

A Summary of Florida's Law of Quarantine of Persons and Public Health Law Reform Issues

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Abstract

Laws related to quarantine of individuals have existed in the United States since the time of the American Revolution. Review, reform, and enforcement of these laws are essential as public health is asked to address new challenges (e.g., SARS) as well as traditional communicable diseases such as TB and various STDs. This article examines the basis for quarantine and reviews the health and legal circumstances for their enactment and enforcement. The relevance of various Florida statutes and regulations is demonstrated with respect to evolving public health considerations and a reform movement.

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Introduction

Threats related to severe acute respiratory syndrome (SARS) and to bioterrorism have highlighted the importance of public health laws and their role in providing the legal authority for the state to protect the health of the population, including quarantine of persons, buildings, plants or animals. The deputy director of the Division of Public Health in Alaska has described what happened in her state when SARS was posing an international threat. A cruise ship from Hong Kong, a site of the epidemic, was due to arrive in an Alaskan port within 14 days. As it considered possible actions to protect Alaska's citizens, the public health agency learned it did not possess legal authority to act effectively to prevent spread of SARS and had to work quickly with its legislature for emergency passage of authorizing legislation. Agency officials also had to make contact and coordinate with federal authorities who generally have jurisdiction over cruise ships entering from foreign ports. (Erickson, 2003).

Even before the threats of bioterrorism and SARS, there had already been interest in examining states' public health laws, to ensure that necessary authority had been provided by statute for imposition of quarantine and use of other public health interventions to deal with the threat of emerging infectious disease (Shaw, 2003). The Institute of Medicine (IOM) Report, *The Future of the Public's Health in the 21st Century* (IOM, 2003), notes that many public health laws are old and in need of reform. One concern was that older laws often do not reflect contemporary understandings of how to prevent and treat disease. A second concern was that such laws may not reflect modern legal norms with regard to the protection of individual rights (IOM, 2003).

"Legal preparedness is increasingly being viewed as a critical component of state and local government public health preparedness activities" (Misrahi, Foster, Shaw, & Cetron, 2004). According to Shaw (2003) relevant components of legal

preparedness include legislation that responds to the following questions:

- Does the state have the legal authority to act effectively against infectious disease and bioterrorism?
- Do the legal procedures for imposition of quarantine or other public health interventions provide for fairness and procedural due process in dealings with those affected? (Note: Procedural due process refers to certain principles and practices that place requirements on how legal proceedings may be conducted to guarantee fairness, justice, and liberty.)
- Are there provisions for coordination between federal and state government and between different states?

Because of this concern about legal capacity of health departments, the Centers for Disease Control and Prevention (CDC) Public Health Practice Program office sponsors the Public Health Law Program. One of the results of the efforts of the CDC and others has been the drafting of the Model Public Health Act (MPHA) through the Turning Point Collaborative (2003) initiative and the Model State Emergency Health Powers Act (MSEHPA) (Center for Law and the Public's Health, 2002). These actions contain suggested statutory provisions developed by legal scholars for adoption by states. Following the terrorist attacks against the U.S. homeland in 2001, Florida quickly adopted its own law to apply to "public health emergencies" (29 FRS sec. 381.00315).

This article examines principles of due process and some of the recommendations that have come from the public health law reform movement and that are incorporated into the MPHA, including the emergency health powers provision. Subsequently, it reviews current Florida law concerning public health quarantine and the recent legislation granting the Florida Department of Health (DOH) power to declare a public health emergency,

and how the extent to which they depart from the recommended MPHA provision.

Recommendations Regarding Due Process

States have inherent power to protect the public's health and safety. This power is not absolute but is limited by the fact that citizens have fundamental rights, including the right to personal liberty, and thus, not to be detained by the government without sufficient legal cause. Over the last 50 years, the tendency of the law has been to place more stringent obligation on the government to justify any infringement of fundamental rights (Gostin, 2000). Most pertinent to public health concerns, when challenges have been filed by affected individuals, courts have found that deprivations of liberty, even in the name of public health and safety, involve fundamental constitutional rights and require a higher standard of judicial review. Cases in the 1960s and ones more recent established the proper procedures or "due process" standards for civil detention, such as isolation or quarantine. (Gostin, 2000). Quarantine and isolation are forms of civil detention or civil confinement that refer to the holding of someone who has not committed a crime. Quarantine of persons is generally the detention of persons who have been exposed to communicable disease, whereas isolation refers to detention of one actually infected. Florida DOH rules, however, use quarantine to refer to both sets of circumstances (64 FAC sec. 64D-3.007).

