

# Explaining a mass quarantine: What does it mean to ‘shelter in place’? And who has the power to call for it?



In six counties in and around San Francisco, the government has already called for residents to “shelter in place.” *JUSTIN SULLIVAN/GETTY IMAGES*

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WASHINGTON — Six counties in the San Francisco metro area made headlines when they announced Monday they were ordering all their residents to “shelter in place” in response to the novel coronavirus.

The sweeping proclamation is the most striking example to date of state and local governments in the United States taking sweeping action to halt the spread of the novel coronavirus and to limit the impact of the disease it causes, Covid-19. While the Bay Area is the first region in the U.S. to issue such an order, a number of states have mandated school and business closures and vastly curtailed nearly all major events.

Stricter lockdowns could follow in other states and localities. The federal government, too, is at least considering the idea. The Trump administration on Monday stopped short of any new requirements or restrictions but nonetheless urged all Americans not to travel and to limit gatherings to fewer than 10 people.

Asked whether he’d impose domestic travel restrictions on Monday, President Trump said they are “certainly something that we talk about every day. We haven’t made that decision.”

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San Francisco’s order follows similar “lockdowns” in China and Italy, where the outbreaks began earlier and have so far been more severe. In San Francisco, at least, there are important exceptions: Residents will still be permitted to travel to buy food, see a doctor, and help care for family. Visitors to the region will be permitted to go home, too. Residents can even take part in outdoor activities, like walking or hiking, so long as they keep at least 6 feet of distance between themselves and others.

STAT took a closer look at what these policies are, what they do for the spread of disease, who has the power to issue them, and whether experts consider them constitutional or ethical.

# What's happening in the U.S. right now?

## Are we under a quarantine?

Officially, the definition of “quarantine” is very specific: It’s the seclusion of a person potentially exposed to a disease for a period of time to see if they become infected. A person under quarantine typically stays in one place to avoid nearly all contact with the outside world. When such a quarantine is ordered by the government, it’s illegal to violate them: Breaking a federal quarantine is punishable by a fine or imprisonment, according to the Centers for Disease Control and Prevention. An individual found violating a federal quarantine order could face a fine of up to \$100,000, a year in jail, or both, according to a report from the Congressional Research Service.

Many states also have their own punishments for violating quarantine, though they vary widely.

But many people talk about “quarantines” more broadly — referring to the city-wide lockdowns that force people to stay in their homes and cut off all travel to and from an impacted area. Legal experts often call this strategy of locking down an entire region “cordon sanitaire” — a term that dates back roughly 200 years when a French duke deployed troops along the Spanish border to contain the spread of infectious disease.

The correct term for what is going on in many places in America is social distancing — though the six counties in San Francisco test the limits of that term.

In most places right now, social distancing is suggested or recommended — Trump administration officials, for example, urged people across the country not to attend gatherings of more than 10 people. Other localities have looser recommendations: The governor of Utah, for example, has recommended banning gatherings of more than 100 people.

In some places, social distancing is mandatory. Massachusetts Gov. Charlie Baker banned gatherings of more than 25 people and forced restaurants to close to diners. (They can still serve takeout.) It’s not immediately clear what penalties anyone violating the order would face.

The governors of Connecticut, New York, and New Jersey announced on Monday

they were limiting gatherings to 50 people and also mandated restaurants close, except for takeout. Laws governing quarantine in these three states are also vague on potential penalties, or even whether the same penalties would apply in these cases. Connecticut's law states that anyone found violating a quarantine order can be fined up to \$1,000 or imprisoned for up to a year. New Jersey's law is comically antiquated: It says anyone found violating a quarantine order "shall be liable to a penalty of not less than ten nor more than one hundred dollars for each offense."

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### **Why encourage social distancing? Why do a lockdown?**

Social distancing is seen as the most effective way to slow the infection rate for Covid-19 here in the United States. Public health experts have emphasized that efforts to flatten the curve — or to spread the rate of new infections out over time — will help ensure that America's health care system is not rapidly overwhelmed with new Covid-19 infections.

Public health officials, however, are much less sure about the impact of a lockdown. Lockdowns by other countries, namely China, were quickly panned by public health experts as ineffective and unethical. Since those early days, however, top public health officials, including the head of the World Health Organization, have praised that same lockdown for helping to slow the spread of the disease.

Other public health experts insist, however, that lockdowns push people toward evasion, and that social distancing measures only work when governments have the public's trust.

“Our historical experience with mandatory quarantines and mass quarantines and cordons is just not good, it’s not effective,” said Crystal Watson, a senior scholar at the Center for Health Security at Johns Hopkins University, before the news of the Bay Area lockdown. “I do not see the need for it.”

