

Fatal Flaws :
Gaps in California Public Health Law and Planning;
A Law Enforcement Perspective

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The Command College Futures Study Project is a FUTURES study of a particular emerging issue of relevance to law enforcement. Its purpose is NOT to predict the future; rather, to project a variety of possible scenarios useful for strategic planning in anticipation of the emerging landscape facing policing organizations.

This journal article was created using the futures forecasting process of Command College and its outcomes. Defining the future differs from analyzing the past, because it has not yet happened. In this article, methodologies have been used to discern useful alternatives to enhance the success of planners and leaders in their response to a range of possible future environments.

Managing the future means influencing it—creating, constraining and adapting to emerging trends and events in a way that optimizes the opportunities and minimizes the threats of relevance to the profession.

The views and conclusions expressed in the Command College Futures Project and journal article are those of the author, and are not necessarily those of the CA Commission on Peace Officer Standards and Training (POST).

Fatal Flaws : Gaps in California Public Health Law and Planning; A Law Enforcement Perspective

The prospect of more first responders dying from an influenza pandemic than the combined death toll of 9/11, the Iraq and Vietnam Wars combined should serve as a wakeup call for local, state and federal law enforcement agencies.

Planning and training with statutory changes must be developed for every agency to be ready to respond effectively to provide our communities with the highest level of protection possible. Despite past and present planning efforts, there are still gaps, both in the law and our preparedness. In the emerging health and safety landscape, both will need attention if we are to be prepared to provide the best service to our employees and our communities. If the future holds a pandemic event, what flaws might we fix, and how can we prepare for the unthinkable?

Pandemics: Past, Present and Future

Plagues and epidemics (or pandemics) have been a fact of life since the beginning of time. In the 1300's, the "Black Death" pandemic killed nearly one third of Europe's population (20 million people).¹ One of the first recorded efforts to isolate and quarantine the ill can be found in histories of the Great Plague of London from 1655-1666. During this plague, "Victims were shut into their houses and the doors were nailed shut and marked with a large red cross. Nurses were hired to take in food and carry out basic care, and guards were set upon to watch and make sure that the sick (or their families) did not escape."² The Asiatic Flu Pandemic was first reported in May of 1889 in Bukhara, Russia. By October of 1889 it had reached the Caucasus. It rapidly spread west and hit North America in December 1889, South America in February-April 1890, India in February-March 1890, and Australia in April 1890. This flu had a very high attack rate and very high rate of mortality. The first wave of influenza in the U.S. appeared early in the spring of 1918 in Kansas. This strain was identified as the Spanish Flu, a different strain, but with equally as disastrous results. Within a year, "the pandemic affected everyone. With one-quarter of the US and one-fifth of the world infected with the influenza, it was impossible to escape from the illness.

In the 1918-1919 epidemic, the Spanish Flu was so severe that the average life span in the US was depressed by 10 years. In fact, in 1918 the death rate for 15 to 34-year-olds of influenza and pneumonia were 20 times higher than in previous years. In the same year, India's mortality rate was also extremely high due to the same influenza epidemic. About 50 deaths were seen from influenza per 1,000 people in that Country."³

In 1918-1919, the population who was not sick had to "deal with public health ordinances adopted to restrain the spread of the disease. The public health departments distributed

¹ Source: <http://www.channel4.com/history/microsites/H/history/plague/story.html> Story of the Plague p1

² by Molly Billings, June, 1997 modified RDS February, 2005

³ Source: <http://www.channel4.com/history/microsites/H/history/plague/story.html> Story of the Plague p2

gauze masks to be worn in public. Stores could not hold sales; funerals were limited to 15 minutes. Some towns required a signed certificate to enter and railroads would not accept passengers without them. Those who ignored the flu ordinances had to pay steep fines enforced by extra officers. Other pandemic events continued to recur from that time to the present day. These include the El Tor Cholera pandemic in the 1960's, the 1972 smallpox epidemic in Yugoslavia, the emergence of HIV and AIDS across the world in the 1980's and the South American Cholera epidemic in the 1990's."⁴

Fast forward to 2003 when President Bush signed Presidential Order Number 13295, adding Sudden Acute Respiratory Syndrome (SARS) to the communicable disease list to address the emergence of the disease in the United States. This allowed the United States Department of Public Health to order isolation of those exposed, and quarantine those who are sick with one of the listed diseases. Public Health and infectious disease professionals predict that we will face influenza of pandemic proportions, the most likely being the H5N1 strain, commonly known as Bird Flu. These extreme examples of communicable diseases are an example of one type of public health emergency we may face in the future.

