

Public Health Law in Texas

Allison N. Winnike, J.D.
Research Professor

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Objectives

- Define Public Health Law
- Explain legal authority to protect public's health
- Identify Notifiable Conditions and reporting requirements
- Explain Control Measures (including quarantine and isolation)
- Discover legislation in Texas 84th Legislative Session

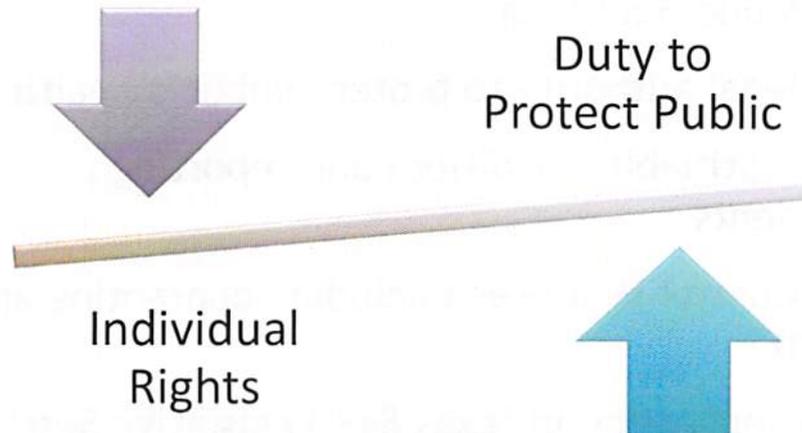
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What is Public Health Law?

- Public Health Law is the intersection of the legal authority and duty of government to protect the public's health and the legally protected rights of the individual.

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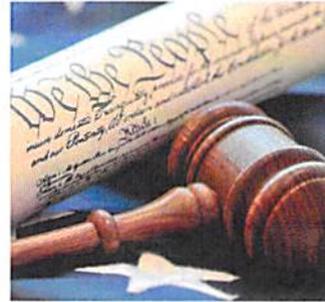
Public Health Law Balance



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Federal v. State Jurisdiction

- States have primary responsibility for protecting the public's health
- State authority may be delegated to local health authorities
- Federal government has power in international and interstate transmission of disease



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Federal Public Health Powers

- HHS Secretary responsible for preventing introduction, transmission, or spread of communicable diseases (a) from foreign countries, and (b) between the states (42 U.S.C. § 264)
- List of Quarantinable Communicable Diseases (Exec. Order No. 13295, as amended by Exec. Order No. 13674)
- HHS Secretary may declare Public Health Emergency (42 U.S.C. § 247d)

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Jacobson v. Massachusetts, 197 U.S. 11 (1905)

- Upheld use of police powers to protect the public's health
- State may delegate public health authority to local health authorities
- Imposed limits on individual liberty if necessary to protect public health
- "There are manifold restraints to which every person is necessarily subject for the common good."

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Texas Executive Public Health Authority and Responsibility

- Governor
- Department of State Health Services
- Local Health Authority



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Texas Executive Public Health Authority and Responsibility

- Governor
 - Declare State of Disaster under Texas Disaster Act
 - Initiate the State Emergency Management Plan
 - Order the evacuation of affected areas
 - Ask for Presidential declaration of emergency under Stafford Act
 - Work with HHS if Secretary declares Public Health Emergency

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Texas Executive Public Health Authority and Responsibility

- Governor and DSHS Executive Commissioner
 - Declare Public Health Disaster under the Communicable Disease Prevention and Control Act
 - Public Health Disaster is both
 - State of Disaster, and
 - Determination by DSHS Executive Commissioner that there is an immediate threat from a communicable disease that poses risk to large number of people

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Texas Executive Public Health Authority and Responsibility

- Department of State Health Services
 - Implement control measures
 - Define reportable diseases
 - Investigate disease cases
 - Assist local health authorities

TEX. HEALTH & SAFETY CODE Chapter 81.

Texas Executive Public Health Authority and Responsibility

- Local Health Authority
 - Implement control measures
 - Report contagious, infectious, and dangerous epidemic diseases to DSHS
 - Investigate disease cases

TEX. HEALTH & SAFETY CODE Chapter 81.

Reportable Diseases

- DSHS identifies reportable infectious diseases/health conditions
- DSHS establishes reporting requirements (e.g., immediate, 1 day, 1 week, 1 month)
- List and reporting requirements:
<http://www.dshs.state.tx.us/idcu/investigation/conditions/>

TEX. HEALTH & SAFETY CODE § 81.041.

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Public Health Control Measures

- Quarantine and Isolation
- Restriction and Detention
- Immunization
- Decontamination, Disinfection and Disinfestation
- Chemoprophylaxis, Preventive Therapy and Prevention
- Education

TEX. HEALTH & SAFETY CODE § 81.082.

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Quarantine and Isolation Definitions

- **Quarantine**

- Applies to healthy individuals who may have been exposed to a communicable disease
- Federal definition: “the separation of an individual or group reasonably believed to have been exposed to a quarantinable communicable disease, but who are not yet ill, from others who have not been so exposed, to prevent the possible spread of the quarantinable communicable disease.” 42 C.F.R. § 70.1.

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Quarantine and Isolation Definitions

- **Isolation**

- Applies to individuals already known to be infected with a communicable disease
- Federal definition: “the separation of an individual or group reasonably believed to be infected with a quarantinable communicable disease from those who are healthy to prevent the spread of the quarantinable communicable disease.” 42 C.F.R. § 70.1.

