Public Health Law Bench Book For Indiana Courts

Center for Public Health Law Partnerships

University of Louisville

A Collaborating Center of
the Public Health Law Program
Centers for Disease Control & Prevention

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Comments

The Center welcomes feedback on this Bench Book. Comments may be directed to Project Director Schofield via email at arscho03@louisville.edu or in writing to the following address:

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PREFACE

In 1905, the United States Supreme Court's landmark *Jacobson v. Massachusetts* ruling recognized the judiciary as both an enforcer of governmental public health policies and an arbiter of the conflicts between individual liberties and public interests that arise from governmental public health action. *See generally* Wendy E. Parmet *et al.* "Individual Rights versus the Public's Health – 100 Years after *Jacobson v. Massachusetts*." 352 NEW ENG. J. MED. 652 (2005). Despite this central role, most members of the judiciary have received little, if any, formal public health law training.

The events of fall 2001 starkly illustrated that many prevailing public health laws and systems were incommensurate with emerging public health threats, both manmade and natural. These concerns were further heightened by the global epidemic of Severe Acute Respiratory Syndrome (SARS) and the emerging threat of avian flu. In recent years, attention has increasingly focused on public health legal preparedness, *i.e.*, assessing current public health laws, updating those laws as needed, and educating the persons who enforce and interpret public health laws to ensure adequate and efficient responses to both emerging public health threats (*e.g.,* emerging natural diseases, bioterrorism) and traditional public health concerns (*e.g.,* vaccination, tuberculosis) in the 21st century.

Public health law is primarily state law, and several considerations make judicial interpretation of state public health law especially challenging. First, the majority of public health cases addressing infectious diseases or other conditions requiring the intervention of county or local health departments date to at least the early twentieth century. The applicability of this case law to modern public health challenges in a global community is questionable. Second, public health experts in court proceedings often use of complex scientific terminology and public health science methodology (*e.g.,* contact tracing) (*see* Appendix B for a Public Health Glossary). In some cases, judges will need to adapt legal parlance to the public health context. For example, at law the term "quarantine" means (a) the right of a widow to remain in her deceased husband's principal home for a period of forty days following his death; (b) the holding of potentially contaminated ships and other vessels of transportation away from the general public for a specified period of time (originally, forty days); (c) the segregation of plants and animals to prevent the spread of agricultural diseases; or (d) the placement of a prisoner into solitary confinement. While several of these definitions are clearly health-related, none specifically captures the most common public health usage of the term "quarantine" to describe the limitation of a healthy individual's activities after that individual has been exposed to a communicable disease in order to prevent the spread of that disease during its period of communicability. Third, the application of many public health laws is complicated by the fact that the authorizing statutes predate current rules of evidence and procedure. Fourth, although public health orders are civil in nature, they often have significant impact on the liberty, property, and economic rights of individuals. Throughout the last half-century, the courts have developed a large body of law guiding the curtailment of individual rights by the state in the criminal context. However, no analogous body of law exists in the public health context, and the applicability of the

criminal law to public health situations in which the individual has committed no wrongful or criminal act is fraught with legal difficulties. Finally, in the event of a public health emergency, the deliberative nature of the judicial process may be strained to keep pace with the rapid response and containment measures sought by members of the public health community.

This Bench Book was created as a significant part of the current public health emergency legal preparedness initiative underway at the Public Health Law Program of the Centers for Disease Control and Prevention (CDC). This work, initiated in early 2001, has generated draft model state public health legislation; training materials and programs for public health personnel, law enforcement agents, emergency management, and state attorneys general addressing issues such as the legal bases for coordinated responses to public health emergencies; checklists and other tools for assessing county- and state-level public health legal preparedness; and the CDC Public Health Emergency Legal Preparedness Clearinghouse, among other products and services. The Center for Public Health Law Partnerships was founded in October 2003, with funding from the Public Health Law Program, to improve legal preparedness by developing partnerships with public health agencies, judicial education organizations, and law enforcement training organizations.

The Bench Book is intended to protect the health and safety of communities by improving legal preparedness for both public health emergencies and more routine public health cases. In addition, it is our hope that this Bench Book will increase communication between the judiciary and public health agencies at the community, state, and national levels and across a broad spectrum of public health issues. Although courts have historically been vital protectors of the public's health (*e.g.,* authorizing sanitary inspections, enjoining nuisances, enforcing vaccination requirements), relationships between public health agencies and the judiciary remain rare. In this new era of bioterrorism, emerging infectious diseases, and potential pandemics, courts play an even more critical role in protecting the public's health. This Bench Book is a reference tool that judges may use as they confront the range of public health issues that come to their courtrooms.

We recognize that it would be impracticable to address each and every aspect of the legal system potentially impacted by public health concerns. Bench books are not tomes of law; rather, they are readily accessible legal references for judges to use in the courtroom, providing, for example, procedural frameworks, statutory texts, summaries of relevant case law, and model orders. We have chosen, therefore, to focus this Bench Book on four topical areas in which the intersection of public health and the law is particularly salient: (1) searches, seizures, and other such government actions to ensure the public health; (2) judicial proceedings centered around the permissibility of limiting certain individual liberties in order to protect the public health; (3) operation of the courts amid public health threats; and (4) the role of the courts during a state of emergency triggered by public health concerns. As such, this Bench Book will not address in detail the important, regulatory functions undertaken by many state and local public health

departments (*e.g.,* licensing of health care institutions, Medicaid administration, provision of clinical services).

Before delving into these four topical areas, we have devoted the opening chapters of the Bench Book to an overview of issues regarding the legal nature and authority of each of the institutions whose intersection is at the heart of this document – the Indiana judiciary and the Indiana public health system. These introductory chapters consider questions such as: Which Indiana courts have jurisdiction over public health matters? What does the public health system in Indiana look like? and Who are the leaders of the Indiana public health system and what authority do they have? The Bench Book concludes with a series of model court orders to implements key public health powers of the state and localities. Appended materials further address various aspects of public health practice and public health law and include a *Public Health Primer* (Appendix A), a *Public Health Glossary* (Appendix B), a map of Indiana's Public Health Preparedness Districts (Appendix C), a *Guide to Indiana's Unsafe Building Law* (Appendix D), Indiana State Department of Health-issued guidance regarding the ability of public health agents to access confidential information (Appendix E), and model court filings and orders from Marion County (Appendix F), whose public health system is governed by distinct provisions of Indiana law.

It is our hope that Indiana judges will find this Bench Book a valuable tool in their courts' public health legal preparedness. Preparedness is prevention in its highest form.

May 2005

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1.00 JURISDICTION OF PUBLIC HEALTH ISSUES

1.10 FEDERAL V. STATE

1.11 The United States Constitution and Public Health

We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America. U.S. CONST. pmbl.

A. ***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).

B. ***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.

1.12 States as Primary Actors

In all other cases, the states bear the primary responsibility for preventing and responding to threats to the public's health. *See, e.g.,* Jacobson v. Massachusetts, 197 U.S. 11, 38 (1905) ("The safety and

health of the people of Massachusetts are, in the first instance, for that commonwealth to guard and protect. They are matters that do not ordinarily concern the national government."); Compagnie Francaise de Navigation à Vapeur v. State Board of Health, 186 U.S. 380, 387 (1902) ("That from an early day the power of the states to enact and enforce quarantine laws for the safety and the protection of the health of their inhabitants has been recognized by Congress is beyond question. That until 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, although their operation affects interstate or foreign commerce, is not an open question.").

Moreover, states will almost certainly be required to provide significant assistance and resources during public health emergencies falling within the federal government's jurisdiction.

A. ***The Indiana Constitution.***

1. **Purpose of state government includes protection of the public welfare.** *TO THE END, that justice be established, public order maintained, and liberty perpetuated; WE, the People of the State of Indiana, grateful to ALMIGHTY GOD for the free exercise of the right to choose our own form of government, do ordain this Constitution.* IND. CONST. pmbl.

WE DECLARE, That all people are created equal; that they are endowed by their CREATOR with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that all power is inherent in the people; and that all free governments are, and of right ought to be, founded on their authority, and instituted for their peace, safety, and well being. IND. CONST. art. I, § 1.

2. **But power of General Assembly limited with respect to public health legislation.** The General Assembly may not pass laws regulating county and township business or relating to fees and salaries except for laws grading the compensation of officers in proportion to the population and necessary services required. IND. CONST. art. IV, § 22.

3. **Public health laws of uniform applicability throughout state.** In all cases in which a general law may be made applicable, the law shall be general and of uniform operation throughout the state. IND. CONST. art. IV, § 23.

B. ***Sources of a State's Public Health Authority.*** The power of a state to

protect the public's health is derived from two sources of authority – the police power and the *parens patriae* power.

1. **The police power.** The "police power" is the power to promote the public 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) ("Throughout our history the several States have exercised their police powers to protect the health and safety of their citizens. Because these are primarily, and historically, matters of local concern, the States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons." (Internal citations omitted.)); BLACK'S LAW DICTIONARY 1156 (6th ed. 1990); ERNST FREUND, THE POLICE POWER: PUBLIC POLICY & CONSTITUTIONAL RIGHTS iii (1976).

2. **The *parens patriae* power.** The *parens patriae* power is the power of the state to serve as guardian of persons under legal disability, such as juveniles or the insane. *See* Heller v. Doe, 509 U.S. 312, 332 (1993) ("[T]he state has a legitimate interest under its *parens patriae* powers in providing care to its citizens who are unable to care for themselves…") (Internal citations omitted.)); Alfred L Snapp & Son, Inc. v. Puerto Rico, 458 U.S. 592, 607 (1982) ("In order to maintain [a *parens patriae*] action, the State must articulate an interest apart from the interests of particular private parties, *i.e.*, the State must be more than a nominal party. The State must express a quasi-sovereign interest….[A] state has a quasi-sovereign interest in the health and well-being – both physical and economic – of its residents in general."); BLACK'S LAW DICTIONARY 1114 (6th ed. 1990).

1.20 STATE AND LOCAL VENUE DETERMINATIONS

1.21 Courts of Jurisdiction

A. *Courts of Original Jurisdiction Over Public Health Matters.*

1. **Circuit Courts have original and unlimited jurisdiction.** The Circuit Courts of Indiana, as courts of general jurisdiction, are vested with original and unlimited jurisdiction over public health matters arising in the state. IND. CODE § 33-28-1-2 (2004).

2. **Superior Courts generally have original jurisdiction.** The majority of Indiana's Superior Courts are vested with jurisdiction concurrent to that of the Circuit Courts except as to juvenile and/or probate matters. IND. CODE § 33-29-1-4; *see, e.g.*, IND. CODE §§ 33-33-1-4 (Adams Superior Court), 33-33-25-4 (Fulton Superior Court), 33-33-39-4 (Jefferson Superior Court), 33-33-49-9 (Marion

NOTE: Superior Court judges should confirm the jurisdiction of their Court prior to undertaking public health cases. *See* IND.

Superior Court), 33-33-79-6 (Tippecanoe Superior Court). Therefore, Superior Courts generally have original jurisdiction over public health matters arising in the state.

CODE §§ 33-33-1 to 33-33-92.

3. **Probate Courts of limited jurisdiction.** The jurisdiction of Indiana's Probate Courts over public health matters is limited to:
   a. Appointment of guardians, assignees, and trustees;
   b. Administration and settlement of estates of protected persons and deceased persons; and
   c. Other probate matters involving public health issues. IND. CODE § 33-31-1-9 (St. Joseph's Probate Court).

NOTE: For example, the appointment of guardians, assignees, and trustees may be necessary in civil commitment proceedings, discussed *infra* at Section 4.12.

4. **County Courts of limited jurisdiction.** Indiana's County Courts have original and concurrent jurisdiction over, *inter alia*:
   a. Civil matters founded on contract or tort law in which the amount in controversy does not exceed ten thousand dollars ($10,000);
   b. Public health matters involving Class D felonies, misdemeanors, and infractions; and
   c. Public health matters involving the violation of city, town, or other municipal ordinances. IND. CODE § 33-30-4-1.

5. **City Courts of limited jurisdiction.** The jurisdiction of Indiana's City Courts over public health matters is limited to:
   a. Those public health matters involving violations of a city ordinance; and
   b. Civil matters in which the amount in controversy does not exceed five hundred dollars ($500). IND. CODE §§ 33-35-2-3, -4.
      i. **Concurrent jurisdiction.** City Courts share concurrent jurisdiction over such civil matters with the Circuit Courts. IND. CODE § 33-35-2-4.
      ii. **Exception for City Courts in third class cities.** City Courts in third class cities share concurrent jurisdiction with Circuit Courts only over those civil matters in which the amount in controversy does not exceed three thousand dollars ($3,000), excluding actions in equity. IND. CODE § 33-35-2-6.
      iii. **Exception for City Courts of largest cities.** The City Courts of the four (4) cities having the largest populations share concurrent jurisdiction with the Circuit Courts only over those civil matters in which the amount in controversy does not exceed three thousand dollars ($3,000). IND. CODE § 33-35-2-5.

6. **Town Courts of limited jurisdiction.** The jurisdiction of

Indiana's Town Courts over public health matters is limited to:

a. Exclusive jurisdiction over those public health matters involving violations of a town ordinance; and

b. Civil matters, other than actions in equity, over which the Circuit Courts have jurisdiction and the amount in controversy does not exceed three thousand dollars ($3,000). IND. CODE §§ 33-35-2-5, -8.

i. **Civil jurisdiction limited to largest town.** This civil jurisdiction is limited to the Town Court of the town having the largest population in a county having a population between four hundred thousand (400,000) and seven hundred thousand (700,000). IND. CODE § 33-35-2-5.

B. ***Courts of Appellate Jurisdiction over Public Health Matters.***

1. **Court of Appeals.** The Indiana Court of Appeals is vested with appellate jurisdiction over:

a. All public health cases in which a final judgment has been entered by a trial court of record, as specified, *supra*, at Section 1.21(A); and

b. All interlocutory appeals. IND. CODE §§ 33-25-3-4, 33-29-5-6, 34-56-1; IND. R. APP. PROC. 5 (2004).

2. **Supreme Court.** The Indiana Supreme Court is vested with appellate jurisdiction over:

a. All public health cases in which a final judgment has been entered by the Indiana Court of Appeals; and

b. All cases in which a motion for transfer has been granted. IND. CODE §§ 33-24-1-2, 33-29-5-6; IND. R. APP. PROC. 4, 56.

1.22 Courts of Record

A. ***Record of proceedings required.*** A complete record should be made at any public health proceeding; under no circumstances should proceedings be conducted off record.

1. **Order book.** All Indiana Courts should document issued public health orders in their order books. IND. R. TRIAL PROC. 77(D) (2004). In City and Town Courts, the order book will constitute the entire record of the proceedings.

B. ***Decisions by courts not of record.*** Although City and Town Courts are vested with jurisdiction over certain public health matters, they are not courts of record. As such, this bench book does not reflect their practices. However, in the event of a public health emergency, City and Town Courts may be expected to play important roles in the issuance of warrants and other public health orders whose necessity is undisputed. When contested, these decisions may be appealed to the Circuit or Superior Courts for trials *de novo*. IND. CODE § 33-35-5-9.

1.23 Venue

A. ***Proper venue.***

1. **Any court having jurisdiction.** A case involving public health matters may be commenced in any Indiana court having jurisdiction as specified, *supra*, at Section 1.21(A). IND. R. TRIAL PROC. 75(A).

2. **Transfer of venue.** Upon filing of a pleading or motion to dismiss, the Court shall order a case transferred to a county or court of preferred venue selected by the party first properly filing such pleading or motion. IND. R. TRIAL PROC. 75(A).
   a. **Preferred venue.** Preferred venue lies, *inter alia*, in:
      i. The county where the greatest percentage of individual defendants resides, or, if there is no such percentage, the county where any individual defendant resides;
      ii. The county where the individual is held in custody or is retrained, if the complaint seeks relief with respect to such custody or restraint; or
      iii. The county where the land, object(s), or some part thereof are regularly located or kept if the complaint includes a claim relating to such land or object(s). IND. R. TRIAL PROC. 75(A)(1)-(10).

NOTE: Marion County Courts are governed by a separate statutory scheme. *See* IND. CODE § 33-33-49. Most public health cases in Marion County are filed and processed in the Marion Superior Court, Environmental Division.

Is it an abuse of process to knowingly file suit in a county or court of non-preferred venue?

B. ***Change of venue.***

1. **When appropriate.** An applicant shall be granted a change in venue from a court or judge upon showing that, *inter alia*:
   a. An odium attaches to the applicant or his cause of action or defense on account of local prejudice;
   b. The county is a party to the suit; or
   c. The judge before whom the case is pending is biased, prejudiced, or interested. IND. CODE §§ 34-35-1-1, 34-35-3-3; IND. R. TRIAL PROC. 76(A).

2. **Limitations.**
   a. **One (1) change of venue per party.** Each party is limited to one (1) change of venue from a court or judge. IND. CODE §§ 34-35-1-2(g), 34-35-3-3.
      i. **Multiple parties allowed only one (1) change of venue.** In proceedings involving multiple plaintiffs and/or multiple defendants, only one (1) change of venue is allowed for all plaintiffs and one (1) change of venue from a court or judge is allowed for all defendants. IND. CODE § 34-35-3-1(a)-(b). Procedures for such applications are detailed at IND. CODE § 34-35-3-1.

1.30 ADMINISTRATIVE PROCESS V. TRIAL COURT

While the Indiana Administrative Procedures Act governs the administrative law processes of state agencies (*see* IND. CODE § 4-21.5-1-3), it does not generally provide administrative process requirements for local governmental entities. Thus, the necessity of exhausting an administrative hearing process prior to accessing the trial courts varies depending upon the issue under consideration and the relevant local ordinances. *See, e.g.*, Town Council of New Harmony v. Parker, 726 N.E.2d 1217 (Ind. 2000) (holding plaintiff's failure to exhaust administrative procedures provided in Indiana's zoning laws deprived the trial court of subject matter jurisdiction over claim regarding denial of zoning variance). Some local ordinances may contain an administrative appeals process for public health matters.

For example, many city and county health departments have established local ordinances regarding food safety. These ordinances often specify administrative processes that must be exhausted as part of due process. In the event of an emergency, exhaustion of such a process is not clearly, but may be, a prerequisite to the trial court's acceptance of a case.

MARION COUNTY NOTE: Marion County's administrative process for public health code violations may be found at Chapter 21, Sections 801 to 908 of the Code of the Health and Hospital Corporation of Marion County, available online at http://www.hhcorp.org/brd_code.htm.

1.40 APPLICABILITY OF INDIANA RULES OF COURT TO PUBLIC HEALTH CASES

As a general rule, public health cases are conducted in the same manner as other proceedings in Indiana Courts. That is, all Rules of Court, including those of Administration, Evidence, Trial Procedure, and Appellate Procedure, apply to public health cases.

While some public health cases will present unique factual scenarios and practical exigencies, the Rules of Court make no specific procedural exceptions for cases involving public health emergencies. In such cases, the Court should utilize routine procedures for resolving and/or expediting urgent matters on their dockets. For example, the Court may issue temporary restraining orders and other injunctive relief in the context of public health emergencies. However, these extraordinary relief measures remain subject to all applicable Rules of Court. *Cf.* Indiana Comm'n on Judicial Qualifications, Advisory Opinion #1-01 (2001), *available at* http://www.in.gov/judiciary/admin/judqual/opinions.html (addressing the stringent standards applicable to *ex parte* temporary custody orders).

NOTE: In the event of a declared public health emergency (discussed *infra* at Section 6.00), the governor may make, amend, and rescind orders, rules, and regulations as necessary. IND. CODE § 10-14-3-11(b). However, the governor's ability to limit or alter the Rules of Court may be limited by principles of Due Process and Separation of Powers.

2.00 HEALTH AGENCIES AND BOARDS

2.10 INDIANA STATE DEPARTMENT OF HEALTH (ISDH)

2.11 Composition of the ISDH

ISDH
2 N. Meridian St.
Indianapolis, IN
46204
(317) 233-1325

A. ***Executive Board.***

1. **Advisory board to ISDH.** The Executive Board serves as the advisory board to the ISDH. IND. CODE § 16-19-2-5.

2. **Membership.** The Executive Board consists of eleven (11) members appointed by the governor and qualified as follows:
   a. Three (3) licensed physicians;
   b. One (1) sanitary engineer;
   c. One (1) pharmacist;
   d. One (1) dentist;
   e. One (1) veterinarian;
   f. One (1) registered nurse;
   g. One (1) hospital administrator;
   h. One (1) health facility administrator; and
   i. One (1) other person. IND. CODE § 16-19-2-1(b).

3. **Term.** Members of the Executive Board are appointed for a term of four (4) years. IND. CODE § 16-19-2-2.
   a. **Removal for cause only.** Members of the Executive Board may be removed by the governor for cause. The governor must appoint a successor to fill the vacant seat for the remainder of the removed member's term. IND. CODE § 16-19-2-3.

4. **Chairman elected by members.** The Executive Board must elect one of its members as Chairman of the Board. IND. CODE § 16-19-2-9.
   a. **Chairman's term.** The elected Chairman serves a term of two (2) years unless his/her term of appointment ends sooner. Id.

5. **Compensation.** Each member of the Executive Board who is not a state employee is entitled to:
   a. The minimum salary per diem required by IND. CODE § 4-10-11-2(b);
   b. Reimbursement of traveling expenses; and
   c. Reimbursement of other expenses incurred in connection with the member's duties. IND. CODE § 16-19-2-8.

6. **Conducting business.**
   a. **Frequency of meetings.** The Executive Board must meet at

least one (1) time every two (2) months. IND. CODE § 16-19-2-6.

b. **Quorum.** A majority of the Executive Board constitutes a quorum for the transaction of official business. IND. CODE § 16-19-2-7.

B. ***State Health Commissioner.***

1. **Appointed by governor.** The State Health Commissioner ("the Commissioner") is appointed by and serves at the pleasure of the governor. Id.

2. **Qualifications.** The Commissioner must:
   a. Hold an unlimited license to practice medicine in accordance with IND. CODE § 25-22.5; and
   b. Be qualified by training and experience to administer the affairs of the ISDH. IND. CODE § 16-19-4-2.

3. **Relationship to Executive Board.** The Commissioner serves as the secretary and executive officer of the Executive Board. IND. CODE § 16-19-4-1.

4. **Compensation.** The Commissioner is entitled to receive a salary in an amount fixed by the Executive Board and approved by the governor. IND. CODE § 16-19-4-6.

5. **Administrative control over ISDH.** The Commissioner is empowered to appoint employees to the ISDH, set employee salaries, and organize ISDH personnel and functions as necessary. IND. CODE §§ 16-19-4-7, -8.

C. ***Branch Offices.***

1. **To be established as necessary.** The ISDH may establish, operate, and maintain branch offices throughout Indiana as necessary to furnish a more comprehensive and effective health program and provide additional assistance to all local health officials. IND. CODE § 16-19-3-2.

NOTE: ***See*** **Appendix C for a map of Indiana's Public Health Preparedness Districts.**

2. **No limit on powers of local health departments.** The establishment of branch offices in no way limits the powers of local health departments. IND. CODE § 16-19-3-2(b).

2.12 Authority of the ISDH

A. ***General Powers.***

1. **All necessary powers.** The ISDH possesses all powers necessary to supervise the health and life of Indiana citizens. IND. CODE § 16-

19-3-1.

B. ***Itemized Powers.***

1. **Inspection of property.** The ISDH is empowered to make:
   a. Sanitary inspections of all public buildings and institutions;
   b. Indoor air quality inspections of all public buildings and institutions occupied by an agency of state or local government; and
   c. Inspections of private property regarding the cause, source, and presence of infectious and contagious diseases. IND. CODE § 16-19-3-7.

2. **Sanitation of public buildings and institutions.** The ISDH is empowered to enforce all laws and rules regarding the character and location of all sanitary features, including but not limited to plumbing, drainage, water supply, sewage disposal, lighting, heating, and ventilation, in all public buildings and institutions. IND. CODE § 16-19-3-8.

3. **Disease.**
   a. **Quarantine.** The ISDH is empowered to establish quarantine and do what is reasonable and necessary for the prevention and suppression of disease. IND. CODE § 16-19-3-9.
   b. **Epidemics.** The ISDH is empowered to forbid public gatherings and the operation of schools and churches when necessary to prevent and stop epidemics. IND. CODE § 16-19-3-10.
   c. **Abatement of causative conditions.** The ISDH is empowered to issue orders condemning or abating conditions causing disease. IND. CODE § 16-19-3-11.

4. **Water pollution.**
   a. **Regulation of sanitary systems as means of preventing.** As a means of preventing pollution of bodies of water, the ISDH is empowered to conduct hearings, issue orders, and take other enforcement action on behalf of the state as necessary to regulate existing or proposed sanitary systems that do not or would not, respectively, meet established standards. IND. CODE § 16-19-3-16.

5. **State health data center.** The ISDH must establish the state health data center, which collects and processes health data (including vital statistics) and uses that data to benefit the public health. IND. CODE §§ 16-19-3-19, 16-19-10-3 to 16-19-10-4.

6. **Dental health.** The ISDH must provide facilities and personnel for

EVIDENTIARY NOTE:
The ISDH is a government body of limited jurisdiction that speaks and acts officially only through minutes and records made at its duly-organized meetings. These records must show that all statutory prerequisites for ISDH action were met in order for such action to be legally proper. *See, e.g.*, Jones v. State, 163 N.E.2d 605 (Ind. 1960).

investigation, research, and dissemination of information regarding dental public health. IND. CODE § 16-19-3-20.

7. **Residential care programs.** The ISDH is empowered to operate and designate local boards of health qualified to operate programs to care for certain individuals, including those falling within the purview of the federal Social Security Act (42 U.S.C. 301 *et seq.*), in their place of residence. IND. CODE § 16-19-3-21.

8. **Poison information.** The ISDH must maintain a toll-free, twenty-four (24) hour per day telephone answering service to provide information regarding poison safety precautions and emergency procedures. IND. CODE § 16-19-3-22.

9. **Services for children with long-term health care needs.** The ISDH must maintain a toll-free telephone line to provide information, referral, follow-up, and personal assistance concerning federal, state, local, and private programs that provide services to children under twenty-one (21) years of age with long term health care needs. IND. CODE § 16-19-3-23.

10. **Acquired immune deficiency drug assistance program.** The ISDH must administer the Indiana Acquired Immune Deficiency Drug Assistance Program. IND. CODE § 16-19-3-24.

11. **Anatomical gift promotion fund.** The ISDH must administer the Indiana Anatomical Gift Promotion Fund. IND. CODE § 16-19-3-26.

12. **Septic system technologies.** The ISDH must study alternative, improved residential septic system technologies and take all actions necessary to develop plans and specifications for residential use of those technologies. IND. CODE § 16-19-3-27.

13. **Exercise powers of local health authorities.** The ISDH is empowered to exercise the powers of local health authorities within their territorial jurisdiction, including but not limited to the enforcement of state orders and rules, when the ISDH believes:
    a. A public health emergency exists; or
    b. A local health authority has failed or refused to enforce laws and rules necessary to prevent and control the spread of a dangerous communicable or infectious disease. IND. CODE § 16-19-3-12(a).

14. **Removal of local health officers.**
    a. **Justification.** The ISDH is empowered to remove a local health officer for:

i. Intemperance;
ii. Failure to collect vital statistics;
iii. Failure to obey rules;
iv. Failure to keep records;
v. Failure to make reports;
vi. Failure to answer letters of inquiry from the ISDH regarding the public's health;
vii. Neglect of official duty; or
viii. Failure to carry out and enforce lawful orders and rules issued by the ISDH in the context discussed, *supra*, at Section 2.12(B)(13). IND. CODE §§ 16-19-3-12(b), -13.

b. **Procedures.** Removal of a local health officer must occur pursuant to the lawful procedures provided for removal of an officer or employee for cause by a state officer or agency. IND. CODE § 16-19-3-14.
   i. **Appointment of successor.** Upon removal of a local health officer, the proper city or county authorities must immediately appoint a successor pursuant to the procedures established for original appointments. IND. CODE § 16-19-3-12(c).

c. **Ineligibility period for removed officer.** A local health officer removed from office is ineligible to hold the position of health officer for four (4) years. IND. CODE § 16-19-3-15.

C. ***Rulemaking Authority.***

1. **Of Executive Board.** The Executive Board may adopt reasonable rules consistent with the Indiana statutes to protect or improve the public health in Indiana on behalf of the ISDH. IND. CODE §§ 16-19-3-4(a), -6.
   a. **Majority vote required.** An affirmative vote of a majority of the Executive Board members is required to adopt a rule. IND. CODE § 16-19-3-4(a).
   b. **Permissible subject matter.** Pursuant to the procedures identified, *supra*, at Section 2.12(C)(1)(a), the Executive Board may adopt rules pertaining, but not limited, to:
      i. Nuisances dangerous to public health;
      ii. Pollution of any water supply other than those falling within the jurisdiction of the water pollution control board or department of environmental management;
      iii. Disposition of excremental and sewage matter;
      iv. Control of fly and mosquito breeding places;
      v. Detection, reporting, prevention, and control of diseases that affect public health;
      vi. Care of maternity and infant cases and homes;
      vii. Production, distribution, and sale of human food;
      viii. Conduct of camps;

NOTE: Title 410 of the Indiana Administrative Code is devoted to ISDH rules and is available online at http://www.in.gov/legislative/iac/.

EVIDENTIARY NOTE: A Court may only take judicial notice of rules duly promulgated and published in the Indiana Administrative Code.

ix. Standards of cleanliness for public eating facilities;
x. Standards of cleanliness for public sanitary facilities;
xi. Handling, disposal, disinterment, and reburial of human bodies;
xii. Vital statistics;
xiii. Sanitary conditions and facilities (*e.g.*, plumbing, heating, lighting, ventilation) in public buildings and grounds other than those falling within the jurisdiction of the fire prevention and building safety commission or other state agency;
xiv. Design, construction, and operation of swimming and wading pools other than those maintained by individuals for household use;
xv. Sanitary operation of tattoo parlors and body piercing facilities; and
xvi. Enforcement of health laws and regulations. IND. CODE §§ 16-19-3-4 to 16-19-3-4.2, 16-19-3-5, 16-19-3-27(b).

D. ***Enforcement Power.***

1. **Generally.** The ISDH is empowered to bring an action in Indiana courts for the enforcement of health laws and rules. IND. CODE §§ 16-19-3-1, -18(b).

2. **Following administrative proceedings.** The ISDH is empowered to bring an action in the courts to compel compliance of any person against whom a final administrative order or determination has been made. IND. CODE § 16-19-3-18(a).

2.20 LOCAL HEALTH DEPARTMENTS

2.21 Composition of Local Health Departments

A. ***Establishment.***

1. **By county executive.** The executive of each county must, by ordinance, establish and maintain a local health department. IND. CODE § 16-20-2-2(a).

B. ***Local Boards of Health.***

1. **Manager of local health department.** A local board of health manages the corresponding local health department. IND. CODE § 16-20-2-3.

2. **Membership.** A local board of health consists of seven (7) members, appointed by the county executive. IND. CODE §§ 16-20-2-4, -6.
   a. **Citizenship and residency requirements.** A member must be

NOTE: An act of a local board may be void unless the board meets each of these requirements (*Cf.* Pittsburg C.C. & St. L. Ry. Co. v. Town of Crothersville, 64 N.E. 914 (Ind. 1902)):

a citizen of the United States and reside in a county to which the local board of health provides services. IND. CODE § 16-20-2-12. ☐

b. **No conflicts of interest.** No member may have a vested interest or stand to gain financially from any activity of the local health department or policy decision of the local board of health. IND. CODE § 16-20-2-13. ☐

c. **Political affiliations.** No more than four (4) members may be of the same political party. IND. CODE § 16-20-2-4. ☐

d. **Qualification criteria.** The seven (7) members must be qualified as follows:

i. Four (4) persons knowledgeable in public health,
(A) Two (2) of whom are licensed physicians, and
(B) Two (2) of whom are any combination of:
(1) A registered nurse practitioner licensed pursuant to IND. CODE § 25-23;
(2) A registered pharmacist licensed pursuant to IND. CODE § 25-26;
(3) A dentist licensed pursuant to IND. CODE § 25-14;
(4) A hospital administrator;
(5) A social worker;
(6) An attorney with expertise in health matters;
(7) A school superintendent;
(8) A veterinarian licensed pursuant to IND. CODE § 15-5-1.1;
(9) A professional engineer licensed pursuant to IND. CODE § 25-31; and
(10) An environmental scientist;

ii. Two (2) representatives of the general public; and

iii. One (1) representative meeting any of the foregoing descriptions. IND. CODE § 16-20-2-5. ☐

3. **Term.** Members of a local board of health are appointed for staggered terms of four (4) years. IND. CODE § 16-20-2-10.

a. **Removal for cause only.** Members of a local board of health may be removed by the county executive upon:

i. Absence from three (3) consecutive regular board meetings;

ii. Absence from four (4) regular board meetings during a calendar year; or

iii. Failure to perform the statutory duties of the office. *See* IND. CODE § 16-20-2-8; Weir v. State ex rel. Axtell, 96 Ind. 311 (Ind. 1884) (holding proper election of county board officer cannot be annulled by electing another individual).

b. **County executive to fill vacancies caused by removal.** The county executive must appoint a qualified successor to fill the vacant seat for the remainder of the removed member's term.

IND. CODE § 16-20-2-11(b).

i. **Executive not bound by recommendations of board.** The local board of health must submit a list of five (5) individuals for consideration by the county executive, who may, but need not necessarily, select a successor from the list. IND. CODE § 16-20-2-11(b)-(c).

4. **Officers elected by members.** The members of a local board of health must elect a chairman, vice chairman, and any other officers deemed necessary at the first meeting of each year. IND. CODE §§ 16-20-1-4, 16-20-2-14.