Future Public Health Emergencies

Future public health emergencies that could result in orders of isolation and quarantine are as vast as one can imagine. An expert panel assembled in May, 2007 to study the issue of possible police responsibilities in a pandemic event noted a number of relevant trends and possible events that could impact the police role in this setting. Some of the more significant were:

- Heat Events – In 2006 and 2007 periods of extreme heat in various parts of the west resulted in public health emergencies being declared at either the state or local levels. As a result, several “cooling centers” were open where persons could go to be more comfortable and escape the extreme heat. The clientele of these centers can range from retirees on fixed incomes to homeless sex offenders. People attempting to escape and survive in an environment where tempers can flare up as much as the temperature, resulting in criminal acts and the need to provide security by local law enforcement.
- Bioterrorism – Since 9/11 we have all worried about a bioterrorism event occurring in the United States. The use of Anthrax as a weapon of terror followed shortly after the World Trade Center attacks and proved that we were vulnerable and even the smallest attack that could interrupt the way our government and businesses work.
- Chemical attack - The subway bombings in Tokyo by religious extremists in the 1990's was a wakeup call for all law enforcement to be prepared to recognize and respond to this type of event.

⁴ by Molly Billings, June, 1997 modified RDS February, 2005

- SARS – Despite a worldwide effort there are still new cases reported each year. Diligence on by the world’s public health community has inhibited this illness from becoming an epidemic.
- Pandemic Flu – A pandemic has traditionally struck the United States every 30-40 years. The last pandemic was over 40 years ago. Odds are that we will experience a pandemic sooner than later, the combined government response will be key to the number of deaths.

What next? The panel noted that many known diseases have begun to mutate into super bugs, drug resistant Tuberculosis and Methicillin resistant Staphylococcus aureus (MRSA). Unfortunately, tomorrow’s mutations are what we will face. This future is what we must prepare for and why we must know our role. The panel looked at those events and trends that may have an effect on the possible roles that law enforcement may face in future emergencies as outlined in the California Health and Safety Code to ensure a quick resolution of those future emergencies. Considering possible State and local plans, what tools and resources exist to support agencies facing a threat of this magnitude?

Federal Response Plan

The National Incident Management System (NIMS) was developed in response to Homeland Security presidential Directive (HSPD) -5, signed by President George W. Bush on February 28, 2003. HSPG -5 entitled Management of Domestic Incidents, director the Secretary of Homeland Security to develop a system that would provide direction to both government and non-governmental agencies to respond to major events nationwide. A condition of HSPD-5 also required that State and local agencies adopt NIMS and train their staff to operate within the requirements of NIMS in order to be considered for or Federal preparedness assistance funding.

Compliance with the National Incident Management System (NIMS) and the National Response Plan (NRP) is another concern for law enforcement agencies. Both NIMS and the NRP have an effect on how law enforcement agencies will respond to incidents of national significance where public health orders may be issued.

The NRP is made up of fifteen sections called Emergency Support Functions (ESF). "ESF #8, titled Public Health and Medical Services Annex," discusses the elements in providing for "public health and medical needs (to include veterinary and/or animal health issues when appropriate) for potential actual incidents of National Significance and/or during a developing potential health and medical situation."⁵ Local law enforcement may be required to take on some of the support roles identified in the NRP. These roles include the following: assist in victim identification, provide intelligence to public health on any credible threats, provide communication, transportation and other logistical support, and provide security for the strategic national stockpile and quarantine enforcement assistance. According to the United States Department of Justice Publication, “The Role of Law Enforcement in Public Health Emergencies,” ESF #8 can

⁵ U.S. Department of Homeland Security: (2004) *National Response Plans*. ESF #8-1

be interpreted to say “there may be an underlying expectation that local law enforcement will help the Postal Service with this task in some communities. This is just one of the many expectations that law enforcement agencies need to be aware of when preparing an all-hazards plan”⁶ Others have emerged from the tragedies of September 11th, 2001.

