



PENNSYLVANIA
PUBLIC HEALTH LAW
BENCH BOOK

DEVELOPED BY
THE ADMINISTRATIVE OFFICE
OF PENNSYLVANIA COURTS
AND THE
UNIVERSITY OF PITTSBURGH
GRADUATE SCHOOL OF PUBLIC HEALTH
CENTER FOR PUBLIC HEALTH PREPAREDNESS

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Introduction and Acknowledgments

In an age when political unrest, global travel and emerging biological threats can combine to create social, political and economic havoc worldwide, Pennsylvania's court system may be required to address unprecedented challenges.

For a number of reasons, those challenges will be particularly difficult – Pennsylvania's public health law is a patchwork of statutes and state and local regulations that predate contemporary Constitutional due process standards; defining federal and state jurisdictional boundaries in a public health context can be problematic; Pennsylvania public health case law dates primarily to the late 19th and early 20th centuries; the liberty restrictions on individual citizens which arise in a public health context are civil in nature and unfamiliar to judges more comfortable in dealing with such issues in a criminal context; and, finally, in the public health arena traditional individualized, deliberative judicial process may result in delay that, literally, becomes a matter of life and death.

Recognizing these complexities, the Administrative Office of Pennsylvania Courts developed this bench book to provide Pennsylvania judges with the critical information they will need to have when they are presented with public health cases. In collaboration with the University of Pittsburgh's Graduate School of Public Health Center for Public Health Preparedness, the AOPC convened researchers, writers, and a board of editors who have worked for the past year on this project. Given the nature of the threats that confront us, it is important to note this is ongoing work. It will be expanded, updated, and corrected as time, circumstances, and changes in the law require.

This bench book is divided into three sections.

- **Section One** contains a set of public health law Bench Guides which provide concise responses to the key questions that will arise when specific public health issues come before the court.
- **Section Two** is analysis and background information on some of the legal issues the court may be called on to consider.
- **Section Three** provides a glossary of public health related terminology, model orders and a table of cases. In the bench book CD format, all material is hyperlinked to original sources.

Principal writing and research of this bench book was performed by Darren M. Breslin, Esq. and Owen J. Kelly, Esq., AOPC staff attorneys, and Elizabeth Ferrell Schmidt, Esq. and Patricia M. Sweeney, JD, MPH, RN of the University of Pittsburgh Center for Public Health Preparedness.

The editorial board consisted of Judge Mark I. Bernstein of Philadelphia County, Judge John A. Bozza of Erie County, President Judge John M. Cleland of McKean County, Grace R. Schuyler, Esq., Office of Legal Counsel, Pennsylvania Department of Health, and Zygmunt A. Pines, Esq., Pennsylvania State Court Administrator.

Special appreciation is extended to Daniel Stier, Esq. and the Centers for Disease Control and Prevention Public Health Law Program, Caroline S. Cooper of American University, Doctors Caroline C. Johnson and Esther D. Chernak of the Philadelphia Department of Public Health, AOPC Assistant Court Administrator Andrea Tuominen, AOPC legal intern Joseph DiGuglielmo, UPCPHP legal intern Caleb Wallace, and especially to Judge Linda L. Chezem, retired Judge of the Indiana Court of Appeals, and who is a pioneer in the work of alerting judges to the challenges presented by public health law and teaching judges what they need to know to perform their critical functions in a democratic society.

This bench book is intended to be a practical and useful resource. While it was written for Pennsylvania judges, we have drawn on the work being done in other states to address problems and issues that are national, even international, in scope. We hope our work will contribute to the collective and ongoing effort of judges around the country who are committed to preserving the rule of law in the face of unprecedented challenges.

Please direct any suggestions, comments and corrections to paphl@pacourts.us.

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The Pennsylvania Public Health Law Benchbook was written for Pennsylvania judges. It is not intended to provide or constitute legal advice.

Pennsylvania Public Health Law Bench Book

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SECTION 1.00 BENCH GUIDE

SECTION 1.10

Involuntary Medical Examination for Communicable Disease

The Disease Prevention and Control Law Of 1955¹

Summary

Public health authorities² may petition the court to compel a medical examination for the presence of a communicable disease if an individual is reasonably suspected of being infected with a communicable disease, or of being a carrier, and has refused a public health order to undergo an examination. 35 P.S. § 521.7(2); 28 Pa. Code § 27.82.³

A. Under What Circumstances May The Court Order An Individual To Submit To A Medical Examination?

The Disease Prevention and Control Law of 1955 (“DPCL”) provides that the court may order an individual to submit to a medical examination to determine whether the individual is infected with a communicable disease, or is a carrier thereof, when:

1. The person named in the petition is suspected of being infected with, or a carrier of, a communicable disease, as evidenced by a sworn statement by a duly licensed Pennsylvania physician; and
2. The person has refused to be examined when ordered to do so by a public health authority and had no valid reason for refusing.⁴

35 P.S. § 521.7(2).⁵

¹ The purpose of the Disease Prevention and Control Law of 1955 is “to assign primary responsibility for the prevention and control of diseases to local health departments, and to institute a system of mandatory reporting, examination, diagnosis, and treatment of communicable diseases.” *Commonwealth v. Moore*, 526 Pa. 152, 159, 584 A.2d 936, 940 (Pa. 1991).

² For purposes of the Pennsylvania Public Health Law Bench Book, “public health authority” includes The Pennsylvania Department of Health, all County/Municipal health departments (the health departments authorized by The Local Health Administration Law (Act 315- 16 P.S. § 12001 *et seq.*) and all local health authorities (the 237 local boards or departments of health that operate outside of the Local Health Administration Law structure and funding).

³ See also *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) (compulsory smallpox vaccination); *Reynolds v. McNichols*, 488 F.2d 1378 (10th Cir. 1973) (compulsory treatment for venereal disease); *City of New York v. Antoinette R.*, 630 N.Y.S.2d 1008 (N.Y. Sup. Ct. 1995) (compulsory treatment for tuberculosis).

⁴ Refusal to comply with a public health authority’s order to undergo a medical examination is not an explicit prerequisite in the statute, but it is implied. 35 P.S. § 521.7(1)-(2). In determining whether the respondent had a valid reason for refusing the examination, the court may consider religious objections, but these objections may not be controlling in a communicable disease situation. See *Prince v. Massachusetts*, 321 U.S. 158, 166-67 (1944) (“[t]he right to practice religion freely does not include the liberty to expose the community . . . to communicable disease”).

⁵ Authority to conduct medical evaluations may also appear in local regulations or ordinances. See e.g. Philadelphia Code § 6-203.

B. What Is The Procedure For Issuing A Court Order For An Involuntary Medical Examination?

1. Filing of a Petition

A petition to compel a medical examination may be brought by The Pennsylvania Department of Health, a County/Municipal health department or a local health authority (collectively referred to as “public health authorities”). 35 P.S. §§ 521.3, 521.5; 28 Pa. Code § 27.82.

The respondent will be the person suspected of being infected with, or a carrier of, a communicable disease. The DPCL does not mention multiple respondents in a single action.

Pursuant to the DPCL, petitions to compel a medical examination must have appended thereto “a statement, under oath, by a physician duly licensed to practice in the Commonwealth, that [the respondent] is suspected of being infected with . . . a communicable disease, or that such person is suspected of being a carrier.” 35 P.S. § 521.7(2). The statute also provides that this statement “shall be received in evidence and shall constitute prima facie evidence that the person therein named is suspected of being infected with . . . a communicable disease [or is a carrier].”

 **Note:** If the public health authority is not The Pennsylvania Department of Health or a County/Municipal health department, the authority must receive approval from The Pennsylvania Department of Health before taking any disease control measure. 28 Pa. Code §§ 27.1, 27.60(c).

2. Jurisdiction

By statute, the court of common pleas of the county where an individual is present has jurisdiction to adjudicate involuntary medical examination petitions. 35 P.S. § 521.7(2); 28 Pa. Code § 27.82(b).

3. Venue

The DPCL does not address venue, other than what is stated in the preceding section on jurisdiction, accordingly the general rules governing venue apply. Pa. R. Civ. P. 1006.

4. Service and Notice

Neither the statute nor its accompanying regulations address service,⁶ nor do they specify what form notice must take, other than requiring that the respondent be served with a copy of the petition seeking to compel a medical examination. 35 P.S. § 521.7(2). The general rules governing service and notice apply,⁷ and both should be provided to the respondent consistent with petition

⁶ “Service of process is a mechanism by which a court obtains jurisdiction of a defendant, and therefore, the rules concerning service of process must be strictly followed . . . Thus, improper service is not merely a procedural defect that can be ignored.” (internal citations omitted). *Mayer v. Garman*, ___ Pa. __; ___A.2d. __; 2006 WL 2252067, citing *Cintas Corp. v. Lee’s Cleaning Services, Inc.*, 549 Pa. 84, 91, 700 A.2d 915 (Pa. 1997). See also *Fraisar v. Gillis*, 892 A.2d 74, 77-78 (Pa. Commw. 2006) (discussing process service rules).

⁷ Under the DPCL a hearing must be held on the petition within 24 hours of service. 35 P.S. § 521.7(2). Accordingly, expedited service may be appropriate, especially if there is a request to isolate or detain the respondent pending the hearing. Additionally, the Court may consider alternative means of service given the allegation that the respondent may be infected with, or a carrier of, a highly contagious communicable disease. The legislature contemplated this in the Counterterrorism Planning, Preparedness and Response Act (“Counterterrorism Act”), 35 P.S. § 2140.301(b)(3)(notice may be oral or written). For alternative service, Pa. R. Civ. P. 430. With the notice, it is suggested the respondent be advised of the right to counsel. See § B 5 b. *infra*.

practice under Pa. R. Civ. P. 206 and local rule.⁸ If the respondent is incapacitated or an unemancipated minor, that person's parents or legal guardian are generally entitled to notice.

5. Hearings

A non-jury trial is required to be held within 24 hours after service on the respondent. 35 P.S. § 521.7(2).

a. Burden and Standard of Proof

There is no Pennsylvania law on this point. The burden of proof would be on the public health authority as the entity seeking the examination.

Pennsylvania law is not clear as to the standard of proof required for court ordered involuntary medical examinations. However, possession and control of one's body is the most highly protected privacy interest.⁹

Arguably, the standard is as minimal as "reasonable suspicion" to believe the respondent is infected with, or a carrier of, a communicable disease.¹⁰

Furthermore, persuasive authority from other jurisdictions and legal scholars suggest the ADA is applicable to governmental orders compelling liberty restrictions resulting from public health orders. "The ADA and its regulations require that a health officer seeking to infringe upon a diseased person's liberty by imposing detention, confinement, isolation or quarantine,

 **Note:** If the petitioner is not The Pennsylvania Department of Health or a County/Municipal health department, a copy of the petition and any hearing notices and court orders should be served upon The Pennsylvania Department of Health since that entity has the ultimate authority to protect the health of the citizens of Pennsylvania. 35 P.S. § 521.3(c); 71 P.S. § 532(a).

⁸ See Pa. R. Civ. P. 440 for service of process under Rule 206.

⁹ "No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person . . ." *In re Fiori*, 543 Pa. 592, 600-01, 673 A.2d 905 (Pa. 1996), quoting *Union Pacific Railway Co. v. Botsford*, 141 U.S. 250, 251 (1891). See also *Schmerber v. California*, 384 U.S. 757, 769-70 (1966) ("The interests in human dignity and privacy which the Fourth Amendment protects forbid [intrusion into the body] on the mere chance that desired evidence might be obtained").

¹⁰ This section of the DPCL requires a sworn statement by a licensed Pennsylvania physician asserting that the respondent is "suspected" of being infected with a communicable disease. 35 P.S. § 521.7(2). Accordingly, the standard of proof is arguably at least "reasonable suspicion." Cf. *Commonwealth v. Ickes*, 582 Pa. 561, 873 A.2d 698 (Pa. 2005) (reasonable suspicion required before game officer may conduct an investigatory detention). The court may find a higher standard of proof is required in certain cases if the proposed examination entails a significant restraint on the respondent's liberty. See e.g. *City of Newark v. J.S.*, 652 A.2d 265, 271-72 (N.J. Super. 1993) (standard of proof required for involuntary commitment of tuberculosis patient). Accord *In re Hancock*, 719 A.2d 1053, 1056-58 (Pa. Super. 1998) ("Clear and convincing evidence" required for involuntary civil commitment under the Pennsylvania Mental Health Procedures Act). Other cases the court may wish to consider when deciding the appropriate standard of proof include: *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 616-20 (1989) (standard applicable to drug and alcohol testing of railroad employees); *In Interest of F.B.*, 658 A.2d 1378, (Pa. Super. 1995), *aff'd* 555 Pa. 661, 726 A.2d 361 (Pa. 1999) (administrative searches may be reasonable absent individualized suspicion "when the intrusion involved in the search is no greater than necessary to satisfy the governmental interest justifying the search, i.e., courts balance the degree of intrusion against the need for the search"); *Commonwealth v. Johnston*, 515 Pa. 454, 530 A.2d 74 (Pa. 1987) (balancing of interests test to determine "reasonableness" under Article I, § 8); *Theodore v. Delaware Valley Sch. Dist.*, 761 A.2d 652, 656-58 (Pa. Commw. 2000) (discussing level of proof required when drug and alcohol testing school students). Compare with Pa. R. Crim. P. 203 (suspicion must be supported by "probable cause" for the issuance of warrants in the criminal context).

must first establish, by clear and convincing evidence, that the person poses a significant risk of transmitting disease to others with serious consequences.”¹¹

b. Right to Counsel

The DPCL does not address the right to counsel or appointed counsel. However, due process and case law from other jurisdictions suggest respondents are entitled to be represented by counsel and appointing counsel for the indigent may be necessary.

Due process may require the appointment of counsel for the indigent if the respondent may be deprived of a fundamental right, such as liberty.¹³ Whether due process would require the appointment of counsel for an indigent respondent in a particular case may depend on the type of medical examination sought and the existence and duration of any restraints on the respondent's freedom or degree of privacy intrusion.

In determining whether appointed counsel is necessary, the court may wish to balance the presumption that there is no absolute right to appointed counsel unless the litigant may lose his or her liberty¹⁴ against: (1) The private interest at stake; (2) the government interest at stake; and (3) the likelihood of an erroneous decision.¹⁵

c. Conduct of the Hearing

1. Hearings would be conducted according to the Rules of Civil Procedure. The Rules do not address taking testimony by telephone or advanced communication technology. However, in a public health case where the respondent is alleged to have a potentially dangerous communicable disease, or may already be in isolation or quarantine, the court may wish to conduct hearings with the aid of a telephone or by using other communication technology (such as two-way simultaneous audio-visual communication).¹⁶ This method of conducting

 **Note:** Involuntary medical examinations may implicate both searches and seizures, and when compelled by the state, are governed by the Fourth Amendment to the U.S. Constitution and Article I, § 8 of the Pennsylvania Constitution.¹²

The standard of proof may depend on the nature of the medical examination sought, the duration of the restraints on the respondent's freedom and the public health interests sought to be protected.

¹¹ See e.g., *City of Newark*, 652 A.2d at 274. See also, Lawrence O. Gostin, *The Law and the Public's Health: A Study of Infectious Disease Law in the United States*, 99 Colum. L. Rev. 59 (Jan. 1999).

¹² See *Skinner*, 489 U.S. at 616 (collection and analysis of biological samples deemed Fourth Amendment searches); *Theodore*, 761 A.2d at 656-58.

¹³ The due process clause of the Fourteenth Amendment requires the appointment of counsel when an individual may be deprived of his or her physical liberty as a result of the proceeding. *Lassiter v. Department of Social Services*, 452 U.S. 18, 26-27 (1981) (holding that there is a presumption that “an indigent litigant has a right to appointed counsel only when, if he loses, he may be deprived of his physical liberty”).

¹⁴ See *Lassiter*, 452 U. S. at 26-27.

¹⁵ See *Mathews v. Eldridge*, 424 U.S. 319 (1976) (setting forth the three factors a court should weigh in determining if appointed counsel is required in a civil proceeding); *Commonwealth v. \$9,847.00 United States Currency*, 704 A.2d 612, 615 (Pa. 1997) (finding no right to appointed counsel in a civil forfeiture proceeding).

¹⁶ Many courthouses, magisterial district judge offices, state and county prisons and health care facilities have simultaneous audio-visual communication equipment.

hearings is contemplated by the Counterterrorism Act. 35 P.S. § 2140.301(b)(3). See *City of Newark v. J.S.*, 652 A.2d 265, 268 n.1 (N.J. Super. 1993).¹⁷

2. The DPCL does not dictate that hearings be held on the record, but persuasive authority from other jurisdictions suggests hearings should be on the record.¹⁸

C. What Remedies Are Available To The Court?

If the court finds that the public health authority had reasonable grounds to suspect the respondent of being infected with, or a carrier of, a communicable disease, and the respondent refused to submit to a medical examination without a valid reason for doing so, it shall order a physical examination that shall include physical and laboratory tests performed in a laboratory approved by the Secretary and shall be conducted in accordance with acceptable professional practices. The court-ordered examination may be conducted by a physician of the respondent's choice at his or her own expense. 35 P.S. § 521.7(2).

If the individual refuses to comply with the court ordered examination, the court may order the individual committed to an institution, as discussed in § D.1, below.

In addition, to enforce court orders, common pleas court judges may issue preliminary/special or permanent injunctions. Pa. R. Civ. P. 1531.¹⁹

D. What Enforcement Mechanisms Are Available To The Court?

1. Statutory sanctions

If the respondent refuses to undergo the court ordered medical examination, he or she may be committed by the court to an institution within the Commonwealth that has been determined by the Secretary to be suitable for the care of the particular disease the respondent is suspected of being infected with or carrying. 35 P.S. § 521.7(2).²⁰

2. Prosecution

In addition, any person who violates any provision of the DPCL, or any regulation issued by the State Advisory Board or ordinances, rules or regulations issued by a public health authority (including The Pennsylvania Department of Health, any County/Municipal department of health or local health

¹⁷ *Accord* 42 Pa. C.S. § 5985 (child victims or material witnesses may testify through the use of closed circuit television in certain circumstances).

¹⁸ See e.g. *Greene v. Edwards*, 263 S.E.2d 661, 663 (W. Va. 1980). Cf. 50 P.S. § 7304(e)(5) ("On the record" hearings are required in involuntary treatment petitions under Section 304 of the Mental Health Procedures Act).

¹⁹ Injunctive relief may be appropriate in the public health context. See e.g. *Commonwealth ex rel. Preate v. Danny's New Adam and Eve Bookstore*, 625 A.2d 119 (Pa. Commw. 1993) (preliminary injunction issued because of ongoing threat to public harm).

²⁰ Although not explicitly stated in the statute, court ordered commitment for refusal to undergo a medical examination would be in quarantine, conceivably lasting until it is determined the individual is not infected with a communicable disease or in a communicable state. Compare with 35 P.S. § 521.7(1). This commitment would presumably be in addition to other enforcement mechanisms discussed in this section.

authority),²¹ commits a summary offense, punishable by a fine of not less than twenty-five dollars (\$25.00), nor more than three hundred dollars (\$300.00), plus costs. 35 P.S. § 521.20(a). In default of payment, the offender may be sentenced to county jail for thirty (30) days. *Id.* Prosecutions may be initiated by The Pennsylvania Department of Health, a County/Municipal health department or a local health authority, or by any person having knowledge of a violation of any provision of the DPCL or its accompanying regulations. 35 P.S. § 521.20(b).²²

3. Contempt

Violation of a court order, such as an order of quarantine, and violation of an injunction, may expose the violator to contempt. The court possesses the inherent authority to enforce court orders by way of the power of contempt. *See generally, Commonwealth v. Bowden*, 576 Pa. 151, 184-86, 838 A.2d 740 (Pa. 2003).

E. Who Is Responsible For Costs?

Regarding the cost of the medical examination, the DPCL states that the respondent must pay the expenses related to having the physician of his or her choice conduct an examination. 35 P.S. § 521.7(2).

Presumably, the governmental authority seeking the examination must pay expenses related to the examination if the respondent does not choose the physician or facility.²³

F. When Is Informed Consent A Consideration?

Typically physicians must provide patients with sufficient information to determine whether or not to proceed with the proposed surgical or operative procedure. 40 P.S. § 1303.504 (MCARE Act - Informed Consent); *Montgomery v. Bazaz-Sehgal*, 568 Pa. 574, 583-84, 798 A.2d 742 (Pa. 2002). Informed consent may not be required for non-surgical procedures, *see* MCARE Act at §504(a)(1-5); *Montgomery*, 568 Pa. at 584, or when treatment is mandated by court order.²⁴ No cases have been found on this point.

²¹ The DPCL defines local health authority as the board of health or the department of public health of a city, borough, incorporated town or township of the first class, or a county department of health, or joint county department of health. 35 P.S. § 521.2.

²² In addition, under the Local Health Administration Law, 16 P.S. § 12001 - 12028, any person who violates this law, or any rule or regulation of the County/Municipal health departments or who interferes with a health director or any agent of a County/Municipal health department in the discharge of official duties, convicted of a second or subsequent offense, commits a misdemeanor, and upon conviction, may be fined not less than five hundred dollars (\$500.00), nor more than one thousand dollars (\$1,000.00), imprisoned for up to one year, or both. 16 P. S. § 12027(b). Also, separate penalty provisions exist for communicable tuberculosis. 35 P.S. § 521.19(a).

²³ *See e.g. Commonwealth v. Irwin*, 1904 WL 2601 (CCP Venango, 1904) and *Zellner v. Allentown*, 18 C.C. 162; 1896 WL 3663 (Lehigh County C.C.P. 1896) (the governmental unit ordering isolation or quarantine has a duty to furnish food and other necessities during the period of quarantine if the individuals so restricted cannot afford these items themselves).

²⁴ Although no cases have been found on point, legal commentators suggest protection of the public's health and statutory authorization to compel treatment (and examinations antecedent to treatment) for communicable diseases in laws similar to the DPCL may outweigh privacy and informed consent restrictions. Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint* (Berkeley: University of California Press & Milbank Memorial Fund)(2000).

SECTION 1.00 BENCH GUIDE

SECTION 1.20

Involuntary Treatment for Communicable Disease

The Disease Prevention and Control Law Of 1955¹

Summary

Public health authorities² may petition the court to compel treatment for a communicable disease if an individual has a communicable disease in a communicable stage and has refused a public health order to receive treatment.

While individuals in Pennsylvania have a right to refuse medical treatment, that right may be outweighed when an individual with a communicable disease poses a significant risk to the health of others and there are no lesser restrictive means of protecting the public's health.³ In these limited circumstances, the Commonwealth may compel an individual to submit to involuntary treatment for the disease. 35 P.S. § 521.11(a.2); 28 Pa. Code § 27.87.⁴

A. Under What Circumstances May The Court Order An Individual To Submit To Treatment For A Communicable Disease?

The Disease Prevention and Control Law of 1955 ("DPCL"), 35 P.S. § 521.11(a.2), provides that a court may order the "safekeeping and treatment" of an individual when:

1. The person named in the petition is infected with or a carrier of a communicable disease; and
2. The person has refused treatment and had no valid reason for refusing.⁵

¹ The purpose of the Disease Prevention and Control Law of 1955 is "to assign primary responsibility for the prevention and control of diseases to local health departments, and to institute a system of mandatory reporting, examination, diagnosis, and treatment of communicable diseases." *Commonwealth v. Moore*, 526 Pa. 152, 159, 584 A.2d 936, 940 (1991).

² For purposes of the Pennsylvania Public Health Law Bench Book, the term "public health authority" includes The Pennsylvania Department of Health, all County/ Municipal health departments (the health departments authorized by the Local Health Administration Law (*Act 315 - 16 P.S. § 12001 et seq.*) and all local health authorities (the 237 local boards or departments of health that operate outside of the Local Health Administration Law (*Act 315*) structure and funding).

³ See *In re Duran*, 769 A.2d 497, 503-05 (Pa. Super 2001) (refusal of medical treatment); *Ragona v. Preate*, 1990 WL 259033 (Lackawanna CCP 1990); *In re Jane Doe*, 1987 WL 226878 at *6 (Phila. CCP 1987); *Stull v. Reber*, 215 Pa. 156, 64 A 419 (Pa. 1906) (upholding involuntary vaccinations of school children). *But see Commonwealth v. Nixon*, 718 A.2d 311 (Pa. Super. 1998), *aff'd* at 563 Pa. 425, 761 A.2d 1151 (2000) (parents' duty to override mature minor's decision to refuse treatment when life is in danger).

⁴ See also *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) (compulsory smallpox vaccination); *Reynolds v. McNichols*, 488 F.2d 1378 (10th Cir. 1973) (compulsory treatment for venereal disease); *City of New York v. Antoinette R.*, 630 N.Y.S.2d 1008 (N.Y. Sup. Ct. 1995) (compulsory treatment for tuberculosis).

⁵ Refusal to comply with a public health authority's order to undergo medical treatment is not an explicit prerequisite in the statute, but it is implied. 35 P.S. § 521.11(a.1)-(a.2). In determining whether the respondent had a valid reason for refusing treatment, the court may consider religious objections, but these objections have their limits in a communicable disease situation. See *Prince v. Massachusetts*, 321 U.S. 158, 166-67 (1944) ("[t]he right to practice religion freely does not include the liberty to expose the community . . . to communicable disease.").

Although not statutorily required in Pennsylvania, courts in other jurisdictions have only allowed quarantine, isolation or involuntary medical treatment when there are no lesser restrictive means of protecting the public's health.⁶ Some courts have stated that when a person has not been convicted of a crime, "any deprivation of his liberty by the state must be the least restrictive means of achieving the purpose of the deprivation."⁷

B. What Is The Procedure Of Issuing A Court Order For Involuntary Treatment?

1. Filing a Petition

A petition to compel safekeeping and treatment may be brought by The Pennsylvania Department of Health, a County/Municipal health department or a local health authority. 35 P.S. § 521.3, 5; 28 Pa. Code § 27.87. The DPCL does not mention multiple respondents in a single action.



Note: If the public health authority is not The Pennsylvania Department of Health or a County/Municipal health department, the authority must receive approval from The Pennsylvania Department of Health before taking any disease control measure. 28 Pa. Code §§ 27.1, 27.60(c).

The respondent will be the person suspected of being infected with, or a carrier of, a communicable disease.

2. Jurisdiction

By statute, the court of common pleas of the county where an individual is present has jurisdiction to adjudicate involuntary medical treatment petitions and to commit the individual to an institution for safekeeping and treatment. 35 P.S. § 521.11(a.2); 28 Pa. Code § 27.87(b).

3. Venue

The DPCL does not address venue, other than what is stated in the preceding section on jurisdiction; accordingly, the general rules governing venue apply. Pa. R. Civ. P. 1006.

4. Service and Notice

Neither the statute nor its accompanying regulations address service,⁸ nor do they specify what form notice must take, other than requiring that the respondent be served with a copy of the petition seeking to compel safekeeping and treatment. 35 P.S. § 521.11(a.2). The general rules

⁶ See *City of Newark v. J.S.*, 652 A.2d 265, 271-72 (N.J. Super. 1993); *Best v. St. Vincent's Hosp.*, 2003 W.L. 21518829 at * 7-8 (S.D.N.Y. 2003), Report and Recommendations adopted by District Court at 2003 WL 21767656 (SDNY), *remanded on other grounds* at 2004 WL 2166316 (2nd Cir. 2004).

⁷ *Hamilton v. Love*, 328 F. Supp. 1182, 1192 (D.C. Ark. 1971); *City of Newark*, 652 A.2d at 268; *Cf. Commonwealth v. Milice*, 584 A.2d 997 (Pa. Super. 1991)(least restrictive means in mental health commitment).

⁸ "Service of process is a mechanism by which a court obtains jurisdiction of a defendant, and therefore, the rules concerning service of process must be strictly followed . . . Thus, improper service is not merely a procedural defect that can be ignored . . ." (internal citations omitted). *Mayer v. Garman*, __ Pa. __; __A.2d. __; 2006 WL 2252067, *citing Cintas Corp. v. Lee's Cleaning Services, Inc.*, 549 Pa. 84, 91, 700 A.2d 915 (1997). See also *Fraisar v. Gillis*, 892 A.2d 74, 77-78 (Pa. Commw. 2006) (discussing process service rules).

governing service and notice apply,⁹ and both should be provided to the respondent consistent with petition practice under Pa. R. Civ. P. 206 and local rule.¹⁰ If the respondent is incapacitated or an unemancipated minor, that person's parents or legal guardian are generally entitled to notice.

5. Hearings

A non-jury trial is required to be held within 24 hours after service on the respondent. 35 P.S. § 521.11(a.2).

a. Burden and Standard of Proof

There is no Pennsylvania law on this point. However, possession and control of one's body is the most highly protected privacy interest.¹¹ By analogy to involuntary civil commitment under the Mental Health Procedures Act, the public health authority has the burden of proving the statutory elements by clear and convincing evidence. See *In re Hancock*, 719 A.2d 1053, 1056-58 (Pa. Super. 1998).¹²

Furthermore, persuasive authority from other jurisdictions and legal scholars suggest the ADA is applicable to governmental orders compelling liberty restrictions resulting from public health orders." The ADA and its regulations require that a health officer seeking to infringe upon a diseased person's liberty by imposing detention, confinement, isolation or quarantine, must first establish, by clear and convincing evidence, that the person poses a significant risk of transmitting disease to others with serious consequences."¹³

 **Note:** If the petitioner is not The Pennsylvania Department of Health or a County/Municipal health department, a copy of the petition and any hearing notices and court orders should be served upon The Pennsylvania Department of Health since that entity has the ultimate authority to protect the health of the citizens of Pennsylvania. 35 P.S. § 521.3(c); 71 P.S. § 532(a).

 **Note:** Involuntary medical treatment may implicate both searches and seizures, and when compelled by the state, are governed by the Fourth Amendment to the U.S. Constitution and Article I, § 8 of the Pennsylvania Constitution.¹⁴

⁹ Under the DPCL a hearing must be held on the petition within 24 hours of service. 35 P.S. § 521.11(a.2). Accordingly, expedited service may be appropriate, especially if there is a request to isolate / detain the respondent pending the hearing. Additionally, the court may consider alternative means of service given the allegation that the respondent may be infected with, or a carrier of, a highly contagious communicable disease. The legislature contemplated this in the Counterterrorism Planning, Preparedness and Response Act ("Counterterrorism Act"), 35 P.S. § 2140.301(b)(3) (notice may be oral or written). For alternative service, Pa. R. Civ. P. 430. With the notice, it is suggested the respondent be advised of the right to counsel. See § B.5.b, *infra*.

