

# State Law in a Pandemic Response

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# CDC's Public Health Law Program (PHLP)

- **What we do**

- Advance the use of law as a public health tool

- **How we do it**

- Training and workforce development
- Legal epidemiology
- Partnership and engagement

- **Who we serve**

- CDC programs and state, tribal, local, and territorial communities
- You!



# Public Health Emergency Law Online Training

Management of public health emergencies requires effective use of legal authorities. In these incidents, public health and emergency management responses must be coordinated under a complex set of federal, state, tribal, and local laws. CDC's Public Health Emergency Law course prepares state, tribal, local, and territorial practitioners to make informed legal decisions related to emergency preparedness and response activities in their jurisdictions.

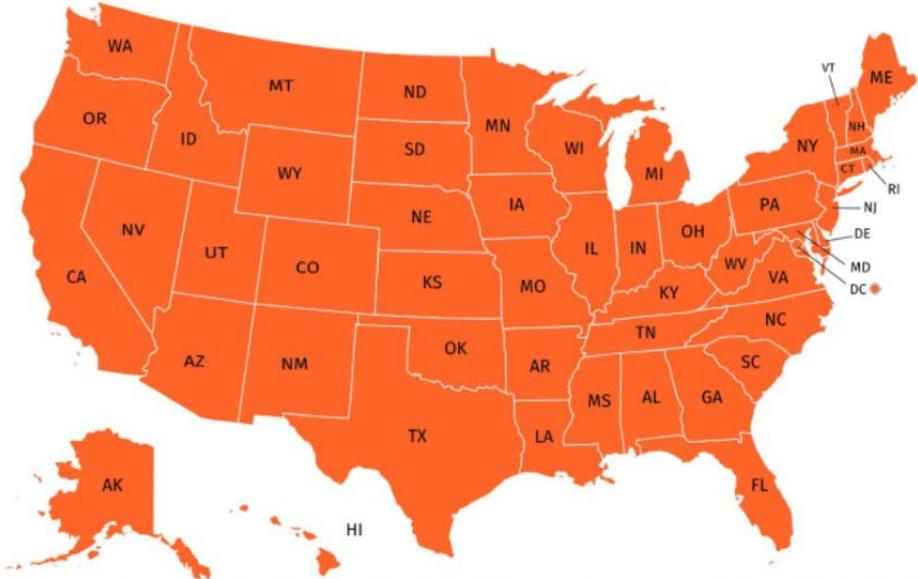
PHEL consists of three [competency-based](#) units and covers legal issues to consider before, during, and after public health emergencies. Each interactive unit takes about 40 minutes to complete.

- [Unit 1—Introduction to Emergency Management Systems Preparedness and Response](#)   
Covers the legal underpinnings of emergency management systems
- [Unit 2—Emergency Powers: Protection of Persons, Volunteers, and Responders](#)   
Describes legal considerations for personnel responding to emergencies
- [Unit 3—Emergency Powers: Management and Protection of Property and Supplies](#)   
Examines considerations surrounding materials and property during public health emergencies



Ohio National Guard members load drinking water onto a helicopter for delivery to Ocean Springs, Mississippi, after Hurricane Katrina disrupted water supplies along the Mississippi Gulf Coast.

# Isolation and Quarantine Laws



Click your state or territory to see examples of isolation and quarantine laws, or select 'Next' to continue.

Guam    Puerto Rico    US Virgin Islands

Back    Next

[www.cdc.gov/php/publications/topic/trainings/ph-emergencylaw.html](http://www.cdc.gov/php/publications/topic/trainings/ph-emergencylaw.html)

# **CDC–PHLP Disclaimer**

**The contents of this presentation have not been formally disseminated by CDC and should not be construed to represent any agency determination or policy.**

**These materials are for instructional use only and are not intended as a substitute for professional legal or other advice.**

**Always seek the advice of an attorney or other qualified professional with any questions you may have regarding a legal matter.**



# Variations in state laws

- **State laws for public health interventions vary greatly**
  - Who has the authority?
  - Who can be quarantined?
  - Where do we quarantine?
  - How long?
  - What are the penalties?
  - Do the laws change if there's an emergency?
  - Is there a process for judicial review?
- **Or the law may be silent on all or some of the above**

# States have the primary responsibility for public health through the 10<sup>th</sup> amendment

## Police power as it relates to public health—

- Promotes the public health, safety, and general well-being of the community
- Enacts and enforces laws for general welfare
- Regulates private rights in the public interest