Post 9/11, the Centers for Disease Control and Prevention (CDC) developed a model law on quarantine, adopted by thirty states. The International Association of Chief’s of Police (IACP), however, has criticized the laws as a “‘patchwork-quilt of legislation’ that offers little specific assistance to local police.”⁷ Many of the pandemic plans that have been adopted by local non-law enforcement agencies neglect to account for the ability of law enforcement to enforce public health orders in the event of widespread isolation or quarantine, and continue providing basic law enforcement services in their respective communities. Issues such as available staffing, continuity of mandated operations, mutual aid requests, legal authority and possible future public health emergencies have been neglected in some plans and must be addressed. Given what we know from experiences in past epidemics, these issues are critical considerations for any public safety executive.

Pandemics- Lessons Learned

The three influenza pandemics in the twentieth century taught the public health community some valuable lessons. These lessons can provide insight into planning needed for law enforcement to prepare for the future. A 2005 report by the World Health Organization detailed key lessons with potential impact on law enforcement planning for staffing, operations and mutual aid in such an event. Some of these are:

- Pandemics behave as unpredictably as the viruses that cause them. During the previous century, great variations were seen in mortality, severity of illness, and patterns of spread.
- One consistent feature important for pandemic preparedness planning is the rapid surge in the number of cases and their exponential increase over a very brief time, often measured in weeks.
- Apart from the inherent lethality of the virus, its capacity to cause severe disease in non-traditional age groups, namely young adults, is a major determinant of a pandemic's overall impact.
- The epidemiologic potential of a virus tends to unfold in waves. Subsequent waves have tended to be more severe.
- Some public health interventions may have delayed the international spread of past pandemics, but could not stop them.
- Delaying spread is desirable, as it can flatten the epidemiological peak, thus distributing cases over a longer period of time.
- The impact of vaccines on a pandemic, through potentially great, remains to be demonstrated. In 1957 and 1968, vaccine manufacturers responded rapidly, but

⁶ The Role Of Law Enforcement in Public Health Emergencies, 2006, *USDOJ, Bureau of Justice Assistance*. <http://www.ncjrs.gov/pdffiles1/bja/214333.pdf>

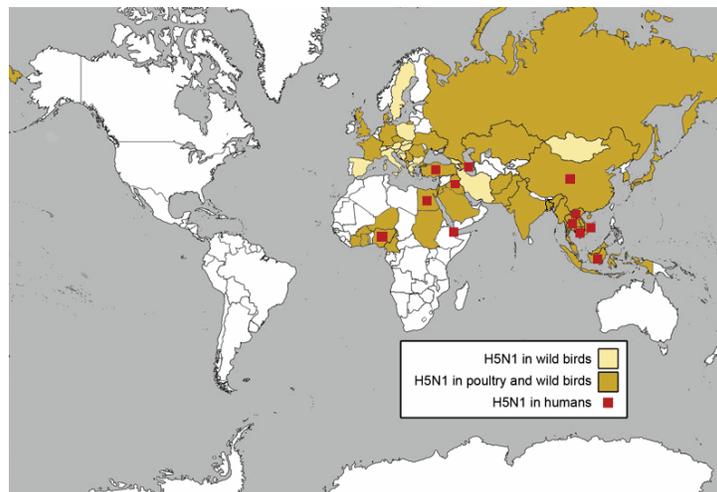
⁷ *Police want guides on quarantine rules*, USA Today Dec 14, 2005 Kevin Johnson Author

limited production capacity resulted in the arrival of inadequate quantities too late to have an impact.

- Countries with domestic manufacturing capacity will be the first to receive vaccines.
- The tendency of pandemics to be most severe in later waves may extend the time before large supplies of vaccine are needed to prevent severe disease in high-risk populations.
- In the best-case scenario, a pandemic will cause excess mortality at the extremes of the lifespan and in persons with underlying chronic disease. Countries with good programs for yearly influenza vaccinations will have experience with the logistics of vaccinations for these populations.”⁸

Additional information from the World Health Organization indicates that, “H5N1 strains cause severe disease in humans, with a high case-fatality rate (reportedly at over 50%, although adequate surveillance data are lacking to accurately define the rate)”⁹ and “The potential of exposure and infection of humans is likely to be ongoing in rural Asia and probably in Africa as well, where many households keep free-ranging poultry flocks for income and food.”¹⁰ With the ease of world-wide travel, one could easily imagine a scenario where the H5N1 virus would migrate to the United States. If so, what laws and regulations are in place to enable a sufficient response?