¹⁰ See Pa. R. Civ. P. 440 for service of process under Rule 206.

¹¹ "No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person . . ." *In re: Fiori*, 543 Pa. 592, 600-01, 673 A.2d 905 (1996), quoting *Union Pacific Railway Co. v. Botsford*, 141 U.S. 250, 251 (1891). See also *Schmerber v. California*, 384 U.S. 757, 769-70 (1966) ("The interests in human dignity and privacy which the Fourth Amendment protects forbid [intrusion into the body] on the mere chance that desired evidence might be obtained").

¹² See also *Addington v. Texas*, 441 U.S. 418 (1979) (standard of proof in civil commitment proceedings); *City of Newark v. J.S.*, 652 A.2d 265, 271-72 (N.J. Super. 1993) (standard of proof required for involuntary commitment of tuberculosis patient).

¹³ See e.g., *City of Newark*, 652 A. 2d. at 274. See also, Lawrence O. Gostin, *The Law and the Public's Health: A Study of Infectious Disease Law in the United States*, 99 Colum. L. Rev. 59 (Jan. 1999).

¹⁴ See *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 616-20 (1989) (collection and analysis of biological samples deemed Fourth Amendment searches); *Theodore v. Delaware Valley Sch. Dist.*, 761 A.2d 652, 656-58 (Pa. Commw. 2000) (discussing level of proof required when drug and alcohol testing school students).

b. Right to Counsel

The DPCL does not address the right to counsel or appointed counsel. However, due process and case law from other jurisdictions suggest respondents are entitled to be represented by counsel, and appointing counsel for the indigent may be necessary.¹⁵

c. Conduct of Hearing

1. Hearings would be conducted according to the Rules of Civil Procedure. The Rules do not address taking testimony by telephone or advanced communication technology. However, in a public health case where the respondent is alleged to have a potentially dangerous communicable disease, or may already be in isolation or quarantine, the court may wish to conduct hearings with the aid of a telephone or by using other communication technology (such as two-way simultaneous audio-visual communication).¹⁶ This method of conducting hearings is contemplated by the Counterterrorism Planning, Preparedness and Response Act, ("Counterterrorism Act"). 35 P.S. § 2140.301(b)(3). *See also City of Newark v. J.S.*, 652 A.2d 265, 268 n.1 (N.J. Super. 1993).¹⁷
2. The DPCL does not dictate that hearings be held on the record, but persuasive authority from other jurisdictions suggests hearings should be on the record.¹⁸

C. What Remedies Are Available To The Court?

1. Safekeeping and Treatment

The court may order the respondent committed to an appropriate institution for safekeeping and treatment for the communicable disease if the petitioning authority meets its burden. If treatment is not *required* to render the disease non-communicable, the court may order the respondent isolated without treatment until such time as the disease is rendered non-communicable. 35 P.S. § 521.11(a.2).¹⁹

¹⁵ The court may need to appoint a public defender to represent indigent respondents. 16 P.S. § 9960.6(a)(11) (appointment when representation is constitutionally required). *Cf.* 16 P.S. §9960.6(c) (appointment of public defender for persons who may be subject to commitment under the Mental Health and Mental Retardation Act of 1966). Also, under the Counterterrorism Planning, Preparedness and Response Act, ("Counterterrorism Act") individuals subject to isolation or quarantine are entitled to be represented by counsel and if an individual is without the financial resources or otherwise unable to employ counsel, the court must appoint counsel. 35 P.S. § 2140.301(b)(4).

¹⁶ Many courthouses, magisterial district judge offices, state and county prisons, and health care facilities have simultaneous audio-visual communication equipment.

¹⁷ *Accord* 42 Pa. C.S. § 5985 (child victims or material witnesses may testify through the use of closed circuit television in certain circumstances).

¹⁸ *See e.g. Greene v. Edwards*, 263 S.E.2d 661, 663 (W. Va. 1980). *Cf.* 50 P.S. § 7304(e)(5) ("On the record" hearings are required in involuntary treatment petitions under Section 304 of the Mental Health Procedures Act).

¹⁹ If treatment is ordered, the DPCL states treatment shall include treatment by a duly-accredited practitioner of any well recognized church or religious denomination which relies on prayer or spiritual means alone for healing, as long as all regulations pertaining to sanitation, isolation or quarantine are complied with. 35 P.S. § 521.11(a.3); 28 Pa. Code § 27.87(c). Neither the statute nor the regulations clarify exactly what this means. Also, "[t]he right to practice religion freely does not include the liberty to expose the community or the child to communicable disease or the latter to ill health or death." *Prince v. Massachusetts*, 321 U.S. 158, 166-67 (1944); *In re First Church of Christ, Scientist*, 205 Pa. 543, 551, 55 A. 536, 539 (1903) ("It may be said that the wisdom or folly of . . . prayer alone, in the cure of disease, is for the parties who invoke such a remedy. But . . . 'none of us liveth to himself, and no man dieth to himself,' and the consequences of leaving disease to run unchecked in the community is so serious that sound public policy forbids it."). *See also In the Matter of Cabrera*, 552 A.2d 1114, 1118 (Pa. Super. 1988); *Stull v. Reber*, 215 Pa. 156, 64 A. 419 (Pa. 1906) (upholding involuntary vaccinations of school children).

Although not statutorily required, if ordering isolation or treatment, the court may wish to consider if there are any less restrictive means of protecting the public's health. See *City of Newark*, 652 A.2d. at 272-74; *Best*, 2003 WL 21518829 at *7-8.

Legal commentators have reasoned that the public health authority must utilize policies that achieve the public health objective with the least intrusion on personal rights and freedoms²⁰ The rules and regulations employed to combat contagious or infectious diseases must not be unreasonable, nor may they be enforced unreasonably.²¹ Quarantine, isolation and involuntary medical treatment orders must be "reasonable, humane and not cruel."²²

2. Injunction

To enforce court orders, common pleas court judges may issue preliminary/special or permanent injunctions. Pa. R. Civ. P. 1531.²⁷

-  **Note:** If ordering a restraint on an individual's liberty the court may wish to consider the least restrictive means ("LRM").²³
1. Effective non-invasive forms of testing are less-restrictive than invasive forms of testing.
 2. If treatment is ordered, the least restrictive but effective means should be considered.²⁴
 3. If a period of isolation alone will cause the person to become non-communicable, isolation without treatment may be appropriate as an LRM.²⁵
 4. In the quarantine context, the LRM may involve ordering someone quarantined at home rather than at a facility, unless there is evidence that the individual will not obey a court order.²⁶

D. What Enforcement Mechanisms Are Available To The Court?

1. Prosecution

While there is no case law for guidance, by statute, any person who violates any provision of the DPCL, or any regulation issued by the State Advisory Board or ordinances, rules or regulations issued by a public health authority (including The Pennsylvania Department of Health, any County/Municipal health department or local health authority),²⁸ commits a summary offense,

²⁰ Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint* (Berkeley: University of California Press & Milbank Memorial Fund)(2000).

²¹ See *Allentown v. Wagner*, 27 Pa. Super. 485 (1905).

²² See *Commonwealth ex rel. Ogden v. Cairns*, 20 Pa. D. 453, 1911 WL 3741 (Pa. Quar. Sess. 1911).

²³ See *City of Newark*, 652 A.2d at 272-74; *Best*, 2003 WL 21518829 at *7-8.

²⁴ For example, would voluntary or mandatory "directly observed treatment" be appropriate for involuntary treatment, or is commitment to an institution necessary?

²⁵ If isolation is required, for how long will the respondent be isolated? Must the person be isolated for the full course of treatment? Can the person be isolated at home, or is a more restrictive environment, such as a facility or hospital required? See e.g., *City of New York v. Antoinette R.*, 630 N.Y.S.2d 1008 (N.Y. Sup. Ct. 1995); *City of Newark*, 652 A.2d at 272-74; *Best*, 2003 WL 21518829 at *7-8.

²⁶ If quarantine is required, for how long will the respondent be quarantined? Can the person be quarantined at home, or is a more restrictive environment required? See e.g., *Antoinette R.*, *supra*, at note 13; *City of Newark*, 652 A.2d at 272-74; *Best*, 2003 WL 21518829 at *7-8.

²⁷ Injunctive relief may be appropriate in the public health context. See e.g. *Commonwealth ex. rel. Preate v. Danny's New Adam and Eve Bookstore*, 625 A.2d 119 (Pa. Commw. 1993) (preliminary injunction issued because of ongoing threat to public health).

²⁸ The DPCL defines local health authority as the board of health or the department of public health of a city, borough, incorporated town or township of the first class, or a county department of health, or joint county department of health. 35 P.S. § 521.2.

punishable by a fine of not less than twenty-five dollars (\$25.00), nor more than three hundred dollars (\$300.00), plus costs. In default of payment, the offender may be sentenced to county jail for thirty (30) days. 35 P.S. § 521.20(a). Prosecutions may be initiated by The Pennsylvania Department of Health, a County/Municipal health department or a local health authority, or by any person having knowledge of a violation of any provision of the DPCL or its accompanying regulations. 35 P.S. § 521.20(b).²⁹

2. Contempt

Violation of a court order, such as an order of quarantine, and violation of an injunction, may expose the violator to contempt. The Court possesses the inherent authority to enforce court orders by way of the power of contempt. See *generally, Commonwealth v. Bowden*, 576 Pa. 151, 184-86, 838 A.2d 740 (2003).

E. May The Court Order Pre-Trial Detention?

A public health authority may seek an order authorizing the isolation of an individual under the DPCL pending a hearing. There is no case law to offer guidance on this question.

By analogy, the Counterterrorism Act contemplates pre-hearing quarantine. 35 P.S. § 2140.301(a).

Pennsylvania statutes authorize a public health authority to order individuals isolated without court approval. 35 P.S. § 521.11(a.1) and 28 Pa. Code § 27.87(a) (the public health authority may cause an individual who has refused to submit to treatment for a communicable disease to be isolated “until the disease has been rendered non-communicable.”).

Neither the statutes nor the regulations have been tested in the courts, however they may provide some guidance, or a basis for the court to order pre-hearing isolation.

Presumably, if the public health authority has made a prima facie showing of the existence of a dangerous communicable disease and a substantial threat to others or the community if the individual is not isolated, and if there are no lesser-restrictive means of protecting the public’s health, the court may order the respondent isolated pending hearing and disposition of the petition.³⁰

²⁹ In addition, under the Local Health Administration Law, 16 P.S. §§ 12001 - 12028, any person who violates this law, or any rule or regulation of the County/Municipal health department (“Act 315” department), or who interferes with a health director or any agent of a County/Municipal health department in the discharge of official duties, convicted of a second or subsequent offense, commits a misdemeanor, and upon conviction, may be fined not less than five hundred dollars (\$500.00), nor more than one thousand dollars (\$1,000.00), imprisoned for up to one year, or both. 16 P.S. § 12027(b). Also, separate penalty provisions exist for communicable tuberculosis. 35 P.S. § 521.19(a).

³⁰ For cases from other jurisdictions discussing limitations on personal freedom in a public health context and due process requirements, see *Best v. St. Vincent’s Hosp.*, 2003 WL 21518829 (U.S.D.C. S.D.N.Y., 2003), Report and Recommendations adopted by district court at 2003 WL 21767656 (S.D.N.Y.), *remanded on other grounds* at 2004 WL 2166316 (2nd Cir. 2004); *New York v. Antoinette R.*, 630 N.Y.S.2d 1008 (N.Y. Sup. Ct. 1995); *City of Newark v. J.S.*, 652 A.2d 265 (N.J. Super. 1993); *Greene v. Edwards*, 263 S.E.2d 661 (W.Va. 1980); *Reynolds v. McNichols*, 488 F.2d 1378 (10th Cir. 1973). See also 7 McQuillin Mun. Corp. § 24.235 (3rd Ed).

F. Who Is Responsible For Costs?

Regarding the cost of the medical treatment, three sections of the DPCL address costs.

35 P.S. § 521.7(2) provides that the respondent must pay the expenses related to having the physician of his or her choice conduct an examination.

35 P.S. § 521.9 requires The Pennsylvania Department of Health to provide or designate facilities for the free diagnosis, testing and treatment of venereal disease. County/Municipal health departments and local health authorities can undertake these expenses with the approval of The Pennsylvania Department of Health, and they may do so, with or without financial assistance from The Pennsylvania Department of Health.

35 P.S. § 521.11(b) provides that public health authorities must reimburse institutions that receive individuals who are ordered isolated or quarantined for safekeeping and treatment for a venereal disease.

Presumably, the governmental authority seeking the treatment must pay expenses related to the treatment if the respondent does not choose the physician or facility.³¹

G. When Is Informed Consent A Consideration?

Typically physicians must provide patients with sufficient information to determine whether or not to proceed with the proposed surgical or operative procedure. 40 P.S. § 1303.504 (MCARE Act - Informed Consent); *Montgomery v. Bazaz-Sehgal*, 568 Pa. 574, 583-84, 798 A.2d 742 (2002). Informed consent may not be required for non-surgical procedures, see MCARE Act at § 504(a)(1-5); *Montgomery, supra* at 584, or when treatment is mandated by court order.³² No cases have been found on this point.

³¹ See e.g. *Commonwealth v. Irwin*, 1904 WL 2601 (CCP Venango, 1904) and *Zellner v. Allentown*, 18 C.C. 162; 1896 WL 3663 (Lehigh County C.C.P. 1896) (the governmental unit ordering isolation or quarantine has a duty to furnish food and other necessities during the period of quarantine if the individuals so restricted cannot afford these items themselves).

³² Although no cases have been found on point, legal commentators suggest protection of the public's health and statutory authorization to compel medical treatment for communicable diseases in laws similar to the DPCL may outweigh privacy and informed consent restrictions. Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint* (Berkeley: University of California Press & Milbank Memorial Fund)(2000).

SECTION 1.00 BENCH GUIDE

SECTION 1.30 Quarantine¹

The Disease Prevention and Control Law Of 1955²

For quarantine petitions brought under the Counterterrorism Planning, Preparedness and Response Act, see Section 1.50.

Summary

Pennsylvania law authorizes public health authorities³ to order quarantines to inhibit the spread of communicable diseases. No statute, regulation or case law addresses the procedures or standards to be used if an individual refuses to comply with a public health quarantine order. Public health authorities may petition the courts to order a quarantine. This bench guide is intended to assist common pleas court judges faced with a public health petition to order a quarantine.

A “quarantine” separates persons who have been exposed to, but who are not necessarily infected with, a communicable disease from those not exposed.

A. Under What Circumstances May Individuals⁴ Be Ordered Quarantined?

The Disease Prevention and Control Law of 1955 (“DPCL”) provides that The Pennsylvania Department of Health, County/Municipal health departments and local health authorities may

¹ Quarantine: “The limitation of freedom of movement of persons or animals who have been exposed to a communicable disease for a period of time equal to the longest usual incubation period of the disease in such manner as to prevent effective contact with those not so exposed. Quarantine may be complete . . . modified . . . or it may consist merely of surveillance or segregation.” 35 P.S. § 521.2(i) (definitions). This is distinguished from “isolation” defined at 35 P.S. § 521.2(e).

Potentially, a quarantine may be sought or ordered for one or more individuals, 35 P.S. § 2140.301(a), or for an entire geographic area. For a general discussion of the latter, see Joseph Barbera, MD, et al., *Large-Scale Quarantine Following Biological Terrorism in the United States: Scientific Examination, Logistic and Legal Limits, and Possible Consequences*, 286 JAMA 2711, 2712 (December 5, 2001).

A “*cordon sanitaire*” is the quarantining of an entire geographic area, such as a city or a town. Lawrence O. Gostin, *Symposium Article: Part 1: Public Health: Pandemic Influenza: Public Health Preparedness for the Next Global Health Emergency*, 32 J.L. Med. & Ethics 565 (Winter 2004); Daniel Markovits, *Symposium: Expert Testimony: Bridging Bioethics and Evidence Law: Independent Article: Quarantine and Distributive Justice*, 33 J.L. MED. & ETHICS 323, 324 (2005).

² The purpose of the Disease Prevention and Control Law of 1955 is “to assign primary responsibility for the prevention and control of diseases to local health departments, and to institute a system of mandatory reporting, examination, diagnosis, and treatment of communicable diseases.” *Commonwealth v. Moore*, 526 Pa. 152, 159, 584 A.2d 936, 940 (1991).

³ For purposes of the Pennsylvania Public Health Law Bench Book, the term “public health authority” includes The Pennsylvania Department of Health, all County/ Municipal departments of health (the health departments authorized by The Local Health Administration Law (Act 315- 16 P.S. § 12001 *et seq.*) and all local health authorities (the 237 local boards or departments of health that operate outside of the Local Health Administration Law (Act 315) structure and funding).

⁴ Although the general quarantining authority given to the various departments of health references the ability to restrain individuals, it is likely that the authority to order a large-scale quarantine would extend to departments of health as well. See *Commonwealth ex re. Ogden v. Cairns*, 20 Pa. D. 453, 1911 WL 3741 (Philadelphia Clerk of Quar. Sess., 1911), *aff’d* 46 Pa. Super 96 (1911)(habeas corpus challenging quarantine of a district of the city of Philadelphia denied). *Cf.* Counterterrorism Planning, Preparedness and Response Act (“Counterterrorism Act”), 35 P.S. § 2140.301(a) (individuals or groups of individuals may be temporarily isolated or quarantined).

order an individual quarantined if he or she has been exposed to a communicable disease and when quarantine is necessary to protect the public from the spread of the communicable disease.⁵ 35 P.S. §§ 521.5 and 521.16(a)(3)-(5); 28 Pa. Code §§ 27.60-61 and 27.65. It is likely court action will be sought if an individual refuses to abide by the public health order for quarantine.

Pennsylvania law does not address the procedures or standards to be applied if the public health authority petitions the court to order a quarantine.



Note: There is no Pennsylvania law establishing what must be alleged or proven for a court ordered quarantine.⁶

B. What Must Be Proven To Obtain A Court Ordered quarantine?

There is no direct Pennsylvania law on point. Analogy to other provisions of the DPCL may be helpful. For example, to obtain an order for involuntary testing for a communicable disease, the public health authority must show:

The person named in the petition was exposed to a communicable disease, and the person refused to be tested and had no valid reason for refusing.⁷

35 P.S. § 521.7(2).

By analogy, it is suggested for a public health authority to obtain a court order for a quarantine, it must show:

1. The person named in the petition was exposed to a communicable disease, and
2. The person has refused to be quarantined and has no valid reason for refusing.

Although not statutorily required in Pennsylvania, courts in other jurisdictions have only permitted quarantine when because of the disease, the person poses a significant threat to the health and safety of others and there are no lesser restrictive means of protecting the public's health.⁸ Some courts have stated that when a person has not been convicted of a crime, "any deprivation of his liberty by the state must be the least restrictive means of achieving the purpose of the deprivation."⁹

⁵ Isolation and quarantine are historically recognized public health techniques used to contain the spread of infectious disease. See e.g. *Compagnie Francaise de Navigation a Vapeur v. State Board of Health*, 186 U.S. 380 (1902) (recognizing the power of states to institute quarantine to protect their citizens from infectious diseases); *Craig v. Kline*, 65 Pa. 399 (Pa. 1870). (The passage of health and quarantine laws is within the reserved power of the states).

⁶ However, statutes specifically authorizing quarantine authority include: 71 P.S. § 532(c) (The Pennsylvania Department of Health); 16 P.S. §§ 12010-12 (all County/Municipal health departments); 16 P.S. §§ 2185-92 (Third Class counties); 53 P.S. §§ 14401-02 (First Class cities); 53 P.S. §§ 24661-75 (Second Class cities); 53 P.S. § 37307 (Third Class cities); 53 P.S. § 46202(6) and §§ 48105-06 (Boroughs); 53 P.S. §§ 56605-08 (First Class townships); 53 P.S. §§ 68001- 06 (Second Class townships). Authority may also appear in regulations or ordinances at the local level. See e.g. Philadelphia Code § 6-204 (isolation and quarantine).

⁷ This provision is used for analogy because if a public health authority orders an individual to undergo medical testing and the individual refuses, the department may order that individual quarantined. 35 P.S. § 521.7(1).

⁸ See *City of Newark v. J.S.*, 652 A.2d 265, 271-72 (N.J. Super. 1993); *Best v. St. Vincent's Hosp.*, 2003 W.L. 21518829 at * 7-8 (S.D.N.Y. 2003), Report and Recommendations adopted by district court at 2003 WL 21767656, *remanded on other grounds* at 2004 WL 2166316 (2nd Cir. 2004).

⁹ *Hamilton v. Love*, 328 F. Supp. 1182, 1192 (D.C. Ark. 1971); *City of Newark*, *supra*, at 268; *Cf. Commonwealth v. Milice*, 584 A.2d 997 (Pa. Super. 1991)(least restrictive means in mental health commitment).

C. What Is The Procedure Of Obtaining A Court Order For Quarantine?

1. Filing a Petition

There is no Pennsylvania case law, statute or court rule establishing specifically who can bring a petition to compel a quarantine or what procedure to follow under the DPCL. However, support for the proposition that The Pennsylvania Department of Health, a County/Municipal health department or any local health authority can bring an action to enforce quarantine under the DPCL is implied in numerous statutes.¹⁰

The respondent will be the person suspected of being infected with, or carrying, a communicable disease.

 **Note:** If the public health authority is not The Pennsylvania Department of Health or a County/Municipal health department, the authority must receive approval from The Pennsylvania Department of Health before taking any disease control measure. 28 Pa. Code §§ 27.1, 27.60(c).

It is suggested that the procedure for obtaining a quarantine order would be *by petition*, similar to the procedures for other public health actions under the DPCL. 35 P.S. §§ 521.7(2) and 521.11(a.2); 35 P.S. § 2140.301(b)(1).

2. Jurisdiction

Pennsylvania law does not address this point.

By analogy, the court of common pleas of the county where an individual is present would have jurisdiction to adjudicate quarantine petitions. 35 P.S. §§ 521.7(2) and 521.11(a.2); 28 Pa. Code §§ 27.82(b), and 27.87(b).¹¹

3. Venue

The DPCL does not address venue, other than what is stated in the preceding section on jurisdiction. Accordingly, the general rules governing venue presumably apply. Pa. R. Civ. P. 1006.

4. Service and Notice

The DPCL does not identify service requirements,¹² nor does it specify the form of notice in public health petitions beyond requiring that the respondent be served with a copy of the petition seeking court action. 35 P.S. § 521.7(2). Presumably the general rules governing service

¹⁰ 35 P.S. § 521.3 (responsibility for disease prevention and control), § 521.5 (control measures), § 521.7 (medical examinations), § 521.11 (involuntary treatment).

¹¹ The courts of common pleas arguably have original jurisdiction pursuant to 42 Pa. C.S. § 931. *Accord*, 35 P.S. § 521.11(2) (court of common pleas has jurisdiction to order medical treatment). The Commonwealth Court may have concurrent jurisdiction if a petition is brought by The Pennsylvania Department of Health. 42 Pa. C.S. §§ 761(a)(2) and 761(b).

¹² "Service of process is a mechanism by which a court obtains jurisdiction of a defendant, and therefore, the rules concerning service of process must be strictly followed . . . Thus, improper service is not merely a procedural defect that can be ignored . . ." (internal citations omitted). *Mayer v. Garman*, __ Pa. __; __A.2d. __; 2006 WL 2252067, *citing Cintas Corp. v. Lee's Cleaning Services, Inc.*, 91 700 A.2d 915 (1997). *See also Fraisar v. Gillis*, 892 A.2d 74, 77-78 (Pa. Commw. 2006) (discussing process service rules).

and notice apply¹³ and presumably both should be provided to the respondent consistent with petition practice under Pa. R. Civ. P. 206 and local rule.¹⁴ If the respondent is incapacitated or an unemancipated minor, that person's parents or legal guardian(s) are generally entitled to notice.

5. Hearings

Under the DPCL for medical testing, a non-jury trial is required to be held on petitions within 24 hours after service on the respondent. 35 P.S. § 521.7(2). By analogy, petitions to compel quarantine presumably should be heard within 24 hours after service on the respondent.

a. Burden and Standard of Proof

There is no Pennsylvania law on this point. By analogy to involuntary civil commitment under the Mental Health Procedures Act, the public health authority has the burden of proving the statutory elements by clear and convincing evidence. See *In re Hancock*, 719 A.2d 1053, 1056-58 (Pa. Super. 1998).¹⁵

Furthermore, persuasive authority from other jurisdictions and legal scholars suggest the ADA is applicable to governmental orders compelling liberty restrictions resulting from public health orders. "The ADA and its regulations require that a health officer seeking to infringe upon a diseased person's liberty by imposing detention, confinement, isolation or quarantine, must first establish, by clear and convincing evidence, that the person poses a significant risk of transmitting disease to others with serious consequences."¹⁶

 **Note:** If the petitioner is not The Pennsylvania Department of Health or a County/Municipal health department, a copy of the petition and any hearing notices and court orders should be served upon The Pennsylvania Department of Health since that entity has the ultimate authority to protect the health of the citizens of Pennsylvania. 35 P.S. § 521.3(c); 71 P.S. § 532(a).

 **Note:** Presumably, petitions to compel a quarantine under the DPCL should be heard within 24 hours after service on the respondent

¹³ Under the DPCL a hearing must be held on petitions for medical testing and treatment within 24 hours of service. 35 P.S. §§ 521.7(2) and 521.11(a.2). Accordingly, expedited service may be appropriate. Additionally, the Court may consider alternative means of service and notice given the allegation that the respondent may be infected with, or a carrier of, a highly contagious communicable disease. The legislature contemplated this in the Counterterrorism Planning, Preparedness and Response Act, ("Counterterrorism Act") 35 P.S. § 2140.301(b)(3) (notice may be oral or written). For alternative service, Pa. R. Civ. P. 430. With the notice, it is suggested the respondent be advised of the right to counsel. See § C.5.b, *infra*.

¹⁴ See Pa. R. Civ. P. 440 for service of process under Rule 206.

¹⁵ See also *Addington v. Texas*, 441 U.S. 418 (1979) (standard of proof in civil commitment proceedings); *City of Newark*, 652 A. 2d at 271-72 (standard of proof required for involuntary commitment of tuberculosis patient).

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b. Right to Counsel

The DPCL does not address the right to counsel or appointed counsel. However, due process and case law from other jurisdictions suggest respondents are entitled to be represented by counsel, and appointing counsel for the indigent may be necessary.¹⁷

c. Conduct of Hearing

1. Hearings would be conducted according to the Rules of Civil Procedure. The Rules do not address taking testimony by telephone or advanced communication technology. However, in a public health case where the respondent is alleged to have a potentially dangerous communicable disease, or may already be in isolation or quarantine, the court may wish to conduct hearings with the aid of a telephone or by using other communication technology (such as two-way simultaneous audio-visual communication).¹⁸ This method of conducting hearings is contemplated by the Counterterrorism Act. 35 P.S. § 2140.301(b)(3). See *City of Newark v. J.S.*, 652 A.2d 265, 268 n.1 (N.J. Super. 1993).¹⁹
2. The DPCL does not dictate that hearings be held on the record, but persuasive authority from other jurisdictions suggests hearings should be on the record.²⁰

D. What Remedies Are Available To The Court?

Under the DPCL, the court may order the respondent to submit to medical testing if the petitioning authority meets its burden. 35 P.S. § 521.7(2). Similarly, by analogy, the court may order the respondent quarantined if the petitioning authority meets its burden. There are no guidelines under Pennsylvania law for the duration of a quarantine order. The court may need to determine this on a case-by-case basis. Under the statutory definition of quarantine, 35 P.S. § 521.2(i), it should be for "a period of time equal to the longest usual incubation period of the disease in such manner as to prevent effective contact with those not so exposed."²¹

¹⁷ The court may need to appoint a public defender to represent indigent respondents. 16 P.S. § 9960.6(a)(11) (appointment when representation is constitutionally required). Cf. 16 P.S. § 9960.6(c) (appointment of public defender for persons who may be subject to commitment under the Mental Health and Mental Retardation Act of 1966). Also, under the Counterterrorism Act, individuals subject to isolation or quarantine are entitled to be represented by counsel and if an individual is without the financial resources or otherwise unable to employ counsel, the court must appoint counsel. 35 P.S. § 2140.301(b)(4).

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¹⁹ *Accord* 42 Pa. C.S. § 5985 (child victims or material witnesses may testify through the use of closed circuit television in certain circumstances).

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²¹ Under the Counterterrorism Act, the governor's order of isolation or quarantine may be continued for not more than thirty (30) days, then further judicial review is required. 35 P.S. § 2140.301(b)(5)-(6).

Legal commentators have reasoned that the public health authority must utilize policies that achieve the public health objective with the least intrusion on personal rights and freedoms²² The rules and regulations employed to combat contagious or infectious diseases must not be unreasonable, nor may they be enforced unreasonably.²³ Quarantine, isolation and involuntary medical treatment orders must be “reasonable, humane and not cruel.”²⁴

In addition, to enforce court orders, common pleas court judges may issue preliminary/special or permanent injunctions. Pa. R. Civ. P. 1531.²⁹



Note: If ordering a restraint on an individual’s liberty the court may wish to consider the least restrictive means (“LRM”).²⁵

1. Effective non-invasive forms of testing are less-restrictive than invasive forms of testing.
2. If treatment is ordered, the least restrictive but effective means should be considered.²⁶
3. If a period of isolation alone will cause the person to become non-communicable, isolation without treatment may be appropriate as an LRM.²⁷
4. In the quarantine context, the LRM may involve ordering someone quarantined at home rather than at a facility, unless there is evidence that the individual will not obey a court order.²⁸

E. What Enforcement Mechanisms Are Available To The Court?

1. Prosecution

While there is no case law for guidance, by statute, any person who violates any provision of the DPCL, or any regulation issued by the State Advisory Board or ordinances, rules or regulations issued by a public health authority (including The Pennsylvania Department of Health, any County/Municipal health department or local health authority),³⁰ commits a summary offense,

²² Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint* (Berkeley: University of California Press & Milbank Memorial Fund)(2000).

