemic can affect many areas of the court. Consider including a cross-section of employees, rather than court leadership exclusively. The court should consider including representatives of justice system entities.

When the plan is developed, the ECO will need assistance to make sure that the plan will be properly implemented. Each court should name and prepare a **court emergency management team (CEMT)** made up of relevant internal stakeholders—judges, attorneys, deputy clerks, deputy sheriffs, IT staff, and others—who will be trained and prepared to perform the court's mission critical functions through the

<sup>2</sup> See A.1 and A.2 from "Key Elements of Courts' Pandemic Influenza Continuity of Operation Plans," an outline included in Costa G. Constantino's presentation "Pandemic Planning" to the State-Federal Judicial Council of Virginia, Dec. 2, 2008.

use of technology and other means developed for their court. Public health officials and other emergency management personnel, as well as local human resources departments where appropriate, should also be actively engaged in these teams. *(See Worksheet 2A— Court Emergency Management Team)*

In smaller courts, it is likely that the same individuals would serve on both the planning and management teams. However, in larger courts, differences in the skills and responsibilities required for planning versus execution may justify the involvement of different persons on each team. In all cases, local circuit and district courts are encouraged to work together to improve their preparedness for and response to a pandemic.

**Tip**

The court may consider using a flowchart similar to the one found in Appendix H to describe how the court will respond to a pandemic.

**C. Office of the Executive Secretary of the Supreme Court of Virginia**

To promote effective communication and facilitate resource allocation within the court system in the event of an actual emergency, the names and contact information for the ECO and members of each local planning and management team should be reported to the Office of the Executive Secretary of the Supreme Court of Virginia (OES). Local courts should also notify OES of any changes to this information over time.

**D. Communication with Local Health Departments**

The court should contact the local health department early in the plan development process and encourage its involvement in the court's pandemic planning efforts.

**WORKSHEET 2 – PANDEMIC PLANNING TEAM**

<b>Role</b>	<b>Name</b>	<b>E-Mail</b>	<b>Phone #</b>	<b>Emergency #</b>
ECO				
Judge				
Clerk of Court				
Probation				
CSU				
Community Corrections				
Local Health Director				
Sheriff				
Chief Magistrate				

**Tip**  
The table above is not intended to be an exhaustive list of people to include on the planning team. Courts should add and delete representatives according to their unique needs.



**WORKSHEET 2A – COURT EMERGENCY MANAGEMENT TEAM**

<b>Role</b>	<b>Name</b>	<b>E-Mail</b>	<b>Phone #</b>	<b>Emergency #</b>
ECO				
Judge				
Clerk of Court				
Probation				
CSU				
Community Corrections				
Local Health Director				
Sheriff				
Chief Magistrate				

**Tip**  
The table above is not intended to be an exhaustive list of people to include on the planning team. Courts should add and delete representatives according to their unique needs.

## WORKSHEET 7 – AUTHORITY AND PROCEDURES

The following sections outline the authority and procedures for activating and implementing the pandemic COOP for \_\_\_\_\_.

**Tip**

The court may already have this information as part of its overall emergency response plan. If so, attach it to *Worksheet 8—Orders of Succession*, and *Worksheet 9—Delegation of Authority*.

### LEADERSHIP SUCCESSION

During a pandemic, the following people are delegated to activate the Pandemic Continuity of Operations Plan in the order of succession shown in *Worksheet 8—Orders of Succession*.

### PLAN ACTIVATION

The [title] or his or her appointee or successor may (as listed in accordance with *Worksheet 8—Orders of Succession*) activate the Pandemic Continuity of Operations Plan when it is necessary to manage and coordinate a response. This decision will be made after consulting with key leaders, including [insert position titles].

Internal notification of plan activation will occur through the steps or processes outlined in *Worksheet 3—Information Dissemination Plan*.

[Insert additional protocols]

**WORKSHEET 8 – ORDERS OF SUCCESSION**

Orders of succession are essential to a court’s COOP to ensure personnel know who has authority and responsibility should leadership become incapacitated or unavailable upon COOP activation.

Orders of succession for the court should:

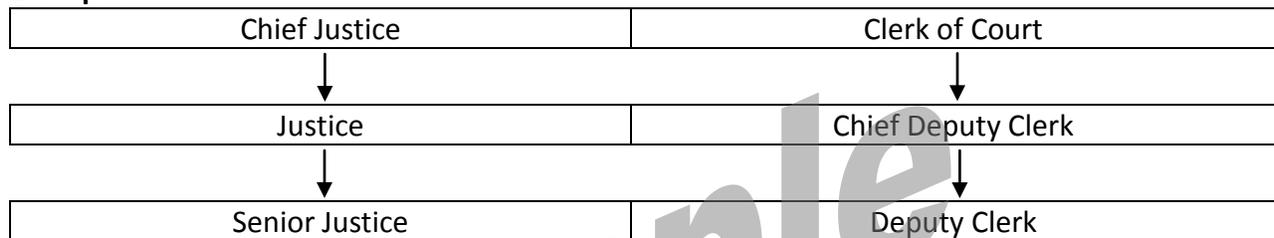
- Describe the order of succession by position or title, rather than by named individuals.
- Provide sufficient depth (at least 3 deep) to protect the court’s ability to perform mission-essential operations to take into account the expected rate of absenteeism.
- Consider personnel outside the immediate area if possible.
- Include the conditions under which succession will take place, method of notification, and any temporal, geographical or organizational limitations.
- Provide that if a designated individual is unavailable, authority will pass to the next individual on the list.

An individual is “unavailable” if he or she is:

- Incapable of carrying out the assigned duties by reason of death, disability, or distance from response time to the facility
- Unable to be contacted within 30 minutes, or
- Already assigned to other emergency activities.

The designated individual retains all assigned obligations, duties, and responsibilities until officially relieved by an individual higher on the list.

**Example:**



Key Position (Position Title)	Successor 1	Successor 2	Successor 3
<i>Clerk of Court</i>	<i>Chief Deputy Clerk</i>	<i>Deputy Clerk</i>	<i>Division Supervisor</i>



## CHAPTER 6: COMMUNICATION & EDUCATION

### I. COMMUNICATIONS MANAGEMENT AND EDUCATION: GENERAL

The overall purpose of the communications and public information effort is twofold: (1) to provide consistent, timely, accurate, and easy-to-understand information to key audiences and to the general public during a pandemic; and (2) to gather, analyze, and disseminate information to the court's decision makers.

#### Note

"Key audiences" may include judges, court staff, attorneys, litigants, jurors, the media, and justice system entities such as the sheriff's office, police department, commonwealth's attorney, public defenders, and magistrate's office.

Communication objectives are to achieve the following:

- Provide up-to-date information about the impact of the pandemic on court operations.
- Educate and train employees on health, hygiene, home planning, and information on pandemics generally.
- Provide current information on revised or amended court processes and procedures.
- Instill confidence that the courts will continue to function.
- Inform the public on the execution of the court's activities.
- Respond to unsubstantiated rumors with accurate information.

A single point-of-contact should be designated to disseminate information to the Court Emergency Management Team (CEMT), all employees, the media, the general public, and external stakeholders. *Worksheet 3 – Information Dissemination Plan* may be used to capture internal, media, and external contact information and to provide staff with resources available to obtain information during the pandemic.

### II. PREPARATION: COMMUNICATION PLAN

Throughout a pandemic, the court will need to provide accurate and up-to-date information to key audiences. A comprehensive communication plan should have internal and external components to ensure that the court is prepared to successfully communicate under pandemic circumstances. The communications plan should include details about **what** is to be communicated, **how** communication will take place, and **by whom**. The plan should also provide instructions for communication before a pandemic emergency occurs, at the point when a pandemic COOP is activated, and for the duration of the emergency. (*See Worksheet 3—Information Dissemination Plan*)

The worksheet identifies the specific means to alert and notify staff that a crisis or disaster is about to occur or has occurred and that the COOP has been activated. (See *Chapter 6 -- Communication & Education, at 6-6 through 6-7*).

Name the person and position responsible for initiating the alert and notification process and the processes used. Prepared messages are helpful in crisis situations because they disseminate the same information and directions to all staff.

One person should be responsible for the alert and notification activities to promote uniformity and consistency in disseminating information. Messages should provide information about the pandemic event and instructions to staff and the response teams. Electronic alert and notification systems should be coordinated with the information technology (IT) staff. If call trees are used, provide detailed information about who initiates the call, the cascade order, and contact information. Similarly, if a combination of methods is used, describe the combination system in a brief narrative.

#### **A. Public Information Officer**

If the court does not have a **public information officer (PIO)**, it should designate one. Review and coordinate the functions of the court's ECO and PIO to ensure the court is prepared to communicate successfully with employees/internal constituents and the public.

#### **Tip**

In an emergency, the ECO may be too busy to handle the duties of a PIO. Likewise, although the judges may be the ultimate authorities with respect to court operations, the chief or presiding judge may not have the time and resources to function in this role. For these reasons, the PIO should ideally be an individual distinct from the ECO and judge(s) and should receive training and experience in the role of a PIO before there is an emergency. In smaller courts there may be no acceptable alternative to the ECO also serving as the PIO.

When considering who will communicate court-related information in the context of an emergency, courts should keep in mind that local public health and emergency management operations often already have individuals who have received special training to serve as public information officers during emergency situations. These individuals may be a valuable resource to the court's PIO in preparing the communication plans.

As with information regarding the ECO and members of the emergency planning and management team(s), the name and contact information of the PIO should be reported to OES. (See *Chapter 5—Pandemic Planning, at 5-4*)

## B. Employee Communication

### 1. Information Dissemination Plan

Courts should establish a communication plan (with redundancy—using multiple means of communication) for providing information to staff. Identify how urgent communications (e.g., work schedules) will be relayed as well as less time-sensitive information. (*See Worksheet 3—Information Dissemination Plan*)

### 2. Employee Initial Communication

The communication plan should communicate to employees:

- General information about influenza and pandemic.
- Key components of the court's pandemic plan.
- How to develop a personal/family emergency plan.
- Steps that will be taken by the court to protect the health and safety of employees during a pandemic.
- Leave policy reminder.

### 3. Employee Ongoing Communication Plan

Part of the communication plan should be to provide regular updates to employees throughout a pandemic, including mechanisms for developing and finalizing communications and authorizing dissemination of information. Develop a single point of authorization so that a consistent format and message is provided to staff. Plan to use multiple dissemination techniques to better ensure that employees hear the message. Techniques may include telephone or voice-mail, internet or e-mail, and traditional mail. (*See Worksheet 3—Information Dissemination Plan*)

#### **Tools**

Influenza fact sheets and other materials are available through the Virginia Department of Health.  
<http://www.vdh.virginia.gov/Epidemiology/Factsheets/pdf/Influenza.pdf>.  
These may be shared with employees and the public. Information sheets on flu are also available in several languages at <http://www.flu.gov/#>.

## C. Public Communication

### 1. Information Dissemination Plan

Each court should establish a plan for communicating with the public. Identify methods for disseminating information (e.g., websites, telephones, press releases, brochures). Assign responsibility for developing and finalizing

communications and authorizing dissemination. (*See Worksheet 3—Information Dissemination Plan*)

**2. Public Advance Communication**

Inform the public of the court's plan and how regular service may change during a pandemic. Include websites and contact information for public reference in the event of an actual emergency, recognizing that in the event of a pandemic the Internet may be slow or unavailable entirely for some length of time.

**3. Public Ongoing Communication Plan**

Develop a plan to provide regular updates to the public during a pandemic. Include mechanisms for developing and finalizing communications and authorizing dissemination of information. Plan to use multiple dissemination techniques to better reach all users of the courts. (*See Worksheet 3—Information Dissemination Plan*)

**D. Messages: Frequency and Content**

The court must provide ongoing information and guidance to employees and the public throughout each stage of an outbreak—preparation, response, and recovery. Areas to be addressed at each stage are listed in *Worksheet 3*. Some important messages will be specific to local court plans and circumstances, so the local court PIO, in consultation with the ECO and other members of the pandemic planning team, will need to determine the appropriate content and format for those messages. Other messages may be copied from Department of Health or other emergency resources (e.g., "[10 Things You Can Do To Prevent Flu](#)"). Additional messages will apply more broadly within the court system; their content and format will be determined by OES.

**E. Communication Device List for Emergency Coordinating Officer**

During an emergency and the activation of the Pandemic COOP, communications with external agencies and stakeholders will be necessary but may not be available through regular means. Therefore, it is recommended that communications devices be interoperable and redundant, internally as well as externally, preprogrammed with the phone numbers of key internal and external contacts, and that back-up interoperable systems are available. Members of the CEMT must know how to use the devices and store them away from the court facility. *Worksheet 3* provides the court with a means to list each device, to whom it is assigned, and with what it is compatible.

### III. EMPLOYEE EDUCATION AND TRAINING

All court staff should have some level of education and training to improve emergency preparedness. ECOs and PIOs will require the most specialized training. Courts should begin efforts to educate court employees about the threats posed by influenza, including actions to be taken once the virus is present in the community. Training should also be undertaken to ensure, at a minimum, that mission critical functions can be maintained in the event of an emergency.

**Tip**

Consider posting educational flyers around the facility, sending via e-mail, or distributing with employee paychecks.

#### A. Health, Hygiene, and Employee Home Planning

Courts should provide staff with informational materials detailing strategies for stopping the spread of disease (e.g., wash hands carefully, practice respiratory etiquette, avoid touching the face and eyes, and avoid shaking hands). See [www.cdc.gov](http://www.cdc.gov) and [www.vdh.virginia.gov](http://www.vdh.virginia.gov). Courts should encourage employees to be vaccinated in accordance with CDC guidelines.

Also, courts should provide employees with information and tools to enable families to prepare for and respond to a pandemic or any disaster. This may minimize disruption to the employee's work duties. Relevant guidance can be found on a number of websites such as those of [ReadyVirginia](http://ReadyVirginia) and [FLU.gov](http://FLU.gov):

"Get a Kit," <http://www.vaemergency.gov/readyvirginia/getakit>

"Make a Plan," <http://www.vaemergency.gov/readyvirginia/makeaplan>

"Stay Informed," <http://www.vaemergency.gov/readyvirginia/stayinformed>

"About the Flu," <http://pandemicflu.gov/individualfamily/about/index.html>

Prevention & Vaccination,"

<http://pandemicflu.gov/individualfamily/prevention/index.html>

"Pandemic Flu Planning Checklist for Individuals and Families,"

<http://www.vdh.virginia.gov/LHD/CentralShenandoah/EPR/documents/2009/pdfs/Check%20List%20of%20Ind%20and%20Fam.pdf>

#### B. Emergency Coordinating Officer and Public Information Officer Training

The ECO and PIO should receive specialized training to assure that they have the knowledge and skills required for their roles in preparing for and responding to emergency situations. The Office of the Executive Secretary should develop appropriate training programs for this purpose, drawing upon the already established government training programs for these functions (e.g., training

programs of the Federal Emergency Management Agency, <http://www.fema.gov/prepared/train.shtm>).

### C. Mandatory New Employee Training

When new employees first begin working at a court, the ECO should ensure that they are made aware of the Pandemic COOP, recommended health practices, and reliable sources for additional information.

In light of the importance of cross-training to maintaining mission critical and essential functions in the event of pandemic and other emergencies, the clerk or the ECO should ensure that new employees also receive this type of training to maintain court preparedness.

#### **Tip**

General emergency management training guidance can also be found in the National Center for State Courts' [\*A Comprehensive Emergency Management Program\*](#) (Denver: NCSC Court Consulting Services, 2007), Part I, at 24-26.

## IV. EMERGENCY RESPONSE: PLAN ACTIVATION

Court leaders should always be alert to conditions in their community as well as in their respective courts. Having established communication networks with state and local health and emergency management officials as well as OES will minimize surprises and help the court to remain informed during a pandemic. With respect to most pandemic illnesses, the court should have abundant notice that a disease is circulating before court operations are actually affected.

If conditions warrant, those individuals who have the authority and responsibility for doing so (*see Worksheet 7—Authority and Procedures*) will activate the Pandemic COOP, following proper protocols. They should alert leaders and staff of the change in pandemic status and activation of the plan. They will then re-familiarize leaders and their designees with their duties.

The ECO and PIO should assess the status of communication systems (e.g., telephone, fax, Internet, website, etc.) to determine that they are up to date and in working order.

The following steps are recommended:

**A. Inform Employees**

Hold regular briefings to be sure that employees remain up-to-date on the plan and the progress of the pandemic, as well as other critical information. Status updates may address applicable policy changes, infection control measures, job reassignments, illness reporting procedures, etc. *(See Worksheet 3—Information Dissemination Plan)*

The ECO and other court leaders should regularly review and update the pandemic COOP protocols and procedures to ensure that new issues are addressed.

**B. Inform Public**

Inform court users of any changes in hours, services, or schedules. *(See Worksheet 3—Information Dissemination Plan)*

**V. RECOVERY**

When conditions permit, the ECO and applicable court leaders should determine that operations under the COOP may be terminated. They will follow the prescribed protocols for activating recovery procedures, alerting leaders and staff to the change in pandemic status and return to normal operations.

**Tip**

Recovery from a pandemic should begin when it is determined that adequate personnel, supplies, response systems, and other resources exist to manage standard ongoing activities without continued assistance from pandemic response systems.

**A. Inform Employees**

Notify employees about the change in pandemic status, the return to business as usual, and any applicable policy changes. *(See Worksheet 3—Information Dissemination Plan)*

**B. Inform Public**

Notify the public of the resumption of all normal court services and functions. *(See Worksheet 3—Information Dissemination Plan)*

**WORKSHEET 3 – INFORMATION DISSEMINATION PLAN**

**RESPONSIBILITY AND AUTHORITY**

Throughout a pandemic, the court will need to provide accurate and up-to-date information to key audiences. The information dissemination plan describes who will develop and authorize content and the information dissemination strategy.

**Content Development**

The following individuals and alternates will be responsible for creating and/or coordinating the development of content for communicating with employees, customers/clients, the general public, suppliers and service vendors, and partners.

Name	Job Classification	Department	Contact Information	Primary/ Alternate

**Content Approval**

The following individuals and alternates will be responsible for authorizing the content and information dissemination strategy.

Name	Job Classification	Department	Contact Information	Primary/ Alternate

**AUDIENCES**

The court will be responsible for providing information to the following audiences:

- Employees
- General public
- Other courts
- Community
- Local Bar Association and other stakeholders
- [Insert additional audiences as appropriate]

See attached table—*Modes for Communicating Pandemic Information*.

**COURT CONTACT LIST**

Department	Contact	Emergency Number
-Media Contact		
-Telecommunications/IT		
-Jury Office		

**MEDIA CONTACT LIST**

Medium	Telephone	Other Contact Info.
<b>Radio</b>		
<b>Television</b>		
<b>Newspapers</b>		

**EXTERNAL COMMUNICATIONS CONTACT LIST**

Audience	Name/Title	Telephone Number
<b>City/Local Level</b>		
• Sheriff's Office		
• Police Department		
• Fire Department		
• Emergency Management Agency		
• Department of Public Safety		
• Public Defender		
• Commonwealth's Attorney		
• Health Department		

**COMMUNICATION MESSAGES**

The court must provide ongoing information and guidance to the above audiences throughout each stage of an outbreak. Important communication messages include:

**Preparation**

- General pandemic information
- Components of the court's *Pandemic Continuity of Operations Plan*
- Infection control preparations taken by the court
- How to develop a personal/family disaster kit (for staff)
- Where to get information during an emergency (e.g., website, brochures, hotline)

**Response**

- Updates on the status of the pandemic
- Policy changes
- Infection measures to be utilized at work
- Illness reporting procedures
- Job reassignments
- Services available to the public

**Recovery**

- Updates on the status of the pandemic
- Job reassignments
- Policy changes
- Resumption of normal operations

**Alert and Notification**

**Court Office:** \_\_\_\_\_

Person/ Position Responsible	Alternate Responsible Persons/ Position	Telephone Messaging/ Office	Telephone Messaging/ Remote Phone #s	E-mail Broadcast/ Office	E-mail Broadcast/ Remote Addresses	Call Tree	Combination

**MODES OF DISSEMINATION**

Information will be disseminated to audiences using the modes of communication described below. Multiple strategies will be used to create redundancy and improve the likelihood that intended recipients receive messages.

- **Telephone Systems.** Internal agency information line [insert telephone number], external public information line, mass voicemail message, call center/phone bank, call-down tree.
- **Electronic Systems.** Mass e-mail messages, website postings [insert web address], Intranet postings, list serves. Information may be packaged in the form of letters, memorandums, fact sheets, brochures, newsletters, et cetera.
- **Hard Copy.** Mailings, interoffice mail, notice board postings.
- **In-Person.** Meetings, presentations, trainings.
- **Media—Television, Radio, Newspaper.** Press releases, press conferences.

**SAMPLE INTEROPERABLE COMMUNICATION DEVICES**

Device	Assigned To	Location of Device	Agency Compatible
Satellite phone #12345	Judge 1	Judge's Home	Police Fire Rescue
Blackberry #6789	Judge 1	On Person	N/A

**SAMPLE COMMUNICATIONS OPTIONS FOR COURT STAFF**

Target Audience	Warning/Notification of Initial Incident	Resumption of Services/ Directions for Accessing Them
The Public	Media (local – print and broadcast) Court website: Radio /TV News Public Address System	Media (local - TV and radio) Court website: _____ [Add URL] _____
Judicial Officers and Court Employees	Court website Email Broadcast Internal Contact List Media Cell Phones Satellite Phone Nextel-type Phone/Radios PDA Court Emergency Information Line (e.g., 1-800 number)	Court website Internal Contact List Media Cell Phones Court Information Line

**MODES FOR COMMUNICATING PANDEMIC INFORMATION**

Mode of Dissemination	Audience				Good for urgent communication	Strength/Weaknesses
	Employees	Partners	Clients/ Public	Vendors		
<b>Telephone System</b>						
Internal Emergency Information Line	✓				Yes	A voice message can be pre-recorded and updated off site. Access to the voice message can be controlled by using a PIN provided to all employees. (This is good for relaying instructions about reporting to work.)
External Information Line	✓	✓	✓	✓	Yes	
Mass Voicemail Message	✓				Maybe	Some employees may not have a designated work phone with voicemail.
Call center/phone bank	✓	✓	✓	✓	Yes	Some individuals may prefer speaking to a live person instead of a recorded message.
Call-down tree	✓				Yes	A call-down tree can be used for relaying simple and short information by phone. Each person is designated to call another once the message has been received.
<b>Electronic</b>						
Mass E-mail	✓				No	Some employees may not have a designated e-mail address or be able to access e-mail at home.
Website Posting	✓	✓	✓	✓	Maybe	Not all people will have access to a computer.
Intranet Posting	✓				No	Not all employees will have access to a computer.
List Serve	✓	✓				Not all people will have access to a computer.
<b>Hard Copy</b>						
Mailing	✓	✓	✓	✓	No	Delivery may take a few days. It may be costly.
Interoffice Mail	✓					Not all employees will have a mail box for receiving interoffice mail.
Notice Board Posting	✓		✓		Maybe	
<b>In Person</b>						
Meeting/Presentation	✓	✓	✓	✓	Maybe	During some stages it may not be advisable to hold gatherings.
Training	✓				No	May take time to coordinate.
<b>Media—Television, Radio, Newspapers</b>						
Press release	✓	✓	✓	✓	Yes	
Press conference	✓	✓	✓	✓	Yes	

## WORKSHEET 7 – AUTHORITY AND PROCEDURES

The following sections outline the authority and procedures for activating and implementing the pandemic COOP for \_\_\_\_\_.

### Tip

The court may already have this information as part of its overall emergency response plan. If so, attach it to *Worksheet 8—Orders of Succession*, and *Worksheet 9—Delegation of Authority*.

### LEADERSHIP SUCCESSION

During a pandemic, the following people are delegated to activate the Pandemic Continuity of Operations Plan in the order of succession shown in *Worksheet 8—Orders of Succession*.

### PLAN ACTIVATION

The [title] or his or her appointee or successor may (as listed in accordance with *Worksheet 8—Orders of Succession*) activate the Pandemic Continuity of Operations Plan when it is necessary to manage and coordinate a response. This decision will be made after consulting with key leaders, including [insert position titles].

Internal notification of plan activation will occur through the steps or processes outlined in *Worksheet 3—Information Dissemination Plan*.

[Insert additional protocols]

## CHAPTER 7: OPERATIONS & CASE MANAGEMENT

### I. MISSION CRITICAL AND ESSENTIAL COURT FUNCTIONS

The functions performed by Virginia's trial courts are divided into two categories for purposes of this Bench Book: Mission Critical Functions and Essential Functions. Mission Critical Functions (Category 1) are those that must remain operational when the court is open. Essential Functions (Category 2) are those functions that are next in priority to the Mission Critical Functions and that must be resumed once the court has regained the necessary capacity. Examples of functions for each category have been identified for each court and compiled in Appendix C. The functions enumerated in Appendix C are intended to be references and are not necessarily exhaustive lists.

When developing a plan for the continuity of operations in the event of a pandemic, each court must identify its Mission Critical (Category 1) and Essential (Category 2) Functions. *Worksheets 4—Prioritization of Category 1 Functions, and Worksheet 5—Pandemic Planning*, are designed to be used by each court to identify its Category 1 and 2 functions, respectively, and to prioritize the importance of each function within each category. In developing its function lists for *Worksheets 4 and 5*, a court may identify additional functions that are not listed in Appendix C. Such identified functions should be included in the court's completed Pandemic COOP. The administrative steps associated with each function (e.g., docketing, case management system entries, and financial management) should not be listed as separate Category 1 or 2 functions; instead, these supportive, administrative steps should be included in *Worksheet 6—Court Function Description Worksheet* when an analysis of each function is conducted.

*Worksheet 6* should be used by the court to list, for each mission critical and essential function identified, the positions, processes and systems, and forms, documents or supplies required to perform it. Each step required to perform the function, including all supportive, administrative steps should be detailed on *Worksheet 6*.

There are many services that, although performed by other entities, support and in many instances are necessary for the operation of the court. Entities providing such services include, but are not limited to, sheriffs' offices, jails and detention facilities, and intake and probation offices. Each court, for example, should coordinate with the sheriff's office, in advance, any necessary plans for the continuance of courthouse security in the event of a pandemic as security is critical for court operations. Similar discussions also are recommended with all other entities providing supportive services to the court to ensure that any necessary functions provided by these entities will be maintained during a pandemic. (*See Chapter 5—Pandemic Planning, at 5-3 through 5-4, and Chapter 9—Facilities, at 9-1.*)

## **II. JURY MANAGEMENT CONSIDERATIONS**

Although the capacity to conduct jury trials will likely be impacted during a pandemic, the constitutional rights to a speedy trial and an impartial jury will require courts to continue to perform this function. Two jury trial management issues for courts to consider in advance of a pandemic are: 1) how to address a reduction in the jury pool, and 2) how to limit juror exposure to contagion while serving. Potential strategies for addressing these issues and other considerations are set forth below.

The jury management issues identified, and the strategies and considerations listed, may also be applicable in determining the number of persons selected to serve annually as grand jurors pursuant to Va. Code § [19.2-194](#).

### **A. Addressing Reduction in the Jury Pool**

Courts should anticipate a reduction in the number of jurors reporting for jury duty in the event of a pandemic. This reduction will be the result of jurors who are ill, jurors who are caring for sick family members, jurors who are afraid of being exposed to contagion, and jurors living in a quarantined area of the jurisdiction. In order to address the reduced number of jurors reporting for service, courts should consider the following:

- Reduce the number of jury trials scheduled by postponing civil and other jury trials where there is not a speedy trial issue.
- Increase the number of jurors summoned to appear.
  - This increase must be balanced against the risk of calling more jurors than are realistically needed thereby unnecessarily exposing them to contagion.
- Clarify the policy for excusing jurors due to illness.
  - Consideration should be given to implementing a more lenient excusal policy for illness during a pandemic.
  - The policy should address how to handle requests for excusal from populations most vulnerable to the flu (e.g., the elderly and pregnant women) and for those caring for sick family members.
  - The policy should identify who has authority for excusing jurors, the criteria for excusal, and whether any documentation will be required.

### **B. Limiting Juror Exposure to Contagion**

During a pandemic event, the court should take steps, where practicable, to prevent the unnecessary exposure of jurors to contagion by limiting the opportunity for jurors to interact with large groups of people. In order to limit potential jurors

from being unnecessarily exposed to contagion, courts should consider the following:

- Avoid having jurors report if the court anticipates a civil settlement or guilty plea.
  - Consideration should be given to having the jurors report later than the scheduled trial time to allow the court to accept pleas or settlements or to continue cases in time to provide notice (posting outside courthouse and on phone recording) to jurors so they do not needlessly appear.
- Have jurors report for service on a staggered schedule.
- Provide hand sanitizer and personal protective equipment (masks and gloves) to jurors if the locality is willing to provide these.
- Consider impaneling extra alternates to prevent having to adjourn or declare a mistrial should a juror fall ill.
- Notify jurors to report directly to a courtroom as opposed to a jury assembly room.
- To the extent possible, avoid passing exhibits between jurors.

### **III. USE OF TECHNOLOGY**

In the event Virginia's Judicial System is affected by a pandemic, technology will play an increasingly important role in the continued functioning of the judicial system. The Code sections and Rules of Court providing authority for electronic filing and the use of electronic communication systems during a hearing are provided below.<sup>1</sup> A statewide list, by locality, of courts and offices that have videoconferencing capability is available on the court system's Intranet site (OESINET). Courts are encouraged to utilize both state and private teleconferencing facilities, as appropriate, in order to respond to the pandemic.

During a pandemic, the Department of Judicial Information Technology (DJIT) will extend computer help desk hours and staffing to provide expanded support to court employees. In order to meet equipment needs during an outbreak, DJIT will stock pre-configured laptops and other necessary equipment for immediate deployment to the affected courts.

#### **A. Statutes**

The statutes authorizing the use of technology are listed below by category: those that address filings and those that address hearings. Within each category, they are further separated by subject.

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<sup>1</sup> Table 7.1, containing these references, follows the text.

## 1. Filings

### a. *Electronic Filing Generally*

Article 4.1 of Chapter 2 of Title 17.1 Va. Code (§§ [17.1-258.2](#), [17.1-258.3](#), [17.1-258.3:1](#), [17.1-258.4](#) and [17.1-258.5](#)) provides for electronic filing in circuit courts.

- **Va. Code § [17.1-258.2](#). Definition.** This section provides a definition of “electronic filing of documents.”
- **Va. Code § [17.1-258.3](#). Electronic filing in civil or criminal actions.** This section authorizes a circuit court clerk to establish a system for electronic filing in civil or criminal actions. Such filings shall be governed by the Rules of the Supreme Court of Virginia.
- **Va. Code § [17.1-258.3:1](#). Electronic filing of land records.** This section authorizes a circuit court clerk to provide a network or system for electronic filing of land records and to charge a fee for each instrument recorded electronically.
- **Va. Code § [17.1-258.4](#). Signature; when effective as original.** This section provides that electronic signatures and electronic notarization satisfy statutory requirements for an original signature and notarization, respectively.
- **Va. Code § [17.1-258.5](#). Application.** This section provides that electronically recorded documents in compliance with this article and recorded on or after July 1, 2004 are presumed to be in proper form, except in cases of fraud.

### b. *Uniform Electronic Transactions Act (UETA)*

The UETA (Va. Code §§ [59.1-479](#) through [59.1-497](#)) is an act of general applicability and “applies to electronic records and electronic signatures relating to a transaction.” Va. Code § [59.1-481](#) (a). However, Va. Code § [59.1-496](#), as seen below, specifically exempts electronic filing in the courts of the Commonwealth from the applicability of the UETA, unless otherwise provided for in the Code.

- **Va. Code § [59.1-496](#). Acceptance and distribution of electronic records by public bodies; electronic filing of information permitted.** This section allows public bodies of the Commonwealth to “accept the electronic filing of any information required or permitted to be filed with such public body and . . . prescribe the methods of executing, recording,

reproducing, and certifying electronically filed information pursuant to subsection.” It also states that “[u]nless otherwise provided for in the Code of Virginia, electronic filing in the courts of this Commonwealth shall be governed by the Rules adopted by the Supreme Court of Virginia.”

*c. Communicable Disease*

- **Va. Code § [32.1-48.013:1](#). Electronic filings as protection from communicable disease.** “Notwithstanding Rule 1:17 of the Supreme Court of Virginia, a court in its discretion may permit the electronic or facsimile filing of a petition, notice, brief, notice of appeal, or other legal document when such filing is necessary to expedite the proceedings or to protect the public, court officials, or others participating in the proceedings from exposure to a communicable disease.”

*d. Emergency Protective Orders in Cases of Family Abuse and Stalking*

- **Va. Code § [16.1-253.4](#). Emergency protective orders authorized in certain cases; penalty.** In a case of family abuse, this section allows law enforcement to request an emergency protection order (EPO) or an extension of an EPO orally, in person or by electronic means, and allows the judge or magistrate to issue an oral emergency protective order.
- **Va. Code § [19.2-152.8](#). Emergency protective orders authorized.** This section allows law enforcement to request an EPO or an extension of an EPO orally, in person or by electronic means, and allows the judge or magistrate to issue an oral emergency protective order.

*e. Land Records*

- **Va. Code § [55-142.11](#). Validity of electronically filed and recorded land records.** An electronic land records document that satisfies the requirements of the Uniform Federal Lien Registration Act satisfies a law requiring, as a condition for recording, that a land record be an original, on paper or in writing. An electronic signature and electronic notarization satisfy requirements that a document be signed and notarized, respectively.
- **Va. Code § [55-142.12](#). Recording of electronic documents among the land records.** An eRecording System implemented by a circuit court clerk shall be in compliance with standards established by the Virginia Information Technologies Agency. A circuit court clerk may receive,

index, store, archive, and transmit electronic land records; provide for access to, and for search and retrieval of, land records by electronic means; convert paper records accepted for recording into electronic form; and collect any fee or tax electronically.

*f. Mental Health*

- **Va. Code § [16.1-345.1](#). Use of electronic communication.** “Petitions and orders for emergency custody, temporary detention, and involuntary commitment of minors may be filed, issued, served, or executed by electronic means, with or without the use of two-way electronic video and audio communication, and returned in the same manner with the same force, effect, and authority as an original document. All signatures thereon shall be treated as original signature.” “A judge may conduct proceedings pursuant to this article [Psychiatric Inpatient Treatment of Minors Act] using any two-way electronic video and audio communication system to provide for the appearance of any parties and witnesses.” A witness’ testimony may be received using a telephonic communication system.
- **Va. Code § [37.2-804.1](#). Use of electronic communication.** “Petitions and orders for emergency custody, temporary detention, and involuntary commitment of minors may be filed, issued, served, or executed by electronic means, with or without the use of two-way electronic video and audio communication, and returned in the same manner with the same force, effect, and authority as an original document. All signatures thereon shall be treated as original signatures.” “A judge or special justice may conduct proceedings pursuant to this chapter [Emergency Custody and Voluntary and Involuntary Civil Admissions] using any two-way electronic video and audio communication system to provide for the appearance of any parties and witnesses.” A witness’ testimony may be received using a telephonic communication system.
- **Va. Code § [37.2-913](#). Emergency custody of conditionally released respondents; revocation of conditional release.** This section allows “petitions and orders for emergency custody of conditionally released respondents to be filed, issued, served, or executed by electronic means, with or without the use of two-way electronic video and audio communication and returned in the same manner . . . . All signatures thereon shall be treated as original signatures.”

- **Va. Code § [37.2-1109](#). Use of electronic communication.** “Petitions and orders for emergency custody and temporary detention pursuant to Va. Code § [37.2-1103](#) or § [37.2-1104](#) may be filed, issued, served, or executed by electronic means, with or without the use of two-way electronic video and audio communication, and returned in the same manner with the same force, effect, and authority as an original document. All signatures thereon shall be treated as original signatures.” “A judge or special justice may conduct proceedings pursuant to this chapter [Judicial Authorization of Treatment] using any two-way electronic video and audio communication system to provide for the appearance of any parties and witnesses.” A witness’ testimony may be received using a telephonic communication system.

## 2. Hearings

### *a. Quarantine and Isolation*

- **Va. Code § [17.1-503](#). Rules of practice and procedure; rules not to preclude judges from hearing certain cases.** “In its rules of practice and procedure for the circuit courts, the Supreme Court shall include rules relating to court decisions on any order of quarantine or isolation issued by the State Health Commissioner . . . that shall ensure, to the extent possible, that such hearings are held in a manner that will protect the health and safety of individuals subject to any such order of quarantine or isolation, court personnel, counsels, witnesses, and the general public.”
- **Va. Code § [32.1-48.010](#). Appeal of any order of quarantine.** “The court shall conduct the hearing on an appeal of an order of isolation in a manner that will protect the health and safety of court personnel, counsels, witnesses, and the general public and in accordance with rules of the Supreme Court of Virginia pursuant to subsection C of § [17.1-503](#).”
- **Va. Code § [32.1-48.013](#). Appeal of any order of isolation.** “The court shall conduct the hearing on an appeal of an order of isolation in a manner that will protect the health and safety of court personnel, counsels, witnesses, and the general public and in accordance with rules of the Supreme Court of Virginia pursuant to subsection C of § [17.1-503](#).”

*b. Civil*

- **Va. Code § [16.1-93.1](#). Use of telephonic communication systems or electronic video and audio communication systems to conduct hearing.** This section allows a general district court to conduct any civil proceeding, in which a party or witness is incarcerated or when otherwise authorized by the court, using telephonic communication or electronic audio and video communication system to provide for the appearance of any parties and witnesses.
- **Va. Code § [16.1-276.3](#). Use of telephonic communication systems or electronic video and audio communication systems to conduct hearing.** This section allows a juvenile and domestic relations district court to conduct any civil proceeding, in which a party or witness is incarcerated or when otherwise authorized by the court, using telephonic communication or electronic audio and video communication system to provide for the appearance of any parties and witnesses.
- **Va. Code § [17.1-513.2](#). Use of telephonic communication systems or electronic video and audio communication systems to conduct hearing.** This section allows a circuit court to conduct any civil proceeding, in which a party or witness is incarcerated or when otherwise authorized by the court, using telephonic communication or electronic audio and video communication system to provide for the appearance of any parties and witnesses.
- **Va. Code § [20-88.59](#). Special rules of evidence and procedure.** This section provides that “[i]n a proceeding under this chapter, a tribunal of the Commonwealth shall permit a party or witness residing outside the Commonwealth to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location. A tribunal of the Commonwealth shall cooperate with other tribunals in designating an appropriate location for the deposition or testimony.”
- **Va. Code § [20-146.10](#). Taking testimony in another state.** “A court of this Commonwealth may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state.”
- **Va. Code § [63.2-1523](#). Use of videotaped statements of complaining witnesses as evidence.** “In any civil proceeding involving alleged abuse or neglect of a child pursuant to this chapter or pursuant to Va. Code §§ [16.1-241](#), [16.1-251](#), [16.1-252](#), [16.1-253](#), [16.1-283](#) or § [20-107.2](#), a

recording of a statement of the alleged victim of the offense, made prior to the proceeding, may be admissible as evidence” if certain requirements are met and certain determinations are made.

*c. Criminal*

- **Va. Code § [19.2-3.1](#). Personal appearance by two-way electronic video and audio communication; standards.** This section provides standards for and permits use of a two-way electronic video and audio communication system for appearances before a magistrate, intake officer or, prior to trial, before a judge to determine bail and appointment of counsel. Documents transmitted by facsimile or other electronic method will have the same force and effect as the originals.
- **Va. Code § [19.2-82](#). Procedure upon arrest without warrant.** As used in this section, the term "brought before a magistrate or other issuing authority having jurisdiction" shall include any two-way electronic video and audio communication meeting the requirements of Va. Code § [19.2-3.1](#). Any documents filed may be transmitted by facsimile.

*d. Detention*

- **Va. Code § [16.1-250](#). Procedure for detention hearing.** For a detention hearing, the appearance of the child, the attorney for the Commonwealth, the attorney for the child and the parent may be by two-way electronic video and audio communication. Any documents filed may be transmitted by facsimile.
- **Va. Code § [16.1-255](#). Limitation on issuance of detention orders for juveniles; appearance by juvenile.** This section provides that a child may appear before an intake officer using two-way electronic and audio communication. Any documents filed may be transmitted by facsimile.
- **Va. Code § [16.1-260](#). Intake; petition; investigation.** This section provides that a child may appear before an intake officer by means of two-way electronic video and audio communication. Any documents filed may be transmitted by facsimile, and may be served and returned with the same effect as an original.
- **Va. Code § [16.1-285.2](#). Release and review hearing for serious offender.** This section provides that a child may appear for a hearing using two-way electronic and video communication. Any documents filed may be transmitted by facsimile.

*e. Emergency Protective Orders*

- **Va. Code § [16.1-253.4](#). Emergency protective orders authorized in certain cases; penalty.** The section allows law enforcement to request an EPO or an extension of an EPO orally, in person or by electronic means, and allows the judge or magistrate to issue an oral emergency protective order.
- **Va. Code § [19.2-152.8](#). Emergency protective orders authorized.** The section allows law enforcement to request an EPO or an extension of an EPO orally, in person or by electronic means, and allows the judge or magistrate to issue an oral emergency protective order.

*f. Mental Health*

- **Va. Code § [16.1-342](#). Involuntary commitment; clinical evaluation.** “The evaluator, if not physically present at the hearing, shall be available whenever possible for questioning during the hearing through a two-way electronic video and audio or telephonic communication system.”
- **Va. Code § [16.1-344](#). Involuntary commitment; hearing.** Upon objection to the evaluator’s report, the evaluator shall attend the hearing in person or by electronic means. An employee or designee of the community services board who arranged for the evaluation shall participate in the hearing through a two-way electronic video and audio or telephonic communication system, if physical attendance is not practicable.
- **Va. Code § [16.1-345.1](#). Use of electronic communication.** “Petitions and orders for emergency custody, temporary detention, and involuntary commitment of minors may be filed, issued, served, or executed by electronic means, with or without the use of two-way electronic video and audio communication, and returned in the same manner with the same force, effect, and authority as an original document. All signatures thereon shall be treated as original signature.” “A judge may conduct proceedings pursuant to this article [Psychiatric Inpatient Treatment of Minors Act] using any two-way electronic video and audio communication system to provide for the appearance of any parties and witnesses.” A witness’ testimony may be received using a telephonic communication system.

- **Va. Code § [37.2-804.1](#). Use of electronic communication.** “Petitions and orders for emergency custody, temporary detention, and involuntary commitment of minors may be filed, issued, served, or executed by electronic means, with or without the use of two-way electronic video and audio communication, and returned in the same manner with the same force, effect, and authority as an original document. All signatures thereon shall be treated as original signatures.” “A judge or special justice may conduct proceedings pursuant to this chapter [Emergency Custody and Voluntary and Involuntary Civil Admissions] using any two-way electronic video and audio communication system to provide for the appearance of any parties and witnesses.” A witness’ testimony may be received using a telephonic communication system.
- **Va. Code § [37.2-808](#). Emergency custody; issuance and execution of order.** A magistrate may use two-way electronic video and audio or telephone communication system to confirm that the proposed alternative transportation provider is available, willing and able to provide transportation in a safe manner.
- **Va. Code § [37.2-809](#). Involuntary temporary detention; issuance and execution of order.** An employee or designee of the local community services board may conduct an evaluation of the person by means of a two-way electronic video and audio communications system.
- **Va. Code § [37.2-810](#). Transportation of person in the temporary detention process.** A magistrate may use two-way electronic video and audio or telephone communication system to confirm that the proposed alternative transportation provider is available, willing and able to provide transportation in a safe manner.
- **Va. Code § [37.2-815](#). Commitment hearing for involuntary admission; examination required.** The section allows the examination of the person by two-way electronic video and audio communication, if an in-person examination is not practicable. Upon objection to the examiner’s report, the examiner shall attend the hearing in person or by electronic means.
- **Va. Code § [37.2-817](#). Involuntary admission and mandatory outpatient treatment orders.** The section requires “[t]he examiner, if not physically present at the hearing, and the treating physician at the temporary detention facility to be available whenever possible for questioning during the hearing through a two-way electronic video and audio or telephonic communication system.” An employee or designee of the

community services board (CSB) representing the CSB that prepared the preadmission screening report shall participate in the hearing through a two-way electronic video and audio or telephonic communication system, if physical attendance is not practicable. The CSB may send the report and disposition through electronic means.

- **Va. Code § 37.2-829. Transportation of person in civil admission process.** “If the judge or special justice determines that transportation may be provided by an alternative transportation provider, the judge or special justice may consult with the proposed alternative transportation provider either in person or via two-way electronic video and audio or telephone communication system to determine whether the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner.”

## **B. Rules of the Supreme Court of Virginia**

- **Rule 1:7. Computation of Time.** One day is added to the prescribed time for a party to respond when a paper is served on him by electronic mail or facsimile.
- **Rule 1:12. Service of Papers after the Initial Process.** Facsimile and electronic mail, when consented to in writing signed by the person to be served, may be used to serve all pleadings, motions and other papers not required to be served otherwise, as well as requests for subpoenas duces tecum. “Service by electronic mail under this Rule is not effective if the party making service learns that the attempted service did not reach the person to be served.” “When service is made by electronic mail, a certificate of counsel that the document was served by electronic mail shall be served by mail or transmitted by facsimile to each counsel of record on or before the day of service.”
- **Rule 1:14. Preservation of the Record.** “A court may authorize the use of electronic or photographic means for the preservation of the record or parts thereof.”
- **Rule 1:17. Electronic Filing and Service.** This Rule provides the scope of electronic filing rules, definitions, requirements for an electronic filing system, and special rules applicable to all electronically filed cases.

- **[Rule 1:20](#). Scheduling Civil Cases for Trial.** “Counsel of record may agree to a trial date and may secure approval of the court by telephone call or other electronic communication to the designated court official.”
- **[Rule 3:24](#). Appeal of Orders of Quarantine or Isolation regarding Communicable Diseases of Public Health Threat.** In holding isolation or quarantine hearings, the circuit court shall take measures “to protect the health and safety of individuals subject to any such order or quarantine or isolation, court personnel, counsel, witnesses, and the general public . . . including, but not limited to, ordering the hearing to be held by telephone or video conference or ordering those present to take appropriate precautions, including wearing personal protective equipment.”
- **[Rule 5:26](#). General Requirements for All Briefs.** When filing in the Supreme Court of Virginia, “[a]n electronic copy of any brief and appendix shall also be filed with the clerk contemporaneous with the brief.” The electronic copy can be sent as a disc, CD, or by e-mail.
- **[Rule 5:41](#). Appeal of Orders Relating to Quarantine or Isolation of Persons.** The Supreme Court shall hold any oral argument “in a manner so as to protect the health and safety of individuals subject to any such order or quarantine or isolation, court personnel, counsel, and the general public. To this end, the Court may take measures including, but not limited to, ordering any oral argument to be held by telephone or video conference or ordering those present to take appropriate precautions, including wearing personal protective equipment. If necessary, the Court may dispense with oral argument.”
- **[Rule 5A:15A](#). Denial of Appeal; Petition for Rehearing Filed by Electronic Means.** “Except for demands for three-judge review filed by pro se prisoners or by those with leave of Court to proceed under Rule 5A:15(a), the demand shall be filed as a single Adobe Acrobat Portable Document Format (PDF) document attached to an e-mail . . . .”
- **[Rule 5A:33](#). Rehearing - On Motion of a Party, After Final Disposition of a Case.** Except for petitions for rehearing filed by pro se prisoners or by those with leave of Court, the petition shall be filed as a single PDF document attached to an e-mail . . . .”
- **[Rule 5A:34](#). Rehearing En Banc After Final Disposition of a Case.** Except for petitions for rehearing en banc filed by pro se prisoners or by those with leave of Court to proceed under Rule 5A:34, the petition shall be filed as a single PDF document attached to an e-mail . . . .”

- **Rule 7A:16. Isolation Proceedings under Article 3.01 of Title 32.1 of the Code of Virginia; Communicable Diseases of Public Health Significance.** In holding isolation hearings, the general district court shall take measures “to protect the health and safety of individuals subject to any such order or quarantine or isolation, court personnel, counsel, witnesses, and the general public . . . including, but not limited to, ordering the hearing to be held by telephone or video conference or ordering those present to take appropriate precautions, including wearing personal protective equipment.”