5. **Compensation.** The members of a local board of health may receive compensation for the performance of their duties as determined to be appropriate by the county fiscal body. IND. CODE § 16-20-2-9.

6. **Conducting business.**
   a. **Frequency of meetings.** Meetings of a local board of health may be called by:
      i. The chairman;
      ii. Four (4) members; or
      iii. The local health officer. IND. CODE § 16-20-2-15(a).
   b. **Quorum.** A majority of a local board of health constitutes a quorum for the transaction of business. IND. CODE § 16-20-2-15(b).

C. ***Local Health Officer.***

1. **Appointed by local board of health.** Each local board of health must appoint a local health officer, whose appointment is certified by the county executive. IND. CODE § 16-20-2-16(a)-(b).

2. **Qualifications.** A local health officer must be a licensed physician. IND. CODE § 16-20-2-16(a).

3. **Relationship to local health department and board of health.** The local health officer serves as the executive officer of the local health department, the secretary of the local board of health, and the registrar of local births and deaths. IND. CODE §§ 16-20-2-16(d), 16-20-1-17(b).

4. **Term.** A local health officer is appointed for a term of four (4) years and is eligible for reappointment. IND. CODE §§ 16-20-2-16(a), (c).

5. **Compensation.** As a member of the local board of health, a local

health officer is eligible to receive compensation for the performance of his/her duties as determined to be appropriate by the county fiscal body. IND. CODE § 16-20-2-9.

2.22 Authority of Local Boards of Health and Health Officers

A. ***General Powers.***

1. **All necessary powers.** A local board of health possesses all powers necessary to supervise the health and life of persons within its jurisdiction. *See* IND. CODE §§ 16-19-3-1 (general powers of ISDH), 16-20-1-21 (local boards of health have all powers granted to ISDH).

2. **Geographic scope.** The power and jurisdiction of a local board of health or health officer are limited to the area in which the board or officer serves. IND. CODE § 16-20-1-1(b).
   a. **Exclusion of certain cities.** The jurisdiction of a local board of health or health officer does not extend to any city having a full-time city health department. IND. CODE § 16-20-4-4.

MARION COUNTY NOTE: The Health and Hospital Corporation of Marion County serves as the local board of health for Marion County and is specifically discussed, *infra*, at Section 2.30(A).

B. ***Itemized Powers.***

1. **Inspection of property.** A local health officer or the officer's designee is empowered to:
   a. Make sanitary inspections and surveys of all public buildings and institutions; and
   b. Enter upon and inspect private property regarding the cause, source, and presence of disease. IND. CODE §§ 16-20-1-22, -23(a).

2. **Disease.**
   a. **Communicable disease control.** A local board of health has the responsibility to take any action authorized by state statute or ISDH rule to control communicable disease. IND. CODE § 16-20-1-21; Board of Comm'rs v. Fertich, 46 N.E. 699 (Ind. Ct. App. 1897).
      i. **Compensation for those serving upon orders of local board of health or local health officer.** Those serving upon orders of a local board of health or local health officer to assist in the control of communicable disease are entitled to reasonable compensation for their services. *See* Board of Comm'rs v. Kime, 118 N.E. 595 (Ind. Ct. App. 1918) (licensed physician entitled to compensation for ordered service to quarantined family); Town of Knightstown v. Homer, 75 N.E.13 (Ind. Ct. App. 1905) ("The discovery of a contagious disease like smallpox in a thickly settled community … creates an immediate necessity for activity

EVIDENTIARY NOTE: Local Boards of Health are government bodies of limited jurisdiction that speak and act officially only through minutes and records made at their duly-organized meetings. These records must show that all statutory prerequisites for Board action were met in order for such action to be legally proper. *See, e.g.*, Jones v. State, 163 N.E.2d 605 (Ind. 1960).

on the part of those charged with the duty of preventing its spread, and creates a liability on the part of the town to pay any necessary expenses incurred by its health boards, or, in the absence of an order of its health board, the expenses incurred by its 'health officer' under such an emergency.").

b. **Epidemics.** A local health officer is empowered to forbid public gatherings and the operation of schools and churches when necessary to prevent and stop epidemics. IND. CODE § 16-20-1-24(a).

c. **Abatement of causative conditions.** A local health officer must order the abatement of conditions that may transmit, generate, or promote disease. IND. CODE §§ 16-20-1-25(a)-(b).

3. **Vital statistics.** A local health officer must collect, record, and report to the ISDH vital statistics for the officer's area of jurisdiction. IND. CODE § 16-20-1-17(a).

4. **Health planning and services contracts.** A local board of health is empowered to enter into contracts for the local provision of health services with:
   a. The ISDH;
   b. Other local boards of health;
   c. Other units of government;
   d. A private individual; or
   e. A corporation. IND. CODE § 16-20-1-8(a).

NOTE: All contracts must be approved by the appropriate budgetary authorities before they are deemed binding. *See, infra*, at Section 2.22(B)(7).

5. **Personnel.**
   a. **Appointment and employment.** A local health officer is empowered to appoint and employ public health and administrative personnel as necessary and reasonable to perform the duties of the local health department. *See* IND. CODE § 16-20-1-14(a); Carr v. State ex rel. Stewart, 12 N.E. 107 (Ind. 1887) (interpreting statute to permit Secretary of State's appointment of ISDH clerical staff only upon ISDH request).
      i. **Confirmation by local board of health required.** All appointed and employed personnel must be confirmed by the local board of health. IND. CODE § 16-20-1-14(a).
   b. **Identification of employment responsibilities.** A local board of health must identify the duties of all officers and employees. IND. CODE § 16-20-1-9.
   c. **Delegation of authority.** A local health officer, with the approval of the local board of health, is empowered to delegate any of the officer's responsibilities to employees of the local health department. IND. CODE § 16-20-1-14(b).
      i. **Agent-principal relationship.** Such delegation establishes

an agent-principal relationship between the local health officer and the employee(s). Id.

d. **Compensation.** A local board of health must authorize payment of employee salaries and related costs from the proper fund. IND. CODE § 16-20-1-16. *Cf.* Kime, 118 N.E. 595 (holding costs incurred by licensed doctor caring for indigent family quarantined with smallpox, pursuant to written order of county health commissioner, were properly paid from health appropriations).

6. **Reports.**
   a. **Annual.** A local board of health must publish for free distribution, within ninety (90) days of January 1, an annual report for the previous year. IND. CODE § 16-20-1-7. This annual report must address:
      i. The amount of money received from all sources;
      ii. The name of any donor;
      iii. The manner in which all money was expended and for what purpose; and
      iv. Other statistics and information concerning the work of the local health department that the board considers to be of general interest. Id.
   b. **Monthly.** A local health officer must make a monthly report of the work done by the local health department to the board. IND. CODE § 16-20-1-11.

7. **Budget.** A local board of health must, in a timely manner, submit an annual budget to the county executive, county fiscal body, or city fiscal body concerned with approval of the budget. IND. CODE § 16-20-1-5.

8. **Financial assistance.** A local health officer, on behalf of the local board of health and subject to the approval of the county executive and the board, is empowered to receive financial assistance from:
   a. An individual;
   b. An organization;
   c. The state government; or
   d. The federal government. IND. CODE § 16-20-1-18.

9. **Service fees.** A local board of health is empowered to establish and collect fees for the provision of specific services and records pursuant to Indiana law. IND. CODE § 16-20-1-27.
   a. **Approval required.** The county executive must approve the establishment of any such fees. Id.

10. **Removal of local health officers.**

a. **Justification.** A local board of health may remove a local health officer for:
   i. Failure to perform the officer's statutory duties; or
   ii. Failure to enforce the rules of the ISDH. IND. CODE § 16-20-1-28(a).
b. **Due process protections.** A local health officer whom the board seeks to remove is entitled to:
   i. At least five (5) days notice;
   ii. An open hearing; and
   iii. Representation by counsel. IND. CODE § 16-20-1-28(b).

C. ***Rulemaking Authority.*** The local board of health is empowered to adopt:
1. Procedural rules for the board's guidance;
2. Administrative policies; and
3. Personnel policies. IND. CODE § 16-20-1-3.

D. ***Enforcement Powers.***
1. **Of local and superior boards of health.** A local health officer must enforce the health laws, ordinances, orders, rules, and regulations of the officer's own and superior boards of health in order to protect and promote the public's health. IND. CODE § 16-20-1-19; Board of Comm'rs v. Fertich, 46 N.E. 699 (Ind. Ct. App. 1897).

2. **Use of courts.** A local board of health or local health officer may enforce the board's or officer's orders by an action in an appropriate Indiana trial court, as identified, *supra*, at Section 1.21(A). IND. CODE § 16-20-1-26(a).
   a. **Counsel.** In such an action, the local board of health or health officer must be represented by the county attorney or other counsel chosen by the county executive. IND. CODE § 16-20-1-26(b).

F. ***Accountability.***
1. **Agency of local government.** A local health department is an agency of local government, administratively responsible to the county executive.

2.30 Variants of Local Health Departments

A. ***Marion County.*** The Division of Public Health of the Health and Hospital Corporation of Marion County performs the functions and duties of a local health department in Marion County. IND. CODE §§ 16-22-8-6, -28(a)-(b).

MARION COUNTY NOTE: Where applicable, information about Marion

1. **Public health ordinances.** The Marion County Health and

Hospital Corporation is governed by a seven (7) member board that has the power to adopt public health ordinances. IND. CODE §§ 16-22-8-8, -9, -20.

County will be noted in the margin in this manner. Statutory provisions applicable to Marion County may be found at IND. CODE § 16-22-8 and are available online at http://www.hhcorp.org/brd_code.htm.

B. ***Multiple County Health Departments.***

1. **Conditions of establishment.** The county executives of at least two (2) or more adjacent counties may establish and maintain a multiple county health department if:
   a. The state department approves the multiple county health department; and
   b. Each of the county executives approves a separate ordinance establishing a multiple county health department. IND. CODE § 16-20-3-1(a).

2. **Board of multiple county health department.** The county executives must appoint at least seven (7) members to the board of an established multiple county health department. IND. CODE § 16-20-3-2(a).
   a. **Executive determinations.** The county executives establishing a multiple county health department must determine:
      i. The number of members of the board;
      ii. The qualifications of the members of the board; and
      iii. The number of appointments made by each county. IND. CODE § 16-20-3-2(b).
   b. **Qualification criteria.** The members of the multiple county board of health must be qualified as follows:
      i. At least one (1) licensed physician must be appointed by each county executive;
      ii. At least two-thirds (2/3) of the members must have expertise in public health and may be any combination of those persons identified as qualified by the county executives. IND. CODE § 16-20-3-2(c)-(d).

3. **Governance and officer determinations.** A multiple county health department is governed by the same provisions specified for local health departments, *supra*, at Section 2.21(B)(4)-(6). IND. CODE §§ 16-20-3-3 to 16-20-3-9.

4. **Powers identical to that of single county local health departments.** The powers of a multiple county health department are identical to those identified for single county local health departments, *supra*, at Section 2.22. IND. CODE § 16-20-3.

C. ***Second Class City Health Departments.***

1. "**Second class city" defined.** A "second class city" is a city having a population of thirty-five thousand (35,000) to two hundred forty-

NOTE: Indiana's second class cities are Anderson,

nine thousand nine hundred ninety-nine (249,999) people. IND. CODE § 36-4-1-1.

Bloomington, East Chicago, Elkhart, Evansville, Fort Wayne, Gary, Hammond, Kokomo, Lafayette, Marion, Michigan City, Mishawaka, Muncie, New Albany, Richmond, South Bend, and Terre Haute.

2. **Conditions of establishment.**
   a. **By city legislative body.** The legislative body of a second class city may, by resolution, provide for a full-time city health department. IND. CODE § 16-20-4-5(a).
   b. **Excluded cities.** Second class cities having a population between one hundred forty-eight thousand (148,000) and one hundred seventy thousand (170,000) may not establish full- or part-time city health departments. IND. CODE § 16-20-4-5(b).
   c. **Subject to approval by fiscal body.** Establishment of a city health department is subject to the approval of the city's fiscal body. IND. CODE § 16-20-4-3.

3. **Board of city health department.** The city executive must appoint seven (7) members to the board of an established city health department. IND. CODE § 16-20-4-6.
   a. **No conflicts of interest.** No board member may have a vested interest or stand to gain financially from any activity of the local health department or policy decision of the local board of health. IND. CODE § 16-20-4-10.
   b. **Political affiliations.** No more than four (4) of the seven (7) members may belong to the same political party. IND. CODE § 16-20-4-6.
   c. **Qualification criteria.** The seven (7) members of the board of the city health department must be qualified as follows:
      i. At least three (3) members must be licensed physicians; and
      ii. At least one (1) member must be a licensed veterinarian. Id.

4. **Conducting business.**
   a. **Frequency of meetings.**
      i. **Regular meetings.** The board of a city health department must hold regular meetings quarterly in January, April, July, and October. IND. CODE § 16-20-4-12(b).
      ii. **Special meetings.** The board of a city health department must hold a special meeting upon:
         (A) A written request signed by three (3) members and filed with the local health officer; or
         (B) The request of the health officer. IND. CODE § 16-20-4-12(c).
   b. **Election of officers.** Officers must be elected during the January meeting of the board of a city health department each year. IND. CODE § 16-20-4-12(a).

5. **Governance and officer determinations.** A second class city

health department is governed in all respects not specifically addressed above by the same provisions specified for local health departments, *supra*, at Section 2.21(B)(4)-(6). IND. CODE §§ 16-20-4-7 to 16-20-4-9, 16-20-4-11.

6. **Powers.**
   a. **City board has powers identical to those of local board of health.** A city board of health has the same powers identified for local boards of health, *supra*, at Section 2.22. IND. CODE § 16-20-4-13.
   b. **Rulemaking authority.** A city board of health may adopt:
      i. Procedural rules for the board's own guidance;
      ii. Rules necessary or desirable to protect, promote, or improve public health; and
      iii. Rules necessary or desirable to control disease. IND. CODE § 16-20-4-14.

D. ***Area Boards of Health.***

1. **Conditions of establishment.** Counties party to multiple county sewer, water, wastewater, or similar districts may, by concurrent resolution of each county executive, establish an area board of health. IND. CODE § 16-20-5-1(a).

2. **Limited purpose.** Area boards of health may be established for the sole purpose of administering and enforcing state and local environmental statutes, rules, and ordinances. Id.

3. **Membership.** An area board of health consists of:
   a. Two (2) members from each participating county board of health, appointed by the appropriate county executive;
   b. The health officer of each participating county; and
   c. The county treasurer from the participating county with the highest population. IND. CODE § 16-20-5-2(a).

4. **Terms.** Each member of an area board of health serves a two (2) year term. IND. CODE § 16-20-5-2(b).

5. **Conducting business.**
   a. **Frequency of meetings.** An area board of health must meet at the call of the chairman. IND. CODE § 16-20-5-3.
   b. **Election of officers.** Once each year, the board of health must elect a chairman and vice chairman. IND. CODE § 16-20-5-4. One (1) of the health officers must be designated to serve as secretary of the board, and the county treasurer member must serve as the treasurer of the board. Id.

6. **Itemized powers.** Consistent with its purpose to administer and enforce environmental laws, an area board of health may:
   a. Adopt and enforce ordinances consistent with state law;
   b. Employ qualified individuals or utilize existing qualified employees to perform inspection and enforcement duties;
   c. Accept financial or in kind assistance from the ISDH, the department of environmental management, or any other source;
   d. Collect fees;
   e. Issue permits, subject to permission from the department of environmental management;
   f. Enter into contracts;
   g. Establish boundary lines for a special uniform inspection and enforcement area;
   h. Prepare an annual budget for submission to the fiscal bodies of participating counties; and
   i. Adopt rules necessary to establish administrative policies and procedures pursuant to IND. CODE § 4-22-2. IND. CODE § 16-20-5-6.

2.40 Relationships Between State and Local Health Departments

A. ***Hierarchical Structure.***

1. **ISDH superior.** The ISDH is the superior health department of Indiana, to which all local health departments are subordinate. IND. CODE § 16-19-1-2.
   a. **Home rule.** A local government unit may not regulate conduct already regulated by a state agency *unless* specifically authorized to do so by statute. IND. CODE § 36-1-3-8(7); *see, e.g.*, Hopkins v. Tipton County Health Dept., 769 N.E.2d 604 (Ind. Ct. App. 2002) (holding state regulation of residential sewage disposal systems preempted county ordinance governing private sewage disposal systems).

2. **Authority to assume powers of local health departments.** The ISDH is empowered to exercise all powers of local health authorities within their territorial jurisdiction, including but not limited to the enforcement of state orders and rules, when the ISDH believes:
   a. A public health emergency exists; or
   b. A local health authority fails or refuses to enforce laws and rules necessary to prevent and control the spread of a dangerous communicable or infectious disease. IND. CODE § 16-19-3-12(a).

NOTE: The ISDH may be unable to enforce these laws unless implementing ordinances have been adopted. *See* Watts v. City of Princeton, 96 N.E. 658 (Ind. Ct. App. 1911) (compensation due city board member not payable until fixed by ordinance

B. ***Exchange of Information.***

1. **Reports to ISDH.**

a. **Of activities.** A local health department must report its activities to the ISDH as required by the laws and rules of Indiana. IND. CODE § 16-20-1-12.
b. **Vital statistics.** A local health officer must report the vital statistics for his/her area of jurisdiction to the ISDH. IND. CODE § 16-20-1-17(a).

where state statute provides ordinance shall fix salary within explicit range).

2. **Attendance at ISDH meetings.** A local health officer or representative of a local board of health must attend ISDH meetings upon request. IND. CODE § 16-20-1-13.

3.00 SEARCHES, SEIZURES, AND OTHER GOVERNMENT ACTIONS TO ENSURE PUBLIC HEALTH

Frequently, protection of the public's health necessitates government intrusion upon individual liberties, such as privacy and bodily integrity. For example, public health agencies and officials must sometimes conduct searches and seizures of persons and property to control disease and other threats to public health. Similarly, public health agencies and officials may require access to and dissemination of personal information. In all such cases, both public and private interests are balanced to determine the appropriate scope of state action justified by public health and safety concerns.

This tension between public safety and individual liberties is also reflected in the context of criminal procedure. To the extent that public health law surrounding these issues remains underdeveloped, it is tempting to turn to criminal law analogies for guidance. The application of criminal procedure principles to public health action is, however, often complicated by numerous factors, including the differing philosophies underlying the two bodies of law and the lack of societal condemnation attached to many persons deemed threats to public health. Thus, while this bench book will identify criminal law analogies potentially relevant to a court's public health decisions, it does so with the caution that serious consideration should be given to the nuances of cited state and federal criminal jurisprudence before applying those decisions in the context of public health.

CRIMINAL LAW ANALOGY
This notation will be used in the margin to indicate discussion of potentially-analogous criminal law in the accompanying text.

3.10 SEARCHES AND SEIZURES GENERALLY

3.11 Constitutional Analysis

A. ***The United States Constitution.***

1. **No unreasonable searches and seizures.**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. U.S. CONST. amend. IV.

2. **Definitions.**
   a. **Search.** A search occurs when government action infringes upon an expectation of privacy that society recognizes as reasonable. *See* United States v. Jacobsen, 466 U.S. 109, 113 (1984); Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).
   b. **Seizure.**
      i. **Of individual.** A seizure of an individual occurs when government action meaningfully interferes with an individual's freedom of movement. *See* Michigan v. Summers, 452 U.S. 692, 696 (1981).
         (A) **Duration of interference irrelevant.** Government's meaningful interference with an individual's freedom of movement constitutes a seizure, "however brief." *See* id. at 696.
      ii. **Of property.** A seizure of property occurs when government action meaningfully interferes with an individual's possessory interest in that property. *See* Jacobsen, 466 U.S. at 113.

NOTE: Isolation or quarantine of an individual constitutes a seizure.

   c. **Government action.** The Fourth Amendment applies to the acts of all state officials, including both civil and criminal authorities. *See* New Jersey v. T.L.O., 469 U.S. 325, 335 (1985).
      i. **State hospital employees are government actors.** Staff at state hospitals are considered government actors, subject to Fourth Amendment requirements. *See* Ferguson v. City of Charleston, 532 U.S. 67, 76 (2001).
   d. **Probable cause.** Probable cause exists when, under the circumstances, there are reasonable grounds for a belief of guilt that is particularized with respect to the person, place, or items to be searched or seized. *See* Maryland v. Pringle, 540 U.S. 366, 370-71 (2003).

CRIMINAL LAW ANALOGY In the public health context, probable cause requires reasonable grounds for a belief that disease or other public health threat exists.

3. **Applicability of Fourth Amendment outside criminal context.** The Fourth Amendment's protections apply to non-criminal searches and seizures, such as health and safety inspections. *See* Torres v. Puerto Rico, 442 U.S. 465, 473 (1979); Marshall v. Barlow's Inc., 436 U.S. 307, 312 (1978); Camara v. Municipal Court of San Francisco, 387 U.S. 523, 533-34 (1967).

4. **Applicability of Fourth Amendment to physical evidence obtained from individual.** The Fourth Amendment is implicated when the government seeks to obtain physical evidence from an individual.
   a. **Detention to obtain evidence as seizure.** The detention of an individual necessary to produce the evidence sought is a seizure if it amounts to a meaningful interference with the individual's freedom of movement. *See* Skinner v. Railway Labor Executives' Assn., 489 U.S. 602, 616 (1989); Schmerber v. California, 384 U.S. 757, 767 (1966).
   b. **Obtaining and examining evidence as search.** Both obtaining physical evidence from an individual and examining that evidence are searches if these acts infringe upon an expectation of privacy that society recognizes as reasonable. *See* Ferguson, 532 U.S. at 76 (urine tests are searches subject to the Fourth Amendment); Cupp v. Murphy, 412 U.S. 291, 295 (1973) (fingernail scraping constitutes search subject to Fourth Amendment); Schmerber, 384 U.S. at 767 (compelled blood draw analyzed for alcohol content constitutes search subject to Fourth Amendment); Patterson v. State, 744 N.E.2d 945, 946 (Ind. Ct. App. 2001) (DNA testing of blood sample constitutes search). A further discussion of these issues may be found, *infra*, at Section 3.31.
   c. **Physical characteristics exposed to public not protected by Fourth Amendment.** Because an individual has no reasonable expectation of privacy in physical characteristics constantly exposed to the public, such as vocal tones, facial features, and fingerprints, the Fourth Amendment is inapplicable to government action to obtain such evidence. *See* United States v. Dionisio, 410 U.S. 1, 14-15 (1973) (voice exemplars); United States v. Doe, 457 F.2d 895, 894 (2d Cir. 1972) ("[T]here is no 'reasonable expectation of privacy' about one's face."); Davis v. Mississippi, 394 U.S. 721, 727 (1969) (fingerprints).
   d. **Obtaining physical evidence via significantly invasive or newly emerging medical procedures unreasonable in certain circumstances.** The Supreme Court has held on at least one occasion that obtaining physical evidence from an individual via surgical intrusion is an unreasonable search. *See* Winston v. Lee, 470 U.S. 753 (1985) (surgical intrusion in chest area to retrieve bullet unreasonable under Fourth Amendment).
      i. **Case-by-case analysis.** The reasonableness of invasive medical intrusions must be determined on a case-by-case basis. *See* id. at 760.
      ii. **Factors relevant to reasonableness inquiry.** The following factors should be considered when determining

the reasonableness of invasive medical intrusions:
(A) The existence of probable cause to believe relevant medical information will be revealed;
(B) Whether a warrant has been obtained;
(C) The extent to which the intrusion may threaten the health or safety of the individual;
(D) The extent of the intrusion upon the individual's dignitary interests in privacy and bodily integrity;
(E) The community's interest in accurately determining presence of disease or other medical threats; and
(F) The availability of other evidence. *See* id. at 760-65.

5. **Applicability of Fourth Amendment to information obtained without physical intrusion of premises or persons.** The Fourth Amendment applies to information obtained from premises or persons even when no physical intrusion is required to obtain the information. *See* Kyllo v. United States, 533 U.S. 27 (2001) (holding use of thermal imaging scanner to obtain information about temperature within defendant's home constituted a search subject to Fourth Amendment protections despite fact that scan occurred from streets outside home).
   a. **Character of premises highly relevant to analysis.** The character of the premises at issue may well be determinative when analyzing the applicability of the Fourth Amendment to information obtained without physical intrusion of premises. *Compare* Kyllo, 533 U.S. 27 (thermal imaging scan of home is search subject to Fourth Amendment) *with* Dow Chemical Co. v. United States, 476 U.S. 227 (1986) (aerial surveillance of industrial complex not search).
   b. **Character and extent of information obtained relevant to analysis.** The acquisition of information about an individual's lawful activities is likely to constitute a search subject to the Fourth Amendment. *See* Illinois v. Caballes, 125 S.Ct. 834, 838 (2005) (holding use of dog sniff to detect illegal narcotics during legal traffic stop was not a search subject to the Fourth Amendment, noting that "[c]ritical to [the Kyllo] decision was the fact that the device was capable of detecting lawful activity…The legitimate expectation that information about perfectly lawful activity will remain private is categorically distinguishable from respondent's hopes or expectations concerning the nondetection of contraband in the trunk of his car.").
   c. **Character of technology may be relevant to analysis.** The acquisition of information using technology *not in general public use* may be more likely to constitute a search subject to the Fourth Amendment. *See* Kyllo, 533 U.S. at 34 ("We think

that obtaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical intrusion into a constitutionally protected area constitutes a search – *at least where (as here) the technology in question is not in general public use*." (Internal citations omitted.)).

6. **Reasonableness analyzed.** The permissibility of government action is assessed by balancing the intrusion upon the individual's Fourth Amendment interests (*e.g.*, dignity, privacy, and personal security) against the promotion of legitimate government interests. *See* T.L.O., 469 U.S. at 337; Delaware v. Prouse, 440 U.S. 648, 653-54 (1979); Starzenski v. City of Elkhart, 659 N.E.2d 1132, 1138 (Ind. Ct. App. 1996).
   a. **Context-specific inquiry.** The reasonableness of a search or seizure depends upon the context in which it takes place. *See* T.L.O., 469 U.S. at 337.
   b. **No "least intrusive" requirement.** The reasonableness of a search or seizure does not depend upon whether the government uses the least intrusive means practicable. *See, e.g.*, Vernonia School District v. Acton, 515 U.S. 646, 663 (1995).
   c. **Warrant generally required.** As a general rule, government searches and seizures conducted without a valid warrant are presumed to be unreasonable. *See* Camara, 387 U.S. at 528-29; Hannoy v. Indiana, 789 N.E.2d. 977, 982 (Ind. Ct. App. 2003). *But see* Starzenski, 659 N.E.2d at 1138-39 (holding warrant *or its equivalent* necessary to due process and reasonableness).
      i. **Character of individual interests involved not dispositive.** The consent or warrant requirement applies to searches of and seizures on both residential and commercial property. *See* Camara, 387 U.S. 523 (search of residence); See v. City of Seattle, 387 U.S. 541 (1967) (search of commercial property).
      ii. **Valid warrants.** To be valid, a warrant must be based upon probable cause, as determined by a neutral magistrate. *See* Pringle, 540 U.S. 366.
         (A) **No guilt by association.** Probable cause to search or seize an individual is not satisfied merely by the existence of probable cause to search another in proximity to the individual or the premises upon which the individual is located. *See* Ybarra v. Illinois, 444 U.S. 85, 91 (1979).

CRIMINAL LAW ANALOGY *BUT* does this principle apply to infectious diseases when proximity alone is a risk factor?

   d. **Exceptions to warrant requirement potentially applicable in the public health context.** The general requirement that searches and seizures must be conducted pursuant to a valid warrant is subject to several notable exceptions:

i. **Consent.** A knowing and voluntary consent by an individual with actual or apparent authority over the premises to be searched or items to be seized obviates the need for a valid warrant. *See* Illinois v. Rodriguez, 497 U.S. 177, 181 (2000); Hannoy, 789 N.E.2d at 982.

(A) **Voluntariness of consent is fact-specific.** The voluntariness of an individual's consent to a search or seizure is evaluated with reference to all surrounding circumstances. *See* Ohio v. Robinette, 519 U.S. 33, 40 (1996); Callahan v. State, 719 N.E.2d 430, 435 (Ind. Ct. App. 1999) (providing factors relevant to analysis).

(B) **Scope of consent limits search or seizure.** A warrantless, consent search or seizure is limited to the scope provided in the consent. *See* Florida v. Jimeno, 500 U.S. 248, 252 (1991); Hannoy, 789 N.E.2d at 982.

ii. **Special needs.** The warrant requirement is inapplicable when special needs, beyond the ordinary need for law enforcement, are implicated. Board of Education v. Earls, 536 U.S. 822, 829 (2002) (upholding warrantless, random drug testing of students participating in public school's extracurricular activities); Acton, 515 U.S. at 653 (upholding random drug testing of student athletes in public schools); National Treasury Employees Union v. Von Raab, 489 U.S. 656, 665-66 (1989) (upholding warrantless drug testing of all customs officials applying for positions involving drug interdiction or use of firearms); TLO, 469 U.S. at 341-42 (upholding warrantless search of student property by public school officials); Skinner, 489 U.S. at 633-34 (upholding warrantless drug testing of railroad employees involved in train accidents or found to be in violation of certain safety rules); Love v. Superior Court of San Francisco, 226 Cal. App. 3d. 736 (1990) (upholding warrantless AIDS testing of prostitutes to protect the health of state citizens). *But see* Chandler v. Miller, 520 U.S. 305 (1997) (rejecting Georgia's "special needs" justification for warrantless, suspicionless drug testing of all candidates for certain state offices); Willis v. Anderson Comm. School Corp., 158 F.3d 415 (7th Cir. 1998) (holding Indiana school district's drug testing of all students suspended for fighting violated Fourth Amendment; "special needs" exception inapplicable given feasibility of suspicion-based testing program); Glover v. Eastern Neb. Comm. Office of Retardation, 867 F.2d 461 (8th Cir. 1989) (holding agency's requirement that all employees working with mentally retarded submit to hepatitis and HIV tests violated Fourth Amendment given virtually non-existent risk of disease

transmission from clients to employees).

(A) **Test.** Under the "special needs" exception, a search or seizure must be reasonable under all the circumstances. This determination is made by balancing the individual's privacy interests against the government's legitimate interests, as previously indicated, *supra*, at Section 3.11(A)(6), with consideration of the *context-specific factors* identified below. *See* Earls, 536 U.S. at 830-38; Acton, 515 U.S. at 652-64.

(1) **Nature of the privacy interest affected by government action.**

(a) Relevant factors:

(i) Legitimate privacy expectations of the affected individual;

- Certain populations of individuals are presumed to have reduced expectations of privacy. *See* United States v. Knights, 532 U.S. 112 (2001) (probationers); Dunn v. White, 880 F.2d 1188 (10th Cir. 1989) (prisoners); People v. Adams, 597 N.E.2d 574 (Ill. 1992) (persons convicted of certain offenses).

(ii) Relationship between the affected individual and the government; and

(iii) Existence of voluntary individual conduct that triggers government action.

(2) **Character of the government intrusion on the individual's privacy interest.**

(a) Relevant factors:

(i) Manner in which the search or seizure is conducted;

(ii) Level of confidentiality afforded private information obtained during the search or seizure; and

(iii) Degree to which the use of private information obtained during the search or seizure is limited.

(3) **Nature and immediacy of concerns giving rise to government action and the efficacy of the action in addressing those concerns.**

(a) Relevant factors:

(i) *Practicability of the warrant and probable cause requirements;*

(ii) Importance of government concern;

(iii) Implicated health and safety issues;

(iv) Need of government to prevent great harm;

NOTE: Probable cause may be impracticable for infectious diseases having "latent periods" in which

(v) Heightened government responsibility with respect to affected individual(s); and
(vi) Degree to which government action is narrowly tailored to address concern.

illness is not outwardly manifested. *See* People v. Adams, 597 N.E.2d 574 (Ill. 1992).

(b) **Close review of government needs and action appropriate.** The Court is permitted to conduct a "close review" of evidence relevant to the government's asserted "special needs" and the efficacy of the government action. *See* Ferguson, 532 U.S. at 81; Chandler, 520 U.S. at 319-22.

(c) **Extensive entanglement of law enforcement inconsistent with "special needs" exception.** To qualify for the special needs exception, the primary and immediate purposes of government action cannot involve the generation of evidence for law enforcement purposes. *See* Ferguson, 532 U.S. at 82-84 (rejecting city's claim that warrantless, nonconsensual drug testing of pregnant women suspected of using cocaine was justified by "special needs" exception, given city prosecutors and police were extensively involved in testing program development and implementation and program used threat of arrest and prosecution to force women into treatment); Acton, 515 U.S. at 658 (noting results of student drug tests are not provided to law enforcement or used for disciplinary purposes in upholding school testing scheme under "special needs" exception); Hannoy, 789 N.E.2d at 984 (rejecting application of "special needs" exception to suspicionless searches performed by law enforcement or for law enforcement purposes). *Cf.* City of Indianapolis v. Edmond, 531 U.S. 32, 37-38 (2000), *aff'g* Edmond v. Goldsmith, 183 F.3d 659 (7th Cir. 1999) (holding Indiana's suspicionless motor vehicle checkpoint program constituted Fourth Amendment violation given the program's primary purpose was to detect evidence of ordinary criminal wrongdoing).

NOTE: The Court should be particularly attuned to the scope and nature of the involvement of law enforcement personnel in public health searches and seizures.

NOTE: For a discussion of some legal issues implicated by the procurement and use of DNA evidence pursuant to the special needs exception *see* Tracey Maclin, *Is Obtaining an Arrestee's DNA a Valid Special Needs Search Under the Fourth Amendment? What Should (and Will) the Supreme Court Do?* 33(1) J. L. MED. & ETHICS 102 (2005).

