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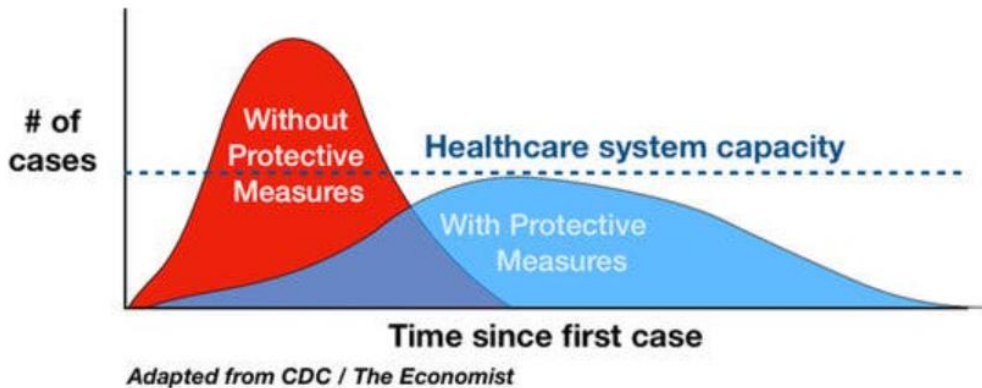
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**STATEMENT FROM FEDERAL PUBLIC DEFENDER OF OREGON
MARCH 11, 2020**

As the coronavirus continues to spread, the Federal Public Defender of Oregon is taking measures to protect our clients and our staff, continue our work, and heed the advice of our Oregon Health Authority to protect vulnerable populations and help slow this spread. We are committed, as individuals and as an organization, to act responsibly and to take this pandemic seriously. We will work to limit group activities, maintain social distance, and communicate with our incarcerated clients to protect their rights and ensure they receive needed care. This one graphic from the New York Times provides visual representation of what motivates us to take action now, as the Oregon Health Authority has requested:



The FPD offices in Portland, Eugene and Medford will be operating with a skeleton staff on-site and will be fully staffed through telework. All work-related travel out of state has been postponed, and non-urgent travel within the state will be limited. No employee with medical vulnerabilities will be in the office. We will be meeting by phone and video. We have asked the Court to allow phone and video appearances in courtrooms, and to take additional measures listed

below to decrease the use of courtrooms and the need to transport inmates from jails. Each of us is committed in our personal lives to make changes that will help slow the spread of this virus.

County jails throughout Oregon and the Federal Correctional Institution in Sheridan, Oregon, house our clients in tight quarters where group activities cannot be avoided. Conditions can be unsanitary and cleaning materials are not available without cost. Just as the elderly in long term care facilities require special protections from the spread of the coronavirus, so do our incarcerated clients. To help slow the spread of this virus and to ensure that incarcerated individuals receive the care they need, we have reached out to our federal partners with requests for action:

- Institute a daily briefing call with accurate information on the existence and spread of the coronavirus within each detention facility. At a minimum this requires information on the number of detainees with the flu; the number who have been tested for COVID-19; the number of positive tests; and the isolation and treatment methods in place;
- Provide free soap and disinfectants to all incarcerated people; increase laundry service;
- Quarantine any individuals with COVID-19 or suspected to have been in contact with someone with the virus.
- Decline to admit any new arrestee without first screening for fever and other symptoms of coronavirus

We also request that our federal partners take steps to decrease the number of people who enter or remain in the facilities by:

- Decreasing arrests on warrants for supervision violations and new indictment cases by making greater use of summonses and recalling any pending warrants that have not been served if a summons could be substituted;
- Delaying dates of voluntary surrender for prison sentences if requested by defense counsel;
- Lifting protective orders on discovery if the defense makes the request and the government cannot show a convincing need for the protective order, to allow discovery material to be sent into the jails instead of requiring lawyers or investigators to review discovery in person with people in custody;
- Requesting that the U.S. probation office review the housing options of anyone in halfway houses to see if home confinement would equally serve the needs of the defendant and the community;

- Requesting that the Bureau of Prisons reassess under 18 U.S.C. § 3621(b) every person with sixteen months or less remaining on a sentence to determine if service of that last year could be accomplished in community corrections and home confinement rather than in the correctional institution.

