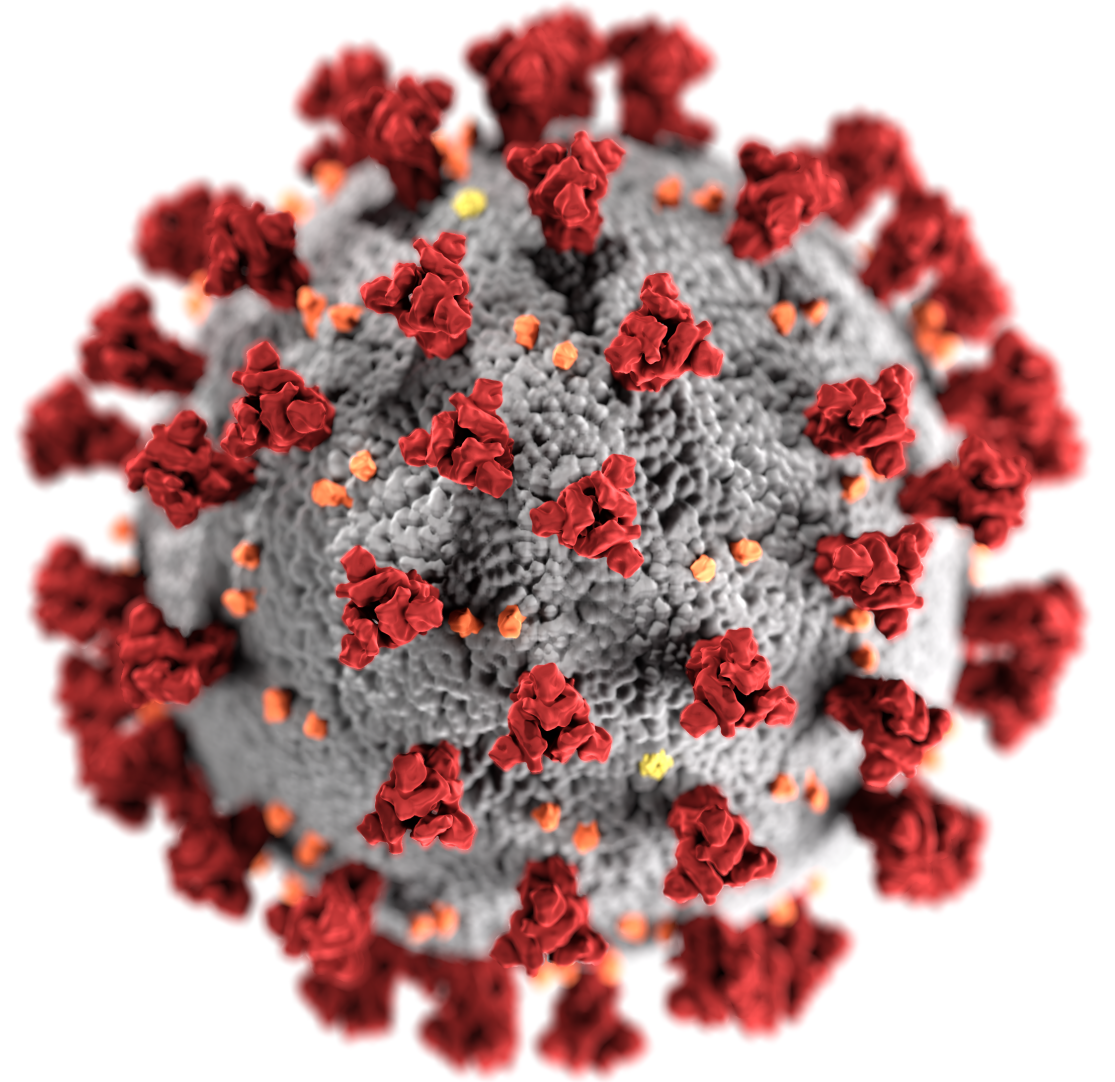


Law and Controlling Communicable Disease

Coronavirus Example

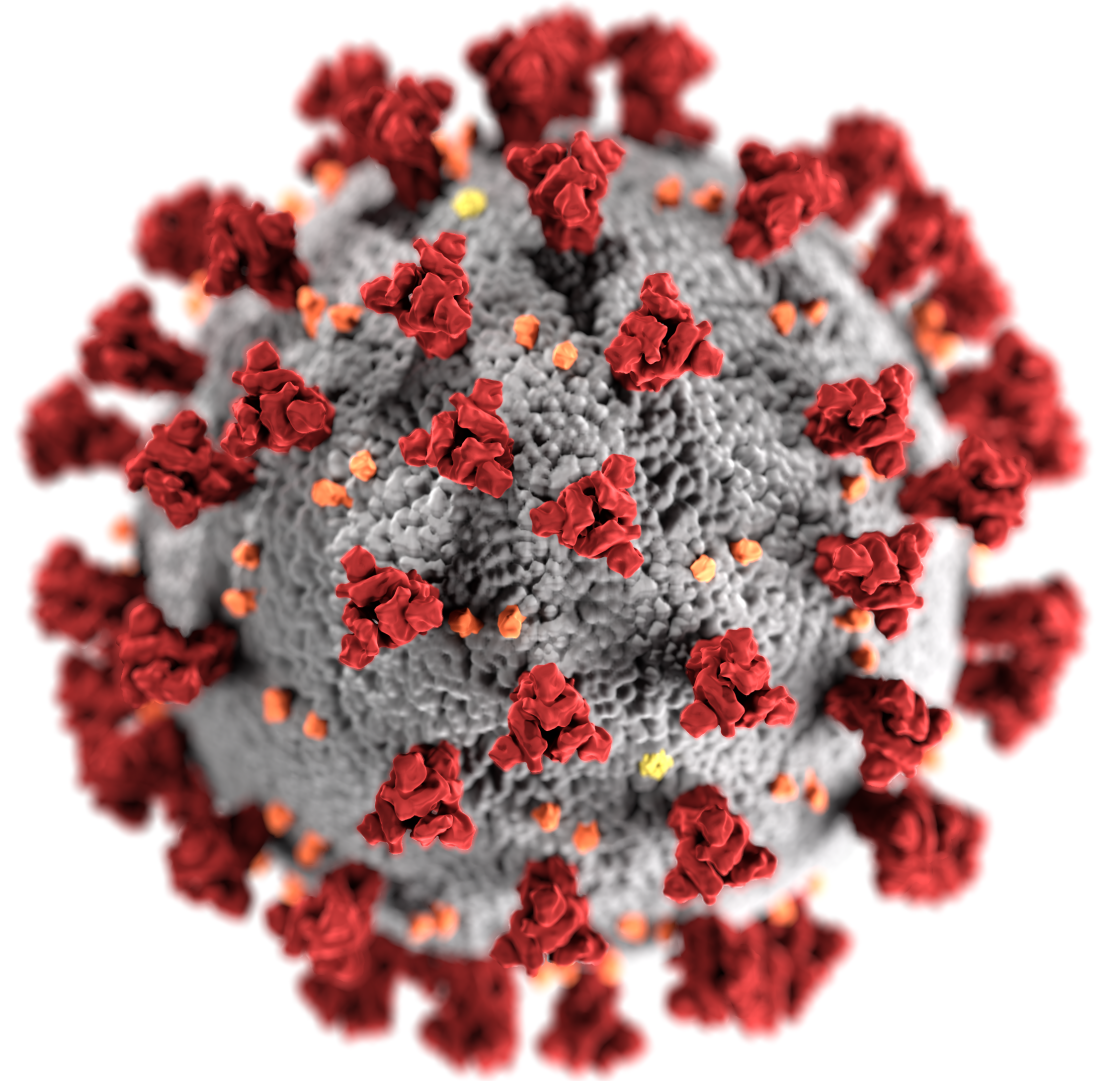
Coronavirus 101

- A large family of viruses that cause illnesses ranging from the common cold to more severe diseases during the 1960s
- Coronaviruses are surrounded by a fatty outer layer called an envelope and usually appear spherical (round shape)
- When observed under an electron microscope, a crown or “corona” of club-shaped pikes on the surface



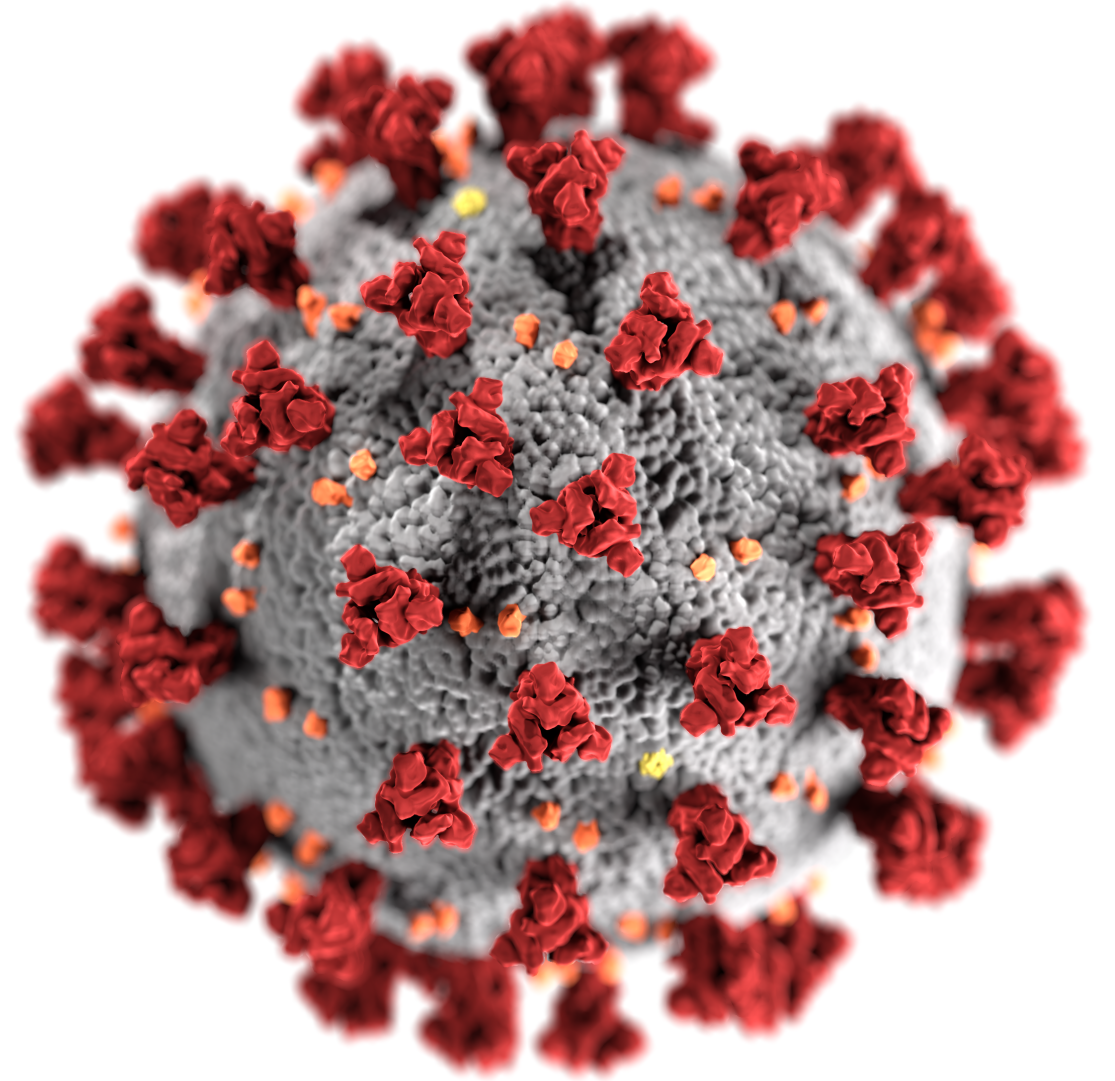
Coronavirus 101

- Usually cause mild illness, e.g., common cold; certain types can infect the lower airway, causing serious illness like pneumonia
- Not considered to be pathogenic to humans until the outbreak of Severe Acute Respiratory Syndrome (SARS-CoV) in 2002 and Middle East Respiratory Syndrome (MERS-CoV) in 2012
- Coronaviruses are zoonotic – transmitted between animals and humans
 - SARS – bats to civet cats to humans
 - MERS – bats to Arabian camels to humans



Coronavirus and COVID-19

- A novel coronavirus, SARS-CoV-2, is a new strain that has not been previously found in humans and causing illness, now called COVID-19
- COVID-19 believed to start in a “wet market” in Wuhan, China; wet market sold both dead and live animals, including fish and birds
- Animal source for COVID-19 not yet identified but thought to be bats; bats infected chickens and other live animals sold



Transmission

- Transmissible person-to-person with potential infectivity rate exceeding annual influenza.
- Asymptomatic persons may infect others.
- Reproductive number [R_0] estimated at 2.2.