**Table 7.1: Use of Technology**

**Statutory Provisions**

**Filings**

1. Generally

<b>Va. Code Section</b>	<b>Caption</b>
<a href="#">17.1-258.2</a>	Definitions
<a href="#">17.1-258.3</a>	Electronic filing in civil or criminal actions
<a href="#">17.1-258.3:1</a>	Electronic filing of land records
<a href="#">17.1-258.4</a>	Signature; when effective as original; notarization; seal
<a href="#">17.1-258.5</a>	Application

2. Uniform Electronic Transactions Act (UETA)

<b>Va. Code Section</b>	<b>Caption</b>
<a href="#">59.1-496</a>	Acceptance and distribution of electronic records by public bodies; electronic filing of information permitted

3. Communicable Diseases

<b>Va. Code Section</b>	<b>Caption</b>
<a href="#">32.1-48.013:1</a>	Electronic filings as protection from communicable disease

4. Emergency Protective Orders

<b>Va. Code Section</b>	<b>Caption</b>
<a href="#">16.1-253.4</a>	Emergency protective orders authorized in certain cases; penalty
<a href="#">19.2-152.8</a>	Emergency protective orders authorized.

5. Land Records

<b>Va. Code Section</b>	<b>Caption</b>
<a href="#">55-142.11</a>	Validity of electronically filed and recorded land records
<a href="#">55-142.12</a>	Recording of electronic documents among the land records

6. Mental Health

<b>Va. Code Section</b>	<b>Caption</b>
<a href="#">16.1-345.1</a>	Use of electronic communication
<a href="#">37.2-804.1</a>	Use of electronic communication
<a href="#">37.2-913</a>	Emergency custody of conditionally released respondents; revocation of conditional release
<a href="#">37.2-1109</a>	Use of electronic communication

Table 7.1

## Hearings

### 1. Quarantine and Isolation

Va. Code Section	Caption
<a href="#">17.1-503</a>	Rules of practice and procedure; rules not to preclude judges from hearing certain cases
<a href="#">32.1-48.010</a>	Appeal of any order of quarantine
<a href="#">32.1-48.013</a>	Appeal of any order of isolation

### 2. Civil

Va. Code Section	Caption
<a href="#">16.1-93.1</a>	Use of telephonic communication systems or electronic video and audio communication systems to conduct hearing
<a href="#">16.1-276.3</a>	Use of telephonic communication systems or electronic video and audio communication systems to conduct hearing
<a href="#">17.1-513.2</a>	Use of telephonic communication systems or electronic video and audio communication systems to conduct hearing
<a href="#">20-88.59</a>	Special rules of evidence and procedure
<a href="#">20-146.10</a>	Taking testimony in another state
<a href="#">63.2-1523</a>	Use of videotaped statements of complaining witnesses as evidence

### 3. Criminal

Va. Code Section	Caption
<a href="#">19.2-3.1</a>	Personal appearance by two-way electronic video and audio communication; standards
<a href="#">19.2-82</a>	Procedure upon arrest without warrant

### 4. Detention

Va. Code Section	Caption
<a href="#">16.1-250</a>	Procedure for detention hearing
<a href="#">16.1-255</a>	Limitation on issuance of detention orders for juveniles; appearance by juvenile
<a href="#">16.1-260</a>	Intake; petition; investigation
<a href="#">16.1-285.2</a>	Release and review hearing for serious offender

### 5. Emergency Protective Orders (EPOs)

Va. Code Section	Caption
<a href="#">16.1-253.4</a>	Emergency protective orders authorized in certain cases; penalty
<a href="#">19.2-152.8</a>	Emergency protective orders authorized.

### 6. Mental Health

Va. Code Section	Caption
<a href="#">16.1-342</a>	Involuntary commitment; clinical evaluation
<a href="#">16.1-344</a>	Involuntary commitment; hearing
<a href="#">16.1-345.1</a>	Use of electronic communication
<a href="#">37.2-804.1</a>	Use of electronic communication
<a href="#">37.2-808</a>	Emergency custody; issuance and execution of order
<a href="#">37.2-809</a>	Involuntary temporary detention; issuance and execution of order.
<a href="#">37.2-810</a>	Transportation of person in the temporary detention process
<a href="#">37.2-815</a>	Commitment hearing for involuntary admission; examination required
<a href="#">37.2-817</a>	Involuntary admission and mandatory outpatient treatment orders
<a href="#">37.2-829</a>	Transportation of person in civil admission process

Table 7.1

## Rules of the Supreme Court of Virginia

<b>Rule</b>	<b>Caption</b>
<a href="#">Rule 1:7</a>	Computation of Time
<a href="#">Rule 1:12</a>	Service of Papers after the Initial Process
<a href="#">Rule 1:14</a>	Preservation of the Record
<a href="#">Rule 1:17</a>	Electronic Filing and Service
<a href="#">Rule 1:20</a>	Scheduling Civil Cases for Trial
<a href="#">Rule 3:24</a>	Appeal of Orders of Quarantine or Isolation regarding Communicable Diseases of Public Health Threat
<a href="#">Rule 5:26</a>	General Requirements for All Briefs
<a href="#">Rule 5:43</a>	Appeal of Orders Relating to Quarantine or Isolation of Persons
<a href="#">Rule 5A:15A</a>	Denial of Appeal; Petition for Rehearing Filed by Electronic Means
<a href="#">Rule 5A:33</a>	Rehearing - On Motion of a Party, After Final Disposition of a Case
<a href="#">Rule 5A:34</a>	Rehearing En Banc After Final Disposition of a Case
<a href="#">Rule 7A:16</a>	Isolation Proceedings under Article 3.01 of Title 32.1 of the Code of Virginia; Communicable Diseases of Public Health Significance

#### IV. FLEXIBILITY OF COURT OPERATIONS – CLOSURE AND RELOCATION

In the event of a pandemic, it may be necessary for a court to close or relocate its operations. The Code provisions authorizing closure and relocation are set forth below by court. The computation of time may become a critical issue in a case when a time limitation expires on a day a clerk's office has been closed. To address this, some of the closure provisions below reference Virginia Code § [1-210](#), which provides that if the last day for performing an act during the course of a judicial proceeding falls on a day the clerk's office is closed, the act may be performed on the next day the clerk's office is open.

In 2010, the General Assembly enacted Virginia Code § [17.1-330](#), which allows the Chief Justice of the Supreme Court of Virginia to declare a judicial emergency for one or more jurisdictions when a "disaster, as defined in [§ 44-146.16](#), substantially endangers or impedes the operation of a court, the ability of persons to avail themselves of the court, or the ability of litigants or others to have access to the court or to meet schedules or time deadlines imposed by court order, rule, or statute." A declaration of judicial emergency would, for a brief, defined period, toll filing and other time limits for the jurisdiction or jurisdictions for which the judicial emergency is declared, and could allow for court relocation outside the circuit or district. Details are found in this chapter at page 7-21. This new statute supplements other provisions relating to closure and relocation at the direction of the individual courts.

##### A. District Court

###### 1. Closure

###### a. Va. Code § [16.1-69.35\(5\)](#). Administrative duties of chief district judge.

- Subject to the Rules of Court, the chief judge shall determine when the court shall be open for the transaction of business.
- The chief judge or presiding judge may authorize the clerk's office to close on any date when he or she determines that the operation of the clerk's office would constitute a threat to the health or safety or the clerk's office personnel or the general public.
- The chief judge or presiding judge coordinates such action with the circuit court so that, where possible and appropriate, both the circuit and the district courts take the same action.
- Closing the clerk's office pursuant to this subsection has the same effect on the computation of time as provided in subsection B of § [1-210](#).

###### 2. Relocation

###### a. Va. Code § [16.1-69.35\(5\)](#). Administrative duties of chief district judge.

- The chief judge shall determine, "in the case of district courts in counties, [if] court shall be held at any place or places in addition to the county seat."

- Any matter may be removed from any one of the designated places where court may be held in order to serve the convenience of the parties or to expedite the administration of justice.

## B. Circuit Court

### 1. Closure

- Va. Code § [17.1-207 \(A\)\(3\)](#). Days of operation of clerks' offices.**
  - “The chief judge or presiding judge of any circuit court may authorize the clerk . . . to close the clerk's office on any day when [he or she] determines that operation of the clerk's office, under prevailing conditions, would constitute a threat to the health and safety of the clerk's office personnel or the general public.”
  - Closing the clerk's office pursuant to this subdivision has the same effect on the computation of time as provided in subsection B of § [1-210](#).

### 2. Relocation

- Va. Code § [17.1-113](#). Places of holding courts; certain orders and decrees entered elsewhere.**
  - Circuit court for any county or city shall be held at the courthouse of such county or city, except when another place is prescribed by law or lawfully appointed.
- Va. Code § [17.1-114](#). When and how changed.**
  - When the courthouse cannot or should not be occupied, the court may hold its session at such places within the geographical limits of the same judicial circuit as the court may direct by an order to its clerk.
  - The circuit court may hold court in another judicial circuit if all parties to the action agree.
- Va. Code § [17.1-115](#). How order or warrant making change posted.**
  - A copy of the order or warrant making the change shall be posted by the clerk on the door of the clerk's office, the courthouse, and the door of the place where court will be held.

## C. Court of Appeals

### 1. Closure and Relocation

a. **Va. Code § [17.1-402 \(A\)](#). Sessions; panes; quorum; presiding judges; hearings en banc.**

- The Court of Appeals sits at locations as the chief judge designates after consultation with the other judges.
- “The chief judge shall schedule sessions of the court as required to discharge expeditiously the business of the court.”

b. **Va. Code § [17.1-414 \(A\)](#). Facilities and supplies.**

- “The Court of Appeals shall be housed in the City of Richmond . . .” The chief judge shall provide for facilities in other parts of the Commonwealth as required for the convening of panels. The court may use any public property for holding court and for its ancillary functions.

## D. Supreme Court

### 1. Closure and Relocation

a. **Va. Code § [17.1-116](#). Change of place or time for holding session of Supreme Court.**

- In the event of the destruction, possession by a public enemy or infection with a contagious disease of any building in which Court is to be held, the Chief Justice may designate a place for Court to be held and, when the circumstances require it, the Chief Justice may postpone the time for holding court.
- In the event of the destruction of the building, the place designated to hold Court shall be within the same county, city, or town as the destroyed building.

b. **Va. Code § [17.1-203](#). Where clerk's offices to be kept.**

- “The clerk of the Supreme Court shall maintain a clerk’s office at Richmond, at such place as the Court shall direct.”

c. **Va. Code § [17.1-304 \(B\)](#). Terms and sessions, state of emergency.**

- In the event of a declared state of emergency, the Court may convene at such time, in such location, and for such purposes as the Court determines necessary for the efficient and effective administration of justice.

d. **Va. Code § [17.1-304 \(C\)](#). Terms and sessions, state of emergency.**

- When the Court convenes pursuant to subsection (B) of [§ 17.1-304](#), presence of the justices may be satisfied through the use of technology.

## E. Any court

### Va. Code [§ 17.1-330](#). Declaration of Judicial Emergency

1. Conditions required for declaration:
  - a. A judicial emergency may be declared “when a disaster, as defined in [§ 44-146.16](#), substantially endangers or impedes the operation of a court, the ability of persons to avail themselves of the court, or the ability of litigants or others to have access to the court or to meet schedules or time deadlines imposed by court order, rule, or statute.”
  - b. The definition of disaster contained in Va. Code [§ 44-146.16](#) includes a communicable disease of public health threat.
2. A judicial emergency may be declared by:
  - a. The Chief Justice of the Supreme Court declares a judicial emergency.
  - b. If the Chief Justice is unavailable, the justice longest in continuous service who is available may make the declaration.
3. A declaration of judicial emergency may be requested by:
  - a. For any court, the governor.
  - b. For the Supreme Court, the Chief Justice, sua sponte.
  - c. For the Court of Appeals, the chief judge.
  - d. For any circuit court, the chief judge of the circuit.
  - e. For any district court, the chief judge of the district.
  - f. The section provides for a successor who may request the declaration if the chief judge of the affected court is unavailable.
4. The declaration of judicial emergency must specify:
  - a. The court or courts and facilities affected.
  - b. The nature of the disaster.
  - c. The duration of the emergency.
  - d. Any other relevant information, including the extension of deadlines.

5. Additional provisions:

- a. The declaration may designate a neighboring city or county for the temporary relocation of the affected circuit or district court, even outside the boundaries of the circuit or district. The new location shall be proper venue for civil and criminal trials, and under certain circumstances a circuit court may summon jurors from the jurisdiction to which the court has been relocated.
- b. The declaration may suspend, toll, extend, or otherwise grant relief from deadlines, time schedules, or filing requirements, including appellate time limitations.
- c. The original declaration shall not exceed 21 days, but may be extended for additional 21-day periods by a majority of justices of the Supreme Court. In the event of a communicable disease of public health threat, the extension by a majority of justices may be for the duration of the threat.
- d. Notice provisions are contained in Va. Code § [17.1-331](#).

**WORKSHEET 4 – PRIORITIZATION OF CATEGORY 1 FUNCTIONS  
(MISSION CRITICAL)**

Category 1 (Mission Critical) functions are those functions that must remain operational when the court is open. In the table below, prioritize the Category 1 functions.

See Appendix C for examples of Category 1 functions.

<b>Priority</b>	<b>Mission Critical Function</b>	<b>Time Limitation (if applicable)</b>
<b>1</b>		
<b>2</b>		
<b>3</b>		
<b>4</b>		
<b>5</b>		
<b>6</b>		
<b>7</b>		
<b>8</b>		
<b>9</b>		
<b>10</b>		
<b>11</b>		
<b>12</b>		
<b>13</b>		

**WORKSHEET 5 – PRIORITIZATION OF CATEGORY 2 FUNCTIONS  
(ESSENTIAL)**

Category 2 (Essential) functions are those functions next in priority to the Category 1 (Mission Critical) functions. Category 2 functions are those services that must be resumed as soon as the court has regained the necessary capacity. In the table below, prioritize the Category 2 functions.

See Appendix C for examples of Category 2 functions.

<b>Priority</b>	<b>Essential Function</b>	<b>Time Limitation (if applicable)</b>
<b>1</b>		
<b>2</b>		
<b>3</b>		
<b>4</b>		
<b>5</b>		
<b>6</b>		
<b>7</b>		
<b>8</b>		
<b>9</b>		
<b>10</b>		
<b>11</b>		
<b>12</b>		



**WORKSHEET 6A – SAMPLE COURT FUNCTION DESCRIPTION WORKSHEET**

Please complete one worksheet for each Category 1 and each Category 2 function identified. This worksheet is to be used to list the pertinent information and describe in detail the steps required to continue operations for each essential function identified.

Category 1 (Mission Critical)

Category 2 (Essential)

**FUNCTION:** Conduct bond hearings for incarcerated defendants.

**AUTHORITY (Applicable Statute/Rule):** Va. Code § 19.2-158 and 19.2-254

Positions Required	Process/Systems Required
Judge	
Commonwealth Attorney	
Defense Attorney (retained or appointed)	
Clerk/Deputy Clerk	CMS, FMS, Visual basic forms program
Bailiff	
Forms, Documents and/or Supplies Required	
Computer with CMS, FMS and visual basic forms program access.	
Charging warrant(s), pretrial report if available and criminal record for defendant.	
Steps for Continuation of Court Function	
1) Notify all parties of date and time of scheduled bond hearing.	
2) Power up equipment and dial jail for video communication; or transport defendant to courtroom.	
3) Conduct hearing.	
4) Prepare continuance order for jail; update CMS regarding court's decision.	
5) Schedule case for next hearing date and summons all witnesses.	
6) If bond is posted, receive bond paperwork from the jail or magistrate. Update CMS with bond information and attached paperwork to case papers.	
7) If bond posted is cash, check or money order, receipt the bond payment in FMS.	

## CHAPTER 8: STAFFING, HUMAN RESOURCES, AND EMPLOYMENT LAW

### I. INTRODUCTION

Courts are expected to continue to keep facilities and operations open and operating as close to normal as possible during a pandemic, utilizing employee and customer protection measures. Healthy employees are expected to continue to attend work and perform their usual or assigned duties, adjust to work schedules and other assigned locations, except if teleworking [if such has been authorized during a pandemic].

Each court is responsible for designing, updating, and carrying out comprehensive plans to anticipate, plan for, and respond to the threats that its employees are most likely to face. These plans interact with and have an impact on human resources management. Judges, court administrators, and managers should be familiar with the many personnel resources and flexibilities that exist to assist managers and employees in an emergency. Courts should confer with OES or local administrations and human resources department(s), as appropriate, to determine:

#### A. Delegations of Authority

Plan for delegations of authority and responsibility for key leadership positions and all department heads and above that are at least three people deep for each essential emergency responsibility (or function) to take into account the expected rate of absenteeism. Delegations of authority should specify who is authorized to act on behalf of court officials when the pandemic plan is in effect. *(See Worksheet 7—Authority and Procedure)*

#### B. Orders of Succession

Prepare a plan for orders of succession in accordance with applicable statutes and rules. An order of succession promotes continuity by identifying, by position, the individuals authorized to act for court officials in case those officials are unavailable. These plans must include provisions for judges and elected officials, as well as managers, and plan for delegation of authority to other individuals to account for what will likely be excessive absenteeism. There should be a three-deep delegation of authority for each responsibility, if possible, depending on the number of staff. *(See Worksheet 8—Orders of Succession, and Worksheet 9—Delegation of Authority)*

The statement of authority designating successors should, if practicable, be by title not by any individual's name, including the rules and procedures for succession and the procedures for notification and implementation. [For example, the

delegation should designate a successor for a “Deputy Clerk” not for Employee Smith.] Where two or more individuals have the same title, the designation may need to be by name.

This designated authority should be exercised only when the successor is reasonably certain that no higher authority in the order of succession is available and the nature of the situation requires immediate action. Individuals acting as successors will be relieved of their authority when a higher authority becomes available or when an official with the requisite authority designates a permanent or acting head.

### **C. Authority Limitations**

The court should prepare a statement carefully detailing when the authority becomes effective, when it terminates, and limitations, if any, including the ability to redelegate. *(See Worksheet 7—Authority and Procedure and, Worksheet 8—Orders of Succession)*

### **D. Cross-Training**

Cross-training of all employees will be crucial in a period of high employee absence caused by a pandemic. Cross-training should occur before the need arises, and should be refreshed periodically to establish that staff are aware of current requirements for each job function. *(See Worksheet 10—Essential Job Functions)*

### **E. Compensation/Pay Policies:**

Courts have the authority and responsibility to establish work schedules for their employees within general legal and policy guidelines and the federal Fair Labor Standards Act (FLSA). The work schedule for most employees is determined in advance, and temporary periods of extended work hours in emergency situations are usually quite different than the employees’ regularly scheduled administrative workweek. Courts must plan to schedule or reschedule an employee’s regularly scheduled administrative workweek so that it corresponds with the employee’s actual work requirements for specific days and hours during a pandemic. Courts will need to review human resources and other appropriate policies for compensation and issues such as:

- Overtime;
- Shift differential;

- Special duty assignments resulting in employee working out-of-classification; and
- Budget considerations.

## **F. Flexible Staffing**

Courts may utilize a variety of flexible staffing techniques to fill emergency or special staffing needs by reviewing human resources and other appropriate policies and considering new policies.

These may include:

1. Adopting multiple shifts, such as:
  - Typical three shifts, with day, evening and midnight shifts.
  - Two shifts of 12 hours on and 12 hours off.
2. Sequestering critical skilled employees in remote locations or existing facilities.
3. Consolidating court staff from different facilities.
4. Hiring new, part-time, and contract employees if funds permit.
5. Canceling vacation when staff shortages occur, to the extent allowed by law.  
(*See Worksheet 11—Alternate Work Schedules*)

## **G. Telework Policy**

If authorized during a pandemic, courts should explore all opportunities to allow eligible employees to work at alternative worksites (home) when it is consistent with the mission of the court or its departments and is supportable by the budget and available technology. Telework promotes flexibility for managers and employees to complement the Pandemic COOP.

Computers used at these alternative work sites must be provided, or pre-approved for use, by OES. These computers must be configured, tested, and ready prior to a pandemic. Critical employees should work from these alternative work sites for a few hours each quarter to verify access to critical applications and to minimize training needs during an outbreak.

## **H. Employee Assistance Program**

Judicial Branch employees are eligible for an Employee Assistance Program through OES, as well as leave sharing. Many county and municipal governments administer a variety of similar programs, which may be applicable to circuit court employees. Courts should review appropriate policies when developing guidance for employee assistance during emergency situations such as a pandemic.

## I. Scenarios

The hypothetical scenarios set forth below are intended to help facilitate a judge or court administrator's resolution of human resources issues during a pandemic. The options presented do not constitute legal advice and may become outdated. Please consult the Centers for Disease Control and Prevention as well as the Virginia Department of Health and local health departments for the most current information.

Please consider the following hypothetical scenarios that may occur during a pandemic. The scenarios apply generally to pandemic illnesses and not to a specific pandemic, although the H1N1 virus or swine flu is referred to in the hypothetical scenarios.

1. The clerk suspects that the deputy clerk may be suffering from swine flu because the deputy clerk has the typical symptoms of swine flu.

Option: Require the deputy clerk to go home to avoid spreading the virus among other staff. If the symptoms are not severe, the clerk may permit the deputy clerk to work from home using an OES-provided computer pursuant to the teleworking policy and policy POL300 "Acceptable Use of Information Technology Resources." The clerk should permit use of sick leave and should seek advice and guidance from the Supreme Court Human Resources Department.

2. The deputy clerk insists on returning to work although her or his symptoms still persist.

Option: The clerk may require that the deputy clerk not return to work without medical clearance until he or she has been symptom-free for twenty-four hours. The clerk should advise the Supreme Court Human Resources Department.

3. The deputy clerk requests leave to care for a sick child who is experiencing flu-like symptoms. The staff is short-handed, and the clerk does not want to excuse the deputy clerk to care for the child.

Option: The Family Medical Leave Act (FMLA) requires job protection for up to 12 weeks' leave to take care of a family member suffering from a serious health problem (defined as requiring three consecutive days of treatment). Follow the Judicial System's human resources policy and consult the Supreme Court Human Resources Department for advice. Please note that the FMLA does not require that the employee be paid for his or her leave. Employees may ultimately need to take leave without pay once they have exhausted paid leave benefits.

4. A magistrate who is not ill and who does not need to care for a family member refuses to work during the period in which a pandemic emergency has been declared.

Option: Absent a declaration from the Governor or approval from the Executive Secretary, a magistrate may be compelled to work as necessary.

## **II. FLEXIBILITY OF COURT OPERATIONS – JUDICIAL ABSENCE**

One concern in the advent of a pandemic emergency is that judges may be unavailable to hear their dockets because of illness. The Code provides some flexibility for assistance to courts, including the use of substitute and retired judges. Relevant Code provisions are summarized in Table 8.1.

**Table 8.1: Assistance for Judges – Current Provisions**

**District Courts (General District=GDC; Juvenile & Domestic Relations=JDR)**

Reason assistance is needed	Assistance by	Authorized by	Code Section	Special considerations	Notes
Judge sick or unable to hold court for any reason	Active district court judge in same or other district	Chief district court judge	Va. Code § <a href="#">16.1-69.35(1)(a)</a>	If available	
Same	Retired district court judge	Chief district court judge	Va. Code § <a href="#">16.1-69.35(1)(b)</a>	With judge's consent, if unable to find active judge	
Same	Retired circuit court judge or Circuit court judge	Chief district court judge or Chief Justice	Va. Code § <a href="#">16.1-69.35(1)(c)</a>	With judge's consent, if unable to find active or retired district court judge	
Same	Substitute Judge	Chief district court judge	Va. Code § <a href="#">16.1-69.35(1)(c)</a>	If unable to find active or retired judge as above	Substitute judges appointed by circuit courts; number of substitute judges limited by Committee on District Courts. Va. Code §§ <a href="#">16.1-69.9:1</a> and <a href="#">16.1-69.14</a> .
Congestion in work/administration of justice requires	Active or retired district court or circuit court judge	Chief Justice	Va. Code § <a href="#">16.1-69.35(3)</a>	On request from chief district court judge or on initiative of Chief Justice	
For expeditious disposition of court's business	Retired district court judge	Chief Justice	Va. Code § <a href="#">16.1-69.22:1</a>	Designation to assist court for period of time up to 90 days	Retired judges under 70 obligated to accept recall
No stated requirement	Active district court judge in same district/other court type	Chief district court judge	Va. Code § <a href="#">16.1-69.35(2)</a>	Cross-designation between GDC and JDR	With designated judge's permission

**Circuit Courts**

Reason assistance is needed	Assistance by	Authorized by	Code Section	Special considerations	Notes
Judge sick or unable to hold court for any reason	Active or retired judge of any court of record	Requested & designated by disabled judge or other judge in circuit	Va. Code § <a href="#">17.1-105(A)</a>	For whole or part of time until judge is able to return	
Congestion in work of court or administration of justice requires	Active or retired judge of any court of record	Chief Justice	Va. Code § <a href="#">17.1-105(D)</a>	Designated to assist a judge, not the court	
Expeditious disposition of court's business	Retired justice or judge of court of record	Chief Justice	Va. Code § <a href="#">17.1-106(A)</a>	Designation for a particular case or to assist court for period of time up to 90 days	Retired judges under 70 obligated to accept recall
Judge rejects plea agreement or is otherwise disqualified in a criminal case.	Active or retired judge of any court of record	Chief Justice	Va. Code § <a href="#">19.2-153.</a>	Appointed to conduct the case.	

**Court of Appeals of Virginia (CAV)**

Reason assistance is needed	Assistance by	Authorized by	Code Section	Special considerations	Notes
Judge sick or unable to hold court for any reason	Retired justice or judge of appellate or circuit court	Chief Judge, CAV	Va. Code § <a href="#">17.1-400(C)</a>	At request of disabled judge or on Chief Judge's initiative	With designated judge's permission
Congestion in work of court	Retired justice or judge of appellate court; active or retired circuit court judge	Chief Judge, CAV	Va. Code § <a href="#">17.1-400(D)</a>	On initiative of Chief Judge	
Any	Senior Judge, retired from CAV	Chief Judge, CAV	Va. Code § <a href="#">17.1-401</a>	Request of retired judge, with consent of majority of members of Court	One-year term; may be renewed. Limited to 5 senior judges at any time.

**Supreme Court of Virginia (SCV)**

Reason assistance is needed	Assistance by	Authorized by	Code Section	Special considerations	Notes
Any	Senior Justice, retired from SCV	Chief Justice	Va. Code § <a href="#">17.1-302</a>	Request of retired justice, with consent of majority of members of Court	One-year term; may be renewed. Limited to 5 senior justices at any time.

### **III. LEAVE POLICY**

At the recommendation of the Pandemic Flu Preparedness Commission, the Supreme Court of Virginia has adopted a pandemic leave policy. This policy is applicable to state employees in the judicial branch otherwise covered by the Human Resources Policy Manual of the Office of the Executive Secretary of the Supreme Court of Virginia. The full text of the policy is contained in Appendix D—Leave Policy.

In order to minimize disruption resulting from a pandemic, the Commission strongly recommends this policy to circuit courts as an option in developing their local policies in coordination with local human resources departments.

### **IV. PRIVACY CONCERNS RELATING TO EMPLOYEE HEALTH RECORDS**

While there are state and federal laws protecting employees' privacy with respect to their health and medical treatment records, the employer has a legal obligation to create and maintain a safe environment for its workforce. For the courts, this obligation has special significance because of the constant interaction of court staff and judges with the public.

The need for the courts to obtain medical information about employees, whether it comes from concerns about a contagious disease or from other work related concerns (such as substantiating the need for leave under the Family and Medical Leave Act), is not a recent development. All employers, including the courts, from time to time have a need to know certain health related facts about their employees. What is important is to take the appropriate safeguards to ensure that information is not misused or shared with those who do not have "a need to know." Employers may avoid any embarrassment or violations of law by using common sense in both identifying when such information is needed and how to secure and use it.

The following summary is not intended to provide legal advice but is intended merely to reflect current guidance and practice. As this area of law changes rapidly, please consult with OES staff if confronted with any of these matters.

#### **A. Privacy of Personal Health Records**

The main source of privacy laws with respect to an individual's health records is the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (scattered in various places of Title 42 of the U.S. Code), and its state counterpart, the Virginia Health Records Privacy Act of 1997 (The Virginia Act) (Va. Code § [32.1-127.1:03](#)). These laws are generally not directly applicable to employers who do not administer a health plan or provide medical services (such as the court system). "Covered entities" under HIPAA are health care providers, insurance plans, etc.

Similarly, under the Virginia Act, the courts do not fit the definition of covered health care providers or health care entities.

What is covered under the Virginia Act is the unauthorized re-disclosure of personal health records to others “beyond the purpose for which such disclosure was made.” (Va. Code § [32.1-127.1:03](#)). Accordingly, it is essential that any health or medical treatment records for individual employees be kept securely, separate from other personnel records.

There are other laws designed to protect the privacy of individuals’ records (medical and otherwise). The Government Data Collection and Dissemination Practices Act, Va. Code § [2.2-3800](#), places restrictions upon the collection and dissemination of “personal information,” which is broadly defined to include any information that “describes, locates, or indexes” anything about an individual. This law should not be of concern to the courts, however, as it does not apply to personal information systems “[m]aintained by any court of the Commonwealth.” Va. Code § [2.2-3802](#). Moreover, the Act also excludes “routine information maintained for the purpose of internal office administration whose use could not be such as to affect adversely any data subject.” Va. Code § [2.2-3801](#).

Health records are excluded from mandatory disclosure under the Virginia Freedom of Information Act, except that the subject of such records has the right to review them (subject to limited exceptions). Va. Code § [2.2-3705.5](#). The courts should not provide any health records of employees to third parties based solely upon a FOIA request.

The Americans with Disabilities Act (ADA), 42 U.S.C. § 12111, its state counterpart, the Virginians with Disabilities Act, Va. Code § [51.5-1](#), and the Family Medical Leave Act (FMLA), 29 U.S.C. § 2601, require that any medical information maintained by employers be kept separate from other personnel records, again to insure that those without a “need to know” do not have access to them.

## **B. What Can the Courts Ask or Demand of Employees?**

Of all the laws that relate to the privacy of employees’ medical or health information, the ADA is probably the most relevant. Under the ADA, an employer may not ask “disability related” questions of applicants or employees unless the questions are job-related and are consistent with business necessity, even if the applicant or employee is not disabled. If the employer in good faith believes that the employee’s health or disability poses a direct threat to his or her safety or that of other employees, relevant questioning is appropriate. Where there is a legitimate concern about a communicable disease and an employee is showing symptoms of

that disease, it would probably be appropriate to question the employee to determine whether a threat exists.

The [United States Equal Employment Opportunity Commission](#) has guidance about permissible questioning under the ADA. Also helpful is the website "[Flu.gov](#)" which addresses the scope of permissible questioning in the workplace in the event of a pandemic.

The Supreme Court of Virginia recognized that an employer has an affirmative obligation to protect its workforce from direct threats to employees' health and safety. In *Virginia Department of Taxation v. Daughtry*, 250 Va. 542, 463 S.E.2d 847 (1995), the Court ruled that a state agency had the authority to require an employee who had made threats of violence to a supervisor to undergo a mental examination and produce a psychiatric clearance as a condition to returning to work. Moreover, the Court approved the agency's transferring the employee to a location in another city upon her return. In this case, the employee's right to privacy was found to be subordinate to the employer's right to counter threats to others posed by her apparent mental instability.

### **C. Suggestions**

While the laws applicable to employees' rights to privacy with respect to their health records can be confusing and technical, there are some appropriate steps that the courts can take to address the threat of a pandemic while appropriately safeguarding their employees' right to privacy. Managers should:

- Understand that they can use health-related information on file for their employees or from observation of their employees to reduce the threat of a pandemic.
- When alerted to the fact that an employee has been diagnosed with H1N1, take action to require the employee to stay out of work until the threat of contagion has passed.
- Ensure that information that an employee has been diagnosed with H1N1 flu is conveyed to supervisors. Additionally, managers should inform those who share close quarters with the affected employee that he or she may have been exposed to H1N1 flu virus (without identifying the affected employee by name). Nevertheless, the information should not be spread around the workplace generally without direction from appropriate outside agencies or officials.

- Understand that all health information maintained by the courts on its employees must be safeguarded and kept separate from other personnel records.
- Establish a working relationship with the local health department so that when there is an outbreak of any communicable disease, there is a clear line of communication for guidance from health officials. Pursuant to Va. Code § [32.1-36](#), the Commissioner of the Department of Health has the authority to disclose the identity and disease of a patient to the employer so appropriate action can be taken to prevent the spread of disease.

## WORKSHEET 7 – AUTHORITY AND PROCEDURES

The following sections outline the authority and procedures for activating and implementing the pandemic COOP for \_\_\_\_\_.

**Tip**

The court may already have this information as part of its overall emergency response plan. If so, attach it to *Worksheet 8—Orders of Succession*, and *Worksheet 9—Delegation of Authority*.

**LEADERSHIP SUCCESSION**

During a pandemic, the following people are delegated to activate the Pandemic Continuity of Operations Plan in the order of succession shown in *Worksheet 8—Orders of Succession*.

**PLAN ACTIVATION**

The [title] or his or her appointee or successor may (as listed in accordance with *Worksheet 8—Orders of Succession*) activate the Pandemic Continuity of Operations Plan when it is necessary to manage and coordinate a response. This decision will be made after consulting with key leaders, including [insert position titles].

Internal notification of plan activation will occur through the steps or processes outlined in *Worksheet 3—Information Dissemination Plan*.

[Insert additional protocols]

**WORKSHEET 8 – ORDERS OF SUCCESSION**

Orders of succession are essential to a court’s COOP to ensure personnel know who has the authority and responsibility should leadership become incapacitated or unavailable upon COOP activation.

Orders of succession for the court should:

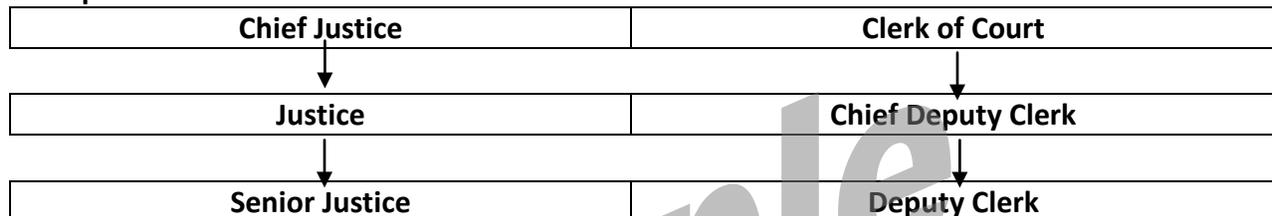
- Describe the order of succession by position or title, rather than by named individuals.
- Provide sufficient depth (at least 3 deep) to protect the court’s ability to perform mission-essential operations to take into account the expected rate of absenteeism.
- Consider personnel outside the immediate area if possible.
- Include the conditions under which succession will take place, method of notification, and any temporal, geographical or organizational limitations.
- Provide that if a designated individual is unavailable, authority will pass to the next individual on the list.

An individual is “unavailable” if he or she is:

- Incapable of carrying out the assigned duties by reason of death, disability, or distance from response time to the facility
- Unable to be contacted within 30 minutes, or
- Already assigned to other emergency activities.

The designated individual retains all assigned obligations, duties, and responsibilities until officially relieved by an individual higher on the list.

**Example:**



Key Position (Position Title)	Successor 1	Successor 2	Successor 3
<i>Clerk of Court</i>	<i>Chief Deputy Clerk</i>	<i>Deputy Clerk</i>	<i>Division Supervisor</i>



**WORKSHEET 9 – DELEGATION OF AUTHORITY**

Clearly pre-established delegations of authority are vital to ensuring that all court personnel know who has the authority for making policy determinations and decisions in a pandemic COOP situation.

Delegations of authority for the court should:

- Identify what is needed for effective operations, including programs and any administrative authority
- Identify the circumstances warranting an exercise of that authority
- State the designated successors by title, not by name
- State when the authority becomes effective and when it terminates

The designated individual retains all assigned obligations, duties, and responsibilities until officially relieved by an individual higher on the list.

<b>Position</b>	<b>Authority</b>	<b>Triggering Conditions</b>	<b>Limitations</b>
<i>Clerk of Court</i>	<i>Statute (e.g., §16.1-69.39 and §16.1-69.40)</i>		
<i>Chief Deputy Clerk</i>	<i>Emergency Declaration</i>	<i>Clerk of Court unavailable</i>	<i>Must consult with and have approval by Chief Judge or successor for any decisions except staff assignments.</i>
<i>Deputy Clerk</i>	<i>Emergency Declaration</i>	<i>Chief Deputy Clerk unavailable</i>	<i>Must consult with and have approval by Chief Judge or successor for any decisions except staff assignments.</i>
<i>Division Supervisor</i>	<i>Emergency Declaration</i>	<i>Deputy Clerk unavailable</i>	<i>Must consult with and have approval by Chief Judge or successor for any decisions except staff assignments.</i>









**WORKSHEET 11 — ALTERNATE WORK SCHEDULES**

In addition to staff working from alternate locations, consider assigning staff to alternate work shifts to support social distancing. In work areas where staff is confined to a small space, such as cubicles, consider assigning half of the staff to work from 6:00 a.m. – 2:30 p.m. and the other half of the staff to work from 2:30 p.m. – 11:00p.m.

\*\* Bear in mind that the OES help desk may not be open for that entire time frame, and employees may need to adjust performance of their tasks accordingly. Courts should check with OES for changes to help desk hours.

Identify functions that are performed by staff working in close proximity to each other.

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_

Identify work shifts that are suitable for the department.

Shift A: \_\_\_\_\_

Shift B: \_\_\_\_\_

Function and Department	Position and Name of Staff	Shift A or B

## CHAPTER 9: FACILITIES, SECURITY, AND PLACEMENT OF JUVENILES AND DETAINEES

### I. COURTHOUSE SECURITY

Sheriffs are charged with maintaining courthouse and courtroom security and assigning deputies for this purpose. Va. Code § [53.1-120](#)(A). Chief judges of the district and circuit courts are responsible “by agreement with the sheriff of the jurisdiction for the designation of courtroom security deputies for their respective courts.” Va. Code § [53.1-120](#)(B).

It is important to work with the local sheriff, in advance of an emergency, to develop a plan for how to maintain courthouse security during a pandemic event. Sheriffs’ offices are as likely as other entities to experience staffing shortages resulting from a pandemic.

- Courts should plan in advance with the sheriff for how shortages in the sheriff’s staff caused by a pandemic event should be handled in order to assure that adequate courthouse security is provided at all times when the courts are open.
- In the event of staff shortages in the sheriff’s office, the courts may need to limit the number of cases they hear during staff shortage periods.

Possible responses may include:

- Limiting the number of courtrooms open and operating simultaneously.

#### **Tip**

To accomplish this goal, the court may consider staggering and coordinating its dockets with those of the other courts in the locality.

- Prioritizing cases in order to limit the number of cases to be heard. (*See Chapter 7, Operations, at 7-1 through 7-2*)
- Segmenting dockets to limit the number of people in the courtroom at any one time.
- Conducting hearings, as appropriate, by electronic means (*See Chapter 7, Operations, at 7-7 through 7-12*)

## II. DISEASE AND INFECTION CONTROL WITHIN THE COURTHOUSE

To limit exposure to contagion within the courthouse, social distancing<sup>1</sup> and environmental infection control measures are recommended as two primary means of control. Courts should coordinate in advance with the sheriff and locality to implement appropriate measures. (*See Worksheet 12—Workforce Protections*). During a pandemic, courts should also check with their local health departments regularly to ensure that they are making decisions based on the most current information.

### A. Social Distancing

Below are alternatives that courts may consider to achieve social distancing.

- Limiting the number of people present in the courthouse at any given time. Possible methods may include:
  - Prioritizing cases, segmenting the dockets, staggering dockets in the various courts in jurisdictions in which more than one court may be running, etc.
  - Encouraging the use of alternative dispute resolution processes.
  - Changing jury procedures to avoid having jurors report if the court anticipates a civil settlement or guilty plea. (*See Chapter 7, Operations, at 7-2 through 7-3*)
  - Conducting by video arraignments and other proceedings in which the physical presence of the parties and witnesses is not required in the courtroom. (*See Chapter 7, Operations, at 7-7 through 7-12*)
  - Establishing protocols to evaluate people entering the courthouse in order to identify those who appear to be sick and exploring alternative ways to provide access to services. The sheriff should undertake such evaluation with guidance from and in collaboration with the judge and local health officials.
- Working with the locality to modify the physical plant to accommodate social distancing (i.e., installing glass panels at public counter in clerk's office, installing drop boxes for pleadings, etc.).
- Identifying other means of maintaining distance between people within the courthouse.

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<sup>1</sup> Social distancing is an infection/disease control strategy that includes methods of reducing the frequency and closeness of contact between people to limit the spread of infectious diseases.

- Using personal protective equipment (PPE), such as masks and gloves.
  - By staff:

Staff may wish to wear respirators or masks for their own protection. Courts should determine when employees will be allowed to wear masks they provide; if and when the courts will make masks or respirators available to employees wishing to use them; and when, if at all, the courts will require such use. The courts should consult information from the Centers for Disease Control and health departments, both local and state, to determine if and when such steps should be taken as use of these devices when not justified would be wasteful and could cause panic.
  - By others:

If necessary to promote the safe use of the courthouse, the Chief Judge of the jurisdiction or his or her designee may prescribe a rule giving the sheriff authority to require use of masks and other equipment by the public, by prisoners, by sheriff's employees and by court personnel when illness of a person is suspected. Va. Code § [8.01-4](#).

That Code section provides, in pertinent part, that “district courts and circuit courts may, from time to time, prescribe rules for their respective districts and circuits. Such rules shall be limited to those rules necessary to promote proper order and decorum and the efficient and safe use of courthouse facilities and clerks' offices. No rule of any such court shall be prescribed or enforced which is inconsistent with this statute or any other statutory provision, or the Rules of Supreme Court or contrary to the decided cases, or which has the effect of abridging substantive rights of persons before such court.” Courts should note the requirements of this section in making any rule there under.

**Tip**

The sheriff or designee and the Chief Judge or designee should develop a policy in advance for when masks and other equipment will be required and how the policy will be enforced.

- Developing policies, in consultation with the sheriff's office, for vendors and delivery people regarding who will have access to the courthouse, and what that access will be. For example, a supplier may have access by a rear door only and have contact with only one staff person, whereas a

repairman may need access to the equipment in the clerk's office and thus will be working in close proximity to staff.

- Determine who will enforce the limitations and/or restrictions to access for each group identified.
- Identifying suspicious behavior or signals that someone may purposely be trying to infect others.

## **B. Facility Maintenance**

To protect those in the courthouse from disease and environmental hazards, the court should plan with the sheriff's office and locality or cleaning contractor to ensure that adequate measures are taken to clean the building.

Possible measures may include:

- Determining from the local health department or CDC what cleaning measures are deemed to be effective.
- Establishing general cleaning and sanitizing protocols for all areas of the courthouse used by public and staff.
- Establishing protocols to ensure holding cells are effectively sanitized on a daily basis.
- Providing disinfecting products for staff to use as needed during work hours, particularly if equipment is shared.
- Providing "no-touch" disposal receptacles for masks, gloves, wipes, etc.

## **III. UTILIZATION OF ALTERNATE FACILITIES**

Utilization of alternate facilities by the courts in the event of a disaster has been addressed in the Courthouse Security & Preparedness Programs Manual (Courthouse Security Manual) prepared by the Supreme Court of Virginia in 2004. Considerations are discussed in the Manual, and there are a number of forms and checklists pertaining to use of alternate facilities should the need arise. The courts should use the plan developed pursuant to the Courthouse Security Manual if and when it becomes necessary to consider using alternate facilities because of any disaster rendering the courthouse inoperable or unsafe, including a pandemic. *(For statutory provisions relating to relocation of courts, see Chapter 7, Operations, at 7-14 through 7-16)*

During a pandemic, the use of alternate facilities would not be expected unless there is an unusual situation or contamination requiring extensive sanitizing, but it may be desirable to

take some of the functions off-site in order to decrease exposure of some of the persons who perform priority functions. (See *Chapter 8, Human Resources, at 8-3*)

#### **IV. SUPPLIES AND EQUIPMENT**

In a pandemic, supply chain disruption may occur. Just as individuals are encouraged to keep on hand a supply of non-perishable foods and medicines, entities such as courts should have on hand adequate quantities of supplies and equipment that may be needed. Courts will need to assess the amount of inventory they can stockpile based on budgetary issues, security, space, and environmental considerations.

- In advance of an emergency, inventory regularly used supplies and keep on hand adequate quantities of these supplies to maintain office function in the event of supply chain disruption. These would include paper, pens, toner, forms, etc. (See *Worksheet 13—Routine and Essential Products and Services Utilized*)
- Make a contact list of regularly used vendors, and develop a list of alternate vendors, in the event that regular vendors have production or delivery issues. Having the list prepared in advance will be particularly valuable if the person normally in charge of ordering supplies is not available. (See *Worksheet 14—Vendors*)
- Stockpile supplies or equipment that may be of value in limiting spread of virus; e.g., hand sanitizer, cleaning wipes, masks, gloves, respirators, etc.

#### **V. DISPOSITION AND PLACEMENT OF JUVENILES**

##### **A. Admission of Juveniles into System**

1. The chief judge, or his or her designee (hereafter referred to as “the court”), and the Director, or his or her designee, of the Court Services Unit (CSU) should coordinate to develop policy and implement procedures to:
  - a. Detain only those juveniles who are a threat to public safety and/or themselves, in compliance with legal authorities.
  - b. Establish guidelines for determining juvenile threat level for use by the court, the Department of Juvenile Justice (DJJ), CSU, and other impacted parties for purpose of detention or developing alternative pre-trial options during an emergency.
  - c. Consider guidelines for when and how a child may be taken into immediate custody.
  - d. Consider alternatives available in the event a facility must be closed or if juveniles must be quarantined or isolated.

2. Recognizing that Residential Units and Intake Services will require staff 24 hours a day, seven days a week, even during a pandemic event, the court should be aware of facility fallback plans designed to ensure juvenile populations are secure and protected in the event a large number of staff is absent because of illness and/or death.

### **B. Release from system**

1. The CSU or facility administration should be encouraged to assess current population for identification of juveniles who may be appropriate for early release; i.e., non-violent, first offenders or non-violent offenders with minimum records.
2. The court should receive information from the CSU with respect to those juveniles identified as appropriate for early release.
3. The court should evaluate how early release will affect its docket with a need for hearings on those identified as appropriate for early release.
4. The CSU should be encouraged to ensure that any juvenile has a place to go during the pandemic crisis. For instance, the CSU might verify that his or her home is not quarantined. If a juvenile cannot return to his or her home, the CSU might identify alternative locations for placement of the child until he or she can return home.
5. The court should communicate with the CSU and/or administrators of juvenile detention facilities concerning policies and procedures with respect to release of juveniles who have become ill with flu.

### **C. Visitation Policy**

The court should communicate with the CSU and/or administrators of juvenile detention facilities to be aware of changes to visitation policies designed to prevent disease transmission. These might include:

1. Suspending or limiting visitation privileges during a pandemic event. Legal issues that may arise from suspension or limitation of visitation privileges should be identified and policies and procedures should then be developed in accordance with law.
2. Notifying the CSU personnel, parents or guardians, attorneys and probation officers of suspension or limitation of visitation at a particular facility.

3. Adopting more liberal policies with respect to mail and telephone privileges and providing increased opportunities for telephone contacts.

#### **D. Supervision of Juveniles During Detention and Probation**

The court should communicate with the CSU and/or administrators of juvenile detention facilities to be aware of their policies for supervision of juveniles designed to prevent disease transmission. These might include:

1. Determining alternative facilities that can be used in the event a local facility is quarantined or closed or has limited staff available, and establishing procedures for moving juveniles to and housing juveniles in an alternative facility.
2. Together with the sheriff or his or her designee, developing a policy and implementing procedures for transportation to move juveniles to an alternative facility.
3. Establishing methods for providing supervision when CSU staff is reduced due to the pandemic event.