A person who is unwilling to comply with a quarantine order is generally entitled to procedural due process before quarantine may be imposed. However, if there is an immediate threat to public health or safety that requires the government to act preemptively, it may do so. The usual requirement, then, is that within a stated limited period of time after such government action, an opportunity for review of that government act is provided to the affected individual, including a hearing before a judge in which he or she may be represented by an attorney. Due process always involves balancing the citizen's right and the need for the protection of society under the facts of each particular case. The underlying concern is that there is an independent review to make sure that public health authorities are acting within their statutory scope of responsibility and that the particular person detained is subject to that jurisdiction, due to the fact that he or she poses a threat to public health and safety. Depending on the circumstances, the attendance of the affected individual at a particular hearing may be waived by the judge.

The Model Public Health Act (MPHA) sets forth a uniform-procedure for quarantine that applies

to all contagious diseases, including tuberculosis (TB) and sexually transmitted diseases (STDs), as long as they fall within the law's definition. "Contagious disease" is defined in the Model Act as an "infectious disease" that can be transmitted from individual to individual (Turning Point Collaborative, 2003). According to the proponents of the MPHA: "Public health law should be based on uniform provisions that apply equally to all communicable diseases - public health interventions should be based on the degree of risk, the cost and efficacy of the response, and burdens on human rights" (Gostin & Hodges, 2002). A single set of standards and procedures that is applicable to all communicable diseases, as defined in the MPHA, would clarify legal responsibilities and make enforcement easier and more consistent.

The MPHA provides for isolation and quarantine of individuals with contagious or possibly contagious disease in cases where "delay in imposing isolation or quarantine would significantly jeopardize the agency's ability to prevent or limit the transmission of a contagious disease or possibly contagious disease to others" (Turning Point Collaborative, 2003). This procedure is initiated by means of a written directive of the public health agency. The MPHA then requires filing of a court petition by the public health authority and an opportunity for a hearing within 48 hours of the filing of the petition, with some limited provision for allowance of an extension of time. An attorney is to be appointed if the affected individual does not have his or her own attorney.

The Model State Emergency Health Powers Act, in a revised version, is now included in as a section of the Model Public Health Act (MPHA) and is referred to as the Emergency Provision (Turning Point Collaborative, 2003). The same procedures that were described above are followed for quarantine under the Emergency Provision. It provides for isolation and quarantine of individuals with contagious or possibly contagious disease, in cases of declared public health emergencies, by means of a written directive of the public health agency, and requires filing of a court petition by the public health authority and a hearing within 48 hours of the filing of the petition. There are similar provisions for limited allowance of an extension of time and for representation by an attorney.

Under the Emergency Provision, a "public health emergency" is an occurrence or imminent threat of an illness or health condition that: [a] is believed to be caused by any of the following events: (i) bioterrorism; (ii) the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin; or (iii) a natural disaster, a

chemical attack or accidental release, or a nuclear attack or accident; and [b] poses a high probability of any of the following harms: (i) a large number of deaths in the affected population; (ii) a large number of serious or long-term disabilities in the affected population; or (iii) widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population (Turning Point Collaborative, 2003).

The MPHA requires application of the “least restrictive alternative” principle (Turning Point Collaborative, 2003). This principle is a legal norm developed in recent years to reflect the understanding that the federal or state government should not be permitted to resort to confinement of an affected individual to a hospital or other institution, if it could achieve its objectives through less drastic means. For example, if the government could avoid some deprivation of liberty by quarantining individuals within their homes, it may be required to do so. However, the government does not have to go to extreme or unduly expensive means to avoid confinement.

The MPHA requires the public health authority to meet a higher burden of proof of “clear and convincing evidence” (Turning Point Collaborative, 2003). The “burden of proof” is the degree of probability to which factual assertions must be proven to allow a party who files a court action to prevail in the litigation. “Clear and convincing evidence” is the level of factual proof required by the MPHA (Gostin, 2000). The standard requires greater certainty than “preponderance of the evidence,” but is not as demanding as “beyond a reasonable doubt,” the standard of proof in criminal prosecutions (Table 1).