Chart #1 shows the spread of H5N1 as of July 8, 2007



Source: <http://www.pandemicflu.gov/>

⁸ From online resources CIDRAP
http://www.cidrap.umn.edu/cidrap/content/influenza/panflu/biofacts/panflu.html#_Historical_Perspective_1

⁹ From online resources CIDRAP
http://www.cidrap.umn.edu/cidrap/content/influenza/panflu/biofacts/panflu.html#_Historical_Perspective_1

¹⁰ From online resources CIDRAP
http://www.cidrap.umn.edu/cidrap/content/influenza/panflu/biofacts/panflu.html#_Historical_Perspective_1

Legal Authority

The legal authority to enforce public health orders can be found in federal, state and local law. In California, laws directing the law enforcement to assist the health officer have been on the books for several years. Section 120155 of the Health and Safety Code provides that the Sheriff or a peace officer in the state of California “may” enforce “all orders of the State Department of Public Health issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease...This section is not a limitation of the authority of peace officers to enforce orders of the State Department of Public Health. ...” This provides the ability of local law enforcement to enforce the orders of isolation and quarantine.

The role of the police

The laws relating to controlling the spread of disease differ from state to state; and in some states, from jurisdiction to jurisdiction. In December 2002, USA Today’s Kevin Johnson reported in his article “Police want guidelines on quarantine rules” that the International Association of Chiefs of Police (IACP) requested better direction from the federal government regarding their responsibilities in the event of a major public health incident.¹¹ The article stated that “the federal government and the military would take the lead on managing quarantines, the chiefs’ group says local police face a ‘monumental challenge’ because of a lack of basic information.” IACP president, Chief Mary Ann Viverette noted that local agencies “need some guidance” as they are “the ones who are going to be the first to respond. ... I would have thought we would be further along.”¹²

Of concern to any police leader are the issues of maintaining adequate staffing and continued operations during a pandemic, and how agencies might combine efforts to manage the panic, concerns and wide-scale impact of a pandemic event in their region.

Staffing and Operations

To best estimate how a widespread public health emergency would effect staffing, the research being done on the H5N1 influenza provides a worst case scenario that is an ideal tool to use for planning. Understanding the lessons learned from past pandemics, though, is a necessary starting point. Estimates for the pandemic flu indicate that 25% of the population “will become clinically ill in a 12 to 24-month pandemic.”¹³ The mortality rate for the H5N1 virus in humans infected since 2003 is 170 of the 288 cases¹⁴. In an agency of 500, this could mean that 125 could become ill, and 74 of the total staff may die. This does not tell the whole story the effect of a pandemic on an agency. The number of staff affected by a sick family member or death of a family member could be

¹¹ Kevin Johnson *USA Today* December 14, 2005

¹² Kevin Johnson *USA Today* December 14, 2005

¹³ *Pandemic Influenza Specific Contingency Plan Training*, June 26, 2007 Santa Clara County.

¹⁴ Source: World Health Organization H5N1 statistics reported to WHO as of April 2, 2007

50%. The obligation of law enforcement to continue to provide mandated law enforcement services will be impacted, along with the ability to respond to the public health emergency.

Staffing during a widespread public health emergency may reach critical levels. Law enforcement executives must identify the minimum service levels that will be provided during an emergency. These levels will vary depending on the type of agency, jurisdiction and requirements of local laws or jurisdiction specific state laws. Additionally, local law enforcement will have to make a decision how they could support the public health mission while meeting their minimum service level requirements. Pre-planning for a widespread public health emergency must take into account the best available information on the rate of infection, the mortality rate of those that may become infected and those staff that may be absent while acting as emergency care givers for family members.

After estimating staffing levels, law enforcement agencies must develop a plan to continue to provide law enforcement service in order to meet the legal and political mandates of their community. In September of 2006, the Bureau of Justice Assistance, in partnership with the Police Executive Research Forum, published “The Role of Law Enforcement in Public Health Emergencies: Special Considerations for an All Hazards Approach.” Continuity of Operations is listed as the “Second component of an all-hazards disease control plan for law enforcement agencies”¹⁵ The authors concluded that an agency may face “possible workforce reductions from 10 to 40 percent- or more as employees will either be caring for others, sick with the disease, or in some cases may be too concerned to report for work.”¹⁶

A plan’s strength, however, lies in the specific detail such as essential functions identified, timelines assigned for those functions to be operational during a major event and what non- field services would be needed to support the continued operations. Those continued operations may be supported through mutual aid.