The attached memorandum sets out additional facts concerning the coronavirus and other suggested steps for consideration. We intend to revisit and update our plan as needed and welcome a collaborative approach to addressing this serious community issue.

COVID 19 - COOP EMERGENCY PLAN

TO: FPD Lisa Hay

FROM: William Teesdale, FPD Chief Investigator

DATED: March 11, 2020

SUMMARY

This report provides a factual summary of the current COVID 19 situation and some proposals, both general and specific regarding a coordinated court, court agency and executive branch response, based upon the district court Continuity of Operations Plan (COOP). The facts I use in this analysis derive from reputable sources such as the World Health Organization, Center For Disease Control, National Institutes of Health, BBC, or other collateral sources that have been demonstrably correct about how this outbreak is spreading faster than expected and the response from some areas of the federal government that has been slower than one would have hoped (test kits) or the messaging inconsistent. I am not going to include most citations to save time in preparing this memorandum and sending it out.

My analysis leads me to believe that some elements of our national government are continuing to underestimate the impact of COVID 19 and the impact it is going to have on the court community and everyone around us. I suggest that the federal court system needs to continue to show leadership during such times. In the content of the following memo, I present a summary of the available information which I believe is sufficient to declare at least a partial COOP now and I urge the Court to look at the present situation with that in mind.

The memo concludes with some general recommendations about steps the Court could take to institute immediate telework for all at-risk personnel (by age or medical condition) then moving to non-essential personnel, narrow the scope of court operations to emergency matters only (by video or phone) and other steps to protect institutions and court staff.

ORIGINS OF THE VIRUS

COVID 19 began spreading in Wuhan China in approximately December 2019 (possibly earlier), as a locally acquired novel coronavirus illness. It spread rapidly in local hospitals until a 31-year-old ophthalmologist (who later died from the virus) warned other health care providers about this new dangerous respiratory virus spreading amongst the population. The Chinese Communist Party (CCP), after first hiding and downplaying the seriousness of the situation, ramped up an authoritarian response involving mandatory quarantines of large segments of the affected areas, preventing almost all travel, as well as other measures. Recent reports suggest that this draconian response is effective in slowing and perhaps stopping its spread. There are also reports from South Korea, which has instituted a response based on widespread testing, social distancing, and technological measures that are also working.

VIRUS SPREAD OUTSIDE CHINA

In a period of 3 or 4 months, COVID 19 has spread to over 100 countries, with over 120,000 infections (under-counting many mild cases) and over 4,300 deaths. States of emergency have been declared in many of those countries. The situation in Italy is particularly informative since the information coming from a European country is likely to be trustworthy, they have a similar population to the United States, and are further along in infections and deaths, likely caused by the failure to restrict or test travelers coming from China. In Italy, there are currently over 10,000 cases and 631 deaths, with 168 deaths in the last day. Italy moved quickly to close schools, cancel events and a mandatory quarantine of Northern Italy which was then extended to the whole country. The hospital system in the North is overwhelmed with many patients dying without treatment and exhausted healthcare workers, many of whom are also becoming infected.

Other European are all seeing a surge in cases and are beginning to close borders and considering emergency measures. In Germany, Chancellor Angela Merkel warned that up to 70% of the German population, some 58 million people, could become infected (BBC 3/11/2020). The British Health Minister announced that she has tested positive for Coronavirus. In the U.K. there are 382 cases with 6 deaths but a shortage of critical care beds needed to care for those expected. The analysis from the National Health Service and British experts is that the UK is on the same trajectory as Italy in terms of virus spread, so will be looking at the same kinds of measures within 2-3 weeks.

The primary aim of trying to slow down the virus is not to contain it (experts say that battle has already been lost) but to slow down the spread (referred to as flattening the curve), thereby reducing the chance that the medical system is overwhelmed by critical patients who need limited ICU beds and ventilators. This is the exact situation occurring in Northern Italy. Our local hospitals and medical personnel are talking about and planning for this happening here. All steps must be taken locally to get ahead of the spread before it gets worse, to preserve medical resources for those who will become critically ill.