Symptoms

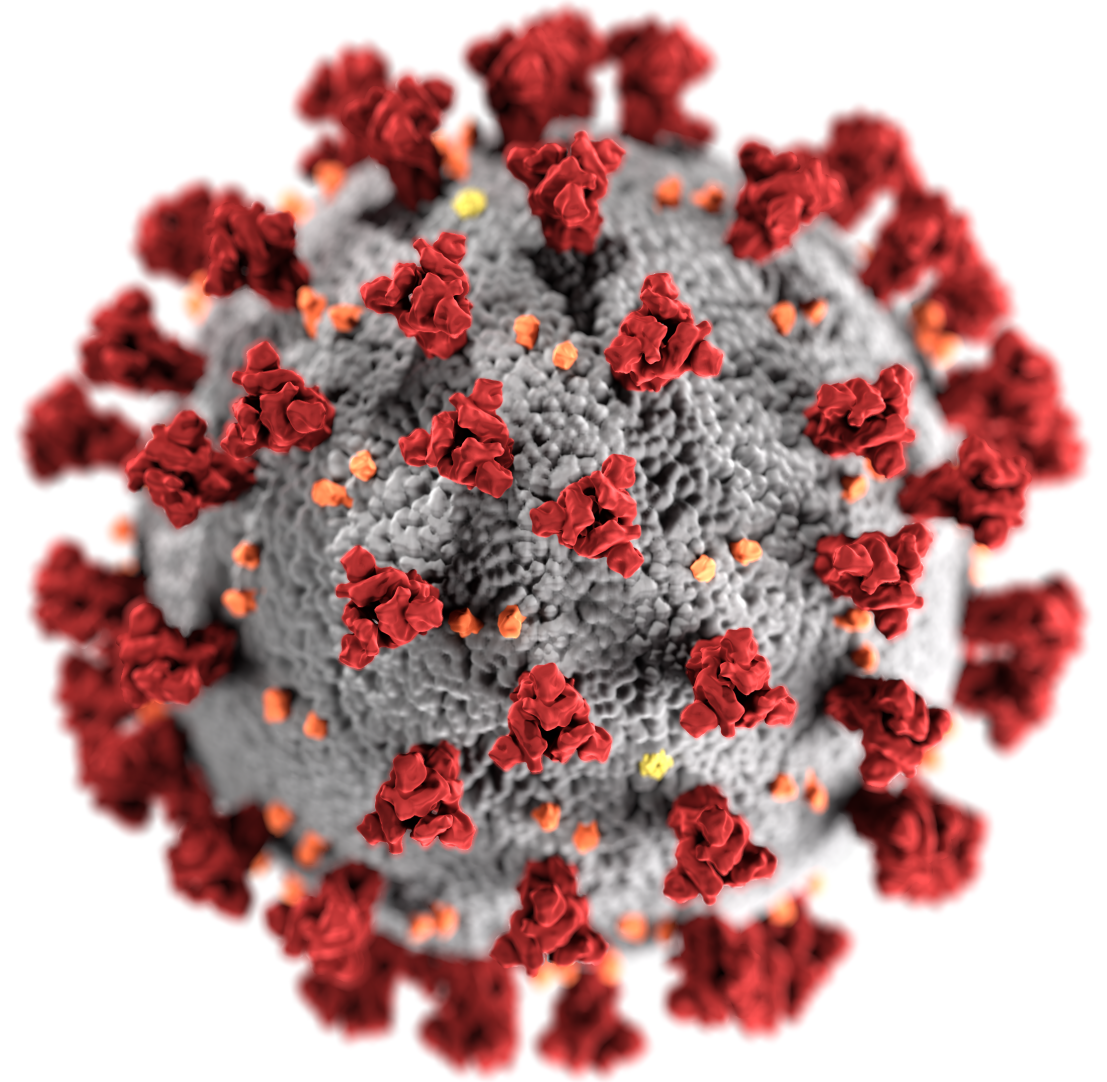
- Respiratory symptoms, fever, cough, breathing difficulties, aches, pains.
- In severe cases (~20%), infection can cause pneumonia, respiratory issues, kidney failure and death.

Vaccines & Treatment

- No vaccines or proven treatments are available.