(i) ***But* mandatory reporting requirements for medical personnel not Fourth Amendment violation even if information ultimately provided to law enforcement.** Mandatory legal and ethical reporting

schemes for information obtained by medical personnel during the ordinary course of treatment do not violate the Fourth Amendment, even if that information is ultimately provided to law enforcement. *See* Ferguson, 532 U.S. at 78, 80-81; Hannoy, 789 N.E.2d at 990-91.

(B) **No probable cause requirement.** The probable cause standard is often unsuited to circumstances outside the criminal context, such as those covered by the "special needs" exception. *See* Von Raab, 489 U.S. at 667-68. The practicability of the probable cause requirement is considered in the balancing test provided above, *supra*, at Section 3.11(A)(6)(d)(ii)(A). Specifically, the probable cause standard is often unsuited to determining the reasonableness of administrative searches when government action seeks to:

(1) Prevent the development of hazardous conditions; or

(2) Detect latent or hidden violations that rarely generate articulable grounds for searching any particular place or person. Earls, 536 U.S. at 828; Von Raab, 489 U.S. at 667-68.

(C) ***And* individualized suspicion not always necessary.** Pursuant to the "special needs" exception, a finding of individualized suspicion may not be necessary in the face of sufficient government safety and administrative interests. *See* Earls, 536 U.S. at 829 ("In certain limited circumstances, the Government's need to discover such latent or hidden conditions, or to prevent their development, is sufficiently compelling to justify the intrusion on privacy entailed by conducting such searches without any measure of individualized suspicion."); Skinner, 489 U.S. at 624.

CRIMINAL LAW ANALOGY/NOTE: Individualized suspicion may be impracticable in the context of infectious diseases characterized by "latent periods" in which illness is not outwardly manifested. *See* Adams, 597 N.E.2d 574.

(1) **Conditions under which individualized suspicion requirement not necessary.** The requirement of individualized suspicion may be suspended when:

(a) The privacy interests implicated by the search or seizure are minimal;

(b) An important government interest furthered by the search or seizure would be placed in jeopardy by a requirement of individualized suspicion; and

(c) Other safeguards are available to assure that the affected individual's reasonable expectation of privacy is not subject to the discretion of the official(s) in the field. *See* Skinner, 489 U.S. at

624; T.L.O., 469 U.S. at 342 n.8.

(2) **Membership in suspicious class or group subject to heightened risk may be sufficient.** In cases where individualized suspicion is impracticable, membership in a suspicious class may provide sufficient justification for a search or seizure pursuant to the "special needs" exception. *See* Dunn, 990 F.2d at 1195 ("[I]n the area of public health, this court has suggested that testing of all those within a suspicious class sometimes may be justified."); Adams, 597 N.E.2d at 582 (upholding mandatory HIV testing of prostitutes and noting HIV provides few articulable grounds for testing other than "categories of risk").

NOTE

iii. **Administrative inspections.** Administrative inspections implicate the individual interests protected by the Fourth Amendment and may be conducted only upon issuance of a valid warrant. *See* Barlow's Inc., 436 U.S. at 316-20 (requiring warrant for OSHA inspection of business); Camara, 387 U.S. at 534 (requiring warrant for housing code inspection of apartment building).

(A) **Modified probable cause standard.** Administrative warrants may issue based upon a modified "probable cause" standard, which is satisfied by a showing of:

(1) Specific evidence of an existing violation; or

(2) Reasonable legislative or administrative standards for conducting an inspection of a particular individual or establishment. *See* Barlow's Inc., 436 U.S. at 320-21 (holding warrant for OSHA inspection could properly issue upon showing of administrative plan derived from neutral sources (*e.g.*, desired frequency of inspections of certain types of businesses)); Michigan v. Tyler, 436 U.S. 499, 506 n.5 (1978) (holding fire inspectors must obtain warrant prior to entering premises to investigate cause of fire after exigencies justifying original warrantless entry evaporate); Camara, 387 U.S. at 538 (holding warrant for housing code inspection could properly issue upon showing of factors such as the nature of building, the condition of the entire area, and the passage of time rather than specific knowledge of the condition of a particular dwelling).

iv. **Pervasively regulated businesses.** Warrantless searches of certain industries are permitted based upon the theory that their extensive history of government oversight and

pervasive regulation prevents those engaged in the industry from holding any reasonable expectations of privacy in their merchandise. *See* New York v. Burger, 482 U.S. 692 (1987) (junkyard owners); Donovan v. Dewey, 452 U.S. 594 (1981) (federally regulated stone quarries); United States v. Biswell, 406 U.S. 311 (1972) (federally licensed firearms dealers); Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970) (federally licensed alcoholic beverage dealers); City of Indianapolis v. Wright, 371 N.E.2d 1298, 1302 (Ind. 1978) (state licensed massage parlors).

(A) **Test.** Warrantless inspections of pervasively regulated businesses are deemed reasonable if the following criteria are met:

(1) A substantial government interest informs the regulatory scheme pursuant to which the inspection is made;

(2) The warrantless inspection is necessary to further the regulatory scheme; and

(3) The regulatory inspection program provides a constitutionally-adequate substitute for a warrant in terms of the certainty and regularity of its application (*i.e.* the regulatory scheme performs the two basic functions of a warrant: (i) it advises the owner of the premises that a search of defined scope is being made pursuant to the law and (ii) it limits the discretion of the inspecting officers). *See* Burger, 482 U.S. at 702-03; Adams v. State, 762 N.E.2d 737, 741 n.9, 744 (Ind. 2002) (adopting Burger test and holding inspection of defendant's home pursuant to jeopardy tax warrant issued without judicial review was unconstitutional due to unlimited officer discretion and lack of exigency).

(B) **Exception limited to businesses in "unique circumstances."** The pervasively regulated business exception to the warrant requirement is narrowly construed; the mere fact that a business is involved in interstate commerce or subject to federal regulation and/or supervision is insufficient to trigger the exception. Rather, the critical element is the *"long tradition of government supervision, of which any person who chooses to enter such a business must already be aware…. The businessman in a regulated industry in effect consents to the restrictions placed upon him."* Barlow's Inc., 436 U.S. at 313; *see also* Burger, 482 U.S. at 704-07 (noting "extensive"

provisions regulating automobile junkyard businesses and existence of junk shop regulations for over 140 years). *Cf.* Wright, 371 N.E.2d at 1302 (upholding warrantless inspection of massage parlor, noting "[i]t is a business which is being inspected and one which has a history of regulation, albeit not as extensive as the liquor or firearms industries, and as a member of a regulated business, a licensee does impliedly consent to inspections at any and all reasonable times and places by obtaining a license" (Internal citations omitted.)).

(C) **Extent to which involvement of law enforcement is consistent with exception.** Provided the statute/regulatory scheme is properly administrative (*i.e.,* serves legitimate regulatory purposes), the following factors lack "constitutional significance":

(1) Penal laws in the jurisdiction address the same problem and serve the same goals;

(2) Evidence of a crime may be discovered in the course of enforcing the administrative scheme; and

(3) Police officers, rather than administrative inspectors, conduct the inspections. Burger, 482 U.S. at 712-17; Ferguson, 532 U.S. at 83 n.21. *But see* United States v. Johnson, 994 F.2d 740, 742-43 (10th Cir. 1993) (holding warrantless inspection of taxidermy shop initiated by and participated in by federal anti-smuggling agent violated Fourth Amendment and pervasively regulated business exception did not apply; "an administrative inspection may not be used as a pretext solely to gather evidence of criminal activity").

v. **Checkpoints and other "blanket searches" for limited purposes related to safety.** Government actors may conduct warrantless, suspicionless checkpoints to ensure public safety and prevent illegal immigration. *See* Edmond, 531 U.S. at 47-48 (noting validity of searches at places where the need to enforce public safety is particularly acute (*e.g.* borders, airports, government buildings)); Chandler, 520 U.S. at 323 ("We reiterate, too, that where the risk to public safety is substantial and real, blanket suspicionless searches calibrated to the risk may rank as 'reasonable' – for example, searches now routine at airports and at entrances to courts and other official buildings."); Michigan Dept. of State Police v. Sitz, 496 U.S. 444 (1990) (upholding suspicionless motor vehicle sobriety checkpoints); Prouse, 440 U.S. at 663 (suggesting verification of licensing, registration, and vehicle inspection requirements at

Is the use of noninvasive technology (*e.g.*, thermal imagery) on a suspicionless basis to obtain information necessary to protect the public's health and safety permissible pursuant to this exception provided the search is appropriately limited in scope and unrelated to a criminal investigation? *Cf.*

roadblock-type stops is permissible means of promoting highway safety).

(A) **Test.** The reasonableness of a warrantless, suspicionless checkpoint is determined by balancing "the nature of the threatened [privacy] interests and their connection to the particular law enforcement practices at issue." Edmond, 531 U.S. at 42-43.

(1) **Gravity of threat to public safety not dispositive but certainly relevant.** The gravity of the threat to public safety is not alone dispositive when determining means appropriate for use by law enforcement. *See* id. at 42. However, urgent public safety considerations must be considered in all Fourth Amendment deliberations. *See* Goldsmith, 183 F.3d at 663 ("When urgent considerations of the public safety require compromise with the normal principles constraining law enforcement, the normal principles may have to bend. The Constitution is not a suicide pact.").

(2) **Inquiry into checkpoint program purposes appropriate.** The Court may inquire into and assess the primary programmatic purpose(s) of warrantless, suspicionless checkpoint programs when assessing their validity under the Fourth Amendment. *See* Edmond, 531 U.S. at 45-46.

(B) **Use of checkpoints to obtain evidence of ordinary criminal wrongdoing impermissible.** The use of motor vehicle checkpoints for the primary purpose of uncovering evidence of criminal wrongdoing violates the Fourth Amendment. *See* id. at 453-54.

Illinois v. Caballes, 125 S.Ct. 834, 846-47 (2005) (Ginsburg, J., dissenting) (suggesting warrantless, suspicionless use of dogs to detect explosives falls within public safety exception pursuant to reasoning of Sitz); Jon S. Vernick *et al.*, *Technologies to Detect Concealed Weapons: Fourth Amendment Limits on a New Public Health and Law Enforcement Tool*, 31 J. L. MED. & ETHICS 567, 575 (2003) (analyzing warrantless, suspicionless use of gun scanners pursuant to "public safety" exception).

vi. **Reasonable searches incident to lawful arrests.** A warrantless search incident to a lawful arrest may be permissible if reasonable under the circumstances. *See, e.g.,* Schmerber, 384 U.S. at 770-71 (warrantless, nonconsensual blood draw held reasonable incident to lawful arrest given probable cause to believe defendant had been driving while intoxicated, delay associated with securing warrant may have led to destruction of evidence, and the intrusion was of a minor nature). *Cf.* Cupp, 412 U.S. at 295-96 (warrantless scraping of fingernails held reasonable search incident to station house detention given threat of evidence destruction and limited nature of the intrusion).

(A) **Threat to officer safety or survival of evidence usually necessary.** A search incident to a lawful arrest must be justified by a need to ensure the arresting officer's safety or prevent the destruction of evidence.

See Marifam v. Buil, 494 U.S. 325 (1990).

vii. **Investigatory stops based on reasonable suspicion.** A warrantless investigatory stop of an individual (and associated "pat-down") is permissible if based upon reasonable suspicion. *See* Terry v. Ohio, 392 U.S. 1 (1968); State v. Lyons, 735 N.E.2d 1179 (Ind. Ct. App. 2000) (airport stop based on reasonable suspicion); State v. Smith, 638 N.E.2d 1353 (Ind. Ct. App. 1994) (motor vehicle stop based on reasonable suspicion).

(A) **Reasonable suspicion defined.** Reasonable suspicion exists when, based on specific and articulable facts considered together with the rational inferences drawn from those facts, there is a particularized and objective basis to suspect criminal activity. *See* Terry, 392 U.S. at 21; Smith, 638 N.E.2d at 1355.

CRIMINAL LAW ANALOGY In the public health context, reasonable suspicion requires a particularized and objective basis to suspect a threat to the public's health exists.

viii. **Exigent circumstances.** A warrantless search or seizure may be permissible if the delay associated with obtaining a warrant is likely to lead to *injury, public harm,* or the destruction of evidence. *See* Mincey v. Arizona, 437 U.S. 385, 393-94 (1978); Tyler, 436 U.S. at 509 (fire constitutes exigency sufficient to render warrantless entry reasonable); Schmerber, 384 U.S. at 770-71; Cochran v. State, 771 N.E.2d 104, 107-08 (Ind. Ct. App. 2002) (endorsing Schmerber). *But see* Justice v. State, 552 N.E.2d 844, 847 (Ind. Ct. App. 1990) (holding threat of dissipation of alcohol in blood not alone sufficient to create exigent circumstances permitting warrantless blood draw absent automobile accident).

(A) **Search limited in scope by circumstances.** A warrantless search justified by exigent circumstances is limited in scope to the exigencies that justify its initiation. *See* Mincey, 437 U.S. at 393.

e. **State bears burden to prove exception justified.** The State bears the burden of proving that a departure from the warrant requirement is justified. *See* United States v. Matlock, 415 U.S. 164 (1974).

i. **Preponderance of evidence required.** The State must prove such a departure is justified by a preponderance of the evidence. *See* id.

B. *The Indiana Constitution.*

1. **No unreasonable searches and seizures.**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly

describing the place to be searched, and the person or thing to be seized. IND. CONST. art. I, § 11.

a. **Purpose.** The purpose of Article I, Section 11 is to "protect from unreasonable *police* activity, those areas of life that Hoosiers regard as private." Moran v. State, 644 N.E.2d 536, 540 (Ind. 1995).
b. **Focus on reasonableness.** The focus of any analysis under Article I, Section 11 must be the reasonableness of the government action. *See* id. at 539.

2. **Analysis distinct from that of Fourth Amendment claims.** The court's analysis of unreasonable search and seizure claims made with reference to Article I, Section 11 of the Indiana Constitution is separate and distinct from that undertaken for federal constitutional claims, despite the nearly identical wording of the federal and state provisions. *See* Moran, 644 N.E.2d at 538-39. *But see* State v. Thomas, 642 N.E.2d 240, 243-44 (Ind. Ct. App. 1995) (applying federal test to determine whether expectation of privacy is reasonable and noting "we look to both federal and Indiana search and seizure law").
   a. **Application of federal precedent determined on case-by-case basis.** Indiana courts decide whether to apply federal Fourth Amendment interpretations to Article I, Section 11 issues on a case-by-case basis. *See* Taylor v. State, 639 N.E.2d 1052, 1053 (Ind. Ct. App. 1994).
      i. **Subsequent changes in federal law irrelevant.** Even if federal constitutional precedent is applied, the decision remains one of Indiana state law, unaltered by subsequent changes in federal interpretations. *See* id. at 1053.

3. **Definitions.**
   a. **Search.** A search occurs when an expectation of privacy that society considers reasonable is infringed. *See* Thomas, 642 N.E.2d at 243.
      i. **Expectation of privacy.** An individual's expectation of privacy in an object or area is deemed reasonable under Indiana law if:
         (A) The individual has exhibited an actual, subjective expectation of privacy in the object or area; and
         (B) The expectation of privacy is one which society would recognize as reasonable. *See* id. at 243.
   b. **Seizure.**
      i. **Of individual.** A seizure of an individual occurs when government action intrudes upon the individual's privacy and meaningfully interferes with the individual's freedom of

NOTE: Isolation or quarantine of an individual constitutes a

movement. *See* Rutledge v. State, 426 N.E.2d 638, 641 (Ind. 1981); Taylor, 639 N.E.2d at 1054.

c. **Probable cause.** Probable cause exists upon a showing of a probability of or the existence of specified items in a certain place. *See* Baker v. State, 562 N.E.2d 726, 728 (Ind. 1990).

seizure.

CRIMINAL LAW ANALOGY In the public health context, probable cause requires reasonable grounds for a belief that disease or other public health threat exists.

4. **Standing requirement.** An individual must establish ownership, control, possession, or interest in the premises searched or property seized in order to challenge government action under Article I, Section 11. *See* Mays v. State, 719 N.E.2d 1263, 1267 (Ind. Ct. App. 1999).

5. **Reasonableness analyzed.** Government conduct is permissible if, in the totality of the circumstances, the conduct is reasonable. *See* Linke v. Northwestern School Corp., 763 N.E.2d 972, 978 (Ind. 2002).
   a. **Fact-specific inquiry.** The reasonableness of the behavior of state agents is determined on a case-by-case basis. *See* Schultz v. State, 742 N.E.2d 961, 965 (Ind. Ct. App. 2001).
   b. **Burden on state.** When analyzing search and seizures issues under Article I, Section 11, the state bears the burden of proving the search or seizure was reasonable. *See* Osborne v. State, 805 N.E.2d 435, 439 (Ind. Ct. App. 2004).
      i. **Article I, Section 11 more protective of individual privacy than Fourth Amendment.** In view of this burden of proof allocation, Indiana Courts have interpreted Article I, Section 11 of the Indiana Constitution as more protective of individual privacy interests than the Fourth Amendment of the United State Constitution. *See* id. at 439.
   c. **Homes afforded greatest protection.** Houses and premises of citizens are afforded the highest protection under Article I, Section 11. *See* Willis v. State, 780 N.E.2d 423, 428 (Ind. Ct. App. 2002).
   d. **Warrant generally required.** As a general rule, government searches and seizures must be conducted pursuant to a valid warrant to be reasonable. *See* Thomas, 642 N.E.2d at 246-47.
      i. **Valid warrants.** A valid warrant must be issued by a neutral magistrate and be based upon probable cause, supported by oath or affirmation. *See* IND. CODE § 35-33-5-1; Baker, 562 N.E.2d at 728; Kinnaird v. State, 242 N.E.2d 500, 504-05 (Ind. 1968).
   e. **Exceptions to warrant requirement potentially applicable in the public health context.** The general requirement that searches and seizures must be conducted pursuant to a valid warrant is subject to the same exceptions discussed, *supra*, at Section 3.11(A)(6)(d) for the Fourth Amendment. *See, e.g.*,

Willis, 780 N.E.2d at 428-29 (discussing consent and exigent circumstances exceptions to the warrant requirement).

f. **Application of totality of circumstances balancing test for reasonableness consistent with federal law.** As applied, the balancing test for reasonableness under Article I, Section 11 of the Indiana Constitution is generally consistent with the principles of federal law discussed, *supra*, at Section 3.11(A). *See, e.g.*, Linke, 763 N.E.2d 972 (adopting federal "special needs" analysis to assess random drug testing program of public school students participating in extracurricular activities); State v. Gerschoffer, 763 N.E.2d 960 (Ind. 2002) (holding sobriety checkpoints do not violate Indiana constitution *per se* but concluding checkpoint at issue was unreasonable due to high level of officer discretion); State v. Stickle, 792 N.E.2d 51, 54 n.5 (Ind. Ct. App. 2003) (interpreting protections of Article I, Section 11 regarding investigatory stops consistent with federal Fourth Amendment protections).

3.12 Search Warrants

As a general rule, the procedures for obtaining and executing search warrants in the public health context are identical to those applicable in the criminal context. *See, e.g.*, IND. CODE § 35-33-5 (specifying process for execution of court-issued warrants). However, given the highly sensitive nature of information that may be revealed in the course of a public health search or seizure (*e.g.* an individual's medical information) and the unpredictable, time-sensitive nature of public health emergencies, several of these procedures require special consideration.

NOTE: When issuing public health warrants, the Court should incorporate public health, rather than criminal, terminology to avoid subjecting the individual to the opprobrium associated with criminal offenses.

A. *Procurement of a Warrant After Hours.*

1. **Issuance of warrant without affidavit.** A judge may issue a search warrant without an affidavit provided the judge has received sworn testimony of the facts required for an affidavit in:
   a. A nonadversarial, recorded hearing before the judge;
   b. A recorded oral telephone or radio conversation; or
   c. A written facsimile transmission. *See* IND. CODE §§ 35-33-5-8(a), (d).

2. **Applicant signs warrant upon judge's approval if based upon oral telephone or radio conversation.** Upon approving the warrant sought in a telephone or radio conversation, the judge must direct the applicant to sign the judge's name to the warrant. IND. CODE § 35-33-5-8(b).

3. **Approved warrant transmitted to applicant if based upon**

written facsimile. Upon approving a transmitted facsimile warrant application, the judge must transmit a duplicate warrant to the applicant and sign the retained warrant. IND. CODE § 35-33-5-8(c).

B. ***Confidentiality of Warrants.***

1. **Warrant applications and issued warrants are public records.** Warrant applications and issued warrants are public records and, as such, may be inspected and copied by any person. IND. CODE § 5-14-3-1 to 5-14-3-3; IND. ADMIN. R. 9(J) (2004).
   a. **Exceptions.** The following public records are among those exempt from the public access requirement:
      i. Patient medical records and charts created by a provider;
      ii. Investigatory records of law enforcement agencies other than information concerning summons, arrests, and crime logs; and
      iii. Records or portions of records the disclosure of which would be reasonably likely to threaten public safety by exposing a vulnerability to terrorist attack. IND. CODE § 5-14-3-4, -5.

2. **Judge may declare warrant confidential prior to return of duly executed service.** The Court may order a warrant and associated information kept confidential prior to the return of duly executed service. *See* IND. ADMIN. R. 9(J).

3. **Court may undertake proceedings to seal warrant applications and issued warrants.** As judicial public records, warrant applications and issued warrants may be sealed under certain circumstances. IND. CODE § 5-14-3-5.5.
   a. **Public hearing required.** Upon receiving a request to seal a warrant application or issued warrant, the Court must hold a public hearing at which both interested parties and members of the public may testify and submit written briefs. IND. CODE § 5-14-3-5.5(c)-(d).
   b. **Conditions under which sealing appropriate.** The Court may order a warrant application or issued warrant sealed upon finding, by a preponderance of the evidence, that the following considerations outweigh the State's policy of public disclosure:
      i. Sealing the application or warrant will secure a public interest;
      ii. Dissemination of the information contained in the application or warrant will create a serious and imminent danger to that interest;
      iii. Any prejudicial effect created by dissemination of the information cannot be avoided by any reasonable method other than sealing the application or warrant;

NOTE: Some states have adopted express policies regarding the importance of protecting the privacy of individuals who are the subject of warrants but are later exonerated. *See, e.g.,* Matter of Joseph M., 623 N.E.2d 1154 (N.Y. Ct. App. 1993). However, Indiana has no such policy.

iv. There is a substantial probability that sealing the application or warrant will be effective in protecting the public interest against the perceived danger; and
v. It is reasonably necessary for the application or warrant to remain sealed for a period of time. IND. CODE § 5-14-3-5.5(d).

3.20 SEARCHES AND INSPECTIONS OF PREMISES

In addition to the general principles surrounding searches, discussed, *supra*, at Section 3.10, Indiana law contains several provisions specifically addressing searches of premises in various public health contexts.

3.21 Inspections to Prevent and Contain Infectious Diseases

A. ***Right to Enter and Inspect Private Property.*** The ISDH, local health officer, or their designated agents may enter upon and inspect private property to gather information regarding the presence of infectious disease and/or the possible source or cause of infectious disease. IND. CODE §§ 16-19-3-7(c), 16-20-1-21, 16-20-1-23(a), 16-41-5-1.

1. **Notice required.** Such entry upon and inspection of private property is permissible only once due notice has been given. IND. CODE §§ 16-19-3-7, 16-20-1-23(a).

2. **Warrant or exigent circumstances required.** The ISDH or local agent is entitled to enter private property only upon issuance of a valid warrant or the presence of exigent circumstances that justify absence of a warrant. IND. CODE § 16-41-5-1(a)(3).

3. **Probable cause required.** To inspect private property, the ISDH or local agent must have probable cause to believe that evidence of a health threat exists on the property. IND. CODE § 16-41-5-1(a)(1).

4. **Credentials must be presented.** The ISDH or local agent must present proper credentials in order to be entitled to access private property. IND. CODE § 16-41-5-1(a)(2).

5. **Remediation.** The local health officer or the officer's designee is empowered to order what is reasonable and necessary for prevention and suppression of disease and protection of the public's health. IND. CODE § 16-20-1-23(a).

6. **Limitations.** A local health officer designee cannot inspect any property in which the officer has any interest unless the premises cannot otherwise be inspected. IND. CODE §§ 16-20-1-23(b)-(c).

MARION COUNTY NOTE: The County Health Officer (HO) may enter any property at any reasonable time to inspect and test as reasonably necessary to determine compliance with the County's ordinances. If denied entry, the HO may seek an administrative search warrant. If conditions on the property pose an imminent and serious threat to the public's health and delay would pose a greater risk, the HO may enter the property without the owner's consent or a warrant. MARION COUNTY HEALTH & HOSP. CODE § 21-201. A model petition, affidavit, and order for inspection in Marion County is

available at Appendix G.

3.22 Inspections to Ensure Compliance with Sanitary Standards

A. ***Right to Inspect Public Buildings and Institutions.*** The ISDH and local health departments may make sanitary and indoor air quality inspections "throughout Indiana" and of all public buildings and institutions. IND. CODE §§ 16-19-3-7(a)-(b), 16-20-1-22.

Does "throughout Indiana" mean all property, private or public?

B. ***Right to Inspect Dwellings.*** The ISDH, local boards of health, and city boards of health may make sanitary and health inspections to ensure the public health and safety. IND. CODE §§ 16-19-3-1 (ISDH general powers), 16-19-3-7 (ISDH inspection regarding causes and sources of disease), 16-20-1-21 (local board sanitary and health inspection), 16-20-1-23(a) (local board inspection regarding causes and sources of disease), 16-20-4-18 (city board sanitary and health inspection). Additionally, a municipal building inspector may exercise all inspection powers with regards to dwellings as are granted in the applicable local ordinance(s). IND. CODE § 16-41-20-2.

C. ***Right to Inspect Public and Private Land for Pest and Vectors.*** A local health officer may enter upon private or public land at any reasonable time to inspect for pest and vector breeding grounds that have adverse health significance to humans, domestic animals, and/or livestock. IND. CODE § 16-41-33-6(b)(2).

1. **Local ordinance is prerequisite to this power.** The power of the local health officer to enter and inspect public and private property for pests and vectors is only as broad as provided in the corresponding local ordinance enacted by the city or county fiscal body. IND. CODE § 16-41-33-6(a).

3.23 Food Establishment Inspections

NOTE: More information about Indiana's Food Laws may be found online at http://www.in.gov/isdh/regsvcs/foodprot/food_laws.htm.

A. ***"Food Establishment" Defined.*** A "food establishment" is any building, room, basement, vehicle of transportation, cellar, or open or enclosed area occupied or used for handling food. IND. CODE § 16-18-2-137.

B. ***Requirements for Food Establishments.*** All food establishments must:

1. Be adequately lit, heated, drained, and ventilated;
2. Be supplied with uncontaminated running water; and
3. Have adequate sanitary facilities, as described at IND. CODE §§ 16-42-5-7 to 16-42-5-22 and IND. ADMIN. CODE tit. 410, r. 7-24-1 *et seq*. *See* IND. CODE § 16-42-5-6.

C. ***Right to Enter and Inspect Food Establishments.*** The ISDH or local health officer may enter a food establishment or place suspected of being a food establishment at any time after providing due notice and

presenting proper credentials. *See* IND. CODE §§ 16-42-5-23, -24; IND. ADMIN. CODE tit. 410, r. 7-20-428. Upon entering, the ISDH or local health officer may inspect:

1. The premises;
2. The utensils;
3. The fixtures;
4. The equipment;
5. The furniture; and
6. The machinery used in food handling (*i.e.* equipment; appliances; tools; plumbing and related fixtures; refrigeration devices; heating, cooling, and ventilation equipment). IND. CODE §§ 16-42-5-2.3, -23(2).

D. ***Procedures Upon Discovery of Violations.*** If, upon inspection of a food establishment, the ISDH or local health officer finds the establishment to be in violation of any of the requirements described, *supra*, at Section 3.23(B), the ISDH or health officer must:

1. Provide evidence of the violation(s) to the prosecuting attorney of the county or circuit in which the violation occurs, who shall prosecute all offenders; and/or
2. Report the violation(s) to the state health commissioner. IND. CODE § 16-42-5-25.
   a. **Order from state health commissioner.** Upon receiving a report of a violation, the state health commissioner may issue a written order to the person of authority at the offending establishment to remedy the violation within five (5) days or other reasonable amount of time. IND. CODE § 16-42-5-25(2).
      i. **Failure to remedy is misdemeanor.** Failure to comply with an order of the state health commissioner constitutes a Class B misdemeanor. IND. CODE § 16-42-5-26.

E. ***Statewide Food Regulation Scheme.*** Sanitary standards are statewide and may not be supplemented by local ordinance. IND. CODE § 16-42-5-0.5.

1. **Local health departments to enforce statewide scheme.** A local health department may issue citations or bring enforcement actions to enforce the statewide sanitary standards. IND. CODE §§ 16-42-5-28(g)-(h).

3.24 Inspection Reports

A. ***Completion of Report Required.*** Upon conducting a public health inspection, discussed, *supra*, at Sections 3.21 to 3.23, the conducting agent should complete a report describing the information obtained during the inspection and any actions taken as a result of the inspection. IND. CODE § 16-20-8 (requiring completion of accompanying narrative report upon use of food service establishment inspection report

checklist). *Cf.* IND. CODE § 16-19-3-25 (providing procedures for mandatory release of inspection reports to public).

B. ***Release of Report to Public.***

1. **Recipient of report entitled to ten (10) days for response.** The ISDH or a local health department may not release an inspection report or records relating to the inspection to the public until the recipient of the report has been given ten (10) calendar days to respond. IND. CODE §§ 16-19-3-25(b), 16-20-8-5, 16-20-8-7.
   a. **Measurement of ten (10) day period.** The ten (10) day period begins to run upon:
      i. The date of delivery of the report to the recipient, if the report is personally delivered to the recipient; or
      ii. Three (3) days after the date of deposit of the report in the United States mail, if the report is mailed to the recipient. IND. CODE § 16-19-3-25(e).

2. **Conditions for early release of report.**
   a. **By ISDH.** The ISDH must release an inspection report or records relating to the inspection prior to the expiration of the ten (10) day period if:
      i. The ISDH determines early release is necessary to protect the public from an imminent threat to health or safety;
      ii. The ISDH determines early release is necessary to protect the consumers of health services from an imminent threat to health or safety;
      iii. The ISDH determines early release is necessary to protect the public from a gross deception or fraud;
      iv. The ISDH orders closure of a regulated entity; or
      v. The regulated entity consents, in writing, to the release. IND. CODE § 16-19-3-25(c)-(d).
   b. **By local health department.** A local health department may make an inspection checklist and report available for public inspection and copying prior to the expiration of the ten (10) day period if:
      i. The local health department schedules a hearing with respect to the subject food service establishment;
      ii. The local health department orders closure of the subject food service establishment;
      iii. The local health department requests revocation of a permit of the subject food service establishment; or
      iv. The local health department finds the existence of an imminent danger to public health or a gross deception of or fraud upon the consumer by the subject food service establishment. *See* IND. CODE § 16-20-8-8.

3. **Access to report following public release.** After an inspection report and records relating to the inspection have been released to the public any member of the public may inspect and/or copy the report and records as provided in IND. CODE § 5-14-3. IND. CODE §§ 16-19-3-25(f), 16-20-8-6.

C. ***Unique Provisions Applicable to Food Service Establishment Reports.***

1. **All inspections checklists must be accompanied by narrative report.** Whenever a food service establishment inspector utilizes a checklist in the course of an inspection, the checklist must be accompanied and explained by a simultaneously-completed narrative report. IND. CODE §§ 16-20-8-3, -4.

2. **Establishment must have opportunity to review report and submit written response.** A food service establishment that is the subject of an inspection report must be provided an opportunity to review and respond to the report. IND. CODE § 16-20-8-5.
   a. **Conditions under which establishment's response becomes part of report.** A written response from a food service establishment must become part of the inspection report if:
      i. The response is submitted to the local health department within the time stated for abatement of the alleged violation(s) in the report; or
      ii. The response is submitted to the local health department within ten (10) calendar days after completion of the inspection report. Id.

3.30 SEARCHES OF PERSONS

In addition to the general principles surrounding searches, discussed, *supra*, at Section 3.10, Indiana law contains several provisions specifically addressing searches of persons in various public health contexts.

3.31 Procurement of Physical Evidence from an Individual's Body

As discussed, *supra*, at Section 3.11(A)(4), the procurement of physical evidence from an individual's body constitutes a search if it infringes upon an expectation of privacy that society recognizes as reasonable.

A. ***Types of Bodily Intrusions Deemed Searches.*** Indiana law has explicitly recognized the following bodily intrusions as searches subject to the protections of the Fourth Amendment of the United States Constitution and Article I, Section 11 of the Indiana Constitution:

1. **Urinalysis** (Linke, 763 N.E.2d 972 (Ind. 2002));

2. **Teeth imprints** (Wade v. State, 490 N.E.2d 1097 (Ind. 1986));

3. **Penile secretion swabs** (McClain v. State, 410 N.E.2d 1297 (Ind. 1980));

4. **Blood tests** (Id at 1300 (discussing Schmerber with approval); Hannoy, 789 N.E.2d 977 (blood tests to determine presence of alcohol); Patterson, 744 N.E.2d at 946 (DNA testing of blood sample)); and

5. **Fingernail scrapings** (McClain, 410 N.E.2d at 1300 (discussing Cupp with approval)).

B. ***Factors Relevant to Search Determination.*** In determining whether a bodily intrusion constitutes a search subject to constitutional protections, Indiana courts have considered the following factors:

1. **The degree of touching** by government officials required to obtain the physical evidence;
   a. **But probing beneath body surface not prerequisite to search.** It is not necessary that an intrusion involve probing beneath the body's surface in order to be deemed a search. *See* id. at 1300.

2. **The degree of fear, humiliation, and anxiety created** by intrusion; and

3. **The nature of information revealed** by the physical evidence. *See* id. at 1300-01.