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Steps to Impose Written Order of Control Measures

1. DSHS or local health authority (LHA) identifies individual infected with or exposed to communicable disease
2. DSHS/LHA may order the individual to implement control measures
3. Order must be in writing and delivered personally or by mail (registered or certified)
4. Order effective until either (a) individual is no longer infected, or (b) expiration of incubation period

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Violation of Written Order of Control Measures

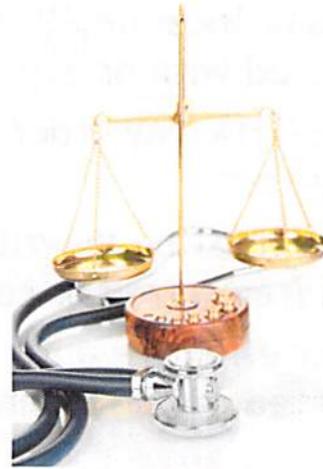
- Failure of an individual to follow the control measures ordered by DSHS/LHA is a Class B misdemeanor, which is punishable by
 - (A) a fine not to exceed \$2,000;
 - (B) confinement in jail for a term not to exceed 180 days; or
 - (C) both fine and confinement.

TEX. HEALTH & SAFETY CODE § 81.087.

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Texas Judiciary Role in Public Health Control Measures

- Hear cases and issue orders related to Control Measures
- Ensure balance between the public's health and an individual's right to liberty



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Court Order for the Management of a Person with a Communicable Disease

- Application must include
 - Medical Evaluation and Statement that individual poses a threat to the public's health
 - Copy of Written Control Order (if applicable) if requesting inpatient treatment
 - Statement that individual was noncompliant with Written Control Order (if applicable) if requesting inpatient treatment

TEX. HEALTH & SAFETY CODE § 81.152.

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Court Order for the Management of a Person with a Communicable Disease

- Judge must appoint attorney to represent individual within 24 hours
- Hearing must be set within 14 days and can only be held within first 3 days if individual does not object
- Individual is entitled to remain free unless detained under a Protective Order
- Protective gear may be worn or teleconference appearance

Court Order for the Management of a Person with a Communicable Disease

- If court finds individual
 - Infected or reasonably suspected of being infected with a communicable disease; and
 - Failed or refused to follow the Written Control Orders, then
- Court may order care at
 - A designated inpatient health care facility, or
 - Other disease management program

Temporary Protective Custody Order

- May be issued if
 - Application for Order for the Management of a Person with a Communicable Disease and application for Protective Custody Order will be filed the next day, and
 - Judge determines that there is probable cause to believe the person represents a substantial risk of serious harm to self or others to the extent that the person can not be at liberty pending the filing of the applications

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Temporary Protective Custody Order

- If issued
 - Individual to submit to examination, observation, isolation, and/or treatment as determined by DSHS/LHA
 - Order terminates at 4 p.m. next business day unless application for Order for the Management of a Person with a Communicable Disease and/or application for Protective Custody Order filed

TEX. HEALTH & SAFETY CODE § 81.162(f)-(h).

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Protective Custody Order

- May be issued if
 - Written Control Orders were issued but not complied with;
 - Individual is or is believed to be infected with a communicable disease that could constitute a threat to the public health; and
 - Individual is likely to cause serious harm to self and/or constitute an immediate threat to the public health if not examined, observed, isolated, or treated

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Protective Custody Order

- If granted
 - Peace officer/Ambulance/EMS takes individual into protective custody and transports to appropriate inpatient health facility
 - Probable cause hearing held within 72 hours to determine if individual presents a substantial risk of serious harm to self or others that would preclude the person from being free pending hearing on Order for the Management of a Person with a Communicable Disease

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Texas 84th Legislative Session

- S.B. 355 (Sen. Jane Nelson)
 - Permits an officer to take into custody a person who is the subject of a Control Order if the officer believes
 - a) the person is not complying with the Control Order,
 - b) the individual has (or has been exposed to) a communicable disease, and
 - c) there is a substantial risk of serious harm to others.

Texas 84th Legislative Session

- S.B. 538 (Sen. Charles Schwertner)
 - Permits an officer to take into custody a person who is the subject of a Control Order (similar to S.B. 355)
 - Permits an officer to use force to keep person under Control Order in home or other location
 - Creates new State of Infectious Disease Emergency
 - Creates DSHS PPE stockpile

Texas 84th Legislative Session

- H.B. 538 (Rep. Sarah Davis)
 - Adds Ebola virus disease as second statutorily-required reportable disease

Note:

- HIV/AIDS is only other statutorily-named condition
- Ebola is already on DSHS list of reportable diseases

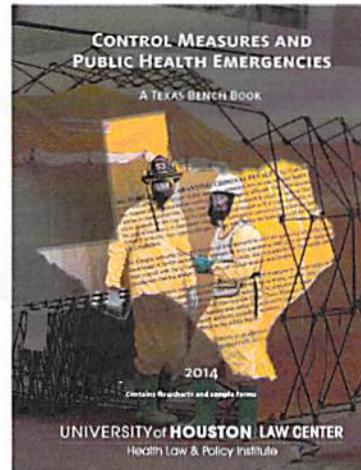
Texas 84th Legislative Session

- H.B. 1495 (Rep. Sarah Davis)
 - Adds email as third acceptable method of delivering a Control Order
 - Two current methods:
 - In-person delivery
 - Registered or certified mail

Contact Information

Allison N. Winnike, J.D.
Research Professor
anwinnik@central.uh.edu

CONTROL MEASURES AND PUBLIC HEALTH EMERGENCIES: A TEXAS BENCH BOOK
available at
<http://www.law.uh.edu/healthlaw/>



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