Florida’s Quarantine Laws

Florida provides for taking individuals into quarantine under four separate statutory sections for:

- communicable disease
- communicable disease where a “public health emergency” has been declared
- sexually transmitted diseases
- tuberculosis

Communicable Disease

The Florida statute authorizing quarantine is

brief and delegates to the DOH the authority to implement it by regulation. The enabling law, by which the legislature grants DOH all its legal authority, lists among the duties of the DOH to “declare, enforce, modify, and abolish quarantine of persons, animals, and premises as the circumstances indicate for controlling communicable diseases or providing protection from unsafe conditions that pose a threat to public health” (29 FRS sec. 381.0011 [6]).

The DOH regulation adopted to implement this statute sets forth the procedures for imposition of quarantine. These procedures necessitate that orders regarding quarantine must be in writing and be issued by the State Health Officer (SHO) or the person to whom the SHO delegates such authority. Orders must include a stated expiration date, and restrict or compel movement or actions by a person, when such restrictions or orders are “consistent with the protection of public health and accepted health practices” (64 FAC sec. 64D-3.007)

An order of quarantine may encompass actions that include isolation, closure of premises, testing, destruction, disinfection, treatment, and preventive treatment, including immunization. The regulation further states that quarantined individuals must be accessible at all times to the DOH or its designees (64 FAC sec. 64D-3.007).

The DOH has never had to use the law that allows for involuntary imposition of quarantine for communicable and there are no court cases to interpret it. Most states have been reluctant to use this power. Even in several cases where SARS was suspected to be present, the State of Florida did not seek to impose quarantine under the law, but rather, sought and received the cooperation of those suspected of having contracted SARS.

Will someone in Florida who is ordered into quarantine have an opportunity for a hearing before a judge? Since we are without a court’s interpretation in cases brought before it, the statute’s statement of the required procedure allows for several possible interpretations. On the one hand, the statutory list of the powers of the DOH includes the power to “declare, enforce, modify, and abolish quarantine of persons, animals, and premises” (29 FRS sec. 381.0011 [6]). This power might be interpreted to

Table 1: Summary of Evidence Required for Court Action

Burden of proof	Degree of probability	When applied
Preponderance of the evidence	More probable than not	Civil cases generally
Clear and convincing evidence	Highly probable, produces in the mind a firm belief	Civil cases in which the liberty of the person is at stake.
Beyond a reasonable doubt	The highest level, no real possibility of being false	Criminal cases

mean that the DOH would take the order of quarantine to the local police authority and based on that order, the police or sheriff would take the subject of the order into custody. This process offers no opportunity for a court hearing, and therefore, does not comply with standards of due process as delineated above.

On the other hand, other language in the statute implies that if the person ordered into quarantine does not obey the order, the DOH must apply for a temporary and permanent injunction in circuit court to have the quarantine order enforced. An injunction is a writ or order issued by a court ordering someone to do something or prohibiting some act and is issued after a court hearing. Therefore, the judge, under this interpretation, will conduct a hearing to consider the DOH's request for such injunction. This process still does not comply with current standards of due process as outlined above. Because temporary injunctions may be issued in the absence of the subject of the quarantine, the person who has not obeyed the quarantine order may not receive notice that the DOH is going to the judge on an emergency basis to obtain a temporary injunction. There is no provision for representation by an attorney nor is there application of the standard that that would require the agency to prove its case with clear and convincing evidence. The court will order the individual to obey the quarantine order, with the support of law enforcement officers (29 FRS sec. 381.0012; Laitner 1998). In light of the power granted by the statute to the DOH, the judge in such a review would likely defer to the professional expertise of the DOH. In addition, the need for prompt action is always a concern so the judge will feel compelled not to delay a decision.

A *habeas corpus* petition is filed in court by a person who objects to his own or another's detention or imprisonment. In the state of Florida, confined persons have used *habeas corpus* to challenge imposition of quarantine, although the cases have not been filed under the law providing for quarantine for communicable disease (Varholy v. Sweat, 1943 [STD case]; Moore v. Draper, 1952 [TB case]). To succeed, the petition for *habeas corpus* must show that the order of detention or imprisonment was based on a legal or factual error. The requirement of filing of a court action by an affected individual to challenge the order of quarantine after he or she is taken into custody, does not comport with modern due process standards because it puts no prior burden on the DOH to show the foundation in law for such deprivation of liberty.