3.32 Medical Testing

The state health commissioner and local health officers are empowered to seek the cooperation of individuals to prevent the spread of communicable diseases. In so doing, the commissioner and local health officers must implement the least restrictive, but medically necessary, procedures to protect the public's health. These procedures will vary by disease (*see* IND. ADMIN. CODE tit. 410, r. 1-2.3-52 to 1-2.3-112) and may include confirmatory and medical testing. *See* IND. ADMIN. CODE tit. 410, r. 1-2.3-51(6).

A. ***Testing for Communicable Diseases and Diseases Dangerous to Health.*** The state health commissioner, local health officer, or their authorized agents may order an individual to undergo testing and examination for a communicable disease or disease dangerous to health if:

1. The commissioner, local health officer, or authorized agent has

reasonable grounds to believe the individual may have such a disease; and

2. The individual gives his/her written, informed consent to the test or a court orders the test. IND. CODE § 16-41-6-2(a)-(c).
   a. **Standard for court order.** A court may order testing of an individual for a communicable or dangerous disease only upon finding clear and convincing evidence that the individual poses a serious and present health threat to others. IND. CODE § 16-41-6-2(c).
      i. **"Serious and present health threat" defined.** An individual is deemed to pose a "serious and present health threat" to others if:
         (A) The individual engages repeatedly in a behavior that has been demonstrated epidemiologically (as defined by rules adopted by the ISDH) to transmit a dangerous communicable disease or that indicates a careless disregard for the transmission of the disease to others;
         (B) The individual's past behavior or statements indicate an imminent danger that the he/she will engage in behavior that transmits a dangerous communicable disease to others; or
         (C) The individual has failed or refused to carry out his/her duty to warn, as described at IND. CODE § 16-41-7-1(d) and discussed, *infra*, at Section 3.44(B). IND. CODE § 16-41-7-2(a).
   b. **Individual entitled to *in camera* hearing.** The individual may request that a hearing regarding the test be held *in camera*. IND. CODE § 16-41-6-2(d).

Epidemiology: **The study of the distribution and determinants of health-related states or events in specified populations.**

EVIDENTIARY NOTE: The Court should require expert testimony on the issue of whether the crime at issue created an epidemiologically demonstrated risk of HIV transmission.

B. ***Human Immunodeficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) Testing.***

1. **Testing of individuals.** A screening or confirmatory HIV test may be performed on an individual if:
   a. The individual has consented to the test;
   b. The test is ordered by a physician who has obtained a health care consent pursuant to IND. CODE § 16-36-1;
   c. The test is ordered by a physician who has obtained an implied consent under emergency circumstances and the test is medically necessary to diagnose or treat the individual;
   d. The test is ordered by a court based on clear and convincing evidence that the individual poses a serious and present health threat to others;
   e. The test is performed as part of an anonymous epidemiologic survey;
   f. The individual is a newborn and the test is ordered by a

physician overseeing the newborn's care pursuant to the conditions described, *infra*, at Section 3.32(B)(3);

g. The test is required or authorized upon the individual's entry into a facility of the Department of Corrections pursuant to IND. CODE § 11-10-3-2.5;

h. The individual has been convicted of a sex crime that created an epidemiologically demonstrated risk of transmission of HIV and the test is ordered by a court pursuant to IND. CODE § 35-38-1-10.5(a) or IND. CODE § 35-38-2-2.3(a)(16); or

i. An alleged victim of a sex crime that created an epidemiologically demonstrated risk of HIV transmission requests that the individual charged with the crime undergo testing, and the test is ordered by a court after the court has determined, pursuant to IND. CODE § 35-38-1-10.5(a)(2), that probable cause exists to believe the requester was a victim of a sex crime committed by the charged individual. IND. CODE § 16-41-6-1.

EVIDENTIARY NOTE: The Court should require expert testimony on the issue of whether the crime at issue created an epidemiologically demonstrated risk of HIV transmission.

2. **Testing of pregnant women.** A physician or advanced practice nurse who provides prenatal care to a pregnant woman or attends at the delivery of a pregnant woman for whom there is no written documentation of an HIV test during the course of pregnancy must order a sample of the pregnant woman's blood drawn and submitted for a standard HIV diagnostic test. IND. CODE §§ 16-41-6-5, -6, -8.
   a. **Right of refusal.** A pregnant woman may refuse the HIV test ordered by a physician or advanced practice nurse. IND. CODE § 16-41-6-7.
      i. **Refusal must be in writing.** A pregnant woman's refusal of the ordered HIV test must be in writing. IND. CODE § 16-41-6-8(j).
   b. **Procedures.** A physician or nurse ordering an HIV test of a pregnant woman must inform the woman:
      i. That the physician or nurse is required by law to order the HIV test;
      ii. That the woman has a right to refuse the HIV test;
      iii. About the purposes of the HIV test; and
      iv. About the risks and benefits of the HIV test. IND. CODE § 16-41-6-8(a)-(b).
   c. **Test results confidential.** The results of an HIV test performed on a pregnant woman are confidential. IND. CODE § 16-41-6-8(g).

3. **Testing of newborns**
   a. **When permissible.** A physician overseeing the care of a newborn infant may order an HIV test for the newborn if:
      i. The mother of the newborn was not tested for HIV as

provided, *supra*, at Section 3.32(B)(2);

ii. The mother of the newborn has refused an HIV test for the newborn; and

iii. The physician believes that testing the newborn is medically necessary. IND. CODE § 16-41-6-4(a).

b. **Time limit.** An HIV test of a newborn must be ordered at the earliest feasible time and no later than forty-eight (48) hours after the newborn's birth. IND. CODE § 16-41-6-4(a).

c. **Religious exemption.** A newborn is exempt from an HIV test if a parent of the newborn objects in writing to the test for reasons pertaining to religious beliefs. IND. CODE § 16-41-6-4(f).

d. **No warrant or probable cause requirements.** Indiana law does not require a warrant or probable cause to test a pregnant woman for HIV.

e. **Procedures.** A physician ordering an HIV test of a newborn must:

i. Inform the newborn's mother of the test;

ii. Provide HIV information and counseling to the mother; and

iii. Release the test results to the mother. IND. CODE §§ 16-41-6-4(b), (d).

f. **Test results confidential.** The results of an HIV test performed on a newborn are confidential. IND. CODE § 16-41-6-4(c).

C. ***Testing for Other Sexually Transmitted Diseases.***

1. **Testing of pregnant women for syphilis.** A physician or person permitted by law to attend a pregnant woman who diagnoses a pregnancy or attends at the delivery of a pregnant woman must test the pregnant woman's blood for syphilis. IND. CODE §§ 16-41-15-10 to 16-41-15-12.

a. **Timing of test.** The syphilis test must be performed:

i. At the time of diagnosis of the pregnancy;

ii. During the third trimester of the pregnancy if the woman belongs to a high risk population for which the Centers for Disease Control and Prevention (CDC) recommends third trimester testing; and

iii. At the time of delivery, if positive evidence is not available to show a syphilis test has been previously administered. IND. CODE §§ 16-41-15-10, -12.

b. **Religious exemption.** A woman is exempt from this mandatory syphilis test if, because of her religious beliefs, she in good faith selects and depends upon spiritual means or prayer for treatment or cure of diseases. IND. CODE § 16-41-15-17(b).

c. **No warrant, probable cause, or individualized suspicion requirements.** Indiana law does not require a warrant, probable cause, or individualized suspicion to test a pregnant

woman for syphilis.

d. **No right of refusal.** Indiana law does not provide a pregnant woman with a right to refuse a syphilis test, unless that refusal is grounded in religious beliefs as described, *supra*, at Section 3.32(C)(1)(b).

D. Testing Pursuant to Exposure Notification Scheme for Emergency Medical Services Providers.

1. **Emergency medical services provider may request exposure notification.** An emergency medical services provider who has been exposed to blood or body fluids while providing emergency medical services to a patient may request notification regarding exposure to a dangerous communicable disease if the exposure was of a type that has been demonstrated epidemiologically to transmit a dangerous communicable disease. IND. CODE § 16-41-10-2(a).
   a. **"Emergency medical services provider" defined.** An emergency medical services provider is:
      i. A firefighter;
      ii. A law enforcement officer;
      iii. A paramedic;
      iv. An emergency medical technician;
      v. A licensed physician;
      vi. A licensed nurse; or
      vii. Any person who provides emergency medical services in the course of his employment. IND. CODE § 16-41-10-1.

2. **Consent of patient implied.** A patient to whose blood or body fluids an emergency medical services provider has been exposed is presumed to have consented to:
   a. Testing for the presence of a dangerous communicable disease of a type that has been epidemiologically demonstrated to be transmissible by an exposure of the kind experienced by the emergency medical services provider;
   b. Release of the test results to the medical director of the facility at which the patient was located at the time of the exposure or to which the patient was admitted following the exposure; and
   c. Notification of the test results to the emergency medical services provider. IND. CODE § 16-41-10-2(a).

3. **Procedures upon refusal of patient to provide specimen for testing.** If the patient refuses to provide a blood or body fluid specimen for testing, a court order may be sought to compel the production of such a specimen. IND. CODE § 16-41-10-2(b).
   a. **Persons who may petition for court order.** A court order to compel the production of such a blood or body fluid specimen may be sought by:

i. The exposed emergency medical services provider;
ii. The exposed provider's employer; or
iii. The ISDH. IND. CODE § 16-41-10-2(b).

b. **Courts having jurisdiction over petition to compel specimen production.** A petition to compel the production of a blood or body fluid specimen is properly filed in:
   i. The Circuit Court in the county of the patient's residence;
   ii. The Superior Court in the county of the patient's residence;
   iii. The Circuit Court in the county where the employer of the exposed provider maintains its principal office; or
   iv. The Superior Court in the county where the employer of the exposed provider maintains it principal office. IND. CODE § 16-41-10-2(b).

4. **Procedures for conducting test.** The test of the patient must be conducted as follows:
   a. **Patient located at medical facility at time of or following exposure.** A physician designated by the medical facility must obtain a blood or body fluid specimen from the patient and test that specimen within seventy-two (72) hours of notification of the exposed provider's request. IND. CODE § 16-41-10-3.
   b. **Patient not located at medical facility.** The exposed provider's employer or the ISDH must arrange for testing of the patient as soon as possible or petition a court having jurisdiction, as identified, *supra*, at Section 3.32(D)(3)(b), for an order to compel production of a specimen. Id.

5. **Limitations on conduct of personnel at medical facility conducting test.** The personnel of a medical facility conducting the test on a patient may not:
   a. Physically restrain the patient to obtain the test; or
   b. Explain information about the patient when notifying the exposed provider of a positive test result. IND. CODE §§ 16-41-10-3.5(a), -4(a), -5.

6. **Immunity of facilities and providers.** A medical facility or provider that tests a patient for the presence of a dangerous communicable disease pursuant to the procedures described, *supra*, at Section 3.32(D)(4) is immune from liability for performing the test over the patient's objection or without the patient's consent, provided such performance did not involve gross negligence or willful or wanton misconduct. IND. CODE § 16-41-10-3.5(c).

***Model Order to Take Body Substance Sample* – Available, *infra*, at Section 7.11.**

***Model Search Warrant/Order to Take Body Substance Sample by Necessary Force* – Available, *infra*, at Section 7.12.**

3.40 INFORMATION COLLECTION AND SHARING

The collection and analysis of health information is an essential function of any public health system. *See* AN INTRODUCTION TO PUBLIC HEALTH, available at Appendix A. However, the government's collection and use of personal medical information implicates both the Fourth Amendment's protections against unreasonable invasions of privacy and the Fourteenth Amendment's Due Process protections, the latter of which are addressed, *infra*, at Section 4.30.

In addition to the general principles surrounding the collection of medical information during searches of premises and persons, discussed, *supra*, at Sections 3.10 – 3.30, Indiana law contains several provisions specifically addressing the collection and distribution of personal medical information.

3.41 Public Health Surveillance

There are two types of surveillance. In *passive surveillance*, health departments gather information about disease occurrence within a population primarily through disease reporting by hospitals, physicians, and other community sources. A discussion of Indiana reporting requirements is provided *infra*, at Section 3.42. In *active surveillance*, health departments take measures to identify all cases of disease, primarily by contacting and soliciting information from physicians, hospitals, clinics, laboratories and other sources. *See* IND. ADMIN. CODE tit. 410, r. 1-2.3-2. Active surveillance is most commonly used to identify cases of infectious disease.

***Surveillance:* A type of observational study that involves continuous monitoring of disease occurrence within a population. *See* STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).**

A. *Indiana State Health Data Center.* Indiana law requires the ISDH to establish a state health data center. IND. CODE § 16-19-10-3.

1. **"Health data" defined.** For purposes of the state health data center, "health data" is information regarding:
   a. A person's health status;
   b. A person's ethnicity;
   c. A person's gender;
   d. The cost, availability and use of health resources and services; or
   e. Vital statistics and vital records. IND. CODE § 16-19-10-2.

2. **Purposes of state health data center.** The Indiana state health data center must:

NOTE: Information about the State Health Data Center may be found online at: http://www.in.gov/isdh/dataandstats/data_and_statistics.htm.

a. Collect and process health data;
b. Maintain statistics concerning gender and ethnicity and provide these statistics to ISDH annually;
c. Improve the quality, timeliness, and comparability of health statistics;
d. Analyze and disseminate information regarding the health status of Indiana residents;
e. Provide access to health data to all persons who are permitted to obtain the data; and
f. Support the goals and objectives of the Cooperative Health Statistics System established by the National Center for Health Statistics. IND. CODE § 16-19-10-3.

3. **ISDH surveys.** The ISDH may conduct surveys that:
   a. Concern the health status of Indiana residents; or
   b. Evaluate the effectiveness of ISDH programs. IND. CODE § 16-19-10-6(a).

4. **Confidential treatment of personal medical information.** Medical information collected pursuant to state health data center surveillance, an ISDH survey, or any other ISDH epidemiological investigation or study that identifies or could be used to determine the identity of an individual is confidential. IND. CODE §§ 16-19-10-6(b), -7(b).
   a. **Conditions under which confidential information may be released.** Confidential information may be released only:
      i. In a form that protects the identity of the subject individual;
      ii. If the subject individual consents in writing to the release of his/her medical information; or
      iii. If the investigation or study results in an administrative or judicial proceeding and release of the medical information is ordered by the administrative law judge or court. IND. CODE § 16-19-10-7(b)-(c).

B. ***State Immunization Data Registry.*** Indiana law authorizes the ISDH to establish an immunization data registry to collect, store, analyze, release and report immunization data. IND. CODE § 16-38-5-1.

1. **Permissible uses of registry data.** Data in the immunization registry may be used to:
   a. Assure that necessary immunizations are provided and overimmunization is avoided;
   b. Assess immunization coverage rates;
   c. Determine areas of underimmunization and other epidemiological research for disease control purposes;
   d. Document that required immunizations have been provided as mandated for school or child care admission; and

e. Accomplish other public health purposes as determined by the ISDH. IND. CODE § 16-38-5-1(b).

2. **Health care providers authorized to supply patient data to registry.** A health care provider may provide a patient's immunization data to the Immunization Data Registry for any of the purposes identified, *supra*, at Section 3.41(B)(2). IND. CODE § 16-38-5-2(a).
   a. **Right to prevent disclosure.** A patient or the guardian of a patient under eighteen (18) years of age may prevent disclosure of the patient's immunization data by filing an immunization data exemption form with the provider. Id.
      i. **ISDH to provide forms.** The ISDH must provide immunization data exemption forms and accompanying written information to all providers upon request. IND. CODE § 16-38-5-2(b)-(c).

3. **Confidential treatment of immunization data.** All data within the Immunization Data Registry is confidential. IND. CODE § 16-38-5-3(a).
   a. **Patient right of access.** The patient or the guardian of a patient under eighteen (18) years of age has a right to access the patient's immunization data upon request. IND. CODE § 16-38-5-3(b).
   b. **Persons to whom ISDH may disclose patient's immunization data.** The ISDH may release a patient's immunization data to any of the following entities, *provided* the recipient entity has executed a written agreement with the ISDH specifying it will not further disclose the data without the patient's written consent:
      i. The immunization data registry of another state;
      ii. A provider;
      iii. A local health department;
      iv. An elementary or secondary school attended by the patient;
      v. A licensed child care center in which the patient is enrolled; and
      vi. The office of Medicaid policy and planning or its contractor. IND. CODE § 16-38-5-3(c)-(d).
   c. **Summary statistics not confidential.** The ISDH may release summary immunization statistics that do not reveal the identity of an individual patient. IND. CODE § 16-38-5-3(e).

4. **Immunity of ISDH and ISDH agents.** The ISDH and its agents are immune from both criminal and civil liability for good faith disclosures of a patient's immunization data to:
   a. Provide information to the Immunization Data Registry;

b. Verify that a patient has received proper immunizations; or
c. Inform the patient or the patient's guardian of the patient's immunization status or that an immunization is due according to recommended schedules. IND. CODE § 16-38-5-4(a).

5. **Violation is Class A misdemeanor.** The knowing, intentional, or reckless disclosure of confidential information contained in the Immunization Data Registry is a Class A misdemeanor. IND. CODE § 16-38-5-4(b).

3.42 Disease Reporting/Disease Notification

Indiana law requires licensed physicians, hospital administrators, and laboratories to report confirmed and suspected cases of certain communicable diseases to local health departments. *See generally* IND. CODE § 16-41-3-2(a); IND. ADMIN. CODE tit. 410, r. 1-2.3-47. The time period in which reporting is required varies by disease and ranges from immediate reporting for the most dangerous, highly contagious diseases (*e.g.* smallpox) to up to seventy-two (72) hours for reporting of diseases that pose less of an immediate community threat (*e.g.* syphilis). *See id.*

Reportable disease/ Notifiable disease: **A disease that, by statutory requirements, must be reported to the public health or veterinary authorities when the diagnosis is made because of its importance to human or animal health. *See* STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).**

Outbreak: **A sudden rise in the number of new cases of a disease during a specified period in a specified population.**

A. ***Reporting of Communicable Diseases.***

1. **Reportable communicable diseases specifically identified in ISDH regulations.** The ISDH regulations specify those communicable diseases for which reporting is required and the time period in which the report must be made. *See generally* IND. ADMIN. CODE tit. 410, r. 1-2.3-47(d), 2-1-2.
   a. **Outbreaks of certain non-reportable diseases also require immediate reporting.** ISDH regulations mandate reporting of outbreaks of certain types of otherwise non-reportable diseases, such as food borne disease, influenza-like illness, and streptococcal illnesses. IND. ADMIN. CODE tit. 410, r. 1-2.3-47(g).
   b. **Outbreaks of potential bioterrorism threats require immediate reporting.** Outbreaks of diseases known or suspected to be bioterrorism threats must be reported immediately. IND. CODE § 16-41-3-1(b); IND. ADMIN. CODE tit. 410, r. 1-2.3-47(g)(10).
      i. **Bioterrorism disease threats defined.** ISDH regulations define diseases posing a bioterrorism threat as:
         (A) Anthrax;
         (B) Plague;
         (C) Tuleremia;
         (D) Brucella species;
         (E) Smallpox; or
         (F) Botulinum toxin. IND. ADMIN. CODE tit. 410, r. 1-2.3-

47(g)(10).

ii. **Recipients of bioterrorism threat report.** In addition to the reporting procedures provided, *infra*, at Section 3.42(A)(3)-(4), the following entities must be notified within twenty-four (24) hours of a disease outbreak that constitutes a bioterrorism threat:
(A) The ISDH;
(B) The Indiana Emergency Management Agency;
(C) The Indiana State Police;
(D) The local law enforcement agency having jurisdiction over the outbreak. IND. CODE § 16-41-3-1(c).

2. **Persons and entities having duty to report.**
   a. **Physicians and hospital administrators.** Physicians and hospital administrators have a duty to report the diseases and conditions specified in IND. ADMIN. CODE tit. 410, r. 1-2.3-47. IND. CODE § 16-41-2-2; IND. ADMIN. CODE tit. 410, r. 1-2.3-47(a).
      i. **Physician-patient privilege inapplicable.** The physician-patient privilege is waived with respect to information reported pursuant to the procedures described in this section. IND. CODE § 16-41-2-4.

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   b. **Directors of medical laboratories.** Directors of medical laboratories have a duty to report certain diseases and conditions found when examining human specimens. IND. CODE § 16-41-2-2; IND. ADMIN. CODE tit. 410, r. 1-2.3-48(a), (d).
      i. **Laboratory report does not satisfy obligation of physicians and hospital administrators.** This reporting of specimen results by laboratory personnel does not relieve physicians and hospital administrators of their reporting duties pursuant to IND. ADMIN. CODE tit. 410, r. 1-2.3-47. IND. ADMIN. CODE tit. 410, r. 1-2.3-47(a).

3. **To whom report should be made.** Reports of confirmed or suspected cases of the diseases and conditions specified in the ISDH regulations must be made to the local health officer of the jurisdiction in which the patient was examined. IND. ADMIN. CODE tit. 410, r. 1-2.3-47(b).

4. **Report contents.** A report required by the ISDH regulations must contain:
   a. The patient's full name, address, telephone number, date of birth, sex, and race and ethnicity, if available, *unless* the patient was tested anonymously in which case the report should be made using a numeric identifier code;

b. The date of onset;
c. The diagnosis;
d. Definitive diagnostic test results;
e. The name, address, and telephone number of the attending physician;
f. Other epidemiologically necessary information requested by the state health commissioner or local health officer; and
g. The name, address, and telephone number of the person completing the report. IND. ADMIN. CODE tit. 410, r. 1-2.3-47(c).

5. **Investigation required upon receipt of report.** Upon receipt of a communicable disease report, a local health officer must investigate the report. IND. ADMIN. CODE tit. 410, r. 1-2.3-49(c).
   a. **Content of investigation.** The local health officer's investigation must include:
      i. Review of laboratory and clinical data necessary for case ascertainment;
      ii. Identification of all potential means for disease acquisition, risk factors, and potential public health threats posed by the case;
      iii. Use of the findings to institute control measures to minimize the risk of disease spread; and
      iv. Written documentation of the investigation's results. IND. ADMIN. CODE tit. 410, r. 1-2.3-49(d)-(e); *see also* IND. ADMIN. CODE tit. 410, r. 1-2.3-51 to 1-2.3-112 (providing disease-specific reporting, investigation, and control measures).

6. **Confidential treatment of reported information.** Information reported as required by IND. ADMIN. CODE tit. 410, r. 1-2.3-47 or 1-2.3-48 is confidential. IND. CODE § 16-41-8-1; IND. ADMIN. CODE tit. 410, r. 1-2.3-50(a).

7. **Immunity for reporting physicians, hospital administrators, and laboratory directors.** Physicians, hospital administrators, and laboratory directors are immune from criminal, civil, administrative, or disciplinary prosecution for good faith reporting pursuant to this section. IND. CODE § 16-41-2-6.
8. **Violations.**
   a. **Failure to report.** The failure to make a report required by IND. ADMIN. CODE tit. 410, r. 1-2.3-47 or 1-2.3-48 is a Class A misdemeanor. IND. CODE § 16-41-2-8.
      i. **Reckless noncompliance.** Reckless noncompliance with the reporting requirements of IND. ADMIN. CODE tit. 410, r. 1-2.3-47 or 1-2.3-48 is a Class B misdemeanor. IND. CODE

§ 16-41-2-9(a).

b. **False report.** Any person who knowingly or recklessly makes a false report of a communicable disease is civilly liable for:
   i. Actual damages suffered by the falsely-reported patient; and
   ii. Punitive damages. IND. CODE § 16-41-2-7.

c. **Failure to protect confidential information.** The reckless, knowing, or intentional disclosure of confidential information subject to the reporting requirements of IND. ADMIN. CODE tit. 410, r. 1-2.3-47 or 1-2.3-48 is a Class A misdemeanor. IND. ADMIN. CODE tit. 410, r. 1-2.3-50(b).

B. ***Reporting of Non-Communicable Diseases.***

1. **State Cancer Registry.** All confirmed cases of cancer in Indiana residents diagnosed or treated in Indiana must be reported to the State Cancer Registry. IND. ADMIN. CODE tit. 410, r. 21-1-2(a).

2. **Persons and entities having duty to report.** The following persons and entities are subject to Indiana's cancer reporting requirements:
   a. Physicians;
   b. Dentists;
   c. Hospitals; and
   d. Medical laboratories. Id.

3. **Confidential treatment of reported information.** Information reported as required by IND. ADMIN. CODE tit. 410, r. 21-1-2(a) is confidential. IND. ADMIN. CODE tit. 410, r. 21-1-5(a).

4. **Immunity for reporting individuals and entities.** Physicians, dentists, hospital administrators, and laboratory directors are immune from both criminal and civil liability for good faith reporting pursuant to this section. IND. ADMIN. CODE tit. 410, r. 21-1-5(d).

5. **Violations.** The knowing or intentional disclosure of the identity of any patient whose confidential information is contained within the State Cancer Registry by a public employee, public official, or government contractor is a Class A misdemeanor. IND. ADMIN. CODE tit. 410, r. 21-1-5(c).

C. ***Reporting of Birth Defects.***

1. **Reportable birth defects specifically identified in ISDH regulations.** The ISDH regulations specify those birth defects for which reporting to the state Birth Problems Registry is required. *See generally* IND. ADMIN. CODE tit. 410, r. 21-3-9.

2. **Persons and entities having duty to report.** The following persons and entities are subject to Indiana's birth defects reporting requirements:
   a. Hospitals;
   b. Birthing centers;
   c. Health facilities;
   d. Physicians;
   e. Psychiatric hospitals;
   f. Dentists;
   g. Oral surgeons;
   h. Registered or licensed practical nurses;
   i. Midwives;
   j. Optometrists;
   k. Podiatrists;
   l. Chiropractors;
   m. Physical therapists;
   n. Psychologists;
   o. Local health departments; and
   p. Health maintenance organizations (HMOs). IND. ADMIN. CODE tit. 410, r. 21-3-7.

3. **Deadline for reporting of birth defects.** A report to the Birth Problems Registry must be made within sixty (60) days of diagnosis. IND. ADMIN. CODE tit. 410, r. 21-3-8(b).

3.43 Disease Investigation and Contact Tracing

Upon diagnosis of a patient infected with a communicable disease, a disease investigation begins. A trained disease investigator, who is usually an employee of the local health department, interviews the patient, the patient's family members, physicians, nurses and anyone else who may have knowledge of the patient's recent contacts and activities. The goal of this investigation is to identify persons who may have been exposed to the disease, as well as persons, animals, or places that may have been the source of the disease. Identified contacts are then screened for the disease and treated as necessary. The investigative process is ideally repeated until the source of the disease (referred to as the "index case" if a person) is identified and all known contacts have been screened.

Contact Tracing: **The use of epidemiological methods (*i.e.* statistical tools and techniques that analyze the distribution and determinants of health events in a population) to confidentially locate, counsel, and refer for medical evaluation and possible treatment those persons who have been in contact with a communicable disease carrier in a manner that provided an**

The type of contacts screened depends upon the nature of the disease in question. Investigation of a sexually transmitted disease (*e.g.* HIV/AIDS) only requires screening of the sexual partners of infected individuals. In contrast, a disease that is spread by respiratory droplets, such as tuberculosis, may require extensive screening of all casual contacts and persons in proximity to infected individuals. *See* THE

MEDICAL & PUBLIC HEALTH LAW SITE, LOUISIANA STATE UNIVERSITY LAW CTR., *Contact Tracing, at* http://biotech.law.lsu.edu/Books/lbb/x578.htm (last visited Sept. 21, 2004).

opportunity for disease transmission. *See* IND. ADMIN. CODE tit. 410, r. 1-2.3-15. A model contact tracing form is provided at Appendix D.

A. *Investigation of Communicable Disease Carriers.*

1. **Power vested in local health officer.** A local health officer must make an investigation regarding each carrier of a dangerous communicable disease in order to determine:
   a. Whether the environmental conditions surrounding the carrier require intervention to prevent the spread of the disease to others; or
   b. Whether the conduct of the carrier requires intervention to prevent the spread of the disease to others. IND. CODE § 16-41-5-2; IND. ADMIN. CODE tit. 410, r. 1-2.3-49(c)-(d).

2. **"Dangerous communicable disease" defined.** The power to conduct these communicable disease investigations applies only to those diseases identified by the ISDH as "Dangerous Communicable Diseases and Conditions" at IND. ADMIN. CODE tit. 410, r. 1-2.3-47(d). IND. CODE § 16-18-2-91.

3. **Government response.** Permissible government action with respect to communicable disease carriers is discussed, *infra*, at Sections 4.11 and 4.13.

B. *Investigation of Private Property.*

1. **Power vested in ISDH agent.** The ISDH, local health officer, or their designated agents may enter upon and inspect private property to gather information regarding the presence of infectious disease and/or the possible source or cause of infectious disease. *See* IND. CODE §§ 16-19-3-7(c), 16-20-1-21, 16-20-1-23(a), 16-41-5-1 (2003).

2. **Due Process protections.** The Due Process protections applicable to such investigations of private property are discussed, *supra*, at Section 3.21(A)(1)-(4).

3. **Remediation.** Remedial government action for property causative of disease is discussed, *infra*, at Section 4.20.

3.44 Sexual Partner Notification and the Duty to Warn

In an attempt to prevent the transmission of certain communicable diseases, Indiana law requires that individuals infected with those

diseases inform third parties of their disease status prior to engaging those third parties in personal activities scientifically proven to be associated with a high risk of disease transmission. *See generally* IND. CODE § 16-41-7.

In certain situations, Indiana law also empowers persons other than the infected individual to warn third parties. *See generally* IND. CODE §§ 16-41-7-2, -3.

A. ***Diseases Subject to Duty to Warn.*** Indiana's "duty to warn" laws apply to only the following dangerous communicable diseases:
1. Acquired immune deficiency syndrome (AIDS);
2. Human immunodeficiency virus (HIV); and
3. Hepatitis B. IND. CODE § 16-41-7-1(a).

B. ***Carriers' Duty to Warn.*** A carrier who knows he/she carries one of the dangerous communicable diseases identified, *supra*, at Section 3.44(A) has a duty to warn or cause to be warned a person at risk. IND. CODE § 16-41-7-1(d).
1. **"Person at risk" defined.** A "person at risk" is:
   a. A past or present sexual or needle sharing partner who may have engaged in high risk activity with the carrier; or
   b. A present or future sexual or needle sharing partner before engaging in high risk activity. IND. CODE § 16-41-7-1(c).

2. **"High risk activity" defined.** A "high risk activity" is sexual or needle sharing contact that has been demonstrated epidemiologically to transmit at least one of the identified dangerous communicable diseases. IND. CODE § 16-41-7-1(b).

3. **Content of the warning.** The warning conveyed to the person at risk must include:
   a. The carrier's disease status; and
   b. The need to seek health care (*e.g.* counseling and testing). IND. CODE § 16-41-7-1(d).

4. **Violations.** A carrier's reckless failure to warn a person at risk is a Class B misdemeanor. IND. CODE § 16-41-7-5(a).

EVIDENTIARY NOTE: Identifying information voluntarily given to a health officer through a voluntary contact notification program may not be used as evidence in a court proceeding to determine noncompliant behavior pursuant to IND. CODE §§ 16-41-1 to 16-41-16. *See* IND. CODE § 16-41-8-2.

C. ***Warnings by Physicians.***
1. **Permissive not mandatory.** A licensed physician who diagnoses, treats, or counsels a patient with one of the dangerous communicable diseases identified, *supra*, at Section 3.44(A) *may*:
   a. **Notify a health officer.** The physician may notify a health officer only if the physician has reasonable cause to believe:
      i. The patient is a serious and present danger to the health of

NOTE: These disclosures are consistent with HIPAA's Privacy Rule, which permits health care providers to disclose an

others, as evidenced by:

(A) The patient's repeated engagement in a behavior that has been demonstrated epidemiologically to transmit the dangerous communicable disease;

(B) The patient's repeated engagement in a behavior that indicates a careless disregard for the transmission of the dangerous communicable disease to others;

(C) The patient's past behavior or statements, which indicate an imminent danger that the patient will engage in behavior that transmits the dangerous communicable disease to others; or

(D) The patient's failure or refusal to carry out his/her duty to warn a person at risk;

ii. The patient has engaged in noncompliant behavior; or

iii. The patient is suspected of being a person at risk. IND. CODE § 16-41-7-3(b)(1).

(A) **Response of health officer.** Upon receipt of such a notification, the health officer must make an investigation of the patient as described, *supra*, at Section 3.43(A)(1). IND. CODE § 16-41-7-4(b).

individual's health information to public health authorities for purposes of disease control and prevention without the individual's authorization. ***See*** **45 C.F.R. 164.512(b), discussed** ***infra*** **at Section 4.31(B)(1).**

b. **Notify a person at risk.** The physician may notify a person at risk only if the physician:

i. Has medical verification that the patient is a carrier;

ii. Knows the identity of the person at risk;

iii. Has a reasonable belief of a significant risk of harm to the identified person at risk;

iv. Has made reasonable efforts to inform the carrier of the physician's intent to make or cause the ISDH to make a disclosure to the person at risk. IND. CODE § 16-41-7-3(b)(2).

"Person at risk" **has the same meaning in the context of physician warnings as carrier warnings, discussed** ***supra*** **at Section 3.44(B).**

c. **Notify the ISDH.** The physician may request, in writing, that the ISDH notify a person is at risk once the physician has met the requirements identified, *supra*, at Section 3.44(C)(1)(b)(i)-(iv).

i. **Response of ISDH.** Upon receipt of such a physician request, the ISDH *must* notify the person at risk unless:

(A) The ISDH determines the person has already been notified;

(B) The ISDH determines the person will be notified; or

(C) The ISDH determines the person will otherwise be made aware that he/she is a person at risk. IND. CODE § 16-41-7-4(c).