Here in the United States, there have been outbreaks in Washington, California, New York and many other states, including Oregon. States of Emergency have been declared in Washington, California, New York (which has called out the National Guard in one town) and many other locations. In Washington (currently 267 cases with 24 deaths), which has seen the worst impact so far, King County has asked its 2.2 million residents to stay home from work and shelter at home and the federal court has moved to stay all non-emergency matters. Amazon, Twitter, Microsoft, and many other tech company employers have asked all employees to work from home. The Department of Defense has ordered all military personnel to cease taking commercial airline flights. Governor Inslee is considering a broader quarantine, event cancellations, social distancing, and other measures.

In Oregon, we currently have 15 positive cases from 228 who have been tested with 67 tests pending (information from OHA website 3/11/2020). There are likely to be many more people who do not have symptoms or have mild symptoms but without much more widespread testing it is not possible to be certain. To some extent the lack of deaths in Oregon suggests the virus has

not yet spread as quickly here yet, allowing more time for an aggressive response before numbers start climbing as they have in Europe, although the lack of widespread testing in Oregon is a real concern.

MORTALITY RATE AND RELATED ISSUES

The mortality rate for this new virus is not known and is difficult to establish. Chinese researchers report that the mortality rate is 2.3%, but it is difficult to rely upon their data, even though they have the most cases and experience with the illness. Other recent reports out of Hong Kong indicate the mortality rate is 1.3%., which is information from a more reliable source but a smaller data set. The WHO reported their current view is that the mortality rate is 3.4% but that does not take into consideration mild cases that have not been reported. An expert interviewed on March 5 in the NYT indicated that his estimate of mortality is between .5% - 2%.

There is good information about the mortality rate of seasonal influenza, which is generally .1%. Applying that to COVID 19 it is between 5 and 34 times more lethal than the seasonal flu. There is information that two separate COVID 19 strains are circulating with one being more aggressive than the other.

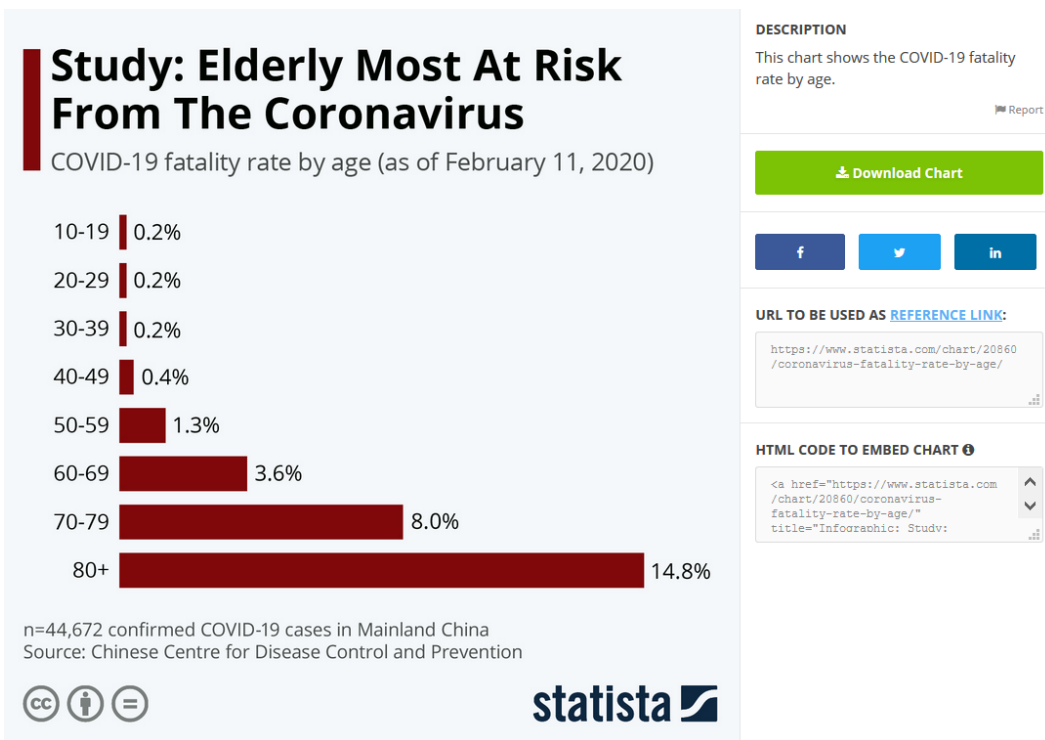
The information about how contagious a specific disease is by reference to an R-0 number or reproductive number, referring to the average number of people an infected person would spread the disease to. The higher the R number the more contagious the disease. WHO currently estimates the median for COVID 19 of 2.5 while other researchers have suggested a median of 2.79, meaning that each COVID 19 patient will infect a median of 2.79 other people. It should be noted that recent studies have shown the chance of a family member getting infected when there is a positive case in the household is about 10%. One can assume that this might be a similar rate for the virus spreading in the institutional setting.