²³ See *Allentown v. Wagner*, 27 Pa. Super. 485 (1905).

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²⁵ See *City of Newark*, 652 A. 2d at 272-74; *Best*, 2003 WL 21518829 at *7-8. If ordering quarantine or isolation, the court may wish to consider the least restrictive means. See *City of Newark, supra*, at 272-74; *Best, supra*, at *7-8. This may involve ordering someone restricted to their home rather than at a facility, unless there is evidence that the individual will not obey a court order. See e.g. *City of New York v. Antoinette R.*, 630 N.Y.S.2d 1008, 1011-12 (N.Y. Sup. Ct. 1995). Quarantine may have several levels. 35 P.S. § 521.2 Quarantine may be complete or modified. It may involve surveillance or segregation in a facility or at home.

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²⁷ If isolation is required, for how long will the respondent be isolated? Must the person be isolated for the full course of treatment? Can the person be isolated at home, or is a more restrictive environment, such as a facility or hospital required? See *Antoinette R., supra*, at note 14; *City of Newark*, 652 A. 2d at 272-74; *Best*, 2003 WL 21518829 at *7-8.

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punishable by a fine of not less than twenty-five dollars (\$25.00), nor more than three hundred dollars (\$300.00), plus costs. In default of payment, the offender may be sentenced to county jail for thirty (30) days. 35 P.S. § 521.20(a). Prosecutions may be initiated by The Pennsylvania Department of Health, a County/Municipal health department or a local health authority, or by any person having knowledge of a violation of any provision of the DPCL or its accompanying regulations. 35 P.S. § 521.20(b).³¹

2. Contempt

Violation of a court order, such as an order of quarantine, and violation of an injunction, may expose the violator to contempt. The court possesses the inherent authority to enforce court orders by way of the power of contempt. See *generally, Commonwealth v. Bowden*, 576 Pa. 151, 184-86, 838 A.2d 740 (2003).

F. May The Court Order Pre-Hearing Detention?

A public health authority may seek an order authorizing the quarantine of an individual or group under the DPCL pending a hearing. There is no case law to offer guidance on this question.

By analogy, the Counterterrorism Act contemplates pre-hearing quarantine. 35 P.S. § 2140.301(a).

Also, Pennsylvania statutes authorize a public health authority to order individuals quarantined without court approval. 35 P.S. § 521.7(1) and 28 Pa. Code § 27.82(a) (the public health authority may cause an individual who has refused to submit to an examination for a communicable disease to be quarantined “until it is determined that the person does not pose a threat to the public health”).

Neither the statutes nor the regulations above have been tested in the courts, however they may provide some guidance, or a basis for the court to order pre-hearing quarantine.

Presumably, if the public health authority has made a prima facie showing of the existence of a dangerous communicable disease and a substantial threat to others or the community if the individual is not quarantined, and if there are no lesser-restrictive means of protecting the public’s health, the court may order the respondent quarantined pending hearing and disposition of the petition.³²

³¹ In addition, under the Local Health Administration Law, 16 P.S. §§ 12001 - 12028, any person who violates this law, or any rule or regulation of the County/Municipal health departments or who interferes with a health director or any agent of a County/Municipal health department in the discharge of official duties, convicted of a second or subsequent offense, commits a misdemeanor, and upon conviction, may be fined not less than five hundred dollars (\$500.00), nor more than one thousand dollars (\$1,000.00), imprisoned for up to one year, or both. 16 P.S. § 12027(b). Also, separate penalty provisions exist for communicable tuberculosis. 35 P.S. § 521.19(a).

³² For cases from other jurisdictions discussing limitations on personal freedom in a public health context and due process requirements, see *Best v. St. Vincent’s Hosp.*, 2003 W.L. 21518829 (S.D.N.Y. 2003), Report and Recommendations adopted by district court at 2003 WL 21767656, *remanded on other grounds* at 2004 WL 2166316 (Second Cir. 2004); *New York v. Antoinette R.*, 630 N.Y.S.2d 1008 (N.Y. Sup. Ct. 1995); *City of Newark v. J.S.*, 652 A.2d 265 (N.J. Super. 1993); *Greene v. Edwards*, 263 S.E.2d 661 (W. Va. 1980); *Reynolds v. McNichols*, 488 F.2d 1378 (10th Cir. 1973). See also 7 McQuillin Mun. Corp. § 24.235 (Third Ed).

G. Who Is Responsible For Costs?

Regarding the costs potentially associated with quarantines, three provisions of the DPCL address costs.

35 P.S. § 521.7(2) provides that the respondent must pay the expenses related to having the physician of his or her choice conduct an examination.

35 P.S. § 521.9 requires The Pennsylvania Department of Health to provide or designate facilities for the free diagnosis, testing and treatment of venereal disease. County/Municipal health departments and local health authorities can undertake these expenses with the approval of The Pennsylvania Department of Health, and they may do so, with or without financial assistance from The Pennsylvania Department of Health.

35 P.S. § 521.11(b) provides that public health authorities must reimburse institutions that receive individuals who are ordered isolated or quarantined for safekeeping and treatment for a venereal disease.

Presumably, the governmental authority seeking the quarantine must pay expenses related to the quarantine.³³

³³ See e.g. *Commonwealth v. Irwin*, 1904 WL 2601 (CCP Venango, 1904) and *Zellner v. Allentown*, 18 C.C. 162; 1896 WL 3663 (Lehigh County C.C.P. 1896) (the governmental unit ordering isolation or quarantine has a duty to furnish food and other necessities during the period of quarantine if the individuals so restricted cannot afford these items themselves).

SECTION 1.00 BENCH GUIDE

SECTION 1.40 Isolation¹

The Disease Prevention and Control Law Of 1955²

For isolation petitions brought under the Counterterrorism Planning, Preparedness and Response Act, see Section 1.50.

Summary

Pennsylvania law authorizes public health authorities³ to order isolation to inhibit the spread of communicable diseases. No statute, regulation or case law addresses the procedures or standards to be used if an individual refuses to comply with a public health isolation order. Public health authorities may petition the courts to order isolation. This bench guide is intended to assist common pleas court judges faced with a public health petition to order isolation.

Generally, isolation, in the public health context, separates persons infected with a communicable disease, in a communicable state, from those not infected.

A. Under What Circumstances May Individuals Be Ordered Isolated?

The Disease Prevention and Control Law of 1955 (“DPCL”), authorizes public health authorities to order an individual isolated if he or she has been infected with a communicable disease and when isolation is necessary to protect the public from the spread of the communicable disease.⁴ 35 P.S. §§ 521.5, 521.11(a.1) and 521.16(a)(3)-(5); 28 Pa. Code § 27.60-61. It is likely court action will be sought if an individual refuses to abide by the public health order for isolation. Pennsylvania law does not address the procedures or standards to be applied if the public health authority petitions the court to order isolation.



Note: There is no Pennsylvania law establishing what must be alleged or proven for a court ordered public health isolation.⁵

¹ Isolation: The separation for the period of communicability of infected persons or animals from other persons or animals in such places and under such conditions as will prevent the direct or indirect transmission of the infectious agent from infected persons or animals to other persons or animals who are susceptible or who may spread the disease to others. See 35 P.S. § 521.2(e) (definitions). This is distinguished from “quarantine” defined at 35 P.S. § 521.2(i).

² The purpose of the Disease Prevention and Control Law of 1955 is “to assign primary responsibility for the prevention and control of diseases to local health departments, and to institute a system of mandatory reporting, examination, diagnosis, and treatment of communicable diseases.” *Commonwealth v. Moore*, 526 Pa. 152, 159, 584 A.2d 936, 940 (1991).

³ For purposes of the Pennsylvania Public Health Law Bench Book, the term “public health authority” includes The Pennsylvania Department of Health, all County/ Municipal health departments (the health departments authorized by The Local Health Administration Law (Act 315-16 P.S. § 12001 *et seq.*) and all local health authorities (the 237 local boards or departments of health that operate outside of The Local Health Administration Law (Act 315) structure and funding).

⁴ Isolation and quarantine are historically-recognized public health techniques used to contain the spread of infectious disease. See, e.g., *Compagnie Francaise de Navigation a Vapeur v. State Board of Health*, 186 U.S. 380 (1902) (recognizing the power of states to institute quarantine to protect their citizens from infectious diseases); *Craig v. Kline*, 65 Pa. 399 (Pa. 1870). (The passage of health and quarantine laws is within the reserved power of the states).

B. What Must Be Proven To Obtain A Court Ordered Isolation?

There is no Pennsylvania law establishing what must be proven for a court ordered isolation. Analogy to other provisions of the DPCL may be helpful. For example, to obtain an order for involuntary treatment for a communicable disease, the health authority must show:

The person named in the petition is infected with a communicable disease, the person has refused to be treated and has no valid reason for refusing.⁶

35 P.S. § 521.11(a.2).

By analogy, it is suggested for a public health authority to obtain a court order for isolation, it must show:

1. The person named in the petition has been infected with a communicable disease; and
2. The person refused to be isolated and had no valid reason for refusing.

Although not statutorily required in Pennsylvania, courts in other jurisdictions have only permitted quarantine when because of the exposure to the disease the person poses a significant threat to the health and safety of others and there are no lesser restrictive means of protecting the public's health.⁷ Some courts have stated that when a person has not been convicted of a crime, "any deprivation of his liberty by the state must be the least restrictive means of achieving the purpose of the deprivation."⁸

C. What Is The Procedure Of Obtaining A Court Order For Isolation?

1. Filing a Petition

There is no Pennsylvania case law, statute or court rule establishing specifically who can bring a petition to compel isolation or what procedure to follow under the DPCL. However, support for the proposition that The Pennsylvania Department of Health, a County/Municipal health

⁵ However, statutes explicitly or implicitly authorize isolation authority: 16 P.S. §§ 12010-12 (County/Municipal health departments); 16 P.S. § 2185-92 (Third Class counties); 35 P.S. §§ 521.3, 521.5 (State or local health department or board of health); 53 P.S. §§ 14401-02 (First Class cities); 53 P.S. §§ 24661-75 (Second Class cities); 53 P.S. § 37307 (Third Class cities); 53 P.S. §§ 46202(6),(74) and 48105-06 (Boroughs); 53 P.S. §§ 56605-08 (First Class townships); 53 P.S. §§ 68001- 06 (Second Class townships). Authority may also appear in regulations or ordinances at the local level. See, e.g. Philadelphia Code § 6-204 (isolation and quarantine).

⁶ This provision is used for analogy because if a public health authority orders an individual to undergo treatment and the individual refuses, the public health authority may order that individual isolated. 35 P.S. § 521.11(a.1).

⁷ See *City of Newark v. J.S.*, 652 A.2d 265, 271-72 (N.J. Super. 1993); *Best v. St. Vincent's Hosp.*, 2003 W.L. 21518829 at * 7-8 (S.D.N.Y. 2003), Report and Recommendations adopted by district court at 2003 WL 21767656, *remanded on other grounds* at 2004 WL 2166316 (2nd Cir. 2004).

⁸ *Hamilton v. Love*, 328 F. Supp. 1182, 1192 (D.C. Ark. 1971); *City of Newark*, 652 A. 2d at 268; *Cf. Commonwealth v. Milice*, 584 A.2d 997 (Pa. Super. 1991)(least restrictive means in mental health commitment).

department or any local health authority can bring an action to enforce isolation under the DPCL is implied in numerous statutes.⁹

The respondent will be the person suspected of being infected with, or carrying, a communicable disease.



Note: If the public health authority is not The Pennsylvania Department of Health or a County/Municipal health department, the authority must receive approval from The Pennsylvania Department of Health before taking any disease control measure. 28 Pa. Code §§ 27.1, 27.60(c).

It is suggested that the procedure for obtaining an isolation order would be by petition, similar to the procedures for other public health actions under the DPCL. 35 P.S. §§ 521.7(2), 521.11(a.2); 35 P.S. § 2140.301(b)(1).

2. Jurisdiction

Pennsylvania law does not address this point. By analogy, the court of common pleas of the county where an individual is present would have jurisdiction to adjudicate isolation petitions. 35 P.S. §§ 521.7(2), 521.11(a.2); 28 Pa. Code §§ 27.82(b), 27.87(b).¹⁰

3. Venue

The DPCL does not address venue, other than what is stated in the preceding section on jurisdiction. Accordingly, the general rules governing venue presumably apply. Pa. R. Civ. P. 1006.

4. Service and Notice

The DPCL does not identify service requirements,¹¹ nor does it specify the form of notice in public health petitions beyond requiring that the respondent be served with a copy of the petition seeking court action. 35 P.S. § 521.11(a.2). Presumably the general rules governing service and notice apply,¹² and presumably both should be provided to the respondent consistent with petition practice under Pa. R. Civ. P. 206 and local rule.¹³ If the respondent is incapacitated or an unemancipated minor, that person's parents or legal guardian are generally entitled to notice.

⁹ 35 P.S. §§ 521.3 (Responsibility for disease prevention and control), 521.5 (control measures), 521.7 (medical examinations), 521.11 (involuntary treatment).

¹⁰ The courts of common pleas arguably have original jurisdiction pursuant to 42 Pa. C.S. § 931. *Accord* 35 P.S. § 521.7(2) (court of common pleas has jurisdiction to order medical testing). The Commonwealth Court may have concurrent jurisdiction if a petition is brought by The Pennsylvania Department of Health. 42 Pa. C.S. §§ 761(a)(2) and 761(b).

¹¹ "Service of process is a mechanism by which a court obtains jurisdiction of a defendant, and therefore, the rules concerning service of process must be strictly followed . . . Thus, improper service is not merely a procedural defect that can be ignored." (internal citations omitted). *Mayer v. Garman*, __ Pa. __; __A.2d. __; 2006 WL 2252067, *citing Cintas Corp. v. Lee's Cleaning Services, Inc.*, 549 Pa. 84, 91, 700 A.2d 915 (1997). *See also Fraisar v. Gillis*, 892 A.2d 74, 77-78 (Pa. Commw. Ct. 2006) (discussing process service rules).

¹² Under the DPCL a hearing must be held on petitions for medical testing and treatment within 24 hours of service. 35 P.S. §§ 521.7(2) and 521.11(a.2). Accordingly, expedited service may be appropriate. Additionally, the court may consider alternative means of service and notice given the allegation that the respondent may be infected with, or a carrier of, a highly contagious communicable disease. The legislature contemplated this in the Counterterrorism Planning, Preparedness and Response Act, ("Counterterrorism Act") 35 P.S. § 2140.301(b)(3) (notice may be oral or written). For alternative service, Pa. R. Civ. P. 430. With the notice, it is suggested the respondent be advised of the right to counsel. *See* § C.5.b, *infra*.

¹³ *See* Pa. R. Civ. P. 440 for service of process under Rule 206.

5. Hearings

Under the DPCL, to compel medical treatment, a non-jury trial is required to be held on petitions within 24 hours after service on the respondent. 35 P.S. § 521.11(a.2). By analogy, petitions to compel isolation presumably should be heard within 24 hours after service on the respondent.

a. Burden and Standard of Proof

There is no Pennsylvania law on this point. By analogy to involuntary civil commitment under the Mental Health Procedures Act, the public health authority has the burden of proving the statutory elements by clear and convincing evidence. See *In re Hancock*, 719 A.2d 1053, 1056-58 (Pa. Super. 1998).¹⁴

Furthermore, persuasive authority from other jurisdictions and legal scholars suggest the ADA is applicable to governmental orders compelling liberty restrictions resulting from public health orders. "The ADA and its regulations require that a health officer seeking to infringe upon a diseased person's liberty by imposing detention, confinement, isolation or quarantine, must first establish, by clear and convincing evidence, that the person poses a significant risk of transmitting disease to others with serious consequences."¹⁵

b. Right to Counsel

The DPCL does not address the right to counsel or appointed counsel. However, due process and case law from other jurisdictions suggest respondents are entitled to be represented by counsel, and appointing counsel for the indigent may be necessary.¹⁶

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 **Note:** If the petitioner is not The Pennsylvania Department of Health or a County/Municipal health department, a copy of the petition and any hearing notices and court orders should be served upon The Pennsylvania Department of Health since that entity has the ultimate authority to protect the health of the citizens of Pennsylvania. 35 P.S. § 521.3(c); 71 P.S. § 532(a).

 **Note:** Presumably, petitions to compel isolation under the DPCL should be heard within 24 hours after service on the respondent

¹⁴ See also *Addington v. Texas*, 441 U.S. 418 (1979) (standard of proof in civil commitment proceedings); *City of Newark*, 652 at 271-72 (standard of proof required for involuntary commitment of tuberculosis patient).

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Under the DPCL, the court may order the respondent to submit to medical treatment if the petitioning authority meets its burden. 35 P.S. § 521.11(a.2). Similarly, by analogy, the court may order the respondent isolated if the petitioning authority meets its burden. There are no guidelines under Pennsylvania law for the duration of an isolation order. The court may need to determine this on a case-by-case basis. Under the statutory definition of isolation, 35 P.S. § 521.2(e), it should be for “the period of communicability.”²⁰

Legal commentators have reasoned that the public health authority must utilize policies that achieve the public health objective with the least intrusion on personal rights and freedoms.²¹ The rules and regulations employed to combat contagious or infectious diseases must not be unreasonable, nor may they be enforced unreasonably.²² Quarantine, isolation and involuntary medical treatment orders must be “reasonable, humane and not cruel.”²³

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In addition, to enforce court orders, common pleas court judges may issue preliminary/special or permanent injunctions. Pa. R. Civ. P. 1531.²⁸

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While there is no case law for guidance, by statute, any person who violates any provision of the DPCL, or any regulation issued by the State Advisory Board or ordinances, rules or regulations issued by a public health authority (including The Pennsylvania Department of Health, any County/Municipal department of health or local health authority),²⁹ commits a summary offense, punishable by a fine of not less than twenty-five dollars (\$25.00), nor more than three hundred dollars (\$300.00), plus costs. In default of payment, the offender may be sentenced to county jail for thirty (30) days. 35 P.S. § 521.20(a).

Prosecutions may be initiated by The Pennsylvania Department of Health, a County/ Municipal health department or a local health authority, or by any person having knowledge of a violation of any provision of the DPCL or its accompanying regulations. 35 P.S. § 521.20(b).³⁰

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²⁶ If isolation is required, for how long will the respondent be isolated? Must the person be isolated for the full course of treatment? Can the person be isolated at home, or is a more restrictive environment, such as a facility or hospital required? See, e.g., *Antoinette R.*, *supra*, at note 12; *City of Newark*, 652 A.2d at 272-74; *Best*, 2003 WL 21518829 at *7-8.

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²⁸ Injunctive relief may be appropriate in the public health context. See e.g. *Commonwealth ex. rel. Preate v. Danny's New Adam and Eve Bookstore*, 625 A.2d 119 (Pa. Commw. 1993) (preliminary injunction issued because of on going threat to public health).

²⁹ The DPCL defines local health authority as the board of health or the department of public health of a city, borough, incorporated town or township of the first class, or a county department of health, or joint county department of health. 35 P.S. § 521.2.

³⁰ In addition, under the Local Health Administration Law, 16 P.S. §§ 12001 - 12028, any person who violates this law, or any rule or regulation of the County/Municipal health departments or who interferes with a health director or any agent of a County/Municipal health department in the discharge of official duties, convicted of a second or subsequent offense, commits a misdemeanor, and upon conviction, may be fined not less than five hundred dollars (\$500.00), nor more than one thousand dollars (\$1,000.00), imprisoned for up to one year, or both. 16 P.S. § 12027(b). Also, separate penalty provisions exist for communicable tuberculosis. 35 P.S. § 521.19(a).

By analogy, the Counterterrorism Act contemplates pre-hearing isolation. 35 P.S. § 2140.301(a). Also, Pennsylvania statutes authorize a public health authority to order individuals isolated without court approval. 35 P.S. § 521.11(a.1) and 28 Pa. Code § 27.87(a) (the public health authority may cause an individual who has refused to submit to treatment for a communicable disease to be isolated “until the disease has been rendered non-communicable.”).

Neither the statutes nor the regulations above have been tested in the courts, however they may provide some guidance, or a basis for the court to order pre-hearing isolation.

Presumably, if the public health authority has made a prima facie showing of the existence of a dangerous communicable disease and a substantial threat to others or the community if the individual is not isolated, and if there is no lesser-restrictive means of protecting the public’s health, the court may order the respondent isolated pending hearing and disposition of the petition.³¹

G. Who Is Responsible For Costs?

Regarding the costs potentially associated with isolation, three provisions of the DPCL address costs.

35 P.S. § 521.7(2) provides that the respondent must pay the expenses related to having the physician of his or her choice conduct an examination.

35 P.S. § 521.9 requires The Pennsylvania Department of Health to provide or designate facilities for the free diagnosis, testing and treatment of venereal disease. County/Municipal health departments and local health authorities can undertake these expenses with the approval of The Pennsylvania Department of Health, and they may do so, with or without financial assistance from The Pennsylvania Department of Health.

35 P.S. § 521.11(b) provides that public health authorities must reimburse institutions that receive individuals who are ordered isolated or quarantined for safekeeping and treatment for a venereal disease.

Presumably, the governmental authority seeking isolation must pay expenses related to the isolation.³²

³¹ For cases from other jurisdictions discussing limitations of personal freedom in a public health context and due process requirements, see *Best v. St. Vincent’s Hosp.*, 2003 W.L. 21518829 (S.D.N.Y. 2003), Report and Recommendations adopted by district court at 2003 WL 21767656, *remanded on other grounds* at 2004 WL 2166316 (2nd Cir. 2004); *New York v. Antoinette R.*, 630 N.Y.S.2d 1008 (N.Y. Sup. Ct. 1995); *City of Newark v. J.S.*, 652 A.2d 265 (N.J. Super. 1993); *Greene v. Edwards*, 263 S.E.2d 661 (W.Va. 1980); *Reynolds v. McNichols*, 488 F.2d 1378 (10th Cir. 1973). See also 7 McQuillin Mun. Corp. § 24.235 (3rd Ed).

³² See e.g. *Commonwealth v. Irwin*, 1904 WL 2601 (CCP Venango, 1904) and *Zellner v. Allentown*, 18 C.C. 162; 1896 WL 3663 (Lehigh County C.C.P. 1896) (the governmental unit ordering isolation or quarantine has a duty to furnish food and other necessities during the period of quarantine if the individuals so restricted cannot afford these items themselves).

SECTION 1.00 BENCH GUIDE

SECTION 1.50 Quarantine and Isolation¹

The Counterterrorism Planning, Preparedness and Response Act

For quarantine petitions brought under the Disease Prevention and Control Law of 1955, see Section 1.30.

For isolation petitions brought under the Disease Prevention and Control Law of 1955, see Section 1.40.

Summary

The Counterterrorism Planning, Preparedness and Response Act² (“Counterterrorism Act”) enacted in 2002, gives the Governor the authority to order the temporary isolation or quarantine of individuals or groups in certain circumstances. The Counterterrorism Act provides judicial review of the Governor’s order.³ No cases have been decided under the Counterterrorism Act. This bench guide is intended to offer suggestions to judges deciding petitions filed under the Counterterrorism Act.

A. Under What Circumstances May Individuals Be Ordered Quarantined?

Under the Counterterrorism Act, the Governor⁴ may order an individual or group of individuals temporarily isolated or quarantined if: (1) There is an actual or suspected outbreak of a contagious

¹ Quarantine: “The limitation of freedom of movement of persons or animals who have been exposed to a communicable disease for a period of time equal to the longest usual incubation period of the disease in such manner as to prevent effective contact with those not so exposed. Quarantine may be complete . . . modified . . . or it may consist merely of surveillance or segregation.” 35 P.S. § 521.2(i) (definitions).

Isolation: The separation for the period of communicability of infected persons or animals from other persons or animals in such places and under such conditions as will prevent the direct or indirect transmission of the infectious agent from infected persons or animals to other persons or animals who are susceptible or who may spread the disease to others. 35 P.S. § 521.2(e) (definitions).

Under the Counterterrorism Act, quarantine or isolation may be sought or ordered for one or more individuals, or arguably for an entire geographic area. 35 P.S. § 2140.301(a). For a general discussion of large scale quarantines, see Joseph Barbera, MD, et al., *Large-Scale Quarantine Following Biological Terrorism in the United States: Scientific Examination, Logistic and Legal Limits, and Possible Consequences*, 286 JAMA 2711, 2712 (December 5, 2001). See also *Commonwealth ex re. Ogden v. Cairns*, 20 Pa. D. 453, 1911 WL 3741 (Philadelphia Clerk of Quar. Sess., 1911), *aff’d* 46 Pa. Super 96 (1911)(habeas corpus challenging quarantine of a district of the city of Philadelphia denied).

A “cordon sanitaire” is the quarantining of an entire geographic area, such as a city or a town. See Lawrence O. Gostin, *Symposium Article: Part 1: Public Health: Pandemic Influenza: Public Health Preparedness for the Next Global Health Emergency*, 32 J.L. Med. & Ethics 565 (Winter 2004); Daniel Markovits, *Symposium: Expert Testimony: Bridging Bioethics and Evidence Law: Independent Article: Quarantine and Distributive Justice*, 33 J.L. Med. & Ethics 323, 324 (Summer 2005).

² 35 P.S. § 2140.301.

³ 35 P.S. § 2140.301(b).

⁴ The Counterterrorism Act gives authority to the Governor, “in consultation with the Secretary of Health.” 35 P.S. § 2140.301(a).

disease or epidemic due to an actual or suspected bioterrorist or biohazardous event;⁵ and, (2) if a delay in imposing isolation or quarantine through judicial proceedings available to public health authorities would significantly jeopardize The Pennsylvania Department of Health's ability to prevent or limit the transmission of the disease to others. A declaration of a disaster emergency is not necessary for the Governor's order to be effective.⁶

To continue the Governor's order for quarantine or isolation, judicial review is required. There is no Pennsylvania case law or regulations interpreting the Counterterrorism Act.

B. What Must Be Proven For The Court To Continue The Governor's Quarantine Or Isolation Order?

Nothing in the Counterterrorism Act provides guidance to the court to help determine if an isolation or quarantine order should be continued. Likewise, there is no Pennsylvania case law establishing what must be proven for a court-ordered quarantine or isolation under the Disease Prevention and Control Law of 1955 ("DPCL"), 35 P.S. § 521.1, *et seq.*

By analogy to DPCL provisions, to obtain an order for involuntary testing or involuntary treatment for communicable diseases, the public health authority must show:

The person named in the petition was exposed to (or infected with) a communicable disease, the person has refused to be tested (or treated) and has no valid reason for refusing.⁷

Based on this analogy, it is suggested for a public health authority to obtain a court-order to continue an isolation or quarantine under the Counterterrorism Act, it must show:

The person or persons named in the petition have been exposed to or infected with a communicable disease.⁸

⁵ The Counterterrorism Act only becomes effective if there is a suspected bioterrorist or biohazardous event. It is not clear if this Act would be triggered in the event of a natural outbreak of pandemic influenza or severe acute respiratory syndrome (SARS). Biohazardous event is not defined in the statute. The court may need to decide if this statute is implicated when there is no actual or suspected terrorist activity. For the court's information: "Biohazard: A biological or chemical agent or substance that is harmful or endangers life; this includes pathogenic organism (i.e., organisms which cause disease). *A Dictionary of Public Health* (J.M. Last ed., 2007).

⁶ 35 P.S. § 2140.301(a).

⁷ These provisions are used for analogy because if a public health authority orders an individual to undergo testing and the individual refuses, the public health authority may order that individual quarantined. 35 P.S. § 521.7(1). If a public health authority orders an individual to undergo treatment and the individual refuses, the public health authority may order that individual isolated. 35 P.S. § 521.11(a.1).

⁸ The Counterterrorism Act makes no mention of refusal to cooperate with an isolation or quarantine order being a prerequisite to court action. Compare with 35 P.S. §§ 521.7(1) and 521.11(a.1) (prior refusal to cooperate with public health orders is an implied prerequisite to court action).

Although not statutorily required in Pennsylvania, courts in other jurisdictions have only permitted quarantine or isolation when because of illness with or exposure to the disease the person poses a significant threat to the health and safety of others and there are no lesser restrictive means of protecting the public's health.⁹ Some courts have stated that when a person has not been convicted of a crime, "any deprivation of his liberty by the state must be the least restrictive means of achieving the purpose of the deprivation."¹⁰

C. What Is The Procedure For Obtaining A Court Order To Continue Isolation Or Quarantine Under The Counterterrorism Act?

1. Filing a Petition

Under the Counterterrorism Act, authority to petition to maintain an isolation or quarantine is vested in The Pennsylvania Department of Health and in County/Municipal health departments.¹¹

The respondent will be the person or group suspected of being infected with, or carrier(s) of, a communicable disease.¹²

2. Jurisdiction

The Counterterrorism Act does not address this point. It only directs that petitions be filed "with the court." By analogy, the court of common pleas of the county where an individual is present has jurisdiction to adjudicate petitions for involuntary medical testing and treatment under the DPCL.¹³

3. Venue

The Counterterrorism Act does not address venue, accordingly the general rules governing venue apply. Pa. R. Civ. P. 1006.

⁹ See *City of Newark v. J.S.*, 652 A.2d 265, 271-72 (N.J. Super. 1993); *Best v. St. Vincent's Hosp.*, 2003 W.L. 21518829 at * 7-8 (S.D.N.Y. 2003), Report and Recommendations adopted by district court at 2003 WL 21767656, *remanded on other grounds* at 2004 WL 2166316 (2nd Cir. 2004).

¹⁰ *Hamilton v. Love*, 328 F. Supp. 1182, 1192 (D.C. Ark. 1971); *City of Newark*, *supra* at 268; *Cf. Commonwealth v. Milice*, 584 A.2d 997 (Pa. Super. 1991)(least restrictive means in mental health commitment).

¹¹ Based on the language of the Counterterrorism Act and the definitions in 35 P.S. § 2140.102, only The Pennsylvania Department of Health and health departments created or authorized under the Local Health Administration Law, 16 P.S. §§ 12001 - 12028 (i.e., the County/Municipal health departments) may file a petition to continue the Governor's isolation or quarantine order.

¹² The Counterterrorism Act does not address incapacitated persons or minors as parties.