2. **Content of notification.** The notification conveyed to a health officer or person at risk must include:

a. An identification of the dangerous communicable disease

involved; and

b. In the case of a notification to a person at risk, information about available health care measures (*e.g.* testing and counseling). IND. CODE § 16-41-7-3(c).

3. **Notification distinct from reporting.** A physician who notifies a health officer or person at risk must also comply with the communicable disease reporting requirements discussed, *supra*, at Section 3.42. IND. CODE § 16-41-7-3(g).

4. **Physician-patient privilege inapplicable.** The physician-patient privilege is waived with respect to:

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a. Information disclosed pursuant to a physician notification, as provided, *supra*, at Section 3.44(C)(1)(a)-(c); and

b. Information provided about a patient's noncompliant behavior in an investigation or action brought under Indiana law. IND. CODE § 16-41-7-3(e).

5. **Immunity for notifying physicians.** Physicians are immune from criminal, civil, administrative, or disciplinary prosecution for good faith notifications made pursuant to this section. IND. CODE § 16-41-7-3(d).

a. **Immunity limited to provision of necessary information.** A physician's immunity from liability extends only to the provision of information reasonably calculated to protect an identified person who is at epidemiological risk of infection. IND. CODE § 16-41-7-3(f).

D. ***Reports by Other Individuals.***

1. **To health officer.** An individual may convey a report to a health officer concerning a person infected with one of the dangerous communicable diseases identified, *supra*, at Section 3.44(A) if the individual has reasonable cause to believe:

a. The person is a serious and present danger to the health of others, as evidenced by:

i. The person's repeated engagement in a behavior that has been demonstrated epidemiologically to transmit the dangerous communicable disease;

ii. The person's repeated engagement in a behavior that indicates a careless disregard for the transmission of the dangerous communicable disease to others;

iii. The person's past behavior or statements, which indicate an imminent danger that the patient will engage in behavior capable of transmitting the dangerous communicable disease to others; or

iv. The person's failure or refusal to carry out his/her duty to

warn a person at risk;

b. The person has engaged in noncompliant behavior; or

c. The person is suspected of being a person at risk. IND. CODE § 16-41-7-2(a)-(b).

***"Person at risk"* has the same meaning in the context of individual reports as it does in carrier warnings, discussed, *supra*, at Section 3.44(B).**

2. **Immunity for reporting individuals.** Individuals are immune from criminal, civil, administrative, or disciplinary prosecution for good faith notifications made pursuant to this section. IND. CODE § 16-41-7-2(c).

3. **Violations.** An individual who knowingly or recklessly makes a false report pursuant to this section is liable for:
   a. Actual damages suffered by the person about whom the report was made; and
   b. Punitive damages. IND. CODE § 16-41-7-2(d).

4.00 PROCEEDINGS REGARDING LIMITATIONS ON INDIVIDUAL LIBERTIES

4.10 LIMITATIONS ON THE PERSON

4.11 Isolation and Quarantine

Isolation: The separation, for the period of communicability, of known infected persons in such places and under such conditions as to prevent or limit the transmission of the infectious agent. *See* STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

***Incubation period:* The period of time between a disease agent's entry into an organism and the organism's initial display of disease symptoms. During the incubation period, the disease is developing. Incubation periods are disease-specific and may range from hours to weeks. *See* STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).**

Quarantine: The restriction of the activities of healthy persons who have been exposed to a communicable disease, during its period of communicability, to prevent disease transmission during the incubation period if infection should occur. *See* STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

Isolation and quarantine are historically-recognized public health techniques used to contain the spread of infectious diseases. *See, e.g.*, Compagnie Francaise de Navigation à Vapeur v. State Board of Health, 186 U.S. 380 (1902) (recognizing power of states to institute quarantine to protect their citizens from infectious diseases). Isolation and quarantine require the separation of infected and potentially infected persons, respectively, from the public. This separation is achieved by confinement of the infected and/or potentially infected person(s) to treatment facilities, residences, and/or other locations, depending upon the nature of the implicated disease and the available facilities. Thus, both isolation and quarantine measures may severely curtail the freedom

of persons to whom they are applied, particularly in the case of diseases characterized by prolonged incubation periods.

In many cases, individuals will voluntarily undertake isolation and quarantine procedures at the request of the state or local health department, and the Court will not be required to intervene. However, in those situations in which individuals are unwilling to undertake isolation or quarantine procedures or become noncompliant with procedures already in place, the Court's assistance may be required.

Given the inherently limiting nature of both isolation and quarantine, as well as the state of anxiety and tension likely to accompany these proceedings, the Court should be attuned to the due process, economic, and logistical concerns of those potentially subject to isolation and quarantine measures and attempt to address these concerns when issuing its orders. A checklist of issues recommended for the Court's consideration prior to the issuance of isolation and quarantine orders is provided, *infra,* at Section 4.11(B)(4)(b).

A. *General Powers of Isolation and Quarantine.*

1. **In whom powers vested.**
   a. **ISDH.** The ISDH has the power to establish quarantine and "do what is reasonable and necessary for the prevention and suppression of disease." IND. CODE § 16-19-3-9.
   b. **Local boards of health.** A local board of health may take any action authorized by law or the rules of the state department of health to control communicable diseases, including confinement of diseased individuals. IND. CODE § 16-20-1-21; IND. ADMIN. CODE tit. 410, r. 1-2.3-51(6).

2. **Implementation**
   a. **Least restrictive means.** The state health commissioner, his/her legally authorized agent, or the local health officer must implement the least restrictive but medically necessary procedures to protect the public health. IND. CODE § 16-41-9-1(a).
      i. **Least restrictive means may include isolation and/or quarantine.** An individual detained in a hospital or other facility may be placed apart from others and restrained from leaving the facility. IND. CODE § 16-41-9-6(a).

MARION COUNTY NOTE: The Marion County Health Officer (HO) is authorized to place restrictions upon the movement of infected individuals and establish quarantine of well individuals as reasonably necessary to prevent and suppress disease and until the individuals have been determined to be non-infectious. MARION COUNTY HEALTH & HOSP. CODE §§ 7-502 to 7-504.

B. *Court Proceedings.*

1. **Courts of jurisdiction.** Title 16, Article 41 of the Indiana statutes does not specify the courts of jurisdiction for proceedings brought regarding disease control. Thus, jurisdiction is vested in state courts of general jurisdiction, as discussed, *supra*, at Section

1.21(A).

2. **Types of isolation and quarantine proceedings.**
   a. **Enforcement of isolation and quarantine orders issued by public health authorities.**
      i. **Orders issued by ISDH.** The ISDH may bring a proceeding against any person against whom a final administrative order or determination has been made seeking to compel compliance with an isolation or quarantine order and/or recover a civil penalty not to exceed one thousand dollars ($1,000) per violation per day. IND. CODE §§ 16-19-3-18, 16-41-9-12(b).
         (A) **Applicability of AOPA.** As a state agency, the ISDH may issue emergency and temporary administrative orders pursuant to the Administrative Orders and Procedures Act (AOPA). IND. CODE § 4-21.5-4. The AOPA provides for both judicial review and enforcement of these orders. IND. CODE §§ 4-21.5-5, -6.
      ii. **Orders issued by local boards of health.** A local board of health or local health officer may enforce local orders by action in the circuit or superior court. IND. CODE § 16-20-1-26(a). A designated health officer may also file a petition for a non-emergency detention upon the failure or refusal of an individual who poses a serious and present health threat to comply with a health directive. IND. CODE § 16-41-9-4.
   b. **Emergency detention.**
      i. **When court order proper.** The Court may order an individual taken into custody by a health or law enforcement officer and transported to an appropriate facility for testing, treatment, and/or temporary detention if:
         (A) The individual presents a serious and present danger to health; and
            (1) **"Serious and present danger."** An individual infected with a communicable or dangerous disease is deemed a serious and present danger to the health of others when:
               (a) The individual engages repeatedly in behavior that has been demonstrated epidemiologically to transmit the disease or that indicates a careless disregard for the transmission of the disease to others;
               (b) The individual's past behavior or statements indicate an imminent danger that he/she will engage in behavior capable of transmitting the disease to others; or
               (c) The individual has been diagnosed with Acquired

NOTE: The individual subject to the isolation or quarantine order should be permitted to appear at all hearings, present evidence, and cross-examine witnesses. In the event the individual's presence in the courtroom itself poses a public health threat, the court should preserve these rights to the extent maximally possible using the procedures discussed, *infra*, at Section 5.10.

Immune Deficiency Syndrome (AIDS), Human Immunodeficiency Virus (HIV), or Hepatitis B and has failed or refused to carry out his/her duty to warn those at risk, as discussed, *supra*, at Section 3.44(B). IND. CODE §§ 16-18-2-328, 16-41-7-2(a).

(B) Irreparable harm is likely to result to others if the individual is not immediately prevented from engaging in activities that pose a serious and present danger to health. IND. CODE §§ 16-41-9-11(a), (d).

ii. **Burden of proof.** The state must prove that *probable cause* exists to believe the individual presents a "serious and present danger" to health. IND. CODE § 16-41-9-11(d).

iii. ***Ex parte* proceedings.** Orders may be issued in an *ex parte* proceeding provided the state offers a sufficient affidavit from the designated health official. IND. CODE § 16-41-9-11(c).

(A) **Sufficiency of affidavit.** The affidavit must set forth the specific facts justifying the state's request for detention. IND. CODE § 16-41-9-11(c).

iv. **Continuation of emergency detentions.**

(A) **Timing of continuation proceedings.** An individual held pursuant to an emergency detention order is entitled to a court hearing addressing the continuation of the hold within seventy-two (72) hours. IND. CODE § 16-41-9-11(e).

(B) **Notice of continuation proceedings.** Notice of the continuation hearing must be served on the individual at least twenty-four (24) hours before the hearing. IND. CODE § 16-41-9-11(f).

(1) **Contents of notice.** The notice must specify:

(a) The time, date, and place of the hearing;

(b) The grounds and underlying facts supporting the request for a continuation hold;

(c) The individual's right to appear at the hearing and cross-examine witnesses; and

(d) The individual's right to court appointed counsel if indigent. IND. CODE § 16-41-9-11(f).

(C) **Court order.** Following the hearing, the Court may order continuation of an emergency detention if the state proves, by *clear and convincing evidence*, that the release of the individual would pose an imminent health threat to others. IND. CODE § 16-41-9-11(g).

(D) **Limits on emergency detentions.** A continued emergency hold may last no longer than five (5) days. If further detention is necessary, the state must

file a petition for a non-emergency detention pursuant to the procedures described, *infra*, at Section 4.11(C). A hearing on the non-emergency detention petition must be held within five (5) days of its filing. IND. CODE § 16-41-9-11(g).

c. **Non-emergency detention.**

i. **When court order proper.** The Court may order restrictions upon an individual, including isolation, when:

(A) The individual has been diagnosed as having a communicable disease or other disease dangerous to health; and

(B) The state health commissioner, the state health commissioner's legally authorized agent, or the local health officer determines that the individual poses "a serious and present danger" to the health of others. IND. CODE § 16-41-9-1(a).

***"Serious and present danger"* has the same meaning when used in the context of non-emergency detentions as in emergency detentions.**

ii. **Burden of proof.** The state must prove the individual is a serious and present danger to the health of others by *clear and convincing evidence*. IND. CODE § 16-41-9-1(a)(3).

iii. ***In camera* proceedings.** Hearings regarding non-emergency detentions must be conducted *in camera* upon the individual's request. IND. CODE § 16-41-9-1(b).

3. **Provision of counsel.**

a. **Indigent individuals.** An indigent individual is entitled to court appointed counsel at hearings on the state's petitions for non-emergency detentions and continuations of emergency detentions. IND. CODE §§ 16-41-9-2, -11(f)(4).

4. **Enforcement of court orders.**

a. **Injunction appropriate.** The Court may enforce its order or determination by injunction. IND. CODE § 16-19-3-18(a).

b. **Further considerations prior to issuance of order.** The Court should undertake the following, additional considerations prior to issuing an order of isolation or quarantine. To the extent possible, these considerations should be addressed in the Court's order(s).

NOTE: A recent study has indicated that at least some of these considerations influence the likelihood of public compliance with emergency plans intended to protect the public's health, such as administration of the smallpox vaccine. *See* R. D. Lasker, *Redefining Readiness: Terrorism*

- Has sufficient scientific evidence been introduced to support issuance of the order? An isolation or quarantine order should only be issued when an individual appears to be suffering from a serious disease capable of being easily transmitted from person-to-person. The government entity seeking the order must show, by *clear and convincing evidence*, that the individual poses a risk to the public's health sufficient to necessitate deprivation of that

individual's liberty. *Cf.* Addington v. Texas, 441 U.S. 418 (1979) (holding Fourteenth Amendment requires "clear and convincing" evidence standard in context of indefinite commitment of individual to a state mental hospital pursuant to state law; "In cases involving individual rights, whether criminal or civil, the standard of proof at a minimum reflects the value society places on individual liberty….We conclude that the individual's interest in the outcome of a civil commitment proceeding is of such weight and gravity that due process requires the state to justify confinement by proof more substantial than a mere preponderance of the evidence." (Internal citations omitted.)).

***Planning Through the Eyes of the Public* (N.Y. Acad. Med., 2004), *available at* http://www.cacsh.org/eptpp.html.**

In the event the disease at issue is a newly-emerging disease, much of this scientific information may be unknown. That scientific details may be unknown will not necessarily prevent the state from meeting the clear and convincing standard of proof, as the standard measures not the scientific data itself but the ability of that data to be reasonably interpreted as evidence of a public health threat justifying government action. *Cf.* id. at 429 ("[T]he factual aspects represent only the beginning of the inquiry. Whether the individual is mentally ill and dangerous to either himself or others and is in need of confined therapy turns on the *meaning* of the facts which must be interpreted by expert psychiatrists and psychologists." (Emphasis in original.))

In the context of newly-emerging diseases, the order should both reflect available scientific information and identify knowledge gaps in order to preserve all available testimony and information for appellate review.

- □ Were all parties granted access to the available scientific evidence to the extent reasonably possible?

- □ Will the individual be confined in an appropriate medical facility (hospital, residence, etc.) and not a jail or other punitive environment?

- □ Does the order specify an appropriate period of confinement? This period should be based upon a disease-specific incubation period, as identified by a certified health professional or other competent witness, and be no longer than necessary.

In the event the individual is already exhibiting physical

symptoms of a disease, the period of confinement is less likely to be a disputed issue as it will coincide in duration with the period of necessary medical treatment.

In the event the disease at issue is a newly-emerging disease, the incubation period may be unknown. In such a case, the court should issue an order confining the individual for a period of time based upon the incubation period of the communicable disease most closely resembling the disease at issue, as established by the testimony of qualified experts, AND require the public health authority to report to the court with additional scientific information to extend or modify the ordered period of confinement.

- □ Does the order satisfactorily address the provision of food, medicine, and other necessities to the individual during his/her detention?

- □ Does the order adequately address the care and support of the individual's dependents during the confinement?

- □ Has the Court considered the impact of the confinement on the individual's financial livelihood and employment?

- □ Has the Court considered any unique cultural or personal circumstances of the individual?

- □ Who will bear the costs associated with the individual's confinement and treatment? *See* IND. CODE § 16-41-9-13.

- □ Has the Court considered the means by which the confinement will be enforced in the event the individual becomes uncooperative? For example, what level of force should be used by law enforcement personnel to enforce the order? Is the use of deadly force appropriate to maintain the individual's confinement? To the extent possible, the Court should instruct appropriate personnel as to implementation and enforcement of the order.

***Model Summons for Individual to Appear at Hearing Regarding Court Enforcement of Isolation or Quarantine Order* – Available, *infra*, at Section 7.21.**

***Model Order for Isolation of Individual Pursuant to IND. CODE § 16-20-1-21 (Including Findings of Fact and Conclusions)* – Available, *infra*, at Section 7.22.**

***Model Order for Quarantine of Individual Pursuant to IND. CODE § 16-20-1-21 (Including Findings of Fact and Conclusions) –* Available*, infra*, at Section 7.23.**

***Model Order for Non-Emergency Isolation of Individual Pursuant to IND. CODE § 16-41-9-1 (Including Findings of Fact and Conclusions) –* Available*, infra*, at Section 7.24.**

5. **Termination of court orders.**
   a. **Upon filing of sufficient report.** The Court may order release of an individual from confinement upon receipt of a report from the designated health official indicating that the individual no longer poses a danger to the health of others. IND. CODE § 16-41-9-8.

C. ***Special Populations.***

1. **Nonresident indigent individuals.** A hospital or facility administrator may order a nonresident indigent individual that has a dangerous contagious disease transported to his/her state or county of residence if able to travel. If the individual is unable to travel, he may be hospitalized until such time as he is able to do so. IND. CODE § 16-41-9-10(a).
   a. **Financial responsibility.** The individual is responsible for all costs associated with his/her hospitalization and/or transportation. The state is responsible for those costs the individual is unable to pay. IND. CODE § 16-41-9-10(b).

2. **Mentally ill individuals.** A designated health official may request immediate or emergency detention of a mentally ill individual with a dangerous communicable disease pursuant to IND. CODE § 12-26-4 or 12-26-5 if that official has reasonable grounds to believe the individual is mentally ill and either dangerous or gravely disabled. IND. CODE § 16-41-9-5.

3. **Students.** A local health officer may exclude a student with a dangerous communicable disease from school if the disease is transmissible through normal school contacts or the student poses a substantial threat to the health and safety of the school community. IND. CODE § 16-41-9-3(a).
   a. **No right to court proceedings.** The executive board of the state health department has final authority over appeals from determinations made by the local health officer regarding the exclusion of students. IND. CODE § 16-41-9-3(c).

D. ***Violations.***

1. **Class B misdemeanor.** Reckless violation or failure to comply with the provisions of Indiana law addressing disease control constitutes a Class B misdemeanor. IND. CODE § 16-41-1-3(a).
   a. **Separate offenses.** Each day a violation continues constitutes a separate offense. Id.

4.12 Civil Commitment

"Civil commitment" is a term commonly used to refer to the voluntary or involuntary commitment of a mentally ill individual to a treatment facility. *See* STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); *see also* IND. CODE § 12-26-1-1. In Indiana, an individual suffering from alcoholism, incapacitation due to alcohol, or drug addition may also be civilly committed. IND. CODE § 12-23-11-1.

In many cases, individuals will voluntarily commit themselves to treatment facilities for mental illness or substance abuse. However, in those situations in which individuals are unwilling or unable to undertake voluntary commitment, the Court may be requested to issue a civil commitment order.

Given the severe impact of compulsory civil commitment on an individual's liberty, the Court should order the least restrictive commitment procedures necessary.

NOTE: Indiana's civil commitment laws provide extensive due process protections for individuals subject to their provisions. This Bench Book recommends that the Court consider these due process protections instructive in the context of isolation and quarantine, given that similar liberty interests are at stake in both types of proceedings.

A. ***Detention of Individual Prior to Court Proceedings Regarding Commitment.***

1. **Detention of individual prior to proceedings.** Upon the filing of a petition for commitment of an individual or a report by the superintendent of a facility refusing to release a voluntarily-admitted individual, the individual may be detained in an appropriate facility by:
   a. An order of the Court pending a hearing; or
   b. Pending an order of the Court in a preliminary or final hearing for temporary or regular commitment or a hearing regarding the refusal of a facility to release a voluntarily-admitted individual. IND. CODE § 12-26-1-8.

B. ***Court Proceedings.***

1. **Jurisdiction.** The following Indiana courts have jurisdiction over civil commitment proceedings:
   a. Courts with probate jurisdiction;
   b. A superior court in a county in which the circuit court has exclusive probate jurisdiction;
   c. A mental health division of the Marion superior court to the extent permissible pursuant to applicable statutes; and

d. A juvenile court if the proceedings involve a child. IND. CODE §§ 12-26-1-2, -4.

2. **Civil proceedings.** Commitment proceedings are conducted as civil proceedings pursuant to the Indiana Rules of Trial Procedure. IND. CODE § 12-26-1-6.

3. **Types of commitment proceedings.**
   a. **Immediate detention.**
      i. **Initiation.**
         (A) **By whom.** A law enforcement officer may apprehend and transport to a treatment facility any individual reasonably believed to be:
            (1) Mentally ill;
            (2) Dangerous; and
            (3) In immediate need of hospitalization and treatment. IND. CODE § 12-26-4-1.
         (B) **Written statement required.** The law enforcement officer who transports an individual to a facility must file a written statement containing the basis for the officer's actions with:
            (1) The facility to which the individual was transported; and
            (2) The appropriate court if charges against the individual are filed. IND. CODE §§ 12-26-4-2, -3.
      ii. **Further detention.**
         (A) **Application for emergency detention required to detain individual longer than twenty-four (24) hours.** Within twenty-four (24) hours of an individual's admission to a treatment facility by a law enforcement officer, the superintendent of the facility or an attending physician must file an application for emergency detention in order to detain the individual for longer than twenty-four (24) hours. IND. CODE §§ 12-26-4-5, -6.
      iii. **Termination.**
         (A) **Upon determination by superintendent or attending physician.** An individual transported to a facility for immediate detention must be discharged if either the superintendent of the facility or the attending physician believes detention is no longer necessary. IND. CODE § 12-26-4-7.
         (B) **After twenty-four (24) hours.** Unless further detention proceedings are initiated, the individual must be released twenty-four (24) hours after being admitted to the facility. IND. CODE § 12-26-4-5.

b. **Emergency detention.** An individual may be detained in an appropriate facility for not more than seventy-two (72) hours upon filing of written application for detention with the facility. IND. CODE § 12-26-5-1.

i. **Initiation.**

(A) **By whom.** The superintendent of a treatment facility or an attending physician may petition the Court for emergency detention of an individual. IND. CODE § 12-26-4-6.

(B) **Application contents.** The application must contain:

(1) A statement of the applicant's belief that the individual is:

(a) Mentally ill and either dangerous or gravely disabled, and

(b) In need of immediate restraint; and

(c) A statement by at least one (1) physician that the individual may be mentally ill and either dangerous or gravely disabled. IND. CODE § 12-26-5-1(b).

(i) The physician's statement must be based on an examination or information given to him. IND. CODE § 12-26-5-1(b)(2).

(C) **Execution of application for detention.** A judicial officer authorized to issue warrants for arrest in the county in which the individual is present must endorse the application for emergency detention. Once this endorsement is obtained, a police officer may take the individual into custody and transport him to a facility. IND. CODE § 12-26-5-2(a).

(1) **Expense borne by county.** The expenses associated with this transportation are borne by the county in which the individual is present. IND. CODE § 12-26-5-2(b).

ii. **Further detention.**

(A) **Report to Court required.** The superintendent or an attending physician must make a written report to the Court prior to the end of the emergency detention period. IND. CODE § 12-26-5-5.

(1) The report must contain:

(a) A statement that the individual has been examined; and

(b) A statement as to whether there is probable cause to believe the individual is mentally ill, either dangerous or gravely disabled, and in need of continuing care and treatment. Id.

(2) Within twenty-four (24) hours after receiving the

report, the Court must:
(a) Order the individual released;
(b) Order the individual's continued detention pending a preliminary hearing; or
(c) Order the individual's continued detention pending a final hearing. IND. CODE § 12-26-5-9.

(B) **Preliminary hearing.** A preliminary hearing ordered in response to a filed report must be held within two (2) days of the order's issuance. Id.

(1) **Oral testimony required.**
(a) Oral testimony of at least one (1) witness subject to cross-examination is required at the preliminary hearing for the Court to order the further detention of the individual. IND. CODE § 12-26-5-10(b).
(i) At least one (1) witness must have personally observed the individual and testify to facts supporting a finding that there is probable cause to believe the individual is in need of further detention. IND. CODE § 12-26-5-10(b)(2).

(2) **Statement of non-present physician admissible.** The statement of a physician may be admitted into evidence despite the lack of the physician's presence at the hearing. IND. CODE § 12-26-5-10(a).

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(3) **Burden of proof.** The Court may order the individual further detained only if the petitioner proves there is probable cause to believe the individual is in need of such further detention. IND. CODE § 12-26-5-10(c)-(d).

(4) **Detention pending further proceedings.** If the court finds probable cause to believe the individual is in need of further detention, the Court must order the detention of the individual in an appropriate facility pending further proceedings. IND. CODE § 12-26-5-10(d).

(C) **Final hearing required.** A final hearing must be held within two (2) days of a court's order in response to a filed report or within ten (10) days of a preliminary hearing at which probable cause was found to believe the individual was in need of further detention. The hearing is held to determine whether the individual should be placed in temporary or regular commitment. IND. CODE §§ 12-26-5-9, -11(a).

(1) **Oral testimony of examining physician required.** Oral testimony of at least one (1) physician who has

personally examined the individual is required for the Court to order temporary or regular commitment of the individual. IND. CODE § 12-26-5-11(b).

(a) **Individual may waive testimony requirement.** The individual may knowingly and voluntarily waive this physician testimony requirement. IND. CODE § 12-26-5-11(b).

(2) **Prior commitment history relevant to Court order.** The Court may order regular detention of the individual only if he/she has previously been the subject of a commitment proceeding. IND. CODE § 12-26-5-11(c)-(d).

iii. **Termination.**

(A) **Upon determination by superintendent or attending physician.** An individual detained in a facility pursuant to an application for emergency detention must be discharged if either the superintendent of the facility or the attending physician determines there is not probable cause to believe the individual is mentally ill and either dangerous or gravely disabled. IND. CODE § 12-26-5-4.

(1) **Written report to Court required prior to discharge.** Upon making such a determination, the superintendent or attending physician must make a written report to the Court, stating:

(a) The individual has been examined; and

(b) There is not probable cause to believe the individual is mentally ill and either dangerous or gravely disabled and in need of continuing care and treatment. IND. CODE §§ 12-26-5-4, -5.

(2) **Court orders discharge.** Upon receiving a report indicating there is not probable cause to believe the individual is in need of continuing care and treatment, the Court must order the individual discharged. IND. CODE §§ 12-26-5-6, -9.

(B) **Upon Court order despite receipt of contrary determination in report by superintendent or attending physician.** Upon receiving a report from the superintendent of the facility where the individual is detained or the attending physician indicating there is probable cause to believe the individual is in need of continuing care and treatment, the Court may nonetheless order the individual discharged. IND. CODE § 12-26-5-9(a)(1).

(C) **Following preliminary or final hearing at which Court determines probable cause does not exist.** The individual must be immediately discharged if the Court

does not find probable cause to believe the individual is in need of continuing care and treatment following a preliminary or final hearing. IND. CODE §§ 12-26-5-10(c), -11.

(D) **After seventy-two (72) hours.** The individual may not be detained in the facility for longer than seventy-two (72) hours unless the Court orders the individual held pending a preliminary or final hearing. IND. CODE §§ 12-26-5-1(a), -7.

c. **Temporary commitment.** An individual alleged to be mentally ill and either dangerous or gravely disabled may be the subject of temporary commitment proceedings capable of resulting in commitment of the individual to a facility for not more than ninety (90) days. IND. CODE § 12-26-6-1.

i. **Initiation.**

(A) **By whom.** The superintendent of a facility to which an individual voluntarily committed himself (IND. CODE § 12-26-3-5), a court having jurisdiction over an individual following an emergency detention, or any person over eighteen (18) years of age may petition the Court for temporary detention of an individual. IND. CODE § 12-26-6-2.

(B) **Petition contents.** If a petition is filed for temporary commitment of an individual, the petition must include the written statement of a physician, indicating:

(1) The physician examined the individual within the past thirty (30) days; and

(2) The physician believes the individual is mentally ill and either dangerous or gravely disabled and in need of custody, care, or treatment at an appropriate facility. IND. CODE § 12-26-6-2(b).

(C) **Venue for temporary commitment proceedings.** A petition for temporary commitment of an individual must be filed in a court having jurisdiction in the county where the individual resides or may be found. IND. CODE § 12-26-6-2(a)(3) (2003).

ii. **Hearing required.** An individual subject to temporary commitment proceedings is entitled to a hearing. IND. CODE § 12-26-6-4.

(A) **Timing of proceedings.**

(1) **Identification of hearing date upon initiation of temporary commitment proceedings.** The Court must set a hearing date within seventy-two (72) hours of the initiation of temporary commitment proceedings. IND. CODE § 12-26-6-4(a).

(2) **Hearing date.**

(a) **Proceedings initiated by superintendent or court having jurisdiction pursuant to emergency detention.** A temporary commitment hearing must be held within ten (10) days of the request of a superintendent or order of a court having jurisdiction of the individual's emergency commitment proceedings. IND. CODE § 12-26-6-4(c).

(b) **Proceedings initiated by petition.** A temporary commitment hearing must be held more than one (1) but less than fourteen (14) days from the date of notice. IND. CODE § 12-26-6-4(b).

(B) **Notice of hearing.** Adequate notice of a temporary commitment hearing, including the time, place, and date of the hearing, must be given to:

(1) The individual;

(2) The petitioner; and

(3) The superintendent or chief executive officer of a facility having care or custody of the individual. IND. CODE §§ 12-26-2-2(b)(1), 12-26-6-3.

(C) **No right to change of venue.** Neither the individual nor the petitioner is entitled to a change of venue from the county in temporary commitment proceedings. IND. CODE § 12-26-2-4.

(D) **Location of proceedings.**

(1) **Hearing site.** The Court may hold the hearing at a facility or other suitable place not likely to have a harmful effect on the individual's health or well-being. IND. CODE § 12-26-6-5.

(E) **Right of individual to be present at proceedings.** The individual has a right to be present at proceedings related to his/her temporary commitment. IND. CODE § 12-26-2-2(b)(3).

(1) **Power of Court to limit presence.** The Court may:

(a) Remove the individual from proceedings if the individual is disruptive; or

(b) Waive the individual's presence if such presence would be injurious to the individual's mental health or well-being. Id.

(F) **Right of all interested persons to testify.** The individual, the petitioner, and all interested persons must be given an opportunity to testify at temporary commitment proceedings. IND. CODE § 12-26-2-3(b).

(G) **Right of individual and petitioner to offer and cross-examine witnesses.** Both the individual and the petitioner may present and cross-examine witnesses at

temporary commitment proceedings. IND. CODE § 12-26-2-3(c).

(H) **Right of individual and petitioner to change of judge.** Both the individual and the petitioner have a right to a change of judge in temporary commitment proceedings. IND. CODE § 12-26-2-4.

(I) **Court may order physician examination.** The Court may appoint a physician to examine and provide the Court with an opinion regarding the individual's condition prior to the hearing. IND. CODE § 12-26-6-6.

(1) **Court not bound by report contents.** If a physician's report filed with the Court indicates the individual is not dangerous or gravely disabled, the Court may, but need not necessarily, terminate the proceedings. IND. CODE § 12-26-6-7.

(J) **Findings necessary to support order of temporary commitment.** The Court may order an individual temporarily committed for a period not to exceed ninety (90) days only if the Court finds the individual is mentally ill and either dangerous or gravely disabled. IND. CODE § 12-26-6-8(a).

(1) **Burden of proof.** The petitioner must prove by *clear and convincing evidence* that the individual is mentally ill and either dangerous or gravely disabled and that detention or commitment of the individual is appropriate. IND. CODE §§ 12-26-2-5(a), (e); *see also* Addington, 441 U.S. at 431-33 (holding Fourteenth Amendment requires "clear and convincing" evidence standard in context of indefinite commitment of individual to a state mental hospital pursuant to state law).

iii. **Court order.**

(A) **Facilities for temporary commitment.** The Court may order an individual temporarily committed to:

(1) An appropriate facility; or

(2) An outpatient treatment program (IND. CODE § 12-26-14). IND. CODE § 12-26-6-8(a).

(B) **Treatment plan required.** The superintendent of the treatment facility or an attending physician is required to file a treatment plan with the Court within fifteen (15) days of the individual's admission to the facility. IND. CODE § 12-26-6-8(b).

(C) **Note unique requirements when certain facilities are used for temporary commitment purposes.** When an individual is committed to a state institution administered by the division of mental health and

addiction, the Larue D. Carter Memorial Hospital, or a state institution administered by the division of disability, aging, and rehabilitative services, unique admissions procedures apply. IND. CODE § 12-26-6-8(c)-(f).

(D) **Filing of final report.** The superintendent of the facility or attending physician must file a final report with the Court at least twenty (20) days before the end of any temporary commitment period. IND. CODE § 12-26-6-11.

(1) **Report contents.** The report must indicate:

(a) The mental condition of the individual;

(b) Whether the individual is dangerous or gravely disabled; and

(c) Whether the individual needs continuing care and treatment in a facility for a period of more than ninety (90) days. Id.

iv. **Further proceedings.**

(A) **Additional ninety (90) day period.** An individual's commitment may be extended for one (1), additional period of not more than ninety (90) days through temporary commitment proceedings as described above. IND. CODE § 12-26-6-10(a).

(1) **Timing of extension hearing.** A hearing for extension of a temporary commitment period must be held before the end of the initial commitment period. IND. CODE § 12-26-6-10(e).

(2) **Report indicating individual's continuing need for custody, care, and/or treatment required.** Additional proceedings are commenced upon the filing with the Court of a report stating the individual's continued need for custody, care, and/or treatment by the superintendent of a facility or an attending physician. IND. CODE § 12-26-6-10(c).

(3) **When order of extension appropriate.** The Court may order an individual's temporary commitment extended for one (1) additional period not to exceed ninety (90) days if the Court finds the individual is:

(a) Mentally ill and either dangerous or gravely disabled; and

(b) In need of continuing custody, care, or treatment. IND. CODE § 12-26-6-10(h).

v. **Termination.**

(A) **Upon determination of appointed physician.** If a court appointed physician examines the individual and reports the individual is not either dangerous or gravely

disabled, the Court may dismiss the petition for temporary commitment. IND. CODE §§ 12-26-6-6, -7.