Mutual Aid

California has one of the oldest and most effective Law Enforcement Mutual Aid systems in the United States. The plan is required and authorized under state law and has been adopted by each agency in the state. The Law Enforcement Mutual Aid Plan is coordinated and updated through the Governor’s Office of Emergency Services, Law Enforcement Branch.

The Law Enforcement Mutual Aid Plan is consistent with the Standardized Emergency Management Systems (SEMS) and the National Incident Management System (NIMS).

¹⁵ “The Roll of Law Enforcement in Public Health Emergencies: Special considerations for an all-hazards approach.” September 2006, Bureau of Justice Assistance Page 5.

<http://www.ncjrs.gov/pdffiles1/bja/214333.pdf>

¹⁶ “The Roll of Law Enforcement in Public Health Emergencies: Special considerations for an all-hazards approach.” September 2006, Bureau of Justice Assistance Page 5.

<http://www.ncjrs.gov/pdffiles1/bja/214333.pdf>

The California Mutual Aid system is codified in the “Emergency Services Act, Chapter 7 of Division I of Title of the Government Code”¹⁷ and “Governor’s Executive Order W-9-91....”..... “Further the Law Enforcement Mutual Aid Plan is issued and revised under the authority of sections 8650, 8569, 8615 through 8619, and 8668 of the California Government Code.....”¹⁸

“Under the Emergency Services Act ...certain limited immunity from liability is granted to agencies responding to a mutual aid request. However, these immunities when applied to mutual aid, as interpreted by the courts, are broader than the general immunity provided to government agencies.”¹⁹ Under SEMS, the organizational structure for ordering resources follows a strict chain of command that must be followed in order to assure legal compliance, protection from liability, future disaster reimbursements and most basically, coordination of valuable resources in the most efficient manner.

A department’s planning must include working knowledge on how to access the mutual aid system, complying with NIMS, SEMS and agency policies and procedure. The prospect of a public health event being regional, statewide or even nationwide are very real; therefore all plans must provide for the contingency that resources will be scarce. Any resources that may be available will be allocated based on extreme needs.

Where do we go from here?

The future of law enforcement to be effective during a wide spread public health emergency is dependent on the preparations that are made by administrators to respond appropriately to the emergency. These preparations should include working to change laws to mandate enforcement of orders of isolation and quarantine by law enforcement. Creative solutions may include may include plans to allow staff who have been exposed, but are not sick to work within their quarantine area, identifying the mandated functions that will be carried out as staffing is reduced and working on interdisciplinary training and exercises. The one clear thing is that complacency will be crippling to public safety and have a negative effect on law enforcement. How, then, will you prepare?

¹⁷ California Law Enforcement Mutual Aid Plan, Governors Office of Emergency Services 2006 Edition [http://www.oes.ca.gov/Operational/OESHome.nsf/0d737f261e76eeb588256b27007ac5ff/a3f586fd13d795c788256b7b0029bbff/\\$FILE/BlueBook11-28-2006.pdf](http://www.oes.ca.gov/Operational/OESHome.nsf/0d737f261e76eeb588256b27007ac5ff/a3f586fd13d795c788256b7b0029bbff/$FILE/BlueBook11-28-2006.pdf)

¹⁸ California Law Enforcement Mutual Aid Plan, Governors Office of Emergency Services 2006 Edition [http://www.oes.ca.gov/Operational/OESHome.nsf/0d737f261e76eeb588256b27007ac5ff/a3f586fd13d795c788256b7b0029bbff/\\$FILE/BlueBook11-28-2006.pdf](http://www.oes.ca.gov/Operational/OESHome.nsf/0d737f261e76eeb588256b27007ac5ff/a3f586fd13d795c788256b7b0029bbff/$FILE/BlueBook11-28-2006.pdf)

¹⁹ Farmers Insurance Exchange v State of California 221 Cal. Rptr. 225, CA App. 6 Dist, 1985 and Labadie v State of California 256 Cal Rptr. 604, 208 cal App.3d 1366 and Soto v State of California 65 Cal Rptr.2d 11,56 Cal App.4th196