¹³ 35 P.S. §§ 521.7(2) and 521.11(a.2). In addition, the courts of common pleas presumably have original jurisdiction pursuant to 42 Pa. C.S. § 931. The Commonwealth Court may have concurrent jurisdiction if a petition is brought by The Pennsylvania Department of Health. 42 Pa. C.S. §§ 761(a)(2) and 761(b).

4. Service and Notice

The Counterterrorism Act does not identify service requirements,¹⁴ nor does it specify the form of notice other than requiring that the respondent(s) receive “[r]easonable notice, either oral or written, stating the time, place and purpose of the hearing.”¹⁵

The general rules governing service and notice apply¹⁶ and both should be provided to the respondent consistent with petition practice under Pa. R. Civ. P. 206 and local rule.¹⁷ If the respondent is incapacitated or an unemancipated minor, that person’s parents or legal guardian(s) are generally entitled to notice.

5. Hearings

A hearing must be held on a petition to isolate or quarantine within 72-hours after the filing of the petition to continue the isolation or quarantine. 35 P.S. § 2140.301(b)(2).

a. Burden and Standard of Proof

There is nothing in the Counterterrorism Act or in Pennsylvania law on this point. By analogy to involuntary civil commitment under the Mental Health Procedures Act, the public health authority has the burden of proving the statutory elements by clear and convincing evidence. See *In re Hancock*, 719 A.2d 1053, 1056-58 (Pa. Super. 1998).¹⁸

Furthermore, persuasive authority from other jurisdictions and legal scholars suggest the ADA is applicable to governmental orders compelling liberty restrictions resulting from public health orders. “The ADA and its regulations require that a health officer seeking to infringe upon a diseased person’s liberty by imposing detention, confinement, isolation or quarantine, must first establish, by clear and convincing evidence, that the person poses a significant risk of transmitting disease to others with serious consequences.”¹⁹

¹⁴ “Service of process is a mechanism by which a court obtains jurisdiction of a defendant, and therefore, the rules concerning service of process must be strictly followed . . . Thus, improper service is not merely a procedural defect that can be ignored . . .” (internal citations omitted). *Mayer v. Garman*, __ Pa. __; __A.2d. __; 2006 WL 2252067, citing *Cintas Corp. v. Lee’s Cleaning Services, Inc.*, 549 Pa. 84, 91 700 A.2d 915 (1997). See also *Fraisar v. Gillis*, 892 A.2d 74, 77-78 (Pa. Commw. 2006) (discussing process service rules).

¹⁵ 35 P.S. § 2140.301(b)(3). In addition, the court may consider alternative means of service and notice given the allegation that the respondent may be infected with, or a carrier of, a highly contagious communicable disease. For alternative service, Pa. R. Civ. P. 430. With the notice, the respondent should be advised of the right to counsel. 35 P.S. § 2140.301(b)(4).

¹⁶ Under the Counterterrorism Act, petitions to continue a quarantine or isolation order must be filed within 24 hours or the next business day after the issuance of the Governor’s order. 35 P.S. § 2140.301(b)(1). A hearing must be held on petitions within 72 hours after the filing of the petition. 35 P.S. § 2140.301(b)(2). Accordingly, expedited service may be appropriate. Additionally, the court may consider alternative means of service and notice given the allegation that the respondent may be infected with, or a carrier of, a highly contagious communicable disease. For alternative service, Pa. R. Civ. P. 430. With the notice, it is suggested the respondent be advised of the right to counsel. See § C.5.b, *infra*.

¹⁷ See Pa. R. Civ. P. 440 for service of process under Rule 206.

¹⁸ See also *Addington v. Texas*, 441 U.S. 418 (1979) (standard of proof in civil commitment proceedings); *City of Newark*, 652 A.2d at 271-72 (standard of proof required for involuntary commitment of tuberculosis patient).

¹⁹ See e.g., *City of Newark*, 652 A.2d at 274 see also, Lawrence O. Gostin, *The Law and the Public’s Health: A Study of Infectious Disease Law in the United States*, 99 Colum. L. Rev. 59 (Jan. 1999).

b. Right to Counsel

The Counterterrorism Act provides that isolated or quarantined individuals have the right to counsel or appointed counsel. 35 P.S. § 2140.301(b)(4).²⁰

c. Conduct of Hearing

1. The Counterterrorism Act states hearings may be conducted through the use of closed circuit television. 35 P.S. § 2140.301(b)(3). There is no case law on this point.

Hearings would be conducted according to the Rules of Civil Procedure. The Rules do not address taking testimony by telephone or advanced communication technology. However, in a public health case where the respondent is alleged to have a potentially dangerous communicable disease, or may already be in isolation or quarantine, the court may wish to conduct hearings with the aid of a telephone or by using other communication technology (such as two-way simultaneous audio-visual communication).²¹ This method of conducting hearings is contemplated by the Counterterrorism Act. 35 P.S. § 2140.301(b)(3). See *City of Newark v. J.S.*, 652 A.2d 265, 268 n.1 (N.J. Super. 1993).²²

2. The DPCL does not dictate that hearings be held on the record, but persuasive authority from other jurisdictions suggests hearings should be on the record.²³

D. What Remedies Are Available To The Court?

Under the Counterterrorism Act, the court may continue the governor's order of isolation or quarantine for up to thirty (30) days before additional judicial review is required. 35 P.S. § 2140.301(b)(5)-(6).

If quarantine or isolation is ordered, the public health authority must provide the court with ongoing reports.²⁴

Under the DPCL, the court may order the respondent to submit to medical testing or treatment if the public health authority meets its burden.²⁵ Similarly, by analogy, the court may order the respondent quarantined or isolated under the Counterterrorism Act if the petitioning authority

²⁰ The court may need to appoint a public defender to represent indigent respondents. 16 P.S. § 9960.6(a)(11) (appointment when representation is constitutionally required). Cf. 16 P.S. § 9960.6(c) (appointment of public defender for persons who may be subject to commitment under the Mental Health and Mental Retardation Act of 1966).

²¹ Many courthouses, magisterial district judge offices, state and county prisons and health care facilities have simultaneous audio-visual communication equipment.

²² *Accord* 42 Pa. C.S. § 5985 (child victims or material witnesses may testify through the use of closed circuit television in certain circumstances).

²³ See e.g. *Greene v. Edwards*, 263 S.E.2d 661, 663 (W. Va. 1980). Cf. 50 P.S. § 7304(e)(5) ("On the record" hearings are required in involuntary treatment petitions under Section 304 of the Mental Health Procedures Act).

²⁴ 35 P.S. § 2140.301(b)(7).

²⁵ 35 P.S. §§ 521.7(2) and 521.11(a.2).

meets its burden. There are no guidelines under Pennsylvania law for the duration of a quarantine or isolation order. The court may need to determine this on a case-by-case basis. Under the statutory definition of quarantine in the DPCL, 35 P.S. § 521.2(i), it should be for “a period of time equal to the longest usual incubation period of the disease in such manner as to prevent effective contact with those not so exposed.” Similarly, isolation should be continued for the “period of communicability.” 35 P.S. § 521.2(e).

Legal commentators have reasoned that the public health authority must utilize policies that achieve the public health objective with the least intrusion on personal rights and freedoms.²⁶ The rules and regulations employed to combat contagious or infectious diseases must not be unreasonable, nor may they be enforced unreasonably.²⁷ Quarantine, isolation and involuntary medical treatment orders must be “reasonable, humane and not cruel.”²⁸

In addition, to enforce court orders, common pleas court judges may issue preliminary/special or permanent injunctions. Pa. R. Civ. P. 1531.³³



Note: If ordering a restraint on an individual's liberty the court may wish to consider the least restrictive means (“LRM”).²⁹

1. Effective non-invasive forms of testing may be less-restrictive than invasive forms of testing.
2. If treatment is ordered, the least restrictive but effective means should be considered.³⁰
3. If a period of isolation alone will cause the person to become non-communicable, isolation without treatment may be appropriate as an LRM.³¹
4. In the quarantine context, the LRM may involve ordering someone quarantined at home rather than at a facility, unless there is evidence that the individual will not obey a court order.³²

²⁶ Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint* (Berkeley: University of California Press & Milbank Memorial Fund)(2000).

²⁷ *Allentown v. Wagner*, 27 Pa. Super. 485 (1905).

²⁸ See *Commonwealth ex rel. Ogden v. Cairns*, 20 Pa. D. 453, 1911 WL 3741 (Pa. Quar. Sess. 1911).

²⁹ See *City of Newark*, 652 A.2d at 272-74; *Best*, 2003 WL 21518829 at *7-8. If ordering quarantine or isolation, the court may wish to consider the least restrictive means. This may involve ordering someone restricted to their home rather than at a facility, unless there is evidence that the individual will not obey a court order. See, e.g. *City of New York v. Antoinette R.*, 630 N.Y.S.2d 1008, 1011-12 (N.Y. Sup. Ct. 1995). Quarantine may have several levels. 35 P.S. § 521.2 Quarantine may be complete or modified. It may involve surveillance or segregation in a facility or at home.

³⁰ For example, would voluntary or mandatory “directly observed treatment” be appropriate for involuntary treatment, or is commitment to an institution necessary?

³¹ If isolation is required, for how long will the respondent be isolated? Must the person be isolated for the full course of treatment? Can the person be isolated at home, or is a more restrictive environment, such as a facility or hospital required? See, e.g., *Antoinette R.*, *supra*, at note 14; *City of Newark*, *supra* at 272-74; *Best*, 2003 WL 21518829 at *7-8.

³² If quarantine is required, for how long will the respondent be quarantined? Can the person be quarantined at home, or is a more restrictive environment required? See, e.g., *Antoinette R.*, *supra*, at note 14; *City of Newark*, 652 A.2d at 272-74; *Best*, 2003 WL 21518829 at *7-8.

³³ Injunctive relief may be appropriate in the public health context. See e.g. *Commonwealth ex. rel. Preate v. Danny's New Adam and Eve Bookstore*, 625 A.2d 119 (Pa. Commw. 1993) (preliminary injunction issued because of ongoing threat to public health).

E. What Enforcement Mechanisms Are Available To The Court?

The Counterterrorism Act does not provide any special enforcement mechanisms. Enforcement mechanisms generally available to the courts include:

Contempt

Violation of a court order, such as an order of quarantine, and violation of an injunction, may expose the violator to contempt. The court possesses the inherent authority to enforce court orders by way of the power of contempt. *See generally, Commonwealth v. Bowden*, 576 Pa. 151, 184-86, 838 A.2d 740 (2003).³⁴

F. Who Is Responsible For Costs?

The Counterterrorism Act does not address this question.

The DPCL however, addresses costs for isolation and quarantine in the following provisions:

35 P.S. § 521.7(2) provides that the respondent must pay the expenses related to having the physician of his or her choice conduct an examination.

35 P.S. § 521.9 requires The Pennsylvania Department of Health to provide or designate facilities for the free diagnosis, testing and treatment of venereal disease. County/Municipal health departments and local health authorities can undertake these expenses with the approval of The Pennsylvania Department of Health, and they may do so, with or without financial assistance from The Pennsylvania Department of Health.

35 P.S. § 521.11(b) provides that public health authorities must reimburse institutions that receive individuals who are ordered isolated or quarantined for safekeeping and treatment for a venereal disease.

Presumably, the public health authority seeking the isolation or quarantine must pay expenses related to these measures.³⁵

³⁴ For cases from other jurisdictions discussing limitations on personal freedom in a public health context and due process requirements, see *Best v. St. Vincent's Hosp.*, 2003 WL 21518829 at (S.D.N.Y. 2003), Report and Recommendations adopted by district court at 2003 WL 21767656, *remanded on other grounds* at 2004 WL 2166316 (2nd Cir. 2004); *New York v. Antoinette R.*, 630 N.Y.S.2d 1008 (N.Y. Sup. Ct. 1995); *City of Newark v. J.S.*, 652 A.2d 265 (N.J. Super. 1993); *Greene v. Edwards*, 263 S.E.2d 661 (W.Va. 1980); *Reynolds v. McNichols*, 488 F.2d 1378 (10th Cir. 1973). *See also* 7 McQuillin Mun. Corp. § 24.235 (3rd Ed).

³⁵ *See e.g. Commonwealth v. Irwin*, 1904 WL 2601 (CCP Venango, 1904) and *Zellner v. Allentown*, 18 C.C. 162; 1896 WL 3663 (Lehigh County C.C.P. 1896) (the governmental unit ordering isolation or quarantine has a duty to furnish food and other necessities during the period of quarantine if the individuals so restricted cannot afford these items themselves).

SECTION 1.00 BENCH GUIDE

SECTION 1.60 Searches of Property

Summary

Government authorities may wish to conduct inspections of property for public health purposes. Pursuant to the Disease Prevention and Control Law of 1955 (“DPCL”), health authorities may wish to inspect property during the course of investigating a suspected case or outbreak of a communicable disease. In addition, a government agency may wish to inspect property to ensure compliance with sanitary standards. General health statutes provide health authorities with authorization to enter and inspect property. However, the Fourth Amendment and Pennsylvania Constitution article I, section 8 apply and if an individual refuses consent or prevents a public health authority from conducting a search, a warrant supported by probable cause is required.

A. Under What Circumstances May The Court Order A Search Of Private Property For Public Health Purposes?

Pennsylvania statutes give public health authorities broad powers to search private property. There may be situations, such as when a property owner refuses permission to search, when public health authorities may come to court to seek a search warrant or court order authorizing the search.

- 1. DPCL Searches:** In the course of investigating a suspected case or outbreak¹ of a communicable disease,² a nuisance, or “questions affecting the security of life and health,” public health authorities³ may enter and inspect private property. 71 P.S. § 532(b) (describing the general inspection powers of The Pennsylvania Department of Health); 28 Pa. Code § 27.152 (describing the investigation powers of public health authorities regarding cases or outbreaks of communicable diseases pursuant to the DPCL).⁴

¹ “Case” and “outbreak” are defined at 28 Pa. Code § 27.1.

² “Communicable disease” defined at 35 P.S. § 521.2.

³ For purposes of the Pennsylvania Public Health Law Bench Book, the term “public health authorities” include The Pennsylvania Department of Health, all County/Municipal departments of health (the health departments authorized by The Local Health Administration Law (Act 315 – 16 P.S. § 12001 *et seq.*) and all local health authorities (the 237 local boards or departments of health that operate outside of the Local Health Administration Law (Act 315) structure and funding).

⁴ These inspection powers also extend to the review of medical records. 28 Pa. Code § 27.152(c).

Neither the DPCL nor its companion regulations refer to an administrative search warrant⁵ or to a procedure for obtaining a warrant.⁶ While there is no case law imposing a warrant requirement within the context of the DPCL specifically,⁷ the Fourth Amendment of the U.S. Constitution and article I, section 8 of the Pennsylvania Constitution require a warrant supported by probable cause before searching private property⁸ in the absence of consent or emergency circumstances.⁹

2. Sanitary Standards Searches: Inspections to ensure compliance with sanitary standards are usually governed by the specific statutes authorizing them. Some statutes make reference to a warrant while others do not. Regardless of whether or not a specific provision mentions a warrant, since inspections are searches of private property conducted by government actors, Fourth Amendment and article I, section 8 analysis is appropriate.¹⁰ Conversely, even where a provision contains directions for obtaining a warrant and includes criteria for determining probable cause, it does not necessarily follow that the statutory scheme meets constitutional requirements.¹¹

3. Injunctions. Another possible way that a public health search issue might come before the court is if a health authority seeks an injunction to compel an individual to allow a search.

B. What Is The Procedure For Issuing A Warrant/Order To Search Private Property For Public Health Purposes?

DPCL Searches. Neither the DPCL nor its accompanying regulations provide any procedure for obtaining a search warrant. Accordingly, the court may find it useful to borrow from the Rules of Criminal Procedure or other health and safety related statutes for guidance.¹²

⁵ An administrative search warrant allows government officials to inspect premises for health and safety purposes. See *Commonwealth v. Tobin*, 828 A.2d 415, 419 (Pa. Commw. 2003).

⁶ Since neither the DPCL nor its regulations provide any procedure for obtaining an administrative warrant, the following procedure has been adapted from criminal warrant procedures and statutes governing inspections to ensure compliance with sanitary standards that contain administrative warrant procedures.

⁷ If a court finds that a statutory provision provides a lower standard than that provided by constitutional law it may find that provision invalid. See *Commonwealth v. Ickes*, 582 Pa. 561, 568, 873 A.2d 698 (2005) (invalidating a provision of the Game Code that gave Game Officers the power to stop any person at any time and demand identification without reasonable suspicion).

⁸ See *Camara v. Municipal Court of San Francisco*, 387 U.S. 523, 528-29 (1967) (“[E]xcept in certain carefully defined classes of cases, a search of private property without proper consent is ‘unreasonable’ unless it has been authorized by a valid search warrant.”); *Maffucci v. City of Philadelphia*, 1999 WL 320940, *3 - 5 (administrative searches of homes must first be validated by a warrant, and a violation of the warrant requirement under *Camara* would also constitute a violation of Pa. Const. art. I, § 8). See also 28A Standard Pennsylvania Practice 2d, §§ 139:34 - 36 (administrative search and seizure).

⁹ See *Camara*, 387 U.S. at 539-40 (warrant may not be required in emergency situations).

¹⁰ See generally *Camara*, 387 U.S. at 534-40; *Maffucci*, 1999 WL 320940 at *3. See also *Smith v. Borough of Glenolden*, 1994 WL 672618 (E.D. Pa. 1994).

¹¹ See *Ickes*, 582 Pa. at 568. To date, none of the administrative search provisions have been tested in court to determine their constitutionality.

¹² 35 P.S. § 780-124(d) (administrative inspection warrants under the Controlled Substances, Drug, Device and Cosmetic Act).

Sanitary Standards Searches. Presumably, if the search is to be conducted pursuant to a specific sanitary standards statute authorizing the issuance of a warrant, the procedural requirements outlined in that statute would be followed. While a few sanitary standards inspection statutes provide some guidance for the court, many do not contain procedures on matters such as the content of the application for the warrant and the warrant itself, execution and return of the warrant, inventory, etc. For these reasons, the court may find it useful to look to the Rules of Criminal Procedure for guidance.¹³

If the court chooses to look to the Rules of Criminal Procedure or other safety related statutes for guidance, these authorities, as applied to public health cases, may need to be adapted to the particular exigencies such cases may present. Some of the criminal and administrative requirements in other statutes may not be practicable in the public health setting, particularly during a rapidly-developing emergency.

1. Filing The Application For The Warrant

Under the DPCL, the public health authority will be the party seeking to search private property to investigate a suspected case or outbreak of a communicable disease. 28 Pa. Code § 27.152.

In the sanitary standards search context, the entity with authority to seek an administrative warrant will vary depending upon the statute authorizing the search.¹⁴ For this reason, the court may wish to require the entity seeking the warrant to cite the statute under which it is proceeding so the court can verify that it is the proper party.

2. Notice

Although in the criminal context a search warrant may be issued ex parte, in the absence of emergency or extraordinary circumstances, the court may wish to order an adversarial hearing to determine the necessity of a search for public health purposes, and to afford the property owner notice and an opportunity to object.¹⁵ The reasons for an ex parte proceeding before issuing a warrant in the criminal context may not exist in a public health case.

¹³ But see cautionary comment in note 7, *supra*.

¹⁴ In some instances the Department of Environmental Resources is the proper party. 35 P.S. § 721.1. (Safe Drinking Water Act); 35 P.S. § 4013.1 (Air Pollution Control Act); 35 P.S. § 6018.609 (Solid Waste Management Act); 35 P.S. § 6020.1106 (Hazardous Site Cleanup Act). In other instances it may be the Secretary of The Pennsylvania Department of Health or his or her designated officers or employees. 35 P.S. § 780-101. (Controlled Substances, Drug, Device and Cosmetic Act.)

¹⁵ In discussing searches of an uncharged person, it has been held that a pre warrant hearing is required. See e.g. *Matter of Lavigne*, 641 N.E.2d 1328 (Mass. 1994)(uncharged person from whom state sought blood sample as evidence of a crime was entitled to a pre-search hearing); *State v. Lawson*, 453 A.2d 556 (N.J. Super 1982)(adversarial hearing conducted before court-ordered removal of a bullet from a criminal suspect). *Accord Maffucci*, 1999 WL 320940 *1-2 (when Philadelphia License and Inspection officers were denied entry into a private residence because they did not obtain a prior warrant, an adversarial hearing was conducted to determine whether a court order compelling the inspection should issue).

3. Content of the Application for a Warrant

The statute governing the search may set forth what the application must contain. For example, an application for a search warrant under the Controlled Substances, Drug, Device and Cosmetic Act should contain a sworn affidavit from a designated officer or employee of the particular agency seeking the warrant having knowledge of the facts alleged, sworn before the issuing authority establishing grounds for the warrant.¹⁶ In the absence of explicit guidance, the court may wish to borrow from this statute or the Rules of Criminal Procedure to fill in these gaps.¹⁷

4. Jurisdiction

There is no provision in the DPCL stating who may issue a warrant; however, by analogy to the rules governing the issuance of criminal search warrants, it would appear to be any issuing authority¹⁸ within the judicial district where the person or place that is the subject of the search is located.¹⁹

5. Venue

Neither the DPCL nor the other public health search provisions specify a particular venue, accordingly general rules governing venue should apply. Pa. R. Civ. P. 1006.

6. Hearing

In the absence of an emergency or extraordinary situation, the court may wish to conduct an adversarial hearing to determine if a search warrant should issue.²⁰

In emergency situations, an application for a search warrant may presumably be brought *ex parte* as in the criminal context.²¹ Any oral testimony in support of the application should be reduced to an affidavit prior to issuance of the warrant.²²

¹⁶ 35 P.S. § 780-124(d)(2) (stating requirements for application for warrant under the (Controlled Substances, Drug, Device and Cosmetic Act.)

¹⁷ Pa. R. Crim. P. 200-211; *but see* cautionary comment in note 7, *supra*.

¹⁸ Under the criminal rules an “issuing authority” is defined as “[a]ny public official having the authority of a magistrate, a Philadelphia bail commissioner, or a magisterial district judge.” Pa. R. Crim. P. 103. Justices of the Supreme Court, Judges of the Superior and Commonwealth Courts, and common pleas Judges all have the power to issue search warrants. Pa. R. Crim. P. 200 Comment. Appellate Court Justices and Judges have the power to issue search warrants anywhere within Pennsylvania while common pleas Judges may issue search warrants within their judicial district. *Id.* A magisterial district judge may issue a warrant to search a person or place outside of his or her magisterial district as long as the person or place is within the judicial district. *See Commonwealth v. Ryan*, 484 Pa. 602, 400 A.2d 1264 (1979).

¹⁹ Pa. R. Crim. P. 200 (stating who may issue a search warrant). Support for the foregoing interpretation is also provided in sanitary standards statutes. 35 P.S. § 721.5(g) (Safe Drinking Water Act); 35 P.S. § 780-124(d)(1) (Controlled Substances, Drug, Device and Cosmetic Act); 35 P.S. § 4013.1 (Air Pollution Control Act); 35 P.S. § 6018.609 (Solid Waste Management Act); 35 P.S. § 6020.1106 (Hazardous Site Cleanup Act).

²⁰ *See* § B.2, *supra* and n.15.

²¹ Pa. R. Crim. P. 203.

²² Pa. R. Crim. P. 203 *Comment*.

a. Burden and Standard of Proof

The party seeking the warrant has the burden of proving that probable cause exists to issue the warrant. U.S. Const. amend. IV; Pa. Const. art. I, § 8; *compare* Pa. R. Crim. P. 203(B) (setting forth the requirements for issuance of a criminal search warrant).

(i) Probable Cause, Generally

Probable cause is the standard by which a decision to search is tested against the constitutional mandate of reasonableness.²³ To apply this standard it is first necessary to focus on the government interest which is alleged to justify the official intrusion upon the constitutionally protected rights of the private citizen.²⁴ Probable cause as used in the criminal context is not necessarily identical to probable cause in the administrative search context.²⁵

For purposes of an administrative search warrant, particularly in the sanitary standards context, probable cause justifying a warrant “may be based not only on specific evidence of an existing violation but also on a showing that ‘reasonable legislative or administrative standards for conducting an . . . inspection are satisfied with respect to a particular [establishment.]”²⁶

(ii) Statutory Probable Cause Standards

Certain statutes provide their own standards for evaluating probable cause sufficient to issue a warrant for certain sanitary standards inspections.²⁷ There is no case law determining whether these provisions are consistent with the probable cause requirements of the Fourth Amendment of the United States Constitution or article I, section 8 of the Pennsylvania Constitution.

 **Note:** The court may need to determine not only whether the party seeking the warrant has satisfied the statutory probable cause standard but also whether the statutory probable cause standard is consistent with the United States and Pennsylvania Constitutions.²⁸

²³ See *Camara*, 387 U.S. at 534-35.

²⁴ See *id.* at 534-35.

²⁵ See *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 320 (1978), *citing* *Camara*, 387 U.S. 523, 538 (1967)

²⁶ See *Marshall*, 436 U.S. at 320; *Camara*, 387 U.S. at 538; *Commonwealth v. Tobin*, 828 A.2d 415, 420 (Pa. Commw. 2003).

²⁷ See e.g. the Safe Drinking Water Act, 35 P.S. § 721.5(g); the Controlled Substances, Drug, Device and Cosmetic Act, 35 P.S. § 780-124(d)(1), the Air Pollution Control Act, 35 P.S. § 4013.1, and the Hazardous Site Cleanup Act, 35 P.S. § 6020.1106.

²⁸ See *Ickes*, 582 Pa. at 568 (invalidating a provision of the Game Code that gave Game Officers the power to stop any person at any time and demand identification without reasonable suspicion).

b. Right to counsel

If the court determines a hearing is required prior to the issuance of a search warrant, the court may wish to decide if counsel should be appointed to represent indigent respondents.

In determining whether appointed counsel is necessary, the court may wish to balance the presumption that there is no absolute right to appointed counsel unless the litigant may lose his or her liberty²⁸ against: (1) The private interest at stake; (2) the government interest at stake; and (3) the likelihood of an erroneous decision.³⁰

C. What Remedies Are Available To The Court?

If the court finds sufficient probable cause it shall issue the warrant. The DPCL does not discuss what the warrant must contain and how it should be executed. Some administrative search statutes discussed in this bench guide address the content, execution and return of warrants while others do not. Therefore, the court may have to turn to the statutes that have detailed provisions in this regard³¹ or the Rules of Criminal Procedure for guidance.

²⁹ See *Lassiter v. Dep't of Social Services*, 452 U.S. 18, 26-27 (1981).

³⁰ See *Mathews v. Eldridge*, 424 U.S. 319 (1976) (setting forth the three factors a court should weigh in determining if appointed counsel is required in a civil proceeding); *Commonwealth v. \$9,847.00 United States Currency*, 704 A.2d 612, 615 (Pa. 1997) (finding no right to appointed counsel in a civil forfeiture proceeding).

³¹ 35 P.S. § 780-124(d) of the Controlled Substances, Drug, Device and Cosmetic Act contains perhaps the most detail of any administrative search statute on this issue.

SECTION 1.00 BENCH GUIDE

SECTION 1.70 Temporary Closures or Evacuations

Summary

Under exigent circumstances, the court may be presented with a request from a public health authority to temporarily close a public or private area (such as a school, a sports venue or a mall), or to evacuate an area. Additionally, the court may be presented with a request to stop a government-ordered closure or evacuation.

There are no specific statutory or regulatory provisions under the Pennsylvania public health laws that expressly authorize such measures by a public health authority. However, Pennsylvania law does vest public health authorities with the responsibility to protect the public health, and are given the authority to use appropriate disease control measures to do so. To carry out this mandate, a public health authority may petition the court to order one or more of the above actions as an appropriate disease control measure.

A. Background

1. Pennsylvania Public Health Statutes

Pursuant to the Disease Prevention and Control Law of 1955 (“DPCL”), 35 P.S. § 521.1, *et seq.*, and other Pennsylvania laws,¹ public health authorities² are responsible for disease prevention and control in the Commonwealth.³ When a public health authority becomes aware of a report of a disease subject to isolation, quarantine or any other control measure, it must carry out “appropriate control measures.” 35 P.S. § 521.5; 28 Pa. Code § 27.152.⁴ Public health

¹ 71 P.S. § 532(a) (powers and duties of The Pennsylvania Department of Health); 16 P.S. § 2192(3)(county code); 16 P.S. §§ 12010(c) and 12012(c) (County/Municipal health departments); 53 P.S. § 14401 (First Class cities); 53 P.S. § 24664 (Second Class cities); 53 P.S. § 37308(3) (Third Class cities); 53 P.S. § 48106 (Boroughs); 53 P.S. §§ 56605-07 (First Class townships). This authority may also appear in local ordinances or regulations. See e.g. Philadelphia Code §§ 6-203 - 206.

² For purposes of the Pennsylvania Public Health Law Bench Book, the term “public health authority” includes the Pennsylvania Department of Health, all County/ Municipal departments of health (the health departments authorized by The Local Health Administration Law (Act 315- 16 P.S. §12001 *et seq.*) and all local health authorities (the 237 local boards or departments of health that operate outside of the Local Health Administration Law (Act 315) structure and funding). Note: Local health authorities must receive approval from The Pennsylvania Department of Health before taking any disease control measure. 28 Pa. Code §§ 27.1, 27.60(c).

³ 35 P.S. §§ 521.3, 521.5; 28 Pa. Code §§ 27.60 and 27.152. See also *supra* note 1.