#### **E. Providing Health Care to Juveniles During Pandemic Event**

The court should communicate with the CSU and/or administrators of juvenile detention facilities to be aware of their policies with regard to provision of health care to juveniles during a pandemic. These might include:

1. Arranging for an adequate and continuously available supply of prescription and non-prescription medication appropriate for use by juveniles.
2. Developing procedures for treating juveniles who become ill, including identification of those personnel who may administer medication.
3. Determining the availability of vaccination for staff and for juveniles and encouraging all to avail themselves of the vaccinations, if and when available.
4. Developing a list of available suppliers who can provide medical supplies, including gloves, masks, etc.
5. Requiring cleaning providers to be familiar with the appropriate supplies and methods of decontaminating an affected area and of maintaining housing and public areas in a sanitary condition in accordance with the policies and procedures recommended by the CDC.

- a. Make appropriate supplies available and endeavor to arrange a continuing source for supplies.
- b. Train cleaning staff on proper cleaning of infected areas and disposal of waste.
- c. Require cleaning staff to wear disposable gloves, outer clothing, masks, etc.
- d. Provide "no touch" disposal receptacles.

## **VI. DISPOSITION AND PLACEMENT OF DETAINEES IN ADULT FACILITIES**

Courts should communicate with sheriffs' offices and corrections officials regarding the status of outbreaks affecting local facilities and to be aware of their policies to prevent disease transmission for detainees in adult facilities. Listed below are some alternatives that might be implemented.

### **Social Distancing**

Despite the overcrowding of jails and prisons, many facilities have infirmaries, and any inmate with a contagious disease such as influenza, or exhibiting symptoms of one (an "infectious prisoner"), could be confined there. In other instances, those infected could be confined separately and all meals taken to them. To the extent that existing infirmary space may prove insufficient to handle the load, closed prisons might be made available for the limited purpose of housing contagious prisoners until it is determined according to health department guidelines they no longer pose a threat to others. Preference for such transfers might be given to those prisoners deemed to pose the least risk of flight or of harm to others.

Juveniles: The approach might be substantially similar to that taken with adults, except that juveniles would continue to remain segregated from adult inmates. To the extent the DJJ may have closed some of its facilities, those might be used to handle any overflow of contagious juvenile prisoners in the same way that closed adult facilities are used for contagious adult prisoners. If DJJ has not closed any facilities, or if the number of cells available in such closed juvenile facilities is insufficient, the overflow might be handled in closed adult facilities, so long as no adults are housed there or juveniles are securely segregated from adults. Preference for transfer might be given to those contagious juvenile prisoners deemed to be least likely to flee or to pose a threat to others.

## **VII. TRANSPORTATION ISSUES**

Because of the close contact involved in transportation of detainees, the courts should discuss with sheriffs and other law enforcement agencies plans to regulate or reduce transportation during an outbreak. These plans may include the following strategies:

### **A. Eliminating Transportation of Prisoners To Extent Possible**

Eliminate all transportation of prisoners except in cases in which the prisoner's physical presence is required or mandated by constitutional or statutory requirements. See Va. Code §§ [16.1-93.1](#), [16.1-276.3](#), [17.1-513.2](#), and [19.2-3.1](#). Coordinate with commonwealth's attorney's office, sheriff's office, and public defender's office, if applicable, to determine the necessity and feasibility of transporting prisoners and possible elimination of inmate transport to and from a facility experiencing an outbreak. It is important to communicate with the local sheriff's office to determine whether a policy is already in place with regard to such measures.

### **B. Providing Precautions During the Necessary Transportation of Prisoners**

When a prisoner needs to be transported or merely guarded, social distancing may be very difficult or even impossible to achieve. To minimize health risks, the following steps are suggested for discussion with the local sheriff's office:

1. Using masks and gloves and educating staff on their proper use.
2. Assigning qualified court and sheriff's office personnel who have already recovered from influenza to handle transportation and other inmate contact. These employees presumably would be immune.
3. Stockpiling masks, gloves, antivirals, and other supplies for court staff and other entities serving the courts. If courts decide to stockpile supplies, they must comply with state and federal requirements, and provide suitable storage facilities, under appropriate environmental conditions, with security sufficient to prevent looting.
4. Cautioning staff that respirators or masks could potentially be used as a weapon or bargaining tool by a detainee, since the item could contain contaminated or infectious material.
5. Emphasizing hand hygiene for both officers and prisoners.
6. Properly cleaning vehicles, restraints, and holding cells after transport.

## WORKSHEET 12 — WORKFORCE PROTECTIONS

All courts should take measures to promote the safety of their employees and control the spread of disease. Efforts should be made to stay informed of current recommendations from the VDH, CDC, OSHA and other appropriate sources regarding worker safety and infection control. Inform the general public, law enforcement, and members of the bar of any changes the court makes to daily operations.

From the list below, highlight which measures the court will take to help control the spread of disease. Below each measure selected, identify steps that need to be taken to implement the measure. This also might help to reduce absenteeism for seasonal influenza. The first measure listed has been completed as an example.

1. Provide employees and customers with easy access to soap and warm water, hand sanitizers, gloves, masks, safety glasses, tissues, sanitizing wipes, and other office cleaning supplies. Consider stockpiling these supplies. Stockpiles should be rotated using the oldest first and ensure proper storage conditions for products.

**Action steps for implementation:**

Purchase and stockpile hand sanitizer and surgical masks. Identify proper storage locations and conditions for supplies. Develop distribution procedures.

2. Install hand sanitizer dispensing units throughout facilities.

**Action steps for implementation:**

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3. Use no-touch trash containers.

**Action steps for implementation:**

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4. Have all staff watch VDH's Influenza Pandemic video to learn about how to reduce the spread of disease such as pandemic influenza.

**Action steps for implementation:**

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5. Educate employees on proper hand washing techniques. VDH has developed “Cover Your Cough” posters, which also address cleaning hands. It is available at [www.vdh.virginia.gov/pandemicflu](http://www.vdh.virginia.gov/pandemicflu).

**Action steps for implementation:**

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6. Train employees on proper use and fit of masks and other personal protective equipment (PPE). Follow recommendations issued by the Virginia Health Department or the Centers for Disease Control and Prevention.

**Action steps for implementation:**

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7. Educate employees on cough etiquette. VDH has developed the “Cover Your Cough” posters available at [www.vdh.virginia.gov/pandemicflu](http://www.vdh.virginia.gov/pandemicflu).

**Action steps for implementation:**

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8. Work with the locality to install barrier protections such as sneeze guards or other clear barriers in offices that serve the general public. Provide drop boxes or consider offering “drive-up” filing services to decrease the number of people who enter the building.

**Action steps for implementation:**

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9. Provide customers with surgical masks and ask them to wear them while seeking services.

**Action steps for implementation:**

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10. Encourage employees to obtain vaccinations in accordance with CDC guidelines.

**Action steps for implementation:**

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11. Require employees to stay at home if they are ill or at the first signs they might become ill.

**Action steps for implementation:**

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12. Regularly clean frequently touched work surfaces such as telephones, computer equipment, and steering wheels of department vehicles.

**Action steps for implementation:**

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13. Consider limiting access or reducing the number of entry and exit points for the general public to the facility.

**Action steps for implementation:**

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Are there any additional disease or infection control measures that the court might require? If so, please list them and their associated action steps for implementation below.

Disease or Infection Control Measure	Action Steps for Implementation



**WORKSHEET 14 — VENDORS**

The court relies on vendors and service providers to maintain operations. Contact information for each of the vendors and service providers, including alternates, can be captured on this worksheet.

<b>TYPE OF VENDOR/SERVICE</b>	
Company Name:	_____
Address:	_____
Telephone:	_____
Fax:	_____
E-mail:	_____
Primary contact:	_____
Alternate contact:	_____
Notes:	_____
	_____
	_____
	_____
If this company is unable to provide services/materials, the following organization(s) can provide:	
Company Name:	_____
Address:	_____
Telephone:	_____
Fax:	_____
E-mail:	_____
Primary contact:	_____
Alternate contact:	_____
Notes:	_____
	_____
	_____
	_____

# APPENDICES

## **APPENDIX A: SOCIAL DISTANCING LAW PROJECT**

### **Note to Bench Book Users**

The Report of the Social Distancing Law Project (Report), included in this appendix, was published in July 2007. The Pandemic Flu Preparedness Commission has checked the authorities cited therein and found that some statutory and regulatory authorities have been amended since 2007.

Although these amendments may not impact the accuracy of the content of the Report, the Commission has prepared a Table of Authorities with Internet links, in order to provide Bench Book users ready access to current statutory and regulatory language. The Commission's Table of Authorities is found on pages A-1 through A-4, immediately preceding the text of the Report.

Bench Book users are urged to check the primary resources before making any legal determinations.

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**Virginia Department of Health (VDH)**

**And**

**Virginia Office of the Attorney General (OAG)**

**Association of State and Territorial Health Officials (ASTHO) Social Distancing  
Law Project (SLDP) – Phase I**

**An Overview of the Commonwealth of Virginia's Statutory Authorities  
Relevant to Social Distancing**

July 31, 2007

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# Introduction

## Background

The Social Distancing Law Project (SDLP), an activity of the Association of State and Territorial Health Officials (ASTHO) in cooperation with the Centers for Disease Control and Prevention (CDC), has been initiated to assist states in assessing their legal preparedness to implement social distancing measures during public health emergencies. An anticipated outcome of this project is to improve the effective legal authorities for social distancing measures, to establish and sustain the competencies of public health professionals to apply those laws, to provide coordination of such efforts across jurisdictions and sectors, and to make accessible information about best practices.

In May, 2007, Virginia was invited as one of eighteen jurisdictions that either host CDC quarantine stations or border jurisdictions with a CDC Quarantine Stations to participate in the Social Distancing Law Project. The following report outlines the legal assessment completed by legal and public health experts in Virginia, in completion of part one of the Project. The goals of this report were to:

- (1) Identify and assess the sufficiency of their legal authorities to implement social distancing measures and distribute mass prophylaxis or treatment in the event of a public health emergency;
- (2) Identify any gaps or uncertainties in those authorities; and
- (3) Create a report and table of authorities (TOA) for ASTHO and CDC.

This report provides an assessment of the legal tools currently available in Virginia, including existing statutes, regulations, guidelines, policies, or procedures in an effort to assess potential effectiveness related to social distancing in response to a communicable disease. In addition, limitations that might be anticipated, as well potential methods to resolve these issues will be addressed.

To facilitate the analysis of the participating programs, the report has been organized according to a standardized format. It should be noted that, due to the nature of the statutes related to social distancing in Virginia, the distinction between the processes under 'normal' circumstances and a state of emergency may not be as significant as in other jurisdictions. As a result, there may be some redundancy in the responses – however, the standardized format has been retained to ensure efficient analysis.

The following important definitions, as specified by ASTHO and the CDC, have been utilized for this report.

## Definitions

1. "Jurisdiction" refers to any of the 18 jurisdictions selected for review in the study.
2. "Legal authority" means any provision of law or regulation that carries the force of law.
3. "Procedures" means any procedures established by the jurisdiction relating to the legal question being researched, regardless of whether the procedures have the force of law.
4. "Restrictions on the movement of persons" means any limit or boundary placed on the free at-will physical movement of adult natural persons in the jurisdiction.
5. "Closure of public places" means an instruction or order that has the effect of prohibiting persons from entering a public place. "Public place" means a fixed space, enclosure, area, or facility that is usually available for entry by the general public without a specific invitation, whether possessed by government or private parties.
6. "Curfew" means an order or regulation prohibiting persons from being in certain public places at certain times.
7. "Person" means a natural person, whether or not individually identified.
8. "Public health emergency" means any acute threat, hazard, or danger to the health of the population of the jurisdiction, whether specific or general, whether or not officially declared.
9. "Superior jurisdiction" means the federal government in respect to a state, or a state in respect to a locality.
10. "Inferior jurisdiction" means a state in respect to the federal government, or a locality in respect to a state government.

Other important definitions, utilized for social distancing discussions in Virginia, include:

1. "Affected area" means any part or the whole of the Commonwealth, which has been identified as where individuals reside, or may be located, who are known to have been exposed to or infected with or who are reasonably suspected to have been exposed to or infected with a communicable disease of public health threat.
2. "Carrier" means a person or animal that harbors a specific infectious agent without discernible symptoms of disease and serves as a potential source of infection.

3. "Case" means a person who has been diagnosed as having a particular disease or condition.
4. "Communicable disease" means an illness due to an infectious agent or its toxic products which is transmitted, directly or indirectly, to a susceptible host from an infected person, animal, or arthropod or through the agency of an intermediate host or a vector or through the inanimate environment.
5. "Communicable disease of public health significance" means an illness caused by a specific or suspected infectious agent that may be transmitted directly or indirectly from one individual to another. This includes, but is not limited to, infections caused by human immunodeficiency viruses, blood-borne pathogens, and tubercle bacillus. The State Health Commissioner may determine that diseases caused by other pathogens constitute communicable diseases of public health significance.
6. "Communicable disease of public health threat" means an illness of public health significance, as determined by the State Health Commissioner in accordance with these regulations, caused by a specific or suspected infectious agent that may be reasonably expected or is known to be readily transmitted directly or indirectly from one individual to another and has been found to create a risk of death or significant injury or impairment; this definition shall not, however, be construed to include human immunodeficiency viruses or the tubercle bacilli, unless used as a bioterrorism weapon.
7. "Communicable period" or "period of communicability" mean the time during which an infectious agent may be transferred directly or indirectly from an infected person to another person, from an infected animal to humans, or from an infected person to animals including arthropods.
8. "Companion animal" means any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purpose of this article.
9. "Contact" means a person or animal known to have been in such association with an infected person or animal as to have had an opportunity of acquiring the infection.
10. "Cordon sanitaire" means the border around an area that contains persons with a communicable disease to restrict travel in or out of the area and thereby prevent the spread of the communicable disease.

11. "Essential needs" means basic human needs for sustenance including, but not limited to, food, water and health care, e.g., medications, therapies, testing, and durable medical equipment.
12. "Exceptional circumstances" means the presence, as determined by the State Health Commissioner in his sole discretion, of one or more factors that may affect the ability of the department to effectively control a communicable disease of public health threat. Factors to be considered include, but are not limited to: 1) characteristics or suspected characteristics of the disease-causing organism or suspected disease-causing organism such as virulence, routes of transmission, minimum infectious dose, rapidity of disease spread, the potential for extensive disease spread, and the existence and availability of demonstrated effective treatment; 2) known or suspected risk factors for infection; 3) the potential magnitude of the effect of the disease on the health and welfare of the public; and, 4) the extent of voluntary compliance with public health recommendations. The determination of exceptional circumstances by the State Health Commissioner may take into account the experience or results of investigation in Virginia, another state, or another country.
13. "Incubation period" means the interval (in hours, days, or weeks) between the initial, effective exposure to an infectious organism and the first appearance of symptoms of the infection.
14. "Individual" means a person or companion animal. When the context requires it, "person or persons" shall be deemed to include any individual.
15. "Infected individual" means a person or animal that harbors an infectious agent and who has either manifest disease or unapparent infection.
16. "Infection" means the entry and multiplication or persistence of an organism (prion, virus, rickettsia, bacteria, fungus, protozoan, helminth, or ectoparasite) in the body of an individual. An infection may be inapparent (i.e., without recognizable signs or symptoms but identifiable by laboratory means) or manifest (clinically apparent).
17. "Infectious agent" means an organism (virus, rickettsia, bacteria, fungus, protozoan or helminth) that is capable of producing infection or infectious disease.
18. "Isolation" means the physical separation, including confinement or restriction of movement, of an individual or individuals who are infected with or are reasonably suspected to be infected with a communicable disease of public health threat in order to prevent or limit the transmission of the communicable disease of public health threat to uninfected and unexposed individuals. Isolation may be complete, or it may be modified to address particular circumstances.

As defined under Virginia Administrative Code (12VAC5-90-10) "protective isolation" is the physical separation of a susceptible individual or individuals not

infected with, or not reasonably suspected to be infected with, a communicable disease from an environment where transmission is occurring, or is reasonably suspected to be occurring, in order to prevent the individual or individuals from acquiring the communicable disease. However, it should be noted that this is not a true form of isolation (i.e., the individual who is subject to the restriction of movement is not ill).

Note that, while the Social Distancing Law Project combines the concepts of isolation and quarantine (see 22. Quarantine, below) into the generic term of “quarantine”, due to differences in the details related to the management of ill and exposed individuals in Virginia, these concepts need to be kept separate.

19. "Law-enforcement agency" means any sheriff's office, police department, adult or youth correctional officer, or other agency or department that employs persons who have law-enforcement authority that is under the direction and control of the Commonwealth or any local governing body. "Law-enforcement agency" shall include, by order of the Governor, the Virginia National Guard.
20. "Least restrictive" means the minimal limitation of the freedom of movement and communication of an individual while under an order of isolation or an order of quarantine that also effectively protects unexposed and susceptible individuals from disease transmission.
21. "Period of communicability" means the time (days, weeks or months) during which an infectious agent may be transferred, directly or indirectly, from an infected person to another person; from an infected animal to humans; or from an infected person to animal or insects.
22. "Quarantine" means, in Virginia, the physical separation, including confinement or restriction of movement, of an individual or individuals who are present within an affected area or who are known to have been exposed, or may reasonably be suspected to have been exposed, to a communicable disease of public health threat and who do not yet show signs or symptoms of infection with the communicable disease of public health threat in order to prevent or limit the transmission of the communicable disease of public health threat to unexposed and uninfected individuals. May be complete or modified.

Note that, while the Social Distancing Law Project combines the concepts of isolation and quarantine (see 18. Isolation, above) into the generic term of “quarantine”, due to differences in the details related to the management of ill and exposed in Virginia, these concepts need to be kept separate.

23. "Self-shielding" means the self-imposed exclusion from infected persons or those perceived to be infected (e.g., by staying home from work or school during an epidemic).

24. "Snow days" means days on which offices, schools, transportation systems are closed or cancelled, as if there were a major snowstorm.
25. "State of emergency" means the condition declared by the Governor when, in his/her judgment, the threat or actual occurrence of an emergency or a disaster in any part of the Commonwealth is of sufficient severity and magnitude to warrant disaster assistance by the Commonwealth to supplement the efforts and available resources of the several localities, and relief organizations in preventing or alleviating the damage, loss, hardship, or suffering threatened or caused thereby and is so declared by him.

Note that for the following discussions the impact of a declared state of emergency is considered only in view of a state of emergency declared by the Governor of the Commonwealth of Virginia. A Presidentially-declared state of emergency may have impacts not considered in these analyses.

26. "Susceptible individual" means a person or animal who is vulnerable to or potentially able to contract a disease or condition. Factors that affect an individual's susceptibility include, but are not limited to, physical characteristics, genetics, previous or chronic exposures, chronic conditions or infections, immunization exposure, or medications.

A complete list of definitions is included in Appendix A.

## **Exclusions**

1. This report excludes detailed contemplation of applicable international and federal law.
2. This report excludes issues related to the closure of schools, which will be covered by another project of the CDC Public Health Law Program.

# Social Distancing Law Project (SDLP) Analysis

## Background

Public health relies largely upon voluntary measures to reduce the transmission of communicable disease. Individualized (e.g., clinician-patient) and public education are generally adequate to improve compliance with appropriate infection control measures. However, legally enforceable social distancing measures (e.g., isolation, quarantine, closure of public places) may be necessary under some circumstances – this requires a range of legal tools (statutes and regulations) as well as policies and procedures.

## Restrictions on the Movement of Persons

The *Code of Virginia* provides the authority for the management of disease in the Commonwealth of Virginia. In Virginia, a wide variety of community containment actions that increase social distance could be used to prevent or limit exposures to a serious contagious disease through restriction of activities. Some examples include limiting social interactions (e.g., canceling meetings, classes, dances, etc.), closing facilities (e.g., schools, restaurants, theaters, etc.), closing certain areas (lakes, rivers, parks, etc.), stopping or limiting mass transit (e.g., buses, trains, etc.), or recommending or requiring special protection or safe behaviors among citizens. Isolation is the restriction of movement of an individual infected with a communicable disease in order to prevent the transmission of the disease to uninfected individuals. Quarantine, a concept closely related to but distinct from isolation, is the physical separation of an individual who may have been exposed to (and infected by) a communicable disease but who does not yet show signs or symptoms of infection, in order to prevent or limit the transmission of the communicable disease to unexposed and uninfected individuals.

To understand the strategy for managing communicable disease in Virginia, an important concept is the distinction between communicable diseases of public health significance (i.e., conditions with less potential for ‘acute’ and widespread consequences), and communicable diseases of public health threat (for conditions that require an immediate and aggressive public health response to prevent wider social impact).

## Communicable Disease of Public Health Significance

The methods that may be used by the Commonwealth to manage an individual with a communicable disease of public health significance are outlined in Article 3.01 (§ 32.1-48.01 et seq.) of Chapter 2 of Title 32.1 of the *Code of Virginia*. To involuntarily isolate a person under Article 3.01, evidence must be presented that the infected person is placing others at risk and that attempts at counseling the infected person to voluntarily modify such behavior have been made and have failed. This would permit the State Health Commissioner (or his/her designee) may petition the court for an order of involuntary isolation of the person, either in the person’s home or in a facility (e.g., hospital or prison) for up to 120 days (to be renewed as needed). An emergency or

temporary order of detention could be issued by the State Health Commissioner or court (respectively) to prevent the transmission of illness, if the individual could not be conveniently brought before the court. These procedures are generally adequate for the management of most situations that have occurred in Virginia, such as for the control of tuberculosis.

However, the procedures required under Article 3.01 of Chapter 2 of Title 32.1 of the *Code of Virginia* can take a significant amount of time to implement. These provisions also do not allow for managing persons who may have been exposed and are potentially infectious, but who do not yet have signs or symptoms of disease (i.e., quarantine is not available as a disease control tool for communicable diseases of public health significance). Article 3.01 of Chapter 2 of Title 32.1 can be applied only to individuals. As a result, it does not enable the management of larger numbers of people by defining an affected area. Therefore, the provisions of Article 3.01 of Chapter 2 of Title 32.1 of the *Code of Virginia* would not enable an effective response in the event of an outbreak of severe disease occurring under exceptional circumstances.

These statutes would not typically be used during a public health emergency. However, these tools remain a potential option as a social distancing tool.

## **Communicable Diseases of Public Health Threat**

Virginia law distinguishes a general subset of communicable diseases of public health significance as being communicable diseases of public health threat. Although some infections might fall readily into this category (e.g., viral hemorrhagic fevers, smallpox) a complete list of these diseases is not possible because agents may be novel (e.g., an emerging pathogen not previously known) or previously known but modified for use as a bio-weapon. Instead, § 32.1-48.06 et seq. of Chapter 2 of Title 32.1 of the *Code of Virginia* specifies that a communicable disease of public health threat is an illness of public health significance that may be readily transmitted from one individual to another and that has a risk of death or significant injury (note, however, that the definition explicitly excludes tuberculosis and HIV, unless used as a bioterrorism weapon – see § 32.1-48.06). This may depend on the available information regarding specific situations (agent, virulence, treatment options, compliance of the individual with interventions, potential economic and social impact, etc.).

In the event that a communicable disease of public health threat occurs, district health departments will make every effort to protect the public health using the least restrictive methods available. This would involve implementing an intensive epidemiologic investigation (as outlined for specific diseases in the *VDH Disease Control Manual*) to define the population at risk to the fullest extent possible and developing interventions, including voluntary isolation and/or quarantine, to prevent the further transmission of the agent. However, should exceptional circumstances (e.g., highly infectious, virulent agent) exist that may make the measures under Article 3.01 inadequate to control the spread of the disease, OR voluntary compliance fails, then the provisions of Article 3.02

(including isolation and/or quarantine) may be implemented by the State Health Commissioner

These provisions enable the State Health Commissioner to initiate a more rapid response to a communicable disease by:

- Issuing orders to immediately isolate an infected or potentially infected person;
- Issuing orders to immediately quarantine exposed or potentially exposed persons;
- Issuing orders to isolate and/or quarantine individuals as a group through defining an “affected area” (when a state of emergency has been declared by the Governor for the affected area).

## **Governor’s Powers**

Per the *Code of Virginia* (§ 44-146.16), a “state of emergency” is a condition declared by the Governor when in his/her judgment the threat or actual occurrence of an emergency or a disaster in any part of the Commonwealth is of sufficient severity and magnitude to warrant disaster assistance by the Commonwealth to supplement the efforts and available resources of the several localities, and relief organizations in preventing or alleviating the damage, loss, hardship, or suffering threatened or caused thereby and is so declared by him/her. The governmental declaration may suspend certain normal functions of government, may work to alert citizens to alter their normal behaviors, or may order government agencies to implement emergency preparedness plans.

## **Miscellaneous**

Of course, statutes exist for the management of individuals for other causes (e.g., *Code of Virginia* § 37.2-1104 provides for the temporary detention of individuals who are incapable of making an informed decision regarding treatment and where the medical standard of care calls for testing, observation, or treatment of the disorder; *Code of Virginia* § 37.2-808 provides for the emergency detention of individuals with mental illness, who are a risk to themselves or others, and who are unwilling to volunteer for necessary hospitalization or treatment). However, the general applicability of these forms of movement restriction to a broader situation of communicable disease control is expected to be extremely limited, and will not be further contemplated as a method for social distancing.

## **I. Restriction of Movement**

### *A. Legal authorities to initiate, maintain, or release from restriction of movement during a declared emergency*

#### **1. Initiation, Maintenance, or Release From Restrictive Measures**

##### *a. Authority to declare or establish movement restrictions*

###### **Governor Authorities**

Under *Code of Virginia* § 44-146.17, during a state of emergency the Governor would act as Director of Emergency Management, and would have additional powers and duties to direct resources. In regard to issues related social distancing, these powers would include the ability to:

- Proclaim rules and regulations and to issue such orders as may be necessary to control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other commodities, materials, goods, services and resources under any state or federal emergency services programs;
- Direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is deemed necessary for the preservation of life;
- Implement emergency mitigation, preparedness, response or recovery actions;
- Prescribe routes, modes of transportation and destination in connection with evacuation;
- Control ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein;
- Address exceptional circumstances that exist relating to an order of quarantine or an order of isolation concerning a communicable disease of public health threat that is issued by the State Health Commissioner for an affected area of the Commonwealth pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1.
- Procure supplies and equipment, institute training and public information programs relative to emergency management, and take other preparatory steps including the partial or full mobilization of emergency management organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces in time of need;
- Enter into mutual aid arrangements with other states and to coordinate mutual aid plans between political subdivisions of the Commonwealth; and,
- Request a major disaster declaration from the President, thereby certifying the need for federal disaster assistance and ensuring the expenditure of a

reasonable amount of funds of the Commonwealth, its local governments, or other agencies for alleviating the damage, loss, hardship, or suffering resulting from the disaster.

The issuance of orders of isolation or orders of quarantine is specifically contemplated for a declared state of emergency in the range of authority under *Code of Virginia* § 44-146.17 – however, this statute specifies that it is the State Health Commissioner that would issue the Orders.

It has been suggested that, under certain circumstances, martial law may be necessary to manage a state of emergency in the Commonwealth. However, this is anticipated to be extremely unlikely, and must be balanced under the Constitution of Virginia (Section 7) that states that “**Laws should not be suspended:** That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.” This will be briefly discussed under Other Issues.

### **State Health Commissioner Authorities**

Under *Code of Virginia* § 32.1-43 the State Health Commissioner has broad powers to require quarantine, isolation, immunization, decontamination, or treatment of any individual or group of individuals when he determines any such measure to be necessary to control the spread of any disease of public health importance. This includes the authority to issue emergency orders while court ordered isolation for a communicable disease of public health significance is being pursued. In addition, pursuant to *Code of Virginia* § 32.1-48.01 et seq., the State Health Commissioner may petition the courts to order the isolation of an individual in a home or another residence or an institution or other place, including a jail when no other reasonable alternative is available, upon a finding by the court that:

1. The person is infected with a communicable disease of public health significance.
2. The person is engaging in at-risk behavior.
3. The person has demonstrated an intentional disregard for the health of the public by engaging in behavior which has placed others at risk for infection with the communicable disease of public health significance.
4. There is no other reasonable alternative means of reducing the risk to public health.

Note that there are no provisions for the quarantine of individuals who may have been exposed to an individual with a communicable disease of public health significance.

Orders of quarantine and orders of isolation under exceptional circumstances involving any communicable disease of public health threat are covered under *Code of Virginia* § 32.1-48.05 et seq. (**note: individuals include companion animals as well as humans**). *Code of Virginia* § 32.1-48.05 specifies that these powers may not be delegated to the district health director, and may only be invoked by a Deputy Commissioner if the State Health Commissioner is unable to perform his/her duties.

The State Health Commissioner also has the power to implement reverse isolation (i.e., exclude non-immunized children from school in case of an outbreak). Under *Code of Virginia* § 32.1-47, upon the identification of an outbreak, potential epidemic or epidemic of a vaccine-preventable disease in a public or private school, the State Health Commissioner shall have the authority to require the exclusion from such school of all children who are not immunized against that disease. This authority has also been delegated to district health directors acting in the name of the State Health Commissioner.

Per *Code of Virginia* § 32.1-42, the Board of Health may promulgate regulations and orders to meet any emergency or to prevent a potential emergency caused by a disease dangerous to public health, that is determined to be caused by an agent or substance used as a weapon or any communicable disease of public health threat that is involved in an order of quarantine or an order of isolation. Further, *Code of Virginia* § 32.1-13 also provides that the Board of Health may make separate orders and regulations to meet any emergency not provided for by general regulations for the purpose of suppressing conditions dangerous to the public health and communicable, contagious, and infectious diseases.

Finally, it should be recognized that the local health director or his designee may recommend to any individual or group of individuals appropriate public health control measures, including but not limited to quarantine, isolation, immunization, decontamination, or treatment (12VAC5-90-100).

## Local Authorities

Per § 44-146.19 of the *Code of Virginia*, whenever the Governor has declared a state of emergency, political subdivisions (e.g., town, city, county) within the Commonwealth of Virginia within the disaster area may, under the supervision and control of the Governor or his designated representative:

- Control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other commodities, materials, goods, services and resource systems which fall only within the boundaries of that jurisdiction and which do not impact systems affecting adjoining or other political subdivisions;
- Enter into contracts and incur obligations necessary to combat such threatened or actual disaster;

- Protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster.

In addition, per *Code of Virginia* § 44-146.21, a local emergency (defined in § 44-146.16 as the threat or actual occurrence of an emergency or disaster is, or threatens to be, of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused thereby; provided, however, that a local emergency arising wholly or substantially out of a resource shortage may be declared only by the Governor, upon petition of the local governing body, when he deems the threat or actual occurrence of such an emergency or disaster to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship or suffering threatened or caused thereby) may be declared by the local director of emergency management with the consent of the governing body of the political subdivision. Whenever a local emergency has been declared, the director of emergency management of each political subdivision, or any member of the governing body in the absence of the director, may:

- Control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other commodities, materials, goods, services and resource systems which fall only within the boundaries of that jurisdiction and which do not impact systems affecting adjoining or other political subdivisions; and,
- Enter into contracts and incur obligations necessary to combat such threatened or actual disaster, protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster, and proceed without regard to time-consuming procedures and formalities prescribed by law (except mandatory constitutional requirements) pertaining to the performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, and other expenditures of public funds, provided such funds in excess of appropriations in the current approved budget, unobligated, are available.

Whenever the Governor has declared a state of emergency, each political subdivision affected may, under the supervision and control of the Governor or his designated representative, enter into contracts and incur obligations necessary to combat such threatened or actual disaster beyond the capabilities of local government, protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster.

However, these activities do not include the authority to isolate or quarantine individuals.

## Miscellaneous

The Virginia Department of Health and the Virginia Office of the Attorney General have developed detailed guidelines, including forms, draft letters requesting voluntary compliance, draft orders of isolation, quarantine, and emergency detention orders, as well as draft terminations of orders of isolation and quarantine, and fact sheets. These are updated regularly to reflect changes to Virginia law and regulations. While these materials do not provide the authority for the response, they provide guidance to those individuals who may be involved in the response on the laws, regulations, procedures, and processes that may be followed to ensure compliance. In addition, efforts have been made to develop efficient protocols and procedures to rapidly and thoroughly implement the laws and regulations related to social distancing. This has included developing mail merge methods to enable mass order generation, exploring database options (e.g., the CDC's Outbreak Management System, or OMS) to facilitate data management, and exercises to develop realistic assessments and expectations of the time and resources required to implement legal social distancing tools.

### *b. Enforcement of movement restrictions*

#### **Governor's Orders**

In general, *Code of Virginia* § 44-146.17 specifies that executive orders, to include those declaring a state of emergency, shall have the force and effect of law and the violation thereof shall be punishable as a Class 1 misdemeanor in every case where the executive order declares that its violation shall have such force and effect. This would apply to movement restrictions outlined under a state of emergency.

#### **Commissioner's Orders**

##### Communicable Disease of Public Health Significance

In Virginia, for communicable diseases of public health significance, the State Health Commissioner may issue emergency orders. These are servable and enforceable upon issuance by all state and local law-enforcement officers. An officer executing an emergency order issued by the State Health Commissioner or a order of temporary detention issued by a court shall detain and order the named person to remain confined in his home or another's residence or in some convenient and willing institution or other willing place (but not a jail) for a period not to exceed 48 hours prior to a hearing (if the specified 48-hour period terminates on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, such person may be detained until the next day which is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed). The institution or other place of temporary detention shall not include a jail or

other place of confinement for persons charged with criminal offenses (*Code of Virginia* § 32.1-48.03).

However, this mechanism is implemented by the State Health Commissioner to restrain individuals who may be a danger to others while an isolation hearing to develop court ordered isolation is being sought. *Code of Virginia* § 32.1-48.04 provides for the court to issue an order for isolation in an individual's home or another's residence or an institution or other place, including a jail when no other reasonable alternative is available, upon a finding by the court that the individual is infected with a communicable disease of public health significance, the person is engaging in at-risk behavior, the person has demonstrated an intentional disregard for the health of the public, and there is no other reasonable alternative means of reducing the risk to public health. Any order for isolation in the person's home or another's residence or an institution or other place shall be valid for no more than 120 days, or for a shorter period of time if the State Health Commissioner or his designee, or the court upon petition, determines that the person no longer poses a substantial threat to the health of others.

A court ordered isolation for a communicable diseases of public health significance, under *Code of Virginia* § 32.1-48.08.C, an electronic device may be used to enforce any such isolation.

#### Communicable Disease of Public Health Threat

For communicable diseases of public health threat, the State Health Commissioner may use an order of quarantine or an order of isolation to require that an individual or individuals remain in their residences, to remain in another place where they are present, or to report to a place or places designated by the State Health Commissioner for the duration of their quarantine (*Code of Virginia* § 32.1-48.08) or isolation (*Code of Virginia* § 32.1-48.011). *Code of Virginia* § 32.1-48.014.B states that law enforcement shall enforce orders of isolation or orders of quarantine for communicable diseases of public health threat. This includes the power to detain or arrest any person or persons known or suspected to be in violation of any order of quarantine or order of isolation, or for whom probable cause exists that the individual may fail or refuse to comply with any such order. Any person or persons so detained shall be held in the least restrictive environment that can provide any required health care or other services. If an order of isolation or an order of quarantine specifies the place of confinement as a location other than a place of residence, such as a healthcare facility, jail, an apartment building, or a hotel, then the individual subject to the order may be transported to the appropriate site for admission as directed by the order.

As specified in *Code of Virginia* § 32.1-48.014, any person who does not comply with a validly issued order of quarantine or order of isolation is, upon

conviction, guilty of a Class 1 misdemeanor and payment of civil penalties. In addition, per § 32.1-27 of the *Code of Virginia* a person may also be subject to an injunction or other remedy. Further, any persons violating or failing, neglecting, or refusing to obey any injunction or other remedy shall be subject, in the discretion of the court, to a civil penalty not to exceed \$25,000 for each violation.

In addition to traditional enforcement officers, local and district health department staff would be important for the enforcement of restrictive measures, among other activities related to the control of a communicable disease of public health threat per 12VAC5-90-40.C. This would include the monitoring and management of cases, and the determination of the efficacy of voluntary and involuntary methods of social distancing.

In the event that a significant number of individuals may require isolation and/or quarantine, the Office of Epidemiology may activate an “Isolation and Quarantine Response Center (IQRC)”. The IQRC’s purpose is primarily to monitor any changes in health status and potential for disease transmission. However, it would also play a critical role in enforcement, by helping to ensure compliance with laws related to individuals placed in isolation and quarantine.

The IQRC would work in conjunction with the Public Health Emergency Operations Center in accordance with ICS/NIMS standard operating procedures, and require a reallocation of staff and other resources. Therefore, while not a formal ‘enforcement’ arm, members of the VDH central office would be part of the enforcement activities (e.g., document non-compliance, assist in developing orders of isolation or quarantine for review by the State Health Commissioner, liaisons with local health departments/law enforcement/Office of the Attorney General, etc.).

An electronic device may be used to enforce an order of quarantine or an order of isolation for a communicable diseases of public health threat (*Code of Virginia* § 32.1-48.08 and § 32.1-48.011, respectively).

### *c. Legal powers and authorities for group quarantine*

The isolation or quarantine of individuals comes under the authority of the State Health Commissioner. Individual orders of isolation or orders of quarantine may be developed whether or not a state of emergency exists.

One difference that occurs with movement restrictions during a state of emergency is that in the declaration, per *Code of Virginia* § 44-146.17 the Governor can specify one or more geographic areas as “affected areas” (e.g., public and private property, buildings, or other structures, towns, cities, districts, counties, subsections of such areas, or the entire Commonwealth of Virginia)(*Code of Virginia* § 32.1-48.06). This may be useful if there is a broad

occurrence of disease or exposure, or there has been widespread risk of disease. As a result, the State Health Commissioner can develop orders of isolation (*Code of Virginia* § 32.1-48.012 and 12VAC5-90-103) or quarantine (*Code of Virginia* § 32.1-48.08 and 12VAC5-90-107) that specify individuals within the affected area(s) as the subject of the orders of isolation or quarantine. This enables the isolation or quarantine of groups of individuals without having to issue separate orders to each individual.

When no such declaration of a state of emergency exists, each individual whose activities are to be restricted requires preparation of a separate order, even if a definable group characteristic is available.

#### *d. Legal powers and authorities for area quarantine*

There are no specific statutes or regulations in Virginia that define an “area quarantine.”

Whether or not a state of emergency has been declared, the State Health Commissioner may isolate or quarantine one or more individuals, as needed, through individualized orders even if each individual is part of a larger identifiable group (i.e., within an area).

However, in a declaration of a state of emergency, per *Code of Virginia* § 44-146.17 the Governor can specify one or more geographic areas as “affected areas” (e.g., public and private property, buildings, or other structures, towns, cities, districts, counties, subsections of such areas, or the entire Commonwealth of Virginia) (*Code of Virginia* § 32.1-48.06). This provides the State Health Commissioner with the option to develop an order of isolation or order of quarantine that applies to all specified individuals within an area. This might be considered a form of “area quarantine.”

“Area quarantine” might also be interpreted to refer to the concept of *cordon sanitaire* (i.e., controlling the ingress and egress of individuals for an area to control the spread of infection). Again, there are no specific provisions in Virginia law for a *cordon sanitaire* to control the spread of disease. Instead, the authority to establish such a social distancing tool rests with Governor’s broad powers during emergencies (*Code of Virginia* § 44-146.17). In addition, while the State Health Commissioner may only specify exposures that require quarantine (under *Code of Virginia* § 32.1-48.08) or isolation (under *Code of Virginia* § 32.1-48.011), this could be developed so as to include exposure to a particular area where a communicable disease agent may be present. Therefore, in situations where specific control of the ingress/egress to an area may not be possible, individuals may be dissuaded from entering an area since exposure could lead to an order of quarantine.

Per *Code of Virginia* § 32.1-13, the Board of Health may make separate orders and regulations to meet any emergency not provided for by general regulations for the purpose of suppressing conditions dangerous to the public health and communicable, contagious, and infectious diseases. This could be applicable to the implementation of some form of area quarantine, if considered necessary. See also *Code of Virginia* § 32.1-42.

*e. Penalties for violation of movement restrictions*

*Code of Virginia* § 44-146.17 specifies that executive orders, to include those declaring a state of emergency, shall have the force and effect of law and the violation thereof shall be punishable as a Class 1 misdemeanor in every case where the executive order declares that its violation shall have such force and effect.

Per § 32.1-48.014 of the *Code of Virginia*, an individual who does not comply with an order of isolation or order of quarantine, may be guilty of a class 1 misdemeanor (with a punishment, upon conviction thereof, of not more than 12 months in jail, a fine of up to \$2,500, either or both [as defined in §18.2-11(a) of the *Code of Virginia*]). In addition, per § 32.1-27 of the *Code of Virginia* a person may also be subject to an injunction or other remedy. Further, any persons violating or failing, neglecting, or refusing to obey any injunction or other remedy shall be subject, in the discretion of the court, to a civil penalty not to exceed \$25,000 for each violation.

No specific penalties for violating voluntary isolation or quarantine (e.g., recommendations by the director of a district health department) exist. However, it may be possible that an individual who is aware that they are or may be infected with a communicable and who intentionally violates voluntary isolation or quarantine could be found to be criminally and/or civilly liable.

## **2. Due Process Measures For Persons Under Restrictive Measures**

*a. Communicable Disease of Public Health Significance*

As outlined above, and defined in *Code of Virginia* § 32.1-48.01 et seq, if an individual with a communicable disease of public health significance is found to have continued to engage in at-risk behavior, the State Health Commissioner or his designee may petition the general district court of the county or city in which such person resides to order the person to appear before the court to determine whether isolation is necessary to protect the public health from the risk of infection with a communicable disease of public health significance.

Per *Code of Virginia* § 32.1-48.04, any person ordered to appear before the court will be informed of his/her right to be represented by counsel. The court shall provide the person with reasonable opportunity to employ counsel at his

own expense, if so requested. If the person is not represented by counsel, the court shall appoint an attorney-at-law to represent him/her.

The court can order the isolation of the individual in the person's home or another's residence or an institution or other place, including a jail when no other reasonable alternative is available. Any person under a court ordered isolation may appeal the order in the circuit court in the jurisdiction in which he resides. Such appeal shall be filed within 30 days from the date of the order. Notwithstanding the provisions of *Code of Virginia* § 19.2-241 relating to the time within which the court shall set criminal cases for trial, any appeal of an isolation order has priority over all other pending matters before the court, except those matters under appeal pursuant to *Code of Virginia* § 37.2-821, and shall be heard as soon possible by the court. The appeal shall be heard *de novo*.

If a person known or suspected to have a communicable disease of public health significance cannot be conveniently brought before the court, the court may issue an order of temporary detention (*Code of Virginia* § 32.1-48.03.B). The institution or other place of temporary detention shall not include a jail or other place of confinement for persons charged with criminal offenses.

Similarly, if an individual poses an imminent threat to the health of others, under *Code of Virginia* § 32.1-48.02.D the State Health Commissioner may issue an emergency order requiring such person to be taken immediately into custody and placed, for a period, not to exceed 48 hours, in the least restrictive, willing facility providing protection of the health of others and appropriate treatment to the person. Of note, a process for the appeal of the State Health Commissioner's emergency order is not outlined in the *Code of Virginia* related to communicable diseases of public health significance.

#### *b. Communicable Disease of Public Health Threat*

For an order of isolation or an order of quarantine issued to manage an individual with a communicable disease of public health threat, the order should contain sufficient information to identify the person subject to the order, the site of isolation or quarantine, the basis for the order (including, for an affected area a clear definition of the geographic/temporal parameters), the necessary restrictions of activities, individuals who are authorized to enter the premises, and the duration of the isolation or quarantine and conditions for termination of the order. The individual should also have timely opportunities, if not readily available under the circumstances, for the person or persons who are subject to the order to notify employers, next of kin, or legally authorized representatives and the attorneys of their choice of the situation. Finally, the order must specify the penalty or penalties that may be imposed for noncompliance with the order, and include a copy of *Code of Virginia* § 32.1-48.010 (for quarantine) or *Code*

of Virginia § 32.1-48.013 (for isolation) informing the individual subject to the order of their right to seek judicial review of the order.

Delivery of the order(s) to individuals occurs through the district health department; the district health director or his/her designee will ensure the delivery, by an appropriate party, of the order(s) to the individual(s) (or an adult family member or legal guardian, or the responsible owner of a companion animal) to the extent practicable. Although under *Code of Virginia* § 32.1-48.09(J) for an order of quarantine or *Code of Virginia* § 32.1-48.012(K) for an order of isolation any state or local health department employee, or any other person designated by a law-enforcement officer or state or local health department employee is empowered and authorized to deliver an order of quarantine, in general, the health department will request that the law enforcement agency that has jurisdiction in the city or county where the individual resides should be requested to deliver the order(s). The district health director may dispatch a VDH representative with the law enforcement officer to assist in answering medically-related questions as needed.

Upon delivery of the order(s), the order(s) will be reviewed with the individual to the extent necessary and practicable, and the individual(s) will be notified that they have the right to the following:

- The right to a court hearing;
- The right to contest the facts alleged against you, to cross-examine witnesses, and to present evidence and witnesses on your behalf;
- The right to counsel. If the individual has legal counsel, then he or she will have an opportunity to contact that counsel for assistance. If the patient cannot afford counsel, the Court will appoint counsel;
- The right to appeal a ruling of the court (however, during the appeal process the order remains in effect).

For orders applied to affected areas or large groups, mass method(s) of communication (e.g., newspaper, internet, text mail, etc.) may be used – however, this would also have to provide persons subject to the orders with a copy of § 32.1-48.013 or § 32.1-48.010 (as appropriate) of the *Code of Virginia*, and/or direct persons to a location, a website, or publication such as a newspaper, where they may obtain this information.

As soon as practicable following the issuance of an order of quarantine or an order of isolation, the State Health Commissioner will work with the Office of the Attorney General to file a petition in the circuit court for the city or county in which the person or persons resides or is/are located (or in the case of an affected area, in the circuit court of the affected jurisdiction or jurisdictions) seeking *ex parte* review and confirmation/extension of the order(s) (*Code of Virginia* § 32.1-48.09 and § 32.1-48.012, respectively).

If the court confirms the order, the individual may appeal as outlined in *Code of Virginia* § 32.1-48.013 (for an order of isolation) and § 32.1-48.010 (for an order of quarantine). Basically, any individual subject to an order of isolation or an order of quarantine may file an appeal of the order, in writing, in the circuit court for the city or county in which the subject of the order resides or is located. Individuals subject to an order of isolation or an order of quarantine applied to an affected area may file an appeal of the order in the circuit court for the jurisdiction or jurisdictions for any affected area. The petition for the appeal will then be served upon the State Health Commissioner or his/her legal representative.

Note that the submission of an appeal of an order of isolation or an order of quarantine DOES NOT stay the order – the order remains effective until the appeal is reviewed by the court and the order is vacated.

The court will hear appeals of orders of isolation or orders of quarantine within 48 hours. However, if the 48-hour period terminates on a day on which the court is lawfully closed, the hearing shall be held on the next day that the court is lawfully open. In extraordinary circumstances, for good cause shown, the State Health Commissioner may request a continuance of the hearing, which the court shall only grant after giving due regard to the rights of the affected individuals, the protection of the public health and safety, the severity of the emergency, and the availability of witnesses and evidence.

*Code of Virginia* § 32.1-48.010 and § 32.1-48.013 allow, upon receiving multiple appeals of an order of quarantine that applies to a group of persons or an affected area, the court may, on the motion of any party or on the court's own motion, consolidate the cases in a single proceeding for all appeals when (i) there are common questions of law or fact relating to the individual claims or rights to be determined; (ii) the claims of the consolidated cases are substantially similar; and (iii) all parties to the appeals will be adequately represented in the consolidation.