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## **What does lockdown look like in Italy and in China?**

Other countries, like Italy and China, have mandated widespread lockdowns of whole cities, which not only prevent citizens from attending public gatherings, but also keep citizens from leaving the city, and even their homes.

China was the first country to implement such a lockdown in response to the novel coronavirus.

On Jan. 22, Chinese officials announced they were locking down the city of Wuhan, then the center of the coronavirus outbreak. All residents of Wuhan were ordered to stay in their homes and all transit within and out of the city was shut down. Within hours, photos emerged, showing a city of more than 11 million virtually deserted.

Restrictions only increased from there: Residents of Wuhan now are subject to temperature checks by police and forced isolation of sick residents in the region’s makeshift hospitals.

It’s not immediately clear what punishments those who violate the quarantine order face, although a top government official has been quoted saying anyone caught hiding their disease will be “forever nailed to history’s pillar of shame.” There have also been press reports of arrests.

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Italy first announced a lockdown of “hot zones” in the country’s north on March 8. Under the decree, all businesses, with the exception of grocery stores and pharmacies, were ordered closed. Residents of the cities were banned from travel within and out of the city without a permit, though there have been press reports that permits are widely available online. Violation of the order is punishable by up to three months in jail, according to the New York Times.

The travel restrictions appeared to be the most jarring for Italians: The news prompted swarms of Italians to flee on the last trains and buses leaving the region.

The country’s prime minister, Giuseppe Conte, extended that lockdown order to the entire country last week. Nearly all businesses across the country are now shuttered and nearly all travel outside one’s home must be justified.

Beginning midday today, France will also be on a widespread lockdown for the next 15 days. France’s President Emmanuel Macron, who announced the restrictions late Monday, only said that violators of the order will be punished.

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## **Could that happen in the U.S.? If so,**

# would local, state, or federal officials issue the decision?

America's system of responding to public health emergencies is notoriously fragmented, and decisions on whether to implement social distancing or quarantine measures are split between federal, state and roughly 2,800 local public health departments.

There's hardly any standardization: 27% of states delegate this power solely to state authorities, 18% of states provide some power to local governments, and the remaining 55% delegate the powers to some combination of both, according to a recent study in the *Journal of Public Health Management and Practice*.

There are a few exceptions, however. When travelers come in from abroad, the decision for an individual quarantine rests solely with the federal government. There's also debate among legal scholars as to whether the federal government has the power to step in and overrule state and local governments' quarantine decisions if need be.

Already there's been calls for the federal government to do just that.

"The variation from one location to another could ... make an epidemic worse as each state makes its own rules, looks out for its own interests, and relies on its own resources," wrote Polly Price, a professor of law and global health at Emory University in a recent op-ed, where she called for the CDC to step in and set a national quarantine policy.

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# Is what the U.S. is doing constitutional?

Mandatory social distancing measures are constitutional, according to multiple constitutional scholars STAT spoke to. But large-scale lockdown policies may not be, they said. But U.S. courts are not used to dealing with these sorts of cases, and no one truly knows how a judge might rule.

“The good news [is] there are a number of cases on public health needs, the constitution, and the so-called state ‘police power.’ The bad news is they are quite old, mostly turn of the 20th century, and a huge amount of constitutional law has changed since then. As a result, there is a lot that is vague and uncertain in this area,” said Glenn Cohen, the faculty director of the Petrie-Flom Center for Health Law Policy, Biotechnology & Bioethics at Harvard Law School.

Lawrence Gostin, the faculty director of Georgetown University’s O’Neill Institute for National and Global Health Law, argued that America’s complicated federalist system might be the best check on any attempt to institute a mass quarantine or lockdown.

Neither federal nor state governments have clear authority, he argued, to restrict travel between states, thus making it difficult to justify any sort of domestic travel restriction in court.

Cohen predicted that in most cases the government would be required to show any quarantine order advances a “compelling government interest” and then prove that the government action was narrowly tailored to meet that goal. That’s where orders might get caught up in court: If quarantines or lockdowns are seen by judges as unnecessarily broad, they could be struck down.

So far, constitutional experts aren’t all together concerned, however, with most of the social distancing measures being rolled out in the U.S. In fact, the issues raised by social distancing aren’t as novel as they may seem.

“Health departments have broad powers to close facilities that pose a danger like a food source or restaurant that’s contaminated or unsanitary conditions. Same principle applies,” wrote Gostin in an email before the Bay Area announcement.

The Bay Area announcement, however, is already raising alarm bells for legal scholars.



“I think the [San Francisco] order will be challenged in court,” Gostin wrote in an email following the announcement. “I also don’t see how it will be possible to enforce such a sweeping order.”

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