COVID-19

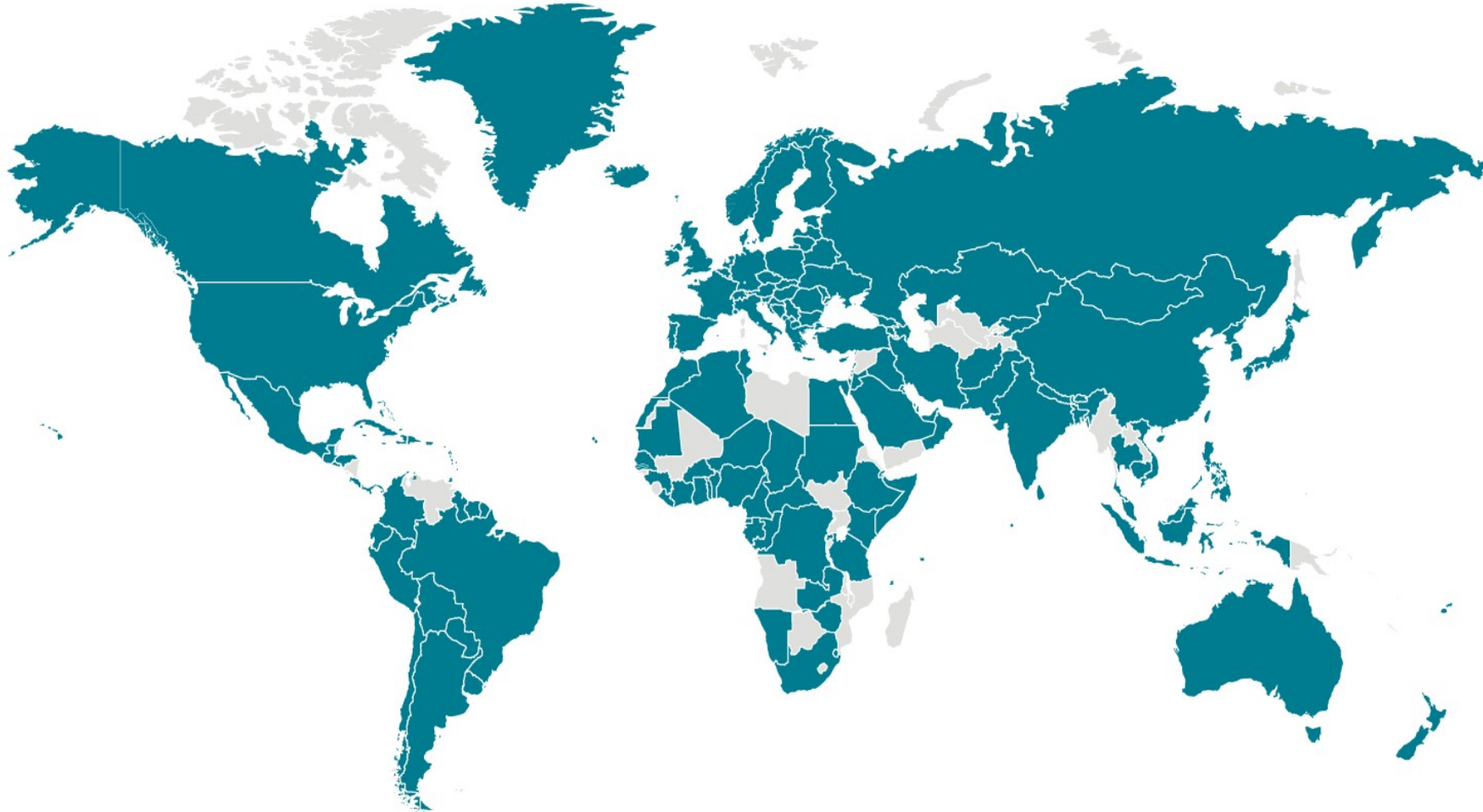
- Rapid spread of COVID-19 driven by the phenomenon of “superspreading”
 - Heighten transmission of the disease to at least 8 contacts
 - Delay in recognizing the disease and implementing effective control measures
 - Global spread through commercial air travel
 - Ineffective airport screening
 - Inflight transmission of virus



COVID-19 Global Distribution (as of March 31st)

Total Confirmed Deaths >: 35,100 = Mortality Rate 4.7%

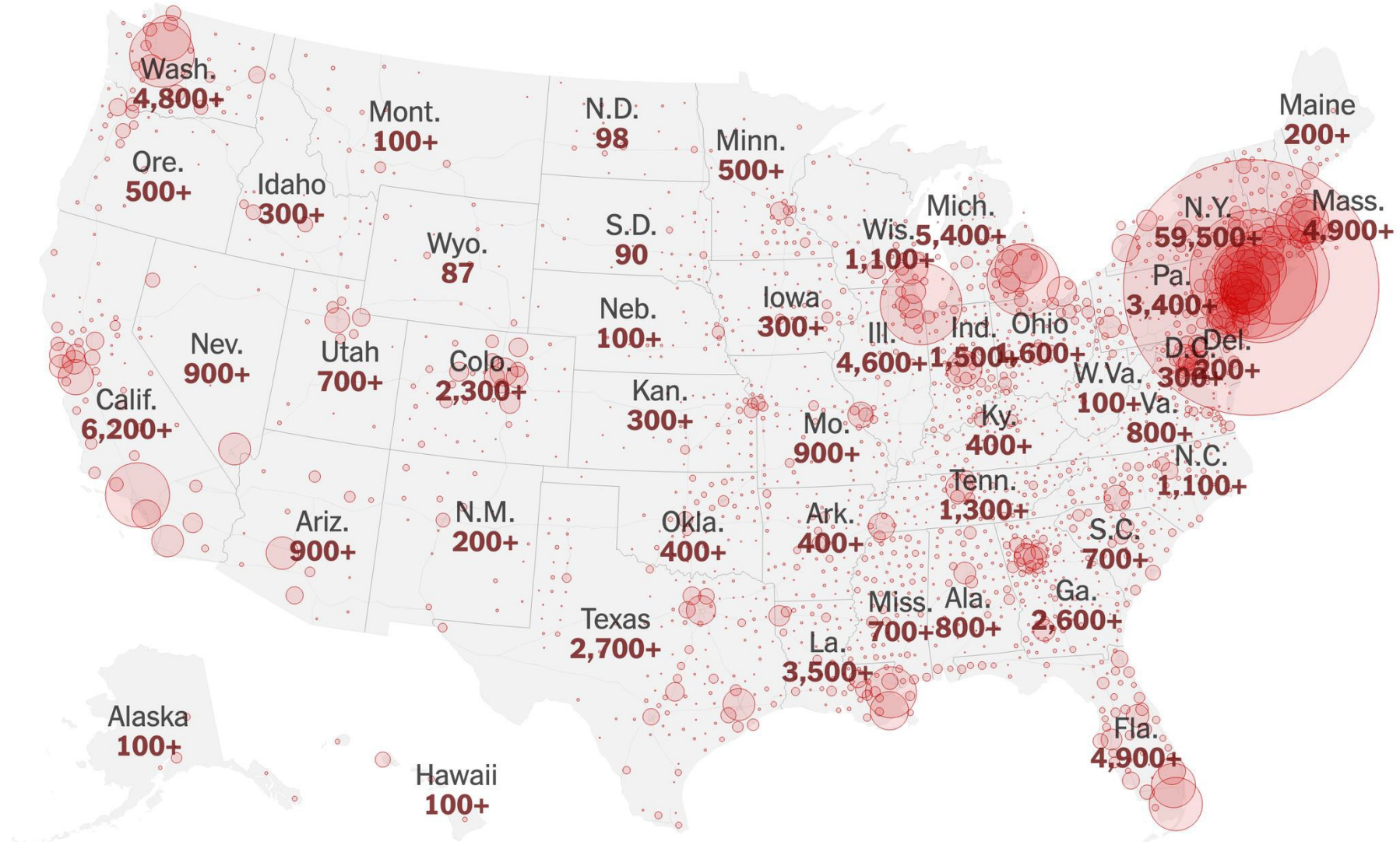
Total Confirmed Cases: > 740,150



US Cases of COVID-19 as of March 31st

Total Confirmed Cases > **143,525**

Total Deaths > **2,490**



Source: [NYT](#)