Any person appealing an order of quarantine shall have the burden of proving that he is not properly the subject of the order of quarantine or isolation. The circuit court shall not conduct a *de novo* review of the order of quarantine; however, the court shall consider the existing record and such supplemental evidence as the court shall consider relevant. The hearing will review the factual issues raised to determine if the individual(s) should continue in isolation or quarantine, or if not found to be a public risk, released. The court shall conduct the hearing on an appeal of an order of quarantine in a manner that will protect the health and safety of court personnel, counsels, witnesses, and the general public and in accordance with rules of the Supreme Court of Virginia pursuant to subsection C of § 17.1-503 and as provided in the *Rules of the Virginia Supreme Court* (§ vs-cr-3:24, C.). To this end, the circuit court may take measures including, but not limited to, ordering the hearing to be held by

telephone or video conference, or ordering those present to take appropriate precautions, including wearing personal protective equipment. The court may, for good cause shown, hold all or any portion of the hearings in camera upon motion of any party or upon the court's own motion.

Upon completion of the hearing, the court may confirm, vacate, or modify the order(s).

If the patient demonstrates to the court's satisfaction that he or she is not properly subject to the order, then the order will be immediately vacated and the person shall be immediately released UNLESS the order to vacate the order of isolation or order of quarantine is stayed by the filing by the State Health Commissioner of an appeal to the Supreme Court of Virginia and an expedited review.

If the appeal is not successful, and the court finds that the individual is properly the subject of the order of isolation or order of quarantine, the individual will continue under the conditions specified by the order (unless modified by the court). However, the individual may also file an appeal to the Supreme Court of Virginia for a review as provided in *Code of Virginia* § 17.1-503 and the *Rules of the Virginia Supreme Court* § 5:43. The individual remains subject to the order of isolation or order of quarantine for the duration of the order or until the patient is no longer considered to be at risk of transmitting the disease to others, or of developing the disease, or the Supreme Court of Virginia vacates the order.

Unless otherwise ordered by the Supreme Court, after the filing of a petition for appeal, 48 hours shall be allowed for the filing of a brief in opposition. The Supreme Court shall act upon the petition within 72 hours of its filing. Should the Supreme Court grant a writ, the Supreme Court may permit oral argument within 48 hours of granting the writ. The Supreme Court will issue an order within 24 hours of the argument or of its review of the case without oral argument. The Supreme Court has the authority to alter these time frames in any case. The Supreme Court may also employ an expedited review provision as outlined in *Rules of the Virginia Supreme Court* § 5:18.

The Supreme Court shall hold any oral argument in appeals in a manner so as to protect the health and safety of individuals subject to any order of quarantine or isolation, court personnel, counsel, and the general public. To this end, the Supreme Court may take measures including, but not limited to, ordering any oral argument to be held by telephone or video conference, or ordering those present to take appropriate precautions, including wearing personal protective equipment. If necessary, the court may dispense with oral argument.

Of note, the Virginia Supreme Court's rules also recognize the potential need to utilize methods to protect the court and the public from potential exposure to a communicable illness (*Rules of the Virginia Supreme Court* § 3:24).

### *c. Other Forms of Social Distancing*

The *due process* measures related to other forms of social distancing during a declared state of emergency are less clearly defined. It is likely that, should an individual challenge one or more provisions of the Governor's declaration of a state of emergency (e.g., to restrict access to a site) or the acquisition of public or private property under *Code of Virginia* § 32.1-48.017, then they would file a writ in the state court, or potentially a federal action.

## **3. Duration of movement restrictions, renewal, and ending measures**

### *Governor Authority*

Executive orders, such as a declaration of a state of emergency, are not specifically described or defined in the *Constitution of Virginia* or the *Code of Virginia*. In general, executive orders do carry an expiration date. The date is typically no longer than six months after the issuing Governor's term, but may be shorter. Executive orders may be renewed prior to their expiration.

However, emergency orders issued under *Code of Virginia* § 44.146.17 do not have any effect beyond June 30 next following the next adjournment of the regular session of the General Assembly, although the same or similar order may be issued again if not contrary to law.

### *State Health Commissioner Authority*

An emergency order issued by the State Health Commissioner, and temporary detention orders issued by a court, to manage a communicable disease of public health significance is for 48 hours. However, if the 48-hour period terminates on a day on which the court is lawfully closed, the hearing shall be held on the next day that the court is lawfully open.

Per *Code of Virginia* § 32.1-48.04 any order for isolation in the person's home or another's residence or an institution or other place is valid for no more than 120 days, or for a shorter period of time if the State Health Commissioner or his designee, or the court upon petition, determines that the person no longer poses a substantial threat to the health of others. Orders of isolation for communicable diseases of public health significance may not be renewed without affording the person the all rights conferred by *Code of Virginia* § 32.1-48.01 et seq.

For a communicable disease of public health threat, an order of isolation or order of quarantine terminates when the State Health Commissioner determines that an individual or individuals no longer pose a risk of transmitting the communicable disease of public health threat to other persons, the duration of effect of the order has expired, or the order has been vacated by the court. The duration of effect for an Order must be consistent with the known period of communicability or, if the course of the disease is unknown or uncertain, for a period anticipated as being consistent with the period of communicability of other similar infectious agents (for isolation; § 32.1-48.011), or for the known incubation period or, if the incubation period is unknown or uncertain, for a period anticipated as being consistent with the incubation period for other similar infectious agents (for quarantine; § 32.1-48.08). In any of the above situations, the individual or individuals under the Order of Isolation or Order of Quarantine shall be released immediately and receive the original copy of the release.

Should treatment (e.g., medication) exist that may shorten the duration of quarantine or isolation exist, the use of such treatment may affect the duration of the order. *Code of Virginia* § 32.1-44 does allow any isolated or quarantined person to choose his own treatment, whenever practicable and in the best interest of the health and safety of the isolated or quarantined person and the public; however, the conditions of any order of isolation for a communicable disease of public health significance (§ 32.1-48.01 et seq.) and any order of quarantine or order of isolation involving any communicable disease of public health threat (§ 32.1-48.05 et seq.) remain in effect until the person or persons subject to such order of quarantine or order of isolation shall no longer constitute a threat to other persons.

The State Health Commissioner may 'extend' the duration of an Order of Isolation or an Order of Quarantine upon finding that such an extension is necessary (e.g., the individual is infected with a disease of public health threat, exceptional circumstances continue to exist, voluntary compliance is unlikely, the incubation period for the disease of public health threat is found to be longer than previously known, the individual has been exposed to a new case of the communicable disease of public health threat and is susceptible to infection, etc.). Note that the extension must be made prior to the expiration of the original Order of Isolation or Order of Quarantine. The extension would take the form of a new Order, and must be delivered to the individual. The State Health Commissioner, or his/her legal representative, will file a petition seeking court review and confirmation of the order to extend the duration of the isolation as soon as practicable following the extension of an order.

It may also be possible to create a combined order that specifies that if an individual subject to an Order of Quarantine develops signs and/or symptoms consistent with the communicable disease of public health threat, then the conditions of an Order of Isolation will take effect. This would require that all of

the elements required in the statute could be set forth in the order, but may cause the duration of such an order to be for the incubation period plus the period of communicability, and avoid any potential gap between issuance of an order of quarantine and an order of isolation.

#### **4. Potential Liability Created by Movement Restrictions**

Under § 32.1-48.016 of the *Code of Virginia*, any person who, in good faith and in the performance of his/her duties, acts in compliance with the *Code of Virginia* and the Board of Health's regulations shall not be liable for any civil damages for any act or omission resulting from such actions unless such act or omission was the result of gross negligence or willful misconduct. Also, state sovereign immunity would apply in many situations (*Code of Virginia* § 32.1-4).

In addition, when ordering isolation or quarantine, VDH is responsible for ensuring that the individual's essential needs are met to the extent practicable (*Code of Virginia* 32.1-48.07). The district health department shall manage the isolation or quarantine, in conjunction with local emergency management resources, such that individual essential needs can be addressed. If the site of isolation or quarantine is not in a residence or healthcare facility, then VDH will ensure that the place of confinement is safely and hygienically maintained with adequate food, clothing, healthcare, and other essential needs. If an area is under a state of emergency, existing emergency protocols pursuant to the *Commonwealth of Virginia Emergency Services and Disaster Law of 2000* (§ 44-146.13 et seq. Chapter 3.2 of Title 44 of the *Code of Virginia*) shall be utilized for mobilizing appropriate resources to ensure that the essential needs of individuals, including those under Orders of Isolation and/or Orders or Quarantine, are met. However, the potential liability related to applying movement restrictions without addressing the expected needs of the restricted individuals is unknown.

#### **5. Limitations to the Legal Basis of the Jurisdiction**

Although there are no sovereign American Indian or Alaskan Native tribal lands within the Commonwealth of Virginia, there are a significant number of federal lands, including military bases, prisons, and national parks where jurisdiction for the application of these measures may be concurrent with the State, or may be exclusively federal. Foreign properties (e.g., consulates) within Virginia are also outside the jurisdiction of these measures. Various statutes (including *Code of Virginia* § 15.2-1724, § 15.2-1728, § 15.2-1729, § 32.1-48.014) provide for some ability to manage law enforcement and movement restrictions across these jurisdictions (see III.A.1, below). However, during an emergency involving a communicable illness, local and federal authorities would need to work together to best manage the movement of individuals.

In addition, in those situations where individuals within the Commonwealth but outside the jurisdiction of state law are located, the Governor or State Health Commissioner may define individuals on these properties as subject to restrictions of movement, even if state or local enforcement powers on these properties does not exist. As part of the declaration of a state of emergency, the Governor could establish criteria or prevent individuals from entering or leaving these areas as well as define the affected area(s) that the State Health Commissioner may then apply orders of isolation or quarantine should individuals leave the area.

Nevertheless, some individuals may not be subject to state civil orders. The application of orders to foreign nationals with diplomatic immunity may be problematic (22 USC254 et seq.).

Other individuals who would be exempt and may not be arrested, apprehended, or detained under any civil process during specific times (but are not otherwise privileged from service of civil process) (*Code of Virginia* § 8.01-327.2) would include the President of the United States, the Governor of the Commonwealth, and the Lieutenant Governor, members of either house of the Congress of the U.S., a judge, grand juror, or witness, members of the national guard, ministers of the gospel engaged in religious services, etc. While a small number of individuals with limited exemption, these are additional limits on the jurisdiction of the statutes and regulations.

## *B. Sufficiency of authorities and powers to restrict movement during a declared emergency, potential gaps, or uncertainties*

### **1. Potential gaps**

Despite extensive work on addressing social distancing strategies in Virginia, as a result of the extensive consideration, gaps continue to be identified related to the implementation of restriction of movement.

For example, there are no specific provisions within the *Code of Virginia* that provide law enforcement with the authority to restrain individuals who are not immediately cooperating with voluntary isolation or quarantine. Therefore, if it is suspected that the assistance of law enforcement may be necessary to immediately ensure compliance, or if the consequences of a potentially non-compliant individual are too great to risk, then proceeding directly to orders of isolation or quarantine should occur. However, there may be instances where this is unclear (e.g., risk of non-compliance is uncertain and therefore insufficient indication for an order exists) – this may lead to potential transmission.

In addition, even for known or suspected cases, there is likely to be a significant delay (exercises suggest at least 3-6 hours) for the preparation, review,

transmittal, and delivery of orders of isolation or orders of quarantine. During this time period, law enforcement has expressed concerns over their authority in detaining individuals. Alternatives, such as developing statutes to enable short term detention by law enforcement for known or suspected infection with a communicable disease, may be extremely problematic. Therefore, significant efforts have gone into developing the most efficient process (e.g., pre-developed orders, detailed guidance for health department staff, etc.) to minimize the delay in delivering orders, and thereby limit this gap.

Another potential gap includes the legislated duration of orders. As outlined above, the duration of an order is for the communicable period for isolation (*Code of Virginia* § 32.1-48.011) and for the incubation period for quarantine (*Code of Virginia* § 32.1-48.08). However, for some conditions this may be an unknown, uncertain, or highly variable period. This duration can be based on similar illness, or likely may be for the upper range for the incubation period or communicable period. However, for certainty of interrupting transmission it may have been better to enable longer periods of restriction of movement (e.g., twice incubation period). While this may be resolved by issuing new orders as information on the specific condition becomes available, this will further complicate the legal and public health process.

A recently recognized gap involves recognition of the spread of extended drug resistant tuberculosis. *Code of Virginia* § 32.1-48.06 states that a communicable disease of public health threat may not include human immunodeficiency viruses or tuberculosis, unless used as a bioterrorism weapon. Isolation for this condition would require the mechanism for a communicable disease of public health significance. This would limit the ability to rapidly implement isolation, and does not provide any option for quarantine of contacts, for such conditions.

In regards to enforcement of orders, one potential gap in Virginia is the criteria for law enforcement to detain/arrest an individual. Generally, police officers may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer. However, in Virginia there may be a gap in the ability of law enforcement to act on alleged violation of orders of isolation: *Code of Virginia* § 19.2-81 specifically defines the conditions that allow for an arrest without a warrant for an alleged misdemeanor not committed in their presence. However, this statute does NOT include violation of orders of isolation or quarantine. While *Code of Virginia* § 32.1-48.014 does provide law enforcement with the power to detain or arrest any person identified as in violation of any order of quarantine or isolation, or for whom probable cause exists that he may fail or refuse to comply with any such order, it may be more difficult to act when an individual was non-compliant outside of the presence of the officer, but is compliant during contact with law enforcement. Perhaps the arresting officer could obtain the appropriate warrant – but this might delay action, further enabling

transmission. Also, *Code of Virginia* § 19.2-82 requires that upon the arrest without warrant that the person arrested without a warrant shall be brought forthwith before a magistrate or other issuing authority having jurisdiction who shall proceed to examine the officer making the arrest under oath. However, without planning and implementation of appropriate precautions this could expose the magistrate/court to a potentially infectious individual.

Finally, *Code of Virginia* § 32.1-48.09(H) and 32.1-48.012(I) state that the State Health Commissioner may seal orders only if the information would “exacerbate the public health threat or compromise any current or future criminal investigation or compromise national security.” The court may reseal the information to “the extent necessary to protect public health and safety.” *Id.* These provisions do **not** include the authority to seal the orders to protect the general privacy of the individual. Therefore, the State Health Commissioner would likely request sealing the information on the basis that the public health threat may be exacerbated by a reluctance of infected individuals or contacts presenting as a result of privacy concerns. This decision would depend on the disease at issue and other circumstances. However, this gap does make protection of the privacy of individuals more difficult.

## 2. Uncertainties

Despite the extensive consultation and revision of the statutes, regulations, policies, and procedures, numerous uncertainties continue to exist related to the implementation of restriction of movement. This is partly a result of the breadth of the implications for these measures, and the many factors (individual, resources, judicial, political) that may affect the potential outcomes.

First, it should be recognized that the declaration of a state of emergency must be developed by the Governor. Such a declaration may have political and social implications, and the contents and extent of the declaration may be difficult to predict. As a result, some aspects of restrictions of movement (e.g., property seizure, closing borders, etc.) may be difficult to anticipate. In addition, the political or social implications (e.g., generating panic) of declaring a state of emergency must be considered.

Under § 32.1-48.017 of the *Code of Virginia*, upon the declaration by the Governor of a state of emergency, the State Health Commissioner may require the use of any public or private property, building, or facility to implement any Order of Isolation or Order of Quarantine (e.g., for centralized care or management of cases). This may involve accommodating persons who are employed in, using, or occupying the property, building, or facility and who are not covered by the relevant order of isolation or order of quarantine. In addition, owners or operators of any property, building, or facility so commandeered are entitled to compensation. However, the actual process (and availability of funds) for reimbursement or restoration of a property is

unclear; these issues may limit the willingness to utilize this mechanism. Again, taking possession of some structure or facility (e.g., a hospital, or a hotel as a temporary shelter) may have political implications. And while the structure may be used by the Governor, it is unlikely that key personnel for the functioning of the structure (e.g., physicians, nurses, maintenance, housekeeping, kitchen staff, administration) could be compelled to maintain services – however, public health is unlikely to have the personnel or experience to be able to manage such facilities independently or in a ‘hostile’ relationship with staff.

While relatively well crafted, there remain some ambiguities in the law regarding how to define a condition as a communicable disease of public health threat. From the *Code of Virginia*, it is unclear if communicable diseases of public health threat are absolute, or that the designation is situational (e.g., a condition may be a communicable disease of public health significance in some circumstances, but a threat in others...although it is recognized that some conditions are more likely to meet multiple criteria than others). This may impact available options. For example, *Code of Virginia* § 32.1-48.02 F states that the provisions of the article “shall only apply to communicable diseases of public health significance and shall not apply to communicable diseases of public health threat.” If communicable diseases of public health threat are absolute (i.e., a condition always is, or never is), does this mean that the ability to use the methods under a communicable disease of public health significance DO NOT exist when considering such conditions. Or is this a safety, where it means that the provisions in *Code of Virginia* § 32.1-48.02 do not limit management of a communicable disease of public health threat?

Another uncertainty relates to the process for managing individuals within a declared affected area(s). While the Governor may declare a state of emergency for an affected area, ensuring that all individuals exposed to that area are identified and managed appropriately by public health and that individuals are compliant may be difficult. In addition, it is unclear how long an order of quarantine could be in effect when applied to an affected area: the *Code of Virginia* (§ 32.1-48.08) specifies the duration of the order as “consistent with the known incubation period for such disease or, if the incubation period is unknown, for a period anticipated as being consistent with the incubation period for other similar infectious agents” – however, for those within the affected area, where new cases and new exposures may be occurring, the application of a specific incubation period to any single individual may be problematic. How to prospectively define the termination date of the quarantine order for the affected area, given the specific restrictions of the *Code of Virginia*, may be a challenge in this situation.

Another uncertainty relates to if, in the opinion of the State Health Commissioner, the number of persons affected by orders of isolation or orders of quarantine is too great to make delivery of copies of the orders to each person possible in a timely manner then the State Health Commissioner shall

cause the orders to be communicated by print, radio, television, internet, and/or other available means (e.g., reverse 911) to those affected. However, these method(s) of communication would also have to provide persons subject to the orders with a copy of § 32.1-48.013 or § 32.1-48.010 (as appropriate) of the *Code of Virginia*, and/or direct persons to a location, a website, or publication such as a newspaper, where they may obtain this information. Assuring that every individual is aware of this requirement, and demonstrating known non-compliance, may prove difficult. A similar issue exists if an order of isolation or an order of quarantine is applied to an affected area.

There are uncertainties related to the adequate availability and training of defense counsel to enable due process. Since use of these statutes and regulations are very rare, there is limited defense counsel with experience in these areas (and may be further reduced by illness or self shielding activities).

Also, the legal support for public health may be problematic if there are large numbers of cases pending in multiple jurisdictions or travel is restricted. In that situation, the Office of Attorney General could appoint city and county attorneys as special counsel to assist.

There may also be inadequate public health staff to support legal activities (e.g., court appearances, complete documentation) while also managing the public health emergency, so that this may impact the response. It is uncertain that healthcare workers and public health staff have adequate training to address legal issues such as maintaining appropriate chain of custody (e.g., to ensure adequacy of evidence provided in legal hearings). The assistance of law enforcement for guidance is recommended, but may not be available during a public health emergency.

Law enforcement in Virginia have also been uncertain with determining the level of physical force that is appropriate to detain an individual in violation of an Order. However, it may be impossible to dictate in advance how much force can be used. A determination of reasonable force is a factual determination to be made by the jury. In *Parker v. McCoy*, 212 Va. 808, 813, 188 S.E.2d 222 (1972) the Court stated that “in making an arrest under lawful authority, . . . [a police] officer is within reasonable limits the judge of the force necessary under the circumstances, and he cannot be found guilty of any wrong, unless he arbitrarily abuses the power conferred upon him.” On another occasion, the Court stated that:

“Officers, within reasonable limits, are the judges of the force necessary to enable them to make arrests, to prevent escapes, and to deliver prisoners where they are required by law or by warrant to deliver them.

When acting in good faith, the courts will afford them the utmost protection, and they will recognize the fact that emergencies arise when they are not expected to exercise that cool and deliberate judgment which courts and juries exercise afterwards upon investigations in court.

When their actions are animated by anger or malice, they subject themselves to liability if they inflict injury upon one under arrest, for actual damage, where the injury is inflicted because of anger resulting from provocation, and for punitive damages where the injury is inflicted through malice.” *Davidson v. Allam*, 143 Va. 367, 373, 130 S.E. 245 (1925); see also *Banks v. Bradley*, 192 Va. 598, 66 S.E.2d 526 (1951).

Another uncertainty is that, by definition (*Code of Virginia* § 32.1-48.01) a communicable disease of public health significance, and (*Code of Virginia* § 32.1-48.06) a communicable disease of public health threat are due to infectious agents. However, communicable diseases may potentially be caused by non-infectious agents (e.g., polonium-210 exposure/contamination). Under this circumstance, other tools would need to be used to address restrictions of movements for these situations.

Also, as provided in the *Rules of the Virginia Supreme Court* § 3:24(C) the circuit court shall hold hearings for appeals of orders in a manner to protect the health and safety of individuals subject to any such order of quarantine or isolation, court personnel, counsel, witnesses, and the general public. To this end, the circuit court may take measures including, but not limited to, ordering the hearing to be held by telephone or video conference, or ordering those present to take appropriate precautions, including wearing personal protective equipment. The abilities and willingness of the individual courts to use these options is unknown, and should be explored in advance to improve implementation.

In addition, section 12 of the Constitution of Virginia provides for “the right of the people peaceably to assemble”. Therefore, movement restrictions that limit gatherings, including closure of public places as part of social distancing measures, may come under challenge. There may also be concern over the distinction between closing “public” gatherings, compared to the ability of the Commonwealth to restrict “private” meetings. Instead, the use of “mass gatherings” may be more appropriate – but defining a mass gathering (i.e., the specific number of people) may prove challenging.

Finally, as discussed above, a major concern is the ability of VDH to meet the responsibility for ensuring that the essential needs of individual’s under orders of isolation or quarantine are met (per *Code of Virginia* § 32.1-48.05 and 12VAC5-90-103 and 12VAC5-90-107). When ordering isolation or quarantine,

the district health department shall manage the isolation or quarantine, in conjunction with local emergency management resources, such that individual essential needs can be addressed. If the site of isolation or quarantine is not in a residence or healthcare facility, then VDH will ensure that the place of confinement is safely and hygienically maintained with adequate food, clothing, healthcare, and other essential needs. Family, friends, and/or neighbors of individual placed in isolation/quarantine, as well as formal aid agencies (e.g., Red Cross, faith-based programs, Social Services, etc.) may also be significant resources in caring for individuals. However, the actual implementation may strain resources, while 'failing' (or allegedly failing) to meet these obligations may severely undermine the effectiveness of restriction of movement.

### **3. Legal provisions that could inhibit, limit, or modify the legal basis to restrict the movement**

None identified aside from those indicated above, related to inhibiting restriction of movement through the procedural burden (e.g., due process measures) to public health, law enforcement, and other agencies given limited resources at a time of increased demand for services and likely further degradation of resources due to the impact of illness on key personnel.

#### *C. Legal powers/authorities specifically related to quarantine enforcement*

### **1. Legal powers and authorities authorizing law enforcement to enforce quarantine orders**

As detailed in A.1.b (above), for a communicable disease of public health significance, all state and local law-enforcement officers executing an emergency order of detention issued by the State Health Commissioner or a order of temporary detention issued by a court shall detain and order the named person to remain confined in his home or another's residence or in some convenient and willing institution or other willing place (but not a jail) for a period not to exceed 48 hours prior to a hearing (if the specified 48-hour period terminates on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, such person may be detained until the next day which is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed). The institution or other place of temporary detention shall not include a jail or other place of confinement for persons charged with criminal offenses (*Code of Virginia* § 32.1-48.03).

*Code of Virginia* § 32.1-48.04 provides for the court to issue an order for isolation in an individual's home or another's residence or an institution or other place, including a jail when no other reasonable alternative is available, upon a finding by the court that the individual is infected with a communicable disease of public health significance, the person is engaging in at-risk behavior, the person has demonstrated an intentional disregard for the health of the public,

and there is no other reasonable alternative means of reducing the risk to public health.

For communicable diseases of public health threat, *Code of Virginia* § 32.1-48.014.B states that law enforcement shall enforce orders of isolation or orders of quarantine developed by the State Health Commissioner. This includes the power to detain or arrest any person or persons known or suspected to be in violation of any order of quarantine or order of isolation, or for whom probable cause exists that the individual may fail or refuse to comply with any such order. Any person or persons so detained shall be held in the least restrictive environment that can provide any required health care or other services. If an order of isolation or an order of quarantine specifies the place of confinement as a location other than a place of residence, such as a healthcare facility, jail, an apartment building, or a hotel, then the individual subject to the order may be transported to the appropriate site for admission as directed by the order.

As specified in *Code of Virginia* § 32.1-48.014, any person who does not comply with a validly issued order of quarantine or order of isolation is, upon conviction, guilty of a Class 1 misdemeanor and payment of civil penalties.

## **2. Legal authorities inhibiting enforcement of a quarantine order**

As detailed in A.5 (above), inhibitions to the use of law enforcement enforcing a quarantine order include authority to act in some jurisdictions (e.g., federal properties), as well as the applicability to a small number of individuals (e.g., foreign nationals with diplomatic immunity).

In addition, as detailed in B.1 (above), the gap related to the issue of whether a violation or non-compliance with an order of isolation or an order of quarantine was actually witnessed by the officer may make enforcement more difficult. If probable cause that an individual will be non-compliant, based on a report (but not observed by an officer) that an individual was non-compliant, then this may resolve this issue.

## **3. Legal authorities for enforcement of a federal quarantine order**

The federal government does have “enumerated powers” that allow it to regulate movement under the Commerce Clause of the Constitution. This provides the basis for the Secretary of the United States Department of Health and Human Services to make and enforce federal regulations (e.g., 42 CFR Parts 70 and 71) to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States, or from one state or possession into any other state or possession. For example, 42 US Code, Sec. 264 enables the President to order a “quarantine”. Presidential Executive Order 13295, 68 Fed Reg 17255 (2003) and its Amendment (April 1, 2005) specifically list the diseases [cholera; diphtheria; infectious tuberculosis;

plague; smallpox; yellow fever; viral hemorrhagic fevers; Severe Acute Respiratory Syndrome (SARS); and influenza caused by novel or re-emergent influenza viruses that are causing, or have the potential to cause, a pandemic] for which a person may be quarantined if there is a danger that one of these diseases could spread across state lines. The federal government also has responsibility for protecting the public health in discrete geographic areas directly under its control (e.g., military bases), and may also assume responsibility for public health emergencies precipitated by acts of war or terrorism.

In general, however, the federal government has only rarely used its power to quarantine persons, and generally works with states to investigate and isolate cases (e.g., Section 311 of the Public Health Service Act. (42 U.S.C. § 243(a)) allows for federal assistance to be provided to state and local authorities in enforcing their health regulations). The Centers for Disease Control and Prevention's (CDC) domestic quarantine regulations also authorize federal intervention "in the event of inadequate local control" (see 42 CFR. § 70.2 and 21 CFR. § 1240.30 for additional details).

However, given the presence of the Centers for Disease Control and Prevention's Washington Quarantine Station located at Dulles International Airport, mechanisms have been prepared to consider the identification and isolation or quarantine of persons either infected with or exposed to an infectious agent of public health concern arriving within an area under the jurisdiction of the Washington Quarantine Station (i.e., all ports in Washington DC, Maryland, Virginia, and West Virginia).

The Quarantine and Border Health Services officers at the Washington Quarantine Station can enforce detention, isolation, quarantine, or conditional release for the purpose of preventing the introduction, transmission, and spread of a limited number of communicable diseases: cholera; diphtheria; infectious tuberculosis; plague; smallpox; yellow fever; viral hemorrhagic fevers (Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named); Severe Acute Respiratory Syndrome (SARS); and influenza caused by novel or re-emergent influenza viruses that are causing, or have the potential to cause, a pandemic [Exec. Order No. 13295, 68 Fed. Reg. 17255 (April 4, 2003), as amended by Exec. Order No. 13375, 70 Fed. Reg. 17299 (April 1, 2005)]. This power applies only to individuals arriving at U.S. ports from foreign countries or possessions of the U.S., or individuals engaged in interstate travel.

In the event that such a condition is known or suspected to be present in a passenger, the Director of the Centers for Disease Control may issue the appropriate detention orders. Under an existing Memorandum of Understanding a federal quarantine order will be enforced by officers from various agencies within the Department of Homeland Security (DHS).

However, the enforcement of a federal order by DHS law enforcement resources is likely to be provided by an agency that does not have a large physical presence at a particular port. With a potential limit on immediately available resources that have the authority to enforce federal quarantine orders, the Quarantine and Border Health Service officers believe that state and local resources may be needed to assist in the control of persons in involuntary quarantine who are intent on leaving the premises. There may also be a need for additional resources to enforce the isolation of ill passengers that have been transported to local hospitals for evaluation and treatment. Under *Code of Virginia* (§ 32.1-48.014.D) pursuant to 42 U.S.C. 264 et seq. and 42 C.F.R. Parts 70 and 71, any order of quarantine or isolation issued by the Director of the Centers for Disease Control and Prevention (CDC) affecting the Commonwealth of Virginia or the Metropolitan Washington Airports Authority may be enforced by local law-enforcement officers or officers of the Metropolitan Washington Airports Authority with jurisdiction over the facility involved in the quarantine or isolation order.

However, in the event that isolation and/or quarantine of individuals were necessary for conditions not contained within the list of federally quarantinable conditions, the Quarantine and Border Health Services officers would confer with local and state health officials on issuing state isolation and/or quarantine orders. Once a state isolation/quarantine order is established, local law enforcement may assist with enforcement.

Nevertheless, due to the severity of the illnesses that may be controlled with a federal order of quarantine, should a federal quarantine order apply to an individual within the border of Virginia, then it is likely that Virginia would try to ensure appropriate management, including restrictions of movement such as the development of orders of isolation or quarantine, if indicated. In addition, public health and local and state law enforcement would likely work with federal law enforcement (e.g., FBI) as well as CDC Quarantine Station staff to consider efforts to apply the federal quarantine order within the borders of the Commonwealth.

#### **4. Legal authorities inhibiting enforcement of a federal quarantine order**

No authorities have been identified that prohibit the use of law enforcement to enforce a federal quarantine order in Virginia in the jurisdiction of local or state law enforcement agencies. *Code of Virginia* § 32.1-48.014 specifically authorizes, pursuant to 42 U.S.C. 264 et seq. and 42 C.F.R. Parts 70 and 71, any order of quarantine or isolation issued by the Director of the Centers for Disease Control and Prevention affecting the Commonwealth or the Metropolitan Washington Airports Authority to be enforced by local law-enforcement officers or officers of the Metropolitan Washington Airports

Authority with jurisdiction over the facility involved in the quarantine or isolation order.

However, law enforcement would be prohibited from enforcing a federal quarantine order for areas they would not otherwise have jurisdiction (e.g., federal properties such as military bases or prisons; foreign property such as consulates).

## **5. Legal authorities prohibiting law enforcement assistance of federal government execution of federal quarantine order**

No authorities have been identified that prohibit the use of law enforcement to assist a federal quarantine order in Virginia in the jurisdiction of local or state law enforcement agencies. However, Virginia law enumerates the situations where law enforcement may act in civil matters. For example, *Code of Virginia* § 32.1-48.014 specifically authorizes, pursuant to 42 U.S.C. 264 et seq. and 42 C.F.R. Parts 70 and 71, any order of quarantine or isolation issued by the Director of the Centers for Disease Control and Prevention affecting the Commonwealth or the Metropolitan Washington Airports Authority to be enforced by local law-enforcement officers or officers of the Metropolitan Washington Airports Authority with jurisdiction over the facility involved in the quarantine or isolation order.

As in C.4 (above) law enforcement would be prohibited from assisting the federal government in enforcing a federal quarantine order for other areas that they would not otherwise have jurisdiction (e.g., federal properties such as military bases or prisons; foreign property such as consulates). However, local and state law enforcement could assist federal authorities through a transfer of custody of the individuals subject to a federal quarantine order but located on federal properties from federal authorities.

### *D. Sufficiency of the authorities to enforce quarantine orders, potential gaps or uncertainties*

#### **1. Potential gaps**

As detailed in B.1 (above), despite extensive work on addressing social distancing strategies in Virginia, gaps continue to be identified related to the implementation of quarantine. These include:

- the legislated duration of orders (for one incubation period only for quarantine, or for the suspected duration of communicability for isolation, thereby decreasing the safety margin for new or emerging conditions where this may not be completely known); and,

- the handling by law enforcement of reported noncompliance with quarantine or isolation orders (misdemeanors) that has not been observed by the officer.

## **2. Uncertainties**

As detailed in B.2 (above), despite the extensive consultation and revision of the statutes, regulations, policies, and procedures, numerous uncertainties continue to exist related to the implementation of restriction of movement. This is partly a result of the breadth of the implications for these measures, and the many factors (individual, resources, judicial, political) that may affect the potential outcomes. These uncertainties in regards to the enforcement of orders of isolation or quarantine include determining the level of physical force that is appropriate to detain an individual in violation of an order;

## **3. Other legal provisions not previously listed that could inhibit, limit, or modify the legal basis to restrict movement**

None identified aside from those indicated above, related to inhibiting restriction of movement through the procedural burden (e.g., due process measures) to public health, law enforcement, and other agencies given limited resources at a time of increased demand for services and likely further degradation of resources due to the impact of illness on key personnel.

### *E. Legal powers/authorities to initiate, maintain, or release from restriction of movement of persons in the absence of a declared emergency*

As described above in I.A.1 (above), the difference in the ability to apply movement restrictions during a declared state of emergency, and those when a state of emergency has not been declared, are mostly related to a) the specific limitations of movement that the Governor's declaration may outline, and b) if no state of emergency is declared, the State Health Commissioner cannot issue an order of isolation or an order of quarantine for an affected area (instead, an order must be developed for each and every individual within the physical area of concern). As a result, the following information may be largely redundant with the initial responses, but is provided for the sake of completeness.

## **1. Initiation, Maintenance, or Release From Restrictive Measures**

### *a. Authority to declare or establish movement restrictions*

The following specific authorities to declare movement restrictions that were detailed in I.A.1.a (above) would also exist in the absence of a declared state of emergency:

- State Health Commissioner can petition the court under *Code of Virginia* § 32.1-48.01 et seq. that provide the ability to issue an order of isolation to an individual infected with a communicable disease of public health significance;
- State Health Commissioner authorities under *Code of Virginia* § 32.1-43 that provide the ability to require quarantine, isolation, immunization, decontamination, or treatment of any individual or group of individuals when he determines any such measure to be necessary to control the spread of any disease of public health importance, the ability to issue emergency orders of detention for communicable diseases of public health significance under *Code of Virginia* § 32.1-48.01 et seq., and the ability to issue orders of quarantine or orders of isolation for **individuals** under *Code of Virginia* § 32.1-48.05 et seq. The State Health Commissioner also has the power to implement reverse isolation (i.e., exclude non-immunized children from school in case of an outbreak) – this power has also been delegated to district health directors acting in the name of the State Health Commissioner;
- Board of Health authorities that include (under *Code of Virginia* § 32.1-42,) the ability to promulgate regulations and orders to meet any emergency or to prevent a potential emergency caused by a disease dangerous to public health, and under *Code of Virginia* § 32.1-13 the ability to make separate orders and regulations to meet any emergency not provided for by general regulations for the purpose of suppressing conditions dangerous to the public health and communicable, contagious, and infectious diseases; and,
- Local health director authorities to recommend to any individual or group of individuals appropriate public health control measures, including but not limited to quarantine, isolation, immunization, decontamination, or treatment (12VAC5-90-100).

However, the authorities detailed in I.A.1.a (above) that would not be available in the absence of a declared state of emergency would include:

- Authorities of the Governor under *Code of Virginia* § 44-146.17 related to the direction of resources, compelling evacuation, and controlling ingress and egress; and,
- Authorities of the State Health Commissioner related to the ability to issues orders of quarantine or orders of isolation (under *Code of Virginia* § 32.1-48.08 and § 32.1-48.012, respectively) for an affected area;

*b. Enforcement of movement restrictions*

As detailed in I.A.1.b (above), the following specific authorities to enforce movement restrictions that would exist in the absence of a declared state of emergency would include state and local law-enforcement officer authority to:

- Detain individuals subject to emergency orders (issued by the State Health Commissioner) per *Code of Virginia* § 32.1-48.02 or orders of temporary detention (issued by a court) per *Code of Virginia* § 32.1-48.03;
- Enforce court ordered isolation (*Code of Virginia* § 32.1-48.04);
- Enforce orders of quarantine or orders of isolation issued by the State Health Commissioner for individuals exposed to, or infected with, a communicable disease of public health threat (*Code of Virginia* § 32.1-48.014); and
- Use an electronic device to enforce isolation for a communicable disease of public health significance (*Code of Virginia* § 32.1-48.08.C) and to enforce an order of quarantine or an order of isolation for a communicable diseases of public health threat (*Code of Virginia* § 32.1-48.014).

In addition, the absence of a declared state of emergency does not affect the ability of local and state health department staff to participate in the enforcement of restrictive measures, including the monitoring of ill or exposed individuals for compliance with orders.

However, in the absence of a declared state of emergency, penalties for violating executive orders, including declarations of a state of emergency that could specify movement restrictions, detailed under *Code of Virginia* § 44-146.17 detailed in I.A.1.b (above) would not be available.

### *c. Legal powers and authorities for group quarantine*

As detailed in I.A.1.c (above), a declared state of emergency is not necessary for the State Health Commissioner to have the authority to issue orders of quarantine (*Code of Virginia* § 32.1-48.08) and orders of isolation (*Code of Virginia* § 32.1-48.011) when exceptional circumstances exist for individuals exposed or infected to a communicable disease of public health threat. In addition, since the State Health Commissioner can issue as many individual orders as are considered necessary to address the exceptional circumstances related to the communicable disease of public health threat, these could essentially provide for 'group quarantine'.

However, in the absence of a declared state of emergency where the Governor declares one or more affected areas (per *Code of Virginia* § 44-146.17) the State Health Commissioner cannot orders of isolation (*Code of Virginia* § 32.1-48.012 and 12VAC5-90-103) or quarantine (*Code of Virginia* § 32.1-48.08 and 12VAC5-90-107) that specify individuals within the affected area(s) as the subject of the orders of isolation or quarantine.

When no such declaration of a state of emergency exists, each individual whose activities are to be restricted requires preparation of a separate order, even if a definable group characteristic is available.

*d. Legal powers and authorities for area quarantine*

As detailed in I.A.1.d (above), there are no specific statutes or regulations in Virginia that define an “area quarantine.” While the State Health Commissioner may isolate or quarantine one or more individuals to address a communicable disease of public health threat, as needed, in the absence of a declared public health emergency individualized orders are required even if each individual is part of a larger identifiable group (i.e., within an area). A declaration of a state of emergency by the Governor that identifies an affected area is necessary to be able to apply an order of isolation or an order of quarantine to individuals within the affected area.

In addition, as detailed in I.A.1.d (above), the authority to control ingress or egress to an area (e.g., as a *cordon sanitaire*) through the Governor’s powers would not exist without a declared state of emergency. However, the State Health Commissioner has the ability to specify exposures that require quarantine (under *Code of Virginia* § 32.1-48.08) or isolation (under *Code of Virginia* § 32.1-48.011), whether or not a state of emergency has been declared. As a result, in situations where specific control of the ingress/egress to an area may not be possible, individuals may be dissuaded from entering an area since exposure could lead to an order of quarantine.

*e. Penalties for violation of movement restrictions*

As detailed in I.A.1.e (above), the following specific penalties for violation of movement restrictions in the absence of a declared state of emergency would include:

- Per § 32.1-48.014 of the *Code of Virginia*, noncompliance with an order of isolation or order of quarantine may be guilty of a class 1 misdemeanor (with a punishment, upon conviction thereof, of not more than 12 months in jail, a fine of up to \$2,500, either or both [as defined in §18.2-11(a) of the *Code of Virginia*]);
- Per § 32.1-27 of the *Code of Virginia* a person may also be subject to an injunction or other remedy. Further, any persons violating or failing, neglecting, or refusing to obey any injunction or other remedy shall be subject, in the discretion of the court, to a civil penalty not to exceed \$25,000 for each violation; and,
- No specific penalties for violating voluntary isolation or quarantine exist (e.g., as recommended by the director of a district health department). However, it may be possible that an individual who is aware that they are or may be infected with a communicable and who intentionally violates voluntary isolation or quarantine could be found to be criminally and/or civilly liable.

## **2. Due Process Measures For Persons Under Restrictive Measures**

As detailed in I.A.2 (above) due process measures for individuals under an order of isolation for a communicable disease of public health differ from the due process measures for an individual quarantined or isolated for a communicable disease of public health threat.

However, the due process measures detailed in I.A.2.a (above) related to a communicable disease of public health significance are not different in the absence of a declared state of emergency. Similarly, the due process measures detailed in I.A.2.b (above) related to a communicable disease of public health significance are not different in the absence of a declared state of emergency.

## **3. Duration of movement restrictions, renewal, and authority/process/notice requirements for ending the measures**

The duration of movement restrictions, renewal, and authority for ending measures as detailed in I.A.3 (above) are not different in the absence of a declared state of emergency. This applies to orders of emergency detention, temporary detention orders, court ordered isolation, and isolation or quarantine ordered by the State Health Commissioner.

Issues surrounding the duration of movement restrictions, renewal, and ending measures regarding executive orders issued by the Governor are not relevant, since this discussion is specific to the absence of a declared state of emergency.

## **4. Potential Liability Created by Movement Restrictions**

Some of the potential liability for movement restrictions detailed in I.A.4 that exist in the absence of a declared state of emergency include those resulting from *Code of Virginia* § 32.1-48.016 (regarding VDH requirements to ensure that essential needs of individuals who have been isolated or quarantined are met).

## **5. Limitations to the Legal Basis of the Jurisdiction**

Without a declaration of a state of emergency, the Commonwealth has limited ability to implement large scale social distancing tools (e.g., *cordon sanitaire*). In this situation, the limitations to the legal basis of the jurisdiction also include those detailed in I.A.5 (above), such as:

- Applicability to military bases, prisons, national parks, and other federal properties;
- Applicability to foreign properties, such as consulates; and,
- Other exempt individuals (e.g., the President of the United States, the Governor of the Commonwealth, etc. at specific times as described in *Code of Virginia* § 8.01-327.2).

*F. Sufficiency of the authorities to restrict movement in the absence of a declared emergency, and potential gaps or uncertainties*

## **1. Potential gaps**

In the absence of a declared emergency, the potential gaps outlined in I.B.1 (above) exist, including:

- Practical issues related to time delays in preparing, reviewing, transmitting, and delivering orders that may enable transmission;
- The legislated duration of orders, where the mandated periods selected for orders of isolation or orders of quarantine may underestimate the period of communicability;
- The issues related to the general requirement that law enforcement must observe a violation of a misdemeanor; and,
- The inability to maintain confidentiality of medical information of individuals once entered as court documents.

## **2. Uncertainties**

When no state of emergency has been declared, the same uncertainties detailed in I.B.2. (above) for movement restrictions exist, including those related to:

- Ambiguities in the law regarding how to define a condition as a communicable disease of public health threat;
- Practical issues regarding the effective management of large numbers of individuals within a declared affected area(s) (e.g., monitoring compliance, delivery of orders, documentation, etc.);
- The ability to effectively prosecute individuals within an affected area subject to an order who are non-compliant;
- Availability of adequate defense counsel to support potentially large numbers of appeals and court resources to manage these appeals in a timely manner;
- Appropriate levels of force for restraining isolated or quarantined individuals;
- The ability to restrict the movement of those who have been exposed to a communicable, non-infectious agent (e.g., polonium-210);
- Constitutional challenges to restrictions on movement; and,

- The ability of VDH to adequately meet the responsibility for ensuring that the essential needs of individual's under orders of isolation or quarantine are met (per *Code of Virginia* § 32.1-48.05 and 12VAC5-90-103 and 12VAC5-90-107).

### **3. Legal provisions that could inhibit, limit, or modify the legal basis to restrict movement**

None identified aside from those indicated above, related to inhibiting restriction of movement through the procedural burden (e.g., due process measures) to public health, law enforcement, and other agencies given limited resources at a time of increased demand for services and likely further degradation of resources due to the impact of illness on key personnel.

#### *G. Additional Considerations*

### **Martial Law**

Martial law is the system of rules that takes effect should the military control of the normal administration of justice. Usually martial law reduces some of the personal rights ordinarily granted to the citizen, limits the length of the trial processes, and prescribes more severe penalties than ordinary law.

Martial law might impose particular rules, such as the use of curfews (see below). Under this system, the administration of justice is left to a military tribunal. In addition, the suspension of the writ of *habeas corpus* could occur. However, the only time that martial law has been applied in the U.S. was during the War of 1812, when U.S. General Andrew Jackson imposed martial law in New Orleans, Louisiana after capturing the encampment of New Orleans from the British in the Battle of New Orleans. During World War II (1939 to 1945) what is now the State of Hawaii was held under martial law from 1941 to 1945.

A comparable situation was New Orleans following Hurricane Katrina. Although martial law was not actually declared, because no such term exists in Louisiana state law, a State of Emergency was declared, that gives unique powers to the state government similar to those of martial law. On the evening of August 31, 2005, New Orleans Mayor Ray Nagin nominally declared "martial law" and said that officers don't have to worry about civil rights and Miranda rights in stopping the looters.

However, it is exceptionally unlikely that martial law would be considered necessary for restricting movement - in cases of major natural disasters, the "state of emergency" construct should adequately deal with the necessary restrictions.

## Police and Civil Processes

Of note, although police officers in Virginia generally do not have authority in civil matters except in certain specific circumstances (e.g., emergency custody due to mental illness), the *Code of Virginia* specifically empowers and authorizes any law-enforcement officer (including police or sheriffs), or any other person designated by a law-enforcement officer, to deliver an order of quarantine [under § 32.1-48.09(J)] or an order of isolation [under § 32.1-48.012(K)]. Note that these statutes also enable any state or local health department employee, or any other person designated by a state or local health department employee to deliver an order of quarantine or an order of isolation. These specific delegations of authority have been important for expanding the resources of public health in ensuring delivery of orders.

## Protected Health Information

The release of protected health information is governed by both Federal and state law. It is NOT true that issues surrounding patient confidentiality are a barrier to the legal basis of the effective restriction of movement, especially regarding the transfer of protected health information. For example, *Code of Virginia* § 32.1-116.3 requires disclosure of a potential risk of exposure to public safety personnel and EMS agencies. In addition, *Code of Virginia* § 32.1-116.3(G) [and re-iterated in § 32.1-48.05(C)] requires any person requesting or requiring any employee of a public safety agency to arrest, transfer, or otherwise exercise custodial supervision over an individual known to be infected with any communicable disease or an individual subject to an order of isolation or an order of quarantine to inform such public safety employee of a potential risk of exposure to a communicable disease. Neither public safety nor emergency medical services personnel shall re-disclose the information [*Code of Virginia* § 32.1-116.3(I)].

However, the release of protected health information should always be limited to those with a need to know, and limited to the minimum necessary to carry out the intended purpose. In addition, individuals who receive protected health information may use the information only for the purposes for which it was engaged and safeguard the information from misuse; as required under the *Code of Virginia* § 32.1-41, any person to whom a patient's identity is divulged shall preserve the patient's anonymity. All such disclosures should be documented (i.e., date, public health information disclosed, identity of the recipient of the disclosure, and the purpose of the disclosure).

Of note, practical barriers do exist in terms of the transmittal of protected health information. For example, in order to protect patient confidentiality the electronic transfer of documents containing protected health information is limited by the Virginia Department of Health to within the e-mail system (i.e., behind the firewall). Although protected health information may be transmitted

to others, including those outside the VDH firewall, this must occur through fax, courier, or mail. As a result, delays in the transmittal of information, or the requirement to transcribe paper documents to electronic formats, could impede the implementation of movement restrictions.