⁴ The term “appropriate control measures” has not been defined by Pennsylvania statutes, regulations, or case law.

authorities have broad powers⁵ to “determine and employ the most effective and practical means for the prevention and suppression of disease.”⁶

2. Emergency Management Services Code

The Governor may commandeer property and compel evacuations under the Emergency Management Services Code, (“EMS Code”). 35 Pa. C.S. § 7301. However, since the emergency provisions in these laws do not address judicial review of the governor’s emergency decisions, this bench guide merely highlights this authority for the court’s information.⁷

B. Under What Circumstances May A Court Issue An Order To Temporarily Close Or Evacuate Public Or Private Properties Or Areas?⁸

There is no Pennsylvania statutory or case law on point. However, general authorization for public health authorities to institute appropriate disease control measures appears in statutes, The Pennsylvania Department of Health Regulations and possibly local ordinances or regulations.⁹ Conceivably, a public health authority may determine that “the most efficient and practical means

⁵ The Pennsylvania Supreme Court has held, “the state possesses inherently a broad police power, which transcends all other powers of government.” *Commonwealth v. Stofchek*, 322 Pa. 513, 519, 185 A. 840 (1936). See also *National Wood Preservers, Inc. v. Commonwealth Dept. of Environmental Resources*, 489 Pa. 221, 414 A.2d 37 (1980) (collecting cases and discussing police powers). The police power is the greatest and most powerful attribute of government; on it the very existence of the state depends.” *Stofchek*, 322 Pa. at 520, quoting *Commonwealth v. Widovich*, 295 Pa. 311 (1929). “One of [the] well-known objects [of a state’s police power] is the protection of public health . . . ” *Id.* Cf. *Moore v. Lumpkin*, 630 N.E.2d 982, 995 (Ill. App. 1 Div. 1994) (holding that “governmental action to restrict and suppress the spread of contagious diseases falls within the scope of a State’s police powers”; *Matter of Juveniles A, B, C, D, E*, 847 P.2d 455 (Wash. 1993) (“Control of a communicable disease is a valid and compelling exercise of the State’s police power”); *Love v. Superior Court*, 226 Cal. App.3d 736, 740 (Cal. Ct. App. 1990).

⁶ 71 P.S. § 532(a). Public health authorities may enter and examine “all grounds, vehicles, apartments, buildings and places . . . ” 71 P.S. § 532(b); 28 Pa. Code §§ 27.60 and 27.152.

⁷ Under the EMS Code, the Governor is responsible for, among other things, “meeting the dangers to this Commonwealth . . . ” 35 Pa. C.S. § 7301(a). In order to fulfill this duty, the Governor can commandeer property or use any private, public or quasi-public property necessary to cope with a disaster emergency. 35 Pa. C.S. § 7301(f)(2) and (4). This includes the use of schools and school vehicles by local, county and State officials. 35 Pa. C.S. § 7701(d) and (e). The Governor can direct and compel the evacuation of all or part of the population from any stricken or threatened area within the Commonwealth, including prescribing the routes, modes of transportation, and destinations. 35 Pa. C.S. § 7301(f)(5)-(6). The Governor also has the authority to suspend laws during disaster emergencies. 35 Pa. C.S. §§ 7301(b), 7301(f) (1) and 7502(a) (2).

⁸ Similarly, a public health authority could petition a court to take or destroy property as a disease control measure. Presumably the taking of property would be governed by a takings analysis under the Fifth Amendment to the U.S. Constitution and article I, section 10 of the Pennsylvania Constitution. See *Mugler v. Kansas*, 123 U.S. 623, 668-69 (1887); *Machipongo Land and Coal Co. Inc. v. Commonwealth*, 799 A.2d 751 (Pa. 2002). See also *Appeal of White*, 287 Pa. 259, 263-66, 134 A. 409 (1926)(distinguishing “police power” from eminent domain); 29A C.J.S. § 8 (police and other related powers in general).

⁹ 35 P.S. §§ 521.2(a) and 521.5; 28 Pa. Code § 27.60(b). Additional authority may appear in local regulations or ordinances. See e.g. Philadelphia Code § 6-205. See also *Commonwealth v. Moore*, 526 Pa. 152, 159, 584 A.2d 936, 940 (1991) (explaining the purpose of the DPCL). Cf. *Commonwealth v. Stotland*, 251 A.2d 701 (Pa. 1969)(Spaulding, J., concurring)(city may invoke emergency powers to limit public gatherings when, among other things, the health and safety of citizens is seriously and substantially endangered) and *Commonwealth v. Flexer*, 2 Bucks 180, 1953 WL 4631 at *9-10 (discussing emergency powers of The Department of Health).

for the prevention and suppression of disease” requires the closure of a school, public or private areas, or the evacuation of an area, and may order these disease control measures. Presumably, if an individual or group of individuals refuse to abide by the public health authority’s order, the public health authority may seek a court order to compel such control measures.¹⁰

C. What Must Be Proven For A Court To Issue An Order To Temporarily Close Or Evacuate Public Or Private Properties Or Areas?

There is no law on point.

A public health authority would have the burden of proving that a condition is present which significantly threatens the public’s health and that the requested action is necessary as a reasonable¹¹ and appropriate disease control measure.¹²

D. What Is The Procedure For Obtaining A Court Order To Close Or Evacuate Public Or Private Properties Or Areas?

1. Filing A Petition Or Other Civil Action

Pennsylvania law does not address this question. When seeking court orders in other public health matters, the action is brought before the court by petition.¹³ It is also possible an action may be initiated by a request for an injunction. Pa. R. Civ. P. 1531.



Note: If the public health authority is not The Pennsylvania Department of Health or a County/Municipal health department, the authority must receive approval from The Pennsylvania Department of Health before taking any disease control measure. 28 Pa. Code §§ 27.1, 27.60(c).

¹⁰ See e.g. *Commonwealth ex re. Ogden v. Cairns*, 20 Pa. D. 453, 1911 WL 3741 (Philadelphia Clerk of Quar. Sess., 1911) (board of health may establish quarantine in a district of the city); *Aspinwall Borough v. Aspinwall School Board*, 1910 WL 3618 (Allegheny County CCP 1910) (public health authorities, under prior law, may order schools closed during an epidemic).

¹¹ Historically public health authorities have been afforded broad discretion to determine appropriate disease control measures. Courts have reviewed these decisions to ensure reasonableness. See e.g. *Allentown v. Wagner*, 27 Pa. Super. 485 (1905) (the rules and regulations employed to combat contagious or infectious diseases must not be unreasonable, nor may they be enforced unreasonably); *Ogden*, 20 Pa. D. at 453, (decision of the board of health must be “reasonable, humane and not cruel”); *Boehm v. Philadelphia*, 1914 WL 4412 at * 4-5 (Philadelphia CCP 1914) (decision of the board of health must not be “manifestly mistaken, or [taken] in obvious disregard of reason”), *aff’d* 59 Pa. Super 441 (1914).

¹² 35 P.S. §§ 521.3 and 521.5; 28 Pa. Code § 27.60(b).

¹³ This presumption is made because when public health authorities seek court orders in other public health matters, those actions are initiated by way of a petition. 35 P.S. §§ 521.7(2) and 521.11(a.2); 35 P.S. § 2140.301(b) (petition practice contemplated by the Counterterrorism Planning, Preparedness and Response Act (“Counterterrorism Act”).

2. Jurisdiction

Pennsylvania law does not address this question. As courts of general jurisdiction, the courts of common pleas would have jurisdiction.¹⁴ 42 Pa. C.S. § 931.

3. Venue

There are no specific venue rules governing public health authority petitions to close or evacuate areas, therefore the general rules governing venue presumably apply. Pa. R. Civ. P. 1006.

4. Service and Notice

Neither the DPCL, nor other relevant public health statutes identify service requirements for public health petitions,¹⁶ nor do they specify the form of notice in public health actions beyond requiring that the respondent be served with a copy of the petition seeking court action. e.g. 35 P.S. § 521.7(2). Presumably the general rules governing service and notice apply, and presumably both should be provided to the respondent consistent with petition practice under Pa. R. Civ. P. 206 and local rule.¹⁷

The court may consider alternative means of service and notice if there are allegations that the respondent or respondents may be infected with, or carriers of, a highly contagious communicable disease. The legislature contemplated this in the Counterterrorism Act, 35 P.S. § 2140.301(b)(3) (notice may be oral or written). For alternative service, Pa. R. Civ. P. 430.¹⁸



Note: If the petitioner is not The Pennsylvania Department of Health or a County/Municipal health department, a copy of the petition and any hearing notices and court orders should be served upon The Pennsylvania Department of Health since that entity has the ultimate authority to protect the health of the citizens of Pennsylvania. 35 P.S. § 521.3(c); 71 P.S. § 532(a).

¹⁴ By analogy, other public health petitions are brought in the courts of common pleas. 35 P.S. §§ 521.7(2) and 521.11(a.2). 35 P.S. § 2140.301(b) (petitions under the Counterterrorism Act are filed in the courts of common pleas).

¹⁵ If The Pennsylvania Department of Health is the petitioner, the Commonwealth Court presumably would have concurrent jurisdiction. 42 Pa. C.S. § 761(a)(1).

¹⁶ "Service of process is a mechanism by which a court obtains jurisdiction of a defendant, and therefore, the rules concerning service of process must be strictly followed . . . Thus, improper service is not merely a procedural defect that can be ignored . . ." (internal citations omitted). *Mayer v. Garman*, __ Pa. __; __A.2d. __; 2006 WL 2252067 (Aug. 4, 2006), citing *Cintas Corp. v. Lee's Cleaning Services, Inc.*, 549 Pa. 84, 91, 700 A.2d 915 (1997). See also *Fraisar v. Gillis*, 892 A.2d 74, 77-78 (Pa. Commw. Ct. 2006) (discussing process service rules).

¹⁷ See Pa. R. C. P. 440 for service of process under Rule 206.

¹⁸ Under usual circumstances, a property owner is entitled to a hearing before his/her property is taken, however, there are some extraordinary situations in which a valid governmental interest justifies postponing the hearing until after the deprivation. See *Fuentes v. Shevin*, 407 U.S. 67, 90 (1972) (the seizure of the property must (1) be necessary to secure an important governmental or general public interest; (2) there must be a special need for prompt action; and, (3) the person initiating the seizure must be responsible for determining that the seizure was necessary and justified in the particular instance). Where governmental interests permit seizure before notice is given or a hearing is held, notice and a hearing should be provided within a meaningful time thereafter. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542-43 (1985).

5. Hearings

Under the DPCL a hearing must be held on petitions for medical testing and treatment within 24 hours of service. 35 P.S. §§ 521.7(2) and 521.11(a.2). It is not clear that an expedited hearing would be required to order the closure or evacuation of a public or private property or area.¹⁹ The court may need to determine whether an expedited hearing is required on a case by case basis.

a. Burden and Standard of Proof

There is no Pennsylvania law on either of these points. The burden of proof would presumably be on the public health authority as the entity seeking to impose the disease control measures.

Authority from other jurisdictions suggests if the public health authority seeks to restrict the liberty of an individual or group, the “clear and convincing” standard may apply. See *Addington v. Texas*, 441 U.S. 418 (1979) (standard of proof required in civil commitment proceedings); *City of Newark v. J.S.*, 652 A.2d 265, 271-72 (N.J. Super 1993) (standard of proof required for involuntary commitment of tuberculosis patient).²⁰ If the physical liberty of the respondent is not at issue, the standard of proof may be less. See generally *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976); *Commonwealth v. Maldonado*, 576 Pa. 101, 838 A.2d 710 (2003) (discussing applicable standards of proof in various contexts).

b. Right to Appointed Counsel

There is no Pennsylvania law on this point.²¹ In determining whether appointed counsel is necessary, the court may wish to balance the presumption that there is no absolute right to appointed counsel unless the litigant may lose his or her liberty²² against: (1) The private interest at stake; (2) the government interest at stake; and (3) the likelihood of an erroneous decision.²³

¹⁹ Compare with 35 P.S. § 2140.301(b)(2) (for isolation or quarantine petitions filed under the Counterterrorism Act, hearings must be held not more than 72 hours after the filing of the petition).

²⁰ “Clear and convincing evidence” is also the standard for involuntary civil commitment under the Pennsylvania Mental Health Procedures Act. *In re Hancock*, 719 A.2d 1053, 1056-58 (Pa. Super. 1998).

²¹ By analogy, under the Counterterrorism Act, when individuals or groups have been ordered isolated or quarantined, individuals are entitled to be represented by counsel and if the individual is without the financial resources or otherwise unable to employ counsel, the court must appoint counsel. 35 P.S. § 2140.301(b)(4). The court may be permitted to appoint a public defender to represent indigent respondents if it is determined representation is constitutionally required. 16 P.S. § 9960.6(a)(11).

²² See *Lassiter v. Dep’t of Social Services*, 452 U.S. 18, 26-27 (1981).

²³ See *Mathews v. Eldridge*, 424 U.S. 319 (1976) (setting forth the three factors a court should weigh in determining if appointed counsel is required in a civil proceeding); *Commonwealth v. \$9,847.00 United States Currency*, 704 A.2d 612, 615 (Pa. 1997) (finding no right to appointed counsel in a civil forfeiture proceeding).

c. Conduct of the Hearing

1. Hearings would be conducted according to the Rules of Civil Procedure. The Rules do not address taking testimony by telephone or advanced communication technology. However, in a public health case where the respondent is alleged to have a potentially dangerous communicable disease, or may already be in isolation or quarantine, the court may wish to conduct hearings with the aid of a telephone or by using other communication technology (such as two-way simultaneous audio-visual communication).²⁴ This method of conducting hearings is contemplated by the Counterterrorism Act. 35 P.S. § 2140.301(b)(3). See *City of Newark v. J.S.*, 652 A.2d 265, 268 n.1 (N.J. Super. 1993).²⁵
2. The DPCL does not dictate that hearings be held on the record, but persuasive authority from other jurisdictions suggests hearings should be on the record.²⁶

E. What Remedies Are Available To The Court?

Injunction. To enforce court orders, common pleas court judges may issue preliminary/special or permanent injunctions. Pa. R. Civ. P. 1531.²⁷

F. What Enforcement Mechanisms Are Available To The Court?

1. Contempt

Violation of a court order, such as an order of quarantine, and violation of an injunction, may expose the violator to contempt. The court possesses the inherent authority to enforce court orders by way of the power of contempt. See *generally, Commonwealth v. Bowden*, 576 Pa. 151, 184-86, 838 A.2d 740 (2003).

²⁴ Many courthouses, magisterial district judge offices, state and county prisons and health care facilities have simultaneous audio-visual communication equipment.

²⁵ *Accord* 42 Pa. C.S. § 5985 (child victims or material witnesses may testify through the use of closed circuit television in certain circumstances).

²⁶ See e.g. *Greene v. Edwards*, 263 S.E.2d 661, 663 (W. Va. 1980). Cf. 50 P.S. § 7304(e)(5) ("On the record" hearings are required in involuntary treatment petitions under Section 304 of the Mental Health Procedures Act).

²⁷ Injunctive relief may be appropriate in the public health context. See e.g. *Commonwealth ex. rel. Preate v. Danny's New Adam and Eve Bookstore*, 625 A.2d 119 (Pa. Commw. 1993) (preliminary injunction issued because of ongoing threat to public health).

2. Prosecution

While there is no case law for guidance, by statute, any person who violates any provision of the DPCL, or any regulation issued by the State Advisory Board or ordinances, rules or regulations issued by a public health authority (including The Pennsylvania Department of Health, any County/Municipal department of health or local health authority),²⁸ commits a summary offense, punishable by a fine of not less than twenty-five dollars (\$25.00), nor more than three hundred dollars (\$300.00), plus costs. In default of payment, the offender may be sentenced to county jail for thirty (30) days. 35 P.S. § 521.20(a). Prosecutions may be initiated by The Pennsylvania Department of Health, a County/Municipal health department or a local health authority, or by any person having knowledge of a violation of any provision of the DPCL or its accompanying regulations. 35 P.S. § 521.20(b).²⁹

²⁸ The DPCL defines local health authority as the board of health or the department of public health of a city, borough, incorporated town or township of the first class, or a county department of health, or joint county department of health. 35 P.S. § 521.2.

²⁹ In addition, under the Local Health Administration Law, 16 P.S. §§ 12001 - 12028, any person who violates this law, or any rule or regulation of the County/Municipal health departments or who interferes with a health director or any agent of a County/Municipal health department in the discharge of official duties, convicted of a second or subsequent offense, commits a misdemeanor, and upon conviction, may be fined not less than five hundred dollars (\$500.00), nor more than one thousand dollars (\$1,000.00), imprisoned for up to one year, or both. 16 P.S. § 12027(b). Also, separate penalty provisions exist for communicable tuberculosis. 35 P.S. § 521.19(a).

SECTION 1.00 BENCH GUIDE

SECTION 1.80 Habeas Corpus

Summary

The Disease Prevention and Control Law of 1955 (“DPCL”) provides that the public health authorities¹ may order public health “control measures,” including, among others, isolation and quarantine, if an individual has been exposed to or infected with a communicable disease and when control measures are necessary to protect the public from the spread of the communicable disease. 35 P.S. §§ 521.5 and 521.16(a)(3)-(5); 28 Pa. Code §§ 27.60-61 and 27.65.

In addition, pursuant to the Counterterrorism Planning, Preparedness and Response Act (“Counterterrorism Act”) in the event of an actual or suspected outbreak of a contagious disease due to an actual or suspected bioterrorist or biohazardous event, the Governor may temporarily order individuals or groups of individuals quarantined or isolated.

35 P.S. § 2140.301(a).

Judicial review is provided in the Counterterrorism Act,² and the legislature has provided some procedures to be followed when a public health authority seeks a court order to compel medical testing or treatment for a communicable disease under the DPCL,³ but otherwise there is no prescribed procedure for challenging the legality of public health orders that restrict an individual’s liberty. Conceivably, individuals challenging public health orders may seek to do so by filing a petition for a writ of habeas corpus.⁴

¹ For purposes of the Pennsylvania Public Health Law Bench Book, the term “public health authority” includes The Pennsylvania Department of Health, all County/ Municipal health departments (the health departments authorized by The Local Health Administration Law (Act 315 -16 P.S. § 12001 *et seq.*) and all local health authorities (the 237 local boards or departments of health that operate outside of the Local Health Administration Law (Act 315) structure and funding). Note: Local health authorities must receive approval from The Pennsylvania Department of Health before taking any disease control measure. 28 Pa. Code §§ 27.1, 27.60(c).

² 35 P.S. § 2140.301(b).

³ 35 P.S. §§ 521.7(2) and 521.11(a.2).

⁴ Habeas corpus relief may not be available in all cases, as appellate remedies may exist to challenge a court order. See *Commonwealth Dept. of Corrections v. Reese*, 774 A.2d 1255, 1260 (Pa. Super. 2001); 18 Standard Pennsylvania Prac. §§ 98:3, 98:4. There is no case law under either the DPCL or the Counterterrorism Act on the availability of habeas corpus relief in the context of public health law. Conceivably, petitions may be filed if an individual initially consents to medical testing or treatment under 35.P.S. §§ 521.7(1) or 521.11(a.1), or voluntary isolation or quarantine, and that person subsequently refuses to consent; if an individual has been involuntarily committed by a public health authority pursuant to 35 P.S. §§ 521.7(1) or 521.11(a.1) and wishes to challenge that confinement; or someone may allege he or she received no notice and opportunity to be heard at a judicial review hearing under 35 P.S. § 2140.301(b).

A. Under What Circumstances May an Individual Petition For a Writ of Habeas Corpus in a Public Health Context?

In Pennsylvania, the government may not suspend the privilege of the writ of habeas corpus *unless* such suspension is required to preserve the public safety in the event of rebellion or invasion. Pa. Const. art. I, § 14; 42 Pa. C.S. § 6501.

Application for a writ of habeas corpus may be brought by or on behalf of any person restrained of his or her liberty under any pretense whatsoever. 42 Pa. C.S. § 6503(a). However, habeas corpus may only be invoked when other remedies have been exhausted or are unavailable.⁵

“Habeas corpus is a civil remedy, regardless of whether the prisoner has been detained under civil or criminal process.”⁶ Habeas corpus may be available to challenge restrictions on liberty pursuant to public health commitment or detention orders.⁷

B. Jurisdiction and Venue

By statute, any judge of a court of record may issue a writ of habeas corpus to inquire into the cause of detention of any person or for any other lawful purpose. 42 Pa. C.S. §§ 721(1), 741, 761(c), § 931(a) and 6502(a).⁸ While appellate court judges have original jurisdiction to issue writs of habeas corpus, generally, that jurisdiction will only be exercised when there is a necessity to do so.⁹

Venue in habeas corpus actions is determined by general rule. 42 Pa. C.S. § 6502(b). See *generally* Pa. R. Civ. P. 1006.

C. What Information Must The Application For a Writ of Habeas Corpus Contain?

While strict pleading requirements generally do not apply to a petition for a writ of habeas corpus, some specificity is required.¹² A petition must aver facts which, if true, would entitle the petitioner

⁵ See *Commonwealth v. McNeil*, 665 A.2d 1247, 1250 (Pa. Super. 1995).

⁶ *Commonwealth ex rel. Paylor v. Claudy*, 366 Pa. 282, 77 A.2d 350 (1951).

⁷ See *Commonwealth ex rel. Odgen vs Carnes*, 20 Pa. D 453, 1911 WL 3741 (Phila. Quar. Sess. 1911), *aff'd* 46 Pa. Super. 96, and *appeal dismissed* at 48 Pa. Super. 265 (1911). See also 39 C.J.S. *Habeas Corpus* § 234. Cf. *Commonwealth ex rel. Finken v. Roop*, 339 A.2d 764 (Pa. Super. 1975) (habeas petition brought to challenge civil commitment under the Mental Health and Mental Retardation Act of 1966).

⁸ Writs issued by a judge of an appellate court are returnable to the court on which that judge sits. 42 Pa. C.S. §§ 741 and 761(c).

⁹ *Commonwealth ex rel. Tiscio v. Martin*, 120 A.2d 307, 308 (Pa. Super. 1956).

¹⁰ Venue provisions in Pa. R. Crim. P. 108 would not apply to habeas petitions challenging civil confinement. See Comment following Rule 108; *Commonwealth ex rel. Rivers v. Myers*, 414 Pa. 439, 444, 200 A.2d 303 (1964) (“[a] petition for a writ of habeas corpus is a civil action and the procedural rules of criminal court do not apply to civil actions”).

¹¹ See also Pa. R. App. P. 106 (original jurisdiction matters in appellate courts).

¹² *Commonwealth ex rel. Kennedy v. Mingle*, 388 Pa. 54, 57, 130 A.2d 161 (1957).

to an award of a writ of habeas corpus and a hearing thereon.¹³ An application for a writ of habeas corpus should include:

1. The name or description of the individual being restrained;
2. The name or identity of the individual or agency restraining that person's liberty;
3. The place where the applicant is being held; and
4. Allegations of facts which, if true, show the detention or restraint is illegal.¹⁴

If the application fails to make a prima facie case for the issuance of the writ, it may be summarily dismissed.¹⁵ Similarly, as a general rule, a writ of habeas corpus may not issue if the individual's confinement has ended.¹⁶

D. What is The Procedure For Bringing a Habeas Corpus Petition in a Public Health Case?

1. Filing a Petition:

Habeas corpus is a civil remedy. The Pennsylvania Rules of Civil Procedure would govern petitions based on non-criminal confinement.¹⁷ (By its terms, Pa. R. Crim. P. 108 addresses habeas corpus petitions filed in criminal matters). A writ of habeas corpus, or a rule to show cause why the writ should not issue, should be filed with the court, and directed to the person having custody of the person confined or detained. 42 Pa. C.S. § 6504. The writ or rule to show cause should be served personally and immediately, whenever possible.¹⁸

2. Return on Writ or Rule to Show Cause and Hearing

The writ or rule to show cause should be returned within three days unless additional time, not to exceed twenty (20) days is allowed for good cause shown. 42 Pa. C.S. § 6504.

The person to whom the writ or rule to show cause is directed must make a return certifying the cause of the detention and, unless otherwise prescribed by general rule or order of the court, shall produce at the hearing the body of the person detained. 42 Pa. C.S. § 6504. However, there is no absolute right to be present at a habeas corpus hearing.¹⁹

¹³ *Balsamo v. Mazurkiewicz*, 611 A.2d 1250, 1253 (Pa. Super. 1992).

¹⁴ See generally 18 Standard Pennsylvania Prac. 2d. §§ 98:59 and 98:61.

¹⁵ *Balsamo*, 611 at 2d. at 1253.

¹⁶ See *Commonwealth v. Smith*, 486 A.2d 445, 448 (Pa. Super. 1984); 18 Standard Pennsylvania Prac. § 98.5.

¹⁷ See *Commonwealth ex rel. Rivers v. Myers*, 414 Pa. 439, 444, 200 A.2d 303 (1964).

¹⁸ 18 Standard Pennsylvania Prac., 2d § 98:68.

¹⁹ See *Commonwealth ex rel. Herge v. Martin*, 6 Pa. D.& C.2d 589, *aff'd* at 387 Pa. 117, 126 A.2d 711 (1956); 18 Standard Pennsylvania Prac. 2d § 98:77. See also § D.6, *infra*.

3. Service and Notice

The general rules governing service and notice apply in civil actions,²⁰ and both should be provided to the respondent consistent with petition practice under Pa. R. Civ. P. 206 and local rule.²¹

4. Burden of Proof and Persuasion

It is not clear what the standard of proof is in a habeas proceeding challenging a public health order. Legal authorities suggest the standard is at least by a preponderance of the evidence.²² The petitioner or the individual acting on his or her behalf bears the initial burden of proving the facts entitling the individual to relief in a habeas proceeding.²³ Specifically, that the individual is being unlawfully detained. Some courts have held that once the petitioner accomplishes this, the burden shifts to the governmental entity restraining the individual of his or her liberty to show such detention, such as isolation or quarantine, is lawful.²⁴

5. Right to Counsel

Due process jurisprudence and case law from other jurisdictions suggest habeas petitioners are entitled to be represented by counsel and appointing counsel for the indigent may be necessary.²⁵

6. Conduct of Hearing

The Pennsylvania Rules of Civil Procedure do not address conducting hearings by telephone or advanced communication technology. However, in a public health case where the respondent is alleged to have a potentially dangerous communicable disease, or may already be in isolation or quarantine, the court may wish to conduct hearings with the aid of a telephone or by using other communication technology (such as two-way simultaneous audio-visual communication). This method of conducting hearings is contemplated by the Counterterrorism Act. 35 P.S. § 2140.301(b)(3).²⁶

²⁰ The court may consider alternative means of service and notice given the allegation that the respondent may be infected with, or a carrier of, a highly contagious communicable disease. The legislature contemplated this in the Counterterrorism Act, 35 P.S. § 2140.301(b)(3) (notice may be oral or written). For alternative service, Pa. R. Civ. P. 430. With the notice, it is suggested the respondent be advised of the right to counsel. See § D.5, *infra*.

²¹ See Pa. R. Civ. P. 440 for service of process under Rule 206.

²² See 39A C.J.S. Habeas Corpus § 336.

²³ See *Commonwealth ex rel. Dion v. Tees*, 118 A.2d 756 (Pa. Super. 1956); 18 Standard Pennsylvania Prac. 2d § 98:79.

²⁴ See e.g. *Ex parte Fowler*, 184 P.2d 814 (Okla. Crim. App. 1947); *Ex parte Arata*, 198 P. 814 (Cal. App. 1921); 39 C.J.S. Habeas Corpus §§ 234, 330.

²⁵ Under the Counterterrorism Act, individuals are entitled to be represented by counsel and if the individual is without the financial resources or otherwise unable to employ counsel, the court must appoint counsel. 35 P.S. § 2140.301(b)(4). The court may be permitted to appoint a public defender to represent indigent respondents. 16 P.S. § 9960.6(a)(4)(appointment of public defender in state habeas proceedings); 16 P.S. § 9960.6(a)(11)(appointment when representation is constitutionally required).

²⁶ See also *City of Newark v. J.S.*, 652 A.2d 265, 268 n.1 (N.J. Super. 1993).

E. What Remedies Are Available to The Court?

If the court finds the individual's confinement is illegal, the court must order the individual to be released.

Injunction: To enforce court orders, common pleas court judges may issue preliminary, special or permanent injunctions. Pa. R. Civ. P. 1531.²⁷

F. What Enforcement Mechanisms Are Available to The Court?

1. Prosecution

Any person who shall fail or refuse to respond to a writ or to an order issued under this chapter, or who shall change the place of detention of any person for the purpose of defeating the writ, or shall, without express authorization from a judge of a court of record, recommit on substantially the same facts and circumstances any person set at large upon a habeas corpus, or shall do any act for the purpose of defeating the writ or the order, commits a misdemeanor of the second degree. 42 Pa. C.S. § 6505 (Interference with writ prohibited).

2. Contempt

Violation of a court order and violation of an injunction may expose the violator to contempt. In addition to statutory authority to punish for contempt, courts possess the inherent authority to enforce court orders by way of the power of contempt.²⁸

²⁷ Injunctive relief may be appropriate in the public health context. See e.g. *Commonwealth ex. rel. Preate v. Danny's New Adam and Eve Bookstore*, 625 A.2d 119 (Pa. Commw. 1993) (preliminary injunction issued because of ongoing threat to public health).

²⁸ See *Commonwealth v. Bowden*, 576 Pa. 151, 184-86, 838 A.2d 740 (2003).

SECTION 2.00 LEGAL ISSUES IN A PUBLIC HEALTH CONTEXT

SECTION 2.10 Pennsylvania Public Health Infrastructure

§ 2.11 Introduction

There are three different authorized public health entities in the Commonwealth: The Pennsylvania Department of Health; County/Municipal health departments; and, local health authorities. For the purposes of this bench book, these three entities collectively are referred to as *public health authorities*. Each of these health departments have separate statutory authority, and distinct (although sometimes overlapping) powers and duties.

§ 2.12 The Pennsylvania Department Of Health

A. Structure

The Pennsylvania Department of Health was created by the Act of April 27, 1905, (P.L. 312), (71 P.S. §§ 1401-1411) and modified subsequently through the Administrative Code of 1929 (71 P.S. §§ 531-555) and its ancillary provisions (71 P.S. §§ 1412 -1435). The Pennsylvania Department of Health is part of the Commonwealth's Executive Department. 71 P.S. §§ 11 and 61. See *Pennsylvania Public Health Law Bench Book* Section 4.10: The Pennsylvania Department of Health Organizational Chart 9/23/05 and Section 4.11: Contact Information: The Pennsylvania Department of Health

The Pennsylvania Department of Health is comprised of three entities: (1) The Secretary; (2) the Advisory Health Board; and (3) the Physician General. 71 P.S. § 1401(a).

The *Secretary* is the department head and must be either a physician or an individual with professional experience in public health or the health services. 71 P.S. §§ 66 and 1401(b).

The *Advisory Health Board* is comprised of the Secretary (who acts as the Chair), physicians, various health care professionals, and additional members. 71 P.S. § 158. It is responsible for approving rules and regulations necessary for the prevention of disease, immunization standards, and local health services. The Advisory Health Board can also declare certain diseases to be communicable. 35 P.S. § 521.4(d); 71 P.S. §§ 536 and 541.