COVID-19 in NYS (as of March 31st)

Total number of cases – 75,795

Total number of deaths – 1550

NYC Total number of cases – 41,771

NYC Total number of deaths – 1096

Emerging Legal Issues



Law and Controlling Communicable Diseases: Role of Public Health

- Global history of public health practice is intrinsically tied to the prevention and control of communicable diseases
 - Curbing the threat of illnesses between and among individuals has been a constant governmental objective
 - Controlling the spread of communicable diseases remains a focal point for federal, state, and local public health agencies
- Key to effective prevention and control of communicable diseases is the law

Multi-level Emergencies

**Public health authorities, powers,
liabilities & immunities vary depending
on the type of emergency declared at
each level of government**

International	WHO Public Health Emergency of Int'l Concern	Emergency Declarations by Foreign Governments
Federal	Stafford Act or National Emergencies Act	HHS Public Health Emergency
State/Tribal	Emergency or Disaster	Public Health Emergency
Local	Emergency or Disaster	Public Health Emergency

WHO Emergency Declaration

Jan. 30: WHO declares a public health emergency of international concern (PHEIC).



Mar. 11: WHO formally classifies COVID-19 as a pandemic

US Federal Laws Invoked to Address Coronavirus

- HHS Public Health Emergency Act
- National Emergencies Act
- Stafford Act Emergency
- Defense Production Act

HHS Public Health Emergency Act

(invoked January 27th)

Allows state, tribal, and local health departments to reassign personnel to respond to COVID-19 if the personnel's salaries are normally are funded or in part by Public Health Service Act programs

- Public Health Service Act provides legal authority to Department of Health and Human Services to respond to public health emergencies
- Personnel could assist with public health information campaigns and other response activities



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National Emergencies Act (invoked on March 13th)

President Trump declared the COVID-19 pandemic an emergency



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Stafford Emergency Act (invoked March 13th)

- Government's main mechanism for responding to major disasters and emergencies
 - Frees up funding and other resources so the federal government can supplement state and local efforts and capabilities to save lives and to protect property, public health, and safety
 - Direct funding to address COVID-19



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Defense Production Act (invoked March 30th)

President delegates his powers to prioritize contracts and allocate resources to HHS Secretary

- HHS Secretary can direct industries to produce needed medical equipment and supplies (e.g., ventilators, masks, gloves, gowns, other supplies)
- HHS Secretary allocates health resources



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Select Congressional Responses



3/27

Congress passes the **CARES Act**, the largest economic stimulus package in history

3/14

Families First Coronavirus Response Act provides paid sick/quarantine time & other benefits

3/4

Congress passes \$8 bill fund for Emergency COVID-19 response

3/4

House introduces "Coronavirus Preparedness and Response Supplemental Appropriations Act"

2/13

Senators urge HHS to establish guidelines for how state & local governments are reimbursed for expenses

Mar. 18: Families First Coronavirus Response Act:

- Requires private health plans to provide no cost coverage for COVID-19 diagnostic tests
- Temporarily > federal portion of Medicaid
- Releases \$ millions in assistance to domestic nutrition assistance programs (e.g., SNAP, WIC)
- Requires certain employers to provide employees 14 days of paid sick leave
- Releases an additional \$1 billion in FY2020 emergency grants for unemployment insurance benefits

COVID-19 Stimulus Bill: Key Public Health Elements



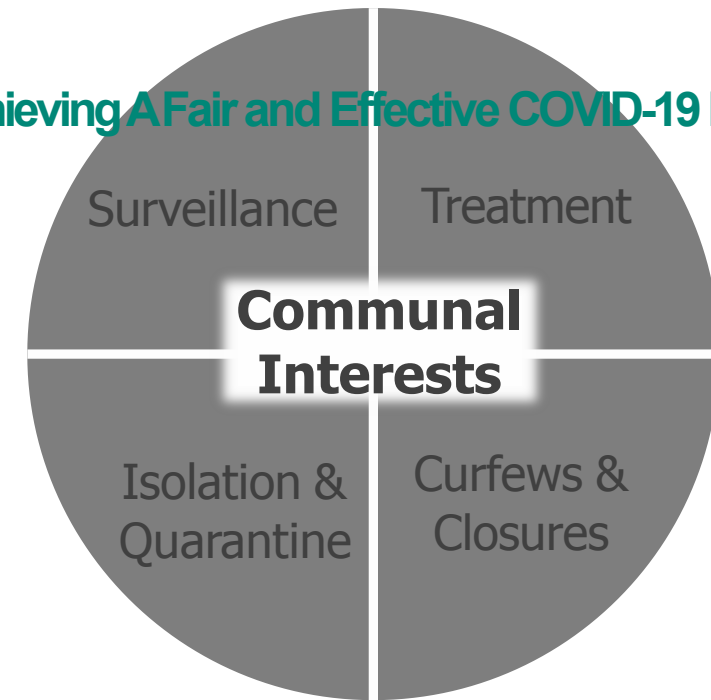
Mar. 27: Congress approves \$2.2 trillion relief bill (largest stimulus package in history):

- Hundreds of billions \$ in emergency funding
- Requires group health plans & insurance providers to cover testing, vaccines, and preventative services related to COVID-19 without cost sharing
- Establishes a Ready Reserve Corps to ensure deployable workers are available for COVID-19 response
- Provides explicit federal & state liability protections for volunteer HCWs assisting COVID-19 patients in good faith
- Authorizes disclosure of PHI to covered entities upon the one-time written consent of patient