## II. Curfew

Curfew” means an order or regulation prohibiting persons from being in certain public places at certain times. From Virginia’s perspective, curfew is not considered a suitable mechanism for efficiently managing the transmission of a communicable disease of public health threat such as pandemic influenza. In the event of a communicable disease of public health threat occurring, then individuals who are infected should be isolated, and those who may have been exposed to a case should be quarantined. If broader control measures are required due to widespread transmission, then isolation and/or quarantine may not longer be effective – the use of “Snow Days” or self-shielding may then be considered. Widespread curfew (in particular, with limited periods of restricted activity to control spread, as compared to full restriction that has been contemplated through “snow days”) has been considered only in a limited manner. However, a curfew could be appropriate to mitigate other issues (e.g., in attempts to maintain public order with a reduced law enforcement capacity due to absenteeism). As such, the statutory issues in Virginia related to curfews are outlined below.

### A. *Legal powers/authorities for curfew during a declared emergency*

#### **1. Powers, authorities, and procedures to institute curfews**

Curfews, or restricted hours of movement, could be implemented in various forms. Should the Governor declare a state of emergency to address an emergency or disaster in a part or the whole of the Commonwealth (per *Code of Virginia* § 44-146.17), the declaration could outline the requirements of a curfew, including the physical regions affected, the individuals who may be affected, the time period it affects, and the duration.

In addition, it is possible that under the State Health Commissioner’s broad powers (*Code of Virginia* § 32.1-43) or as part of specific orders of isolation or quarantine issued by the State Health Commissioner for an affected area (§ 32.1-48.01 et seq. and § 32.1-48.05 et seq.) could specify a form of modified isolation or quarantine that approximates a curfew (i.e., that specifies the time period(s) where movement of all individuals, ill or potentially exposed within that area, is restricted). This appears to be a stretch of the statutes, and the usefulness of such a measure in preventing infection may be limited. However, it is possible that this measure might be utilized to somewhat reduce (although it would be recognized that it would not completely eliminate) the risk of transmission, while still enabling individuals to move about within the affected area (e.g., to obtain food, medication, or meet other essential needs).

The *Code of Virginia* § 32.1-13 allows the Board of Health to make separate orders and regulations to meet any emergency not provided for by general regulations for the purpose of suppressing conditions dangerous to the public health and communicable, contagious, and infectious diseases. This could be

applicable to the implementation of some form of curfew, if considered necessary.

Other statutes that relate to the imposition of curfew in Virginia include *Code of Virginia* § 15.2-926 that enables localities to establish ordinances that prohibit minors from loitering in, upon or around any public place, whether on public or private property. This statute also enables a locality to enact ordinances that specifically prohibit minors who are not attended by their parents from frequenting or being in public places, whether on public or private property, at such times, between 10:00 p.m. and 6:00 a.m., as the governing body deems proper. In a state of emergency, *Code of Virginia* § 44-146.19 also enables localities within a disaster area, under the supervision and control of the Governor to “protect the health and safety of persons and property.” This could include instituting curfews, if determined to be of benefit to the management of the situation.

A local health director could recommend limited movement to individuals, groups, or the population that might not be absolute, and could constitute a form of curfew. Parents or guardians could also implement restricted movements on their dependent minors (e.g., children). While not a legal restriction of movement, this may be an important voluntary measure recommended by public health to reduce the transmission of communicable disease.

## **2. Persons who can order curfew, and who makes the decision to institute curfew**

As outlined in II.A.1 (above), individuals or authorities who may implement a form of curfew include the Governor, the State Health Commissioner, localities, and parents or guardians of minors.

## **3. Process for mobilizing public health/law enforcement of curfew**

In the event that public health emergency related to a communicable disease exists, public health, law enforcement, emergency management, and others (including education, transportation, etc.) would need to coordinate efforts to minimize morbidity and mortality, as well as social disruption. This may involve considerations of using curfews partly to control transmission, but mainly to facilitate the maintenance of social order. Such actions would be coordinated through state and local emergency operations centers (EOCs).

It would be anticipated that law enforcement would be primarily responsible for maintaining the curfew, where the source was a declared state of emergency. Should the State Health Commissioner utilize a form of curfew (i.e., a modified order of isolation or quarantine, whether for specific individuals or for individuals within the defined affected areas of a declaration of a state of emergency) then

public health could play an important role in identifying noncompliance as part of the monitoring of individuals under such orders. Non-compliant individuals could be referred for additional management, including apprehension by law enforcement.

#### **4. Enforcement of curfew**

Law enforcement, including the National Guard if authorized by the Governor, may be necessary to enforce curfews. In addition, all law-enforcement officers as directed by the State Health Commissioner can enforce isolation and quarantine orders (*Code of Virginia* § 32.1-48.014.C).

#### **5. Penalties for violation of curfew**

*Code of Virginia* § 44-146.17 specifies that executive orders, to include those declaring a state of emergency, have the force and effect of law and the violation thereof shall be punishable as a Class 1 misdemeanor in every case where the executive order declares that its violation shall have such force and effect.

Per § 32.1-48.014.A of the *Code of Virginia*, noncompliance with an order of isolation or order of quarantine may be guilty of a class 1 misdemeanor (with a punishment, upon conviction thereof, of not more than 12 months in jail, a fine of up to \$2,500, either or both [as defined in §18.2-11(a) of the *Code of Virginia*]). In addition, per § 32.1-27 of the *Code of Virginia* a person may also be subject to an injunction or other remedy. Further, any persons violating or failing, neglecting, or refusing to obey any injunction or other remedy shall be subject, in the discretion of the court, to a civil penalty not to exceed \$25,000 for each violation.

For part A of § 15.2-926, a violation of such curfew ordinances developed by a locality by a minor shall be disposed of as provided in §§ 16.1-278.4 (including participating in public service projects, placement in another care setting, transfer of legal custody) and 16.1-278.5 (probation, including suspension of driver's license, and/ or program participation).

Under *Code of Virginia* § 15.2-926.B, violation of an ordinance that regulates the frequenting, playing in, or loitering in public places of amusement by minors constitutes a Class 3 misdemeanor.

#### **6. Duration of curfew**

The option to institute a curfew by the Governor by a declaration of a state of emergency would likely be for the duration of the emergency.

For a curfew implemented through a quarantine order applied to the individuals in an affected area, the duration would be limited to the duration of the order. The specific duration may be difficult to determine in advance, and may need to be modified (e.g., through a new order of quarantine) over the duration of the event. It is possible that the duration may need to be extended for one incubation period past the last detected case in the affected area to ensure that no further transmission is occurring.

For curfews related to minors, localities would determine the duration of the curfew, and would terminate the curfew according to local resources and perceived needs.

## **7. Renewal of curfew**

Curfew through a declared state of emergency, if used, would likely be for the duration of the emergency, but could be renewed either through an amendment to the declaration by the Governor, or a new declaration.

Renewal or re-implementation of a curfew implemented through an order from the State Health Commissioner applied to an affected area would occur through issuing a new order, including court review.

Localities would renew curfews according to local policies and procedures related to implementation of ordinances.

## **8. Authority/process/notice requirements for ending curfew**

A curfew implemented through a declared state of emergency by the Governor (or the authority of localities to apply curfews) could be terminated by the Governor (or the locality) when this measure was no longer considered to be necessary or at the expiration date generally incorporated into the executive order. Notification would likely occur through processes used to notify individuals of the state of emergency (e.g., newspaper, radio, television, internet, etc.).

The State Health Commissioner could terminate an order of quarantine based on the available findings of a lack of further effectiveness or that disease transmission had ceased. Notification would occur through a notice to terminate the order, and would be disseminated individually or, if this would not be practical, through media (e.g., newspaper, radio, television, internet, etc.). In addition, during the *ex parte* review, or as part of an appeal for one or more individuals subject to the order, a court could modify or terminate the order, thereby ending or altering the duration of curfew. Finally, orders of quarantine have an expiration date based on the incubation period, and expire on that date unless extended.

Those local authorities that implement curfew, including enforcing curfews related to minors, could end the curfew. Notice of modification or termination of the curfew in these circumstances would follow local protocols.

*B. Sufficiency of the authorities to institute or maintain curfew during a declared emergency, and potential gaps or uncertainties*

## **1. Potential gaps**

As curfew has not been generally considered a critical tool for the management of disease transmission, but rather a tool for maintaining public order and safety, it has not been very thoroughly explored. Therefore, some gaps may exist in its application for prolonged periods or through the delegation to local jurisdictions. Although it may prove to be useful in relation to maintaining public order, its usefulness as a social distancing tool is uncertain, and additional work is also necessary to further define the appropriateness of this tool for the management of communicable disease transmission.

Another gap is understanding the full ability, processes, and triggers/reasons for localities to selectively implement curfews based on local considerations; these may need to be explored further.

Finally, it may be difficult to distinguish and adequately identify in the curfew orders those individuals who may have legitimate reasons (e.g., medical professionals, law enforcement, etc.) for movement during a curfew. This may be further complicated in that some social distancing methods that have been proposed to reduce transmission include extending and modifying work and school hours (i.e., to reduce the amount of contact time). Therefore, curfew may not work well in such a situation.

## **2. Uncertainties**

As with other movement restrictions, the appropriate use of force by law enforcement for maintaining a curfew is difficult to determine. While law enforcement has the experience and training related to intervening in criminal activities detected during a curfew, the appropriate use of force to restrain individuals in violation of a curfew during a declared during a state of emergency (e.g., while walking their dog, seeking medical care or medication) may be more difficult. Therefore, additional work with law enforcement on this may be required.

The use of curfew, especially when applied to minors or specific identifiable groups, is uncertain. The State has a responsibility to protect the safety of individuals, and the use of curfew could be considered a small restriction of the right to assemble that is outweighed by protecting the public safety if law enforcement is limited and/or it may result in a reduction in transmission of

infection. However, these laws could be challenged. In Virginia, minors could contest the application of local ordinances related to curfews (*Code of Virginia* § 8.01-8 specifies the process for suits by minors). In addition, potential difficulties with curfew for minors include violation of Constitutional first amendment rights to congregate regardless of such factors as religion, ethnicity, and even age, and violation of fourteenth amendment rights to equal protection under the law. Therefore, it may be that sufficient legal objections exist to make the application of local curfew ordinances that relate to minors problematic and perhaps best avoided in the context of a state of emergency when other tools exist.

However, it may be that restricting the movement of minors, especially for conditions such as influenza where epidemiologic evidence could demonstrate an increased risk of transmission or infectivity among some risk groups (such as minors), may be determined to be necessary and that curfew may be a justifiable and appropriate tool.

### **3. Legal provisions that could inhibit, limit, or modify the legal basis for curfew**

Challenges to curfew based on potential violations of both Virginia and US Constitutional rights, including the right to assemble, may severely limit the utility of this tool.

#### *C. Legal powers/authorities for curfew in the absence of declared emergency*

If there is no declared public health emergency, then it is uncertain that the situation is sufficiently severe that curfew would be considered be a reasonable/appropriate means for control. In such a situation, it would be likely that insufficient numbers of individuals were ill where resources, including availability of law enforcement, were degraded to the point that curfew in an effort to protect the public safety would be necessary.

### **1. Powers, authorities, and procedures to institute curfews**

Without a declaration of a state of emergency, the mechanism for the state government to declare a mandatory curfew would not be practical.

In addition, without a declaration of a state of emergency from the Governor to specify the affected area, orders of isolation or quarantine would need to be applied individually. Although these could be modified to provide periods of relative freedom from restriction (approximately equivalent to a curfew), the utility of such a measure for controlling a communicable disease of public health threat is unclear.

Local ordinances related to curfew for minors would still be an option; however, as outlined above, the utility of such ordinances in the control of a communicable disease is not likely to be significant in general. There may be some situations, such as if the epidemiologic data suggests an increased transmissibility or prolonged period of shedding in minors, where this tool may be appropriate. These tools would be available in the absence of a declared public health emergency.

## **2. Persons who can order curfew, and who makes the decision to institute curfew**

As outlined in II.C.2 (above), in the absence of a declared state of emergency, individuals or authorities who may implement a form of curfew would be limited to the State Health Commissioner (applied individually), localities (in relation to minors), and the legal guardians of minors. Local and state health department staff could make recommendations related to the control of communicable diseases, including the use of voluntary curfews; however, these would not be legally enforceable.

## **3. Process for mobilizing public health/law enforcement of curfew**

As above, in II.A.3, in the event that public health emergency related to a communicable disease exists, public health, law enforcement, emergency management, and others (including education, transportation, etc.) would need to coordinate efforts to minimize morbidity and mortality, as well as social disruption. This would require communication on individuals isolated and quarantined by the State Health Commissioner, and the management of known or suspected violation of the orders. Such actions would be coordinated through state and local emergency operations centers (EOCs).

## **4. Enforcement of curfew**

All law-enforcement officers as directed by the State Health Commissioner can enforce isolation and quarantine orders (*Code of Virginia* § 32.1-48.014.C). Therefore, individuals could be detained by law enforcement for known or suspected violation of a 'curfew' contained within an order.

It would be anticipated that law enforcement would be primarily responsible for maintaining local ordinances related to curfew.

## **5. Penalties for violation of curfew**

As above (II.A.5), per § 32.1-48.014.A of the *Code of Virginia*, noncompliance with an order of isolation or order of quarantine may be guilty of a class 1 misdemeanor (with a punishment, upon conviction thereof, of not more than 12

months in jail, a fine of up to \$2,500, either or both [as defined in §18.2-11(a) of the *Code of Virginia*]. In addition, per § 32.1-27 of the *Code of Virginia* a person may also be subject to an injunction or other remedy. Further, any persons violating or failing, neglecting, or refusing to obey any injunction or other remedy shall be subject, in the discretion of the court, to a civil penalty not to exceed \$25,000 for each violation.

For part A of § 15.2-926 of the *Code of Virginia*, a violation of such curfew ordinances developed by a locality by a minor shall be disposed of as provided in *Code of Virginia* §§ 16.1-278.4 (including participating in public service projects, placement in another care setting, transfer of legal custody) and 16.1-278.5 (probation, including suspension of driver's license, and/ or program participation).

## **6. Duration of curfew**

The duration of a curfew imposed by an order of isolation or an order of quarantine from the State Health Commissioner could be for the duration of the order (i.e., the period of communicability for isolation, or for the incubation period for quarantine), or until the individual is no longer considered contagious, or the order is vacated by a court.

For curfews related to minors, localities would determine the duration of the curfew, and would terminate the curfew according to local resources and perceived needs.

## **7. Renewal of curfew**

Renewal or re-implementation of a curfew implemented through an order from the State Health Commissioner applied to an affected area would occur through issuing a new order, including court review.

Localities would renew curfews according to local policies and procedures related to implementation of ordinances.

## **8. Authority/process/notice requirements for ending curfew**

The State Health Commissioner could terminate an order of quarantine based on the available findings of a lack of further effectiveness or that disease transmission had ceased. Notification would occur through a notice to terminate the order, and would be disseminated individually. In addition, during the *ex parte* review, or as part of an appeal for one or more individuals subject to the order, a court could modify or terminate the order, thereby ending or altering the duration of curfew. Finally, a curfew specified in an order would end at the expiration of the order (i.e., the period of communicability for an order of isolation, or the incubation period for an order of quarantine).

Those local authorities that implement curfew, including enforcing curfews related to minors, could end the curfew. Notice of modification or termination of the curfew in these circumstances would follow local protocols.

*D. Sufficiency of the authorities to institute or maintain curfew in the absence of a declared emergency, and potential gaps or uncertainties*

### **1. Potential gaps**

In the absence of a declared emergency the ability to apply curfew is likely significantly limited. Since the usefulness of this tool is unclear when the situation does not warrant a declaration of a state of emergency, this may not be important.

A model ordinance authorizing the imposition of curfews during times of emergency, as developed by the State of Georgia, would be helpful to facilitate the imposition of curfew (should it be considered potentially useful) by localities. This model will be adapted to coincide with Virginia law, and included in the VDH Isolation and Quarantine Guidelines.

### **2. Uncertainties**

As detailed in II.B.2 (above), uncertainties exist for the use of curfew as a social distancing tool and the likely effectiveness in significantly reducing the spread of illness, the appropriate use of force by law enforcement, and the potential legal challenges to the implementation of curfew.

### **3. Legal provisions that could limit, or modify the legal basis to institute or maintain curfew**

As detailed in II.B.3 (above), challenges to curfew may be based on potential violations of both Virginia and US Constitutional rights, including the right to assemble, may severely limit the utility of this tool by localities. In addition, the lack of the specific authority to implement curfew by the State Health Commissioner limits the ability to implement this social distancing tool for communicable disease control.

### III. Inter-jurisdictional Cooperation and Restricting Movement of Persons

Planning, preparation, and assessments are ongoing in Virginia to facilitate inter-jurisdictional cooperation in general, and have begun to address the restriction of movement of persons. Virginia has developed extensive plans and protocols related to the intra- and inter-jurisdictional management of situations, using an all-hazards approach that would include public health emergencies. These include training and exercises to improve communications, and improving local and state emergency operation center coordination. Specific statutes and regulations related to cooperation among and between the various levels of government (local, state, tribal, and federal, and international) for the restriction of movement of persons are considered below.

For the purposes of the discussion below, relationships “among” superior and “among” inferior jurisdictions is considered to mean the relationship of agencies within a given level of jurisdiction (e.g., among local agencies, among state agencies). “Relationships between jurisdictions” is considered to mean the relationships between agencies in different levels of jurisdiction (e.g., a local agency to a state agency).

#### *A. Legal provisions/procedures for inter-jurisdictional cooperation on restricting movement during a declared emergency*

##### **1. Provisions governing the relationships among jurisdictions (i.e., within the same level)**

*Code of Virginia* § 44-146.17 authorizes the Governor to enter into mutual aid arrangements with other states. After a state of emergency is declared in another state and the Governor receives a written request for assistance from the executive authority of that state, the Governor may authorize the use in the other state of personnel, equipment, supplies, and materials of the Commonwealth, or of a political subdivision, with the consent of the chief executive officer or governing body of the political subdivision.

In addition, the Emergency Management Assistance Compact (EMAC) (*Code of Virginia* § 44-146.28:1) allows for the provision or receipt of mutual aid between member states to address an emergency that is duly declared by the Governor of the affected state, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack. EMAC also provides for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Although EMAC does not specify movement restrictions, some elements that would be relevant, including assisting in

warning communities adjacent to or crossing the state boundaries (e.g., if an individual known or infected with a communicable disease of public health threat had traveled to another state), and protecting and assuring uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material (relevant to the provision of essential needs within the Commonwealth). In addition, EMAC specifies that mutual assistance may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact (*Code of Virginia* § 44-54.1) or by mutual agreement between states. This may be relevant as additional law enforcement support for the enforcement of movement restrictions.

In addition, in order to insure that preparations of the Commonwealth and its political subdivisions will be adequate to deal with emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety, and to preserve the lives and property and economic well-being of the people of the Commonwealth, the *Code of Virginia* (§ 44-146.13 et seq.) creates a State Department of Emergency Management (DEM). Virginia's DEM works to develop the policies and procedures to coordinate the state's emergency preparedness, mitigation, response and recovery efforts.

### *Localities*

The *Code of Virginia* § 15.2-1736 enables the governing bodies of localities to enter in and become a party to contracts or mutual aid agreements for the use of their joint forces, both regular and auxiliary, their equipment and materials to maintain peace and good order. In addition, *Code of Virginia* § 15.2-1727 also enables a locality to enter into reciprocal agreements with any locality outside the Commonwealth, including the District of Columbia, in order to establish and carry into effect a plan to provide mutual aid through the furnishing of its police and other employees and agents, together with all necessary equipment, in the event of such need or emergency. While operating under the terms of the reciprocal agreement, the principal law-enforcement officer is empowered to authorize all police officers and other officers and agents from outside the Commonwealth to enforce the laws of the Commonwealth of Virginia to the same extent as if they were duly authorized law-enforcement officers of the locality. These provisions could be used to augment local law enforcement capacity for the enforcement of movement restrictions.

In case of an emergency declared by the chief law-enforcement officer of a locality, *Code of Virginia* § 15.2-1730 enables calling upon law-enforcement officers of adjoining localities for assistance without the necessity for deputizing such deputies or officers. Such deputies or officers shall have full police powers in such locality as are conferred upon them by law during the period of such emergency. *Code of Virginia* § 15.2-1730.1 provides additional support for localities where no police department has been established and the sheriff is

the chief law-enforcement officer, such that the sheriff may enter into agreements with any other governmental entity providing law-enforcement services in the Commonwealth, and may furnish and receive inter-jurisdictional law-enforcement assistance for all law-enforcement purposes. Therefore, additional support for enforcement of movement restrictions is available at the local level.

## **2. Provisions governing the relationships between superior and inferior jurisdictions (i.e., across levels)**

International-federal relations are governed by federal codes and regulations, and international law, and outside the scope of the analyses of social distancing for Virginia. In addition, no sovereign tribal lands are currently located within the Commonwealth of Virginia, and therefore federal-tribal and tribal-state provisions or procedures are not considered further. Federal-state (with consideration of federal statutes and regulations only where necessary) and state-local provisions and procedures are considered further.

A successful response to many emergencies will depend on a closely coordinated and integrated local-state-federal partnership. State governments share many powers with federal institutions, and state and local governments carry the primary responsibility for funding, preparing, and operating emergency services. Despite the importance of the state's role in emergency preparedness, it should be observed that state laws may not take precedence over conflicting federal laws. The Supremacy Clause of Article VI, Clause 2 of the United States Constitution specifies that federal laws and regulations on homeland security supercede conflicting laws enacted by Virginia.

On the other hand, it should also be noted that the United States Constitution expressly reserves to the States and the people the authority to make laws where the Constitution or federal law is silent. It is well-settled that the 10th Amendment leaves police powers to the states regarding public health issues. As a result, if the United States Congress or other federal entities have not enacted a law or regulation pertaining to Virginia's preparedness pursuant to their Constitutional powers, Virginia is free to enact legislation and regulations in this area, as long as the measures are Constitutional and otherwise lawful.

State emergency preparedness plans are based on needs assessments and are developed in collaboration with State and local emergency management officials and fire, law enforcement, emergency medical services and public health services. Maximum coordination and utilization of resources requires integration of resources available at the local, State and federal levels. State and local first responders need a coordinated federal preparedness effort to maximize risk management, preparedness, and response; and to eliminate confusion, overlap and duplication among federal programs. However, *Code of*

*Virginia* § 44-146.14 directs state agencies to coordinate with the federal government with respect to the carrying out of emergency service functions.

As discussed above (section I.3.C), the federal government has the power to quarantine persons, and Section 311 of the Public Health Service Act. (42 U.S.C. § 243(a)) allows for federal assistance to be provided to state and local authorities in enforcing their health regulations. The Centers for Disease Control and Prevention's (CDC) domestic quarantine regulations also authorize federal intervention "in the event of inadequate local control" (see 42 CFR. § 70.2 and 21 CFR. § 1240.30 for additional details). However, due to limitations on federal resources, it is unlikely that such statutes would be implemented without state support.

Under an existing Memorandum of Understanding a federal quarantine order will be enforced by officers from various agencies within the Department of Homeland Security (DHS). However, to support these activities, *Code of Virginia* (§ 32.1-48.014.D) pursuant to 42 U.S.C. 264 et seq. and 42 C.F.R. Parts 70 and 71, provides that any order of quarantine or isolation issued by the Director of the Centers for Disease Control and Prevention (CDC) affecting the Commonwealth of Virginia or the Metropolitan Washington Airports Authority may be enforced by local law-enforcement officers or officers of the Metropolitan Washington Airports Authority with jurisdiction over the facility involved in the quarantine or isolation order.

Should isolation and/or quarantine of individuals be necessary for conditions not contained within the list of federally quarantinable conditions, the Centers for Disease Control and Prevention would confer with local and state health officials on issuing state isolation and/or quarantine orders. Once a state isolation/quarantine order is established, local law enforcement could further assist with enforcement.

The Commonwealth has also improved preparedness in Virginia's communities through State and local partnerships on the Interoperability Initiative, the Bio-Terrorism Preparedness Program, and the Homeland Security Funding Program. The establishment of regional and local liaisons and the promotion of statewide initiatives in each region enhances preparedness activities through a comprehensive and proactive risk management approach.

The Commonwealth continues to maintain a relationship with Virginia's military community, as well as with military authorities in Washington, D.C. This relationship is sustained through: the Virginia Military Advisory Council, the Virginia Commission on Military Bases, the Virginia National Defense Industrial Authority, Base Re-alignment and Closure efforts, Determined Promise 2004, and the Virginia Modeling and Analysis Simulation Center. These various working groups and collaborative efforts strengthen and preserve civil/military relations throughout the Commonwealth. The Virginia Military Advisory Council

has made over 20 recommendations, approved by the Governor, to improve civil/military coordination of education, emergency response, and spouse adaptation issues.

There are other statutes and regulations defining the relationships among the jurisdictional levels that may be applicable to the restriction of the movements of individuals within the Commonwealth. *Code of Virginia* § 15.2-1728 states that where exclusive jurisdiction over any property or territory has been granted by the Commonwealth to the United States government, or to a department or agency thereof, the governing body of any contiguous locality may enter into a mutual aid agreement with the appropriate federal authorities to authorize police cooperation and assistance within such property or territory. Subject to the conditions of any such agreement, all police officers and agents of the contracting governing body shall have the same powers, rights, benefits, privileges and immunities while acting in the performance of their duties on the property or territory under federal authority as are lawfully conferred upon them within their own jurisdictions.

The *Code of Virginia* (§ 15.2-1729) also provides agreements for enforcement of state and county laws by federal officers on federal property. This statute essentially provides that a governing body of a county may enter into an agreement with the United States government (or a department or agency thereof) whereby law-enforcement officers employed by the federal government may enforce the laws of such county and the Commonwealth on federally owned properties. As a result, restrictions on movement enacted by the state or locality (including those provided in a declaration of a state of emergency, orders of isolation or quarantine, or curfew) could be enforced by federal officers on federal property.

In addition, *Code of Virginia* § 15.2-1724 (whereby, in response to any law-enforcement emergency involving any immediate threat to life or public safety, or during any emergency resulting from the existence of an epidemic or other public disaster, law enforcement officers of any locality may lawfully go beyond the territorial limits of such locality to any point within or without the Commonwealth to assist in meeting such emergency or need) may be implemented. If an agreement under *Code of Virginia* § 15.2-1729 has been entered into with US government officials for a federally owned property, then state and local law enforcement officers could enforce state or local movement restrictions on the federally owned property.

The *Code of Virginia* (§ 44-146.14) provides for rendering of mutual aid among the political subdivisions of the Commonwealth through the Department of Emergency Management.

Finally, in regards to the management of the processes related to the legal enforcement of movement restrictions such as orders of isolation or orders of

quarantine, the Office of the Attorney General could appoint as special counsel city and county attorneys to provide assistance for legal management of movement restrictions. This may be particularly important should the volume of work (e.g., due to appeals) or the geographic distribution of the work require additional support.

### **3. Legal authority of the jurisdiction to accept, utilize, or make use of federal assistance**

Under *Code of Virginia* § 44-146.17, the Governor has the authority to request a major disaster declaration from the President, thereby certifying the need for federal disaster assistance and ensuring the expenditure of a reasonable amount of funds of the Commonwealth, its local governments, or other agencies for alleviating the damage, loss, hardship, or suffering resulting from the disaster.

In addition, *Code of Virginia* § 44-146.27.B states that whenever the federal government or any agency or officer thereof offers to the Commonwealth, or through the Commonwealth to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant or loan for purposes of emergency services, the Commonwealth, acting through the Governor, or such political subdivision, acting with the consent of the Governor and through its local director or governing body, may accept such offer and agree to the terms of the offer and the rules and regulations, if any. Upon such acceptance, the Governor or local director or governing body of such political subdivision may authorize any officer of the Commonwealth or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the Commonwealth or such political subdivision, in accordance with the terms of the agreement, and subject to the rules and regulations, if any, of the agency making the offer.

Therefore, the Commonwealth or its political subdivisions may receive federal assistance to address emergency services, including the implementation and enforcement of movement restrictions.

#### *B. Sufficiency of powers/authorities to cooperate with other jurisdictions during a declared emergency*

##### **1. Potential gaps**

As outlined in I.5 and III.A.1 (above), the relationship of federal properties such as military bases and prisons with nearby localities for managing the movement of individuals is complicated, and requires local efforts. Although the Governor or State Health Commissioner may define individuals on these properties as subject to restrictions of movement, state or local enforcement powers on these properties may or may not exist, and would need to be addressed by situation.

During an emergency involving a communicable illness, local and federal authorities would need to work together to best manage the movement of individuals. However, as part of the declaration of a state of emergency, the Governor may establish criteria or prevent individuals from entering or leaving these areas as well as define the affected area(s) that the State Health Commissioner may then apply orders of isolation or quarantine to those who leave these areas.

In addition, some individuals may not be subject to state civil orders. The application of orders to foreign nationals with diplomatic immunity may be problematic. Coordination between the Commonwealth and the Department of State may help to effectively address the control of communicable illness when foreign nationals are involved.

Nevertheless, formal and informal intergovernmental cooperation between local, state, and federal government entities as well as within each level of government must be established, strengthened, and nurtured to facilitate coordination and cooperation among all levels of government. Only with an integrated approach to preparedness will the national vision for an integrated and seamless risk management system be realized.

## **2. Uncertainties**

As in II.B.2 (above), where the appropriate use of force by law enforcement is difficult to determine, it is unclear how much force should be used to detain or prevent an individual from crossing from one jurisdiction to another if such transit is prohibited by state or federal law.

In addition, use of coordinating centers (e.g., State EOC) and consistent protocols such as the Incident Command System/Unified Command under the National Incident Management System (NIMS) are promoted to provide a consistent nationwide template to establish federal, state, tribal and local governments and private sector and nongovernmental organizations to work together effectively and efficiently to prepare for, prevent, respond to and recover from domestic incidents, regardless of cause, size or complexity, including acts of catastrophic terrorism. NIMS benefits include a unified approach to incident management; standard command and management structures; and emphasis on preparedness, mutual aid and resource management. As a result, Gov. Mark R. Warner signed Executive Order 102, formally adopting the National Incident Management System and the National Preparedness Goal. Training and exercises at the local, state, and federal levels have helped to improve the interaction. However, the actual effectiveness of these efforts during a complex and prolonged event such as may occur due to a public health emergency related to a communicable disease remains to be determined.

Finally, while not likely to be an effective method of control of the spread of a communicable disease, and while this may adversely affect trade and the availability of critical supplies, the issue of closure or restriction of travel across state borders, or between localities, is uncertain. While it may be within the powers of the Governor, in a declaration of a state of emergency, to close borders, whether this could be effectively enforced is not known.

### **3. Legal provisions that could inhibit, limit, or modify the legal basis to cooperate with other jurisdictions**

Restricting the movement of individuals between states, and thereby impeding trade and commerce, may not be permissible without Federal support.

#### *C. Legal provisions/procedures for inter-jurisdictional cooperation on restricting movement in the absence of a declared emergency*

##### **1. Provisions governing the relationships among jurisdictions (i.e., within the same level)**

In the absence of a declared state of emergency, the relations among jurisdictions as outlined in III.A.1 (above) are intact. Therefore, the relationships among jurisdictions in Virginia related to the restriction of movement of individuals are largely independent of the presence of a state of emergency in the Commonwealth.

##### **2. Provisions governing the relationships between superior and inferior jurisdictions**

In the absence of a declared state of emergency, the relations between jurisdictions as outlined in III.A.2 (above) are intact. Therefore, the relationships between superior and inferior jurisdictions are largely independent of the presence of a state of emergency in the Commonwealth.

##### **3. Legal authority of the jurisdiction to accept, utilize, or make use of federal assistance**

In the absence of a declared state of emergency, the ability of the Commonwealth and its subdivisions to accept federal assistance under *Code of Virginia* § 44-146.27 is intact. Under *Code of Virginia* § 44-146.17, the Governor has the authority to request a major disaster declaration from the President, thereby certifying the need for federal disaster assistance and ensuring the expenditure of a reasonable amount of funds of the Commonwealth, its local governments, or other agencies for alleviating the damage, loss, hardship, or suffering resulting from the disaster. For practical purposes, it is likely that the locality and state would declare a state of

emergency for the area to facilitate the process of requesting federal aid in the response to a public health emergency.

C. *Sufficiency of powers/authorities to cooperate with other jurisdictions in the absence of a declared public health emergency*

**1. Potential gaps**

As detailed in III.B.1 (above), gaps related to federal properties and immunity of some individuals to state civil orders are relevant.

**2. Uncertainties**

As detailed III.B.2 (above) uncertainties in the use of force and the effective coordination of multiple jurisdictions exist and need additional consideration.

**3. Legal provisions that could inhibit, limit, or modify the legal basis to cooperate with other jurisdictions**

Restricting the movement of individuals between states, and thereby impeding trade and commerce, may not be permissible without federal support.

D. *Interagency/inter-jurisdictional agreements on restricting movement of persons*

Specific interagency/inter-jurisdiction agreements on the restriction of movement of persons are limited. As discussed above (section III.A.1), *Code of Virginia* (§ 32.1-48.014.D) pursuant to 42 U.S.C. 264 et seq. and 42 C.F.R. Parts 70 and 71, provides that any order of quarantine or isolation issued by the Director of the Centers for Disease Control and Prevention (CDC) affecting the Commonwealth of Virginia or the Metropolitan Washington Airports Authority may be enforced by local law-enforcement officers or officers of the Metropolitan Washington Airports Authority with jurisdiction over the facility involved in the quarantine or isolation order.

Less formal discussions have occurred with CDC Quarantine Station staff (Dulles Station) regarding the implementation of isolation and/or quarantine of individuals for conditions not contained within the list of federally quarantinable conditions. In such a situation, the Centers for Disease Control and Prevention would confer with local and state health officials on issuing state isolation and/or quarantine orders. Once a state isolation/quarantine order is established, local law enforcement could further assist with enforcement.

## IV. Closure of Public Places

One method of preventing the widespread transmission of a highly communicable disease (spread either by person-to-person, or fomites/environmental contamination) would be to limit exposure to individuals or environments where transmission may be likely to occur. Since individuals may be infectious with some conditions prior to becoming symptomatic, or may even travel or attend events while symptomatic (and infectious), closing places where people gather in close proximity may be an effective mitigation measures.

### A. *Legal authorities to order closure of public places during a declared emergency*

#### 1. Powers and authorities authorizing closure of public places

Under a state of emergency declared by the Governor of Virginia (*Code of Virginia* § 44-146.16), the Governor could limit the general movement of individuals. For the purposes of controlling an epidemic of a communicable disease, the declaration could include closing public places of association, as well as limiting the ability of individuals to associate. *Code of Virginia* § 44-146.17 specifically lists the Governor's power to direct and compel evacuation of all or part of the populace from any stricken or threatened area, control ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein. Applied on a larger scale, this could effectively be used to specify the closure of public places.

*Code of Virginia* § 32.1-48.017 provides that, during a declared state of emergency, the State Health Commissioner acting in concert with the Governor are authorized to require the use of any public or private property, building or facility to implement any order of quarantine or order of isolation. This would likely provide very limited ability to close a public place to access, likely with the intent of using the public place for emergency response purposes (e.g., centralized isolation facility for treatment).

*Code of Virginia* § 32.1-42 provides the State Health Commissioner with the authority to implement measures necessary for the control of any disease of public health importance. In addition, *Code of Virginia* § 32.1-13 provides the Board of Health with the ability to make orders and regulations to meet any emergency not provided for by general regulations for the purpose of suppressing conditions dangerous to the public health and communicable, contagious, and infectious diseases. These could be used as additional authority to close public places and prevent gatherings to prevent further disease transmission.

In addition, *Code of Virginia* § 15.2-926 that enables a locality to develop ordinances to prohibit loitering in, upon or around any public place, whether on

public or private property would still be available. While this is a relatively weak form of closure (i.e., individuals could access public places as long as they were not loitering), it is possible that it could be adequate to reduce the risk of transmission under some circumstances with less adverse impact. For example, it might enable individuals to obtain essential needs or travel to address legitimate purposes, while potentially reducing the amount of time large groups of individuals would spend together.

Although orders of isolation or orders of quarantine as described in *Code of Virginia* § 32.1-48.012 and § 32.1-48.08 (respectively) apply to individuals, exposure to a particular site or affected area (if a state of emergency that defines one or more affected areas) could be a sufficient risk to require quarantine. Therefore, some public places could be in a sense 'closed' through individuals avoiding entry so that they do not become subject to quarantine.

For specific situations (e.g., contamination with infectious materials, such as anthrax spores), a locality might close a public places to reduce risk of illness through law related to the abatement of blighted properties (as defined in *Code of Virginia* § 36-3). Such an action, under *Code of Virginia* § 25.1-200 et seq., enables the acquisition or repair of any blighted property by purchase or through the exercise of the power of eminent domain (or declaring the site a nuisance). However, such a mechanism for closing a public place is complex, and time and resource intensive. Whenever possible, other mechanisms would be used to prevent further illness. For example, the State Health Commissioner could define access to such an area as a risk of infection, and notify individuals that access to such areas would lead to quarantine. While this would not physically close the area, it may cause individuals to refrain from entry to avoid being subject to quarantine.

The Commonwealth and localities may be able to close public places through limits on the issuance, or revocation if already issued, of permits and licenses. For example, section 8 of Article VII of the Virginia Constitution requires previous consent by a local government for street railway, gas, water, steam or electric heating, electric light or power, cold storage, compressed air, viaduct, conduit, telephone, or bridge company, or any corporation, association, person, or partnership engaged in these or like enterprises to use the streets, alleys, or public grounds of a city or town.

In addition, a local health director could recommend limited movement to individuals, groups, or the population that might not be absolute, and could constitute a form of quarantine. While not a formal legal restrictions closure, these may be an important voluntary measure by public health to reduce the transmission of communicable disease. Although school closures are not considered in this analysis, initial work in Virginia suggests that public schools could be closed through the joint efforts of the local health department and the

administration of school divisions. The management of daycares, universities, private schools, etc. remains unclear.

## **2. Powers and authorities prohibiting closure of public places**

Important authorities that prohibit closure of public places include both the US Bill of Rights (Section 1) as well as Section 12 of the Constitution of Virginia that provides for the right of citizens to peaceably to assemble.

In addition, preventing access to property as part of abatement of a blight could be considered a seizure, and might be challenged under the US Bill of Rights (Amendment IV) protection against unreasonable searches and seizures.

## **3. Who can declare or establish closure**

As outlined in IV.A.1 (above), individuals or authorities who may declare or establish closures of public places include the Governor and the State Health Commissioner – as above, this may be through formal declarations, as well as through directions to state and local agencies to restrict or cancel permits. Public schools may also be closed at the determination of the school superintendent, working with local health department staff. Parents or guardians may declare public places off limits to their dependent minors, thereby effectively closing some public places.

The Governor, as well as senior administrators of localities, might have the authority to restrict access or close government buildings and other properties. This might reduce at least some forms of contact between individuals and further transmission.

## **4. Who makes the decision to close a public place**

The decision to close a public place may be made at several levels, including the Governor, the State Health Commissioner, and local government (e.g., Mayor).

## **5. Process for initiating and implementing closure**

As with restricting the activities of individuals, whenever possible localities and the state would work with individual property owners as well as provide education to the public regarding public gatherings. Voluntary compliance with recommendations that may reduce the risk of transmission may be less restrictive and less socially disruptive than mandating closure. However, when deemed necessary, some processes for requiring closure of public places exist. Should the Governor declare a state of emergency to address an emergency or disaster in a part or the whole of the Commonwealth (per *Code of Virginia* § 44-146.17), the declaration could outline the requirements for closure of public

places, including the physical regions affected, the individuals who may be affected, the time period it affects, and the duration.

In addition, under the State Health Commissioner's authority under *Code of Virginia* § 32.1-48.08 et seq. the specific order of quarantine for public places determined to be affected areas could specify exposure to the public places as a indication for quarantine. This would approximate a form of closure, since individuals may avoid the public places so as not to become quarantined.

There may also be some options for the Board of Health (under *Code of Virginia* § 32.1-13) to make separate orders and regulations to meet any emergency not provided for by general regulations for the purpose of suppressing conditions dangerous to the public health and communicable, contagious, and infectious diseases.

## **6. Enforcement of closure**

*Code of Virginia* § 15.2-1124 specifies that for public places (lands, buildings, and structures) provided and operated by a municipality, the enforcement of the municipalities regulations respecting the use or occupancy is under the jurisdiction of the police for the jurisdiction. All regular and special police officers of the municipal corporation shall have jurisdiction to make arrests on such land and in such buildings or structures for violations of such regulations.

Law enforcement, including the National Guard if authorized by the Governor, may be necessary to enforce closure of public places through the declaration of a state of emergency.

Other public places not subject to local and state jurisdiction (e.g., National Parks) would need to addressed in conjunction with the administration of the property.

## **7. Penalties for violation of closure**

*Code of Virginia* § 44-146.17 specifies that executive orders, to include those declaring a state of emergency, shall have the force and effect of law and the violation thereof shall be punishable as a Class 1 misdemeanor in every case where the executive order declares that its violation shall have such force and effect.

## **8. Procedural and due process requirements for closure**

Although specific mention of closure of public places is not covered under statutes governing a state of emergency, and there are limited statutes restricting access to public places in general, an order from the Governor to

close a business or cancel a gathering should be treated as other executive orders.

The recipient of an order to close a business or cancel a public gathering could challenge the order; this would most likely in the circuit court where the business is located.

Should individuals become subject to an order of quarantine following exposure to environment where transmission of a communicable disease of public health threat is occurring then their rights and due process requirements are as outlined in I.A.2.b (above), and are detailed in *Code of Virginia* § 32.1-48.09.

During the appeal process, the order would not be stayed.

## **9. Available compensation for closure**

*Code of Virginia* § 44-146.18:1 provides for the existence of Virginia Disaster Response Funds for use by the state in preventing or alleviating damage, loss, hardship, or suffering caused by emergencies or natural or man-made disasters. During a declared state of emergency, these funds may be used to reimburse for costs and expenses, including, but not limited to personnel, administrative, and equipment directly incurred by the Department of Emergency Management or by any other state agency or political subdivision or other entity, acting at the direction of the Coordinator of Emergency Management. It is possible that the operators of public places subject to a closure could attempt to gain compensation through this fund.

For situations where a public place was closed to access by the State Health Commissioner for the enforcement of an order of quarantine or an order of isolation under *Code of Virginia* § 32.1-48.017, then the Commissioner shall make accommodations, in conjunction with the owner or operator of the property, building or facility, for persons who are employed in, using or occupying the property, building or facility and who are not covered by the relevant order of quarantine or order of isolation. Owners or operators of any property, building, or facility so commandeered shall be entitled to compensation. However, the specific level of compensation is not defined.

## **10. Duration of closure**

The duration of closure of a public place, either through the declaration or by order of the State Health Commissioner, during a declared state of emergency would likely be for the duration of the emergency. While earlier relaxation of restrictions might occur (e.g., if adequate numbers of individuals were vaccinated), early relaxation could result in a resurgence in cases.

## **11. Renewal of closure**

Closure through a declared state of emergency, if used, could be renewed either through an amendment to the executive order by the Governor, or a new order.

Renewal or re-implementation of closure implemented through an order from the State Health Commissioner would occur through extending the order or issuing a new order.

## **12. Authority/process/notice requirements for ending a closure.**

Closures implemented through a declared state of emergency by the Governor could be terminated by the Governor when this measure was no longer considered to be necessary, or on the expiration date of the executive order. Notification would likely occur through individual notification, and/or other communication methods (e.g., newspaper, radio, television, internet, etc.).

The State Health Commissioner could terminate an order of quarantine based on the available findings of a lack of further effectiveness or that disease transmission had ceased. Notification would occur through a notice to terminate the order, and would be disseminated individually or, if this would not be practical, through media (e.g., newspaper, radio, television, internet, etc.). A successful appeal of an order for closure could also terminate an order of quarantine. An order of quarantine would also terminate at the expiry date of the order.

### *B. Sufficiency of authorities to authorize closure of public places during a declared emergency*

#### **1. Potential gaps**

Virginia law related to the closure of public places for the control of transmission of communicable diseases during a declared public health emergency is relatively patchy. While the declaration of the state of emergency could include language to close places in general within a specified affected area, it may be difficult for the declaration to contemplate all of the necessary details (e.g., duration, specific exempt facilities), especially if the emergency was widespread.

Overall, it may be necessary to develop specific statutes or regulations that provide for the ability to close public places, including adequate due process measures and penalties, comparable to the abatement of common nuisances or blighted properties. Therefore, additional planning on methods to better implement the closure of public places is necessary.

In addition, State and local officials do not have authority to close other places (especially federal or foreign properties). Therefore, coordination with these entities may be necessary for maximal effectiveness of closure of public places as a legal tool for the control of communicable diseases.

## **2. Uncertainties**

Although the mechanism and the *due process* measures related to closing public places may be generally described, the specific details and the potential challenges that may arise are unclear. For example, it is unclear to what extent the state must provide ‘just compensation’ for closing a facility.

While the closure of public places may likely be an effective mechanism for interrupting communicable disease transmission, it has significant practical limitations. For example, the social and economic impact of large-scale closures could be extreme. Therefore, there would need to be clear benefits and likelihood of success to enable implementation.

As with other movement restrictions, the appropriate use of force by law enforcement for closing a public place is difficult to determine. Therefore, additional work with law enforcement in this area may be required.

In addition, it is likely that the closure of a business (e.g., mall, movie theater, sports arena) or the cancellation of a gathering (e.g., church services, political meeting, sports event, parade) may be protested as an unjust taking of property, and possibly a curtailment of religious expression or free speech. The right of the state to exercise its police power where compelling necessity to protect the health and safety of the public is established in common law provided it is not exercised in an arbitrary and capricious manner and procedural due process protections are provided. While individual state employees and the state are immune from liability, this does not prevent the affected businesses from attempting to obtain compensation for lost income from closure – as a result, a significant legal effort may be expected following the use of such measures, and potential expenses may be incurred that need to be anticipated.

Finally, it is unclear to what extent government agencies could withhold or cancel permits and licenses on the basis of attempting to control the spread of illness in the general community. The question of whether this action may be taken, should the legal requirements of a permit be otherwise met, needs to be explored further, and perhaps codified in statute.

## **3. Legal provisions that could inhibit, limit, or modify the authority to close public places**

No legal provisions have been identified that would inhibit or limit a jurisdiction's legal basis to cooperate with other jurisdictions.

C. *Legal powers/authorities to order closure of public places in the absence of a declared emergency*

The necessity of closing a public place for controlling the transmission of a communicable illness, in a situation where it is not considered necessary to declare a state of emergency is unnecessary is likely to be rare. Possibly, this could occur for a very localized outbreak of an illness that is relatively mild and/or limited for transmissibility. Another situation may be if there is significant contamination of the environment (e.g., anthrax spores, *Coxiella burnetii* release) that requires control of the environment to prevent illness but is not imminently dangerous.

## 1. Powers and authorities authorizing closure of public places

In the absence of a state of emergency, the Commonwealth's ability to control access to public places would be restricted to the State Health Commissioner's powers to implement measures necessary for the control of any disease of public health importance, including (under *Code of Virginia* § 32.1-13) the ability of the Board of Health to make orders and regulations to meet any emergency not provided for by general regulations for the purpose of suppressing conditions dangerous to the public health and communicable, contagious, and infectious diseases. However, whether these could be used as additional authority to close public places and prevent gatherings to prevent further disease transmission is unknown.

In addition, *Code of Virginia* § 15.2-926 that enables a locality to develop ordinances to prohibit loitering in, upon or around any public place, whether on public or private property would still be available. While this is a relatively weak form of closure (i.e., individuals could access public places as long as they were not loitering), it is possible that it could be adequate to reduce the risk of transmission under some circumstances with less adverse impact. For example, it might enable individuals to obtain essential needs or travel to address legitimate purposes, while potentially reducing the amount of time large groups of individuals would spend together.

