



SOCIAL DISTANCING LAW PROJECT

Public Health Legal Authority in the Absence of Declared Emergency

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Authority of MDPH

- Define which diseases are dangerous. (G.L. c. 111, s. 6)
- Create rules/regulations for the control/prevention of such diseases. (G.L. c. 111, s. 6)
- Has co-ordinate powers with LBOHs of every town in cases of infectious disease. (G.L. c. 111, s. 7)
- **Implement and enforce isolation and quarantine requirements.**
 - (Regulations: 105 CMR 300.200)
- Implicit authority to issue health orders



Authority of LPHAs

- Local Public Health Authorities (boards of health, public health commissions, health departments):
 - **May make reasonable health regulations (G.L. c. 111, s. 31)**
 - **Example: Boston's isolation/quarantine regulation**
 - **Shall use all possible care to prevent the spread of infection of a dangerous disease in their town, and may give notice of infected places. (G.L. c. 111, s. 104)**
 - **Shall implement and enforce isolation and quarantine regulations (105 CMR 300.200)**
 - **Have implicit authority to issue health orders**
 - **Orders can & should be enforced by local or state police**



Specific LPHA I/Q Authority (MDPH has co-authority)

- G.L. c. 111, s. 95: If a dangerous disease breaks out, the LPHA may “cause any sick or infected person to be removed to [a] hospital . . .”
- G.L. c. 111, s. 96: A warrant may be issued to any police officer, “requiring him . . . to remove any person infected with a disease dangerous to the public health . . .”
- G.L. c. 111, s. 97: LPHA is authorized to cause a sick or infected person to be removed to a hospital where, in its opinion, the patient cannot properly be isolated at home.



How it would work in practice

- LPHA and/or MDPH would request person/group to voluntarily isolate or quarantine self
- If non-compliance, written order would be issued



Written Order to Isolate or Quarantine Individuals

- Where?
 - In home, if home is available and individual is willing to stay
 - If homeless or unwilling, in facility designated by MDPH/LPHA
 - Enforcement by state/local police
- Due process protection
 - In home – appeal by telephone to named public health official
 - In facility – MDPH/LPHA must get court order authorizing isolation or quarantine ASAP



If person fails to comply with written order

- Order may allow police to remove person to facility with court hearing to follow, *or* DPH/LPHA will attempt to get court order first
 - Will depend on the nature of the risk (science)
- DPH/LPHA file complaint in Superior Court ASAP with request for:
 - Preliminary injunction
 - Warrant to police to forcibly isolate or quarantine



Tuberculosis is different

- Separate laws apply: M.G.L. c. 111, §§ 94A – 94H
- Patient can be involuntarily hospitalized if certain conditions exist
- BoH notifies DPH Commissioner; Commissioner may order patient to TB treatment center for 15-day observation
- Court action takes place in *District* Court



Training Programs

- “The Legal Nuts and Bolts of Isolation and Quarantine”
 - Created by MDPH and AGO
 - Contains templates for legal papers based on hypothetical case of SARS (LPHA order, court complaint, affidavits, motion for preliminary injunction, sample court orders, etc.)
 - These legal materials are being posted on HHAN
 - Has been presented many times to local health officials and public safety
 - Materials provided to Superior Court judges
 - Can find schedule on www.masslocalinstitute.org



Training Programs

- “Infectious Diseases & Emergencies Training For Public Safety”
 - Created by MDPH and State Police
 - Has section on isolation & quarantine
 - Continues to be presented to law enforcement audiences throughout state



Community Caretaking Function of the Police

- Premise: Police do not have to sit idly by if immediate action is needed to prevent serious harm to people or property.
- Developed through case law at state and federal levels



Law Enforcement vs. Community Caretaking Function

- **Law Enforcement:**
Primary purpose is to detect and gather evidence of criminal activity
- Limited by 4th Amendment prohibitions on unreasonable searches and seizures
- **Community Caretaking:**
Primary purpose to render immediate action to prevent serious harm to people or property
- Not limited by 4th Amendment



Community Caretaking: 4 Requirements

- Reasonable grounds to believe emergency exists
- Immediate action
- Actions totally separate from investigation of crime (Law enforcement function)
- Actions narrowly tailored to alleviate emergency



Powers under Community Caretaking Function (Examples)

- Non-consensual warrantless entries into premises during emergencies
- Detain
- Seize property
- Isolate - infected
- Quarantine - exposed
- Mandate evacuation of or close buildings



Curfew

- Various curfew mechanisms
 - Municipalities may impose curfew to protect public safety when riot or civil disorder occurs or there is danger of it (G.L. c. 40, s. 37A)
 - Formal proclamation; takes effect 2 hours later



Curfew

- Local curfew by regulation of LPHA under G.L. c. 111, s. 31
 - Open Meeting Law requires 48 hours notice unless emergency (“sudden, generally unexpected occurrence”)
- Local curfew by ordinance or bylaw of city council or town meeting
 - City council: OML issue as above
 - Town meeting requires advance notice



Curfew

- Possible LPHA order under nuisance statute (G.L. c. 111, s. 122)
 - Health agent can act for the board or department in issuing an order (G.L. c. 111, s. 30)
- Possible changes?
 - Amend c. 40, s. 37A to include public health danger in reasons for curfew
 - Local ordinance authorizing municipality's executive officer to enact public health curfew in collaboration with LPHA



Mutual aid: state level

- Declared emergencies: EMAC (Emergency Management Assistance Compact)
 - All states are members
 - Aid is sent upon request: material resources and personnel (“officers or employees of party state”)



Mutual aid: state level

- Non-declared emergencies
 - NESPAC: aid from other New England state police depts. in law enforcement emergency
 - IEMAC: aid from other New England states or eastern Canadian provinces when affected jurisdiction asks for assistance
 - Congressional consent not yet obtained



Mutual aid: local level - emergency or non-emergency

- Local public health agencies: contract under G.L. c. 40, s. 4A
 - DPH and others developed template agreement – adopted by some municipalities and authorized by many more
- Police mutual aid: G.L. c. 40, s. 8G and c. 41, s. 99