States may also delegate these powers to localities



# State and local public health systems

- **Centralized**

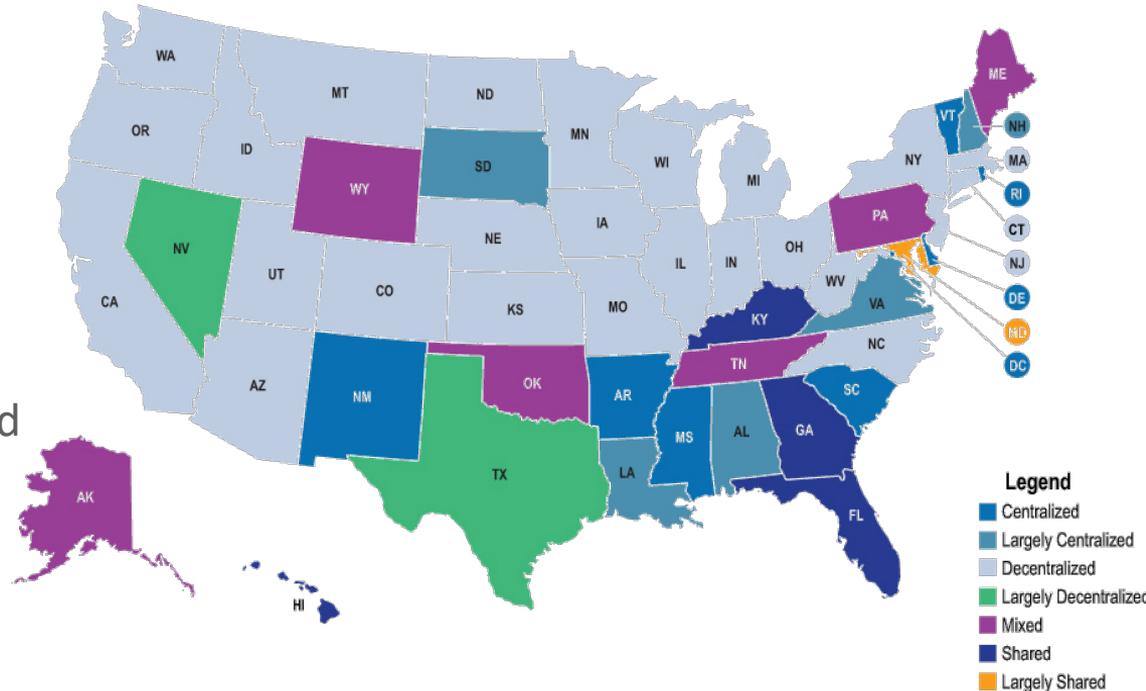
- Local health units are led by the state; the state retains authority

- **Mixed/Shared**

- Some local health units are led by the state; some are led by local government

- **Decentralized**

- Local health units are led by local governments; local governments retain authority



# Who has the power?

State	Non-Emergency vs. Emergency Declaration	Authority to Quarantine
CT	Non-Emergency	Any town, city, borough or district director of health
	Emergency declared by the Governor	State Commissioner of Public Health, if so authorized by the Governor
GA	No difference	Commissioner of the Georgia Department of Public Health District Health Directors for each Health District ( <u>not</u> County Boards of Health)
IL	No difference	State Department of Public Health Local Health Authority
MA	No difference	Local boards of health and the Department of Public Health
TX	Non-Emergency	The department, a local health authority, or a regional health authority
	Public Health Disaster	Same as non-emergency

# Who is subject to that power?

State	Non-Emergency vs. Emergency Declaration	Individuals, Groups, or Both?
CT	Non-Emergency	Individuals only
	Emergency declared by the Governor	Both individuals and groups
GA	No difference	Both individuals and groups
IL	No difference	Both individuals and groups
MA	No difference	Both individuals and groups
TX	Non-Emergency	Both individuals and groups
	Public Health Disaster	Same as non-emergency

# Where can you quarantine?

State	Non-Emergency vs. Declaration	Location of Quarantine
CT	Non-Emergency	Private homes or other private or public premises as designated by the district director of health
	Emergency declared by the Governor	Private homes or other private or public premises as designated by the State Commissioner of Public Health
GA	No difference	Unspecified
IL	No difference	Health care facility (if person is already there), home setting (if possible), or hospital (if home quarantine cannot be accomplished), or other public or private premises; premises used for quarantine shall be maintained to minimize the likelihood of further transmission of infection or other harm to persons quarantined
MA	No difference	Residences; other locations may be used so long as the Department or local board of health obtains an order of the Superior Court authorizing the quarantine as soon as practicable, but in no event later than ten days following the commencement of isolation or quarantine
TX	Non-Emergency	Location designated by the health authority or the Commissioner, including health care facilities designated by the health authority or the Commissioner (except for nursing homes, convalescent homes, and related institutions)
	Public Health Disaster	Location designated by the health authority or the Commissioner, including health care facilities designated by the health authority or the Commissioner (except for nursing homes, convalescent homes, Intermediate Care Facilities for Individuals with an Intellectual Disability, and related institutions)  A court may also designate a private health care facility or a federal facility (with permission from the federal agency)