It is very clear from the rapid spread from Asia to Europe and North America using the global travel network has allowed the virus to spread very quickly and that it is highly contagious.

MORTALITY RATE IN OLDER OR COMPROMISED PATIENTS OR INSTITUTIONAL SETTINGS

Current information from many sources establishes that age is a significant factor impacting mortality from this disease, which has led to many jurisdictions advising older or compromised (diabetes, heart disease, immune conditions, etc) people to isolate themselves from social contact.

The following chart summarizes how age is a very significant factor in patient outcomes but should not be viewed as the only factor. Institutional type settings allow for the easier spread of the disease amongst compromised populations (e.g. WA nursing home, cruise ships, and prison populations):



LACK OF TESTING AND RELATED ISSUES

Unfortunately, limited availability of testing has made it difficult to differentiate mild COVID 19 cases from other seasonal flu or cold infections. People who have mild cases or no symptoms at all are believed to be able to transmit the virus to others. Children below the age of 9 are either not vulnerable to the virus or do not get symptoms. It does not appear to be known whether they transmit it to others. These unusual factors make it extremely difficult to detect and stop all instances of the virus (unlike SARS which always involved fever). China has overcome this lack of detection through extreme quarantine measures, a massive decontamination effort, social control measures and other strategies that are not available in the United States except during wartime or a similar national security type event.

APPLICATIONS TO OREGON AND THE FEDERAL COURT

The federal court here in Oregon has a Continuity of Operations Plan (COOP) that provides general guidance for how operations should continue in an emergency, including the update this month to include a pandemic or infectious disease event (Appendix F and Section 6).

I suggest that the current general plan be reviewed and updated with additional guidance tailored towards the current situation on the West Coast in preparation for issuing a partial or full COOP notification immediately upon some triggering event (perhaps the first COVID 19 death in Portland). My view is that some of these steps should be taken now, before waiting for the situation to deteriorate. Some of these recommendations might fit within a tiered approach.

SUGGESTED EMERGENCY MEASURES

- **Over 60, or with underlying known medical risk factors (or in your household), move to immediate telework**
- **Non-essential personnel move to telework**
- **Each agency to cancel all non-essential travel. Any approved emergency travel would take place only with the approval of a Judge or agency head**
- **Each agency to create a hygiene plan for disinfection of all common spaces and all public spaces**
- **Each agency to require all sick (coughs and fevers) staff members to stay home until resolution of symptoms and are no longer contagious or a clear test result**
- **Stay or continue all civil and criminal cases except for emergency matters and to the extent consistent with constitutional rights**
- **Where emergency hearings have to be held they take place by phone or video**
- **Cease all in-custody transportation except for true emergency situations, as required to protect constitutional rights and authorized by a Judge or agency head**
- **Minimize or cease all institutional jail and prison movement to reduce risk of infections spread**
- **Immediate quarantine any suspected institution or area**
- **Suspend public access to the courthouse. Enable video or phone access to limited emergency court hearings**
- **Encourage Executive branch agencies to suspend new arrests except in case of potentially dangerous offenders**
- **Encourage all court and executive branch agencies, where possible, to undertake a collaborative approach to case-related decision making to slow the spread of the virus during the emergency**
- **Other steps as needed consistent with this approach**