Public Health Emergency

The newer emergency provisions of the Florida statutes provide for issuance of a "public

health advisory" or warning of a potential public health threat by the State Health Officer when necessary to protect the public's health (29 FRS sec. 381.00315). The SHO must notify each county health department within the affected area of intent to issue the advisory.

The emergency provisions also give the SHO the authority to declare a public health emergency, which, according to statute, is any occurrence, or threat that "may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins or situations involving mass casualties or natural disasters" (29 FRS sec. 381.00315 (1) [b]). The threat may be either natural or manmade. Under the Florida statute, the SHO has various powers in case of a public health emergency, including ordering an individual to be examined, tested, vaccinated, treated or quarantined for communicable diseases that have significant morbidity or mortality and present a severe danger to public health (29 FRS sec 381.00315.(4) [a]. (Note: Individuals who due to health, religious belief or conscience are unable or unwilling to submit to such examination, testing or treatment may be subjected to quarantine only.) The Florida emergency statute provides even stronger language than the previously described general communicable disease law to describe the power of the SHO and states: "Any order of the State Health Officer... shall be immediately enforceable by a law enforcement officer under s. 381.0012" (29 FRS sec. 381.00315 (1) [b] (4) [b]). The reference to section 381.0012 confuses matters because that section, as described above, states that the DOH must apply for a temporary and permanent injunction, an action carried out through the circuit court to have the quarantine order enforced.

DOH has enacted regulations concerning declaration of a "Public Health Emergency" (64 FAC sec. 64D-3.0071). With respect to such declarations, DOH adopted a definition of "quarantine" that limited its reference to the isolation of persons and closure of premises. It also requires that the public health authority provide a "practical method of quarantine," that is, a location where a person infected with or exposed to a communicable disease that threatens public health will have food, clothing, and shelter as necessary, while isolated from contact with people who have not been infected with that disease or immunized against that infection. In line with the principle of "least restrictive alternative," the regulations also state that where quarantine is used following a declaration of public health emergency, individuals may choose isolation in their home unless DOH determines it is not a practical method (64 FAC sec. 64D-3.0071)

As noted above, with regard to communicable disease law generally, Florida did not enact those provisions of the MEHPA that provide for a hearing with representation by an attorney. Florida's STD and TB laws have been changed over the years to comply more closely with modern due process requirements and so they may be contrasted with the general communicable disease law.

Sexually Transmitted Diseases (STDs) and Tuberculosis (TB)

In contrast with the treatment of quarantine for other communicable diseases, the STD and TB statutes specify the procedures for civil confinement of non-compliant individuals (29 ch.384 [STD] and ch.392 [TB]). Which infections are covered by the STD statute? DOH regulations have defined STD to include the following infections: (a) acquired immunodeficiency syndrome, (b) chancroid, (c) chlamydia trachomatis, (d) gonorrhea, (e) granuloma inguinale, (f) hepatitis A and hepatitis B, (g) herpes simplex virus in neonates and infants to six months of age, (h) human immunodeficiency virus infection, (i) human papillomavirus in neonates and children through 12 years of age, (j) lymphogranuloma venereum, and (k) syphilis (64 FAC sec. 64D-3.015).

Under the statute dealing with STDs, non-compliant persons may be subject to an order for hospitalization, placement in another health or residential facility, or isolation from the general public in his or her own residence or another's residence. No person is to be apprehended, examined, or treated for an STD against his or her will, except upon the order of a court. In petitioning the court for a hearing for such an order, DOH must show 'by clear and convincing evidence' that a threat to the public's health and welfare exists unless the order is issued, that all other reasonable means of obtaining compliance have been exhausted, and that no other less restrictive alternative is available (29 sec. 384.28).

The affected person must receive written notification of the proposed actions to be taken and the reasons for each one at least 72 hours in advance of any action. The person has the right to attend the hearing, to cross-examine witnesses, and to present evidence. The person has a right to representation by attorney, or to have an attorney appointed on the person's behalf if he or she cannot afford one (29 sec. 384.28). The order of quarantine is valid for no more than 120 days or for a shorter period of time, if the DOH or the court, upon petition, determines that the person no longer poses a substantial threat to the community due to STD (29 sec. 384.28).