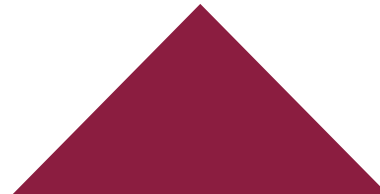
Balancing Individual & Communal Interests



Achieving A Fair and Effective COVID-19 Response



Emergency Preparedness and Response



Constitutionality of Selected, Potential COVID Emergency Responses

Constitutional	Unconstitutional
Quarantine of individuals or groups suspected or known to be exposed to COVID	“Cordon sanitaire” or lockdown of groups or communities within or outside “hot zones”
Isolation of individuals who are known to be infected with COVID	Separation of persons based on mere suspicion of COVID infection without real-time confirmation
Travel recommendations to avoid specific U.S. jurisdictions based on known risks of infection	State or local travel bans or border closures that directly inhibit ingress or egress of U.S. citizens
Real-time medical triage decisions based on government recommendations grounded in epidemiologic and medical science	Real-time medical triage decisions based on specious grounds (e.g., race, ethnicity, religious affiliation, ability to pay)
Limited waivers of federal, state, or local statutory or regulatory laws impeding effective public health responses	Complete waiver of constitutionally-required due process, equal protection, or other rights
Reasonable testing or screening measures designed to mitigate exposure of others to COVID	Forced invasive testing of autonomous adults without a warrant based on probable cause
Accurate, real-time sharing of identifiable patient health information between medical & public health authorities for surveillance purposes	Mass publication of identifiable patient health information absent compelling circumstances
Government acquisition of critical resources or property from private entities sector with	Government “taking” of private sector property or resources without “just compensation.”

Public Health Law and Controlling Communicable Diseases

- Voluntary, Mandatory, and Compulsory Powers
 - Voluntary – public health measures that rely on the participation of individuals or groups acting on their own volition
 - Mandatory – public health interventions that no longer seek the voluntary actions of individuals
 - Sets conditions on participation to encourage or require individuals or groups to protect the public's health to avoid penalties or loss of privilege
 - Compulsory – individual choice is not an option; individuals must participate or change behaviors regardless of consent

Public Health Law and Controlling Communicable Diseases

- Testing and Screening

Public health authority to test and screen for communicable diseases are authorized generally or specific condition is based upon laws and regulations in all states and localities

- Testing – diagnostic tests (or procedures) are used to ascertain the presence of absence of a particular disease or condition
- Screening – involves the application of specific tests or procedures to ascertain the presence of a disease or condition within groups or populations

COVID-19

Effective screening requires:

- Trace contacts
- Assess and test suspected cases
- Isolate infected individuals until the risk of disease transmission is eliminated

Issues to consider regarding screening and testing:

- Where
- Availability
- Allocation
- Costs
- Reimbursements
- Options – voluntary, mandatory, compelled



The Washington Post

March 21: “Health officials in [NY, CA] and other hard-hit parts of the country are restricting coronavirus testing to health care workers and people who are hospitalized, *saying the battle to contain the virus is lost and we are moving into a new phase of the pandemic response.*”

www.medpagetoday.com/infectiousdisease/covid19/85138

Personal and Community Control Measures

- Monitoring: public health response to monitor disease outbreaks
 - Public health department or designee contacting exposed individuals by phone or in person at least daily to determine whether the exposed individual has developed symptoms of disease