# How long can you quarantine?

State	Non-Emergency vs. Emergency Declaration	Length of Order
CT	Non-Emergency	20 days (72 hours if the person challenges the order)
	Emergency declared by the Governor	20 days (72 hours if the person challenges the order excluding Saturdays, Sundays and legal holidays; the court may extend the time for a hearing based on extraordinary circumstances)
GA	No difference	Until they are found to be free of the infectious agent or disease
IL	No difference	For a period not to exceed the period of incubation and communicability, reexamining the basis for the order every 30 days (if the person objects, a court petition must be filed in 48 hours or as soon as reasonably possible if the court system is unavailable); court ordered quarantine lasts for 30 days before renewal is necessary
MA	No difference	Length of quarantine is disease-specific
TX	Non-Emergency	Until the individual is no longer infected with a communicable disease or, in the case of a suspected disease, expiration of the longest usual incubation period for the disease
	Public Health Disaster	72 hours in a designated facility

# What are the penalties for noncompliance?

State	Non-Emergency vs. Emergency Declaration	Penalties for Noncompliance
CT	Non-Emergency	Class C misdemeanor
	Emergency declared by the Governor	<\$1,000 fine, <1 year imprisonment, or both, for each offense
GA	No difference	Misdemeanor
IL	No difference	Class A misdemeanor
MA	No difference	A minimum fine of \$10, maximum fine of \$100
TX	Non-Emergency	Individual quarantine: Class B misdemeanor Area quarantine: felony of the third degree
	Public Health Disaster	Class A misdemeanor



# Administrative review of public health orders

- Process for individuals subject to an order for petitioning **the agency** to end the order
  - Georgia: county quarantine orders must be reviewed by the state health commissioner
- **Not all states have procedures for administrative review of any or all quarantine orders**
  - Ohio: no established process for administrative review
  - Georgia: no administrative review for state-issued orders, only local





# Statutory due process

- **Statutes may establish—**
  - Time required for judicial endorsement of an order and consequences if endorsement isn't given
  - Venue for the challenge (e.g., filing in magistrate court)
  - Appointment of an attorney for indigent clients
- **Absent any statutes or regulations stating due process, individuals may use the writ of habeas corpus to challenge an order**
  - E.g. Ohio has no statutory or regulatory process for challenging an isolation or quarantine order



# Due process during a pandemic

- **Recognized need: systems for large number of hearing requests in event of mass quarantine**
  - Procedures for handling service of process
- **In-person vs. electronic or telephonic hearings**
  - Measures to protect safety of hearing officers and participants





# Enforcement

- **Some laws specifically require police enforcement of public health orders**
  - South Carolina Code 1976 § 44-1-100

“All sheriffs, constables, police officers, and health officers **must** assist, carry out, and obey orders of the Director and the Department of Health and Environmental Control to enforce and carry out any and all restrictive measures and quarantine regulations. ...During a state of public health emergency, the director may request assistance in enforcing orders from the public safety authority, other state law enforcement authorities, and local law enforcement. The public safety authority may request assistance from the South Carolina National Guard.”



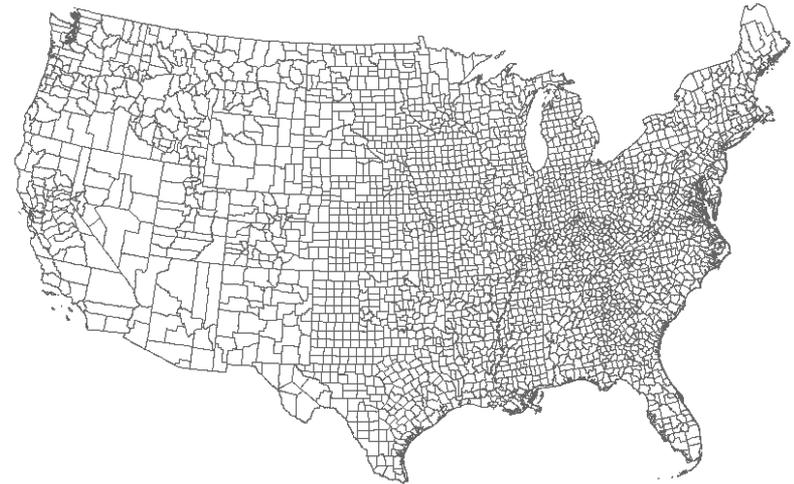
# Applicability of authorities across jurisdictional lines

## ■ Intrastate travel

- Local orders may be cosigned by the state
- States may issue orders that apply across all localities
- States may request federal support to enforce their authorities

## ■ Interstate travel

- Federal quarantine or conditional release order
- Federal travel permits may be used to define the terms of travel
- States may coordinate with other states and issue concurrent orders



# Conclusions

- **Protecting the public's health is primarily the responsibility of state and local governments**
  - **State laws governing isolation and quarantine vary greatly**
  - **Planning and exercises must account for legal processes and include health officials, attorneys, and the judiciary to ensure an efficient response**
  - **Pandemics will bring about novel legal issues: be ready to adapt**
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**Thanks!**

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For more information, contact CDC  
1-800-CDC-INFO (232-4636)  
TTY: 1-888-232-6348 [www.cdc.gov](http://www.cdc.gov)

The findings and conclusions in this report are those of the authors and do not necessarily represent the official position of the Centers for Disease Control and Prevention.