Orders for hospitalization, placement, or isolation in a residence may contain additional requirements for adherence to a treatment plan or

participation in counseling or education programs as appropriate. If the DOH believes the person should be detained after the initial 120 days have expired, it must follow the same procedures as it did to obtain the first order (29 FRS sec. 384.28 [4]).

The Florida TB law also offers more protection relating to due process than the general communicable disease statute (29 FRS sec. 392). Where the person does not consent to treatment, according to the statute, the DOH must file a court petition for examination or treatment before the person may be quarantined. If it is seeking to hospitalize the individual, DOH must show that the judge should grant its petition by "clear and convincing evidence" (29 FRS sec. 392.56 (2) [a]). If the DOH is petitioning that the patient, who is suspected of having, or having been exposed to, active tuberculosis be ordered to outpatient examination and continued outpatient treatment, it must prove its case "by a preponderance of evidence" (29 FRS sec. 392.55 [3]).

A person may not be apprehended or examined on an outpatient basis for active tuberculosis without consent, except upon the presentation of a warrant duly authorized by a circuit court. The DOH may petition the court that the patient with TB be hospitalized, placed in another health care facility or residential facility, or isolated from the general public in the home until he or she is no longer a threat to the public (29 FRS sec. 392.56 [1]).

A Note on Federal Quarantine Authority

The federal government also has quarantine authority within the various states, under the provisions of the federal statute, when "necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession" (42USC 264). In general, the responsibility for issuing and enforcing quarantine falls under the jurisdiction of state and local governments. However, the CDC may declare quarantines with respect to the seven specified diseases for persons arriving from foreign countries, with respect to restriction of interstate movement, and in the event of inadequate local control. Certain diseases were intended by the initial act to be updated by regulation but are now updated by an executive order of the President of the United States. By executive order of April 4, 2003, the following diseases are now included: cholera, diphtheria, infectious tuberculosis, plague, smallpox, yellow fever, viral hemorrhagic fevers (Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or

named), and SARS (Executive Order of President George W. Bush, 2003). No particular numbers of cases need occur before the federal government may exercise its authority. Federal quarantine authority could be applied to a single SARS case inside a state or local jurisdiction, if necessary. The practice is for CDC to work in partnership with the states where such cases occur. Under the regulations implementing the federal law, whenever the Director of the CDC determines that the measures taken by health authorities of any state or possession (including political subdivisions thereof) are insufficient, the CDC Director may act under federal quarantine authority (42 CFR sec. 70.2). Any person detained in accordance with federal quarantine laws may be treated and cared for by the U.S. Public Health Service (USPHS). Furthermore, such persons may, in accordance with regulations, receive care and treatment at the expense of the USPHS from public or private medical or hospital facilities other than those of the USPHS.

The federal statute does not require that a hearing be provided for persons taken into quarantine. As *habeas corpus* may be filed by the quarantined individual at the state level, similarly, procedural review of federal quarantine is by federal *habeas corpus*. The affected person is, alternatively, entitled to judicial review under Section 702 of the Federal Administrative Procedure Act (Trippler, 2004). Neither of these after-the-fact challenges, each of which must be initiated by the individual already in quarantine, satisfies modern due process requirements.

Conclusion

The due process protections in the Florida laws relating to quarantine vary. The justification for having non-uniform standards of due process where different diseases are concerned is open to debate. Presently, the provisions related to communicable disease and to public health emergencies do not provide protections, including opportunity for a hearing, despite the fact that current standards of due process demand.

Some authorities may argue that SARS, for example, poses a greater threat and emergency than more “ordinary” emergencies, and therefore, the procedures required to introduce quarantine in that case should be rigid. However, the history of public health shows that in times of greatest fear in the community the protections of due process may be more needed. For example, a federal court once overturned health officials’ efforts to quarantine an entire Chinese neighborhood in San Francisco in response to bubonic plague because the quarantine was applied in a discriminatory way. There was no

evidence that all Chinese persons who were quarantined had been exposed and the homes of nearby non-Asian whites were excluded from the quarantine (Jew Ho vs. Williamson, 1900). In addition, as a practical consideration, people are more likely to avoid public health authorities and flee if they fear they have no legal protections that will prevent them from being detained when evidence would show they have not, in fact, been exposed or infected.

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