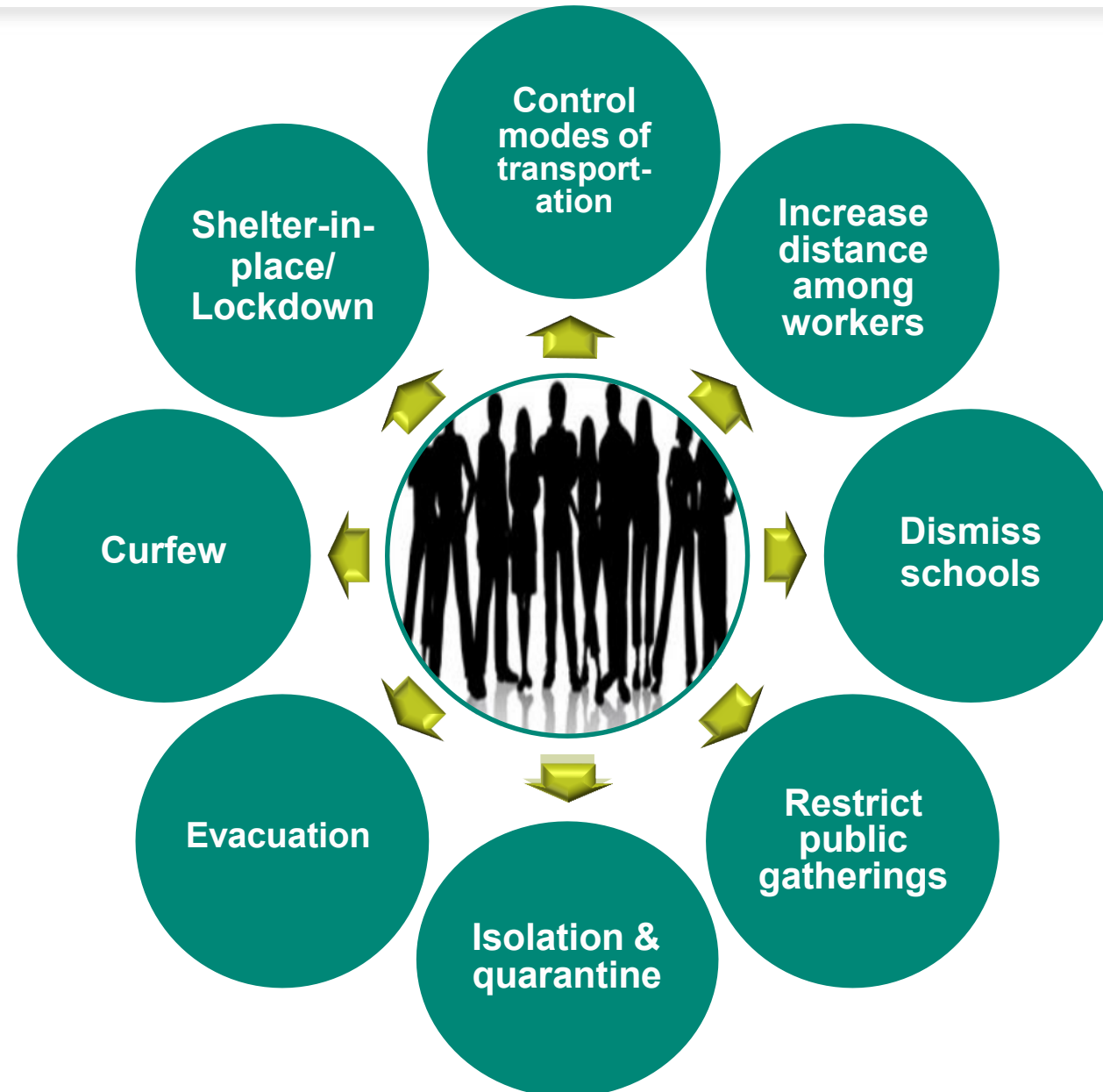
Control Measures

- Monitoring activities
 - Identify individuals that have been exposed
 - Active or Passive
 - Passive: notifying exposed individuals or populations and asking them to assess themselves and to notify if symptoms develop; relying on the individual to report, failure to comply can harm community due to increase risk of exposure
 - » Low risk exposure situation
 - Active: requires public health staff to contact exposed individuals on a regular basis to ascertain if the individual is developing symptoms; public health staff need to have contingency plan to deal with individuals who fail to comply
 - » Moderate to high risk situation
 - » More expensive than passive monitoring but reduces the risk of disease transmission to the broader community

Public Health Law and Controlling Communicable Diseases

- Public health professional practice has the power to control communicable diseases through social distance
 - Quarantine
 - Isolation
 - Curfew
 - Closure
- Social distancing is not meant to be punitive per se; designed to solely to limit the spread of airborne or other easily transmitted conditions through infected or exposed individuals

Social Distancing Measures

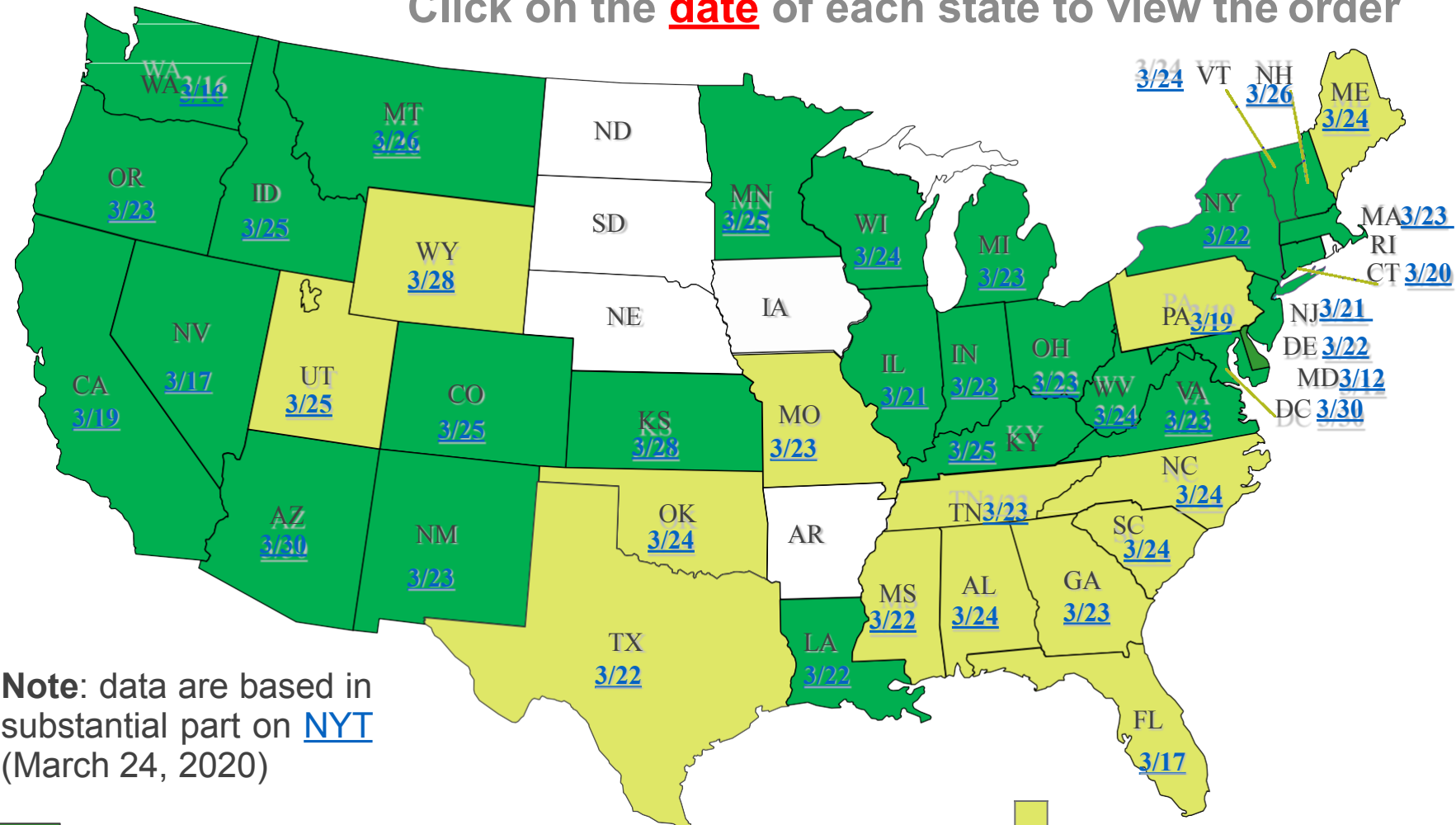


Social Distancing Measures

- Foreign Travel Restrictions/Ban
- States imposing quarantine for domestic travelers
- “Shelter in Place” Orders
 - State and local orders seek to limit travel and out-of-residence activities to minimal levels to control disease spread

State Shelter-In-Place & Stay Home Orders

Click on the [date](#) of each state to view the order



Note: data are based in substantial part on [NYT](#) (March 24, 2020)

-  Shelter-in-Place or Stay Home Orders – **29 states**
-  Shelter-in-Place or Stay Home Orders – **16 partial states**