The *Physician General* is appointed by the Governor and must be a physician. Among his or her other duties, the Physician General advises the Governor and the Secretary on health policy, participates in decision making, and consults with recognized experts on medical and public health matters. 71 P.S. § 1401(c).

Pennsylvania is divided into six community health districts which provide public health services. Each community health district has a district office which operates as a branch of The Pennsylvania Department of Health. See *Pennsylvania Public Health Law Bench Book* Section 4.12: Contact Information: Community Health District Offices.

B. Duties

The Pennsylvania Department of Health must protect the health of the people of the Commonwealth and determine and employ the most efficient and practical means for the prevention and suppression of disease. 71 P.S. § 532(a). The Secretary can take charge of a County/Municipal health department or a local health authority if the department or authority oversteps its jurisdiction or fails to comply with certain enumerated requirements. 16 P.S. § 12026 (pertaining to County/Municipal health departments); 71 P.S. §§ 532(f),(h), and (i) and 1406 (pertaining to local health authorities). The term “local health authority” is not defined in statutes, however, under the Pennsylvania Code, “local health authorities” includes both County/Municipal health departments and local health authorities. 28 Pa. Code § 27.1.

§ 2.13 County/Municipal Health Departments

A. Structure

The Local Health Administration Law (16 P.S. §§ 12001-12028) authorizes the creation and state funding of two different forms of local health departments in Pennsylvania: (1) County health departments (either single or joint); and, (2) certain municipal departments of health. 16 P.S. § 12002(c). A health department in Pennsylvania that falls into either of these categories is often referred to as an *Act 315 health department*. For the purposes of this bench book, the health departments authorized by The Local Health Administration Law are referred to as *County/Municipal health departments*.

There are currently 10 single County/Municipal health departments and no joint county health departments. See *Pennsylvania Public Health Law Bench Book* Section 4.13: Contact Information: County/Municipal Health Departments.

Each County/Municipal health department has a board of health which appoints a health director. 16 P.S. §§ 12007 and 12008. The health director is responsible for the administration of the County/Municipal health department and has certain other enumerated powers, such as the authority to inspect premises and abate nuisances. 16 P.S. § 12012.

B. Duties

The duties of the County/Municipal health departments are very similar to those of The Pennsylvania Department of Health. By Code, County/ Municipal health departments must provide administrative, personal health, and environmental health services. See Pennsylvania Code: Title 28: Chapters 13, 15, and 17. County/Municipal health departments provide these services through comprehensive programs of disease reporting, surveillance and outbreak investigation as well as environmental programs. However, unlike the state wide authority of The Pennsylvania Department of Health, the County/Municipal health departments’ jurisdiction is generally limited to the geopolitical boundary of the entity forming the department (single or joint counties, or townships of the second class). 16 P.S. § 12013. A municipality can be exempt from the jurisdiction of the County/Municipal health department if: (1) It had its own department or board of health at the time the County/Municipal health department was established; (2) The Pennsylvania Department of Health was not performing the local administration of

health laws in the municipality when the County/Municipal health department was created; and, (3) the exempt municipality had not, by ordinance, opted to become subject to the jurisdiction of the County/Municipal health department. 16 P.S. §§ 12014 and 12015.

§ 2.14 Local Health Authorities

A. Structure

There are approximately 237 local boards or departments of health that operate outside of the Act 315 structure and funding. For the purposes of this bench book, these local boards or departments of health are referred to as *local health authorities*. The specific structure of each local health authority is determined by local regulations and ordinances. Usually, a health officer (commonly referred to as the director of public health) or other individual is appointed to supervise the public health activities of a local health authority. 53 P.S. §§ 12291 and 12294 (First Class cities); § 24561 (Second Class cities); §§ 37305 and 37306 (Third Class cities); §§ 48101 and 48105 (Boroughs); §§ 56601 and 56605 (First Class townships); §§ 68003 and 68005 (Second Class townships).

B. Duties

Local health authorities provide limited public health services. The specific duties performed by local health authorities are determined by city codes and by local rules and ordinances. However, a Local Health Officer Manual created by The Pennsylvania Department of Health in 2004 states that in addition to the responsibilities listed in municipal codes, local health personnel duties and responsibilities may include: inspections, assessments of community health needs, food service inspections, training and consultation for operators and personnel of food establishments, investigation and follow-up of public health complaints, communicable disease investigation and reporting, implementation of timely, effective and efficient control measures, participation in epidemiologic studies, and providing information to the community which promotes disease prevention and health promotion.

None of the 237 local health authorities are *Local Morbidity Reporting Offices* (LMRO). An LMRO is a district office of The Pennsylvania Department of Health or a County/Municipal health department. 28 Pa. Code § 27.1. This is significant because, since they are not LMROs, local health authorities must obtain approval from The Pennsylvania Department of Health prior to taking certain actions, such as ordering quarantines, isolations or taking other appropriate disease control measures to protect the public from the spread of disease. 28 Pa. Code §§ 27.60-61, 27.65, 27.67-68.

§ 2.15 Other Entities Performing Public Health Duties

There are other state agencies with jurisdiction that supplements that of the public health officials referenced above. For example, the Department of Agriculture works in consort with The Pennsylvania Department of Health regarding outbreaks of domestic animal diseases that may threaten human health. 3 P.S. § 2321. This includes determining the risk associated with the outbreak and the appropriate action that should be taken to manage the risk. *Id.* Also, the Department of Environmental Resources and The Pennsylvania Department of Health share some nuisance abatement functions. 71 P.S. § 510-17.

SECTION 2.00 LEGAL ISSUES IN A PUBLIC HEALTH CONTEXT

SECTION 2.20 Jurisdiction

§ 2.21 *The Role Of The Federal Government*

A. The United States Constitution

The preamble to the Constitution speaks generally to the Federal government's interest in promoting the *general welfare* of its citizens. More specifically, Article I, § 8 of the Constitution contains two provisions allowing the Federal government to regulate activities that directly impact public health. First, the *Commerce Clause* gives Congress the power to regulate commerce with foreign nations, between the states, and with Indian tribes. U.S. Const. art. I, § 8, cl. 3. Second, the *General Welfare Clause* empowers Congress to levy and collect taxes for the general welfare of the United States. U.S. Const. art. I, § 8, cl. 1. It is through these express Constitutional provisions that Congress enacts laws affecting public health.

B. Federal Constitution Generally Silent

The preamble's stated purpose of promoting the "general Welfare" is the closest the Federal Constitution comes to addressing public health. The remainder of the Constitution, including the Amendments, provides no role for the Federal government in matters of public health. This silence, viewed in conjunction with the Tenth Amendment's reservation of undelegated powers to the states, indicates that the Federal government's public health powers extend only to the boundaries permitted by its defense, interstate commerce, and tax powers. See, e.g., *Carolene Products Co. v. Evaporated Milk Assn.*, 93 F.2d 202, 204 (7th Cir. 1937). ("While the police power is ordinarily said to be reserved by the states, it is obvious that it extends fully likewise to the federal government in so far as that government acts within its constitutional jurisdiction . . . The police power referred to extends to all the great public needs . . . Its dimensions are identical with the dimensions of the government's duty to protect and promote the public welfare." (Internal citations omitted.)). In addition, the Federal government is responsible for protecting the public health in discrete geographic areas directly under its control (e.g., military bases).

C. Exemplary Federal Public Health Powers

Pursuant to its itemized powers, the Federal government may, for example, assume responsibility for public health emergencies precipitated by acts of war or terrorism.

§ 2.22 The Role Of The Commonwealth

Powers not specifically delegated to the Federal government by the United States Constitution, nor prohibited by it, are reserved to the States. U.S. Const. amend. X . All laws enacted in the Commonwealth are presumed to be constitutional, including those impacting public health. With regard to public health laws, “A statute enacted for the protection of the public health, safety, or morals, can be set aside by the courts only when it plainly has no real or substantial relation to those subjects, or is a palpable invasion of rights secured by the fundamental law.” *Nolan v. Jones*, 106 A. 235, 236 (Pa. 1919).

A. The Pennsylvania Constitution

The Pennsylvania Constitution does not specifically address the role the State is to have regarding public health laws. However, the Pennsylvania Constitution references a general duty to protect its citizens’ *inherent and indefeasible rights*. Pa. Const. art. I, § 1.

B. States Have Historically Assumed a Primary Role In Public Health Issues

States have historically borne much of the responsibility for preventing and responding to public health threats. In *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), the plaintiff objected to a small pox vaccine mandated by the State. The Supreme Court not only upheld the constitutionality of the vaccine requirement, but emphasized that “The safety and health of the people . . . [are] for [the] Commonwealth to guard and protect. They are matters that do not ordinarily concern the National Government.” *Jacobson*, 197 U.S. at 38. In another case, the Supreme Court recognized the well-established principle that States have the authority to enact public health laws, including those involving quarantine. “[U]ntil Congress has exercised its power on the subject, such state quarantine laws and state laws for the purpose of preventing, eradicating, or controlling the spread of contagious or infectious diseases, are not repugnant to the Constitution of the United States . . . ” *Compagnie Francaise de Navigation a Vapeur v. State Bd. Of Health*, 186 U.S. 380, 387 (1902).

In the event of a public health crisis, State, county, and local agencies would most likely be required to work in conjunction with the Federal government. In the Commonwealth, the Pennsylvania Emergency Management Agency is responsible for coordinating Federal, State, and local disaster emergency management activities. 35 Pa. C.S. § 7313(1).

C. Sources of the State’s Public Health Authority

1. Police Power

Police power gives the government the right to protect the public’s safety, health and morals by restraining and regulating the use of liberty and property. See *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996). The invocation of the Commonwealth’s police power extends to the care and preservation of the public health. See *Zeuger Milk Co v. Pittsburgh Sch. Dist.*, 5 A.2d 885, 886 (Pa. 1939). “In order to serve the public welfare, the State, under its police power, may lawfully impose such restrictions upon private rights . . . ” *Nolan*, 106 A. at 236. When a law is enacted for the protection of the public health, “it must be assumed that the legislature proceeded after full examination and on reasonable grounds.” *Id.* (citation omitted).

To justify using police power, a State (a) must be acting in the interests in general (as opposed to a particular class of people) and (b) must be using means that are *reasonably necessary* to accomplish its goal and are not *unduly oppressive*. See *Lawton v. Steele*, 152 U.S. 133, 137 (1894).

2. The Doctrine Of Parens Patriae

The phrase *parens patriae* literally means “parent of the country.” The doctrine is derived from the English constitutional system wherein the King retained certain powers in his capacity as the “father” of his country. See *Commonwealth v Philip Morris, Inc.*, 736 A.2d 693, 701 (Pa. Commw. 1999). It is one of the most essential and least limitable powers in the Commonwealth. See *Adams Sanitation Co., Inc. v. Commonwealth of Pennsylvania, Dep’t of Environmental Protection*, 715 A.2d 390, 395 (Pa. 1998).

Parens patriae imposes an affirmative duty upon a State to protect its citizens. See *Morris*, 736 A.2d at 701. Under *parens patriae*, the Commonwealth can act to protect the health, safety and welfare of the public at large. As with police powers, the State must act on behalf of all of its citizens rather than to protect the interest of a specific individual or particular group of individuals. See *Lieberman v. Howard Johnson’s, Inc.*, 68 Pa. D. & C.2d 179, 181 (1973).

§ 2.23 Structure And Jurisdiction Of Pennsylvania Courts

The Pennsylvania Constitution provides for a *unified judicial system*. Pa. Const. art. V, § 1. A unified judicial system is a hierarchical scheme where the Supreme Court has supervision over all of the other courts. The jurisdiction of each court is established by the legislature. 42 Pa. C.S. §§ 721-26, 741-42, 761-64, 931-34, 1123, 1302 and 1515. The General Assembly may establish additional courts as needed. Pa. Const. art. V, § 8. There are very few specific statutory references to jurisdiction for public health issues.

A. The Court of Common Pleas

Most actions involving public health issues are initiated in the court of common pleas. Except as otherwise provided by law, the jurisdiction of the court of common pleas is exclusive. Pa. Const. art. V, § 5; 42 Pa. C. S. § 931(a)-(b).

The statutory provisions which expressly vest jurisdiction for public health issues in the court of common pleas include the following:

1. Actions to compel an individual to submit to a physical examination to determine whether the person is infected with a communicable disease. 35 P.S. § 521.7(2) and 28 Pa. Code § 27.82(b).
2. Actions to compel treatment for an individual with a communicable disease. 35 P.S. § 521.11(a.2) and 28 Pa. Code § 27.87(b).

3. Certain types of water contamination actions. 53 P.S. § 14464.
4. Actions involving a person aggrieved by a health department order in a Second Class City relative to the vacancy or destruction of unhealthy buildings. 53 P.S. § 24616.
5. Contempt hearings when a witness refuses to obey a subpoena issued by The Pennsylvania Department of Health. 71. P.S. § 200.

The court of common pleas has appellate jurisdiction over the appeals from final orders of certain governmental agencies, including County/Municipal health departments and local health authorities, but does not have jurisdiction over appeals from final orders of The Pennsylvania Department of Health. 42 Pa. C.S. § 933(a)(2).

B. The Commonwealth Court

The Commonwealth Court has limited original jurisdiction. Pa. Const. art. V, § 4. The Commonwealth Court would only have original jurisdiction over matters initiated by The Pennsylvania Department of Health or over suits filed *against* The Pennsylvania Department of Health (except for proceedings relative to a writ of habeas corpus, post-conviction relief, eminent domain proceedings, and a few other noted exceptions). 42 Pa. C.S. § 761(a)(1)(i)-(v). The court of common pleas has concurrent jurisdiction over matters initiated by The Pennsylvania Department of Health. 42 Pa. C.S. § 761(b).

C. Other Courts

Magisterial district judges and the Philadelphia Municipal Court can adjudicate violations of nuisance laws which constitute a summary offense. 42 Pa. C.S. §§ 1123(a)(1) and 1515(a)(1). These courts would have concurrent jurisdiction with the courts of common pleas to adjudicate violations of public health laws that constitute summary offenses. 35 P.S. § 521.20(a).

The Supreme Court may, upon its own motion or upon petition of any party, assume plenary jurisdiction and enter a final order in any matter pending before any court involving an issue of immediate public importance. 42 Pa. C.S. § 726; *See Philadelphia Newspapers, Inc. v. Jerome*, 434 U.S. 241, 243 (1978).

A judge of any court of record can issue search warrants in criminal matters, and presumably also in the civil context. *See* Pa. R. Crim. P. 103 and 200 Comment. Any judge of a court of record can also issue a writ of habeas corpus. 42 Pa. C.S. § 6502(a).

§ 2.24 Venue

There are a limited number of references to proper venue involving public health issues. For example, when a public health authority seeks a court order to quarantine a person who refuses medical treatment for a suspected contagious disease, the petition is filed in the court of common pleas in the county where the person is present. 35 P.S. § 521.7. Similarly, the Secretary of Health or the local health officer can file a petition to isolate a person refusing to submit to treatment for a communicable disease in the court of common pleas of the county where the person is present. 35 P.S. § 521.11(a.2). In general, an action involving a person who violates a provision of the Disease Control and Prevention Law is to take place in the county where the offense was committed. 35 P.S. § 521.20(a). Abatement actions taken by County/Municipal health departments must be instituted by the county commissioners in the county where the nuisance is located. 16 P.S. § 12012(d).

A. General Rules

In other actions, the following general rules governing venue apply.

1. An action against an individual. Venue is proper in any county where the individual can be served, in the county where the cause of action arose or a transaction or occurrence took place out of which the cause of action arose, Pa. R. Civ. P. 1006(a)(1), or in the county where the individual's property made the subject matter of the action is located, Pa. R. Civ. P. 1006(a)(2).
2. An action against multiple individuals. Venue is proper in any county where venue is proper as to any one of the individuals (except when The Pennsylvania Department of Health is a named defendant). Pa. R. Civ. P. 1006(c).
3. An action with more than one cause of action. Venue is proper in any county where any of the causes of action can properly be brought. Pa. R. Civ. P. 1006(f)(1).
4. An action against The Pennsylvania Department of Health. Venue is proper where the principal or a local office of The Pennsylvania Department of Health is located, in the county where the cause of action arose, or where the transaction or occurrence took place out of which the cause of action arose. 42 Pa. C.S. § 8523(a).

A strong presumption is given to the plaintiff's choice of forum. See *Cheeseman v. Lethal Exterminator, Inc.*, 701 A.2d 156 (Pa. 1997). If there is a conflict between the appropriate venue for a Commonwealth party and a local agency, the conflict will be resolved in favor of the Commonwealth. See *Simons v. State Correctional Inst. at Camp Hill*, 615 A.2d 924, 927 (Pa. Commw. 1992).

§ 2.25 The Administrative Process

A litigant may be required to exhaust administrative remedies before seeking judicial review. See *Jackson v. Centennial School District*, 501 A.2d 218, 221 (Pa. 1985).

In the public health context, there is statutory authority mandating administrative hearings for persons aggrieved by health department orders concerning the abatement of nuisances in Third Class Counties and Third Class Cities. 16 P.S. § 2199 and 53 P.S. § 37323.

In addition, County/Municipal health departments and local health authorities have the power to promulgate rules and regulations. 16 P.S. §§ 2193 and 12010(c); 53 P.S. §§ 14401, 23158, 37308, 48106, 56606, and 68006. Therefore, public health authorities may have regulations that require the exhaustion of administrative procedures prior to filing suit. For example, Allegheny County Health Department regulations require a person aggrieved by the department to first file a Notice of Appeal. The Director then holds a hearing and renders his/her decision. If the person is aggrieved by the Director's decision, he/she may appeal to the court of common pleas in Allegheny County. See Allegheny County Health Dept. Rules and Regulations Art. XI, §§ 1103, 1105, 1106 and 1110.

When an administrative remedy is prescribed, a court is without jurisdiction to hear the action until the administrative process is exhausted. See *Pennsylvania Soc. Serv. Union v. Department of Public Welfare*, 699 A.2d 807, 813 (Pa. Commw. 1997). In other words, a failure to exhaust administrative remedies without good cause precludes a court from entertaining the matter. See *Lilian v. Commonwealth*, 354 A.2d 250 (Pa. 1976).

SECTION 2.00 LEGAL ISSUES IN A PUBLIC HEALTH CONTEXT

SECTION 2.30 Costs And Compensation

§ 2.31 Pennsylvania Statutes

The following is a summary of the Pennsylvania statutes which specifically address costs in a public health context:

A. Abatement

Public health authorities have the right to enforce a claim against the property owner for costs it incurred in an abatement proceeding: The Pennsylvania Department of Health, 71 P.S. § 532(e); County/Municipal health departments, 16 P.S. § 12012(c); the board of health in Third Class counties, 16 P.S. § 2199.1; the bureau of health in a First Class city, 53 P.S. § 24568; the board of health in Boroughs, 53 P.S. § 37324; Incorporated towns, 53 P.S. § 53175. There are also provisions for punitive damages that the court can order against the property owner (10% penalty in boroughs under 53 P.S. § 48108 and 15% penalty in incorporated towns under 53 P.S. § 53175).

B. Diagnosis, Testing and Treatment of Venereal Disease

The Disease Prevention and Control Law ("DPCL") requires The Pennsylvania Department of Health to provide or designate facilities for the free diagnosis, testing and treatment of venereal disease. County/Municipal health departments and local health authorities can undertake these expenses with the approval of The Pennsylvania Department of Health, and they may do so, with or without financial assistance from The Pennsylvania Department of Health. 35 P.S. § 521.9.

The DPCL also mandates that any county jail or other appropriate institution that receives persons to be isolated or quarantined by a public health authority because of a venereal disease for the purpose of safekeeping and treatment will be reimbursed by the public health authority at the rate of maintenance that prevails in such institution, and shall furnish the necessary medical treatment to the persons committed to such institution. 35 P.S. § 521.11.

C. Involuntary Medical Testing

If an individual chooses to select his or her own physician, he or she is responsible for any incurred expenses. 35 P.S. § 521.7.

D. Temporary Closures Of Private Property And Commandeering Property By The Governor

Under the Emergency Management Services Code, The Pennsylvania Emergency Management Agency ("PEMA") can arrange for the payment for the use of any private facility or property commandeered by the Governor during a declared disaster emergency. 35 Pa. C.S. § 7313(10).

E. The Right To Appointed Legal Counsel For Individuals Quarantined Or Isolated Under The Counterterrorism, Preparedness and Response Act

Persons who are isolated or quarantined during a bioterrorist or biohazardous event have the right to be represented by counsel at all stages of the proceedings. If a person is unable to afford or obtain counsel, the court must appoint counsel. 35 P.S. § 2140.301(b)(4).

§ 2.32 Costs Incurred During The Taking Of Property

A. Property Is The Danger

When the property itself is a danger, the government's action to abate or destroy the property is not a taking and the property owner is usually not entitled to financial compensation. See *Lucas v South Carolina Coastal Council*, 505 U.S. 1003, 1029 (1992); *Muglar v. Kansas*, 123 U.S. 623, 668-69 (1887). Whether a taking has occurred must be determined in light of the particular facts and circumstances of the case. See *U.S. v. Pewee Coal Co.*, 341 U.S. 114, 117 (1951).

B. Temporary Closure

It is likely that a temporary closure of private property or the commandeering of property would be considered to be a governmental *taking*. A taking is the government's removal of *unoffending* property from an *innocent* owner (as opposed to the removal of property which itself constitutes a danger). See *Muglar*, 123 U.S. at 668-69.

C. Physical Invasion

If a regulation authorizes the physical invasion of private property, no matter how slight, a taking has occurred. See *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 422 (1982).

§ 2.33 Compensation

A. Fifth Amendment

The Fifth Amendment to the United States Constitution protects persons from a governmental taking of property without *just compensation*. This provision of the Fifth Amendment is applicable to the states by the Fourteenth Amendment. See *Chicago B & O R. Co. v. Chicago*, 166 U.S. 226 (1897). The Constitutional guarantee of compensation is designed to temper the government from forcing some people alone from shouldering burdens which should be borne by the public as a whole. See *Penn Cental Transp. Co. v. City of New York*, 438 U.S. 104, 123-24 (1978). Similarly, article I, section 10 of the Pennsylvania Constitution prohibits the taking of private property for public use without *just compensation*. Pennsylvania case law has consistently relied on federal precedent for its taking jurisprudence. See *Machipongo Land and Coal Co., Inc. v. Commonwealth*, 799 A.2d 751 (Pa. 2002).

B. Emergency or Wartime

In emergency and wartime situations, a property owner may not be entitled to compensation from the government when a taking occurs. See, e.g., *U.S. v. Caltex*, 344 U.S. 149 (1952) (oil companies were not entitled to compensation for oil terminal facilities destroyed by the Army during wartime since the destruction was necessary to thwart the approaching enemy); *National Bd. of YMCA v. U.S.*, 395 U.S. 85 (1969) (rioting occurred in Panama resulting in the destruction of some of the petitioner's buildings. The petitioner's claim was denied since the Constitution does not require compensation every time violence against the government damages or destroys private property); and, *Juragua Iron Co. v. U.S.*, 212 U.S. 297 (1909) (during war with Spain, the United States government destroyed property suspected of containing "yellow fever germs" that was owned by an American company in Cuba. Cuba was a territory of Spain. No compensation was required since the American company was an enemy of the United States with respect to the Cuban property.)

C. Reasonable Value

Ordinarily, compensation for a *temporary possession* of a business enterprise is the reasonable value of the property's use. See *Pewee Coal Co.*, 341 U.S. at 117.

§ 2.34 Costs Incurred During Quarantines And Isolations

A. Food, Medicine and Necessities

The governmental unit ordering isolation or quarantine has been recognized as having a duty to furnish food and other necessities during the period of confinement if the restricted individual cannot afford the items. See *Commonwealth v. Irwin*, 29 Pa. C.C. 587, 1904 WL 2601 (CCP Venango, 1904) and *Zellner v. Allentown*, 18 Pa. C.C. 162, 1896 WL 3663 (CCP Lehigh County, 1896). See also *Hutchinson v. Carthage*, 73 A. 825 (Me. 1909)(a town was obligated to pay the expenses of a man who took care of a quarantined family); *Loudoun v. Merrimack County*, 53 A. 906 (N.H. 1902)(a county was liable for reimbursing a town for the costs of medicine, medical assistance, and "necessaries" furnished to "paupers" who were quarantined with diphtheria) and, *Hudgins v. Carter County*, 72 S.W. 730 (Ky. App. 1903)(where the court held that a physician could recover from the county money for the services he rendered to individuals who were quarantined with small pox).

B. Loss of Income and Other Support

In addition to expenses connected with food, medicine and other necessities, confined individuals could experience financial challenges due to loss of income, childcare expenses and eldercare costs. See *Phelps v. School District*, 221 Ill. App. 500, (Ill. Ct. App. 4th Cir. 1921) (where a teacher was awarded compensation for her salary when a school was closed for two months due to an influenza epidemic).

SECTION 2.00 LEGAL ISSUES IN A PUBLIC HEALTH CONTEXT

SECTION 2.40 Emergency Declaration

§ 2.41 Authority To Declare An Emergency

By law, officials of the various political subdivisions, the Secretary of Health and Human Services, the Governor, and the President of the United States are each authorized to declare emergencies in Pennsylvania. There is no specific reference to the definition or declaration of a *public health emergency* in the Pennsylvania statutory or regulatory provisions. However, in *Rohm and Haas Co. v. Continental Casualty Company*, 732 A.2d 1236 (Pa. 1999), a *public health emergency* was found to exist when huge amounts of arsenic waste were dumped into the soil, groundwater, and a creek. The actual phrase, though, was not defined. See *Rohm*, 732 A.2d at 1258.

Statutory authority to respond to an emergency is given to the Governor, political subdivisions, and the Pennsylvania Emergency Management Agency (“PEMA”) under the Emergency Management Services Code (35 Pa. C.S. §§ 7101-7707) and The Counterterrorism Planning, Preparedness and Response Act (35 P.S. §§ 2140.101- 2140.303). The President of the United States has authority to respond to an emergency through The Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 100-707, 42 U.S.C. §§ 5121 *et seq.* (“The Stafford Act”).

During a widespread disaster or emergency, Federal, State and local laws could be simultaneously invoked in the name of public health and safety. Federal law authorizes cooperation between the States and the Federal governments. 42 U.S.C. § 243. PEMA is responsible for cooperating with the Federal government to implement programs for disaster response and for accepting assistance under The Stafford Act. 35 Pa. C.S. §§ 7313(12) and (14).

A. Emergency Declared By The Governor

The Governor can declare a *disaster emergency* upon finding that a *disaster* occurred or that the occurrence or threat of a disaster is imminent. 35 Pa. C.S. § 7301(c). Disasters include man-made, natural (such as hurricanes, tornadoes, storms, floods, high water, landslides, snowstorms, droughts, fire explosions, or other catastrophes which result in substantial damage to property, hardship, suffering or possible loss of life), and war-caused disasters. 35 Pa. C.S. § 7102.

A disaster emergency includes conditions which may be found to actually or likely:

1. Seriously affect the safety, health or welfare of a substantial number of Pennsylvania citizens or preclude the operation or use of essential public facilities; and,
2. Be of such severity as to render essential State supplementation of county and local efforts to alleviate the danger, damage, suffering or hardship; and,

3. Have been caused by forces beyond the control of man, by reason of civil disorder, riot or disturbance, or by factors not foreseen and not known to exist when appropriation bills were enacted. See 35 Pa C.S. § 7102.

A local emergency is a condition declared by the local governing body when the threat or actual occurrence of a disaster is of sufficient severity to warrant coordinated local government action to prevent or alleviate the damage, loss, hardship, or suffering. 35 Pa. C.S. § 7102. Upon petition by a local governing body, the Governor can declare a *local disaster emergency* arising wholly or substantially from a *resource shortage*. See *id.* A resource shortage occurs when the supply of any raw or processed natural resource, or any commodity, goods or services that bear a substantial relationship to the health, safety, welfare and economic well-being of the Commonwealth's citizenry, is absent, unavailable, or reduced. 35 Pa. C.S. § 7102.

The Governor uses an executive order or a proclamation to declare a disaster emergency. The order or proclamation must be disseminated promptly and, unless circumstances do not permit, filed with PEMA. According to statute, the order or proclamation must contain: (1) The nature of the disaster; (2) the threatened area(s); and (3) the conditions which brought the disaster about. The disaster emergency will continue until the Governor finds that the threat or danger has passed or that the disaster has been dealt with to the extent that emergency conditions no longer exist. Unless renewed by the Governor, the disaster emergency will not continue longer than 90 days. The General Assembly can terminate a disaster emergency at any time. 35 Pa. C.S. § 7301(c).

The sufficiency of an emergency declaration was tested in the Pennsylvania Commonwealth Court when a candidate's petition to run for office was filed past the statutorily mandated deadline. The petition was accepted, though, because the Governor had declared a disaster emergency and, as a result, the filing date was extended. The complainant averred that no legitimate emergency existed so the Governor was in error in extending the deadline. Numerous state offices remained open, Amtrak and bus service were running, and a *State of Emergency* was not expressly declared in the Governor's executive order. The court recognized that even though the Executive Order did not specify that the Governor was declaring a "State of Emergency," it contained all the necessary requirements: (1) A disaster emergency existed in the form of a winter storm; (2) as a result of the storm, it was necessary to extend the filing deadline; (3) the Executive Order had an effective date for the declaration and a time it was ending; and, (4) the order was disseminated to the public by a news release. See *In re Farrow*, 754 A.2d 33 (Pa. Commw. 2000).

B. Emergency Declared By A Political Subdivision

The governing body of a *political subdivision* (i.e., any county, city, borough, incorporated town or township) can declare a local disaster emergency upon finding that a disaster has occurred or is imminent. 35 Pa. C.S. §§ 7102, and 7501(b).

A local disaster emergency is declared through an order or proclamation which must be given prompt and general publicity and filed with PEMA. It cannot be continued or renewed for more than 7 days except with the consent of the governing body. 35 Pa. C.S. § 7501(b).