(B) **Following hearing at which Court determines that clear and convincing evidence does not exist.** If, at the hearing regarding the petition for temporary commitment, the petitioner fails to prove by clear and convincing evidence that the individual is mentally ill and either dangerous or gravely disabled, the court must order the individual released. IND. CODE §§ 12-26-6-8(a), 12-26-2-5(a).

(C) **Upon determination of superintendent or attending physician.** The superintendent of the facility to which the individual has been committed or the attending physician may discharge the individual prior to the end of the temporary commitment period if either the superintendent or the attending physician determines the individual is neither mentally ill nor dangerous or gravely disabled. IND. CODE § 12-26-6-9(a).

(1) **Notification to Court required.** Upon such a discharge, the superintendent or attending physician must notify the Court, which then enters an order terminating the commitment. IND. CODE § 12-26-6-9(b).

(2) **Inapplicable if Court has required notice to other persons prior to discharge.** The superintendent or attending physician may not discharge the individual if the Court has entered an order requiring notice of discharge to the petitioner or other person. IND. CODE § 12-26-6-9(a).

(D) **Upon expiration of commitment period or ninety days, whichever is shorter.** The individual must be released upon expiration of the period ordered by the Court, which may not exceed ninety (90) days, unless a petition is filed for extended commitment pursuant to IND. CODE § 12-26-6-10. IND. CODE § 12-26-6-1.

d. **Regular detention.** An individual may be the subject of regular commitment proceedings capable of resulting in the commitment of the individual to a facility for greater than ninety (90) days if the individual is alleged to be mentally ill and either dangerous or gravely disabled and is reasonably expected to require custody, care, or treatment in a facility for more than ninety (90) days. IND. CODE § 12-26-7-1.

i. **Initiation.**

(A) **By whom.** Any of the following individuals may petition the Court for regular commitment of an individual:

(1) A health officer;
(2) A police officer;
(3) A friend of the individual;
(4) A relative of the individual;
(5) A spouse of the individual
(6) A guardian of the individual;
(7) A superintendent of a facility at which the individual is present;
(8) A prosecuting attorney in a case in which the individual is found non-responsible by reason of insanity pursuant to IND. CODE § 35-36-2-4; or
(9) A prosecuting attorney or attorney for a county officer in a juvenile proceeding in which the juvenile is believed to be mentally ill pursuant to IND. CODE § 31-34-19-3. IND. CODE § 12-26-7-2(b).

(B) **Petition contents.** A petition filed for regular commitment of an individual must include the written statement of a physician, indicating:
(1) The physician examined the individual within the past thirty (30) days; and
(2) The physician believes the individual is mentally ill and either dangerous or gravely disabled and in need of custody, care, or treatment at an appropriate facility for a period expected to be more than ninety (90) days. IND. CODE § 12-26-7-3(a).

ii. **Hearing required.** An individual subject to regular commitment proceedings is entitled to a hearing. IND. CODE § 12-26-7-4.

(A) **Hearing must be held before current commitment period expires.** If the individual is currently under a commitment order, the hearing for regular commitment must be held prior to the expiration of the current commitment period. IND. CODE § 12-26-7-4(b).
(1) **Notice of hearing for individual under current commitment.** Notice of a hearing for an individual currently under a commitment order must be given to the individual and all other interested parties at least five (5) days before the hearing date. IND. CODE § 12-26-7-4(b).

(B) **Hearing procedures identical to those for temporary commitment proceedings.** The procedures for regular commitment proceeding are identical to those described for temporary commitment proceedings, *supra*, at Section 4.12(B)(3)(c)(ii). IND. CODE § 12-26-7-4(d).

(C) **Rights identical to those for temporary commitment proceedings.** The rights of an individual subject to a

regular commitment proceeding are identical to those described for temporary commitment proceedings, *supra*, at Section 4.12(B)(3)(c). IND. CODE § 12-26-7-4(c).

(D) **Findings necessary to support order of regular commitment.** The Court may order an individual committed for a period greater than ninety (90) days only if the Court finds the individual is mentally ill and either dangerous or gravely disabled. IND. CODE § 12-26-7-5(a).

(1) **Burden of proof.** The petitioner must prove by *clear and convincing evidence* that the individual is mentally ill and either dangerous or gravely disabled and that detention or commitment of the individual is appropriate. IND. CODE § 12-26-2-5(a), (e); *see also* Addington, 441 U.S. at 431-33 (holding Fourteenth Amendment requires "clear and convincing" evidence standard in context of indefinite commitment of individual to a state mental hospital pursuant to state law).

iii. **Order of commitment.**

(A) **Facilities for regular commitment.** The Court may order an individual committed to:

(1) An appropriate facility; or

(2) An outpatient treatment program. IND. CODE § 12-26-7-5(a).

(B) **Note unique requirements when certain facilities are used for regular commitment purposes.** When an individual is committed to a state institution administered by the division of mental health and addiction, the Larue D. Carter Memorial Hospital, or a state institution administered by the division of disability, aging, and rehabilitative services, unique admissions procedures apply. *See* IND. CODE § 12-26-7-3(b)-(e).

iv. **Termination.**

(A) **Following hearing at which Court determines that clear and convincing evidence does not exist.** If, at the hearing regarding the petition for regular commitment, the petitioner fails to prove by clear and convincing evidence that the individual is mentally ill and either dangerous or gravely disabled, the court must order the individual released. IND. CODE §§ 12-26-7-5(a), 12-26-2-5(a).

(B) **Upon discharge from the facility or release from the therapy program.** The Court's order of commitment

terminates upon discharge of the individual from the facility or therapy program to which he was committed. IND. CODE § 12-26-7-5(b)(1).

(C) **Upon entry of Court order terminating the commitment.** A Court order terminating the commitment or releasing the individual from therapy ends the commitment period. IND. CODE § 12-26-7-5(b)(2).

4. **Provision of Counsel**
   a. **Indigent individuals.** An indigent individual is entitled to court appointed counsel during proceedings regarding temporary commitment, regular commitment, review of commitment orders, and opposition to an individual's release from commitment. IND. CODE §§ 12-26-2-5(a), (c).
   b. **Non-indigent individual may be represented by counsel.** An individual who is the subject of commitment proceedings may be represented by counsel, but the Indiana statutes make no provision for court appointed counsel for other than indigent individuals. IND. CODE § 12-26-2-2(b)(4).
   c. **Petitioner may be represented by counsel.** A petitioner may be represented by counsel, but the Indiana statutes make no provision for court appointed counsel for petitioners. IND. CODE § 12-26-2-5(b).

5. **Implementation of the Court's Commitment Orders and Judicial Oversight of Commitment**
   a. **Placement pending facility admission.** The Court may order temporary placement of an individual in the least restrictive suitable facility pending the individual's admission to a facility. IND. CODE § 12-26-10-2.
      i. **Confinement to jail rarely appropriate.** Pending admission to a facility, an individual may only be confined in a county jail if:
         (A) The individual is found to be dangerous and violent;
         (B) There is no other suitable facility available; and
         (C) A court so orders. IND. CODE § 12-26-10-3.
      ii. **Consultation with facility superintendent or attending physician required.** If an individual is committed to a facility, the Court must consult with the facility superintendent or attending physician regarding care of the individual prior to admission. IND. CODE § 12-26-10-1.
   b. **Transfer of individual.**
      i. **When permissible.** An individual who has been temporarily or regularly committed to a facility, may be transferred to another appropriate facility (*see* IND. CODE §

12-26-11-1 for list) if:
(A) The transfer is ordered by the superintendent of the facility to which the individual was committed; and
(B) The transfer is likely to be in the best interest of the individual or other patients. IND. CODE § 12-26-11-1.

ii. **Provision of medical records to recipient facility.** A copy of the individual's current medical and treatment records must be provided to the facility to which the individual is transferred. IND. CODE § 12-26-11-3.

iii. **Notice.** The transferring facility shall give written notice of the individual's transfer to each of the following:
(A) The individual's legal guardian;
(B) The individual's parents;
(C) The individual's spouse; and
(D) The individual's attorney, if any. IND. CODE § 12-26-11-4.

iv. **Rights of individual upon transfer.** Within thirty (30) days of a transfer, the transferred individual may petition the committing court for an order setting aside the transfer and returning the individual and his/her records to the facility to which the individual was originally committed. IND. CODE § 12-26-11-6.

v. **Rights of individual upon transfer to substantially more restrictive environment.** Upon transfer of an individual to a substantially more restrictive environment, the transferring facility must provide the individual with an opportunity for an administrative hearing within ten (10) days after the transfer. IND. CODE § 12-26-11-5(b) (2003).
(A) **"Substantially more restrictive environment" defined.** A "substantially more restrictive environment" is another facility or that part of a facility that is designated as the place providing maximum security for patients. IND. CODE § 12-26-11-5(a).

vi. **Rights of recipient facility.** The superintendent of a facility to which an individual is transferred may decline to admit the individual if the superintendent determines that adequate space, treatment staff, or treatment facilities are not available. IND. CODE § 12-26-11-2.

c. **Review of commitment.**

i. **Annual review required.** The superintendent of the facility or attending physician must file an annual review of the individual's care and treatment with the committing Court. IND. CODE § 12-26-15-1(a).
(A) **Contents of review.** The review must state:
(1) The mental condition of the individual;
(2) Whether the individual is dangerous or gravely

disabled; and

(3) Whether the individual needs to remain in the facility or may be cared for under a guardianship. Id.

(B) **More frequent reviews may be mandated.** The committing Court may require the superintendent or attending physical to file reviews more frequently than once per year. Id.

ii. **Court response to review.** Upon receipt of the review, the Court must:

(A) Order the individual's continued custody, care and treatment in the appropriate facility or program;

(B) Terminate the commitment; or

(C) Conduct a hearing requested by a petitioner opposing the individual's release pursuant to IND. CODE § 12-26-12. IND. CODE § 12-26-15-2(a).

iii. **Individual may request hearing if Court issues continued commitment order.** If the Court orders the continued commitment of the individual in response to the review, the individual or his/her representative may request a hearing to seek review or dismissal of the order. IND. CODE § 12-26-15-3(a).

(A) **One hearing annually.** The individual is entitled to only one (1) such hearing per year unless the Court determines there is good cause for an additional review. Id.

(B) **Notice.** The Court must provide at least five (5) days notice of the hearing date to:

(1) The individual;

(2) The individual's counsel; and

(3) Other interested parties. IND. CODE § 12-26-15-3(b).

(C) **Rights and procedures identical to those for temporary commitment hearings.** The individual's rights during the hearing and the hearing procedures are identical to those identified for temporary commitment hearings, *supra*, at Section 4.12(B)(3)(c). IND. CODE § 12-26-15-4.

6. **Appeals.**

a. **Persons who may appeal final order or judgment.** Any of the following persons may appeal a final order or judgment of the Court of original jurisdiction in an involuntary detention or commitment proceeding:

i. The individual who is the subject of the proceeding;

ii. A petitioner in the proceeding; or

iii. An aggrieved person. IND. CODE § 12-26-1-9(a).

NOTE: The Indiana statutes do not explicitly provide a right of appeal to the individual's legal guardian. *See* IND. CODE § 12-26-1-9(a).

b. **Timing.** An appeal from an order or judgment made in an involuntary commitment proceeding must be taken in the same manner as any other civil case according to the Indiana Rules of Trial and Appellate Procedure. IND. CODE § 12-26-1-9(b).

7. **Habeas corpus intact.** The right of an individual to apply to an appropriate court for a writ of habeas corpus is not limited by any of the foregoing provisions of Indiana law. IND. CONST. art. I, § 27; IND. CODE § 12-26-2-1.

C. ***Violations.***

1. **Not addressed by Indiana statutes.** The Indiana statutes do not address penalties for violation of the civil commitment procedures.

4.13 Mandatory Testing and Treatment

In certain situations, a government may seek to obtain information about an individual's medical status or subject the individual to medical treatment as part of its efforts to ensure the public's health. While many individuals may agree to provide such information or undergo such treatment voluntarily, in some cases the government will need to compel compliance.

NOTE: A discussion of compulsory medical testing as a search subject to constitutional scrutiny is provided, *supra*, at Section 3.32.

A. ***General Authority of Government to Compel Testing or Treatment.***

1. **Reasonable compulsion permissible pursuant to police power.** Pursuant to their police powers, state and local governments may compel an individual to submit to *reasonable* medical testing and treatment in order to protect the public health. *See generally* Jacobson v. Massachusetts, 197 U.S. 11, 25-30 (1905) ("According to settled principles, the police power of a state must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety….It is not, therefore, true that the power of the public to guard itself against imminent danger depends in every case involving the control of one's body upon his willingness to submit to reasonable regulations established by the constituted authorities, under the sanction of the state, for the purpose of protecting the public collectively against such danger."); Reynolds v. McNichols, 488 F.2d 1378, 1382 (10th Cir. 1973) ("Involuntary detention, for a limited period of time, of a person reasonably suspected of having a venereal disease for the purpose of permitting an examination of the person thus detained to determine the presence of a venereal disease and providing further for the treatment of such disease, if present, has been upheld by numerous state courts when challenged on a wide variety of constitutional grounds as a valid exercise of the police power designed to protect the public health."); Blue v.

NOTE: An individual subject to compulsory testing or treatment should be provided with all pertinent information regarding those procedures. *Cf.* IND. CODE § 16-41-6-2 (discussing informed consent requirements for physical examination).

Beach, 56 N.E. 89 (Ind. 1900) ("If vaccination was the most effective means of preventing the spread of the disease through the public schools, and this the local board seems to have determined, it then became not only the right but the duty of the board to require that the pupils of such schools be vaccinated as a sanitary condition imposed upon their privilege of attending the schools during the period of the threatened epidemic of smallpox.").

2. **Explicit statutory provisions.** Where such power has been expressly asserted in the public health laws, it has been noted herein. *See, e.g.*, IND. CODE §§ 16-41-6-1 (HIV testing may be mandated when individual poses serious and present health threat to others, as discussed, *supra*, at Section 3.32(B)(1)), 16-41-6-2(c) (communicable disease examination may be mandated when individual poses serious and present health threat to others, as discussed, *supra*, at Section 3.32(A)(2)), 16-41-9-11(a) (testing and treatment of individual subject to emergency health detention may be mandated, as discussed, *supra*, at Section 4.11(B)(2)(b)(i)), 16-41-10-2.5 (testing for dangerous communicable disease may be mandated following exposure of emergency medical services provider, as discussed, *supra*, at Section 3.32(D)(3)).
   a. **Deference to legislative determination.** The court should defer to legislative determinations regarding the necessity and expediency of compulsory testing and treatment *provided* such determinations are not arbitrary or unreasonable. *See* Jacobson, 197 U.S. at 30-31 ("We must assume that, when the statute in question was passed, the legislature of Massachusetts was not unaware of these opposing theories, and was compelled, of necessity, to choose between them. It was not compelled to commit a matter involving the public health and safety to the final decision of a court or jury. It is no part of the function of a court or a jury to determine which one of two modes was likely to be the most effective for the protection of the public against disease.").

NOTE: The refusal of an individual to accept treatment does not leave public health authorities without effective remedies. For example, an individual who refuses treatment for a dangerous communicable disease may be isolated to protect the public's health, as discussed, *supra*, at Section 4.11.

B. ***Right of Individual to Select Treatment.*** Although the government has the authority to mandate treatment of an individual, the individual retains the right to "select any mode of treatment, including reliance upon spiritual means through prayer alone for healing." IND. CODE § 16-41-1-1.

4.14 Writs of Habeas Corpus

An individual whose liberty has been restrained pursuant to an isolation, quarantine, or commitment order may prosecute a writ of habeas corpus seeking to obtain information about the cause of the

restraint and/or to be freed from the restraint. IND. CODE § 34-25.5-1.

Pursuant to the Indiana Constitution, the government may not suspend the privilege of the writ of habeas corpus *unless* such suspension is necessary to preserve the public safety in the event of rebellion or invasion. IND. CONST. art. I, § 27. Thus, in the event of an outbreak of a naturally-occurring infectious disease, individuals subjected to isolation or quarantine orders must be granted access to the courts to prosecute writs of habeas corpus seeking their release.

NOTE: Some of Indiana's public health statutes specifically provide that the writ of habeas corpus may not be suspended during their execution. *See, e.g.*, IND. CODE § 12-26-2-1 (writ of habeas corpus may not be suspended in the context of involuntary commitment). Regardless of whether such explicit assurances exist, the power of government entities to suspend the writ is extremely limited by the Indiana Constitution. IND. CONST. art. I, § 27.

The following discussion briefly addresses habeas corpus procedure, with a particular emphasis on issues germane to public health. A more detailed discussion of habeas corpus may be found at IND. CODE §§ 34-25.5-1 to 34-25.5-7.

A. ***Application for Writ of Habeas Corpus.***

1. **Contents of application.** An individual whose liberty has been restrained or a person acting on behalf of such individual may file a complaint specifying:
   a. The identity or a description of the person(s) restraining the applicant's liberty;
   b. The place where the applicant is being held;
   c. The cause or pretense of the restraint, according to the applicant's best knowledge or belief; and
   d. The reason(s) why the restraint is illegal, if such illegality is alleged. IND. CODE § 34-25.5-2-1.

2. **Courts of competent jurisdiction.** An application for a writ of habeas corpus may be filed in a circuit or superior court in the county in which the applicant is restrained. IND. CODE § 34-25.5-2-2(a)(1).
   a. **Alternate courts in event of judicial illness.** In the event the judges of the circuit or superior courts of the county are absent or incompetent due to illness or other cause, the application may be considered by any judge of an adjoining circuit. IND. CODE § 34-25.5-2-2(a)(2).

3. **Granting of writ.** Upon application, a writ of habeas corpus must be granted without delay and directed to the person restraining the applicant. IND. CODE §§ 34-25.5-2-2(b), -4.
   a. **Contents of writ.** An issued writ must command its recipient to bring the applicant before the judge at the directed time and place. IND. CODE § 34-25.5-2-4.
   b. **Service of writ.** A sheriff must deliver the writ to the person restraining the applicant without delay. IND. CODE §§ 34-25.5-3-1 to 34-25.5-3-3, 34-25.5-3-6.

c. **Immaterial defects irrelevant.** A writ may not be disregarded for any defect *provided* the writ is sufficient to notify its intended recipient of its purpose. IND. CODE § 34-25.5-3-7.

d. **Return of writ.** The person receiving the writ must sign and return the writ, indicating:

i. The authority supporting or cause of the applicant's restraint; and

(A) If such authority exists in writing, a copy of the writing must be included with the returned writ.

ii. In the event the applicant has been transferred into another's custody, the identity of the person now restraining the applicant and the details of the applicant's transfer. IND. CODE § 34-25.5-3-5.

B. ***Hearing Regarding Writ of Habeas Corpus.*** The court must "proceed in a summary way" to hear and determine the habeas corpus action at the time and place indicated in the writ. IND. CODE § 34-25.5-4-3.

1. **Applicant's presence required unless prevented by sickness.** The person to whom the writ was directed must produce the applicant at the hearing *unless* the applicant's presence is prevented by sickness or infirmity, as indicated in the return. IND. CODE § 34-25.5-3-5.

a. **Judge assesses allegation of sickness.** The judge must assess the adequacy of the allegation that the applicant cannot be produced due to sickness or infirmity. In the event the judge is satisfied such allegation is true, the judge may:

i. Proceed to decide the cause of action; or

ii. Adjourn the hearing until the applicant can be produced or for other good cause. IND. CODE § 34-25.5-4-1.

2. **Powers of judge.** The judge may compel the attendance of witnesses and do all other acts necessary to determine the cause of action. IND. CODE § 34-25.5-4-4.

C. ***Emergency Warrant.*** In certain situations, the court may issue a warrant ordering the sheriff or constable to immediately bring an applicant before the court. IND. CODE § 34-25.5-6.

1. **When proper.** The court may issue an emergency warrant when there is good reason to believe that:

a. The applicant will be carried out of the court's jurisdiction; or

b. The applicant will suffer some irreparable injury before compliance with the writ can be enforced. IND. CODE § 34-25.5-6-1.

2. **Routine habeas procedures applicable.** The procedures required following issuance of an emergency warrant are identical to those

applicable in routine habeas corpus causes of action. IND. CODE § 34-25.5-6-3.

D. ***Discharge of Applicant from Restraint.*** If, following the hearing, the court determines that the applicant has been illegally restrained, the court must discharge the applicant from restraint. IND. CODE § 34-25.5-1.

1. **Notice to interest parties required.** An applicant may not be discharged from restraint until all parties having an interest in the restraint have been notified of the pending discharge. IND. CODE § 34-25.5-5-4.

2. **Immunity of officers obeying discharge orders.** A sheriff or other officer is immune from civil action for obeying an order of discharge resulting from a habeas corpus cause of action. IND. CODE § 34-25.5-5-5.

NOTE: Rules and other considerations applicable to the court's decision in habeas matters are provided at IND. CODE § 34-25.5-5.

4.20 LIMITATIONS ON PROPERTY AND ECONOMIC INTERESTS

4.21 Public Nuisances

A "public nuisance" is commonly defined as an unreasonable interference with a public right. *See, e.g.*, City of Gary v. Smith & Wesson Corp., 801 N.E.2d 1222, 1229 (Ind. 2003). In the context of public health, public nuisances are those actions or uses of property that significantly interfere with the public's health or safety. *See generally* RESTATEMENT (SECOND) OF TORTS § 821(B)(2)(a) (1979).

Pursuant to their police powers, state and local government entities may require remediation of public nuisances. *See* Lawton v. Steele, 152 U.S. 133, 136 (1894). The extent of remediation required will range in degree with the severity of the nuisance and may, in extreme cases, entail the destruction of property or forcible cessation of conduct.

A. ***Nuisance Defined.*** Indiana statutes define a nuisance as whatever is *injurious to health*, indecent, offensive to the senses, or an obstruction to the free use of property so as to essentially interfere with the comfortable enjoyment of life or property. IND. CODE § 32-30-6-6 (emphasis added).

1. **Public v. private nuisance.** Indiana law recognizes both public and private nuisances.
   a. **Public nuisance.** A "public nuisance" is an unreasonable interference with a right common to the general public. *See* City of Gary, 801 N.E.2d at 1229; Hopper v. Colonial Motel Props., Inc., 762 N.E.2d 181, 186 (Ind. Ct. App. 2002) ("a 'public' nuisance is one that affects an entire neighborhood or

community").

i. **Interference with property not required.** Interference with a property right is not a prerequisite to determining that a public nuisance exists. *See* City of Gary, 801 N.E.2d at 1232-33; Sand Creek Partners, L.P. v. Finch, 647 N.E.2d 1149, 1152 n.4 (Ind. Ct. App. 1995) (noting Indiana cases have recognized public nuisances associated with personal injuries).

ii. **Identification of public nuisances.** A public nuisance may be identified as such by a legislature, government entity, or court.

(A) **Statutorily-defined public nuisances.** The Indiana statutes explicitly define certain conduct and uses of property as public nuisances. For example, any structure or vehicle in which an alcoholic beverage is sold or possessed in violation of Indiana law is a public nuisance. IND. CODE § 7.1-2-6-1.

(1) **BUT NOTE** the conduct or use of property must be a nuisance in fact. *See* City of Evansville v. Miller, 45 N.E. 1054 (Ind. 1897) (holding ordinance declaring all partially-burned buildings nuisances invalid because it made no reference to the conditions, surroundings, or characteristics that made the buildings unsafe or dangerous to the public health); J.E. Macy, *Constitutional Rights of Owner as Against Destruction of Building by Public Authorities*, 14 A.L.R.2d 73, § 8 (2004) ("But neither at common law nor under such express power can [a governing body], by mere declaration that specified property is a nuisance, make it one when in fact it is not.").

NOTE: Indiana's Unsafe Building Law defines unsafe buildings to include those that are hazardous to the public health or are public nuisances. IND. CODE § 36-7-9-4(a). Proceedings to demolish unsafe buildings are analogous to nuisance abatement proceedings but will not be addressed in detail. A Guide to Indiana's Unsafe Building Law may be found at Appendix E.

(B) **Power to declare public nuisance vested in government entities.** In other cases, the Indiana statutes empower government entities, such as public health authorities, to determine when conduct or uses of property amount to a public nuisance. For example, the ISDH, a local board of health, or a county health officer *may* declare a dwelling unfit for human habitation a public nuisance. IND. CODE § 16-41-20-6. A dwelling is "unfit for human habitation" when it is a danger or detriment to health due to:

(1) Want of repair;

(2) Structural or construction defects;

(3) Infection with contagious disease; or

(4) An unsanitary condition likely to cause sickness among the dwelling's occupants. IND. CODE § 16-

41-20-1.

(C) **Judicially-defined public nuisances.** The following have been found by Indiana courts to constitute public nuisances in abatement actions, as discussed *infra* at Section 4.21(B)(3):

(1) Discharge of polluted water into streams flowing through working farms (Weston Paper Co. v. Comstock, 58 N.E. 79 (Ind. 1900)); and

(2) Wooden buildings constructed within prohibited fire limits (Baumgartner v. Hasty, 100 Ind. 575, 1885 WL 4236 (Ind. 1885)).

b. **Private nuisance.** A "private nuisance" is a use of property that unreasonably interferes with another's use and enjoyment of his/her property. *See* Hopper, 762 N.E.2d at 186 (also noting "a 'private' nuisance affects only one individual or a determinate number of people").

i. **Interference with property required.** Interference with a property right is a prerequisite to determining that a private nuisance exists. *See* Sand Creek Partners, L.P., 647 N.E.2d at 1152 n.4.

2. **Implicit reasonableness element.** Although the Indiana statutes do not explicitly require conduct constituting a public nuisance to be unreasonable, Indiana courts have incorporated a reasonableness standard into their analysis of nuisance law. *See* City of Gary, 801 N.E.2d at 1229-31 ("Indiana courts have consistently referred to the common law reasonableness standard in applying the Indiana nuisance statute…Given this consistent interpretation of a statute long on the books, we reaffirm that a nuisance claim is, as the Restatement says, predicated on *unreasonable* interference with a public right."(emphasis added))

a. **Not all dangerous entities and conduct are nuisances.** An entity or conduct is deemed a nuisance only when injury is a reasonable and natural consequence of its existence. *See* id. at 1230; Sand Creek Partners L.P., 647 N.E.2d at 1152.

3. **Nuisance per se v. nuisance per accidens.** Indiana law recognizes that a public nuisance may be a nuisance per se or nuisance per accidens.

a. **Nuisance per se (nuisance at law).** Some uses of property and conduct are deemed incapable of being maintained without unreasonably interfering with the rights of others. These uses and conduct are termed "nuisances per se" and are unlawful. *See* Hopper, 762 N.E.2d at 186.

b. **Nuisance per accidens (nuisance in fact).** Some uses of property and conduct are deemed to unreasonably interfere with

the rights of others only under certain circumstances. These uses and conduct are termed "nuisances per accidens" and must be identified with reference to their contexts, characteristics, and surroundings. *See* Bowers v. City of Indianapolis, 81 N.E. 1097 (Ind. 1907) (emission of dense smoke deemed nuisance within city limits); City of Evansville, 45 N.E. 1054 (holding ordinance declaring all partially-burned buildings nuisances invalid because it made no reference to the conditions, surroundings, or characteristics that made the buildings unsafe or dangerous to the public health); Baumgartner, 1885 WL 4236 (wooden structures deemed nuisances within proscribed fire districts); Hopper, 762 N.E.2d at 186 (defining nuisance per accidens).

i. **Deference to legislative determinations.** Courts should defer to legislative determinations regarding conduct that constitutes a nuisance per accidens *unless* manifestly unreasonable. *See* Bowers, 81 N.E. at 1097 ("[S]uch regulation should be upheld as valid unless it is plain that it has no real relation to its professed object, or is a palpable invasion of private rights protected by constitutional guarantees"); Blair v. Anderson, 570 N.E.2d 1337, 1340 (Ind. Ct. App. 1991) (holding legislative determination that an open dump constitutes a "nuisance inimical to human health" not subject to judicial review).

4. **Applicability to both individuals and municipalities.** Both individuals and municipalities are subject to liability for maintaining a nuisance. *See* City of Newcastle v. Harvey, 102 N.E. 878 (Ind. Ct. App. 1913) (holding municipality liable in the amount of $400 for pollution of plaintiff's pond resulting from municipality's negligent garbage disposal). *Cf.* Anable v. Board of Comm'rs, 71 N.E. 272, 274 (Ind. Ct. App. 1904) ("And if the board pleads statutory sanction in justification of an act which under the general rules of law constitutes a nuisance to private property, it should show either that the act is expressly authorized by the statute, or that it is plainly and necessarily implied from the powers expressly conferred.").

NOTE: Financial difficulties are not a defense to nuisance. *See, e.g.,* City of Gary v. Stream Pollution Control Bd., 422 N.E.2d 312 (Ind. Ct. App. 1981) (city ordered to abate landfill nuisance despite budget shortages).

5. **Equitable concept.** Nuisance law is an equitable doctrine, and, as such, individuals seeking to enjoin or abate a nuisance must do so with clean hands. *See* Pittsburg C.C. & St. L. Ry. Co. v. Town of Crothersville, 64 N.E. 914 (Ind. 1902) (holding plaintiff was not entitled to enjoin city's abatement of his stock pens unless capable of alleging the pens were not a public nuisance, despite fact that abatement order was potentially void due to improper Board action).

B. *Remedies.*

1. **Summary abatement.** A state or municipal legislature may, through an act or ordinance, respectively, authorize summary abatement of a defined nuisance by a government entity or agent *provided*:
   a. The property to be abated is of little value;
   b. The use of the property for illegal purposes is clear or its destruction is necessary to effectuate the object a statute (*see* Lawton, 152 U.S. at 140-41 (upholding summary destruction of fish nets and endorsing as acceptable "the power to kill diseased cattle; to pull down houses in the path of conflagrations; the destruction of decayed fruit or fish or unwholesome meats, of infected clothing, obscene books or pictures, or instruments which can only be used for illegal purposes"); Baumgartner, 1885 WL 4236, at*3 (summary removal of wooden building erected within prohibited fire limits); and
   c. Due process of law is afforded the property owner. *See generally* City of Gary v. Redmond, 489 N.E.2d 543 (Ind. Ct. App. 1986) (upholding emergency demolition of unsafe building without notice to building owner against §1983 challenge on grounds post-deprivation remedy was available to property owner through the Indiana Tort Claims Act); Macy, *supra* at § 2 ("But the owner is always entitled to due process of law. As the power to destroy his property depends upon its being a public nuisance, he is entitled to a judicial hearing upon the question of whether it is or was, in fact and law, such a nuisance.").

NOTE: Summary abatement by an individual is also permissible under certain circumstances. *See* Baumgartner, 1885 WL 4236, at *2 ("an individual citizen may, without notice, abate a nuisance, and, if it is necessary to effectively abate it, destroy the thing which creates it.").

NOTE: Summary abatement may also be permitted in an emergency. *See, e.g.*, Conwell v. Emrie, 2 Ind. 35, 1850 WL 3085 (Ind. 1850) (upholding summary destruction of building to prevent spread of fire).

2. **Order of abatement.** Under certain conditions, the ISDH, a local board of health, or a health officer may order the abatement of conditions constituting a public nuisance.
   a. **Dwellings unfit for human habitation.** The ISDH, a local board of health, or a county health officer, upon determining that a dwelling unfit for human habitation is a public nuisance, may order the removal, abatement, improvement, or cleaning of the dwelling or structures and items in or about the dwelling. IND. CODE §§ 16-41-20-6, -7.
      i. **ISDH must provide right of first action to local board of health or county health officer.** The ISDH may not declare a dwelling a nuisance or order its abatement without first providing the local board of health or county health officer:
         (A) Notice of all information concerning the dwelling; and
         (B) Three (3) days to take action after receiving the notice. IND. CODE § 16-41-20-3.

NOTE: Upon declaring such a dwelling a nuisance, a public health authority may also order all persons living in the dwelling to vacate the premises within five (5) to fifteen (15) days. Such an order must contain at least one (1) justification for its issuance. IND. CODE § 16-41-20-4.

ii. **Service of order.** An order to remove, abate, improve, or clean a dwelling declared to be a public nuisance must be served on the tenant and owner of the dwelling (or the owner's rental agent). IND. CODE § 16-41-20-8.

iii. **Contents of order – notice.** Although the elements to be included in notice to an individual regarding government condemnation of his/her property vary according to the circumstances of the case, due process generally requires that an individual receive notice of his/her right to a hearing prior to the government's condemnation of the individual's property. *See, e.g.,* Wilson v. Health & Hospital Corporation of Marion County, 620 F.2d 1201, 1215 (7th Cir. 1980) (denying city's motion for summary judgment in § 1983 action given failure of condemnation notice to adequately inform property owner of his right to a hearing on the matter).

iv. **Judicial review of order.** An individual aggrieved by an order to remove, abate, improve, or clean a dwelling declared to be a public nuisance may file a petition for review of the order with the appropriate circuit or superior court. IND. CODE § 16-41-20-9(a).

(A) **Petition must be filed within ten (10) days.** Such a petition must be filed within ten (10) days after the issuance of the order. Id.

(B) **Review conducted as civil action.** The court's review of the health authority's order must be conducted as a civil action. IND. CODE § 16-41-20-11.

(C) **Final decision.** The decision of the circuit or superior court regarding the order is final. IND. CODE § 16-41-20-9(b).

What is the standard of review for appealed abatement orders? *Cf.* Groff v. Butler, 794 N.E.2d 528 (Ind. Ct. App. 2003) (*de novo* review of demolition order required by Unsafe Building Law).

b. **Conditions promoting disease.** The ISDH or a local health officer may order the abatement of any conditions that transmit, generate, or promote disease within their jurisdiction. IND. CODE §§ 16-19-3-11, 16-20-1-25(b).

i. **Order contents.** The written order must specify:

(A) The conditions that transmit disease; and

(B) The shortest reasonable time for abatement of those conditions. IND. CODE § 16-20-1-25(b).

ii. **Enforcement in the event of noncompliance.** The county where the nuisance exists may, through its attorney, institute proceedings to enforce the order by a court-issued injunction. IND. CODE § 16-20-1-25(c).