 AK – Alaska [3/22](#)
 HI – Hawaii [3/23](#)
 PR – (Puerto Rico)
 VI – (U.S. Virgin Islands)

Control Measures

- Quarantine: public health action that involves separating and restricting movement or activities of individuals monitored
 - Reduce disease transmission by separating exposed persons from others, limiting movements, monitoring symptoms, instituting appropriate infection control precautions
- Voluntary vs Mandatory Quarantine

Quarantine & Isolation

Quarantine

Separation from others of people exposed to a contagious condition prior to knowing if they may be ill or contagious



Isolation

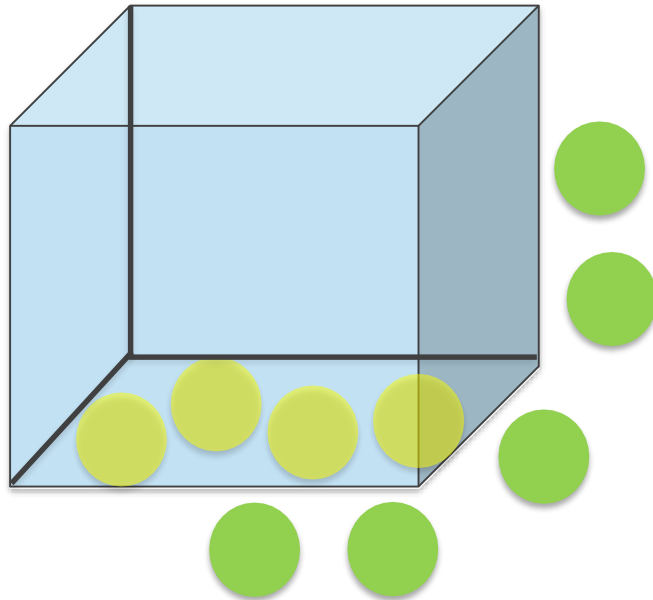
Separation from others of people who are known to be infected, or capable of infecting others, with a contagious condition



**NYS statutes and regulations governing quarantine are
NYS Public Health Law Sections 2100 and 2120**

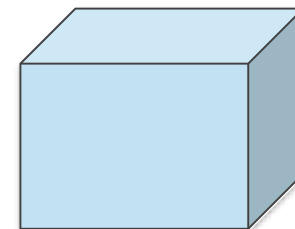
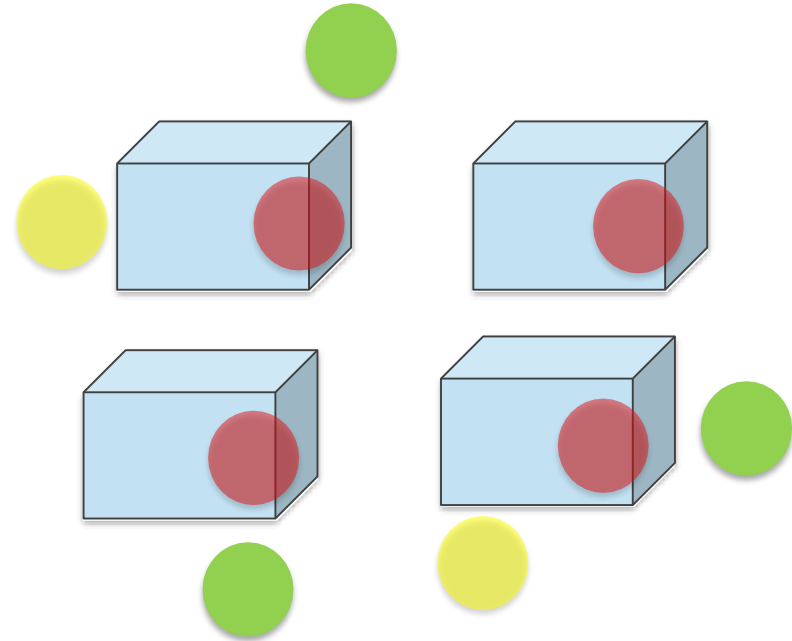
Quarantine & Isolation - Illustrated

Quarantine



-  Known, infected individual
-  Individual exposed to contagious disease
-  Healthy individual

Isolation



Place of isolation
or quarantine

Control Measures

Home, Facility and Working Quarantines

- Home: least intrusive; requires those quarantined to monitor symptoms; individuals might be able to travel to work or school
- Facility: Use of specific quarantine facilities to those who do not have a home environment conducive to protecting others
- Working: For exposed individuals who work in essential occupations; when not working, individuals are in quarantine; when working, wear protective equipment

Public Health Law and Controlling Communicable Diseases

- Application and enforcement of social distancing can be highly controversial in large part because of their effects on constitutional rights
 - Freedom of movement
 - Assembly
 - Bodily integrity
 - Privacy
- Possible infringements on civil liberties among individuals and groups can lead to legal and ethical challenges

Control Measures

Burdens and Risks of Quarantine

- Infringes some personal values and create potential harms for quarantined individuals and community
 - Quarantined individuals face restrictions on personal freedom and mobility; feelings of isolation
 - Loss of income/employment
 - Need to provide support for individuals in quarantine
 - Issues of stigmatization for those quarantined

Mar. 21: PA Governor Tom Wolfe rescinded in part his order for all “non-life-sustaining” businesses to close:

- Considerable disdain re: economic impacts
- Legal challenges via a law firm and gun store
- New guidance excepting timber industry, coal mining, hotels, accountants, laundromats & some law firms
- Allows “robust waiver process” for businesses seeking exemption



Public Health Law and Controlling Communicable Diseases

What may be legally authorized in creating social distances between individuals does not comport with what is practiced in the field of public health

- Federal and state authorities may have authority to apprehend and isolate individuals susceptible of carrying a highly infectious disease but in practice, they may defer to ethical principles supporting voluntary compliance of individuals



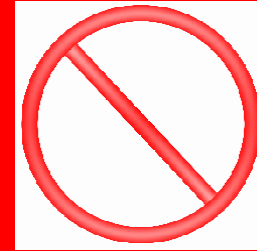
**Voluntary
Measures**



**Encourage
Compliance**



**Court
Orders to
Enforce
Health
Official's
Order**



Penalties