C. Emergency Declared By The President Of The United States

The Stafford Act provides for assistance by the Federal government to State and local governments to alleviate suffering and damages resulting from disasters. 42 U.S.C. § 5121. A Governor must first ask the President to issue a declaration that an *emergency* or a *major disaster* exists. An emergency is defined as any occasion that the President determines Federal assistance is needed to supplement State and local efforts to save lives, to protect property, public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States. 42 U.S.C. § 5122(1). A major disaster includes any natural catastrophe, fire, flood, or explosion in any part of the United States which, in the determination of the President, causes damage to warrant major disaster assistance under The Stafford Act. 42 U.S.C. § 5122(2).

The Governor's request must describe the severity of the disaster (i.e., that an effective response is beyond the capabilities of the State and local governments and that Federal assistance is necessary), include that the Governor has taken appropriate response action under State law and the State's emergency plan, and contain information concerning the nature and amount of State and local resources committed to the disaster. 42 U.S.C. § 5170.

The President can also determine that an emergency exists when it involves a subject area under which the United States exercises exclusive or preeminent responsibility and authority (such as a Federal building). 42 U.S.C. § 5191(b).

D. Emergency Declared By The Secretary Of Health And Human Services

If the Secretary of Health and Human Services determines, after consultation with public health officials, that a disease or disorder presents a *public health emergency* or if a public health emergency exists (including a significant outbreak of an infectious disease or bioterrorist attack), the Secretary can take appropriate action to respond. 42 U.S.C. § 247d(a). This term is not statutorily defined.

§ 2.42 Changes In Governmental Powers During A State Of Emergency

The following is a summary of changes in governmental powers during a state of disaster emergency:

A. Suspension of Laws

The Governor can issue, amend, and rescind executive orders, proclamations, and regulations. 35 Pa. C.S. § 7301(b). The Governor can also suspend any regulatory statute prescribing procedures for the conduct of any Commonwealth business, or the regulations of any Commonwealth agency (including The Pennsylvania Department of Health) if strict compliance with them would prevent, hinder or delay necessary action in coping with the emergency. 35 Pa. C.S. § 7301(f)(1). Also, The Pennsylvania Department of Health and other Commonwealth agencies can implement their emergency assignments without regard to procedures required by other laws (except for mandatory constitutional requirements) relative to the performance of public work, entering into contracts, incurring obligations, employing temporary workers, renting equipment, and purchasing supplies and materials, and expenditures of public funds. 35 Pa. C.S. § 7308.

B. The Temporary Suspension Of Formal Requirements

A political subdivision included in a disaster emergency can exercise its powers without regard to time-consuming procedures and formalities prescribed by law (except for mandatory constitutional requirements) relative to performing public work, entering into contracts, incurring obligations, employing temporary workers, renting equipment, purchasing supplies and materials, levying taxes, and appropriating/expending public funds. 35 Pa. C.S. § 7501(d).

C. The Governor as Commander in Chief

The Governor is the Commander in Chief of the Pennsylvania military forces. 35 Pa. C.S. § 7301(e).

D. Using Commonwealth Resources

The Governor can use all available resources of the Commonwealth government and political subdivisions that are reasonably necessary to cope with the disaster emergency. 35 Pa. C.S. § 7301(f)(2).

E. Using Commonwealth Personnel

The Governor can transfer the direction, personnel and functions of Commonwealth agencies, such as The Pennsylvania Department of Health, or their entities to perform emergency services. 35 Pa. C.S. § 7301(f)(3).

F. Commandeering Property

The Governor can commandeer or utilize any private, public or quasi-public property necessary to cope with a disaster emergency. PEMA can provide payment for the commandeered property. 35 Pa. C.S. §§ 7301(f)(4) and 7313(10).

G. Evacuation

The Governor can compel the evacuation of all or part of the population if necessary to preserve life or for other disaster mitigation, response or recovery, including the prescription of routes, modes of transportation and destinations. 35 Pa. C.S. §§ 7301(f)(5)-(6).

H. Ingress and Egress

The Governor can control the movement of persons within the disaster area and the occupancy of the premises therein. 35 Pa. C.S. § 7301(f)(7).

I. Alcoholic Beverages, Firearms, Explosives And Combustibles

The Governor can suspend or limit the sale, dispensing, and transportation of these items. 35 Pa. C.S. § 7301(f)(8).

J. Schools and School Vehicles

Publicly funded universities, colleges, elementary schools, and secondary schools must be made available to local, county and State officials for emergency planning and exercises, as well as serving as mass care facilities during an emergency. School buses and other vehicles owned or leased by universities, colleges, and school districts must be made available to local, county, and State officials for the same purposes. 35 Pa. C.S. § 7701(d)-(e).

K. Specific Enumerated Responsibilities Of The Pennsylvania Department Of Health

During a disaster emergency, this agency is responsible for reporting to PEMA damage to medical facilities, supplying technical advice and assistance during emergency nuclear incidents, providing medical services through Pennsylvania Department of Health installations, and assisting in the procurement and distribution of medical equipment. 4 Pa. Code § 3.25(p)(3)(ii), (iv)-(vi).

§ 2.43 The Role Of PEMA

PEMA was created to assure the prompt, proper and effective discharge of basic Commonwealth responsibilities relating to civil defense and disaster preparedness, operations and recovery. 35 Pa. C.S. § 7311. PEMA is comprised of The Pennsylvania Emergency Management Council. The Council is primarily responsible for the overall policy and direction of a statewide civil defense and disaster program. The Secretary of The Pennsylvania Department of Health sits as a member. 35 Pa. C.S. § 7312(a).

The following is a summary of PEMA's powers and duties:

A. Preparing a Pennsylvania Emergency Management Plan. 35 Pa. C.S. § 7313(1).

B. Rulemaking Authority

PEMA can promulgate, adopt and enforce rules, regulations and orders necessary to carry out its powers and duties. 35 Pa. C.S. § 7313(3).

C. Stockpiling Supplies And Emergency Equipment. 35 Pa. C.S. § 7313(19)

D. Suspending bidding And Other Contract Procedures

For the period during which a disaster emergency is declared, PEMA can incur obligations for and purchase materials and supplies necessary to combat the disaster, to protect the health and safety of persons and property, and to provide emergency assistance to the victims without complying with formal bidding or other time-consuming contract procedures. 35 Pa. C.S. § 7313(20).

E. Hazardous Sites

PEMA is to work with The Pennsylvania Department of Health, the Departments of Environmental Protection, Agriculture, and others, as well as the Pennsylvania State Police to develop a hazardous material safety program for incorporation into the Commonwealth Emergency Operations Plan. 35 P.S. § 6022.204.

SECTION 3.00 PETITION CHECKLISTS AND MODEL ORDERS

SECTION 3.10 Actions Filed Under The Disease Prevention And Control Law Of 1955

For petitions under the Disease Prevention and Control Law of 1955 (“DPCL”), 35 P.S. § 521.1, *et seq.*, to compel involuntary medical examinations and treatment, hearings must be held within 24 hours after service of the petition on the respondent. The court may order hearings to compel isolation or quarantine within 24 hours after service of the petition. The court may also hold a hearing on a petition for a writ of habeas corpus for an individual whose liberty has been restricted pursuant to a public health order.

§ 3.11 Checklist

The court may wish to consider some or all of the following:

- A.** Is there a request to serve the respondent by means other than those provided in the rules of civil procedure? If so, how may respondent be served with a copy of the petition and any other notices?
- B.** Given the nature of the petition and the relief requested, is respondent entitled to appointed counsel (either because the respondent cannot afford counsel or cannot otherwise obtain counsel because of restrictions on his or her liberty)? If so:
 - 1. How will the respondent be advised of the right to counsel?
 - 2. Who will be appointed to represent the respondent?
 - 3. How will counsel be advised of the appointment?
 - 4. How and when will the respondent and counsel be provided with contact information for the other?

- C.** If the petitioner makes a prima facie showing that respondent is infected with a highly contagious communicable disease, will the court order the hearing to be conducted by alternative means (such as by telephone or video-conference)? If so:
1. How will the parties, counsel, witnesses and court staff be advised of this?
 2. What steps must be taken to facilitate the hearing (ie., equipment brought to the courtroom, notify the court reporter, teleconference scheduled, etc.)?
- D.** Is there a request to isolate or quarantine the respondent pending the hearing? If so:
1. How will respondent (and counsel) be served with the pre-hearing detention order?
- E.** Will the court seal the record or order the caption amended to protect the identity or confidentiality of the respondent? *See generally R.W. v. Hampe*, 626 A.2d 1218, 426 Pa. Super. 305 (Pa. Super. 1993), *Commonwealth v. Milice*, 584 A.2d 997, 401 Pa. Super. 96 (Pa. Super. 1991).

§ 3.12 Pre-Hearing Model Order For Public Health Cases

COMMONWEALTH OF PENNSYLVANIA
COURT OF COMMON PLEAS OF _____ COUNTY
_____ JUDICIAL DISTRICT

Petitioner
:
:
:
vs.
:
:
:

Respondent

DOCKET NO.

PRE-HEARING ORDER

Public Health Cases

AND NOW, this ____ day of _____, 200__, it is hereby ORDERED as follows:

_____ (health authority) has filed a petition pursuant to the Disease Prevention and Control Law of 1955, 35 P.S. §521.1 *et seq.*, on _____, 200__ to compel the _____ (medical examination / treatment / isolation / quarantine) of respondent.

Respondent is suspected of being infected with or a carrier of _____.

Petitioner has made a prima facie showing that respondent is infected with or a carrier of the aforementioned disease in a communicable stage. If proven, respondent would pose significant threat to the health of others if exposed to said disease.

Accordingly, it is hereby ordered as follows:

___ Respondent be detained at the following location pending a hearing on this matter, which shall be within 24 hours after service of the petition. Respondent to be detained at:

_____.

___ Respondent shall be advised of the right to consult with and be represented by an attorney. If respondent cannot afford or otherwise obtain counsel, representation will be provided by:

Name of attorney:_____

Address of attorney:_____

Telephone number of attorney:_____

___ Because of the possibility that respondent is infected with a highly contagious communicable disease, hearings in this matter shall be conducted by alternative means, specifically:

_____.

A copy of this Order shall be served upon Respondent, and if so indicated, on counsel, forthwith as follows: _____.

A copy of this Order shall be served forthwith on the following by: _____.

Pennsylvania Department of Health
Attention: Office of the Secretary of Health
Health and Welfare Building
7th & Forster Streets
Harrisburg, PA 17120
Phone: 717-787-0190
Fax: 717-787-6436

BY THE COURT

J.

§ 3.13 Pre-Hearing Model Order For Habeas Corpus

COMMONWEALTH OF PENNSYLVANIA

COURT OF COMMON PLEAS OF _____ COUNTY

_____ JUDICIAL DISTRICT

_____	:	
_____	:	DOCKET NO.
_____	:	
Petitioner	:	
	:	
vs.	:	
	:	
_____	:	
_____	:	
_____	:	
Respondent	:	

PRE-HEARING ORDER

Habeas Corpus

AND NOW, this _____ day of _____, 200__, it is hereby ORDERED as follows:

_____ has filed a petition for a writ of habeas corpus alleging he or she has been unlawfully restrained of his or her liberty by _____ (public health authority).

The order under which respondent has been restrained of his or her liberty asserts respondent is infected with, or is suspected of being infected with or a carrier of _____.

Because of the potentially significant threat to the health of others if exposed to said disease, it is hereby ordered as follows:

___ Because of the possibility that respondent is infected with a highly contagious communicable disease, hearings in this matter shall be conducted by alternative means, specifically:

_____.

___ Respondent shall be advised of the right to consult with and be represented by an attorney. If respondent cannot afford or otherwise obtain counsel, representation will be provided by:

Name of attorney:_____

Address of attorney:_____

Telephone number of attorney:_____

A copy of this Order shall be served on respondent, and if so indicated, on counsel, forthwith by _____.

BY THE COURT

J.

After conducting a hearing on this matter, the court finds:

1. Respondent is reasonably suspected of being infected with, or a carrier of, the communicable disease _____, in a communicable stage.
2. Respondent was ordered by petitioner to submit to a medical examination for the presence of said disease, has refused to be examined and had no valid reason for refusing.

Therefore, it is hereby ordered that respondent shall:

___ Submit to a medical examination for the aforementioned disease. The examination may be performed by a physician of respondent's own choice at respondent's own expense. The examination shall include physical and laboratory tests performed in a laboratory approved by the Secretary of The Pennsylvania Department of Health, and shall be conducted in accordance with accepted professional practices. The results of the examination shall be reported to the petitioner on forms furnished by The Pennsylvania Department of Health. If respondent refuses to undergo an examination, he / she may be committed by the court to an institution in this Commonwealth determined by the Secretary of The Pennsylvania Department of Health to be suitable for the care of such cases.

___ Not be required to submit to an involuntary medical examination, but shall be quarantined at the following location for _____ days, or until the disease is no longer in a communicable stage, as determined by petitioner. Respondent is ordered quarantined at:

_____.

___ Provisions for food, water, medical care, and other necessities:

_____.

___ Allocation of costs of isolation or quarantine:

_____.

___ Other conditions: _____.

___ This matter shall be re-listed for _____.

A copy of this Order shall be served forthwith on the following by: _____.

Pennsylvania Department of Health
Attention: Office of the Secretary of Health
Health and Welfare Building
7th & Forster Streets
Harrisburg, PA 17120
Phone: 717-787-0190
Fax: 717-787-6436

BY THE COURT

J.

§ 3.15 Model Order For Involuntary Medical Treatment

COMMONWEALTH OF PENNSYLVANIA
COURT OF COMMON PLEAS OF _____ COUNTY
_____ JUDICIAL DISTRICT

Petitioner
:
:
:
vs.
:
:
:

Respondent

ORDER

Public Health - Medical Treatment

_____ (health authority) filed a petition pursuant to the Disease Prevention and Control Law of 1955, 35 P.S. § 521.1 *et seq.*, on _____, 200__ to compel the medical treatment of respondent.

A hearing was held on _____, 200__.

After conducting a hearing on this matter, the court finds:

1. It has been proven to the Court, by clear and convincing evidence, that Respondent is infected with the communicable disease _____, in a communicable stage.
2. Respondent was ordered by petitioner to submit to treatment for said disease, has refused to be treated and had no valid reason for refusing.
3. Because of this communicable disease, the respondent poses a significant threat to the health and safety of others *and* there are no less restrictive means of protecting the public's health other than involuntary treatment.

Therefore, it is hereby ordered that respondent shall:

___ Submit to medical treatment for the aforementioned disease at a location approved by petitioner for the safekeeping and treatment of respondent until such time as the disease is rendered non-communicable.

___ Not be required to submit to involuntary treatment, but shall be isolated at the following location for _____ days, or until the disease is no longer in a communicable stage.
Respondent is ordered isolated at: _____.

___ Provisions for food, water, medical care, and other necessities:
_____.

___ Allocation of costs of isolation or quarantine:
_____.

___ Other conditions: _____.

___ This matter shall be re-listed for _____.

A copy of this Order shall be served forthwith on the following by _____.

Pennsylvania Department of Health
Attention: Office of the Secretary of Health
Health and Welfare Building
7th & Forster Streets
Harrisburg, PA 17120
Phone: 717-787-0190
Fax: 717-787-6436

BY THE COURT

J.

After conducting a hearing on this matter, the court finds:

1. It has been proven to the Court, by clear and convincing evidence, that Respondent is reasonably suspected of being exposed to, infected with, or a carrier of, the communicable disease _____, in a communicable stage.
2. Respondent was ordered by petitioner to remain in quarantine for the period of communicability.
3. Respondent has refused to remain in quarantine and had no valid reason for refusing.
4. Because of this communicable disease, the respondent poses a significant threat to the health and safety of others *and* there are no less restrictive means of protecting the public's health other than quarantine.

Therefore, it is hereby ordered that respondent shall be quarantined at the following location for _____ days, or until the disease is no longer in a communicable stage, as determined by the petitioner. Petitioner to be quarantined at: _____

___ Provisions for food, water, medical care, and other necessities: _____.

___ Allocation of costs of isolation or quarantine: _____.

___ Other conditions: _____.

___ This matter shall be re-listed for _____.

A copy of this Order shall be served forthwith on the following by: _____.

Pennsylvania Department of Health
Attention: Office of the Secretary of Health
Health and Welfare Building
7th & Forster Streets
Harrisburg, PA 17120
Phone: 717-787-0190
Fax: 717-787-6436

BY THE COURT

J.

§ 3.17 Model Order For Isolation

COMMONWEALTH OF PENNSYLVANIA
COURT OF COMMON PLEAS OF _____ COUNTY
_____ JUDICIAL DISTRICT

Petitioner
:
:
:
vs.
:
:
:

Respondent

DOCKET NO.

ORDER

Public Health - Isolation

_____ (health authority) filed a petition pursuant to the Disease Prevention and Control Law of 1955, 35 P.S. § 521.1 *et seq.*, on _____, 200__ to compel the isolation of respondent.

A hearing was held on _____, 200__.

After conducting a hearing on this matter, the court finds:

1. It has been proven to the Court, by clear and convincing evidence, that the Respondent has been infected with the communicable disease _____.
2. The respondent has refused to be isolated and had no valid reason for refusing.
3. Because of this communicable disease, the respondent poses a significant threat to the health and safety of others *and* there are no less restrictive means of protecting the public's health other than isolation.

Therefore, it is hereby ordered that respondent shall be isolated at the following location for _____ days, or until the disease is no longer in a communicable stage. The respondent shall be isolated at: _____
_____.

___ Provisions for food, water, medical care, and other necessities:
_____.

___ Allocation of costs of isolation or quarantine:
_____.

___ Other conditions: _____.

___ This matter shall be re-listed for _____.

A copy of this Order shall be served forthwith on the following by: _____.

Pennsylvania Department of Health
Attention: Office of the Secretary of Health
Health and Welfare Building
7th & Forster Streets
Harrisburg, PA 17120
Phone: 717-787-0190
Fax: 717-787-6436

BY THE COURT

J.

SECTION 3.00 PETITION CHECKLISTS AND MODEL ORDERS

SECTION 3.20 Petitions Filed Under The Counterterrorism Planning, Preparedness, And Response Act

Under the Counterterrorism Planning, Preparedness and Response Act, (“Counterterrorism Act”) the Governor may temporarily order individuals or groups isolated or quarantined “in the case of an actual or suspected outbreak of a contagious disease or epidemic due to an actual or suspected bioterrorist or biohazardous event.” 35 P.S. § 2140.301(a).

Within 24 hours, or the next court business day after the issuance of the Governor’s order, the health department must file a petition with the court to authorize the continued isolation or quarantine. *Id.* at § 2140.301(b)(1).

A hearing on the petition must be held within 72 hours after the filing with the court. 35 P.S. § 2140.301(b)(2).

§ 3.21 Checklist

The court may wish to consider the following in advance of the hearing:

- A.** Pursuant to the Counterterrorism Act, notice of the hearing may be oral or written and must provide the respondent(s) with the time, place and purpose of the hearing. 35 P.S. § 2140.301(b)(3). Will the court order or authorize a method of service other than that provided in the rules of civil procedure?
- B.** Pursuant to the Counterterrorism Act, individuals are entitled to be represented by counsel and if an individual cannot afford counsel or is “otherwise unable to employ counsel,” the court must provide counsel. 35 P.S. §2140.301(b)(4). The court may wish to consider:
 - 1. How will respondent(s) be advised of the right to counsel?
 - 2. Who will be appointed to represent the respondent(s) that cannot afford or obtain counsel?
 - 3. How will counsel be advised of the appointment?
 - 4. How and when will the respondent(s) and counsel be provided with contact information for the other?

- C.** Pursuant to the Counterterrorism Act, the court may determine the manner in which the hearing shall occur, including through the use of closed circuit television. 35 P.S. § 2140.301(b)(3). The court may wish to consider:
1. Will the hearing be conducted by alternative means (such as by telephone or video-conference)?
If so:
 - a. How will the parties, counsel, witnesses and court staff be advised of this?
 - b. What steps must be taken to facilitate the hearing (ie., equipment brought to the courtroom, notify the court reporter, teleconference scheduled, etc.)?
- D.** Will the court seal the record or order the caption amended to protect the identity or confidentiality of the respondent? See *generally*, *R.W. v. Hampe*, 626 A.2d 1218, 426 Pa. Super. 305 (Pa. Super. 1993), *Commonwealth v. Milice*, 584 A.2d 997, 401 Pa. Super. 96 (Pa. Super. 1991).

§ 3.22 Pre-Hearing Model Order For Isolation/Quarantine

COMMONWEALTH OF PENNSYLVANIA

COURT OF COMMON PLEAS OF _____ COUNTY

_____ JUDICIAL DISTRICT

_____	:	
_____	:	DOCKET NO.
_____	:	
Petitioner	:	
	:	
vs.	:	
	:	
_____	:	
_____	:	
_____	:	
Respondent	:	

PRE-HEARING ORDER

ORDER

AND NOW, _____200_, _____ having filed a petition pursuant to the Counterterrorism Planning, Preparedness and Response Act, 35 P.S. § 2140.301, *et seq.*, on _____, 200__ to compel the isolation or quarantine of Respondent and alleging:

That Respondent is suspected of being infected with, exposed to, or a carrier of the communicable disease _____ in a communicable stage; and

That as a result Respondent poses a significant threat to the health of others if exposed to the disease;

And requesting that the Respondent being isolated or quarantined.

Therefore, it is ordered as follows:

A hearing on the petition is scheduled to be held on at _____ on _____ at _____.m.

Because of the possibility Respondent has been exposed to or infected with a highly communicable disease, hearings shall be conducted by alternative means, specifically:

_____.

Respondent is hereby advised of the right to consult with, and be represented by, an attorney. If Respondent cannot afford an attorney, or otherwise obtain counsel, representation will be provided by:

Name _____

Address _____

Phone _____

A copy of this order shall be served on the Respondent in the following manner:

BY THE COURT

J.

§ 3.23 Model Order For The Continuation Of Isolation

COMMONWEALTH OF PENNSYLVANIA
COURT OF COMMON PLEAS OF _____ COUNTY
_____ JUDICIAL DISTRICT

Petitioner
:
:
:
vs.
:
:
:

Respondent

ORDER

AND NOW, _____200_, _____ having filed a petition pursuant to the Counterterrorism Planning, Preparedness and Response Act, 35 P.S. § 2140.301, *et seq.*, on _____, 200__ to compel the isolation of Respondent(s) and it appearing:

1. That on _____, pursuant to 35 P.S. § 2140.301(a), the Governor of Pennsylvania ordered the Respondent(s) into isolation; and
2. That on _____ the Court held a hearing to determine whether continued isolation is warranted, and at which the Respondent(s) was (were) present or otherwise afforded the opportunity to participate and represented by counsel; and

3. After hearing the Court having concluded that:

- i. It has been proven, by clear and convincing evidence, that Respondent was infected with the communicable disease _____.
- ii. Because of the infection, Respondent poses a significant threat to the health and safety of others; and
- iii. There are no lesser restrictive means of protecting the public's health from infection by the Respondent other than continued isolation of the Respondent.

Therefore, it is ordered as follows:

1. Respondent is ordered isolated for the lesser of _____ days (not to exceed 30 days) or until the disease is no longer in a communicable stage as determined by Petitioner pursuant to 35 P.S. § 2140.301(b)(5).
2. The terms and conditions of Respondent's isolation shall be as follows:
 - a. Location: _____.
 - b. Provisions for food, water, medical care, and other necessities:
_____.
 - c. Allocation of costs of isolation: _____.
 - d. Other conditions: _____.
3. Petitioner shall provide the Court with reports as mandated by 35 P.S. § 2140.301(b)(7) in the following manner: _____.
4. Further hearing shall be held: _____.

BY THE COURT

J.

§ 3.24 Model Order For The Continuation Of Quarantine

COMMONWEALTH OF PENNSYLVANIA
COURT OF COMMON PLEAS OF _____ COUNTY
_____ JUDICIAL DISTRICT

Petitioner
:
:
DOCKET NO.
:
:
vs.
:
:

Respondent

ORDER

AND NOW, _____200_, _____ having filed a petition pursuant to the Counterterrorism Planning, Preparedness and Response Act, 35 P.S. § 2140.301, *et seq.*, on _____, 200__ to compel the quarantine of Respondent(s) and it appearing:

1. That on _____, pursuant to 35 P.S. § 2140.301(a), the Governor of Pennsylvania ordered the Respondent(s) into quarantine; and
2. That on _____ the Court held a hearing to determine whether continued quarantine is warranted, and at which the Respondent(s) was (were) present or otherwise afforded the opportunity to participate and represented by counsel; and

3. After hearing the Court having concluded that:

- i. It has been proven, by clear and convincing evidence, that Respondent was exposed to the communicable disease _____.
- ii. Because of the exposure, Respondent poses a significant threat to the health and safety of others; and
- iii. There are no lesser restrictive means of protecting the public's health from infection by the Respondent other than continued quarantine of the Respondent.

Therefore, it is ordered as follows:

- 1. Respondent is ordered quarantined for the lesser of _____ days (not to exceed 30 days) or until the disease is no longer in a communicable stage as determined by Petitioner pursuant to 35 P.S. § 2140.301(b)(5).
- 2. The terms and conditions of Respondent's quarantine shall be as follows:
 - a. Location: _____.
 - b. Provisions for food, water, medical care, and other necessities:
_____.
 - c. Allocation of costs of isolation or quarantine:
_____.
 - d. Other conditions: _____.
- 3. Petitioner shall provide the Court with reports as mandated by 35 P.S. § 2140.301(b)(7) in the following manner: _____.
- 4. Further hearing shall be held: _____.

BY THE COURT

J.

SECTION 4.00 APPENDICES

SECTION 4.11 Contact Information: The Pennsylvania Department of Health

The Pennsylvania Department of Health

Health and Welfare Building
7th and Forster Streets
Harrisburg, Pennsylvania 17120
Phone: 1.877.724.3258
FAX: 412.565.7582

Calvin B. Johnson, MD, MPH

Secretary
Health and Welfare Building
Executive Offices
8th Floor, West Wing
7th and Forster Streets
Harrisburg, Pennsylvania 17120
Phone: 717.787.6436
FAX: 717.787.0191

SECTION 4.00 APPENDICES

SECTION 4.12 Contact Information: Community Health District Offices

A. SOUTHEAST DISTRICT

Reading State Office Building
Room 442
625 Cherry Street
Reading, Pennsylvania 19602
Phone: 610.378.4352
FAX: 610.378.4527

B. NORTHEAST DISTRICT

665 Carey Avenue
Wilkes-Barre, Pennsylvania 18702
Phone: 570.826.2062
FAX: 570.826.2238

C. NORTHCENTRAL DISTRICT

Water Tower Square
1000 Commerce Park Drive
Suite 109
Williamsport, Pennsylvania 17701
Phone: 570.327.3400 (day)
570.327.5893 (night)
FAX: 570.327.3748

D. NORTHWEST DISTRICT

19 McQuiston Drive
Jackson Center, Pennsylvania 16133
Phone: 724.662.6068
FAX: 724.662.6086

E. SOUTHCENTRAL DISTRICT

30 Kline Plaza
Harrisburg, Pennsylvania 17104
Phone: 717.787.8092
FAX: 717.772.3151

F. SOUTHWEST DISTRICT

514 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, Pennsylvania 15222
Phone: 412.565.5085
FAX: 412.565.7582

SECTION 4.00 APPENDICES

SECTION 4.13 Contact Information: County/Municipal Health Departments

A. ALLEGHENY COUNTY HEALTH DEPARTMENT

3333 Forbes Avenue
Pittsburgh, Pennsylvania 15213
Phone: 412.687.2243
FAX: 412.578.8325

B. ALLENTOWN BUREAU OF HEALTH

245 North 6th Street
Allentown, Pennsylvania 18102
Phone: 610.437.7760
FAX: 610.437.8799

C. BETHLEHEM HEALTH BUREAU

10 East Church Street
Bethlehem, Pennsylvania 18018
Phone: 610.865.7087
FAX: 610.865.7326

D. BUCKS COUNTY DEPARTMENT OF HEALTH

Neshaminy Manor Center
1282 Almshouse Road
Doylestown, Pennsylvania 18901
Phone: 215.345.3318
FAX: 215.345.3833

E. CHESTER COUNTY HEALTH DEPARTMENT

601 Westtown Road
Suite 290
West Chester, Pennsylvania 19380
Phone: 610.344.6225
FAX: 610.344.6727

F. ERIE COUNTY DEPARTMENT OF HEALTH

606 West Second Street
Erie, Pennsylvania 16507
Phone: 814.451.6700
FAX: 814.451.6766

G. MONTGOMERY COUNTY HEALTH DEPARTMENT

1430 DeKalb Street
P.O. Box 311
Norristown, Pennsylvania 19404
Phone: 610.278.5117
FAX: 610.278.5167

H. PHILADELPHIA DEPARTMENT OF PUBLIC HEALTH

1101 Market Street
Suite 840
Philadelphia, Pennsylvania 19107
Phone: 215.686.5000
FAX: 215.685.5398

I. WILKES-BARRE CITY HEALTH DEPARTMENT

City Hall
40 E. Market Street
Wilkes-Barre, Pennsylvania 18711
Phone: 570.208.4268
FAX: 570.208.4272

J. YORK CITY HEALTH BUREAU

One Market Way West
Third Floor
York, Pennsylvania 17401
Phone: 717.849.2252
FAX: 717.852.9397

SECTION 4.00 APPENDICES

SECTION 4.14 Table of Authorities

FEDERAL CONSTITUTION

U.S. Const. art. I, § 8, cl. 1
U.S. Const. art. I, § 8, cl. 3
U.S. Const. art. I, § 10
U.S. Const. amend. IV
U.S. Const. amend. V
U.S. Const. amend. X

PENNSYLVANIA CONSTITUTION

Pa. Const. art. I, § 1
Pa. Const. art. I, § 8
Pa. Const. art. I, § 14
Pa. Const. art. V, § 1
Pa. Const. art. V, § 4
Pa. Const. art. V, § 5
Pa. Const. art. V, § 8

FEDERAL STATUTES

42 U.S.C. § 243 (2000)
42 U.S.C.S. § 247 (Lexis 2006)
42 U.S.C. § 5121 (2000)
42 U.S.C. § 5122 (2000)
42 U.S.C. § 5170 (2000)
42 U.S.C. § 5191 (2000)