NOTE: Although the communicable disease control laws do not define conditions promoting disease to be a nuisance, such conditions qualify as such under the general nuisance law's provision encompassing all conduct "injurious to health." IND. CODE § 32-30-6-6.

c. **Any necessary conditions.** Pursuant to its broad power to take all actions "necessary to supervise the health and life of Indiana citizens," the ISDH may be able to order the abatement of all conduct and uses of property that are unreasonably harmful to

the public's health. IND. CODE § 16-19-3-1.

d. **Warrant not required.** Government agents need not obtain a warrant prior to entering private property to execute destruction or abatement orders of public health authorities *provided* the procedures by which the order was issued afforded the property owners due process. *Cf.* Starzenski v. City of Elkhart, 659 N.E. 2d 1132, 1138-39 (Ind. Ct. App. 1996) (holding entry of city workers onto plaintiffs' property to remove debris pursuant to City Hearing Authority's order did not violate due process given order was executed following two adjudicatory hearings at which plaintiffs presented evidence and cross-examined witnesses and plaintiffs failed to avail themselves of opportunity to appeal order to county court).

3. **Civil Actions to Enjoin and Abate Public Nuisances.** A civil action to enjoin or abate a public nuisance may be brought by an aggrieved individual or municipality. IND. CODE § 32-30-6-7.

a. **Action by individual.** An individual whose property is injuriously affected or whose personal enjoyment is lessened by a public nuisance may maintain an action to abate or enjoin the nuisance. IND. CODE § 32-30-6-7(a).

i. **Limited to individuals suffering "special injury."** Public authorities are generally responsible for addressing wrongs committed against the public as a whole. Thus, the right of an individual to maintain an action to enjoin or recover damages for a public nuisance is limited to those cases in which the individual has suffered a "special injury" distinct from that suffered by the public. *See, e.g.,* Blair, 570 N.E.2d at 1339-40 (holding that blockage of waterflow to creek on plaintiff's property was special injury distinct from general harm caused to the public by defendant's landfill).

(A) "**Special injury" defined.** A "special injury" is one that is different in both kind and degree from that suffered by the general public. *See* id.

b. **Action by municipality.** A county, city, or town in which a public nuisance exists may bring an action to abate or enjoin the nuisance. IND. CODE § 32-30-6-7(b).

i. **Action brought by municipal attorney.** The action to abate or enjoin the nuisance must be brought by an attorney representing the municipality. IND. CODE § 32-30-6-7(a).

4. **Destruction v. abatement.** Destruction of property causing or constituting a public nuisance is permissible when:

a. The nuisance cannot be effectively abated so as to protect the public; and

b. Evidence suggests that the owner will not repair or abate the

nuisance. *See* Baumgartner, 1885 WL 4236, at *2. *Cf.* Groff v. City of Butler, 794 N.E.2d 528 (Ind. Ct. App. 2003) ("[T]he fact that a property can be repaired is not the dispositive consideration in reviewing a demolition order. Because in theory any building can be repaired, an equally important consideration is whether the building will be repaired." (Internal citations omitted.)); Brown v. Anderson Bd. of Public Safety, 777 N.E.2d 1106 (Ind. Ct. App. 2002) (upholding demolition order given building owner had failed to make repairs despite municipal requests and orders over 5 year period).

5. **Property owner not entitled to financial compensation for nuisance abatement.** The abatement or destruction of property deemed a nuisance is an exercise of the government's police powers to enforce a use restriction inherent in the owner's property title and not a taking. As such, the owner of property abated or destroyed as a nuisance is not entitled to financial compensation from the government. *See* Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1029 (1992) ("Any limitation [that prohibits all economically beneficial use of land] cannot be newly legislated or decreed (without compensation), but must inhere in the title itself, in the restrictions that background principles of the State's law of property and nuisance already place upon land ownership. A law or decree with such an effect must, in other words, do no more than duplicate the result that could have been achieved in the courts – by adjacent landowners or other uniquely affected persons) under the State's law of private nuisance, or by the State under its complementary power to abate nuisances that affect the public generally…."); Mugler v. Kansas, 123 U.S. 623, 668-69 (1887) ("The exercise of the police power by the destruction of property which is itself a public nuisance, or the prohibition of its use in a particular way, whereby its value becomes depreciated, is very different from taking property for public use, or from depriving a person of his property without due process of law. In the one case, a nuisance only is abated; in the other, unoffending property is taken away from an innocent owner."); Town Council of New Harmony v. Parker, 726 N.E.2d 1217, 1222 (Ind. 2000) ("The Supreme Court has held that the government may, consistent with the Takings Clause, affect property values by regulation without incurring an obligation to pay under the full scope of the State's police power. This may be done when the regulation proscribes harmful or noxious uses of property, although the proscribed use need not rise to this level." (Internal citations omitted.)); Starzenski, 659 N.E.2d at 1140 ("It is well settled that the government's exercise of its police power to abate a public nuisance hazardous to the public health, safety, or welfare does not

entitle the property owner to compensation." (Internal citations omitted.)).

4.22 Government Takings

No person shall … be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. U.S. CONST. amend V.

… No person's property shall be taken by law, without just compensation; nor, except in case of the State, without such compensation first assessed and tendered. IND. CONST., art. I, § 21.

As a general rule, the government must pay compensation for private property taken for public use pursuant to its eminent domain power. This constitutional guarantee is "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." Penn Central Transp. Co. v. City of New York, 438 U.S. 104,123-24 (1978) (Internal citations omitted.).

NOTE: To be proper, a government's exercise of its eminent domain power must substantially advance legitimate state interests. *See, e.g.,* Oral Arguments in Lingle v. Chevron U.S.A., Inc., 2005 WL 529658 (Feb. 22, 2005) (No. 04-163) (discussing standard of review applicable to court's assessment of whether legislation will substantially advance a legitimate state interest); Board of Zoning Appeals v. Leisz, 702 N.E.2d 1026, 1029 (Ind. 1998).

As mentioned *supra*, at Section 4.21(B)(5), this rule does not apply to certain exercises of the government's police power. Decisions of the United States Supreme Court indicate, however, that this is not an absolute rule: some exercises of the police power, particularly those that entail extensive regulation of private property, may be subject to the compensation rule. *See, e.g.,* Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1014 (1992) ("If, instead, the uses of private property were subject to unbridled, uncompensated qualification under the police power, the natural tendency of human nature would be to extend the qualification more and more until at last private property disappeared." (Internal citations omitted.)). These distinctions are addressed in more detail, *infra*, at Section 4.22(B).

A. *Taking Defined.*

1. **Takings Per Se.** There are two types of government use of private property considered takings *per se*, entitling the property owner to compensation without a case-specific inquiry:
   a. **Physical invasion.** Regulations that compel a property owner to suffer a physical invasion of his/her property, no mater how minute the invasion. *See* Lucas, 505 U.S. at 1015; Board of Zoning Appeals v. Leisz, 702 N.E.2d 1026, 1028-29 (Ind. 1998).
   b. **Permanent denial of all economically beneficial or productive use.** Regulations that permanently deny all economically beneficial or productive use of property (often

referred to as a "total taking" or "confiscatory regulation"). *See* Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency, 535 U.S. 302 (2002); Lucas, 505 U.S. at 1015-16; Leisz, 702 N.E.2d at 1028-29.

2. **Case-specific takings.** In those cases in which government regulation denies some, but not all, economically beneficial or productive uses of private property, a taking may nonetheless exist if the impact of the regulation on the property is sufficiently severe. *See* Penn Central Transp. Co., 438 U.S. at 136; Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415 (1922) ("[W]hile property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.").
   a. **Relevant factors.** Such determinations are highly fact-specific and necessitate consideration of at least the following factors:
      i. The economic impact of the regulation on the property owner;
      ii. The extent to which the regulation has interfered with reasonable investment-backed expectations;
      iii. The character of the governmental action; and
      iv. The duration of the regulation. *See* Tahoe-Sierra Pres. Council, 535 U.S. at 330-32; Penn Central Transp. Co., 438 U.S. at 136-37; Leisz, 702 N.E.2d at 1030; Town of Georgetown v. Sewell, 786 N.E.2d 1132, 1139 (Ind. Ct. App. 2003).
   b. **Diminution in value not alone taking.** That a regulation forces a property owner to suffer some diminution in property value is not alone sufficient to render the regulation a taking. *See* Leisz, 702 N.E.2d at 1030.
   c. **Denial of most profitable use of property not alone taking.** That a regulation denies a property owner the most profitable use of his/her property is not alone sufficient to render the regulation a taking. *See* Young v. City of Franklin, 494 N.E.2d 316, 318 (Ind. 1986); Sewell, 786 N.E.2d at 1140 (holding remaining ability of property owner to use regulated land purchased for $14,000 for grazing or recreational purposes prevented finding that regulation constituted taking entitling owner to compensation).

NOTE: Statutes authorizing police to fingerprint and photograph arrested individuals do not constitute unconstitutional takings. *See* State v. Tyndall, 74 N.E.2d 914, 364-65 (Ind. 1947) ("Granting that the citizen has a property right in his finger prints and picture ..., these rights must be made to harmonize with the rights of the people collectively to life, liberty, safety and the pursuit of happiness likewise guaranteed by the constitution.").

B. ***Relationship to the State's Police Powers.***

1. **Government is not obligated to compensate property owner for abatement or destruction of property pursuant to police power in cases of emergency.** State or local government may, pursuant to its police powers, abate or destroy private property as necessary in an emergency to prevent public harm or destruction. These emergency exercises of the government's police powers do not

entitle property owners to compensation. *See* Lucas, 505 U.S. at 1029, n.16; Bowditch v. Boston, 101 U.S. 16, 18 (1879) (destruction of building to prevent spread of fire does not entitle building owner to compensation). *Cf.* Conwell v. Emrie, 2 Ind. 35, 1850 WL 3085, at *1 (Ind. 1850) (upholding summary destruction of building to prevent spread of fire).

2. **Government must compensate property owner for *per se* taking pursuant to police power *unless* proscribed conduct or use was restriction inherent in owner's original title.** State or local government may, pursuant to its police powers, physically invade private property or enact regulations that deprive the property owner of all economically beneficial uses of his/her property. However, such *per se* takings must be accompanied by compensation for the property owner *unless* the taking merely enforces a use restriction inherent in the owner's original title. *See* Lucas, 505 U.S. at 1026-27 ("*A fortiori* the legislature's recitation of a noxious-use justification cannot be the basis for departing from our categorical rule that total regulatory takings must be compensated….Where the State seeks to sustain regulation that deprives land of all economically beneficial use, we think it may resist compensation only if the logically antecedent inquiry into the nature of the owner's estate shows that the proscribed use interests were not part of his title to begin with."); Leisz, 702 N.E.2d at 1029, n.2 ("As the Court noted in Lucas, however, regulations that prohibit all economically beneficially [*sic*] use of land are still permissible if they do no more than duplicate the result that could have been achieved under state nuisance law."); Young, 494 N.E.2d at 317-18 ("Reasonable zoning regulations are a proper exercise of the police powers of the state. However, the exercise of such power may result in a taking of one's property without just compensation and in violation of the Indiana Constitution and the United States Constitution….A taking will be found only where all reasonable uses of the property are prevented."); Town of Homecroft v. Macbeth, 148 N.E.2d 563 (Ind. 1958) (holding zoning ordinance precluded use of property for all purposes to which it was reasonably adapted and, therefore, entitled property owner to just compensation).

   a. **Title restricted against maintaining nuisances and other threats to public health.** As discussed *supra*, at Section 4.21(B)(5), restrictions against the maintenance of conditions significantly threatening public health are deemed inherent in property titles. *See, e.g.*, 409 Land Trust v. City of South Bend, 709 N.E.2d 348 (Ind. Ct. App. 1999) (holding demolition of unsafe building valid exercise of police power not subject to compensation requirement); Zahm v. Peare, 502 N.E.2d 490

(Ind. Ct. App. 1985) (holding ordinance prohibiting sand filter sewage disposal system valid exercise of police power not subject to compensation requirement given potential for such system to cause infectious disease); Miller v. Sergeant, 37 N.E. 418 (Ind. Ct. App. 1894) (holding destruction of wooden building erected within city fire limits valid exercise of police power not subject to compensation requirement). *Cf.* Town of Knightstown v. Homer, 75 N.E. 13, 15-16 (Ind. Ct. App. 1905) (denying compensation to owner of household contents burned to prevent spread of smallpox on grounds that, even if board of health's action amount to taking, contents were worthless at the time of their destruction).

3. **Government is, as a general rule, not obligated to compensate property owner for other regulations that affect property value for public benefit pursuant to police power.** State or local government may, pursuant to its police power, enact regulations that restrict property use and affect property values for public benefit *provided* the regulations substantially advance legitimate state interests. Property owners are not entitled to compensation for losses occasioned by such regulations. *See* Lucas, 505 U.S. at 1023-24 ("The 'harmful or noxious uses' principle was the Court's early attempt to describe in theoretical terms why government may, consistent with the Takings Clause, affect property values by regulation without incurring an obligation to compensate – a reality we nowadays acknowledge explicitly with respect to the full scope of the State's police power….[L]and-use regulation does not effect a taking if it substantially advances legitimate state interests." (Internal citations omitted.)); Town Council of New Harmony v. Parker, 726 N.E.2d 1217, 1222 (Ind. 2000) ("The Supreme Court has held that the government may, consistent with the Takings Clause, affect property values by regulation without incurring an obligation to pay under the full scope of the State's police power."); State v. Tyndall, 74 N.E.2d 914, 916-17 (Ind. 1947) ("Property or property rights may not be taken or destroyed under the guise of the police power or of a police regulation, unless the taking or destruction has a just relation to the protection of the public health, welfare, morals or safety. Unless it affirmatively appears by the act, or the history of its enactment that it has no such just relation, the police power extends even to the taking and destruction of property.").

NOTE: Government action that is found to be a case-specific, rather than a *per se*, taking may nonetheless be subject to the compensation rule. Presumably, however, the fact that property rights or value were limited pursuant to a valid exercise of the police power would mitigate against a finding that the action constituted a taking. *See* Penn Central Transp. Co., 438 U.S. 104, 136 (1978), discussed *supra*, at Section 4.23(A)(2) (identifying character of governmental action as factor relevant to case-specific takings analysis).

a. **Judiciary ultimately assesses public nature of benefit.** Although the legislature is granted deference when exercising its police power, the judiciary must ultimately determine whether the benefits of such exercises are sufficiently public to withstand constitutional scrutiny. *See* Gifford Drainage Dist. v.

Shroer, 44 N.E. 636, 637 (Ind. 1896).

b. **Examples.** The following are examples of cases in which an Indiana court has upheld state or local regulations as valid exercises of the police power, not entitling affected property owners to compensation:

i. Zoning ordinance limiting occupancy in residential districts (Leisz, 702 N.E.2d 1026 (Ind. 1998));

ii. Formation of drainage districts (Bemis v. Guirl Drainage Co., 105 N.E. 496 (Ind. 1914)); and

iii. Extension of street across railroad right-of-way (Cincinnati I. & W. Ry. Co. v. City of Connersville, 83 N.E. 503 (Ind. 1908)).

4. **Government must compensate harmed property owner for improper exercise of police power.** While a government may abate or destroy private property without compensation in order to enforce use restrictions inherent in the owner's original title (*e.g.* to abate a nuisance), compensation must be paid to property owners whose property was not injurious to the public health but was harmed or destroyed only through an improper exercise of the police power. *See* City of Frankfort v. Slipher, 162 N.E. 241, 246 (Ind. Ct. App. 1928) ("It can not be said, no matter how comprehensive the power, that a municipality might locate a pesthouse in the midst of a thickly settled neighborhood, or that the power to erect a pesthouse carriers with it the further power to locate it at a place where it will injure others."). *Accord* Anable v. Bd. of Comm'rs, 71 N.E. 272 (Ind. Ct. App. 1904).

C. ***Procedures.*** The Indiana statutes provide detailed procedures that a state or local government must follow when exercising its power of eminent domain. *See* IND. CODE § 32-24. The statutes provide both general procedures for the exercise of eminent domain and specific procedures for the exercise of eminent domain by the state government, a city, or a town for purposes of public works and construction.

1. **General procedures.** Any individual authorized to exercise the power of eminent domain pursuant to Indiana law must comply with the procedures provided in IND. CODE § 32-24-1.

a. **Offer to purchase required prior to court action.** An individual authorized to exercise the power of eminent domain must:

i. Make an offer to purchase the relevant property interest; and

(A) The offer must be served upon the property owner(s) or the owner's designated representative personally or by certified mail;

(B) The offer must be in the form provided at IND. CODE § 32-24-1-5(c);

NOTE: Additional requirements for the condemnation proceedings are provided at IND. CODE §§ 32-24-1-6 to 32-24-1-16.

ii. File a complaint in condemnation in the circuit court of the county where the property is based in the event the individual and owner(s) of the relevant property cannot reach an agreement as to the value of the property interest.
(A) The complaint cannot be filed until at least thirty (30) days after the making of the offer;
(B) The court must appoint appraisers to assess the fair market value of the relevant property interests, as well as any related damages; and
(C) The owner has a right to appeal interlocutory orders overruling the owner's objections to the proceedings in the manner that appeals are taken from final judgments in civil actions. *See* IND. CODE §§ 32-24-1-3 to 32-24-1-9.

b. **Right of entry.** Any individual authorized to exercise the power of eminent domain may enter upon any property for examination and surveying purposes. *See* IND. CODE § 32-24-1-3(b)(1).

2. **Exercise of eminent domain for purposes of public works or construction.** The state or a municipality may exercise its eminent domain power for purposes of public works pursuant to the procedures described in IND. CODE § 32-24-3 or § 34-24-2, respectively.

a. **Action by state.** When the governor considers it necessary to acquire property on which to construct public buildings or which adjoins state property already containing public buildings, the governor must order the attorney general to file an action in a court of jurisdiction in the county where the property is located. IND. CODE § 32-24-3-1.

i. **Notice required.** The attorney general must provide the owner(s) of the relevant property the notice required in a civil action. IND. CODE § 32-24-3-2.

ii. **Appointment of appraisers.** The court must appoint appraisers to assess the fair market value of the relevant property interests. IND. CODE § 32-24-3-3.

iii. **Exceptions to appraisal.** An affected property owner may file an exception to the appraisal. A trial on the exceptions must be held by the court, or before a jury if so requested by either party. IND. CODE § 32-24-3-4.

b. **Action by municipality.** If the works board of a city or town wants to acquire private property for public works purposes, it must adopt a resolution so stating. IND. CODE § 32-24-2-6(b).

i. **Notice required.** At least once each for at least two (2) consecutive weeks, the works board must public the resolution in a newspaper of general circulation published in

the municipality. Id.

ii. **Hearing required.** The works board must hold a hearing regarding the resolution no sooner than ten (10) days after the last notice publication. Id.

iii. **List of affected property owners and corresponding assessment required.** Following the hearing, the works board must prepare a list of all property owners affected by the resolution and assess the damages and/or benefits accruing to each. IND. CODE §§ 32-24-2-7, -8.

(A) **Remonstrances hearing required.** The works board must provide a hearing for the presentation of remonstrances to the assessments and, following that hearing, either sustain or modify the assessments for which remonstrances were presented. IND. CODE § 32-24-2-10(a)-(b).

iv. **Right of appeal.** A property owner who disagrees with the work board's decision following the remonstrances hearing may appeal the board's decision to a court of jurisdiction in the county in which the municipality is located. IND. CODE § 32-24-2-10(c).

(A) **Timing.** The appeal must be filed within twenty (20) days of the board's decision. Id.

(B) **De novo review.** The court must conduct a de novo review of the assessment. IND. CODE § 32-24-2-11(a).

(C) **Final decision.** The judgment of the court is final and may not be appealed. Id.

NOTE: Additional requirements governing the distribution of benefits and payment of damages pursuant to the board's assessment are provided at IND. CODE §§ 32-24-2-12 to 32-24-2-15.

4.23 Sanitary Regulations

As discussed *supra*, at Section 3.22, state and local public health departments, as well as some municipal building inspectors, may inspect both public buildings and private dwellings to ensure compliance with sanitary laws and regulations. *See* IND. CODE §§ 16-19-3-7, 16-19-3-8, 16-20-1-21, 16-20-1-22, 16-41-20-2. Indiana law provides for several remedies upon a finding that a building or dwelling is not in compliance with sanitary standards.

A. ***Dwellings Unfit for Human Habitation.*** If, upon inspection, public health personnel or municipal building inspectors determine that a dwelling is unfit for human habitation due to the existence of an unsanitary condition likely to cause sickness among the dwelling's occupants, the ISDH, local board of health, or county health officer may declare the dwelling a public nuisance.

1. **Power to abate unsanitary conditions.** Upon declaring an unsanitary dwelling a public nuisance, the ISDH, local board of health, or county health officer may order:

NOTE: The abatement of dwellings deemed

a. The dwelling to be removed, abated, altered, improved, purified, cleansed, or disinfected; and/or
b. The occupants of the dwelling to vacate the dwelling at a time between five (5) and fifteen (15) days of the determination. IND. CODE §§ 16-41-20-4, -6, -7.

public nuisances is discussed in more detail *infra*, at Section 4.21(B)(2).

B. ***Property Causative of Disease.*** If, upon inspection, public health personnel determine that property is causative of disease, the ISDH, local board of health, or city board of health may order what is reasonable and necessary for the prevention and suppression of disease, including condemnation or abatement of such property. IND. CODE §§ 16-19-3-11 (ISDH), 16-20-1-23(a) (local board of health), 16-20-1-25(b) (same), 16-20-4-8(a) (city board of health may exercise powers to prevent or suppress disease granted in state statutes or rules).

C. ***Enforcement.*** The ISDH or a local board of health may bring an action in the appropriate superior or circuit court to enforce compliance with its order by injunction. *See* IND. CODE §§ 16-19-3-18 (ISDH), 16-20-1-25(c) (local board), 16-20-1-26 (same).

4.24 Regulation and Closure of Businesses

In the event of a communicable disease epidemic, public health officials may find it necessary to limit public contact of individuals in affected communities. The Indiana statutes provide that the ISDH or a local board of health may close schools and churches and forbid public gatherings when such action is deemed necessary to prevent and stop epidemics. *See* IND. CODE §§ 16-19-3-10 (power of ISDH), 16-20-1-24 (power of local boards). Neither the Indiana statutes nor the ISDH regulations explicitly authorize the ISDH or a local board of health to close a business in order to prevent or control an epidemic. However, state and local public health authorities presumably possess such powers pursuant to the "all powers necessary" provisions of Indiana law. *See* IND. CODE §§ 16-19-3-1 (ISDH possesses "all powers necessary" to fulfill its statutory duties to supervise the health and life of Indiana citizens), 16-20-1-21 (authorizing local boards to take same actions as ISDH).

Although business owners would suffer financial losses as a result of such closings, it is unlikely an affected owner would be entitled to recover for the losses given the expansive authority of governments to regulate property for the public health, safety, and welfare, as discussed *supra*, at Section 4.22(A)-(B).

4.25 Animal Health

Animal diseases are relevant to public health for several reasons. First, some animal diseases are directly capable of causing illness in humans. For example, monkeypox is a viral disease that is found primarily in rodents but may be transmitted from infected animals to humans. In June 2003, several Americans became infected with monkeypox from their pet prairie dogs. Second, some animal diseases, although not initially transmissible to humans, may acquire this capability by mutating in certain hosts. For example, many experts believe that gene swapping between flu viruses in pigs created the highly virulent human influenza strains that led to the great flu outbreaks of the past century, including the Spanish Flu of 1918-1919 that claimed the lives of more than 20 million people worldwide (including approximately 500,000 Americans) and the 1957 Asian flu that killed approximately 70,000 Americans. Finally, disease epidemics among animals frequently lead to widespread animal death and slaughter, both of which have the potential to create nuisances and other conditions hazardous to human health.

NOTE: Although Indiana law also contains provisions for horticultural control, such as plant quarantine and destruction (*see* IND. CODE § 15-3), these provisions will not be discussed in detail herein due to their limited impact on human health.

Given these public health threats, Indiana law empowers both state and local governments to closely monitor animal health and act to prevent disease epidemics among animals within the state. *See* IND. CODE § 15-2.1-1-1 to 15-2.1-1-6.

A. ***State Board of Animal Health.*** The Indiana State Board of Animal Health ("Animal Health Board") is the primary state governmental entity responsible for animal health.

1. **Composition and Conduct.**
   a. **Membership.** The Animal Health Board consists of eleven (11) members appointed by the governor. IND. CODE § 15-2.1-3-2.
      i. **Qualification criteria.** The eleven (11) members must be qualified as follows:
         (A) One (1) member of the Purdue University School of Veterinary Medicine;
         (B) Two (2) veterinarians licensed to practice in Indiana, each having at least five (5) years experience and each a member of a different political party;
         (C) Seven (7) producers of certain livestock or poultry, no more than four of which may be members of the same political party; and
         (D) One (1) person affiliated with a licensed livestock market. Id.
      ii. **No conflicts of interest.** No Board member may be a director, officer, salesman, or employee affiliated with the manufacture or sale of any commercial product, by-product,

NOTE: Given that seven (7) producers of livestock or

poultry are required to serve on the Board, the production of livestock or poultry must not be deemed a manufacture or sale of a commercial or biological product affecting the livestock industry.

or biological product affecting the livestock industry. IND. CODE § 15-2.1-3-3.

iii. **Officers elected by members.** The Board members must elect a chairman and vice-chairman at each annual April meeting. The state veterinarian serves as secretary of the Board. IND. CODE § 15-2.1-3-9.

b. **Term.** Members of the Animal Health Board are appointed for staggered terms of four (4) years. IND. CODE §§ 15-2.1-3-5 to 15-2.1-3-6.

i. **Term limits.** No Board member may serve for more than two (2) consecutive full terms, except the Purdue University School of Veterinary Medicine appointee. IND. CODE § 15-2.1-3-5.

ii. **Vacancies.** In the event of a vacancy, the governor must appoint a successor to fill the vacant seat for the remainder of the unexpired term. IND. CODE § 15-2.1-3-8.

c. **Compensation.** Members of the Board must receive per diem and transportation expenses as provided by law when engaged in their official duties. IND. CODE § 15-2.1-3-4.

d. **Conducting business.**

i. **Frequency of meetings.** The Animal Health Board must meet quarterly (January, April, July, and October) and special meetings may be called by the chairman or a majority of the board members. IND. CODE § 15-2.1-3-10.

ii. **Quorum.** Six (6) members of the Board constitutes a quorum for the transaction of business. Id.

2. **Authority.**

a. **General supervisory power over animal industry.** The Animal Health Board has general supervision over:

i. The prevention, suppression, control, and eradication of diseases affecting the health of animals within Indiana; and

ii. The production, manufacture, processing, and distribution of animal products that may affect the health and welfare of Indiana citizens. IND. CODE § 15-2.1-3-11.

b. **All necessary powers.** The Animal Health Board possesses all powers necessary to fulfill its duties. IND. CODE § 15-2.1-3-12.

c. **Itemized powers.** The powers of the Animal Health Board include, *inter alia*:

i. Control over the movement of animals into, out of, and within the state;

ii. Provision for quarantine of animals exposed to communicable diseases and the identification of animals condemned for slaughter;

iii. Control over the disposal of deceased animals and animal carcasses;

iv. Control over the public and private sale of animals; and

v. Issue licenses as required by law to individuals and corporations seeking to participate in the animal industry. IND. CODE §§ 15-2.1-3-13, 15-2.1-17.

d. **Enforcement of animal health laws.**

i. **Orders.** The Animal Board of Health may issue orders to enforce provisions of Indiana law relevant to animal health. IND. CODE § 15-2.1-3-13(24).

ii. **Hearings.** The Board may conduct administrative hearings as it deems necessary to perform its duties. IND. CODE § 15-2.1-3-13(21).

(A) **Notice requirements.** The Board must provide notice of any hearing to all affected individuals. IND. CODE §§ 15-2.1-19-3, -4.

iii. **Subpoena power.** The Board may issue subpoenas for both oral testimony and documentary evidence as necessary to accomplish its objectives. IND. CODE § 15-2.1-3-15.

iv. **Court proceedings.** If necessary, the Board may institute legal proceedings in the name of the state to compel compliance with its orders. IND. CODE § 15-2.1-3-13(21).

v. **Assistance of law enforcement.** All peace officers and law enforcement agencies within the state must assist the Board as necessary in enforcing Indiana's animal health laws. IND. CODE § 15-2.1-20-1.

NOTE: Any individual aggrieved by a final decision of the Board may seek judicial review of that decision. IND. CODE § 15-2.1-19-8.

B. ***Infectious Disease Control Among Animals.*** One of the primary responsibilities of the Animal Health Board is to prevent and suppress outbreaks of infectious diseases among Indiana's animals. The Indiana animal health laws create a system of oversight for the prevention, identification, and control of infectious diseases.

1. **Mandatory reporting.** Any person, including an animal owner, knowing or having reason to suspect that an animal is infected with a dangerous infectious disease must report such information to the state veterinarian or local health officer within forty-eight (48) hours of becoming so informed. IND. CODE § 15-2.1-18-10.

a. **Health officer to transmit information to state veterinarian.** A local health officer who receives a report of an infectious disease among animals must transmit such information to the state veterinarian within twenty-four (24) hours. Id.

2. **Inspection by board and/or state veterinarian.** The Board may enter upon public or private property where any animal or the carcass of any animal is located in order to inspect the property, examine the animal(s), conduct tests regarding the presence of infectious diseases, or carry out any other authorized function. IND. CODE § 15-2.1-3-14. The state veterinarian is also authorized to

examine any animal suspected of being infected with a dangerous infectious disease. IND. CODE § 15-2.1-18-11.

3. **Limitations on animal importation.** The governor may, upon recommendation of the Board, prohibit or limit the importation of certain animals from another jurisdiction when there is good reason to believe that:
   a. An infectious disease has become epidemic among such animals; and
   b. Products derived from such animals would threaten the health of the animals or citizens of Indiana. IND. CODE § 15-2.1-18-13.

4. **Condemnation.** The Board may order the condemnation of any animal infected or suspected to be infected with a disease that "presents unforeseeable aspects, insofar as control and eradication of such diseases is concerned" and presents a health hazard to other animals within the state. IND. CODE § 15-2.1-18-16.
   a. **Exposed feed also subject to condemnation.** Feed and other materials exposed to the infectious disease may also be condemned. Id.
   b. **Indemnification required.** The owner of any condemned animal must be indemnified in accordance with applicable regulations *unless*:
      i. The animal belongs to the federal government or the state;
      ii. The animal was brought into Indiana contrary to state law;
      iii. The animal was previously affected by another disease that was incurable and necessarily fatal;
      iv. The animal was affected with disease at the time of purchase; or
      v. The animal was purchased from a place where infectious disease was known to exist. IND. CODE §§ 15-2.1-18-14, -15.

5. **Involvement of USDA.** The United States Department of Agriculture (USDA) has the right to inspect, test, quarantine, and/or condemn any animal in Indiana that is infected with, suspected to be infected with, or exposed to an infectious disease. IND. CODE § 15-2.1-18-12.
   a. **Right of entry.** The USDA may enter upon any premises for these purposes. Id.
   b. **Assistance of law enforcement.** The USDA may require the assistance of local sheriffs, constables, or peace officers for these purposes. Id.

6. **Emergency rules and orders.** If the Board determines that an infectious disease presents a definite health hazard to the animals or

citizens of Indiana, the Board and/or the state veterinarian may issue emergency rules and orders regarding the movement, identification, treatment, and disposal of animals and animal products. IND. CODE §§ 15-2.1-18-21, -22.

a. **Animal health emergency.** Additionally, the Board may declare an animal health emergency so that it may access, as necessary, all funds appropriated to the Board or request additional funds from the budget agency. IND. CODE § 15-2.1-18-23.

C. ***Nuisance Prevention.*** Several provisions of Indiana law specifically address the prevention of public nuisances involving animals.

1. **Disposal of dead animals.** All dead animals must be disposed of within twenty-four (24) hours of death to prevent a nuisance. IND. CODE § 15-2.1-16-20. Additionally, all skinning of dead animals must be performed so as to prevent a nuisance. IND. CODE § 15-2.1-16-21.

4.30 LIMITATIONS ON PRIVACY

4.31 Disclosure of Medical Information and the Health Insurance Portability and Accountability Act (HIPAA)

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) contains provisions intended to protect the privacy of certain individually identifiable health information (referred to as "protected health information" (PHI)). *See* 42 U.S.C. 1320d-2 (2005). Generally, HIPAA limits the ability of certain entities to use and disclose an individual's PHI without notifying and/or obtaining authorization from that individual.

NOTE: More information regarding HIPAA may be found online at http://www.hhs.gov/ocr/hipaa/.

It is important to note that HIPAA contains numerous exceptions to this general rule. One of the most significant of these exceptions involves uses and disclosures of PHI for public health activities.

A. ***Applicability of HIPAA Requirements.***

1. **Covered entities.** HIPAA's privacy requirements apply to only three types of entities (referred to as "covered entities"):
   a. **Health plan:** An individual or group plan that provides, or pays the cost of medical care.
   b. **Health care clearinghouse:** A public or private entity that processes or facilitates the processing of health information.
   c. **Health care provider:** A provider of medical or health services or any person or organization who furnishes, bills, or is paid for health care in the normal course of business. 45 C.F.R. §§ 160.102, .103.