For specific situations (e.g., contamination with infectious materials, such as anthrax spores), the State Health Commissioner or a locality might close a public places to reduce risk of illness through law related to the abatement of blighted properties (as defined in *Code of Virginia* § 36-3). Such an action, under *Code of Virginia* § 25.1-200 et seq., enables the acquisition or repair any blighted property by purchase or through the exercise of the power of eminent domain. However, such a mechanism for closing a public place is complex, and could be time and resource intensive. Whenever possible, other

mechanisms would be used to prevent further illness. For example, the State Health Commissioner could define access to such an area as a risk of infection, and notify individuals that access to such areas would lead to quarantine. While this would not physically close the area, it may cause individuals to refrain from entry to avoid being subject to quarantine.

The Commonwealth and localities may be able to close public places through limits on the issuance, or revocation if already issued, of permits and licenses. For example, Section 8 of Article VII of the Virginia Constitution requires previous consent by a local government for street railway, gas, water, steam or electric heating, electric light or power, cold storage, compressed air, viaduct, conduit, telephone, or bridge company, or any corporation, association, person, or partnership engaged in these or like enterprises to use the streets, alleys, or public grounds of a city or town.

In addition, a local health director could recommend limited movement to individuals, groups, or the population that might not be absolute, and could constitute a form of quarantine. While not a formal legal restrictions closure, these may be an important voluntary measure by public health to reduce the transmission of communicable disease. Although school closures are not considered in this analysis, initial work in Virginia suggests that public schools could be closed through the joint efforts of the local health department and the administration of school divisions. The management of daycares, universities, private schools, etc. remains unclear.

## **2. Powers and authorities prohibiting closure of public places**

Important authorities that prohibit closure of public places include both the US Bill of Rights (Section 1) as well as Section 12 of the Constitution of Virginia that provides for the right of citizens to peaceably to assemble.

In addition, preventing access to property as part of abatement of a blight could be considered a seizure, and might be challenged under the US Bill of Rights (Amendment IV) protection against unreasonable searches and seizures.

These powers remain in effect whether or not there is a declared state of emergency – however, without a state of emergency there may be less willingness from the courts in relation to actions that potentially conflict with these powers.

## **3. Who can declare or establish closure**

As outlined in IV.C.1 (above), individuals or authorities who may declare or establish closures of public places in the absence of a State of Emergency include the State Health Commissioner. As above, this may be through formal declarations, as well as through directions to state and local agencies to restrict

or cancel permits. Public schools, working local health departments, may also be closed (at the determination of the school superintendent, working in concert with local health department staff). Parents or guardians may declare public places off limits to their dependent minors, thereby effectively closing some public places.

The Governor, as well as senior administrators of localities, might have the authority to restrict access or close government buildings and other properties. This might reduce at least some forms of contact between individuals and further transmission.

#### **4. Who makes the decision to close a public place**

The decision to close a public place may be made at several levels, including the Governor, the State Health Commissioner, and local government (e.g., Mayor).

#### **5. Process for initiating and implementing closure**

Similar to as noted in IV.A.5 (above), the State Health Commissioner under *Code of Virginia* § 32.1-48.08 et seq. could specify that individuals exposed to public place where transmission of a communicable disease of public health threat is occurring could be subject to an order of quarantine. This would approximate a form of closure, since individuals may avoid the public places so as not to become quarantined.

Another option would be for the Board of Health (under *Code of Virginia* § 32.1-13) to make separate orders and regulations to meet any emergency not provided for by general regulations for the purpose of suppressing conditions dangerous to the public health and communicable, contagious, and infectious diseases. This could be applicable to the implementation of some form of curfew, if considered necessary.

#### **6. Enforcement of closure**

*Code of Virginia* § 15.2-1124 specifies that for public places (lands, buildings, and structures) provided and operated by a municipality under the police jurisdiction of the municipal corporation for the enforcement of its regulations respecting the use or occupancy thereof. All regular and special police officers of the municipal corporation shall have jurisdiction to make arrests on such land and in such buildings or structures for violations of such regulations.

Other public places not subject to local and state jurisdiction (e.g., National Parks) would need to be addressed in conjunction with the administration of the property.

## **7. Penalties for violation of closure**

Per § 32.1-48.014.A of the *Code of Virginia*, noncompliance with an order of isolation or order of quarantine may be guilty of a class 1 misdemeanor (with a punishment, upon conviction thereof, of not more than 12 months in jail, a fine of up to \$2,500, either or both [as defined in §18.2-11(a) of the *Code of Virginia*]). In addition, per § 32.1-27 of the *Code of Virginia* a person may also be subject to an injunction or other remedy. Further, any persons violating or failing, neglecting, or refusing to obey any injunction or other remedy shall be subject, in the discretion of the court, to a civil penalty not to exceed \$25,000 for each violation.

## **8. Procedural and due process requirements for closure**

The same due process considerations apply to an order for closure of public places or cancellation of a public gathering in the absence of a declared state of emergency. However, there is a difference in the procedures to be followed.

## **9. Available compensation for closure**

As described in IV.A.9 For situations where a public place was closed to access by the State Health Commissioner for the enforcement of an order of quarantine or an order of isolation under *Code of Virginia* § 32.1-48.017, then the Commissioner shall make accommodations, in conjunction with the owner or operator of the property, building or facility, for persons who are employed in, using or occupying the property, building or facility and who are not covered by the relevant order of quarantine or order of isolation. Owners or operators of any property, building or facility so commandeered shall be entitled to compensation. However, the specific level of compensation is not defined.

## **10. Duration of closure**

The duration of application of orders of quarantine to those who may enter an environment where infection could occur (i.e., a de facto closure of a public place) would likely be for the duration where transmission is thought to be occurring. While earlier relaxation of restrictions might occur (e.g., if adequate numbers of individuals were vaccinated), early relaxation could also result in a resurgence in cases.

## **11. Renewal of closure**

A *de facto* closure through the use of orders of quarantine for those individuals exposed to a location where infection could be occurring would be re-instituted through a new order if it was determined by public health that disease transmission had not ceased or had recurred.

## **12. Authority/process/notice requirements for ending a closure**

The State Health Commissioner could terminate an order of quarantine based on the available findings of a lack of further effectiveness or that disease transmission had ceased. Notification would occur through a notice to terminate the order, and would be disseminated individually or, if this would not be practical, through media (e.g., newspaper, radio, television, internet, etc.). A successful appeal of an order for closure could also terminate an order of quarantine. An order of quarantine would also terminate at the expiry date of the order.

### *D. Sufficiency of powers/authorities to authorize closure of public places in the absence of a declared emergency*

#### **1. Potential gaps**

Virginia law related to the closure of public places for the control of transmission of communicable diseases in the absence of a declared public health emergency is very limited, and is largely extrapolated from the ability to close restaurants, or abate nuisances or blights. As a result, there are some potential gaps that exist in considering how to apply these laws in a systematic and large-scale fashion. It is anticipated that the use of closure when no state of emergency has been declared would therefore need to be limited in scope (one or a few buildings or facilities) to minimize the resources necessary to implement such restrictions.

As in IV.C.1.(above), the authority of the State Health Commissioner could be used to close individual public places (or perhaps a wider area), using various statutes, regulations, or policies. However, these have largely been developed to address other situations, and their wider applicability may be limited.

Overall, it may be necessary to develop specific statutes or regulations that provide for the ability to close public places, including adequate due process measures and penalties, comparable to the abatement of common nuisances or blighted properties. Additional planning on methods to better implement the closure of public places is necessary, or at least procedures for recommending voluntary closure of public places and methods to improve compliance/reduce social disruption, are necessary.

In addition, State and local officials do not have authority to close other public places (especially federal or foreign properties). Therefore, coordination with these entities may be necessary for maximal effectiveness of this legal tool.

#### **2. Uncertainties**

As in IV.B.2. (above), although the mechanism and the *due process* measures related to closing public places may be generally understood, the specific details and the potential challenges that may arise are unclear. For example, it is unclear to what extent the state must provide 'just compensation' for closing a facility.

The closure of public places has significant practical limitations. For example, the social and economic impact of large-scale closures could be extreme. Therefore, there would need to be clear benefits and likelihood of success to enable implementation.

As with other movement restrictions, the appropriate use of force by law enforcement for closing a public place is difficult to determine. Therefore, additional work with law enforcement in this area may be required.

In addition, it is likely that the closure of a business (e.g., mall, movie theater, sports arena) or the cancellation of a gathering (e.g., church services, political meeting, sports event, parade) may be protested as an unjust taking of property, and possibly a curtailment of religious expression or free speech. The right of the state to exercise its police power where compelling necessity to protect the health and safety of the public is established in common law provided it is not exercised in an arbitrary and capricious manner and procedural due process protections are provided. In addition, while individual state employees and the State are immune, it might be possible for affected businesses to obtain compensation for lost income in some manner.

Finally, it is unclear to what extent government agencies could withhold or cancel permits and licenses on the basis of attempting to control the spread of illness in the general community. The question of whether this action may be taken, should the legal requirements of a permit be otherwise met, needs to be explored further, and perhaps codified in statute.

### **3. Legal provisions that could inhibit, limit, or modify the authority to close public places**

No other legal provisions have been identified that would inhibit or limit a jurisdiction's legal basis to close public places.

## V. Mass Prophylaxis Readiness

In general, the provision of medications and vaccinations is strictly governed in the Commonwealth of Virginia (e.g., Title 54.1 of the *Code of Virginia*).

However, as a result of its experience with various public health emergencies, including the 2003 anthrax releases, the Commonwealth of Virginia has made significant efforts to prepare for the mass dispensing of vaccines or medications. This has included both updates to statutes and regulations to address the need for a coordinated and rapid response, as well as the development and exercise of plans for all levels of government.

### A. *Legal authorities for blanket prescriptions and use of other mass prophylaxis measures during a declared emergency*

#### 1. **Who makes the decision to issue blanket prescriptions or other mass prophylaxis measures**

The decision on the necessity of the use of mass prophylaxis measures would require the input from multiple authorities, including the State Health Commissioner in collaboration with Emergency Management, local authorities, and federal agencies such as the Centers for Disease Control and Prevention, Homeland Security, and others, especially if use of federal assets such as the Strategic National Stockpile (SNS) were necessary to supplement available state and local supplies.

*Code of Virginia* § 32.1-48.A specifically enables the State Health Commissioner to require immediate immunization of all persons in case of an epidemic of any disease of public health importance for which a vaccine exists other than a person to whose health the administration of a vaccine would be detrimental as certified in writing by a physician licensed to practice medicine in this Commonwealth. The Department of Health may take into consideration the opinion of an individual's personal physician as to whether such vaccine is advisable or appropriate for the physician's patient (*Code of Virginia* § 32.1-48).

In a large-scale emergency, mass prophylaxis or vaccination would be provided only to those individuals where there is a health risk due to exposure. The decision on whether or not to issue prophylactic medications will generally be made by the Local Health Department at the time of an event and will relate specifically to the identified hazard and associated health risks. However, when multiple localities and/or regions are involved, decisions about dispensing to responders and their household members may be escalated to the state level in consideration of the agents involved, levels of exposures and risk, availability of preventive medications, feasibility of dispensing in advance to the target population, etc.

## 2. Authority to issue blanket prescriptions or order the use of mass prophylaxis measures

Overall, Virginia does not have a legal mechanism in law or regulation for mass distribution of prescription medications by use of a specific “blanket prescription” (i.e., where one prescription covers many individuals). Instead, should mass prophylaxis be indicated then the Governor could include appropriate language in the declaration of a state of emergency to address the specific relaxation of statute and regulations to address the public health emergency. The Virginia Department of Health would request that the Governor enact emergency waivers of laws impeding mass prophylaxis activities, such as scope of practice, and prescribing/dispensing laws. The *Code of Virginia* § 54.1-3307.3 states that, in the event of an occurrence which the Governor of Virginia has declared a disaster or a state of emergency (*Code of Virginia* § 44-146.13 et seq.), and where it is necessary to permit the provision of needed drugs, devices, and pharmacy services to the citizens of the Commonwealth, the Board of Pharmacy may waive applicable requirements related to the practice of pharmacy (*Code of Virginia* § 54.1-3300 et seq.), the Drug Control Act (*Code of Virginia* § 54.1-3400 et seq.), and the Board's regulations governing the practice of pharmacy (18 VAC 110-20-10 et seq.). However, the Board shall not authorize the administering or dispensing of controlled substances by persons whose scope of practice does not include such authority.

## 3. How countermeasures would be distributed

The extent and nature of the emergency would affect the distribution of countermeasures. For example, should adequate availability of healthcare professionals and supplies exist, countermeasures may be distributed through normal mechanisms (as covered in *Code of Virginia* § 54.1-3408 et seq. related to the professional use of controlled substances and requirements for prescriptions, and *Code of Virginia* § 54.1-3410 related to the sale of drugs). In addition, *Code of Virginia* § 54.1-3408.S enables anyone authorized to administer controlled substances in hospitals to administer influenza vaccines (such as a pandemic influenza vaccine, if available).

However, during a declared state of emergency, *Code of Virginia* § 32.1-42.1 allows the administration and dispensing of necessary drugs and devices. The State Health Commissioner, pursuant to *Code of Virginia* § 54.1-3408, may authorize persons who are not authorized by law to administer or dispense drugs or devices to administer or dispense all necessary drugs or devices in accordance with protocols established by the Commissioner when it is necessary to permit the provision of needed drugs or devices and such persons have received the training necessary to safely administer or dispense the needed drugs or devices. Such persons shall administer or dispense all drugs

or devices under the direction, control, and supervision of the State Health Commissioner and based upon protocols developed in consultation with the Department of Health Professions, that address the required training of such persons and procedures for such persons to use in administering or dispensing drugs or devices. This may include addressing requirements of investigational new drug (IND) protocols. There may be a prescribing physician statewide, or preferably for each dispensing site.

Should the situation require, the Local Health Department, in coordination with emergency management officials, can establish dispensing sites where the appropriate medications will be issued. These sites could take various forms, including working with hospitals and other clinics or physician offices, temporary clinics (e.g., in malls), drive through clinics, etc. The Local Health Department will collaborate with the VDH's Central Office on coordinating the availability of necessary supplies and medications. The Local Health Department may also coordinate efforts with the Metropolitan Medical Response System (MMRS) in those jurisdictions where such an entity exists, enter into agreements with local pharmacies or hospitals, or institute other measures to provide the necessary medications.

In order to receive of medications at dispensing site, individuals will be required to complete a medical history screening and consent form or equivalent for themselves and for those household members not accompanying them to the site. In addition, public health may develop follow-up of some form (either passive or active surveillance) to detect adverse events related to drugs or vaccinations.

Current plans for the distribution of countermeasures in Virginia consider various scenarios. It is likely that the majority of situations would involve dispensing to a head of household or special needs custodian. After providing his/her proof of identification (via picture ID such as a Military ID, Driver's License, or Medicaid card), the Head of Household or Special Needs Custodian will be requested to provide information (e.g., name, address, date of birth, weight, medical history including medications and allergies) on each person for whom medications are to be issued.

In addition, dispensing to a special needs facility or institution agent may occur. Patient care facilities and services (e.g., Nursing Homes, Home Care Agencies) may make arrangements with the Local Health Department to pick up medications for their clients outside of the normal dispensing site flow. This option, if used, should be pre-arranged between facility management and the Local Health Department to the furthest extent possible. Through this mechanism, an authorized representative of that facility/agency can provide the Local Health Department with a client list so that medications needed to accommodate the facility or client population can be prepared and issued. The representative picking up medications will be expected to provide written

authorization to do so by the facility management, a picture ID indicating affiliation with that facility, and will need to sign for receipt of dispensed medications.

Alternatively, patient care facilities and services should also be able to pick up medications for their clients at the Dispensing Site, once staffed and operational. Consideration should be given to establishing a Special Needs dispensing area within the dispensing facility, with scheduled pick-up times arranged for each institution. The representative picking up medications will be expected to provide written authorization to do so by the facility management, the number of clients served, a picture ID indicating affiliation with that facility, and will need to sign for receipt of dispensed medications.

Dispensing to unaccompanied minors has also been considered. In the event an unaccompanied minor reports to a dispensing site, then the specific situation needs to be considered. Emancipated minors may consent to medical treatment per *Code of Virginia* § 16.1-334 which states, "An order that a minor is emancipated shall have the following effects: 1. The minor may consent to medical, dental, or psychiatric care, without parental consent, knowledge, or liability." Minors who are married may consent to medical treatment. *Code of Virginia* § 54.1-2969 addresses consent for medical treatment of minors and states, "F. Except for the purposes of sexual sterilization, any minor who is or has been married shall be deemed an adult for the purpose of giving consent to surgical and medical treatment. Generally, any other unaccompanied minor(s) may receive medications without the consent of a parent/guardian as provided per *Code of Virginia* § 54.1-2969. In particular, *Code of Virginia* § 54.1-2969.C allows for treatment whenever delay in providing medical or surgical treatment to a minor may adversely affect such minor's recovery and no person authorized in this section to consent to such treatment for such minor is available within a reasonable time under the circumstances, no liability shall be imposed upon qualified emergency medical services personnel as defined in § 32.1-111.1 at the scene of an accident, fire or other emergency, a licensed health professional, or a licensed hospital by reason of lack of consent to such medical or surgical treatment. However, in the case of a minor fourteen years of age or older who is physically capable of giving consent, such consent shall be obtained first. In addition, *Code of Virginia* § 54.1-2969.E: A minor shall be deemed an adult for the purpose of consenting to: 1. Medical or health services needed to determine the presence of or to treat venereal disease or any infectious or contagious disease that the State Board of Health requires to be reported. However, minors may not obtain medications or provide consent for any other person with the exception of his/her spouse or children (should those circumstances apply). The State Health Commissioner/designee or Health Director should issue a specific event-based determination where failure to dispense to minors will result in a risk to their health and safety.

Processes to dispense to special populations (homebound, nursing home, incarcerated, etc.) will also be implemented at the local level, as well as to best address cultural and language issues.

*B. Sufficiency of authorities to issue blanket prescriptions or order the use of other mass prophylaxis measures during a declared emergency*

## **1. Potential gaps**

The provision of mass prophylaxis during a declared health emergency has been extensively considered, both from legal and logistic perspectives. Although the most serious issues revolve around protocols to ensure a safe, fair, and efficient distribution of resources, legal gaps exist.

For example, *Code of Virginia* § 32.1-44 allows any isolated or quarantined person to choose his/her own treatment, whenever practicable and in the best interest of the health and safety of the isolated or quarantined person and the public, conditions of any order of isolation issued pursuant to *Code of Virginia* § 32.1-48.01 et seq. involving a communicable disease of public health significance and any order of quarantine or order of isolation involving any communicable disease of public health threat pursuant to *Code of Virginia* § 32.1-48.05 et seq. remain in effect until the person or persons subject to such order of quarantine or order of isolation shall no longer constitute a threat to other persons. However, should an individual NOT under an order of quarantine or isolation refuse treatment, then depending on the likely risk of exposure (e.g., presence within an affected area, versus general risk) then exceptional circumstances might exist where the State Health Commissioner could order isolation or quarantine until such time as the individual is no longer considered a risk.

## **2. Uncertainties**

While legal tools exist for the management of mass dispensing or provision of drugs in Virginia, there are numerous uncertainties that exist related to this form of intervention in an epidemic.

Although general immunity for public health staff and the state [including representatives of public or private employees including, but not limited to, volunteers in state and local services who are persons who serve in a Medical Reserve Corps (MRC) unit or on a Community Emergency Response Team (CERT)] exist related to liability for dispensing medication/devices, and individuals would be required to sign informed consent prior to receipt of countermeasures, in the complex situation of a response there may be liability issues. In addition, there may be issues related to liability for NOT providing some countermeasures (e.g., if antivirals are reserved for treatment, or initial vaccine doses are prioritized to select groups).

In addition, public health will be responsible for monitoring and investigating adverse events (e.g., allergic reactions, rare complications related to the medication) related to the administration. While this may help to identify problems, and provide for future information regarding risk-benefit outcomes, this will be another drain on limited public health resources. This may also have legal ramifications, if individuals who have an adverse event (whether related to the countermeasure or not) sue – responding to the resulting subpoenas may become a significant burden on the local and state health departments.

Addressing the various disparities in access for some individuals and groups, including reaching all of the special populations, could become resource intensive, and may create issues around perceived discrimination. It is likely that, should priority groups be developed to organize distribution, there will be citizens who disagree with the prioritization and may challenge the government. Aside from ethical issues related to the distribution of countermeasures, there could be civil rights issues (e.g., whether or not to prioritize US citizens over undocumented or foreign individuals).

Finally, it has not been well documented how the receipt of mass prophylaxis or vaccination would affect orders or other restrictions of movement (e.g., curfew, closure of public places). Documented receipt of vaccine or other countermeasures may render those individuals immune to injury from the agent – therefore, the applicability of movement restrictions may no longer be justified in their circumstances. A similar issue concerns the management of individuals who have had the illness and are no longer infectious, as they may be immune and could safely resume activities. Determining a specific strategy difficult, and should instead be dependent on the available information about the agent and the effectiveness of the countermeasures.

### **3. Legal provisions that could inhibit, limit, or modify authority to issue blanket prescriptions or order the use of other mass prophylaxis measures**

No additional legal provisions have been identified that would inhibit or limit a jurisdiction's legal basis to use mass prophylaxis measures.

*C. Legal powers/authorities for issuance of blanket prescriptions and use of other mass prophylaxis measures in the absence of a declared emergency*

#### **1. Who makes the decision to issue the blanket prescriptions or use other mass prophylaxis measures**

In the absence of a declared state of emergency, the decision on the necessity of the use of broad use of prophylaxis measures would require the input from multiple authorities, including the district health director and the State Health Commissioner.

## **2. Who has the authority to issue the blanket prescriptions or order the use of other mass prophylaxis measures**

Without state of emergency, the ability to issue blanket prescriptions and other forms of mass prophylaxis or immunization would be significantly limited, and efforts would be necessary to comply with relevant statutes (e.g., *Code of Virginia* § 54.1-3408) related to the prescription of drugs. Therefore, it is likely that such a situation would occur when prophylaxis using other standard operating procedures by health departments, such as referral to private physicians, or under the authority of a specific physician such as the district health director (as may occur when providing antibiotics to patients with sexually transmitted infections to deliver to their partners for treatment, prophylaxis of pertussis contacts, post exposure prophylaxis for post-office employees for anthrax, etc.).

## **3. How countermeasures would be distributed**

In a situation that does not require a declared state of emergency, it is likely that normal measures (e.g., referral to a healthcare provider or clinic, purchase at a local pharmacy) may be adequate to manage the distribution of countermeasures. Additional measures, such as establishing temporary clinics, and delivery by local health department staff or couriers, may also be considered.

### *D. Sufficiency of authority to issue blanket prescriptions or order the use of other mass prophylaxis measures in the absence of a declared emergency*

#### **1. Potential gaps**

The provision of mass prophylaxis without a declared health emergency has not been extensively considered. It has essentially been considered that true mass dispensing would only be necessary when the demand exceeded available resources. Even for relatively large events (e.g., chemoprophylaxis of postal workers following an anthrax exposure) then there has been sufficient time and additional resources to address the risk using the normal procedures.

However, additional consideration of the potential need, and relevant mechanism(s), to enable mass prophylaxis or vaccination without a declared state of emergency may be indicated.

## **2. Uncertainties**

The uncertainties regarding mass prophylaxis that are outlined in V.B.2 (above) exist when no state of emergency has been declared, including issues of: monitoring and investigating adverse events, addressing disparities and reaching special populations, and the impact on orders of isolation or orders of quarantine.

## **3. Legal provisions that could inhibit, limit, or modify the authority to issue blanket prescriptions or order the use of mass prophylaxis measures**

No additional legal provisions have been identified that would inhibit or limit a jurisdiction's legal basis to use mass prophylaxis measures.

## VI. Other Issues

### A. Other resources for social distancing and/or mass prophylaxis readiness

To improve consistency, to help ensure that all requirements are met, and to minimize the time required by district health department staff during periods of potential crisis, template forms and documents are provided whenever possible. Modification and editing of these templates may be required to meet particular situations. These resources, as well as any additional data (e.g., patient charts, laboratory results, radiographs, reports from witnesses, etc.), should be organized appropriately and kept confidential as part of a public health record.

Every district health department in Virginia has developed a local plan that includes addressing the community's needs based on the available resources. These include pre-event planning, such as:

- Identifying key personnel within the health department required for the response;
- Training and exercising staff on issues related to communicable diseases of public health threat;
- Identifying and contacting key agency (e.g., law enforcement) and community partners. This may include, with central office support, providing training and updates to local law enforcement and court officers on isolation and quarantine procedures, personal protective equipment, methods for the prevention of disease transmission, appropriate decontamination methods, and staff and agency identification/credentials;
- Developing communication protocols to ensure efficient notification of key personnel and agencies, as well as appropriate media updates;
- Identifying critical resources (e.g., facilities, transport, volunteers, support supplies, etc.). This may involve working with the owner or operator of a property, building, or facility in advance to establish procedures for activating sites (including developing memorandums of agreement), coordinating activities related to patient management, and developing appropriate detailed plans (e.g., supplies, security, etc.). A multidisciplinary team approach can be used to assess potential sites in a jurisdiction to ensure suitability. The assessment team should include:
  - Emergency personnel/police/fire
  - Healthcare personnel
  - Local hospital personnel, and
  - Engineering/maintenance/public works staff;
- Ensuring appropriate documentation capability for managing persons in isolation or quarantine;
- Considering appropriate media responses and developing materials and contacts; and,

- Identifying methods or resources for special needs populations. Many vulnerable populations are distributed throughout Virginia, including people who are:
  - Physically disabled (e.g., blind, deaf, deaf-blind, hard of hearing)
  - Seniors
  - Limited English or non-English proficient
  - Children (including those in day cares, Head Start, before/after-school programs, latch-key kids, as well as those in school, foster care, truancy, juvenile justice system)
  - Homeless and shelter dependent
  - Impoverished
  - Mentally disabled
  - Medically dependent/medically compromised
  - Chemically dependent (includes substance abusers, as well as those who would experience withdrawal, sickness, or other symptoms due to lack of access—i.e., methadone users)
  - Clients of the criminal justice system (e.g., ex-convicts, parolees, people under house arrest, registered sex offenders)
  - Emerging or transient special needs (e.g., migrant workers, persons in shelters, on the streets or temporarily housed—transitional, safe houses for women and minors, as well as tourists/visitors, university/college/boardings school students, commuters, etc.), and
  - Undocumented persons. Many do not have a regular health care provider and are beyond the reach of traditional public health and other emergency response systems. Therefore, public health planning needs to consider ways to reach deeply into communities to ensure the effectiveness of isolation/quarantine.

Other resources developed to date by the Virginia Department of Health include:

- Family and personal preparedness materials (training manuals, presentations, brochures, websites)
- Chempack pre-deployment and planning
- Dispensing site planning
- Hospital and long-term care facility preparedness
- Emergency response plans (including specific plans for addressing smallpox, pandemic influenza, and radiation/potassium iodide)
- Continuity of Operations (COOP) planning
- NIMS/ICS training

The Virginia Department of Emergency Management has also developed extensive materials for responding to a wide range of situations, including public health emergencies.

#### *B. Other resources not currently in place but would like to develop*

In the event that the occurrence of a communicable disease of public health threat is due to an intentional action, additional issues related to evidence (e.g., chain of custody considerations, preservation of the scene) and documentation will exist. Law enforcement will provide guidance on these issues, as needed.

Another area that has been recognized is addressing restrictions on the movements of individuals with communicable diseases that are not infectious. For example, statutes related to isolation and quarantine for communicable diseases of public health threat (e.g., *Code of Virginia* § 32.1-48.06) specify application only to “infectious agents.” However, there may be conditions, such as contamination or illness with polonium-210 contamination, where restricting the movement of the individual may be necessary to protect the health of the public. Alternative legal tools would therefore be needed.

It should be noted that the laws, regulations, and planning have not fully addressed some issues related to isolation and quarantine. Examples of issues that remain to be resolved include reimbursement (e.g., for lost work for individuals, for decontamination and remediation of facilities following usage, etc.), guidelines for allocating a limited resource in a community (e.g., chemoprophylaxis or immunization), the appropriate use of force by law enforcement to compel compliance, etc. The wide range of situations where these issues may arise will affect the available options; therefore, flexibility in responding to events is needed.

Concerns also exist regarding potential gaps in the application of state and federal public health laws to multi-jurisdictional entities (e.g., airports such as Dulles and Reagan National), cross-jurisdictional situations (e.g., Tribal lands, districts bordering on other states or D.C., non-U.S. citizens, etc.), federal facilities (e.g., federal prisons, military bases, national parks), and diplomats/foreign nationals. While some tools exist to address these issues (as outlined in the analyses) additional work is necessary to ensure that there are no critical gaps. Possible modifications of state or federal law to address these issues and optimize the protection of the citizens of Virginia may need to be considered.

Work will continue between state agencies to better define the conditions and processes for school closures. Initial work between the Department of Education and the Department of Health has provided better awareness of the issues, as well as suggested a range of tools that could be used. Further work to define tools, including potential modification of public school programs (including possible closure), that minimize social and economic disruptions, are ongoing. Additional work will also need to focus on possible tools for private schools, universities/colleges, and daycare facilities.

Issues related to federal response in terms of waiving various requirements (e.g., for school closures and funding, WIC funding) need to be considered.

In addition, given the potential impact on some industries (e.g., life insurance) work may be necessary to identify any unanticipated consequences (e.g., loopholes that may affect payments to survivors), comparable to those issues that occurred in defining ‘flood’ versus ‘storm’ damage following Hurricane Katrina in New Orleans.

### *C. Unique social distancing or mass prophylaxis measures in Virginia*

#### **Virginia Supreme Court Rules**

The Virginia Supreme Court has promulgated a limited set of rules to specifically address the management of review and appeals, by circuit courts and the Supreme Court, of Orders of Isolation or Orders of Quarantine. These rules generally refer to the *Code of Virginia* to address the process. However, the rules also recognize the potential need to utilize methods to protect the court and the public from exposure, and outline the expedited review process necessary to address the situation.

#### **Infectious Diseases of Livestock and Poultry**

The interaction between animal and human diseases is not an academic issue. Some diseases of animals, including avian influenza and SARS, may be acquired by humans (known as “zoonoses”). In addition, the threat of transmission of illness among animals (even where humans are not themselves affected) has significant economic and food security implications. Therefore, the management of serious infectious diseases through restricting movement (both of animals, and of humans) should be considered.

The State Veterinarian, under the Commissioner of Agriculture and Consumer Services and the State Board of Agriculture and Consumer Services, has broad powers for the control of infectious and contagious disease that may affect livestock and poultry. The *Code of Virginia* (§ 3.1-726) authorizes that “such measures shall be taken by the Board or its authorized veterinarian as to them may seem necessary, to eradicate and prevent the spread of such diseases.” Note that, for animals (including companion animals) this could include destruction/depopulation.

In addition, *Code of Virginia* § 3.1-727 states that if a contagious disease is identified in domestic animals or poultry then the State Veterinarian, or an assistant, “may adopt and enforce such quarantine lines and regulations and shall enforce such cleaning and disinfection of premises, cars, or vehicles, as may be deemed necessary to prevent the spread of such disease.” The *Code of Virginia* (§ 3.1-728) further gives the State Veterinarian control of the movement of contagious or potentially contagious animals from a district, premises, or grounds so quarantined, and *Code of Virginia* § 3.1-730 outlines

the ability of the State Veterinarian to segregate and care for diseased animals or poultry.

The basic notice of quarantine (*Code of Virginia* § 3.1-732), the ability of the State Veterinarian to call upon law-enforcement to execute orders (§ 3.1-738), the enforcement by circuit court judges (*Code of Virginia* § 3.1-738.1), and the penalty for violation (a Class 1 misdemeanor, under *Code of Virginia* § 3.1-733) are all generally outlined in the *Code of Virginia*.

Of particular note, *Code of Virginia* § 3.1-729 provides the State Veterinarian with the power to 'quarantine' persons exposed to animal and poultry diseases that may be transmitted by such persons to animals or poultry if the State Veterinarian determines that such quarantine will prevent the spread of such diseases among livestock or poultry.

Therefore, as a result of discussions with the Virginia Department of Agriculture and Consumer Services (VDACS), at the present time it is felt that:

- For communicable diseases that affect only commercial animals, but that may be transmitted to other animals by contaminated humans/animals, VDACS would assume primary control of the environment, and the individuals (animal or human), that may pose a risk to animal health;
- In the event that individuals (persons or companion animals) could be infected with a communicable disease that represents a threat to agriculture, individuals could be subject to isolation/quarantine/decontamination/treatment through the State Veterinarian. However, co-ordination between VDH and VDACS should occur to ensure adequate management of humans/companion animals; and,
- If exotic and/or wild animals may be involved, then the Virginia Department of Game and Inland Fisheries (VDGIF) would participate in the management of the situation.

Of note, the current laws related to the control of infectious or potentially infectious animals (and possibly humans) by the Commissioner of Agriculture and Consumer Services parallel the approach that had until recently been in place for the management of humans. However, the concerns (e.g., lack of due process) relating to the implementation of the previous laws by the State Health Commissioner could similarly apply to the management of human cases (and, perhaps, non-human cases) by the State Veterinarian. Therefore, in the event that a situation exists that could significantly impact agriculture, the restriction of humans or companion animals through the use of the powers of the State Health Commissioner may be preferable as they may be less subject to challenge – the appropriate application of these laws will be situation-specific and require consultation among the various agencies.

## **Expense of Treatment**

*Code of Virginia* § 32.1-45 specifies that expenses related to any treatment, including for those individuals subject to an order of isolation issued pursuant to *Code of Virginia* § 32.1-48.01 et seq. or an order of quarantine or an order of isolation issued pursuant to *Code of Virginia* § 32.1-48.05 et seq., remain the responsibility of the individual.

## **Hotels, Restaurants, Summer Camps, and Campgrounds**

The *Code of Virginia* has an additional statute that may be of use in the development of centralized isolation or quarantine facilities. Specifically, *Code of Virginia* § 35.1-12 relates to the ability of the State Health Commissioner to make separate orders and regulations to meet any emergency not provided for by general regulations for the purpose of suppressing conditions dangerous to the public health and communicable, contagious, and infectious diseases. As a result, this statute may be useful in responding to communicable diseases when it is necessary to implement or alter regulations related to the management of hotels, restaurants, summer camps, or campgrounds that could be utilized by the Commonwealth to provide centralized sites for isolation and/or quarantine.

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## Legal Consultation Meetings

Each of the 13 states that have CDC quarantine stations<sup>1</sup> will conduct a one-day “Pandemic Preparedness Legal Consultation Meeting,” (LCM). The LCMs will bring together legal counsel to the state health department, colleagues from other state and local agencies with preparedness roles, cognizant judges, and other relevant actors to engage in structured dialogue to explore their understanding of the relevant laws, assess the feasibility of successfully applying law-based social distancing measures in a pandemic, and identify any areas of legal preparedness they believe warrant further attention. The states hosting LCMs will prepare reports on the meetings for ASTHO.

As a result, the Virginia Department of Health and the Virginia Office of the Attorney General will be conducting a legal consultation meeting. The objectives of the LCM will be to:

- Convene those persons who would be the principal legal advisors and law-related actors if pandemic influenza threatened the jurisdiction;
- Explore the participants’ opinions/attitudes on the viability and sufficiency of legal authorities in the jurisdiction available to restrict the movement of persons, and to close public places or limit/prohibit large gatherings of people, in the event that the jurisdiction was threatened by pandemic influenza;.
- Promote dialogue among the participants about available legal authorities; and,
- To the extent possible, reach agreement on the viability and sufficiency of the authorities, law-related problems that could arise in executing social distancing measures using available authorities, procedural or logistical issues related to using the authorities, and enforcement of social distancing measures.

These one-day sessions will be planned and moderated through the appropriate Virginia Department of Health and Office of the Attorney general staff and facilitated by experienced meeting facilitators. It will bring together representatives from governmental and private sectors entities to discuss legal authority for implementing social distancing measures in the Commonwealth of Virginia.

Entities and groups that have been considered for inclusion at the present time currently include:

- State and local health officers
- Governor’s office representatives
- Attorney General’s representatives
- State legislative representatives
- Commonwealth’s attorneys
- Relevant state agencies including:
  - Health

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<sup>1</sup> Alaska, California, Florida, Georgia, Hawaii, Illinois, Massachusetts, Michigan, Minnesota, New York, Texas, Virginia (in the Washington DC area) and Washington

- Law enforcement (local and state)
- Emergency response
- Representatives of the judiciary
- CDC quarantine station representatives and other appropriate federal officials (e.g., attorneys from regional U.S. Department of Health and Human Services offices)
- CDC public health law program representative
- Association of State and Territorial Health Officers (ASTHO) representative
- Representatives of business organizations
- Members of the private bar (e.g., attorneys for healthcare entities and other private attorneys)
- Representatives of other federal agencies, including:
  - Military bases
  - Prisons
  - National parks
  - State Department
  - Federal Bureau of Investigation
- ACLU representative
- Law school representatives/scholars
- Virginia Department of Game and Inland Fisheries
- Virginia Department of Agricultural and Consumer Affairs

Issues that remain to be worked on include:

- Identifying a meeting moderator
- Select a meeting facilitator
- Refining the agenda
- Identifying and inviting specific persons to the meeting
- Address meeting logistics (space, food/coffee, location, audio/visual equipment, travel reimbursement, etc.)
- Create a background memorandum for the meeting participants no later than two weeks before the meeting. The memorandum will include the findings from the initial Part I legal assessment.
- Record proceedings by audio and/or note-taking
- Create and distribute a report of the meeting

Meeting expenses, facilitator fees, recording or transcription services, and travel expenses to bring persons to the meeting will be provided through the ASTHO stipend.

### Format and Agenda of Meeting

This forum will provide participants the opportunity to exercise and/or discuss the state's authority to conduct social distancing measures in declared and undeclared emergencies. **A hypothetical scenario for use in this session is included in the Appendices.**

The general format and agenda for the legal consultation meeting agenda is provided below.

<b>Time</b>	
8:30 – 8:45 a.m.	Welcome/General Introduction
8:45 – 9:00 a.m.	Participant Introductions
9:00 – 9:45 a.m.	Virginia Social Distancing Statutes and Regulations
9:45 – 10:15 a.m.	Scenario – Background and Situation
10:15 – 10:30 a.m.	Break
	Discussion
10:30 – 11:15 a.m.	<ul style="list-style-type: none"> <li>• Restriction of Movement (Individuals and Groups)</li> </ul>
11:15 – 11:45 a.m.	<ul style="list-style-type: none"> <li>• Curfew</li> </ul>
11:45 – 12:15 a.m.	<ul style="list-style-type: none"> <li>• Inter-jurisdictional Cooperation</li> <li>• Interagency Cooperation</li> </ul>
12:15 – 1:00 p.m.	Lunch
1:00 – 1:30 p.m.	<ul style="list-style-type: none"> <li>• Closure of Public Places</li> </ul>
1:30 – 2:00 p.m.	<ul style="list-style-type: none"> <li>• Mass Prophylaxis</li> </ul>
2:00 – 2:30 p.m.	<ul style="list-style-type: none"> <li>• Public Health State of Emergency</li> </ul>
2:30 – 3:00 p.m.	<ul style="list-style-type: none"> <li>• Virginia Enforcement or Assistance with Federal Orders</li> </ul>
3:00 – 3:15 p.m.	Break
3:15 – 4:00 p.m.	Practical Issues Regarding Movement Restriction
4:00 – 4:30 p.m.	Future Efforts
4:30 – 4:45 p.m.	Closing Remarks
4:45 p.m.	Adjourn

Participants will be divided into groups to discuss and evaluate the fact pattern based on Virginia’s current legal authorities to institute social distancing measures and any practical considerations in implementing them. The scope of discussion will cover the same areas of inquiry as were addressed in the Part 1 Legal Assessment (see agenda, above) in both declared and undeclared emergencies. In addition, participants will address any insufficiencies, gaps, and other uncertainties regarding the powers and authorities to conduct a range of social distancing measures, and a consideration of priority action steps for addressing any gaps or uncertainties.

### Report

Following the meeting, VDH and the OAG will prepare a summary of the LCM to be shared with ASTHO and CDC. The summary will include a listing of attendees, the final meeting agenda, a summary of the hypothetical scenario used, identification of break out groups, and conclusions from the meetings.

ASTHO will then prepare a comprehensive project report based on the states’ reports from Part 1 and Part 2 of the project and share with all the states and CDC.

## **Issues to Cover in LCM**

For the response, consider the legal authorities and limitations for:

- Restriction of movement of individuals, identifiable groups of individuals, and the general public
- Curfew
- Inter-jurisdictional cooperation
- Interagency cooperation
- Closure of public places
- Mass prophylaxis
- Declaring a state of emergency – criteria to declare, provisions, limitations
- Local and state enforcement or assisting in execution of federal orders

Specific issues to consider will include:

- Initiation
- Enforcement
- Due process measures
- Duration
- Potential liability
- Limitations

Additional areas that will need to be addressed include:

- Emergency powers that need to be addressed
- Uncertainties in legal authorities
- Gaps that need to be addressed
- Ways to address these uncertainties and gaps acutely
  - Possible changes to statutes and regulations that should be considered

## Conclusions

In the event of a public health emergency (e.g., a significant pandemic of influenza), medical, social, public health, legal, judicial, and law enforcement resources, among others, will be severely strained. Virginia has responded to reduce this strain through a variety of activities, including preparedness training and stockpiling of critical medications. Public health must rely upon the voluntary compliance of citizens to address many of the critical interventions that may reduce the severity of the impact, such as social distancing. Therefore, numerous resources have been developed to assist in emergency preparedness for citizens. However, it is recognized that that a minority of individuals may not comply. As such, Virginia has also made significant strides in modernizing the statutes, regulations, policies, and procedures related to key social distancing methods.

This report outlines the status and issues related to statutes and regulations for key social distancing tools available in Virginia (e.g., restriction of movement, curfew, closure of public places, mass prophylaxis). While the current laws and regulations provide extensive detail, including addressing such issues as due process, this level of specification has required significant effort in training at various levels (e.g., public health, attorneys, law enforcement, judges, the public) and preparation. In addition, while detail is necessary, public health laws also require some flexibility to respond to new or emerging conditions. Gaps have occurred when the impact of some conditions have not been contemplated (e.g., if the control of individuals exposed to Polonium-210 were necessary).

The next step in social distancing preparedness will include Virginia's participation in a legal consultation meeting (LCM), a one-day tabletop exercise with key stakeholders to work through a scenario incorporating social distancing measures. Following these consultation meetings, a summary of the meeting and its findings, along with the Part 1 legal assessments, will be compiled into a final report.

## Appendices

### Appendix A - Definitions

Affected area	Any part or the whole of the Commonwealth, which has been identified as where individuals reside, or may be located, who are known to have been exposed to or infected with or who are reasonably suspected to have been exposed to or infected with a communicable disease of public health threat.
Carrier	A person or animal that harbors a specific infectious agent without discernible symptoms of disease and serves as a potential source of infection.
Case	A person who has been diagnosed as having a particular disease or condition.
Case definition	Specifications of the characteristics that describe a case of disease (e.g., person, place, time, symptoms, signs). These are specific to each disease, and can be specific to each situation. They vary, according to knowledge of the disease and can change over the course of an investigation.
Case, confirmed	A case that is classified as confirmed for reporting purposes, usually by laboratory testing data or other testing results. (e.g., X-ray). The elements of classification will vary from disease to disease.
Case, probable	A case that meets the clinical criteria but has not been confirmed by laboratory or other means. The elements of classification will vary from disease to disease.
Case, suspected	A person who has known contact with an infectious agent or is experiencing some of the symptoms of the disease under investigation. The elements of classification will vary from disease to disease.
Chain of custody	A process used to maintain and document the chronological history of the evidence. Documentation should include name or initials of the individual collecting the evidence, each person or entity subsequently having custody of it, dates the items were collected or transferred, agency and case number, the case's name, and a brief description of the item.
Communicable disease	An illness due to an infectious agent or its toxic products which is transmitted, directly or indirectly, to a susceptible host from an infected person, animal, or arthropod or through the agency of an intermediate host or a vector or through the inanimate environment.
Communicable disease of public health significance	An illness caused by a specific or suspected infectious agent that may be transmitted directly or indirectly from one individual to another. This includes, but is not limited to, infections caused by human immunodeficiency viruses, blood-borne pathogens, and tubercle bacillus. The State Health Commissioner may determine that diseases caused

	by other pathogens constitute communicable diseases of public health significance.
Communicable disease of public health threat	An illness of public health significance, as determined by the State Health Commissioner in accordance with these regulations, caused by a specific or suspected infectious agent that may be reasonably expected or is known to be readily transmitted directly or indirectly from one individual to another and has been found to create a risk of death or significant injury or impairment; this definition shall not, however, be construed to include human immunodeficiency viruses or the tubercle bacilli, unless used as a bioterrorism weapon.
Communicable period/ period of communicability	The time during which an infectious agent may be transferred directly or indirectly from an infected person to another person, from an infected animal to humans, or from an infected person to animals including arthropods.
Companion animal	Any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purpose of this article.
Condition	Any adverse health event, such as a disease, an infection, a syndrome, or procedure (including, but not limited to, the results of a physical exam, laboratory test, or imaging interpretation) indicating that an exposure of public health importance has occurred.
Contact	A person or animal known to have been in such association with an infected person or animal as to have had an opportunity of acquiring the infection.
Contact tracing	The process by which an infected person or health department employee notifies others that they may have been exposed to the infected person in a manner known to transmit the infectious agent in question.
Cordon sanitaire	The border around an area that contains persons with a communicable disease to restrict travel in or out of the area and thereby prevent the spread of the communicable disease.
Curfew	An order or regulation prohibiting persons from being in certain public places at certain times.
Designee or “designated officer or agent”	Any person, or group of persons, designated by the State Health Commissioner, to act on behalf of the State Health Commissioner or the board.

Due process	The administration of justice according to established rules and principles; based on the principle that a person cannot be deprived of life or liberty or property without appropriate legal procedures and safeguards. Examples include a person's right to be adequately notified of charges or proceedings involving him/her, and the opportunity to be heard at these proceedings.
Epidemic	The occurrence in a community or region of cases of an illness clearly in excess of normal expectancy.
Essential needs	Basic human needs for sustenance including, but not limited to, food, water and health care, e.g., medications, therapies, testing, and durable medical equipment.
Exceptional circumstances	The presence, as determined by the State Health Commissioner in his sole discretion, of one or more factors that may affect the ability of the department to effectively control a communicable disease of public health threat. Factors to be considered include, but are not limited to: 1) characteristics or suspected characteristics of the disease-causing organism or suspected disease-causing organism such as virulence, routes of transmission, minimum infectious dose, rapidity of disease spread, the potential for extensive disease spread, and the existence and availability of demonstrated effective treatment; 2) known or suspected risk factors for infection; 3) the potential magnitude of the effect of the disease on the health and welfare of the public; and, 4) the extent of voluntary compliance with public health recommendations. The determination of exceptional circumstances by the State Health Commissioner may take into account the experience or results of investigation in Virginia, another state or another country.
Health Information	Under HIPAA, health information includes any information, in any form or medium, that is created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse, and that relates to the past, present, or future physical or mental health or condition of an individual or the provision of healthcare to an individual.
HIPAA	The Health Insurance Portability and Accountability Act of 1996 - Federal regulations that require the protection of the privacy and security of patients' medical information and the use of a standard format when submitting electronic transactions. The Privacy Rule within HIPAA regulates the way certain healthcare groups, organizations, or businesses, called covered entities, handle the individually identifiable health information known as protected health information (PHI).