PENNSYLVANIA STATUTES

3 P.S. § 331 (1995)
3 Pa. C.S. § 2303 (2006)
3 Pa .C.S. § 2321 (2006)
16 P.S. §§ 2185 – 2193 (2001)
16 P.S. § 2196 (2001)
16 P.S. § 2199 (2001)
16 P.S. § 9960.6 (2001)
16 P.S. §§ 12001 – 12028 (2006)
34 Pa. C.S. § 102 (2006)
35 P.S. § 521.1 (2003)
35 P.S. § 521.2 (2003)
35 P.S. § 521.3 (2003)
35 P.S. § 521.4 (2003)
35 P.S. § 521.5 (2003)
35 P.S. § 521.7 (2003)
35 P.S. § 521.9 (2003)
35 P.S. § 521.11 (2003)
35 P.S. § 521.16 (2003)
35 P.S. § 521.19 (2003)
35 P.S. § 521.20 (2003)
35 P.S. § 721.1 (2003)
35 P.S. § 721.5 (2003)
35 P.S. § 780-101 (2003)

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35 P.S. § 780-124 (2003)	42 Pa. C.S. § 722 (2004)
35 P.S. § 2140.102 (2006)	42 Pa. C.S. § 723 (2006)
35 P.S. § 2140.301 (2006)	42 Pa. C.S. § 724 (2006)
35 P.S. § 4013.1 (2003)	42 Pa. C.S. § 725 (2004)
35 P.S. § 6018.609(2003)	42 Pa. C.S. § 726 (2004)
35 P.S. § 6020.1106 (2003)	42 Pa. C.S. § 741 (2004)
35 P.S. § 6022.201 (2003)	42 Pa. C.S. § 742 (2004)
35 P.S. § 6022.202 (2003)	42 Pa. C.S. § 761 (2004)
35 P.S. § 6022.203 (2003)	42 Pa. C.S. § 762 (2004)
35 P.S. § 6022.204 (2003)	42 Pa. C.S. § 763 (2004)
35 P.S. § 6931 (2003)	42 Pa. C.S. § 764 (2004)
35 Pa. C.S. § 7101 (2003)	42 Pa. C.S. § 931 (2006)
35 Pa. C.S. § 7102 (2006)	42 Pa. C.S. § 932 (2004)
35 Pa. C.S. § 7103 (2003)	42 Pa. C.S. § 933 (2004)
35 Pa. C.S. § 7104 (2003)	42 Pa. C.S. § 934 (2004)
35 Pa. C.S. § 7301 (2003)	42 Pa. C.S. § 1123 (2004)
35 Pa. C.S. § 7308 (2003)	42 Pa. C.S. § 1302 (2006)
35 Pa. C.S. § 7311 (2003)	42 Pa. C.S. § 1515 (2006)
35 Pa. C.S. § 7312 (2003)	42 Pa. C.S. § 4132 (2004)
35 Pa. C.S. § 7313 (2006)	42 Pa. C.S. § 5985 (2006)
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35 Pa. C.S. § 7502 (2003)	42 Pa. C.S. § 6502 (2000)
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40 P.S. § 1303.504 (2006)	42 Pa. C.S. § 6504 (2000)
42 Pa. C.S. § 721 (2004)	42 Pa. C.S. § 6505 (2000)

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50 P.S. § 7304 (2001)	53 P.S. § 56601 (1957)
53 P.S. § 12291 (1998)	53 P.S. § 56605 (1957)
53 P.S. § 12294 (1998)	53 P.S. § 56606 (1957)
53 P.S. § 14401 (1998)	53 P.S. § 56607 (1957)
53 P.S. § 14402 (1998)	53 P.S. § 56608(1957)
53 P.S. § 14464 (1998)	53 P.S. § 68001 (1997)
53 P.S. § 23158 (1998)	53 P.S. § 68002 (1997)
53 P.S. § 24561 (1998)	53 P.S. § 68003 (1997)
53 P.S. § 24568 (1998)	53 P.S. § 68004 (1997)
53 P.S. § 24616 (1998)	53 P.S. § 68005 (1997)
53 P.S. §§ 24661 – 24675 (1998)	53 P.S. § 68006 (1997)
53 P.S. § 37305 (1998)	71 P.S. § 11 (1990)
53 P.S. § 37306 (1998)	71 P.S. § 61 (1990)
53 P.S. § 37307 (1998)	71 P.S. § 66 (1990)
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53 P.S. § 37320 (1998)	71 P.S. § 200 (1990)
53 P.S. § 37323 (1998)	71 P.S. § 510-17 (2006)
53 P.S. § 37324 (1998)	71 P.S. §§ 531-555 (2006)
53 P.S. § 46202 (2006)	71 P.S. § 536 (1990)
53 P.S. § 48101 (1966)	71 P.S. § 541 (1990)
53 P.S. § 48105 (1966)	71 P.S. §§ 1401-1411 (2006)
53 P.S. § 48106 (1966)	71 P.S. § 1406 (1990)
53 P.S. § 48108 (1966)	71 P.S. §§ 1412-1435 (2006)

PENNSYLVANIA RULES OF COURT

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Criminal Rules

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Appellate Court Rules

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Addington v. Texas, 441 U.S. 418 (1979)

Best v. St. Vincent's Hosp., 2003 WL 21518829 (S.D.N.Y. 2003), Report and Recommendations adopted by District Court at 2003 WL 21767656, *remanded on other grounds* at 2004 WL 2166316 (2nd Cir. 2004).

Camara v. Municipal Court of San Francisco, 387 U.S. 523 (1967)

Carolene Products Co. v. Evaporated Milk Ass'n, 93 F.2d 202 (7th Cir. 1937)

Chicago B. & Q. R. Co. v. Chicago, 166 U.S. 226 (1897)

Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985)

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Hamilton v. Love, 328 F. Supp. 1182 (D.C. Ark. 1971)

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Juragua Iron Co. v. U.S., 212 U.S. 297 (1909)

Lassiter v. Department of Social Services, 452 U.S. 18 (1981)

Lawton v. Steele, 152 U.S. 133 (1894)

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FEDERAL CASES cont'd

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Marshall v. Barlow's, Inc., 436 U.S. 307 (1978)
Mathews v. Eldridge, 424 U.S. 319 (1976)
Medtronic, Inc. v. Lohr, 518 U.S. 470 (1996)
Muglar v. Kansas, 123 U.S. 623 (1887)
National Board of YMCA v. U.S., 395 U.S. 85 (1969)
Penn Central Transport Co. v. City of New York, 438 U.S. 104 (1978)
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- Commonwealth ex rel. Dion v. Tees*, 180 Pa. Super 82, 118 A.2d 756 (Pa. Super. 1956)
- Commonwealth ex rel. Finken v. Roop*, 234 Pa. Super 155, 339 A.2d 764 (Pa. Super. 1975)
- Commonwealth ex rel. Fisher v. Philip Morris, Inc.*, 736 A.2d 693 (Pa. Commw. 1999)
- Commonwealth ex rel. Herge v. Martin*, 6 Pa. D.& C.2d 589, *aff'd* at 387 Pa. 117, 126 A.2d 711 (Pa. 1956)
- Commonwealth ex rel. Kennedy v. Mingle*, 388 Pa. 54, 130 A.2d 161 (Pa. 1957)
- Commonwealth ex rel. Ogden v. Cairns*, 1911 WL 3741 (Philadelphia Clerk of Quar. Sess., 1911), *aff'd* 46 Pa. Super 96 (1911)
- Commonwealth ex rel. Paylor v. Claudy*, 366 Pa. 282, 77 A.2d 350 (Pa. 1951)
- Commonwealth ex. rel. Preate v. Danny's New Adam and Eve Bookstore*, 155 Pa. Commw. 281, 625 A.2d 119 (Pa. Commw. 1993)
- Commonwealth ex rel. Rivers v. Myers*, 414 Pa. 439, 200 A.2d 303 (Pa. 1964)
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- Commonwealth v. Maldonado*, 576 Pa. 101, 838 A.2d 710 (Pa. 2003)
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- Commonwealth v. Milice*, 401 Pa. Super 96, 584 A.2d 997 (Pa. Super. 1991)
- Commonwealth v. Moore*, 526 Pa. 152, 584 A.2d 936 (Pa. 1991)
- Commonwealth v. Nixon*, 718 A.2d 311 (Pa. Super. 1998), *aff'd* at 563 Pa. 425, 761 A.2d 1151 (Pa. 2000)
- Commonwealth v. Ryan*, 484 Pa. 602, 400 A.2d 1264 (Pa. 1979)
- Commonwealth v. Smith*, 336 Pa. Super. 636, 486 A.2d 445 (Pa. Super. 1984)
- Commonwealth v. Stofchek*, 322 Pa. 513, 185 A. 840 (Pa. 1936)

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- Commonwealth v. Tobin*, 828 A.2d 415 (Pa. Commw. 2003)
- Commonwealth v. Widovich*, 295 Pa. 311, 145 A. 295 (1929)
- Commonwealth v. \$9,847.00 United States Currency*, 550 Pa. 192, 704 A.2d 612 (Pa. 1997)
- Commonwealth Department of Corrections v. Reese*, 774 A.2d 1255 (Pa. Super. 2001)
- Craig v. Kline*, 65 Pa. 399 (Pa. 1870)
- Eagle Environmental II v. Commonwealth*, 584 Pa. 494, 884 A.2d 867 (Pa. 2005)
- Fraisar v. Gillis*, 892 A.2d 74 (Pa. Commw. 2006)
- In Interest of F.B.*, 442 Pa. Super 216, 658 A.2d 1378 (Pa. Super. 1995), *aff'd* 555 Pa. 661, 726 A.2d 361 (Pa. 1999)
- In re Duran*, 769 A.2d 497 (Pa. Super. 2001)
- In re Farrow*, 754 A.2d 33 (Pa. Commw. 2000)
- In re Fiori*, 543 Pa. 592, 673 A.2d 905 (Pa. 1996)
- In re First Church of Christ, Scientist*, 205 Pa. 543, 55 A. 536 (Pa. 1903)
- In re Hancock*, 719 A.2d 1053 (Pa. Super. 1998)
- In re Jane Doe*, 45 Pa.D.&C.3d 371, 1987 WL 226878 (Philadelphia C.C.P. 1987)
- In the Matter of Cabrera*, 381 Pa. Super. 100, 552 A.2d 1114 (Pa. Super. 1989)
- Jackson v. Centennial School District*, 509 Pa. 101, 501 A.2d 218 (Pa. 1985)
- Lieberman v. Howard Johnson's, Inc.*, 68 Pa. D. & C.2d 179 (C.C.P. Philadelphia 1973)
- Lilian v. Commonwealth*, 467 Pa. 15, 354 A.2d 250 (Pa. 1976)
- Machipongo Land and Coal Co. Inc. v. Commonwealth*, 569 Pa. 3, 799 A.2d 751 (Pa. 2002)
- Mayer v. Garman*, __ Pa. __ ; __ A.2d __; 2006 WL 2252067 (Pa. 2006)
- Montgomery v. Bazaz-Sehgal*, 568 Pa. 574, 798 A.2d 742 (Pa. 2002)
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- Nolan v. Jones*, 263 Pa. 124, 106 A. 235 (Pa. 1919)
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Zellner vs. Allentown, 18 C.C. 162, 1896 WL 3663 (Lehigh C.C.P. 1896)

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Greene v. Edwards, 263 S.E.2d 661 (W. Va. 1980)

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Hutchinson v. Carthage, 73 A. 825 (Me. 1909)

Loudoun v. Merrimack County, 53 A. 906 (N.H. 1902)

Love v. Superior Court, 226 Cal.App.3d 736 (Cal. Ct. App. 1990)

Matter of Juveniles A, B, C, D, E, 847 P.2d 455 (Wash. 1993)

Matter of Lavigne, 641 N.E.2d 1328 (Mass. 1994)

Moore v. Lumpkin, 630 N.E.2d 982 (Ill. App. 1 Div. 1994)

Phelps v. School District, 221 Ill. App. 500 (Ill. Ct. App. 4th Dist. 1921)

State v. Lawson, 453 A.2d 556 (N.J. Super. A.D. 1982)

PENNSYLVANIA CODE

(Regulations)

4 Pa. Code § 3.25

28 Pa. Code § 27.1

28 Pa. Code § 27.60

28 Pa. Code § 27.61

28 Pa. Code § 27.65

28 Pa. Code § 27.67

28 Pa. Code § 27.68

28 Pa. Code § 27.82

28 Pa. Code § 27.87

28 Pa. Code § 27.152

PHILADELPHIA CODE

Philadelphia Code § 6-203

Philadelphia Code § 6-204

Philadelphia Code § 6-205

ALLEGHENY COUNTY REGULATIONS

Health Dept. Rules and Regulations Art. XI,
§§ 1103 - 1106, available at:
<http://www.achd.net/regulations/regs.html>

SECONDARY SOURCES

18 Standard Pennsylvania Prac. 2d § 98.3

18 Standard Pennsylvania Prac. 2d § 98.4

18 Standard Pennsylvania Prac. 2d § 98.5

18 Standard Pennsylvania Prac. 2d § 98:59

18 Standard Pennsylvania Prac. 2d § 98:61

18 Standard Pennsylvania Prac. 2d § 98:68

18 Standard Pennsylvania Prac. 2d § 98:77

18 Standard Pennsylvania Prac. 2d § 98:79

28A Standard Pennsylvania Prac. 2d, § 139:34

28A Standard Pennsylvania Prac. 2d, § 139:35

28A Standard Pennsylvania Prac. 2d, § 139:36

Corpus Juris Secundum

29A C.J.S. Police and Other Related Powers § 8: Eminent Domain (Police Powers)

39A C.J.S. Habeas Corpus § 234

39A C.J.S. Habeas Corpus § 330

39A C.J.S. Habeas Corpus § 336

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7 McQuillin Mun. Corp. § 24.235 (3rd ed.)

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SECTION 4.00 APPENDICES

SECTION 4.15 Public Health Glossary

A

abatement	<p>Pennsylvania Statutes do not define.</p> <p>The reduction or, preferably, the elimination of public health hazards or nuisances such as environmental pollutants, noxious smells and excessive noise. <i>A Dictionary of Public Health</i> (J.M. Last ed., 2007).</p>
administrative search warrant	<p>Permission for government officials to inspect premises for healthcare and safety purposes. <i>Commonwealth v. Tobin</i>, 828 A. 2d 415, 419 (Pa. Commw. 2003). In cases of sanitary standard-related statutes, such warrants shall be issued upon probable cause (the details of which vary and are detailed in the following: Safe Water Drinking Act, 35 P.S. § 721.5(g); Air Pollution, 35 P.S. § 4013.1; The Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. § 780-124(d)(1); Solid Waste Management Act, 35 P.S. § 6018.609; and Hazardous Waste Cleanup Act, 35 P.S. § 6020.1106).</p>
acknowledgement of guilt	<p>A written statement in which an individual admits guilt and pays a fine; the statement has the same force and effect as a hearing before proper authority with the individual being convicted of the offense of which he/she is accused. 34 Pa. C.S. § 102.</p>
advisory health board	<p>Comprised of the Secretary of The Pennsylvania Department of Health (who acts as the Chair), physicians, various health care professions, and additional members. It is responsible for approving rules and regulations necessary for the prevention of disease, immunization standards, and local health services and has the power to declare certain diseases to be communicable. 71 P.S. §§ 158, 536 and 541; 35 P.S. § 521.4(d).</p>
antigen	<p>Pennsylvania Statutes do not define.</p> <p>A substance that is alien to the body and induces a specific immune response and antibody production when introduced. <i>A Dictionary of Public Health</i> (J.M. Last ed., 2007).</p>

B

biohazard	<p>Pennsylvania Statutes do not define. A biological or chemical agent or substance that is harmful or endangers life; this includes pathogenic organisms (i.e., organisms which cause disease). <i>A Dictionary of Public Health</i> (J.M. Last ed., 2007).</p>
bioterrorism	<p>Pennsylvania Statutes do not define.</p> <p>The threat or intentional release of biological agents (viruses, bacteria or their toxins) for the purpose of influencing the conduct of government or intimidating or coercing a civilian population. United States General Accounting Office. <i>Bioterrorism: Public Health and Medical Preparedness</i>. Washington, D.C. October 2001 (www.gao.gov/new.items/d02141t.pdf).</p> <p>A form of terrorism, indiscriminate violent hostile acts against the general population, that employs biological agents, such as pathogenic organisms or their spores, cultures or toxic products, or even infected persons, to spread dangerous contagious disease in an indiscriminate manner among the general population. <i>A Dictionary of Public Health</i> (J.M. Last ed., 2007).</p> <p>The deliberate release of viruses, bacteria, or other germs (agents) used to cause illness or death in people, animals, or plants. These agents are typically found in nature; it is possible that they could be changed to increase their ability to cause disease, make them resistant to current medicines, or to increase their ability to be spread into the environment. Biological agents can be spread through the air, through water, or in food, are often difficult to detect and do not cause illness for several hours to several days. Some bioterrorism agents, like the smallpox virus, can be spread from person to person and some, like anthrax, can not. Centers for Disease Control and Prevention (http://www.bt.cdc.gov/bioterrorism/overview.asp#intro).</p>

C

carrier	<p>A person, without any apparent symptoms of a communicable disease, harbors a specific infectious agent and may serve as a source of infection. 35 P.S. § 521.2.</p>
case	<p>A person or animal that is determined to have or is suspected of having a disease, infection or condition. 28 Pa. Code § 27.1.</p>
communicable	<p>Pennsylvania Statutes do not define.</p> <p>Capable of being transmitted from one organism or person to another. <i>Stedman's Medical Dictionary</i> (27th ed. 2000).</p>

communicable disease	An illness due to an infectious agent or its toxic products which is transmitted, directly or indirectly, to a susceptible host or a well person by or from an infected person, animal or other reservoir. 35 P.S. § 521.2(c).
communicable period	The time during which an etiologic agent may be transferred, directly or indirectly, from an infected person or animal to a person. 28 Pa. Code § 27.1.
contagious disease	See communicable disease.
cordon sanitaire	<p>Pennsylvania Statutes do not define.</p> <p>The defensive “barrier,” such as isolation procedures, around a focus of infection (often an entire geographic area, such as a city or town). <i>A Dictionary of Public Health</i> (J.M. Last ed., 2007).</p> <p>Typically, associated with a mass outbreak, the isolation of infected persons or quarantine of exposed persons or of a geographic area. Lawrence O Goston, <i>Symposium Article: Part 1: Public Health: Pandemic Influenza: Public Health Preparedness for the Next Global Health Emergency</i>, 32 J.L. Med. & Ethics 565, 565-73 (Winter 2004).</p>
counterterrorism	<p>Pennsylvania Statutes do not define.</p> <p>Specialized, regional planning and/or response to terrorism. See terrorism.</p>
county/municipal health department	A health department created and authorized by the Local Health Administration Law, charged with protection and promotion of the people’s health through the provision of adequate local health services to all people. 16 P.S. §§ 12001-12028.

D

disaster	A man-made disaster, natural disaster or war-caused disaster that disrupts the environment and human or animal habitats and causes widespread distress and, often, loss of life. 35 Pa. C.S. § 7102.
disaster emergency	A condition which may actually or likely (a) seriously affect the safety, health or welfare of a substantial number of citizens or preclude the operation or use of essential public facilities; (b) be of such magnitude as to render essential state supplementation of county/local efforts or resources to alleviate the danger, damage, suffering or hardship; and (c) have been caused by forces beyond the control of man, by civil disorder, riot or disturbance or by unforeseen factors. 35 Pa. C.S. § 7102.

disease	Pennsylvania Statutes do not define. An interruption, cessation or disorder of a body function, system or organ; a departure from a state of health. <i>Stedman's Medical Dictionary</i> (27th ed. 2000).
domestic animal	Any equine or bovine animal, sheep, goat, pig, dog, cat, poultry, bird, fowl or any wild or semi-wild animal held in captivity. 3 P.S. § 331.

E

emergency	In public health, a situation that threatens life, personal and population health and safety - generally, from equilibrium to an unbalanced state; it is usually sudden in onset. <i>A Dictionary of Public Health</i> (J.M. Last ed., 2007). See also, disaster.
epidemic	Pennsylvania Statutes do not define. The occurrence, within a community or specified population, of deaths or cases of a condition in numbers greater than usual or expected for a given period of time. <i>A Dictionary of Public Health</i> (J.M. Last ed., 2007).

F

Federal Emergency Management Agency (FEMA)	The Federal agency responsible for managing federal response and recovery efforts following any national incident. FEMA initiates proactive mitigation activities, trains first responders and manages the National Flood Insurance Program. Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 100-707.
first responder	Individual certified to perform basic life support activities to stabilize and improve a patient's condition, in a pre-hospital setting, until more highly trained emergency medical service personnel arrive at the scene. 35 P.S. § 6931.

H

hazardous substance	Any element, compound or material which threatens the health of domestic animals or humans. 3 Pa. C.S. § 2303.
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I

incubation period	Pennsylvania Statutes do not define. The period of time between the entry of a disease agent into an organism and the organism's initial display of symptoms; the disease develops during the incubation period. Incubation periods are disease-specific and range from hours to weeks. <i>Stedman's Medical Dictionary</i> (27th ed. 2000).
infectious agent	Any organism, such as a virus, bacterium, fungus or parasite, that is capable of being communicated by invasion and multiplication in body tissues and capable of causing disease. 28 Pa. Code § 27.1.
infectious disease	See communicable disease.
immunization	Pennsylvania Statutes do not define. Artificial induction of active immunity by introducing (through injection or orally), into a vulnerable host, the specific antigen of a pathogenic organism. <i>A Dictionary of Public Health</i> (J.M. Last ed., 2007).
isolation	The separation, for the period of communicability, of known infected persons or animals from other persons or animals in such places and under such conditions as will prevent or limit the direct or indirect transmission of the infectious agent. 35 P.S. § 521.2(e).

L

local emergency	The condition declared by the local governing body when the threat or actual occurrence of a disaster is of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate damage, loss, hardship or suffering. A local emergency, arising wholly or substantially, due to a resource shortage, may be declared only by the Governor, upon petition by the local governing body, when the threat or actual occurrence of a disaster is deemed to be of sufficient severity and magnitude to warrant coordinated local government action to prevent or alleviate damage, loss, hardship or suffering. 35 Pa. C.S. § 7102.
local health authority	The 237 local boards or departments of health that operate outside of the Local Health Administration Law (Act 315) structure and funding. The specific structure of each local health authority is determined by local regulations and ordinances.

local health officer	The person appointed by a local health authority to head the daily administration of duties imposed upon or permitted of local health authorities by State laws and regulations. 28 Pa. Code § 27.1.
local morbidity reporting office (LMRO)	A district office of The Pennsylvania Department of Health or a County/Municipal health department. 28 Pa. Code § 27.1.

M

man-made disaster	Any industrial, nuclear or transportation accident, explosion, conflagration, power failure, natural resource shortage or other condition, except enemy action, resulting from man-made causes, such as oil spills and other injurious environmental contamination, which threatens or causes substantial damage to property, human suffering, hardship or loss of life. 35 Pa. C.S. § 7102.
modified quarantine	A selected, partial limitation of freedom of movement determined on the basis of differences in susceptibility or danger of disease transmission, which is designed to meet particular situations. Modified quarantine includes, though is not limited to, the exclusion of children from school and the prohibition or the restriction of those exposed to a communicable disease from engaging in particular occupations. 35 P.S. § 521.2.

N

natural disaster	Any hurricane, tornado, storm, flood, high water, earthquake, landslide, mudslide, snowstorm, drought, insect infestation, fire, explosion or other natural catastrophe which results in substantial property damage, human suffering and hardship or loss of life. 35 P.S. § 2140.102; 35 Pa. C.S. § 7102.
nuisance	Any condition or usage in or about buildings, structures or land or the streets or private ways and places, or elsewhere, whether public or private, which the board of health finds to be detrimental to the public health. 16 P.S. § 2196; 53 P.S. § 37320.

O

outbreak An unusual increase in the number of cases of a disease, infection or condition, whether reportable or not as a single case, above the number of cases that one required to report would expect to see in a particular geographic area or among a subset of persons defined by a specific demographic or other features. 28 Pa. Code § 27.1.

P

pathogen Pennsylvania Statutes do not define. An organism that causes disease. *A Dictionary of Public Health* (J.M. Last ed., 2007).

Pennsylvania Department of Health The Pennsylvania Department of Health is part of the Commonwealth's Executive Department. 71 P.S. §§ 11 and 61. It is responsible for protecting the health of the people of the Commonwealth and determining and employing the most efficient and practical means for the prevention and suppression of disease. 71 P.S. § 532(a).

Pennsylvania Emergency Management Agency (PEMA) Statewide agency responsible for assuring prompt, proper and effective discharge of basic Commonwealth responsibilities relating to civil defense and disaster preparedness, operations and recovery.

Pennsylvania Emergency Management Council The legal body with primary responsibility for overall policy and direction of a statewide civil defense and disaster program and response capability; it supervises and coordinates the responsibilities of local emergency planning committees. Established and organized under P.L. 1332 (known as the Emergency Management Services Code) in 1978, the Council is composed of the Governor, Lieutenant Governor, Secretary, Attorney General, General Counsel and many others. 35 Pa. C.S. § 7312; 35 P.S. § 6022.201.

physician general Appointed by the governor, advises the Governor and the Secretary on health policy, participates in decision making, and consults with recognized experts on medical and public health matters. 71 P.S. § 1401(c).

points of dispensing (PODs)	<p>Pennsylvania Statutes do not define.</p> <p>Pre-designated locations where antivirals and vaccines are available and distributed to all members of the public within a limited period of time (e.g., 48 hours); PODs are organized for the purpose of preventing the spread of disease and/or a negative effect on the public's health.</p>
political subdivision	<p>Any county, city, borough, incorporated town or township.</p> <p>35 Pa. C.S. § 7102.</p>
public health	<p>Pennsylvania Statutes do not define.</p> <p>"What we, as a society, do to collectively assure the conditions in which people can be healthy." <i>The Future of Public Health</i>, Institute of Medicine, 1988.</p>
public health authorities	<p>Pennsylvania Statutes do not define.</p> <p>For purposes of this Bench Book, the term refers collectively to The Pennsylvania Department of Health, County/Municipal departments of health (authorized by Act 315) and local health authorities.</p>
public health emergency	<p>Pennsylvania Statutes do not define.</p> <p>An occurrence or imminent threat of an illness or health condition, caused by epidemic or pandemic disease, bioterrorism, or novel and highly infectious agent or biological toxin that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long term disability. Such illness or health condition include, though is not limited to, an illness or health condition resulting from a national disaster. Lawrence O. Gostin and J. Hodges, <i>The Model State Emergency Powers Act</i> (2001).</p>

Q

quarantine	<p>The limitation of freedom of movement of persons or animals who have been exposed to a communicable disease for a period of time equal to the longest usual incubation period of the disease in such a manner as to prevent effective contact with those not so exposed. Quarantine may be complete or see "modified quarantine," "surveillance," and "segregation." 35 P.S. § 521.2.</p>
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R

reportable disease	a) Any communicable disease declared reportable by regulation; b) any unusual or group expression of illness which, in the opinion of the secretary, may be a public health emergency; and c) non-communicable diseases and conditions for which the Secretary may authorize reporting to provide data and information which are deemed to needed in order to carry out programs designed to protect and promote the health of the people or to determine the need for the establishment of programs. 35 P.S. § 521.2.
resource shortage	The absence, unavailability or reduced supply of any raw or processed natural resource or any commodities, goods or services of any kind which bear a substantial relationship to the health, safety, welfare and economic well-being of the citizens of the Commonwealth. 35 Pa. C.S. § 7102.

S

segregation	The separation for special control or observation of one or more persons or animals from other persons or animals to facilitate the control of communicable disease. 35 P.S. § 521.2.
sexually transmitted disease	Pennsylvania Statutes do not define. Approximately 25 miscellaneous diseases with a variety of causal agents, having in common the fact that all are transmitted from person to person by direct contact and that the responsible pathogen usually resides in the genital tract and/or in blood and other body fluids. <i>A Dictionary of Public Health</i> (J.M. Last ed., 2007).
surveillance	The close supervision and monitoring of persons and animals exposed to a communicable disease without restricting their movement. 35 P.S. § 521.2.

T

terrorism	The unlawful use of force or violence committed by a group or individual against persons or property to intimidate or coerce a government, civilian population or any segment thereof in furtherance of political or social objectives. 35 P.S. § 2140.102.
transmissible disease	A disease of a domestic animal which can be transferred, reproduced or established in a domestic animal or human by direct or indirect means. 3 Pa. C.S. § 2303.

transmission
Pennsylvania Statutes do not define.
The conveyance of disease from one organism to another.
Stedman's Medical Dictionary (27th ed. 2000).

tuberculosis
Pennsylvania Statutes do not define.
A disease caused by infection with the bacterium, *Mycobacterium tuberculosis*, which can affect almost any tissue or organ of the body - most commonly, the lungs. Primary tuberculosis is typically a mild or asymptomatic local lung infection that, in otherwise healthy people, does not lead to generalized disease because an immune response arrests the spread of the bacteria and walls off the zone of infection.
Stedman's Medical Dictionary (27th ed. 2000).

V

vaccination
Means of preventing the spread of communicable disease.
71 P.S. § 536. *See also* immunization.

venereal disease
See sexually transmitted disease.

W

war-caused disaster
Any condition following an attack upon the United States resulting in substantial damage to property or injury to persons in the United States caused by use of bombs, missiles, shellfire, nuclear, radiological, chemical or biological means, or other weapons or overt paramilitary actions, or other conditions such as sabotage. 35 Pa. C.S. § 7102.

wildlife
Wild birds, wild mammals and facsimiles thereof, whether protected or unprotected, including any part, product, egg or offspring thereof, or the dead body or parts thereof (excluding fossils) whether or not included in a manufactured product or in a processed food product. 3 P.S. § 331, 34 Pa. C.S. §102.

Additional terms inconsistently defined across Pennsylvania Code and Statutes

(Note: to prevent confusion, these definitions have not been used in the Pennsylvania Public Health Law Bench book or Bench Guides. They are provided here only for reference)

local health authority	A county or municipal department of health, or board of health of a municipality that does not have a department of health. This term includes a sanitary board. 28 Pa. Code §27.1.
local health department	Each county department of health under the Local Health Administration Law and each department of health in a municipality approved for a Commonwealth grant to provide local health services under section 25 of the Local Health Administration Law. 16 P.S. §§ 12001-12028.