Immunization	A procedure that increases the protective response of an individual's immune system to specified pathogens.
In camera	Kept private or confined to those intimately concerned;
Incubation period	The interval (in hours, days, or weeks) between the initial, effective exposure to an infectious organism and the first appearance of symptoms of the infection.
Individual	A person or companion animal. When the context requires it, "person or persons" shall be deemed to include any individual.
Infected individual	A person or animal that harbors an infectious agent and who has either manifest disease or unapparent infection.
Infection	The entry and multiplication or persistence of an organism (prion, virus, rickettsia, bacteria, fungus, protozoan, helminth, or ectoparasite) in the body of an individual. An infection may be inapparent (i.e., without recognizable signs or symptoms but identifiable by laboratory means) or manifest (clinically apparent).
Infectious agent	An organism (virus, rickettsia, bacteria, fungus, protozoan or helminth) that is capable of producing infection or infectious disease.
Investigation	An inquiry into the incidence, prevalence, extent, source, mode of transmission, causation of, and other information pertinent to a disease occurrence.
Isolation	The physical separation, including confinement or restriction of movement, of an individual or individuals who are infected with or are reasonably suspected to be infected with a communicable disease of public health threat in order to prevent or limit the transmission of the communicable disease of public health threat to uninfected and unexposed individuals.
Isolation, complete	The full-time confinement or restriction of movement of an individual or individuals infected with, or reasonably suspected to be infected with, a communicable disease in order to prevent or limit the transmission of the communicable disease to uninfected and unexposed individuals.
Isolation, modified	A selective, partial limitation of freedom of movement or actions of an individual or individuals infected with, or reasonably suspected to be infected with, a communicable disease. Modified isolation is designed to meet particular situations and includes, but is not limited to, the exclusion of children from school, the prohibition or restriction from engaging in a particular occupation or using public or mass transportation, or requirements for the use of devices or procedures intended to limit disease transmission.
Isolation, protective	The physical separation of a susceptible individual or

	individuals not infected with, or not reasonably suspected to be infected with, a communicable disease from an environment where transmission is occurring, or is reasonably suspected to be occurring, in order to prevent the individual or individuals from acquiring the communicable disease.
Law enforcement agency	Any sheriff's office, police department, adult or youth correctional officer, or other agency or department that employs persons who have law-enforcement authority that is under the direction and control of the Commonwealth or any local governing body. "Law-enforcement agency" shall include, by order of the Governor, the Virginia National Guard.
Least restrictive	The minimal limitation of the freedom of movement and communication of an individual while under an order of isolation or an order of quarantine that also effectively protects unexposed and susceptible individuals from disease transmission.
Medical care facility	Any hospital or nursing home licensed in the Commonwealth, or any hospital operated by or contracted to operate by an entity of the United States government or the Commonwealth of Virginia.
Mode of transmission	Describes the mechanisms by which an infectious agent is spread to humans. Such mechanisms include direct, indirect, and airborne spread.
Nurse	Any person licensed as a professional nurse or as a licensed practical nurse by the Virginia Board of Nursing.
Outbreak	The occurrence of more cases of a disease than expected.
Period of communicability	The time (days, weeks or months) during which an infectious agent may be transferred, directly or indirectly, from an infected person to another person; from an infected animal to humans; or from an infected person to animal or insects.
Physician	Any person licensed to practice medicine or osteopathy by the Virginia Board of Medicine.
Personal Protective Equipment (PPE)	Protection for employees from the risk of injury by creating a barrier against workplace hazards. The appropriate PPE for a communicable disease situation depends on the characteristics of the agent and the potential exposure.
Protected Health Information (PHI)	Under the HIPAA Privacy Rule, protected health information includes any <i>individually identifiable</i> health information. 'Identifiable' refers not only to data that is explicitly linked to a particular individual; it also includes health information with data items that reasonably could be expected to allow individual identification. Examples of HIPAA regulated patient identifiers include: names, medical record/account numbers, addresses, telephone numbers, date of birth,

	<p>Social Security Number, etc.</p> <p>De-identified information is information where all potentially identifying information has been removed.</p>
Quarantine	<p>The physical separation, including confinement or restriction of movement, of an individual or individuals who are present within an affected area or who are known to have been exposed, or may reasonably be suspected to have been exposed, to a communicable disease of public health threat and who do not yet show signs or symptoms of infection with the communicable disease of public health threat in order to prevent or limit the transmission of the communicable disease of public health threat to unexposed and uninfected individuals.</p>
Quarantine, complete	<p>The full-time confinement or restriction of movement of an individual or individuals who do not have signs or symptoms of infection but may have been exposed, or may reasonably be suspected to have been exposed, to a communicable disease of public health threat in order to prevent the transmission of the communicable disease of public health threat to uninfected individuals.</p>
Quarantine, modified	<p>A selective, partial limitation of freedom of movement or actions of an individual or individuals who do not have signs or symptoms of the infection but have been exposed to, or are reasonably suspected to have been exposed to, a communicable disease of public health threat. Modified quarantine may be designed to meet particular situations and includes, but is not limited to, limiting movement to the home, work, and/or one or more other locations, the prohibition or restriction from using public or mass transportation, or requirements for the use of devices or procedures intended to limit disease transmission.</p>
Reportable disease	<p>An illness due to a specific toxic substance, occupational exposure, or infectious agent, which affects a susceptible individual, either directly, as from an infected animal or person, or indirectly through an intermediate host, vector, or the environment, as determined by the board.</p>
“Reverse 911” Messaging	<p>A communications product that establishes a virtual calling network, enabling public safety agencies to telephone community residents with recorded messages informing them of emergencies, hazards, major road closures, or other important matters relevant to public health and public safety. The system is built on a database of local resident and business phone numbers.</p>
Self-shielding	<p>Self-imposed exclusion from infected persons or those perceived to be infected (e.g., by staying home from work or school during an epidemic).</p>

Snow days	Days on which offices, schools, transportation systems are closed or cancelled, as if there were a major snowstorm.
Special Populations	Persons who by reason of language barriers, living conditions, confinement, lack of transportation, or other unique situations might require additional assistance to understand publicly issued instructions or obtain needed care, especially in times of emergency. Examples include homeless persons, nursing home patients, mentally ill or mentally retarded individuals living in group residential homes, students in university dorms, juveniles in detention centers, prisoners, and migrant laborers.
Stakeholders	Everyone with an interest (or "stake") in an activity. For isolation and quarantine, this may include state, local and federal agency staff, including—but is not limited to—public health and hospitals, law enforcement, fire and EMS, homeland security, emergency management, human services, and support agencies such as sanitation, energy, housing authority, schools, and transportation. In addition, it could include decision-makers in private business and organizations, including nongovernmental organizations, private hospitals, and health care providers, food, shelter, transportation, security, funerary and other private service providers. Finally, other stakeholders may include public leaders, members of the media, and private citizens interested in becoming informed on how to better protect their communities and respond to contagious diseases.
State of emergency	The condition declared by the Governor when, in his/her judgment, the threat or actual occurrence of an emergency or a disaster in any part of the Commonwealth is of sufficient severity and magnitude to warrant disaster assistance by the Commonwealth to supplement the efforts and available resources of the several localities, and relief organizations in preventing or alleviating the damage, loss, hardship, or suffering threatened or caused thereby and is so declared by him.
Surveillance	The on-going systematic collection, analysis, and interpretation of outcome-specific data for use in the planning, implementation and evaluation of public health practice. A surveillance system includes the functional capacity for data analysis as well as the timely dissemination of these data to persons who can undertake effective prevention and control activities.
Susceptible individual	A person or animal who is vulnerable to or potentially able to contract a disease or condition. Factors that affect an individual's susceptibility include, but are not limited to, physical characteristics, genetics, previous or chronic

	exposures, chronic conditions or infections, immunization exposure, or medications.
Vector	A carrier, either biological or mechanical, that transmits disease-causing organisms from infected to non-infected persons or animals (mosquito, tick, mice, etc) or that carries disease-causing microorganisms from one host to another.

## Appendix B - Political and Public Health Structure of the Commonwealth

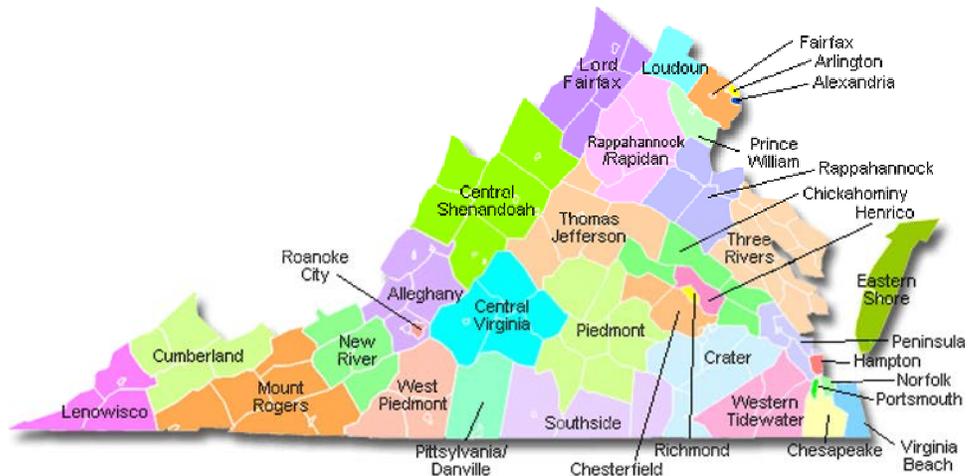
In order to understand the responsibilities and authorities related to disease control and prevention, it is important to first understand the structure of the public health system in Virginia. The authority in Virginia originates from the Constitution of Virginia. The Constitution establishes the Governor, as well as the legislative body (General Assembly, composed of the House of Delegates and the Senate). The legislative bodies develop the law (formalized in the Code of Virginia) – the *Code of Virginia* establishes the State Board of Health, and when appropriate directs the Board to promulgate Regulations related to the implementation of the Code, including those pertaining to the reporting and control of diseases of public health importance and to meet any emergency or to prevent a potential emergency caused by a disease dangerous to the public health.

The Commonwealth of Virginia State Board of Health *Regulations for Disease Reporting and Control* (12VAC5-90-10 et seq) provide the processes and procedures that fulfill the requirements of the *Code of Virginia* and ensure the uniform reporting of diseases of public health importance occurring within the Commonwealth in order that appropriate control measures may be instituted to interrupt disease transmission.

Under the Secretary of Health of Human Resources within the Governor's cabinet is the Virginia Department of Health (VDH), directed by the State Health Commissioner. The State Health Commissioner is the executive officer for the State Board of Health, with the authority of the board when it is not in session.

In particular, *Code of Virginia* § 32.1-39 authorizes the Board to provide for the surveillance of and investigation into all preventable diseases and epidemics and into the means for the prevention of such diseases and epidemics. Surveillance and investigation may include contact tracing in accordance with the regulations of the Board. When any outbreak or unusual occurrence of a preventable disease shall be identified, the Commissioner or his designee shall investigate the disease in cooperation with the local health director or directors in the area of the disease. If in the judgment of the Commissioner the resources of the locality are insufficient to provide for adequate investigation, he may assume direct responsibility and exclusive control of the investigation, applying such resources as he may have at his disposal. The Board may issue emergency regulations and orders to accomplish the investigation.

The Virginia Department of Health is functionally composed of local and district health departments and the central office. Per *Code of Virginia* § 32.1-30 each county and city is responsible for maintaining a local department of health which shall be headed by a local health director. Each such local health director is physician licensed to practice medicine in the Commonwealth. As a result, there are 119 local health departments (including two independent health departments) in Virginia that operate programs that work to improve the health of the communities they serve. One or more local health departments are grouped into one of the 35 health districts in Virginia, each headed by a district health director who acts as the local health director for each local department of health in the district. District health directors have significant responsibilities, including the surveillance for, and investigation of, illnesses of public health importance that occur in their jurisdiction. District health directors are also responsible for instituting measures for disease control, including implementing the quarantine and isolation orders of the State Health Commissioner. In addition, regional teams are available to augment local/district emergency public health responses in Virginia.



## Health Districts of Virginia

Although some powers granted to the State Health Commissioner may not be delegated to the district health director, many of the activities at the local and district level related to the control of a communicable disease of public health threat will be overseen by the district health director, and therefore local operations are critical to disease control and prevention.

In addition, the VDH central office, under the State Health Commissioner, provides technical support and coordination for the district health departments. Within the central office, per 12VAC5-90-40, the Office of Epidemiology is responsible for the statewide surveillance of communicable diseases, for defining and disseminating appropriate disease control protocols for an outbreak situation, for coordinating the investigation of those diseases with the local health director, and for providing direct assistance where necessary. The Director of the Office of Epidemiology (“State Epidemiologist”) acts as the State Health Commissioner’s designee in reviewing reports and investigations of diseases and recommendations by local health directors for quarantine or isolation. However, authority to order quarantine or isolation resides solely with the commissioner.

The Office of Epidemiology would serve as an important liaison between the different entities involved in the implementation of the laws and regulations related to communicable diseases of public health threat (e.g., district health directors, private physicians, facilities, the State Health Commissioner, the Attorney General's office, law enforcement, etc.).

Offices within VDH are further sub-divided into Divisions. Depending on the specific situation, various divisions and offices play important roles in implementing control measures. For example, the Division of Surveillance and Investigation (DSI) would provide technical guidance in managing a communicable disease of public health threat. In the event of an outbreak in companion animals (e.g., monkeypox) that could potentially spread to humans, the Division of Environmental Epidemiology (DEE) would also have a vital technical role. The Division of Immunization and the Division of Disease Prevention (DDP) would have important roles if vaccines or medications were available as part of the response.

The Office of Emergency Preparedness and Response (EP&R) within VDH coordinates the overall public health response and provides logistic support during emergencies. In addition, EP&R would coordinate VDH's communication with the Virginia Department of Emergency Management (VDEM) Emergency Operations Center (EOC) and other partners.

## **Appendix C - Recent Statutory Changes for Communicable Disease Control Laws in Virginia**

In the past, many states including Virginia have relied upon a general delegation of authority to the State Health Commissioner or other official(s) for the control of communicable diseases. While the courts have given deference to the expertise of public health professionals in protecting the safety of communities, some public health law experts worried that this practice would not be adequate for the response to a large-scale event. Thus, there was a concern that successful challenges to the broad yet flexible methods that have traditionally enabled the public health system to act rapidly could potentially leave the public vulnerable when interventions are most needed.

As a result, in April 2004 the General Assembly and the Governor of Virginia amended Chapter 2 of Title 32.1 of the *Code of Virginia* to increase the Commonwealth's ability to respond to serious threats to its citizens. Among the issues addressed were specific details on the use of isolation and quarantine for the control of communicable diseases of public health threat.

Subsequently, the Commonwealth of Virginia Board of Health issued emergency regulations on isolation and quarantine that further defined the public health procedures that would be followed to control communicable diseases of public health threat. These regulations were finalized May 2, 2007 as part of the revisions to the Board of Health's *Regulations for Disease Reporting and Control*.

In addition, in March 2007, the General Assembly and the Governor of Virginia made amendments (under HB2845) to Chapter 2 of Title 32.1 of the *Code of Virginia* to refine the management of communicable diseases of public health threat.

## Appendix D - General Communicable Disease Control Measure Options

Sections 32.1-36 and 32.1-37 of the *Code of Virginia* and Virginia Board of Health *Regulations for Disease Reporting and Control* (12 VAC 5-90-80 and 12 VAC 5-90-90) identify notifiable conditions and the time frame in which they must be reported.

Persons and entities having a duty to report include healthcare professionals, as well as directors of laboratories and healthcare facilities. In addition, directors of child daycare facilities and schools must report outbreaks.

Interventions to control the spread of communicable diseases should be undertaken to address the multiplicity and complexity of obstacles involved in managing those who are or may be infected. Depending on the agent, examples of activities that may be implemented in the event of an outbreak of a communicable disease of public health threat could include:

- Primary and secondary preventive interventions:
  - Vaccination
  - Chemoprophylaxis (e.g., antibiotics)
  - Personal protective equipment (PPE) (e.g., masks, gloves, etc.)
- Enhanced disease surveillance and symptom monitoring
- Rapid diagnosis and treatment of ill individuals
- Restrictions on group assembly
- Travel advisories and restrictions (including air, rail, water, motor vehicle, and/or pedestrian)
- Cancellation of public events
- Closure of public places, mass public transit
- “Snow days” – when people are asked to stay at home for a defined period
- Isolation and quarantine – may be modified or complete
- Cordon sanitaire – defining an area infected with disease and restricting travel in or out to prevent a disease from spreading

Additional activities that may be required to support these activities include: refining therapeutic regimen(s) for ill individuals, providing information related to the disease process and mode of transmission, assessing infection risk within the family and community, resolving communication issues with the affected individuals as well as the community, and enforcing treatment, isolation, and quarantine instructions.

In general, implementing control measures in stages, beginning with less restrictive measures, minimizes social disruption and expense, and allows evaluation of effectiveness. However, some situations may call for the sudden implementation of many measures simultaneously to ensure rapid control. Interventions require planning and monitoring in order to ensure the best possible personal health outcome as well as to minimize the risk to the community.

## Appendix E - Ethical Principles Related to the Control of a Communicable Disease

When making decisions related to restrictive measures, individual freedoms need to be balanced against the common good of society, and economic losses against the need to contain the spread of a deadly disease. Authorities exercising public health powers will do so in a way that is relevant, legitimate, legal, proportional, necessary, and accountable. They will use the least restrictive methods that are reasonably available to limit individual liberties, and will apply restrictions without discrimination. Voluntary involvement is preferred over compulsory measures, but where compulsion is required, it will meet strict ethical principles around due process and respect for civil liberties. People will be fully informed about issues, including the risks and benefits of public health measures, and the trust of the general public will be maintained through open, factual, and timely communication and planning.

The following rights are recognized for individuals who are known or suspected of having a communicable disease:

- Generally, medication will not be physically forced (e.g., by swallowing, injection, etc.) on an individual without consent, except in the case of minors (where parental or guardian consent will be obtained, if appropriate) or companion animals. Note that § 3.1-796-76 of Chapter 27.4 of Title 3.1 of the *Code of Virginia* specifies that a veterinarian can treat, hospitalize, or euthanize a sick animal if the animal's owner cannot be immediately located. Specific authority in the animal laws regarding a situation where the owner is available, but refuses consent for treatment of a sick animal, does not exist. In such a case, the State Health Commissioner has the authority to isolate and quarantine companion animal(s). Other bodies (e.g., Board of Agriculture and Consumer Services, the State Veterinarian) may have additional authorities.
- All warnings and orders will be written in terminology that is as clear as possible to the layperson. Whenever reasonably possible, orders and instructions will be provided in appropriate languages to persons of limited English proficiency.
- An individual subject to an order has the right to appeal.
- Any action (e.g., an Order of Isolation) will be supported by proper documentation.
- Any individual subject to an order has the right to essential needs that include adequate food, water, shelter, means of communication with others, and medical services. To the greatest extent possible, cultural, and religious beliefs will be considered in addressing the needs of individuals.
- An individual subject to an order will be released as soon as practicable when the public health authority determines that they pose no substantial risk of constituting a serious and imminent threat to others.
- Any individual subject to an order has the right to be represented by counsel. A person who cannot afford a legal counsel will have one appointed.

Neither the State Health Commissioner nor any employee of the Virginia Department of Health shall disclose to the public the name of any person reported, isolated, or quarantined, except where revealing private medical information is deemed pertinent to an investigation by the State Health Commissioner (*Code of Virginia* § 32.1-4) to protect the public health, or as provided by law (*Code of Virginia* § 32.1-48.015).

## **Appendix F - Legal Consultation Meeting: Hypothetical Scenario**

### **Training Structure**

The principles of this tabletop exercise are to:

- Enable group discussion stimulated by a disaster scenario
- Provide an atmosphere designed to promote free and open exchange of ideas
- Familiarize participants with roles, functions, plans, procedures and resources
- Identify gaps and uncertainties in social distance statutes, regulations, and procedures, and develop methods to address these issues

Participants should recognize that this is not a test. The goal is to identify strengths of the system, and improve understanding/fill gaps, rather than assessing individual knowledge. Varying viewpoints, including disagreements, are possible (even likely).

One person should take notes for the debriefing/discussion session as ideas occur. Following the situation update, participants will review key aspects and engage in discussion of various aspects of the legal tools for social distancing in Virginia. Participants should base their responses on current capabilities (e.g., existing laws, abilities, assets). Although practical issues (e.g., adequate numbers of law enforcement to enforce isolation or quarantine) are important to identify, these are not the primary concern of the conferences.

Ask questions – make mistakes now, rather than later. Try things out - learn from each other and have fun!

### **Assumptions**

A number of assumptions may be necessary to complete the exercise within the time and meet the objectives. Participants should keep in mind the overall objectives – there is no “hidden agenda,” nor trick questions to mislead the participants. In addition, everyone will receive information at the same time.

### **Scenario Background**

Influenza ("the flu") is a viral infection of the lungs. There are two main types of influenza virus: A and B. Each type includes many different strains that tend to change each year. In the US, influenza occurs most often in the late fall and winter months.

Symptoms usually appear 1-3 days after exposure, and can include a sudden onset of headache, fever, chills, cough, sore throat and body aches. Although most people are ill for less than a week, some people have complications and may need to be hospitalized.

Anyone can get influenza, but it is most serious in the elderly, in people with chronic illnesses or those with weak immune systems. Influenza spreads very easily, usually through contact with droplets from the nose and throat of an infected person during

coughing and sneezing. The contagious period probably begins **the day before** symptoms appear and extends for a week.

## **Flu Pandemics**

An influenza pandemic is a global outbreak of influenza that occurs when a new influenza A virus appears in the human population, causes serious illness, and then spreads easily from person to person worldwide. Pandemics are different from seasonal outbreaks of influenza since pandemics are caused by new subtypes or by subtypes that have never circulated among people or that have not circulated among people for a long time. Past influenza pandemics have led to high levels of illness, death, social disruption, and economic loss. For example, the 1918 pandemic killed over 20 million people worldwide. In the US, future influenza pandemics could cause between 89,000 and 207,000 deaths and the economic impact could range from \$71 billion to \$166 billion, not including disruptions to commerce and society.

Compared to many types of disasters, pandemic influenza will have unusual effects:

- The pandemic will last much longer than most other emergency events and may include “waves” of influenza activity separated by months;
- The numbers of health-care workers and first responders available to work can be expected to be reduced (they will be at high risk of illness through exposure in the community and in healthcare settings, and some may have to miss work to care for ill family members).
- Resources in many locations could be limited because of how widespread an influenza pandemic would become.

Other potential problem areas that have already been identified include: 1) shortages of ICU beds, ventilators, and other critical care items; 2) shortages of antiviral agents and antibiotics for treatment of secondary bacterial infections; 3) needs for ancillary or “non-traditional” treatment centers”; and 4) high demand for social and counseling services.

## **Avian Influenza**

In late June 2004, new deadly outbreaks of influenza H5N1 among poultry were reported by several countries in Asia (Cambodia, China, Indonesia, Malaysia, Thailand, and Vietnam). It is believed that these outbreaks are ongoing.

Human cases of influenza A (H5N1) infection have occurred recently in Thailand, Vietnam, Cambodia and Indonesia during large H5N1 outbreaks in poultry. The mortality rate for these reported cases has been about 50 percent. Most of these cases occurred from contact with infected poultry or contaminated surfaces.

The transmission of H5N1 virus from person to person has been rare and spread has not continued beyond one person. However, because all influenza viruses have the ability to change, H5N1 virus could one day acquire the ability to infect humans and

spread easily from one person to another. Because these viruses do not commonly infect humans, there is little or no immune protection against them in the human population. If the H5N1 virus were able to infect people and spread easily from person to person, an “influenza pandemic” could begin. No one can predict when a pandemic might occur....

### **Scenario – November 20**

Within the past 30 days, the World Health Organization (WHO), the Centers for Disease Control and Prevention (CDC), and other agencies have confirmed the isolation of a novel and highly virulent strain of influenza A(H5N1) from clinical specimens obtained from persons on several continents. Four days ago, on November 16, the CDC announced confirmation of isolation of the same strain from ill persons in several U.S. states, even though the strain had not yet been isolated from any persons in Virginia.

Preliminary findings from epidemiological investigations indicate the following:

- Illness typically presents as classical influenza with abrupt onset of fever, malaise, myalgia (muscle aches), cough, and runny nose.
- In approximately 20% of cases, illness rapidly progresses to a primary viral pneumonia, acute respiratory distress syndrome, and death.
- At-risk populations include persons in all age groups regardless of their previous health (i.e., includes persons who previously have been in good health, as well as those who with pre-existing chronic disease conditions).
- The average incubation period (i.e., time from patient’s exposure to an infected person to time of onset of initial symptoms) is approximately 36-48 hours.

No information is available yet regarding the effectiveness of the current formulation of influenza vaccine administered to persons in settings worldwide prior to onset of this pandemic, and preliminary evaluation indicates that anti-viral chemotherapeutic agents administered both pre- and post-exposure are only marginally effective in preventing or attenuating severity of illness.

On November 16, following CDC’s announcement of the confirmation of the circulation of the pandemic strain in the United States, the Virginia Department of Health fully activated its plan for intensified morbidity, virological, and mortality surveillance for influenza, including active daily surveillance for cases of influenza-like-illness (ILI) diagnosed in all hospital emergency rooms, selected urgent-care outpatient facilities, and in sentinel providers’ offices located throughout the state.

Overnight and early this morning (November 20), VDH received reports of ILI among persons visiting emergency rooms, urgent care facilities, and sentinel providers’ offices

located in the metropolitan area of the capital, but also in scattered places elsewhere in Virginia. VDH immediately informed the notified the Governor's office according to the VDH pandemic influenza preparedness plan. Within a short time, the Governor convened the Virginia Pandemic Influenza Response Group, comprising representatives from the Virginia homeland security task force, health department, attorney general's office, public safety, civil defense, emergency management, and courts' administrators' office, as well as leaders from both chambers of the state legislature.

The Governor opened the meeting by asking VDH to provide an update on the status of ILI reported from throughout the state and other potentially relevant information. VDH reports the following information, which is based on calls to local public health units and to the network of healthcare facilities comprising the Virginia public health surveillance system, as well as additional reports VDH has received since the Governor's office was first informed about these developments only a short time earlier.

- Cases of ILI-like have been reported among a small number of persons of all age groups who live in the metropolitan area of the capital, the largest city in Virginia.
- A cluster of ILI cases has occurred among residents and staff of one large stepped-care facility in the metropolitan area of the capital. The stepped-care facility is affiliated with two acute-care hospitals and each day transfers some patients to the hospitals for management of intercurrent problems.
- A cluster of ILI cases has occurred among students who attend, as well as teachers and other staff, at one middle school in the metropolitan area.
- A small cluster of ILI cases also has been reported among city bus drivers and other transit workers who together just completed in-service training a few days earlier.
- Only within the past 30 minutes, the CDC Quarantine Station, located at the Dulles international airport, has contacted VDH and the coordinator of the Pandemic Influenza Response Group to report that the captains of two inbound transoceanic flights have radioed ahead that a small number of persons on board each plane have had onset of acute febrile and respiratory tract symptoms while the flights have been en route. Both flights have been airborne for over 12 hours and both originated in countries for which the novel strain of A(H5N1) had been isolated among residents.

The Governor requests staff and the Pandemic Influenza Response Group to enumerate major events known to be planned throughout Virginia] for the next week. At a minimum, these include:

- Statewide pre-Thanksgiving school events planned for this year to commemorate new historical discoveries about the first Thanksgiving.
- Traditional family and social seasonal Thanksgiving gatherings.
- A sold-out Thanksgiving day (November 22) professional football game to be played in the capital's enclosed stadium.
- The opening of a new, nationally promoted blockbuster film the day following Thanksgiving in movie theater chains.
- Kickoff of the traditional post-Thanksgiving holiday shopping season in malls across the state.
- Multi-denominational services planned to be held in memory of victims of a recent flood disaster. The services are scheduled to be held on Thanksgiving eve and will include a candlelight vigil and walk to begin at 8:00 pm with a gathering in front of the state capitol.

Given this information, the Governor has asked members of the Pandemic Influenza Response Group to assess the situation and offer opinions on the merits of declaring a public health emergency. As part of this deliberation, the Governor is asking the Attorney General and legal counsel for key agencies—including the health department, public safety, and emergency management—to confirm the status and sufficiency of authorities for the spectrum of measures that the Governor might need to order into effect imminently. A draft declaration of a state of emergency has also been developed for discussion by attendees.

## **Acknowledgements**

Special thanks to the following individuals or organizations for providing input or model document:

Dr. Robert B. Stroube - State Health Commissioner, VDH

Dr. Lisa Kaplowitz – Deputy State Health Commissioner, Virginia

Bob Mauskaupf – Emergency Preparedness and Response Program, VDH

Robin Kurz - Assistant Attorney General, Virginia

Steven D. Gravely, JD, MHA - Troutman Sanders LLP

Dr. Carl Armstrong –State Epidemiologist, VDH

Dr. Diane Woolard - Director, Division of Surveillance and Investigation, VDH

Dr. Christopher Novak – Medical Epidemiologist, Division of Surveillance and Investigation, VDH

Karen McKie - Centers for Disease Control and Prevention

Audrey Chan - Association of State and Territorial Health Officers (ASTHO)

Patricia Elliot - Association of State and Territorial Health Officers (ASTHO)

Funding for the Social Distancing Law Project provided by:  
Centers for Disease Control and Prevention

## APPENDIX B: WEBSITE ADDRESSES FOR COURT PLANNING AND COMMUNICATION

### I. WEBSITE FOR THE SUPREME COURT OF VIRGINIA

Pandemic Flu Preparedness Commission

<http://www.courts.state.va.us/programs/pfp/home.html>

### II. INFORMATION ON PANDEMIC FLU

[FLU.gov](http://www.flu.gov)

Virginia Department of Health Pandemic Influenza

<http://www.vdh.virginia.gov/oep/>

Virginia Social Distancing Law Project

[http://www.vdh.state.va.us/oep/pdf/SDLP%20LCM%20Final%20Report%2010\\_31\\_07.pdf](http://www.vdh.state.va.us/oep/pdf/SDLP%20LCM%20Final%20Report%2010_31_07.pdf)

Flu Information from the U.S. Centers for Disease Control and Prevention

<http://www.cdc.gov/flu/>

World Health Organization (WHO)

<http://www.who.int/en/>

### III. EMERGENCY PREPAREDNESS GENERALLY

Virginia Department of Emergency Management

<http://www.vaemergency.gov/>

### IV. INTERNET LINKS FOR LOCAL COURT CONSTITUENCIES

*Local Health Districts (VDH)—includes link to list of district directors and their contact information*

<http://www.vdh.state.va.us/lhd/>

*Local Emergency Managers*

<https://lemd.vdem.virginia.gov/Public/Default.aspx>

*Virginia Sheriff's Association*

Pictorial directory webpage, <http://vasheriff.org/the-sheriffs/va-sheriffs-directory/>

Alternative (PDF), [http://vasheriff.org/vsaadmin/wp-](http://vasheriff.org/vsaadmin/wp-content/plugins/sheriff_directory/sheriff_pdf/sheriff_directory.pdf)

[content/plugins/sheriff\\_directory/sheriff\\_pdf/sheriff\\_directory.pdf](http://vasheriff.org/vsaadmin/wp-content/plugins/sheriff_directory/sheriff_pdf/sheriff_directory.pdf)

*Virginia Association of Chiefs of Police*

<http://www.vachiefs.org/>

*Virginia Police Departments*

<http://www.usacops.com/va/pollist.html>

*Virginia Fire and Rescue*

<http://www.usafireandrescue.com/va/firelist.html>

*Commonwealth's Attorneys*

Search engine by locality or name: <http://www.cas.state.va.us/cgi-bin/attorneySearch.cgi>

*Local Bar Groups*

Contact the Virginia State Bar's [Conference of Local Bar Associations](#) for frequent updates.

*Emergency Legal Services*

This VSB Young Lawyers Conference committee, in conjunction with VBA-YLD, has developed and implemented a statewide Emergency Legal Services Response Plan, which includes training volunteers and working with other bar organizations to establish communication plans in the event of natural disasters and other declared emergencies.

<http://www.vsb.org/site/conferences/ylc/emergency-legal-services>

*Virginia Correctional Facilities (Major Institutions and Corrections Units)*

<http://www.vadoc.state.va.us/facilities/>

*Virginia Community Corrections—Probation and Parole Offices*

Community Corrections has three regional offices providing supervision of 43 District Offices, 12 state-operated facilities, 12 Day Reporting Programs, and oversight for 10 privately-contracted adult residential centers.

For a list of offices with addresses and phone numbers:

<http://www.vadoc.state.va.us/community/>

*Local Departments of Social Services*

<http://www.dss.state.va.us/localagency/>

*Court Services Units (by Juvenile District)*

[http://www.djj.virginia.gov/Community\\_Programs/Field\\_Operations/CSUlisting.aspx](http://www.djj.virginia.gov/Community_Programs/Field_Operations/CSUlisting.aspx)

*Local Governments*

Virginia County and City websites:

<http://www.virginia.gov/government/federal-and-local>

Virginia State and Local Government: <http://www.statelocalgov.net/state-va.cfm>

*Local School Divisions*

[http://www.doe.virginia.gov/directories/school\\_divisions/division\\_info\\_by\\_regions.shtml](http://www.doe.virginia.gov/directories/school_divisions/division_info_by_regions.shtml)

*Other Types of Contacts to Consider*

Utilities: <http://www.connectutilities.com/directory/states/Virginia.html> [Note: Does not include Dominion Virginia Power.]

**V. INFORMATION ON PANDEMIC PLANNING IN STATE COURTS**

*National Center for State Courts*

<http://www.ncsc.org/Services-and-Experts/Areas-of-expertise/Emergency-planning-and-security/~media/Files/PDF/Services%20and%20Experts/Areas%20of%20expertise/Emergency%20Preparedness/toolkit.ashx>

*California*

<http://www.cdph.ca.gov/programs/cclho/Documents/EpidemicsInTheCourts.pdf>

*Florida*

Florida State Courts Strategy for Pandemic Influenza:

[http://www.flcourts.org/gen\\_public/emergency/bin/panflu\\_strategy.pdf](http://www.flcourts.org/gen_public/emergency/bin/panflu_strategy.pdf)

Florida Pandemic Influenza Planning Templates:

[http://www.flcourts.org/gen\\_public/emergency/templates.shtml](http://www.flcourts.org/gen_public/emergency/templates.shtml)

*Indiana*

<http://www.in.gov/judiciary/coop/files/coop-pandemic-checklist.pdf>

**VI. PUBLIC HEALTH BENCH BOOKS**

The [Centers for Disease Control and Prevention](#) website has links to bench books for the following states:

- *Arizona*
- *Arkansas*
- *Florida*
- *Georgia*
- *Indiana*
- *Kentucky*
- *Michigan*

- *Minnesota*
- *New York*
- *North Carolina*
- *Ohio*
- *Oklahoma*
- *Oregon*
- *Pennsylvania*
- *South Carolina*
- *Texas*
- *Utah*
- *Washington*

## APPENDIX C: MISSION CRITICAL AND ESSENTIAL FUNCTIONS

### I. CIRCUIT COURT

#### A. Mission Critical Functions

1. Conduct emergency (time sensitive) hearings (includes administrative support functions associated with hearings such as processing of all necessary paperwork, managing financial matters).

Examples include, but are not limited to, the following:

- a. Adult protective services – emergency order ([63.2-1609](#))
- b. Criminal cases with speedy trial issues
  - Adults ([19.2-243](#)) (In custody - commence trial *within five months* from probable cause finding; Not in custody - commence trial *within nine months* from probable cause finding)
  - Juveniles
    - Transfer- Speedy trial rights attach upon the juvenile court's finding of probable cause in a preliminary hearing ([16.1-269.1](#), [19.2-243](#))(Juvenile in custody - commence trial *within five months* from probable cause finding; Not in custody - commence trial *within nine months* from probable cause finding)
    - Appeal of a transfer decision where the juvenile is in secured detention ([16.1-269.6 \(B\)](#)) (*Hearing on the merits must be held within 45 days of filing the appeal*)
- c. Guardians/conservators – Appointment ([64.2-2001](#)- jurisdiction) ([64.2-2007](#) - hearing) ([64.2-2014](#) Notice and distribution of order - *next business day*)
- d. Injunctions ([8.01-620](#))
- e. Isolation orders
  - Public health significance
    - Appeal ([32.1-48.04](#))(*Priority over all other pending matters, except those under appeal pursuant to [37.2-821](#), and shall be heard as soon as possible*)
  - Public health threat
    - Review ([32.1-48.012](#))
    - Appeal ([32.1-48.013](#))(*Within 48 hours*)
- f. Judicial authorization of treatment ([37.2-1101](#), includes appointing an attorney)(*Expedited hearing following appointment of an attorney*)
- g. Judicial denial of authorization for abortion appeal ([16.1-241\(W\)](#))
- h. Mandamus ([17.1-513](#))
- i. Mental Health

Circuit Court

- Involuntary admission to an inpatient facility, mandatory outpatient treatment or certification order appeal ([37.2-821](#)) (*Filed within 30 days of the order and shall be given priority over all other pending matters and heard as soon as possible*)
  - Forward copies of orders to CCRE [37.2-819](#)
    - Order for involuntary admission (*as soon as practicable but no later than the close of business on the next following business day*)
    - Order for mandatory outpatient treatment (*prior to the close of that business day*)
    - Temporary Detention Order ([19.2-169.6](#) and [19.2-176](#))
  - j. Protective orders
    - Emergency protective order
      - Family abuse ([16.1-253.4](#))
      - Stalking, sexual battery and acts of violence ([19.2-152.8](#))
      - *Forward an attested copy of the order to law enforcement forthwith for entry into CCRE* ([16.1-253.4](#) and [19.2-152.8](#))
    - Protective order in pending cases of divorce, custody, support or visitation ([20-103 \(B\)](#))
      - *Forward the order as soon as possible to law enforcement for entry into CCRE* ([20-103 \(D\)](#))
    - Appeal of protective order
      - Family abuse ([16.1-279.1](#)) (*Precedence on the docket over other civil appeals* [16.1-296 \(F\)](#))
      - Stalking ([16.1-106](#), [19.2-152.10](#))
      - *Upon issuance, forward an attested copy of the order to law enforcement forthwith for entry into CCRE* ([16.1-279.1](#) and [19.2-152.10](#))
  - k. Quarantine orders
    - Review ([32.1-48.09](#))
    - Appeal ([32.1-48.010](#)) (*Within 48 hours*)
  - l. Voter registration denial - Appeal ([24.2-422](#)) (*precedence over all other business of the court and shall be heard as soon as possible*)
2. Conduct bond hearings and appoint counsel (as needed) for defendants in custody (includes administrative support functions such as docketing and processing necessary paperwork and managing financial matters ([19.2-158](#)))
- a. Appeal from order denying bail or fixing terms of bond or recognizance ([19.2-124](#))
- Note: videoconferencing should be used, if possible.
3. Conduct arraignments (includes administrative support functions such as docketing and processing necessary paperwork ([19.2-254](#)))

**Circuit Court**

Note: videoconferencing should be used, if possible.

4. Provide interpreter services as needed
  - a. Civil cases ([8.01-384.1:1](#) (non-English speaking); [8.01-384.1](#) (deaf))
  - b. Criminal cases ([19.2-164](#) (non-English speaking); [19.2-164.1](#) (deaf))Note: Utilize telephonic interpreter services where appropriate
5. Process all incoming time sensitive documents received by mail, fax or over the counter (includes processing of all necessary paperwork and managing financial matters)

Examples include, but are not limited to, the following:

- a. Civil pleadings ([17.1-129](#) – date and time received must be stamped or marked)
  - b. Election results ([24.2-668](#) (Retention of pollbooks, paper ballots and election materials), [24.2-802](#) (Procedure for recount))
  - c. Fees collected by clerk ([17.1-275](#))
  - d. Land records ([55-96](#), [17.1-223](#) – time and date stamp)
  - e. Probate taxes and fees ([58.1-1712](#), [58.1-1715](#), [58.1-1718](#))
6. Secure and maintain records ([17.1-209](#))
  7. Secure funds received ([17.1-211](#))
    - a. Deposit state monies into State Treasury ([2.2-806 \(B\)](#))
  8. Maintain systems (automated and manual), personnel, technology and communications (telephone, email, internet) necessary to support continuance of operating functions

**B. Essential Functions**

1. Resume daily dockets and case processing functions for civil and criminal cases
2. Manage financial matters, including but not limited to the following:
  - a. Assessment of fines/costs - [19.2-336](#)
  - b. Collections [19.2-349](#)
  - c. Notices to pay – issuance of ([46.2-395](#))
  - d. Observe sound accounting practices (daily bookkeeping duties, deposit, investment and payout of funds ([58.1-3177](#)), reconciliation of accounts)
  - e. Preparation of statements and reports ([17.1-283](#), [19.2-390](#), [19.2-336](#))
  - f. Setoff Debt Collection Act ([58.1-520](#) et seq.)
  - g. Unclaimed property ([55-210.9:2](#); [55-210.12](#) by November 1 of each year)

Circuit Court

3. Process probate matters ([64.2-443](#) and [64.2-444](#))
4. Record, index and scan land records
  - a. Entries in index ([17.1-249](#)) (*daily*)
  - b. Index of recorded instruments ([55-96](#)) (*daily index- daily; general index - within 90 days after admission to record*)
  - c. Record writings ([17.1-223](#))
5. Manage juries (8.01-343 through 8.01-363)
6. Process civil and criminal appeals
  - a. Court of Appeals ([Rule 5A:10](#)) (*as soon as possible after notice of appeal is filed*)
  - b. Supreme Court of Virginia ([Rule 5:13](#)) (*as soon as possible after notice of appeal is filed*)
7. Submit reports to other agencies

These reports include, but are not limited to, the following:

- a. Adoption - VS-21 ([32.1-262](#) – *on or before the 10<sup>th</sup> day of the month*)
  - b. COIN (Constitutional Officers Information Network) – submission of salary and expenses to Compensation Board (*by the 10<sup>th</sup> of each month*)
  - c. Deeds of partition/conveyance of land ([58.1-3303](#) – *before the 15<sup>th</sup> of each month*)
  - d. Divorce - VS-4 ([32.1-268](#) – *on or before the 10<sup>th</sup> day of the month*)
  - e. Incapacity adjudications ([64.2-2014](#)) (*next business day*)
  - f. Marriage license ([32.1-267\(D\)](#)) – *on or before the 10<sup>th</sup> day of the month*)
  - g. Notary report to Secretary of Commonwealth ([47.1-9](#) – *within 14 days of qualification*)
8. Process miscellaneous activities, including but are not limited to the following:
    - a. Appoint ministers ([20-23](#)) and others to perform marriage rites ([20-25](#))
    - b. Concealed handgun permits ([18.2-308](#))
    - c. Marriage licenses ([20-14](#))
    - d. Military Discharge Papers - record ([17.1-265](#))
    - e. Notary qualification ([47.1-9](#))

General District Court

II. GENERAL DISTRICT COURT

A. Mission Critical Functions

1. Conduct emergency (time sensitive) hearings (includes administrative support functions associated with hearings such as processing of all necessary paperwork, managing financial matters)

Examples include, but are not limited to, the following:

- a. Isolation cases ([32.1-48.03](#) and [32.1-48.04](#))(*Within 48 hours of the execution of any temporary detention order*)
- b. Judicial authorization of treatment
  - Treatment for physical or mental disorder of an adult, includes appointing an attorney ([37.2-1101](#))(*Expedited hearing following appointment of an attorney*)
  - Physical and mental health treatment of adult incapable of giving consent (temporary detention order) ([37.2-1104](#))
  - Medical and mental health treatment of prisoner incapable of giving consent ([53.1-40.1](#))
- c. Protective orders in cases of stalking, sexual battery and acts of violence
  - Emergency protective orders ([19.2-152.8](#))
  - Preliminary protective orders ([19.2-152.9](#))
  - Protective orders ([19.2-152.10](#))
    - Registration of foreign orders ([19.2-152.10 \(F\)](#))
  - Enter and transfer information into VCIN ([19.2-152.8\(E\)](#), [19.2-152.9\(B\)](#), [19.2-152.10\(C\)](#)) (*Forthwith, but in all cases no later than the end of the business day the order was issued*)
- d. Mental Health
  - Civil
    - Involuntary commitment hearings (includes appointing attorney and processing necessary paperwork) ([37.2-814](#) through [37.2-817](#)) (*Within 72 hours of execution of the temporary detention order*)
      - Mandatory outpatient treatment order ([37.2-817\(D\)](#))
    - Mandatory outpatient treatment plan review ([37.2-817.2](#)) (*Within 5 days, unless being held pursuant to a TDO, then within 72 hours*)
    - Forward copies of orders and forms to CCRE ([37.2-819](#))
      - Order for involuntary admission (*as soon as practicable but no later than the close of business on the next following business day*)
      - Order for mandatory outpatient treatment (*prior to the close of that business day*)

General District Court

- Certification of voluntary admission after being subject to a TDO (*as soon as practicable, but no later than the close of business the next following business day*)
  - Criminal
    - Emergency psychiatric treatment prior to trial
      - Inpatient treatment ([19.2-169.6\(A\)\(1\)](#))
      - Issuance of temporary detention order ([19.2-169.6\(A\)\(2\)](#))
      - Inpatient treatment after hearing on temporary detention order ([19.2-169.6\(A\)\(2\)](#))(Within 72 hours of execution of TDO)
    - Mental illness determination after conviction but before sentencing
      - Inpatient treatment ([19.2-176\(A\)](#))
      - Temporary detention order ([19.2-176\(B\)](#))
      - Inpatient treatment after hearing on temporary detention order ([19.2-176\(B\)](#))(Within 48 hours of execution of TDO)
    - Mental illness determination after sentencing – Issuance of a temporary detention order for treatment ([19.2-177.1](#))
2. Conduct arraignments for defendants in custody (includes docketing and processing necessary paperwork) ([19.2-254](#))  
Note: videoconferencing should be used, if possible
  3. Conduct bond hearings and appoint counsel (as needed) for defendants in custody (includes docketing and processing necessary paperwork) ([19.2-158](#))  
Note: videoconferencing should be used, if possible
  4. Provide interpreter services as needed
    - a. Civil cases ([8.01-384.1:1](#)) (non-English speaking); ([8.01-384.1](#)) (deaf)
    - b. Criminal cases ([19.2-164](#)) (non-English speaking); ([19.2-164.1](#)) (deaf)Note: utilize telephonic interpreter services where appropriate
  5. Process all incoming time sensitive documents received by mail, fax or over the counter
  6. Secure and maintain records ([16.1-69.54](#) through [16.1-69.56](#))
  7. Maintain systems (automated and manual), personnel, technology and communications (telephone, email, internet) necessary to support performance of operating functions

General District Court

**B. Essential Functions**

1. Conduct arraignments for defendants not in custody (includes administrative support functions such as docketing and processing necessary paperwork) ([19.2-157](#), [19.2-254](#))
2. Resume daily dockets and case processing functions for traffic, civil and criminal cases, including but not limited to the following:
  - a. Criminal motions ([19.2-266.2](#))
  - b. Preliminary hearings ([19.2-183](#)) (*as soon as may be practical*)
  - c. Unlawful detainer ([8.01-126](#)) (*If pursuant to the Virginia Residential Landlord and Tenant Act (§ [55-248.2](#) et seq.), the initial hearing shall be held within 15 calendar days from the date of service*)
3. Resume CMS data entry of traffic/criminal/civil, and civil commitments and issuance of other case related documents (i.e. subpoena's for witness, summons, and notice of hearings)
4. Manage financial matters, including but not limited to the following:
  - a. Additional fee for conviction of certain offenses ([16.1-69.48:1.01](#))
  - b. Collections ([19.2-349](#))
  - c. Fees and fines ([16.1-69.48](#)) (*promptly*)
  - d. Fees charged to drug offenders ([16.1-69.48:3](#))
  - e. Fees for services of judges, clerks and magistrates in civil cases ([16.1-69.48:2](#))
  - f. Fixed fees ([16.1-69.48:1](#))
  - g. Notices to pay - Issuance of ([46.2-395](#))
  - h. Observe sound accounting practices (daily bookkeeping duties, deposit funds and reconciliation of accounts)
  - i. Preparation of statements and reports ([19.2-335](#), [19.2-336](#), [19.2-390](#))
  - j. Disburse restitution ([19.2-305.1](#))
  - k. Refund bond ([19.2-143](#))

J&DR District Court

**III. JUVENILE & DOMESTIC RELATIONS DISTRICT COURT**

**A. Mission Critical Functions**

1. Conduct emergency (time sensitive) hearings (includes administrative support functions associated with hearings such as processing of all necessary paperwork, managing financial matters)

Examples include, but are not limited to, the following:

- a. Cases with speedy trial issues ([16.1-277.1](#))(*Pre-adjudication: In detention – within 21 days; Not in detention – within 120 days; Post-adjudication: dispositional hearing within 30 days*)
- b. Detention hearings ([16.1-250](#)) (*the next day on which court sits, but not to exceed 72 hours*)
- c. Detention reviews ([16.1-284.1](#))(*hearing once every 30 days*)
- d. Judicial authorization for abortion ([16.1-241\(W\)](#))(*Precedence over other pending matters and shall be heard and decided as soon as practicable but not later than four days after the petition is filed*)
- e. Judicial consent for emergency surgical or medical treatment for child ([16.1-241\(D\)](#))
- f. Mental Health (Psychiatric Treatment of Minors)
  - Emergency admission ([16.1-340](#))
  - Involuntary commitment ([16.1-341](#))(*hearing to be no sooner than 24 hours and no later than 96 hours from filing of petition*)
  - Mandatory outpatient treatment review ([16.1-345.4](#)) (*hearing within 15 days after filing of motion*)
  - Parental admission review - 14+ years objecting ([16.1-339](#))
- g. Newborn children; substance abuse ([16.1-241.3](#)) (*Within 21 days of a child's birth*)
- h. Protective Orders
  - Emergency protective orders
    - Family abuse ([16.1-253.4](#))
    - Stalking, sexual battery and acts of violence ([19.2-152.8](#))
  - Preliminary protective orders
    - Children ([16.1-253](#))
    - Family abuse ([16.1-253.1](#))
    - Stalking, sexual battery and acts of violence ([19.2-152.9](#))
  - Protective orders
    - Family abuse ([16.1-279.1](#))
    - Stalking, sexual battery and acts of violence ([19.2-152.10](#))

**J&DR District Court**

- VCIN - Enter and transfer information (*forthwith but no later than the end of the business day on which the order was issued*)
- i. Removal orders
  - Emergency Removal Orders ([16.1-251](#))
  - Preliminary Removal Orders ([16.1-251](#) and [16.1-252](#)) (*as soon as practicable, but no later than 5 business days after removal of the child*)
- 2. Appoint counsel and guardian ad litem (includes docketing and processing necessary paperwork) [16.1-266](#), [16.1-268](#), and [19.2-158](#)  
Note: videoconferencing should be used, if possible
- 3. Conduct bond hearings for juveniles/adult defendants in custody (includes docketing and processing necessary paperwork)  
  
Note: videoconferencing should be used, if possible
  - a. [19.2-158](#)
- 4. Provide interpreter services as needed
  - a. Civil cases ([8.01-384.1:1](#) (non-English speaking); [8.01-384.1](#) (deaf))
  - b. Criminal cases ([19.2-164](#) (non-English speaking); [19.2-164.1](#) (deaf))  
Note: utilize telephonic interpreter services where appropriate
- 5. Process all incoming time sensitive documents received by mail, fax or over the counter
- 6. Secure and maintain records
  - a. Record retention and storage ([16.1-69.54](#) through [16.1-69.56](#))
  - b. Confidentiality of records and reports ([16.1-301](#), [16.1-302](#), [16.1-303](#), [16.1-305](#))
  - c. Disclosure of disposition to superintendent ([16.1-305.1](#)) (*within 15 days*)
- 7. Maintain systems (automated and manual), personnel, technology and communications (telephone, email, internet) necessary to support performance of operating functions

**B. Essential Functions**

1. Conduct arraignments for juveniles and adult defendants not in custody (includes docketing and processing necessary paperwork)([16.1-266](#), [16.1-268](#), [19.2-157](#) and [19.2-254](#))

J&DR District Court

2. Resume daily dockets and case processing functions (includes all case processing required). Examples include but are not limited to the following:
  - a. Criminal motions ([19.2-266.2](#))
  - b. Foster care cases
    - Entrustments ([16.1-277.01](#))(*within 45 days of filing*) and relief of custody pursuant to ([16.1-278.3](#))(*once custody granted to the department, within 60 days*)
    - Foster care plan ([16.1-281](#))(*initial review within 75 days of preliminary removal*)
    - Foster care review ([16.1-282](#))(*within 4 months of dispositional hearing*)
    - Permanency planning hearing ([16.1-282.1](#))(*within 5 months of foster care review/within 10 months of initial review*)
    - Annual foster care review ([16.1-282.2](#)) (*within 12 months of permanency planning order*)
  - c. Preliminary hearings ([19.2-183](#))(*as soon as may be practical*)
3. Resume CMS data entry of traffic/delinquency/criminal, juvenile civil, support, and civil commitments and issuance of other case related documents (i.e. subpoena's for witness, summons, and notice of hearings)
4. Manage financial matters, including but not limited to the following:
  - a. Additional fee for conviction of certain offenses ([16.1-69.48:1.01](#))
  - b. Collections ([19.2-349](#))
  - c. Fees and fines ([16.1-69.48](#)) (*promptly*)
  - d. Fees charged to drug offenders ([16.1-69.48:3](#))
  - e. Fees for services of judges, clerks and magistrates in civil cases ([16.1-69.48:2](#))
  - f. Fixed fees ([16.1-69.48:1](#))
  - g. Notices to pay - Issuance of ([46.2-395](#))
  - h. Observe sound accounting practices (daily bookkeeping duties, deposit funds and reconciliation of accounts)
  - i. Preparation of statements and reports ([19.2-335](#), [19.2-336](#), [19.2-390](#))
  - J. Disburse restitution ([19.2-305.1](#))
  - k. Refund bond ([19.2-143](#))

## **APPENDIX D: LEAVE POLICY**

This policy is applicable to state employees in the judicial branch otherwise covered by the Human Resources Policy Manual of the Office of the Executive Secretary of the Supreme Court of Virginia.

### **PANDEMIC INFLUENZA (FLU) EMERGENCY LEAVE POLICY**

***Policy Number:***

***Effective Date:***

#### **Policy**

It is the policy of the Judicial Branch to protect the health of its employees and the public and to provide continuity of services to the citizens of the Commonwealth during times of a pandemic flu threat.

#### **Purpose**

This policy permits or requires eligible employees to attend to the medical needs of self and immediate family members by providing up to 80 hours of paid leave per leave year when pandemic flu threat conditions as defined in Va. Code § [32.1-48.06](#), et seq. (Communicable Diseases of Public Health Threat), have been declared by the State Health Commissioner and Governor, or where the Chief Justice or his/her designee has authorized its implementation.

Use of this policy is intended for any illness directly related to the pandemic flu. Procedures for the administration of this policy and a Glossary of Terms accompany this policy.

#### **Authority**

This policy can be partially or fully implemented upon declaration of a Communicable Disease of Public Health Threat or in response to a specific incident where the Chief Justice or his designee has authorized its implementation. The Director of the Department of Human Resources or his/her designee has the authority to implement all or select provisions of this policy and to grant exceptions on a court-by-court basis in order to ensure use in the intended manner and to meet the unique operational requirements of any situation.

**Related Office of the Executive Secretary Human Resources Policies  
(References are to the Human Resources Policy Manual of the Office of the  
Executive Secretary of the Supreme Court of Virginia)**

500 - Compensation

703 - Inclement Weather or Other Safety Factors

900 - Problem Resolution

1000 - Terminations

2104 - Annual Leave

2107 - Compensatory Leave

2109 - Family and Medical Leave

2111 - Leave Sharing

2112 - Leave Without Pay

2120 - Original Sick Leave

2121 - Original and VSDP Sick Leave

2200 - Virginia Sickness and Disability Program

2300 - Workers' Compensation

## **ADMINISTRATIVE PROCEDURES PANDEMIC FLU EMERGENCY LEAVE**

### **Purpose**

The Supreme Court of Virginia adopted this policy upon the recommendations of the Commission on Pandemic Flu Preparedness, Committee on Human Resources. This policy is applicable to state employees in the judicial branch otherwise covered by the Human Resources Policy Manual of the Office of the Executive Secretary of the Supreme Court of Virginia. The Commission recommends this policy to circuit courts as an option in developing their local policies.

These procedures accompany the Pandemic Flu Emergency Leave Policy and are designed to assist courts prior to and during exceptional circumstances requiring the protection of employees, customers, and the public from exposure to the pandemic flu and upon formal declaration of a pandemic flu threat by the State Health Commissioner pursuant to Va. Code § [32.1-48.06](#), (Communicable Diseases of Public Health Threat).

#### **A. Procedures Prior to Any Formal Declaration of an Emergency**

Upon the State Health Commissioner's determination of the existence of exceptional circumstances relating to one or more persons within the Commonwealth who are known to have been exposed to or infected with pandemic flu, but prior to any formal declaration or emergency office closing decision, courts must apply the following procedures:

1. Courts will remain open for business. All employees are expected to report to work as usual.
2. Employees must receive a copy of the Judicial Branch's Pandemic Flu Emergency Leave Policy at this time unless previously provided through standard employee communication procedures.
3. Courts must designate employee functions as essential or non-essential functions and allow the designations to be situation-specific. Employees must be reminded of their designations and related performance expectations during exceptional circumstances and during a declaration of pandemic flu.
4. Courts must communicate with employees in a clear and timely manner to ensure that employees are aware of the status of public health concerns, courts' efforts to reduce the spread of or exposure to infection and applicable human resources policies.

5. Employees will be compensated according to established compensation policies and overtime regulations.
6. Courts should consider expanding the use of alternate work schedules to reduce employee contact.
7. Courts may temporarily reassign employees to minimize critical staffing deficiencies. The reassignment must be consistent with employees' qualifications and training.
8. Employees who become ill prior to a formal declaration of a pandemic flu threat are subject to existing leave policies. Managers should encourage these employees to use existing leave to attend to their medical needs.

**B. Workplace Safety and Hygiene**

Courts are required to implement measures that reduce the spread of pandemic flu in the workplace as recommended by the Virginia Department of Health, the Centers for Disease Control and Prevention and related Workers' Compensation policies and laws. This includes, but is not limited to, the following:

1. Formally advising employees of precautionary measures that apply to the workplace and home, including the provision of community health or online resources that offer information and assistance on pandemic flu prevention, respiratory manners, signs and symptoms of the disease, and when to seek medical attention.
2. Actively encouraging employees to independently take proactive steps to protect themselves and their families.
3. Making arrangements with contractors or cleaning staff that ensure that court offices and facilities are cleaned using techniques and cleaning agents that reduce the spread of infection.

**C. Procedures Upon Declaration of a Pandemic Flu Threat**

Upon declaration and within the period of a pandemic flu threat, all eligible employees may receive up to 80 hours of paid leave per leave year to attend to their own medical condition and/or to care for immediate family members residing in an affected area.

#### D. Paid Pandemic Flu Emergency Leave

In order to qualify for paid Pandemic Flu Emergency Leave, an employee must submit the required leave request form to his/her immediate supervisor or to the supervisor's designee. The request should be submitted in a timely manner but must be submitted no later than the employee's return to work or upon an absence of 80 hours. Courts should assist the employee in the completion and submission of this request.

**Courts may also stipulate that one or more of the following conditions be met in order to qualify for paid Pandemic Flu Emergency Leave:**

1. The employee's primary care provider, a public health official, or an acceptable medical authority may be required to confirm the diagnosis of the pandemic flu that requires isolation and/or medical attention for a specified period of time.
2. The employee's primary care provider, a public health official, or an acceptable medical authority may be required to confirm the employee's exposure to the pandemic flu and recommend removal from the workplace for a specified period of time.
3. The employee's primary care provider, a public health official, or an acceptable medical authority may be required to confirm that an eligible member of an employee's immediate family is diagnosed with the pandemic flu.
4. Employees may be responsible for providing written confirmation of the diagnosis and/or isolation requirements according to clinical recommendations published by the Virginia Department of Health.
5. Recovering employees whose illness and/or isolation extends beyond 80 hours must use existing leave and/or disability policies to cover the remainder of their absences.

#### E. Workplace Attendance

Employees are expected to report to work as usual unless ill or as otherwise directed by the Chief Justice, Chief Judge of the Court of Appeals or district court, Clerk of the circuit court or other supervising authority. Failure to report to work or to perform assigned duties may result in disciplinary action.

A court may temporarily reassign employees to minimize critical staffing deficiencies. The reassignment must be consistent with the employees' qualifications and training.

#### F. Illness in the Workplace

Upon declaration of a pandemic flu threat, courts should direct ill employees to leave the workplace and attend to their medical needs. Time away from the job site to comply with this directive shall be applied toward the 80 hours of pre-authorized pandemic flu emergency leave. These employees are subject to the same leave request process as all other employees. (Refer to Section D.)

An employee's refusal to leave the workplace under these circumstances may result in disciplinary action.

#### G. Emergency Office Closings

If the pandemic flu threat requires the closing of courts, employees will be compensated in accordance with Policy 703, Inclement Weather or Other Safety Factors.

### **Glossary of Terms**

Please note that this glossary of terms only applies to the Pandemic Flu Emergency Leave Policy.

#### **Acceptable Medical Authority**

Doctors of Medicine and Surgery, Hospital Interns and Residents, Physician Assistants, and Nurse Practitioners licensed to practice in Virginia by the State Boards of Medicine or Nursing.

#### **Affected Area**

Any part or the whole of the Commonwealth, which has been identified as where persons reside, or may be located, who are known to have been exposed to or infected with or who are reasonably suspected to have been exposed to or infected with a pandemic flu threat.

#### **Communicable Disease of Public Health Threat**

An illness of public health significance, as determined by the State Health Commissioner in accordance with regulations of the Board of Health, caused by a specific or suspected infectious agent that may be reasonably expected or is known to be readily transmitted directly or indirectly from one individual to another and has been found to create a risk of death or significant injury or impairment as described in Va. Code § 32.1-48.06.

### **Designated Employees**

Designated employees are exempt and non-exempt employees who are required to work during an authorized closing because their positions have been designated by the courts as essential to court operations during emergencies. Designated employees may be required to work during times they are not regularly scheduled to work. Courts may designate different employees as essential for different situations.

### **Eligible Employees**

Eligible employees are salaried state employees, who are otherwise eligible for paid leave benefits. Employees who do not accrue leave benefits are not eligible for paid leave under this policy.

### **Exceptional Circumstances**

When one or more persons within the Commonwealth are known or are reasonably expected to have been exposed to or infected with the pandemic flu.

### **Immediate Family Member**

Immediate family includes parents, step-parents or persons who stood in place of the parent and performed parental duties and responsibilities; a spouse as defined by laws of the Commonwealth; children, including step-children and legal wards; siblings residing within an affected area, or other persons whose relationship with the eligible employee meets FMLA eligibility, as determined by the Office of the Executive Secretary.

### **Pandemic Influenza (Flu) Threat**

This threat occurs when there is an abrupt and major change in the structure of the flu virus and infection reaches global proportions. Since people have no immunity to the completely new strain, the virus can spread very quickly and outbreaks can occur in many countries.

### **Public Health Official**

Public Health physicians under the supervision and management of the State Health Commissioner who are licensed to practice medicine in the Commonwealth and have expertise in public health duties, epidemiology, sanitary science and/or environmental health, including Public Health physicians at all clinical sites administered by local health departments.

### APPENDIX E: ABBREVIATIONS

ADA	Americans with Disabilities Act
CAV	Court of Appeals of Virginia
CEMT	Court Emergency Management Team
COOP	Continuity of Operations Plan
CSB	Community Services Board
CSU	Court Services Unit
DJJ	Department of Juvenile Justice
EP&R	Office of Emergency Preparedness and Response (within VDH)
ECO	Emergency Coordinating Officer
EPO	Emergency Protective Order
FLSA	Fair Labor Standards Act
FMLA	Family Medical Leave Act
GDC	General District Court
HHS	United States Department of Health and Human Services
HIPAA	Health Insurance Portability and Accountability Act of 1996
IT	Information Technology
JDR	Juvenile and Domestic Relations District Court
OES	The Office of the Executive Secretary of the Supreme Court of Virginia
PIO	Public Information Officer
PPE	Personal protective equipment
PPT	Pandemic Planning Team
SCV	Supreme Court of Virginia
UETA	Uniform Electronic Transactions Act
VDEM	Virginia Department of Emergency Management
VDH	Virginia Department of Health
WHO	World Health Organization

**APPENDIX F: PANDEMIC INFLUENZA TEMPLATE FOR  
CONTINUITY OF OPERATIONS PLANNING  
IN VIRGINIA'S JUDICIAL BRANCH**



## TEMPLATE STRUCTURE AND INSTRUCTIONS

In each section of the template, there are *instructions*, sample language, and references to worksheets that might be helpful in gathering data necessary to develop the Pandemic Flu Plan.

The worksheets are available online on the Judicial Branch Intranet site.

- Instructions are in ***bold and italics*** to distinguish them from other parts of the template. **These instructions should not appear in the final Plan.**
- Sample language is provided to assist in developing the Plan. The sample language provided in the template should be expanded, deleted or modified as necessary to fit the needs of the individual court using the template. This includes tables, charts, checklists or other tools within the template.
- The worksheets were created to help identify information needed in the development of the Plan. It is not mandatory to include the worksheets in the Plan. If you do choose to use them, you may include the actual worksheet(s) as attachments to the Plan or enter a summary of the information from the worksheets into the Plan.
- You may add to these worksheets as necessary.

Please customize the template as determined by your court. Do not forget to take out (*insert name of court*) throughout the template, as that was put in to help tailor the template to the court.

**Pandemic Influenza  
Continuity of Operations Plan for  
*(insert name of court)***

**Created on *(insert date)***

***(insert names of Chief Judge, Judges, and Clerk)***

## **Pandemic Influenza Continuity of Operations Plan (*insert name of court*)**

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### **Implementation**

## INTRODUCTION

***This section of the Plan is optional. The introduction describes the purpose and focus of the Plan. Sample language is provided below.***

The purpose of this Plan is to enable the *(insert name of court)* to respond to and mitigate the effects of a loss of workforce and, more specifically, loss of workforce due to pandemic influenza. The focus of continuity of operations planning for pandemic influenza is effective and efficient human capital management to foster the continued performance of essential functions and services. This Plan might have applications beyond that of pandemic influenza for other highly communicable diseases of public health consequence, or any other event that results in workforce reductions for extended periods of time.

## ASSUMPTIONS

***This section provides general and court-specific assumptions for pandemic influenza planning. Planning assumptions are statements identified to guide each department in the development of its pandemic influenza Plan. Below are examples that can be utilized in this Plan.<sup>1</sup>***

### General Assumptions

- *(Insert name of court)* has an up-to-date, comprehensive COOP that has been maintained and exercised on a regular basis. ***Delete if inapplicable.***
- Susceptibility to pandemic influenza will be universal, or nearly so, impacting Judicial Branch employees at the same rate as the general population. This means judges, clerks, and supervisors might be among those who are absent from work due to illness or family care needs.
- Pre-event planning is critical to ensure a prompt and effective response to pandemic influenza, as its spread will be rapid, probably reoccurring (in multiple waves), and difficult to stop once it begins.
- Workforce absenteeism may be as high as 40 percent at the height of a given pandemic wave for periods of about two weeks.
- Additional resources that might be accessed through mutual aid agreements, contracts, and the emergency management system including state and federal resources may not be available for a widespread event.
- Telecommunications connectivity might be limited.
- Individuals that recover from a pandemic virus, with or without treatment, will likely have a significant degree of immunity and can serve in key positions.

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<sup>1</sup> Examples are taken from the Virginia Emergency Operations Plan Influenza Pandemic (Non-Health) Plan

- To control the spread of disease, measures such as isolation, quarantine, and social distancing might be implemented which will impact the court's ability to conduct business activities.
- Schools, child care, and adult day care centers may be closed.

## PLANNING AND EMERGENCY MANAGEMENT RESPONSIBILITIES

***This section provides information about the identity of the Emergency Coordinating Officer and Public Information Officer, as well as the Pandemic Planning Team and Emergency Management Team, as applicable. (See Bench Book Chapter 5 and Worksheets 2, 2A, and 7 through 9)***

The *(insert name of court)* has designated the following positions and teams to be responsible for planning and emergency management responsibilities in the event of a pandemic:

Emergency Coordinating Officer: \_\_\_\_\_

Public Information Officer: \_\_\_\_\_

Pandemic Planning Team (see Attachment \_\_\_\_)

Emergency Management Team (see Attachment \_\_\_\_)

Chain of Command and Orders of Succession within *(insert name of court)* are documented in Attachment \_\_\_\_.

## ASSESSMENT OF MISSION CRITICAL AND ESSENTIAL FUNCTIONS

***This section provides information about the prioritization of court functions. (See Bench Book Chapter 7 and Worksheets 4 through 6)***

The *(insert name of court)* has reviewed its functions and has prioritized them as listed on Attachments \_\_\_\_ and \_\_\_\_.

## COMMUNICATION AND EDUCATION

***This section provides information about the communication plan for the court. (See Bench Book Chapter 6 and Worksheet 3)***

The *(insert name of court)* will disseminate information to staff, the public, bar, court support agencies, and others through the information plan contained in Attachment \_\_\_\_.

The Court's communication efforts should take place in stages: (1) at the onset of a pandemic declaration; (2) during the ongoing pandemic event; and (3) the recovery after the event so that all relevant audiences are fully and accurately informed of changes to court schedules, policies, and other necessary information. See Attachments \_\_\_\_.

The *(insert name of court)* will provide information to staff on personal hygiene, social distancing, and other measures to limit disease transmission.

The *(insert name of court)* will provide training to staff on proper use of Personal Protective Equipment, if provided.

## HUMAN RESOURCES MANAGEMENT

***This section addresses staffing strategies for the efficient and effective management of human resources. Each court has the option to choose which strategies will work best for its working environment. Below is sample language and information that might be used to help guide the development of specific language internally. (See Bench Book Chapter 8 and Worksheets 7 through 10)***

### Cross-training

***This section addresses cross-training gaps, which may not be problematic if the court has a Workforce Plan or other document that addresses this. If used, insert information from Worksheet 10.***

In order to maximize human resources, *(insert name of court)* will develop its Workforce Plan addresses staff development and cross-training needs for significant reductions in workforce for extended periods of time. This court will provide cross-training by implementing the following: *(insert additional cross training activities, if applicable or necessary).*

### Alternate Work Arrangements

***This section addresses alternate work arrangements that a court might implement to maximize the ability of its workforce to continue working during a pandemic. Each court will need to include court-specific policies and procedures for the alternate work arrangements that it elects to use. Courts can choose which strategies they plan to use and include that information in this section. If used, insert information from Worksheet 11.***

To support social distancing and mitigate the spread of disease, employees may be permitted to perform duties at home or off-site. Teleworking and alternate work schedules are strategies for continuing essential services in the event of pandemic influenza.

### Teleworking

Listed below are the functions that might be performed off-site and their associated equipment and remote access requirements.

***(Insert list of functions and personnel.)***

### **Alternate Work Schedules**

Alternate work schedules for staff are listed on Attachment \_\_\_\_\_. This might vary depending on event circumstances.

## **INFECTION CONTROL AND PROTECTION OF STAFF AND COURT VISITORS**

***Each court should decide which infection control measures are appropriate based on its own risk assessment. (See Bench Book Chapter 9) Below are examples that are most likely to be applicable. If used, insert information from Worksheet 12.***

*(Insert name of court)* will implement the following strategies to support social distancing:

- Schedule hearings, where appropriate, via electronic means;
- Allow electronic filing of documents, where appropriate;
- Temporarily adopt a liberal continuance policy;
- Continue jury cases if possible, and adopt jury management techniques that provide maximum social distancing;
- Avoid face-to-face meetings if possible. Meet via phone, internet, or some combination of the two;
- Train employees on cough etiquette and proper hand washing techniques;
- Implement alternate work schedules or other alternative work arrangements; and
- Provide sanitation supplies so employees can clean frequently touched surfaces such as phones and computers, and be able to appropriately wash hands.

## **SUPPLIES AND VENDORS**

***This section includes information on inventory and alternate sources for services or supplies. (See Bench Book Chapter 9) Vendors that provide support services or supplies for essential functions need to be identified along with alternate sources of these services or supplies in the event the primary vendor cannot deliver during a pandemic. If used, insert information from Worksheets 13 and 14.***

*(Insert name of court)* has several services or supplies provided by vendors, other departments, and contractors. *(Insert name of court)* has taken steps to determine that these providers have their own COOPs. In addition, *(insert name of court)* has identified other potential sources for services or supplies in the event the primary vendor or contractor cannot provide essential services or supplies. See Attachment \_\_\_\_\_.

## IMPLEMENTATION

***This section describes activation, notification and implementation procedures for the court, including who has authority to implement this Plan and how to notify employees.*** This Plan might be implemented in part or in whole, by *(insert appropriate court authorities)*.

Employees will be notified by *(insert procedure or reference to plan with notification procedures and contact information for all employees)*.

## **APPENDIX G: WORKSHEETS FOR PANDEMIC PLANNING**

1. Pandemic Influenza COOP Checklist
2. Pandemic Planning Team/Court Emergency Management Team
3. Information Dissemination Plan
4. Prioritization of Category 1 Functions (Mission Critical)
5. Prioritization of Category 2 Functions (Essential)
6. Court Function Description Worksheet
7. Authority and Procedures
8. Orders of Succession
9. Delegation of Authority
10. Essential Job Functions
11. Alternate Work Schedules
12. Workforce Protections
13. Routine and Essential Products and Services Utilized
14. Vendors

**WORKSHEET 1 — PANDEMIC INFLUENZA COOP CHECKLIST**

- Review contents of Bench Book
- Designate members of Pandemic Planning Team and Court Emergency Management Team (*Worksheets 2 and 2A*)
- Appoint court's Emergency Coordinating Officer and Public Information Officer
- Convene court Pandemic Planning Team
- Review existing court COOP plans
- Review pandemic planning assumptions
- Develop court-specific planning assumptions for pandemic influenza
- Ensure good communication strategy with staff, sheriff's office, court users and law enforcement (*Worksheet 3*)
- Review and prioritize mission critical and essential functions (*Worksheets 4 – 6*)
- Determine jury management strategies, where applicable
- Identify orders of succession for key personnel (*Worksheets 7 – 9*)
- Identify essential job functions and cross-training needs of staff to ensure at least three persons can perform essential functions (*Worksheet 10*)
- Review human resource management policies and procedures
- Determine if additional human resource policies and procedures are needed within the court
- Establish human resource policies and procedures as needed
- Identify functions that can be performed off-site
- Establish procedures associated with staff working off-site
- Identify staff who can work alternate work schedules. (*Worksheet 11*)
- Establish alternate work schedules (i.e., staggered hours to support social distancing).
- Review infection control measures
- Establish procedures for mitigating the spread of disease by identifying infection control measures that the court will take (*Worksheet 12*)
- Educate staff on how to control the spread of disease, including vaccinations
- Identify vendor or department needs and contingency options for services in the event primary vendor or department is not able to provide service (*Worksheets 13 and 14*)
- Document the information identified above in the pandemic COOP
- Distribute court's plan and train staff on plan

**WORKSHEET 2 – PANDEMIC PLANNING TEAM**

Role	Name	E-Mail	Phone #	Emergency #
ECO				
Judge				
Clerk of Court				
Probation				
CSU				
Community Corrections				
Local Health Director				
Sheriff				
Chief Magistrate				

**Tip**  
The table above is not intended to be an exhaustive list of people to include on the planning team. Courts should add and delete representatives according to their unique needs.



**WORKSHEET 2A – COURT EMERGENCY MANAGEMENT TEAM**

<b>Role</b>	<b>Name</b>	<b>E-Mail</b>	<b>Phone #</b>	<b>Emergency #</b>
<b>ECO</b>				
Judge				
Clerk of Court				
Probation				
CSU				
Community Corrections				
Local Health Director				
Sheriff				
Chief Magistrate				

**Tip**  
The table above is not intended to be an exhaustive list of people to include on the planning team. Courts should add and delete representatives according to their unique needs.

**WORKSHEET 3 – INFORMATION DISSEMINATION PLAN**

**RESPONSIBILITY AND AUTHORITY**

Throughout a pandemic, the court will need to provide accurate and up-to-date information to key audiences. The information dissemination plan describes who will develop and authorize content and the information dissemination strategy.

**Content Development**

The following individuals and alternates will be responsible for creating and/or coordinating the development of content for communicating with employees, customers/clients, the general public, suppliers and service vendors, and partners.

Name	Job Classification	Department	Contact Information	Primary/ Alternate

**Content Approval**

The following individuals and alternates will be responsible for authorizing the content and information dissemination strategy.

Name	Job Classification	Department	Contact Information	Primary/ Alternate

**AUDIENCES**

The court will be responsible for providing information to the following audiences:

- Employees
- General public
- Other courts
- Community
- Local Bar Association and other stakeholders
- [Insert additional audiences as appropriate]

See attached table—*Modes for Communicating Pandemic Information*.

**COURT CONTACT LIST**

Department	Contact	Emergency Number
-Media Contact		
-Telecommunications/IT		
-Jury Office		

**MEDIA CONTACT LIST**

Medium	Telephone	Other Contact Info.
<b>Radio</b>		
<b>Television</b>		
<b>Newspapers</b>		

**EXTERNAL COMMUNICATIONS CONTACT LIST**

Audience	Name/Title	Telephone Number
<b>City/Local Level</b>		
• Sheriff's Office		
• Police Department		
• Fire Department		
• Emergency Management Agency		
• Department of Public Safety		
• Public Defender		
• Commonwealth's Attorney		
• Health Department		

**COMMUNICATION MESSAGES**

The court must provide ongoing information and guidance to the above audiences throughout each stage of an outbreak. Important communication messages include:

**Preparation**

- General pandemic information
- Components of the court's *Pandemic Continuity of Operations Plan*
- Infection control preparations taken by the court
- How to develop a personal/family disaster kit (for staff)
- Where to get information during an emergency (e.g., website, brochures, hotline)

**Response**

- Updates on the status of the pandemic
- Policy changes
- Infection measures to be utilized at work
- Illness reporting procedures
- Job reassignments
- Services available to the public

**Recovery**

- Updates on the status of the pandemic
- Job reassignments
- Policy changes
- Resumption of normal operations

**Alert and Notification**

**Court Office:** \_\_\_\_\_

Person/ Position Responsible	Alternate Responsible Persons/ Position	Telephone Messaging/ Office	Telephone Messaging/ Remote Phone #s	E-mail Broadcast/ Office	E-mail Broadcast/ Remote Addresses	Call Tree	Combination

**MODES OF DISSEMINATION**

Information will be disseminated to audiences using the modes of communication described below. Multiple strategies will be used to create redundancy and improve the likelihood that intended recipients receive messages.

- **Telephone Systems.** Internal agency information line [insert telephone number], external public information line, mass voicemail message, call center/phone bank, call-down tree.
- **Electronic Systems.** Mass e-mail messages, website postings [insert web address], Intranet postings, list serves. Information may be packaged in the form of letters, memorandums, fact sheets, brochures, newsletters, et cetera.
- **Hard Copy.** Mailings, interoffice mail, notice board postings.
- **In-Person.** Meetings, presentations, trainings.
- **Media—Television, Radio, Newspaper.** Press releases, press conferences.

**SAMPLE INTEROPERABLE COMMUNICATION DEVICES**

Device	Assigned To	Location of Device	Agency Compatible
Satellite phone #12345	Judge 1	Judge's Home	Police Fire Rescue
Blackberry #6789	Judge 1	On Person	N/A

**SAMPLE COMMUNICATIONS OPTIONS FOR COURT STAFF**

Target Audience	Warning/Notification of Initial Incident	Resumption of Services/ Directions for Accessing Them
The Public	Media (local – print and broadcast) Court website: Radio /TV News Public Address System	Media (local - TV and radio) Court website: _____ [Add URL] _____
Judicial Officers and Court Employees	Court website Email Broadcast Internal Contact List Media Cell Phones Satellite Phone Nextel-type Phone/Radios PDA Court Emergency Information Line (e.g., 1-800 number)	Court website Internal Contact List Media Cell Phones Court Information Line

### MODES FOR COMMUNICATING PANDEMIC INFORMATION

Mode of Dissemination	Audience				Good for urgent communication	Strength/Weaknesses
	Employees	Partners	Clients/ Public	Vendors		
<b>Telephone System</b>						
Internal Emergency Information Line	✓				Yes	A voice message can be pre-recorded and updated off site. Access to the voice message can be controlled by using a PIN provided to all employees. (This is good for relaying instructions about reporting to work.)
External Information Line	✓	✓	✓	✓	Yes	
Mass Voicemail Message	✓				Maybe	Some employees may not have a designated work phone with voicemail.
Call center/phone bank	✓	✓	✓	✓	Yes	Some individuals may prefer speaking to a live person instead of a recorded message.
Call-down tree	✓				Yes	A call-down tree can be used for relaying simple and short information by phone. Each person is designated to call another once the message has been received.
<b>Electronic</b>						
Mass E-mail	✓				No	Some employees may not have a designated e-mail address or be able to access e-mail at home.
Website Posting	✓	✓	✓	✓	Maybe	Not all people will have access to a computer.
Intranet Posting	✓				No	Not all employees will have access to a computer.
List Serve	✓	✓				Not all people will have access to a computer.
<b>Hard Copy</b>						
Mailing	✓	✓	✓	✓	No	Delivery may take a few days. It may be costly.
Interoffice Mail	✓					Not all employees will have a mail box for receiving interoffice mail.
Notice Board Posting	✓		✓		Maybe	
<b>In Person</b>						
Meeting/Presentation	✓	✓	✓	✓	Maybe	During some stages it may not be advisable to hold gatherings.
Training	✓				No	May take time to coordinate.
<b>Media—Television, Radio, Newspapers</b>						
Press release	✓	✓	✓	✓	Yes	
Press conference	✓	✓	✓	✓	Yes	

**WORKSHEET 4 – PRIORITIZATION OF CATEGORY 1 FUNCTIONS  
(MISSION CRITICAL)**

Category 1 (Mission Critical) functions are those functions that must remain operational when the court is open. In the table below, prioritize the Category 1 functions.

See Appendix C for examples of Category 1 functions.

Priority	Mission Critical Function	Time Limitation (if applicable)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		

**WORKSHEET 5 – PRIORITIZATION OF CATEGORY 2 FUNCTIONS  
(ESSENTIAL)**

Category 2 (Essential) functions are those functions next in priority to the Category 1 (Mission Critical) functions. Category 2 functions are those services that must be resumed as soon as the court has regained the necessary capacity. In the table below, prioritize the Category 2 functions.

See Appendix C for examples of Category 2 functions.

Priority	Essential Function	Time Limitation (if applicable)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		



**WORKSHEET 6A – SAMPLE COURT FUNCTION DESCRIPTION WORKSHEET**

Please complete one worksheet for each Category 1 and each Category 2 function identified. This worksheet is to be used to list the pertinent information and describe in detail the steps required to continue operations for each essential function identified.

Category 1 (Mission Critical)      Category 2 (Essential)

**FUNCTION:** Conduct bond hearings for incarcerated defendants.

**AUTHORITY (Applicable Statute/Rule):** Va. Code § 19.2-158 and 19.2-254

Positions Required	Process/Systems Required
Judge	
Commonwealth Attorney	
Defense Attorney (retained or appointed)	
Clerk/Deputy Clerk	CMS, FMS, Visual basic forms program
Bailiff	
Forms, Documents and/or Supplies Required	
Computer with CMS, FMS and visual basic forms program access.	
Charging warrant(s), pretrial report if available and criminal record for defendant.	
Steps for Continuation of Court Function	
1) Notify all parties of date and time of scheduled bond hearing.	
2) Power up equipment and dial jail for video communication; or transport defendant to courtroom.	
3) Conduct hearing.	
4) Prepare continuance order for jail; update CMS regarding court's decision.	
5) Schedule case for next hearing date and summons all witnesses.	
6) If bond is posted, receive bond paperwork from the jail or magistrate. Update CMS with bond information and attached paperwork to case papers.	
7) If bond posted is cash, check or money order, receipt the bond payment in FMS.	

## WORKSHEET 7 – AUTHORITY AND PROCEDURES

The following sections outline the authority and procedures for activating and implementing the pandemic COOP for \_\_\_\_\_.

### **Tip**

The court may already have this information as part of its overall emergency response plan. If so, attach it to *Worksheet 8—Orders of Succession*, and *Worksheet 9—Delegation of Authority*.

### **LEADERSHIP SUCCESSION**

During a pandemic, the following people are delegated to activate the Pandemic Continuity of Operations Plan in the order of succession shown in *Worksheet 8—Orders of Succession*.

### **PLAN ACTIVATION**

The [title] or his or her appointee or successor may (as listed in accordance with *Worksheet 8—Orders of Succession*) activate the Pandemic Continuity of Operations Plan when it is necessary to manage and coordinate a response. This decision will be made after consulting with key leaders, including [insert position titles].

Internal notification of plan activation will occur through the steps or processes outlined in *Worksheet 3—Information Dissemination Plan*.

[Insert additional protocols]

### WORKSHEET 8 – ORDERS OF SUCCESSION

Orders of succession are essential to a court’s COOP to ensure personnel know who has authority and responsibility should leadership become incapacitated or unavailable upon COOP activation.

Orders of succession for the court should:

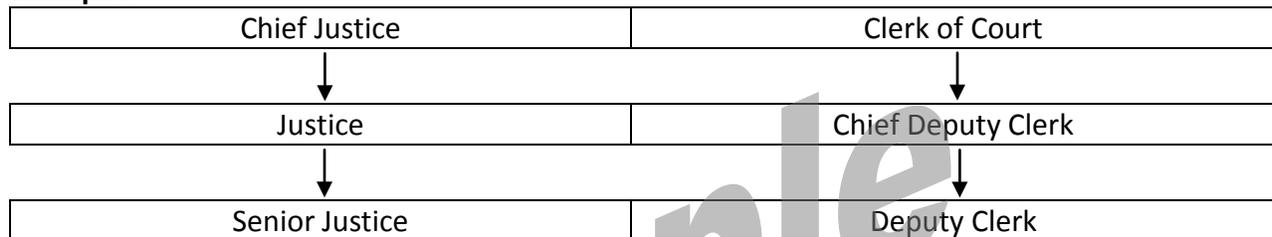
- Describe the order of succession by position or title, rather than by named individuals.
- Provide sufficient depth (at least 3 deep) to protect the court’s ability to perform mission-essential operations to take into account the expected rate of absenteeism.
- Consider personnel outside the immediate area if possible.
- Include the conditions under which succession will take place, method of notification, and any temporal, geographical or organizational limitations.
- Provide that if a designated individual is unavailable, authority will pass to the next individual on the list.

An individual is “unavailable” if he or she is:

- Incapable of carrying out the assigned duties by reason of death, disability, or distance from response time to the facility
- Unable to be contacted within 30 minutes, or
- Already assigned to other emergency activities.

The designated individual retains all assigned obligations, duties, and responsibilities until officially relieved by an individual higher on the list.

**Example:**



Key Position (Position Title)	Successor 1	Successor 2	Successor 3
<i>Clerk of Court</i>	<i>Chief Deputy Clerk</i>	<i>Deputy Clerk</i>	<i>Division Supervisor</i>



**WORKSHEET 9 – DELEGATION OF AUTHORITY**

Clearly pre-established delegations of authority are vital to ensuring that all court personnel know who has the authority for making policy determinations and decisions in a pandemic COOP situation.

Delegations of authority for the court should:

- Identify what is needed for effective operations, including programs and any administrative authority
- Identify the circumstances warranting an exercise of that authority
- State the designated successors by title, not by name
- State when the authority becomes effective and when it terminates

The designated individual retains all assigned obligations, duties, and responsibilities until officially relieved by an individual higher on the list.

<b>Position</b>	<b>Authority</b>	<b>Triggering Conditions</b>	<b>Limitations</b>
<i>Clerk of Court</i>	<i>Statute (e.g., §16.1-69.39 and §16.1-69.40)</i>		
<i>Chief Deputy Clerk</i>	<i>Emergency Declaration</i>	<i>Clerk of Court unavailable</i>	<i>Must consult with and have approval by Chief Judge or successor for any decisions except staff assignments.</i>
<i>Deputy Clerk</i>	<i>Emergency Declaration</i>	<i>Chief Deputy Clerk unavailable</i>	<i>Must consult with and have approval by Chief Judge or successor for any decisions except staff assignments.</i>
<i>Division Supervisor</i>	<i>Emergency Declaration</i>	<i>Deputy Clerk unavailable</i>	<i>Must consult with and have approval by Chief Judge or successor for any decisions except staff assignments.</i>











## WORKSHEET 12 — WORKFORCE PROTECTIONS

All courts should take measures to promote the safety of their employees and control the spread of disease. Efforts should be made to stay informed of current recommendations from the VDH, CDC, OSHA and other appropriate sources regarding worker safety and infection control. Inform the general public, law enforcement, and members of the bar of any changes the court makes to daily operations.

From the list below, highlight which measures the court will take to help control the spread of disease. Below each measure selected, identify steps that need to be taken to implement the measure. This also might help to reduce absenteeism for seasonal influenza. The first measure listed has been completed as an example.

1. Provide employees and customers with easy access to soap and warm water, hand sanitizers, gloves, masks, safety glasses, tissues, sanitizing wipes, and other office cleaning supplies. Consider stockpiling these supplies. Stockpiles should be rotated using the oldest first and ensure proper storage conditions for products.

**Action steps for implementation:**

*Purchase and stockpile hand sanitizer and surgical masks. Identify proper storage locations and conditions for supplies. Develop distribution procedures.*

2. Install hand sanitizer dispensing units throughout facilities.

**Action steps for implementation:**

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3. Use no-touch trash containers.

**Action steps for implementation:**

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4. Have all staff watch VDH's Influenza Pandemic video to learn about how to reduce the spread of disease such as pandemic influenza.

**Action steps for implementation:**

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**Worksheet 12**

5. Educate employees on proper hand washing techniques. VDH has developed “Cover Your Cough” posters, which also address cleaning hands. It is available at [www.vdh.virginia.gov/pandemicflu](http://www.vdh.virginia.gov/pandemicflu).

**Action steps for implementation:**

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6. Train employees on proper use and fit of masks and other personal protective equipment (PPE). Follow recommendations issued by the Virginia Health Department or the Centers for Disease Control and Prevention.

**Action steps for implementation:**

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7. Educate employees on cough etiquette. VDH has developed the “Cover Your Cough” posters available at [www.vdh.virginia.gov/pandemicflu](http://www.vdh.virginia.gov/pandemicflu).

**Action steps for implementation:**

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8. Work with the locality to install barrier protections such as sneeze guards or other clear barriers in offices that serve the general public. Provide drop boxes or consider offering “drive-up” filing services to decrease the number of people who enter the building.

**Action steps for implementation:**

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9. Provide customers with surgical masks and ask them to wear them while seeking services.

**Action steps for implementation:**

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10. Encourage employees to obtain vaccinations in accordance with CDC guidelines.

**Action steps for implementation:**

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**Worksheet 12**

11. Require employees to stay at home if they are ill or at the first signs they might become ill.

**Action steps for implementation:**

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12. Regularly clean frequently touched work surfaces such as telephones, computer equipment, and steering wheels of department vehicles or shared vehicles regularly.

**Action steps for implementation:**

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13. Consider limiting access or reducing the number of entry and exit points for the general public to the facility.

**Action steps for implementation:**

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Are there any additional disease or infection control measures that the court might require? If so, please list them and their associated action steps for implementation below.

Disease or Infection Control Measure	Action Steps for Implementation



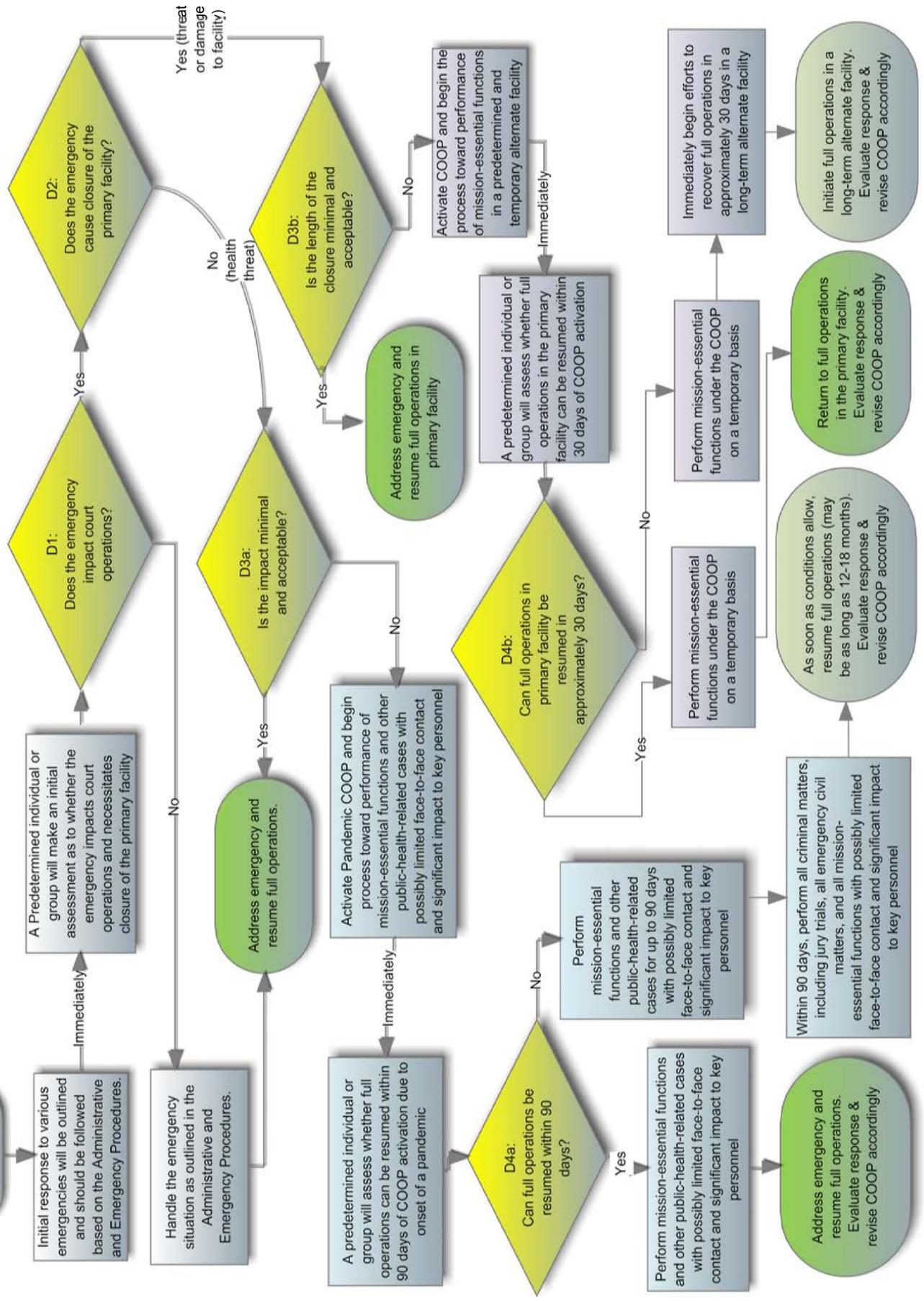
**WORKSHEET 14 — VENDORS**

The court relies on vendors and service providers to maintain operations. Contact information for each of the vendors and service providers, including alternates, can be captured on this worksheet.

<b>TYPE OF VENDOR/SERVICE</b>	
Company Name:	_____
Address:	_____
Telephone:	_____
Fax:	_____
E-mail:	_____
Primary contact:	_____
Alternate contact:	_____
Notes:	_____
	_____
	_____
	_____
If this company is unable to provide services/materials, the following organization(s) can provide:	
Company Name:	_____
Address:	_____
Telephone:	_____
Fax:	_____
E-mail:	_____
Primary contact:	_____
Alternate contact:	_____
Notes:	_____
	_____
	_____
	_____



# All-Hazards Trial Court Decision and Response Flow Chart: Process for Responding to An Emergency



## All-Hazards Court Communication Flowchart: Emergency Response and Recovery