2. **Public health departments as covered entities.** Many public health departments and agencies provide health care services and, as such, are covered entities. *See generally* IND. CODE § 16-20-1-8(a) (authorizing local boards of health to provide health services); 52 M.M.W.R. 1-12 (Apr. 11, 2003) (available online at http://www.cdc.gov/mmwr/preview/mmwrhtml/m2e411a1.htm).
   a. **Hybrid entity status.** A public health department may designate itself as a hybrid entity and designate those health-care providing components of its organization to which HIPAA applies. Then, the non-designated components of the public health department need not comply with HIPAA's privacy requirements. *See* 45 C.F.R. § 164.504; 52 M.M.W.R. 1-12.

B. ***Uses and Disclosures of PHI for Public Health Activities.*** A covered entity may disclose PHI for public health purposes without an individual's authorization *provided* such disclosures are made to:

1. **A public health authority** authorized by law to collect such information to prevent or control disease, injury, or disability;
   a. "**Public health authority" defined.** A "public health authority" is an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency that is responsible for public health matters as part of its official mandate. 45 C.F.R. § 164.501.

2. **An official of a foreign government agency** that is acting in collaboration with a public health authority;

3. **A public health authority or other government authority** authorized to receive reports of child abuse or neglect;

4. **A person subject to the jurisdiction of the Food and Drug Administration (FDA)** for the purpose of activities related to the quality, safety, or effectiveness of an FDA-regulated product or activity;

5. **A person who may have been exposed to a communicable disease or is at risk of contracting or spreading a disease** if the covered entity is otherwise authorized by law to notify such a person as necessary in the conduct of a public health intervention or investigation; or

6. **An employer** if such information is related to an employee's workplace injury or workplace medical surveillance. 45 C.F.R. § 164.512(b).

C. ***Other Permitted Uses and Disclosures of PHI.*** A covered entity may also disclose PHI without an individual's authorization for, *inter alia*:

1. **Disclosures about victims of abuse, neglect, or domestic violence** to a government authority authorized to receive reports of such abuse, neglect, or violence;

2. **Uses and disclosures for health oversight activities**, such as audits, criminal investigations, or licensing actions;

3. **Disclosures for judicial and administrative proceedings** in response to a court or tribunal order, subpoena, discovery request, or other lawful process;

4. **Disclosures for law enforcement purposes**, such as identification of a suspect, apprehension of a criminal suspect, or ascertainment of a potential victim's cause of death or injury (*Cf.* United States v. Lievertz, 247 F. Supp. 2d 1052, 1063 (S.D. Ind. 2002) (holding government's interest in deterring physician's illegal distribution of controlled substances outweighed privacy interests of patients whose medical records were seized pursuant to search warrant));

5. **Uses and disclosures about decedents** for purposes such as identifying a deceased person or determining a cause or death;

6. **Uses and disclosures for cadaveric organ, eye, or tissue donation purposes** to organ procurement, banking, or transplantation organizations;

7. **Uses and disclosures for public health research purposes** regardless of the source of research funding;

8. **Uses and disclosures to avert a serious threat to health or safety**;

9. **Uses and disclosures for specialized governmental functions**, such as military activities, intelligence gathering, or law enforcement custodial situations;

10. **Disclosures for workers' compensation**; and

11. **Uses and disclosures otherwise authorized by law.** 45 C.F.R. § 164.512 (which includes a more detailed discussion of the requirements for these disclosures).

NOTE: More information about the privacy of court records may be found in the *Public Access to Court Records Handbook*, available at http://www.in.gov/judiciary/pubs.

D. ***Preemption of State Privacy Law.***

1. **Contrary state law preempted by HIPAA.** HIPAA requirements preempt contrary provisions of state law unless:
   a. The state law serves a compelling need related to public health, safety, or welfare;
   b. The principal purpose of the state law relates to the control of any controlled substance;
   c. The state law provides more stringent privacy protections for health information than the applicable HIPAA provisions;
   d. The state law provides for the reporting of disease, injury, child abuse, birth, death, or other public health surveillance or investigation; or
   e. The state law requires health plans to report or provide access to health information for purposes of financial audits or other programmatic monitoring. 45 C.F.R. § 160.203.

4.32 Disclosure of Medical Information and State Privacy Law

In general, Indiana law provides for the confidential treatment of an individual's medical information. *See generally* IND. CODE §§ 4-1-6 (defining general protections for personal information), 5-14-3-4(a)(9) (exempting personal medical records from public access requirements).

Additionally, various provisions of Indiana law require government entities and employees to maintain the confidentiality of specific medical information. Such provisions have been discussed where applicable herein and will not be further addressed in this section. *See, e.g.*, IND. CODE § 16-41-6-8(g) (HIV test results from pregnant women confidential, as discussed, *supra*, at Section 3.32(B)(2)); IND. CODE § 16-41-6-4(c) (HIV test results from newborns confidential, as discussed, *supra*, at Section 3.32(B)(3)); IND. CODE § 16-19-10-6(b) (information collected for surveillance by State Health Data Center confidential, as discussed, *supra*, at Section 3.41(A)); IND. CODE § 16-41-8-1 (reported communicable disease information confidential, as discussed, *supra*, at Section 3.42(A)).

However, of particular importance are the provisions of Indiana law regarding the confidential nature of communicable disease information.

A. ***Confidentiality of Communicable Disease Information.***

1. **No disclosure.** A person may not disclose or be compelled to disclose, by subpoena or otherwise, medical or epidemiological information involving a communicable disease or other disease that is a danger to health *unless*:
   a. The information is released for statistical purposes in a manner that does not identify an individual;
   b. The information is released pursuant to the written consent of

all individuals identified in the information;

c. The information is released to the extent necessary to enforce the public health laws, juvenile delinquency laws, criminal sentencing laws, or homicide laws;

d. The information is released to protect the health or life of a named party; or

e. The information is about a deceased individual and is released to a coroner. IND. CODE §§ 16-41-8-1(a), (d), (e).

2. **Penalties for reckless, knowing, or intentional disclosure.** A person responsible for recording, reporting, or maintaining information required to be reported pursuant to Indiana's reportable disease laws (IND. CODE § 16-41-2) who recklessly, knowingly, or intentionally discloses or fails to protect medical or epidemiological information involving a communicable disease or other disease dangerous to health commits a Class A misdemeanor. IND. CODE § 16-41-8-1(b).

NOTE: The ISDH, when investigating disease outbreaks that are potentially dangerous to the public's health, may inspect all medical and epidemiological information, wherever located. *See* IND. ADMIN. CODE tit. 410, r. 1-2.3-49(g); *Guidance on ISDH Field Epidemiologist Access to Confidential Information*, available at Appendix F.

4.33 Access to Public Records

As a general rule, all persons are entitled to full and complete information regarding the official actions of government agencies, officials, and employees – including those of the judicial branch. IND. CODE § 5-14-3-1. Indiana law provides that any person may request access to inspect and copy the public records of any public agency, without stating the purpose of such request, during the agency's regular business hours. IND. CODE § 5-14-3-3(a); IND. ADMIN. R. 9; *see generally* INDIANA PUBLIC ACCESS HANDBOOK, available at http://www.in.gov/pac/handbook. Such requests are often referred to as Freedom of Information Act (FOIA) requests. Information regarding the public health actions of federal agencies, officials, and employees are also subject to public disclosure requirements pursuant to the federal Freedom of Information Act. 5 U.S.C. § 552 (2005).

NOTE: Indiana law defines a "public agency" as any board, commission, department, committee, agency, office, or instrumentality exercising any part of the executive, administrative, judicial, or legislative power of the state. IND. CODE § 5-14-3-2.

This general policy of public disclosure may prove problematic in the event of a public health emergency, such as an infectious disease outbreak: disclosing the identity of infected individuals subject to isolation and quarantine orders may subject them to discrimination or retaliatory activities, while disclosing the scope of government containment efforts may intensify public panic. In such situations, the government may seek to maintain the confidentiality of certain public records to protect individuals and the public at large. However, the government's ability to restrict access to public records is extremely limited.

A. ***Exceptions to General Rule of Access to All Public Records.*** Indiana

statutes specifically identify those public records to which public access must or may be prohibited.

1. **Public records to which access *is* prohibited.** Indiana law provides that the public is prohibited access to, *inter alia*, the following public records in the absence of a statutory mandate or court order:
   a. **Records declared confidential by statute.** The public is prohibited access to those public records declared confidential by an Indiana statute. Such statutory declarations have been identified where applicable herein. *See, e.g.*, IND. CODE § 16-41-6-8(g) (HIV test results from pregnant women confidential, as discussed, *supra*, at Section 3.32(B)(2)); IND. CODE § 16-41-6-4(c) (HIV test results from newborns confidential, as discussed, *supra*, at Section 3.32(B)(3)); IND. CODE § 16-19-10-6(b) (information collected for surveillance by State Health Data Center confidential, as discussed, *supra*, at Section 3.41(A)); IND. CODE § 16-41-8-1 (reported communicable disease information confidential, as discussed, *supra*, at Section 3.42(A)). IND. CODE § 5-14-3-4(a)(1).
   b. **Records declared confidential by public agency rule.** The public is prohibited access to those public records declared confidential in a rule issued by a public agency having the specific authority to make such declarations. IND. CODE § 5-14-3-4(a)(2).
   c. **Records declared confidential by Indiana Supreme Court.** The public is prohibited access to those public records declared confidential by the Indiana Supreme Court, either directly or through its promulgated rules. IND. CODE § 5-14-3-4(a)(8).
   d. **Patient medical records.** The public is prohibited access to patient medical records and charts created by a provider, unless the patient gives written consent to such access. IND. CODE § 5-14-3-4(a)(9).

2. **Public records to which access *may* be prohibited.** A public agency is vested with the discretion to determine whether the public is prohibited access to, *inter alia*, the following public records:
   a. **Law enforcement investigatory records.** The public may be prohibited access to law enforcement investigatory records. IND. CODE § 5-14-3-4(b)(1).
      i. **Access to arrest, lock-up, and offense summons information required.** A public agency may not prohibit access to information regarding the arrest, lock-up, or summons of an individual for any offense. IND. CODE § 5-14-3-5.
   b. **Information regarding hospital staff meetings.** The public may be prohibited access to minutes or records of hospital staff

meetings. IND. CODE § 5-14-3-4(b)(9).

c. **Records indicating vulnerability to terrorist attack.** The public may be prohibited access to any record or part of a record that has a reasonable likelihood of threatening public safety by revealing a vulnerability to a terrorist attack. IND. CODE § 5-14-3-4(b)(19).

3. **Judicial public records.** A court may seal a public record not declared confidential by Indiana law or a public agency under certain circumstances. IND. CODE § 5-14-3-5.5; IND. ADMIN R. 9(H).

NOTE: Given the sensitive nature of medical information, as well as the fear and panic likely to surround public health emergencies, the court should consider sealing isolation and quarantine orders to protect individuals' privacy and safety.

a. **Public hearing required.** Upon receiving a request to seal a public record, the Court must hold a public hearing at which both interested parties and members of the public may testify and submit written briefs. IND. CODE § 5-14-3-5.5(c)-(d).

b. **Conditions under which sealing appropriate.** The Court may order a public record sealed only upon finding, by a preponderance of the evidence, that the following considerations outweigh the State's policy of public disclosure:

i. Sealing the record will secure a public interest;

ii. Dissemination of the information contained in the record will create a serious and imminent danger to that interest;

iii. Any prejudicial effect created by dissemination of the information cannot be avoided by any reasonable method other than sealing the record;

iv. There is a substantial probability that sealing the record will be effective in protecting the public interest against the perceived danger; and

v. It is reasonably necessary for the record to remain sealed for a period of time. IND. CODE § 5-14-3-5.5(d).

c. **Unsealing of records at earliest possible time.** A sealed public record must be unsealed at the earliest possible time after the circumstances necessitating the sealing of the record no longer exist. Id.

4. **Hybrid records.** A public agency that receives a request for access to a public record that contains both disclosable and non-disclosable information must separate the disclosable material and make it available to the requesting party. IND. CODE § 5-14-3-6.

5. **Confidentiality follows document.** A public agency that receives a confidential public record from another public agency must maintain the confidentiality of that record. IND. CODE § 5-14-3-6.5.

6. **Expiration of confidentiality.** A public record that is classified as confidential and to which public access is denied must be made

available to the public seventy-five (75) years after its creation. IND. CODE § 5-14-3-4(d).

B. ***Remedies Upon Denial of Access to Public Record.***

1. **"Denial" defined.** A public agency is deemed to have denied a request for access to a public record when:
   a. The individual making the request is physically present in the agency or has made the request by telephone, and either:
      i. The person designated by the public agency as being responsible for the release of public records refuses access to the requested record; or
      ii. Twenty-four (24) hours have elapsed after any employee of the public agency refused access to the requested record; or
   b. An individual makes the request by mail or facsimile and seven (7) days have elapsed from the date the agency received the request. IND. CODE § 5-14-3-9(a)-(b).

2. **Court proceedings.** An individual who has been denied access to a requested public record by a public agency may file an action to compel access in the circuit or superior court of the county in which the denial occurred. IND. CODE § 5-14-3-9(e).
   a. **De novo review.** The court must determine the matter de novo. IND. CODE § 5-14-3-9(f).
   b. **Burden of proof on agency.** The public agency bears the burden of proof to sustain its denial. Id.
   c. ***In camera* review of record permissible.** The court may conduct an *in camera* review of the public record at issue to determine whether any part of the record may be properly withheld from public access. IND. CODE § 5-14-3-9(h).
   d. **Right of interested parties to intervene.** The public agency must notify each person who supplied any part of the record that a request for release of the record has been denied. Upon receiving such notification, these persons may intervene in any litigation resulting from the denial. IND. CODE § 5-14-3-9(e).

C. ***Improper Disclosure of Confidential Information.***

1. **Knowing or intentional disclosure.** A public agency employee, official, or contractor who knowingly or intentionally discloses information classified as confidential by state statute commits a Class A misdemeanor and may be disciplined according to agency policy. IND. CODE § 5-14-3-10(a)-(b).

2. **Unknowing or unintentional disclosure.** A public agency employee, official, or contractor who unknowingly or unintentionally discloses confidential information in response to a request or who discloses confidential information in reliance upon

an advisory opinion by the public access counselor is immune from liability for such disclosure. IND. CODE § 5-14-3-10(c).

5.00 OPERATION OF THE COURTS AMID PUBLIC HEALTH THREATS

The conduct of judicial proceedings involving persons infected or suspected of being infected with a dangerous communicable disease will require the court to alter many of its standard procedures in order to assure the safety of court personnel and parties participating in the proceedings. For example, the court must consider whether an individual suspected of being infected with an unknown, highly contagious disease should be permitted to physically appear in the court room and, if not, how the proceedings will be conducted to ensure the individual adequate participation. Additional issues, including the adequacy of the individual's access to and consultation with counsel, will also challenge the court in such situations.

CRIMINAL LAW ANALOGY Courts may face similar considerations when conducting proceedings involving particularly violent criminal defendants.

In the event of a public health emergency, such as the widespread outbreak of an infectious disease within a community, the challenges facing the courts will be greater. Court personnel, including judges and sheriffs, may themselves become ill. The court may be forced to relocate to safer and more sanitary premises. Hundreds (if not thousands) of hearings may be required to determine the validity of isolation and quarantine orders. Each of these scenarios will strain the resources of the courts and require innovative solutions that ensure the continued operation of the judicial system while respecting constitutional due process guarantees.

Neither Indiana law nor the rules of court specifically address these challenges in the context of public health emergencies. However, several generalized provisions may be invoked in such situations.

5.10 APPEARANCE OF INDIVIDUALS POSING A POTENTIAL THREAT TO PUBLIC HEALTH

5.11 Appearance by Means Other Than in Person

Although isolation and quarantine orders may, under certain circumstances, be issued following *ex parte* hearings (*see supra*, at Section 4.11), an individual affected by such an order is subsequently entitled to attend a full hearing on the subject. *See* U.S. CONST. amend. V ("No person shall … be deprived of life, liberty, or property without due process of law…"); IND. CONST. art. I, § 26 ("All courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law."). *Cf.* IND. R.

NOTE: An individual should not be denied the opportunity to appear in person *unless* reliable scientific evidence indicates (1) the mere presence of the individual in the courtroom will

TRIAL PROC. 43(A) ("In all trials the testimony of witnesses shall be taken in open court…."). However, an individual that is the subject of an isolation or quarantine order may be physically unable to appear in court due to illness. Alternatively, the court may be unwilling to permit an infected or potentially infected individual to appear in person because of the health threat such an individual poses to court personnel, counsel, and the attending public. In the event an individual is not able or permitted to attend proceedings in person, the court should consider the following alternative procedures.

jeopardize the health of court personnel, counsel, and the attending public and (2) less extreme preventative measures (*e.g.*, face masks) are unable to adequately protect the court.

A. ***Telephonic Proceedings.*** It is within the discretion of any Indiana judge to issue reasonable orders regarding the manner in which hearings are conducted, and hearings by telephone conference call, or similar means of communication, are permissible. IND. R. TRIAL PROC. 73(A).

B. ***Video Telecommunications.*** Indiana trial courts are permitted to conduct mental health commitment hearings and proceedings via video telecommunications. IND. ADMIN. R. 14(A)(2) (also permitting use of video telecommunications in certain criminal and juvenile proceedings). Although this Rule does not authorize the use of video telecommunications in other contexts, a judge could presumably order this technology to be used in isolation and quarantine hearings pursuant to the judge's general authority to conduct hearings in any reasonable manner. IND. R. TRIAL PROC. 73(A).

1. **Observation required.** All video telecommunications technology used to conduct hearings must enable the judge to fully view the out-of-court party and his/her counsel and vice versa. IND. ADMIN. R. 14(B)(3).
   a. **Advantage of observation.** Advantageously, the use of video telecommunications, unlike telephone conferencing, would permit the judge to observe the physical condition of the patient, which will frequently be extremely relevant to assessing the scientific validity of isolation and quarantine orders.

2. **Presence of counsel required.** Counsel must be personally present with the out-of-court party when such video telecommunications technology is used to conduct hearings. IND. ADMIN. R. 14(B)(1).

3. **Meaningful consultation with counsel must be preserved.** All video telecommunications technology used to conduct hearings must enable counsel to confer privately with the out-of-court party outside the reach of the camera and audio microphone. IND. ADMIN. R. 14(B)(1)-(2).

NOTE: Due to the health threat posed by the out-of-court party, the ability of counsel to be "personally present" with the party will be limited. In such cases, the court will need to ensure the technology enables

4. **Contemporaneous document transmission required.** All video telecommunications technology used to conduct hearings must enable the contemporaneous transmission of documents and exhibits. IND. ADMIN. R. 14(B)(4).

5. **Public access preserved.** The use of video and audio telecommunications technology during judicial proceedings must not abridge, in any way, the right of public access to the courtroom. IND. ADMIN. R. 14(B)(6).

meaningful consultation between counsel and the out-of-court party while protecting counsel's health.

5.20 PROTECTION OF COURT PERSONNEL

In the event of an outbreak of infectious disease in a community, the court may find it necessary to adopt the procedures discussed, *supra*, at Section 5.10, to ensure an individual subject to an isolation or quarantine order does not expose court personnel to the disease. In certain circumstances, such as when the outbreak has affected large numbers of persons in the community or the infectious disease is easily transmitted through airborne droplets, the court may need to limit public access to the courtroom. In extreme circumstances, the court itself may need to relocate to a non-affected area to ensure its continued operation.

5.21 Limiting Public Access to the Courtroom

A. ***Limited Access at Judge's Discretion.*** A judge, at his/her discretion, may hold hearings and conduct proceedings, other than trials, in chambers. IND. R. TRIAL PROC. 72(B).

1. **Questionable ability to limit trial access.** The current rules of trial procedure require that all trials be conducted in open court and contain no exception for public health threats. *See* IND. R. TRIAL PROC. 72(B) ("All trials upon the merits shall be conducted in open court…); *see also* IND. R. TRIAL PROC. 43(A) ("In all trials the testimony of witnesses shall be taken in open court, unless state law, these rules, the Indiana Rules of Evidence, or other rules adopted by the Indiana Supreme Court provide otherwise."). Thus, under the current rules, a judge appears unable to limit public access to trials to protect the health of personnel and the public.

2. **Ability to limit media access.** Pursuant to Indiana's Code of Judicial Conduct, a judge should prohibit recording, photographing, or broadcasting of any court proceeding unless:
   a. Recording or photographing is necessary for presentation of evidence, perpetuation of the record, or other purposes of judicial administration; or
   b. The judge deems such recording, photographing, and/or broadcasting appropriate and

NOTE: "Secret" proceedings may have a detrimental effect on the public's trust in the courts. Public cooperation will be critical to successful management of any public health emergency, and actions that undermine this cooperative spirit should be taken only when scientifically necessary.

CRIMINAL LAW ANALOGY This analysis is similar to that undertaken when ruling on motions for

i. The recording, photographing, and/or broadcasting will not be a distraction;
ii. All parties and witnesses have consented;
iii. The reproduction will not be exhibited until the proceeding has been concluded and all direct appeals have been exhausted; and
iv. The reproduction will only be exhibited in educational institutions for instructional purposes. IND. CODE JUD. CONDUCT, Canon 3(B)(13).

changes of venue in criminal cases. *See* IND. R. CRIM. PROC. 12; Mendez v. State, 370 N.E.2d 323 (1977) (court must balance rights of media, defendant, and citizens when considering changes of venue in criminal cases).

5.22 Relocation of Court

A. ***Relocation at Judicial Discretion.*** A judge, at his/her discretion, may hold hearings and conduct trials in a regular courtroom or at any other location within the state. IND. R. TRIAL PROC. 72(B) ("All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom in or outside the county seat. All other acts or proceedings may be done or conducted by a judge in chambers…and at any place either within or without the circuit."); IND. R. TRIAL PROC. 73(A) ("[T]he judge at any time or place and on such notice, if any, as he considers reasonable may make order for the advancement, conduct, and hearing of actions.").

1. **Parties must consent to proceedings outside state.** A judge may not relocate the court outside the state unless all parties affected by the proceedings consent to such a relocation. IND. R. TRIAL PROC. 72(B).
   a. **Not applicable to *ex parte* hearings.** *Ex parte* hearings may be conducted outside the state without the consent of all parties. Id.

B. ***Relocation by Government Officials.*** In the event of an emergency resulting from an actual or threatened enemy attack, certain state or local government officials may relocate the courts to an emergency temporary location(s) as needed. IND. CODE §§ 4-1-3-1, 4-1-4-2.

1. **Relocation by governor.** In the event of such an emergency, the governor may relocate the seat of state government to a temporary location(s) deemed advisable under the circumstances. IND. CODE § 4-1-3-1.
   a. **Effect on government actions.** All acts undertaken at such temporary location(s) are valid and binding. IND. CODE § 4-1-3-2.
   b. **Duration of relocation.** The site designated by the governor remains the seat of government until:
      i. The general assembly, by law, establishes a new location; or
      ii. The governor declares the emergency ended and the seat of government returned to its normal location. IND. CODE § 4-1-3-1.

2. **Relocation by governing body of political subdivision.** In the event of such an emergency, the governing body of any county, township, city, or town may meet at any location within or without the political subdivision at the call of the presiding officer or any two (2) members of the body. Upon such meeting, the governing body must establish, by ordinance or resolution, a temporary location where all or any part of the public business may be conducted. IND. CODE § 4-1-4-2.
   a. **Temporary location not limited to geographical boundaries.** The temporary location designated by the governing body may be within or without the territorial limits of the political subdivision and within or without the state. Id.
   b. **Effect on government actions.** The governing body and subdivision officers possess and may exercise all executive, legislative, and judicial powers and functions conferred upon them by state law at the temporary location. IND. CODE § 4-1-4-3.
      i. **Time-consuming formalities not mandatory.** The governing body and officers may exercise their powers and functions "in light of the exigencies of the emergency situation and without regard to or compliance with time consuming procedures and formalities proscribed by law and pertaining thereto". Id.

Are some due process procedures "formalities"? In any event, the ability to dispense with "time consuming formalities" is limited to enemy attacks and does not apply to naturally occurring disease outbreaks.

5.30 PROCEEDINGS INVOLVING NUMEROUS PERSONS

In the event of an infectious disease outbreak, the courts may be called upon to issue numerous isolation and quarantine orders while simultaneously enforcing public health orders regarding premises inspections, searches, and seizures. In a severe outbreak, the sheer number of such proceedings could overwhelm the court system. Judicial surge capacity may be obtained through several logistical and procedural measures.

5.31 Additional Judicial Personnel

A. ***Additional Judges.*** The number of judges available to hear matters in courts having original jurisdiction over public health matters (*i.e.* circuit courts, superior courts, and county courts, as discussed, *supra*, at Section 1.21(A)) may be augmented through several mechanisms.

1. **Use of higher court judges.** Judges from the Indiana Supreme Court and Indiana Courts of Appeals may sit as judges on lower courts when needed. IND. CODE §§ 33-24-1-4 (supreme court judge may sit on court in any county in his/her district), 33-25-1-6 (appellate judge may sit on any circuit, superior, or criminal court).

NOTE: The appointment of additional personnel may also be necessary if the judges themselves are unable to sit due to illness. *See also* IND. CODE § 33-35-2-1 (city or town

court judge may appoint practicing attorney as temporary replacement if necessary); IND. CODE § 34-35-1-5 (election of attorney to serve as temporary judge when presiding judge unavailable due to illness or death); IND. R. TRIAL PROC. 63 (judge may be assigned to replace judge unable to complete proceedings due to illness or death).

2. **Appointment of senior judges.** The Indiana Supreme Court may appoint a senior judge, as designated by the judicial nominating commission, to sit on any circuit or superior court making such a request. IND. CODE § 33-24-3-7(a).

3. **Appointment of temporary judges.** A judge of a circuit, superior, or county court may appoint, in writing, a temporary judge. IND. CODE § 33-38-11-1(a).
   a. **Qualification criteria.** A temporary judge must be:
      i. A competent attorney admitted to practice law in Indiana; and
      ii. A resident of the judicial district of the court after his/her appointment. Id.
   b. **Powers.** A temporary judge may, *inter alia*:
      i. Take and certify affidavits and depositions (IND. CODE § 33-38-11-2(1)(B));
      ii. Issue subpoenas for witnesses to give testimony (IND. CODE § 33-38-11-2(1)(C));
      iii. Issue search warrants and arrest warrants (IND. CODE § 33-38-11-2(3)(B));
      iv. Conduct preliminary hearings in criminal matters (IND. CODE § 33-38-11-2(3)(A));
      v. Hear evidence in all cases referred to the judge and report findings in those cases to the judge of the court (IND. CODE § 33-38-11-3(a));
      vi. Make the final judgment in all cases other than those in which the defendant is being tried for a felony (IND. CODE §§ 33-38-11-3, -5); and
      vii. Conduct a jury trial, receive the jury verdict, and enter judgment on the jury verdict (IND. CODE § 33-38-11-4).
   c. **Powers within discretion of appointing judge.** The powers of a temporary judge are within the discretion of the appointing judge *provided* the powers conferred do not exceed those permitted by law. IND. CODE § 33-38-11-6.
   d. **Duration of appointment.** A temporary judge continues in office until removed by the appointing judge *provided* the temporary judge may not serve for more than sixty (60) days within a calendar year. IND. CODE §§ 33-38-11-1(a), -10.
      i. **Exception.** A temporary judge appointed by a court located in a county having a population between two hundred thousand (200,000) and three hundred thousand (300,000) is not subject to the sixty (60) day limitation. IND. CODE § 33-38-11-10.
   e. **Compensation.** A temporary judge is to be paid twenty-five dollars ($25) for each day of service. IND. CODE § 33-38-11-9.

i. **Salary to be paid by county.** The county in which a temporary judge is appointed is responsible for that temporary judge's salary. Id.

4. **Appointment of magistrates.** A superior court may appoint a full-time magistrate if authorized by its organizational statute. *See* IND. CODE §§ 33-33-1 to 33-33-92.
   a. **Qualification criteria.** An appointed magistrate must be admitted to practice law in Indiana. IND. CODE § 33-23-5-2.
   b. **Powers.** An appointed magistrate may, *inter alia*:
      i. Take and certify affidavits and depositions;
      ii. Order a subpoena to be issued in any matter pending before the court;
      iii. Issue warrants;
      iv. Conduct pretrial hearings;
      v. Conduct evidentiary hearings; and
      vi. Conduct trials. IND. CODE § 33-23-5-5.
   c. **No final orders.** An appointed magistrate may not enter a final appealable order in proceedings other than a criminal trial. IND. CODE §§ 33-23-5-8(2), 33-23-5-9.
   d. **Compensation.** A magistrate is to be paid an annual salary equal to eighty percent (80%) of the annual salary of a full-time circuit, superior, or county court judge. IND. CODE § 33-23-5-10.

NOTE: For example, the Marion County superior court is authorized to appoint one full-time magistrate. IND. CODE § 33-33-49-31.

5. **Appointment of other officers.** A superior court judge may appoint other officers as necessary to conduct the court's business. IND. CODE § 33-29-5-4.

6. **Appointment of elisor.** In the event the sheriff and coroner are unable or refuse to serve the circuit court, the board of county commissioners may appoint an elisor to serve in their place during all necessary matters. IND. CODE §§ 33-28-1-10, -11.

5.32 Consolidation of Cases

A. ***Class Actions.*** The ISDH, a local board of health, or a health officer may find it expeditious to bring a judicial action to enforce isolation or quarantine orders against numerous individuals as a class action. IND. R. TRIAL PROC. 23(A). If numerous orders are required, class certification may be appropriate given that similar issues of law and objections will predominate in most cases. IND. R. TRIAL PROC. 23(A)-(B). In the event the court agrees to class certification, it should be certain to:

1. Provide the best notice practicable under the circumstances to all class members, including individual notice when reasonable (IND. R. TRIAL PROC. 23(C)(2));

NOTE: Given the extensive intrusions upon individual liberties that isolation and quarantine may entail and the limited opportunity that class certification affords affected individuals to present their case

2. Advise each member of the class, through the notice, that he/she may request to be excluded from the class (IND. R. TRIAL PROC. 23(C)(2)(a)); and

3. Carefully describe the class when issuing orders (IND. R. TRIAL PROC. 23(C)(3)).

to the court, class certification should be implemented only when no other feasible procedure exists for efficiently adjudicating all matters pending before the court.

6.00 STATE OF EMERGENCY

In recognition of the threat to public health and safety posed by emergencies and disasters of both manmade and natural causes, Indiana law provides for emergency management procedures. *See* IND. CODE § 10-14-3-7. Indiana's emergency management procedures include, but are not limited to, the following:

- Establishment of a Department of Homeland Security (IND. CODE § 10-14-3-7; S.B. 56, 114th Gen. Assem. (Ind. 2005)).
- Preparation of state emergency plans and preparedness efforts (IND. CODE § 10-14-3-9);
- Provision of increased powers to the governor, state agencies, and local governments (IND. CODE §§ 10-14-3-7(b)(4), -12);
- Enactment of an Interstate Emergency Management and Disaster Compact for the provision of equipment, personnel, and services by other states in the event of an emergency or disaster (IND. CODE §§ 10-14-5, -6); and
- Use of private property to cope with an emergency or disaster and compensation for such use (IND. CODE §§ 10-14-3-12(d)(4), -31).

NOTE: A state of emergency is distinct from martial law. The provisions discussed in this section do not limit or modify the governor's power to proclaim martial law. *See* IND. CODE § 10-14-3-8(a)(4).

The provision of necessary medical and health services is included within emergency management. *See* IND. CODE § 10-14-3-2(3). Thus, Indiana's emergency management laws will be discussed herein to the extent they affect public health practitioners and public health law. Indiana's emergency management laws may be found in their entirety at IND. CODE § 10-14-3.

6.10 DECLARING A STATE OF EMERGENCY

6.11 When Appropriate

A. ***By Governor Upon Determination that Disaster Has Occurred or Is Imminent.*** The governor may declare a disaster emergency upon determining that a disaster has occurred or that the occurrence or threat of a disaster is imminent. IND. CODE § 10-14-3-12(a).

NOTE: Prior to the formal declaration of a state of

1. **"Disaster" defined.** A "disaster" is an "occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural phenomenon or human act." IND. CODE § 10-14-3-1(a); S.B. 56, 114th Gen. Assem. (Ind. 2005).
   a. **Epidemics and public health emergencies specifically included within definition of "disaster."** The 2005 General Assembly amended the Indiana statutes to specifically identify epidemics and public health emergencies as examples of a "disaster." *See* IND. CODE § 10-14-3-1(b); S.B. 56, 114th Gen. Assem. (Ind. 2005). As defined, "disaster" also includes biological incidents. *See id.*

B. ***By Local Official.*** The principal executive officer of a political subdivision may declare a local disaster emergency for no more than seven (7) days when appropriate. IND. CODE § 10-14-3-29(a)(1).

emergency, the Director of the Department of Homeland Security may use and allocate the services, facilities, equipment, personnel, and resources of any state agency as reasonably necessary for response to or recovery from any threatened or actual emergency. *See* IND. EXEC. ORDER NO. 05-09 (Jan. 10, 2005).

6.12 Procedures

A. ***When Declared by Governor.***

1. **Method of declaration.** The governor may declare a disaster emergency by executive order or proclamation. IND. CODE § 10-14-3-12(a).

2. **Contents of declaration.** All executive orders or proclamations declaring a disaster emergency must indicate:
   a. The nature of the disaster;
   b. The area(s) threatened; and
   c. The conditions that have brought about the disaster. Id.

3. **Duration.** A gubernatorially-declared state of emergency remains in effect until the earlier of:
   a. The governor's termination of the disaster emergency by executive order or proclamation upon determining that the threat or danger has passed or the disaster has been dealt with such that emergency conditions no longer exist;
   b. The passage of a concurrent resolution by the general assembly terminating the disaster emergency; or
   c. The passage of thirty (30) days. Id.

4. **Renewal.** The governor may renew the declaration of a state of emergency following the expiration of thirty (30) days. Id.

B. ***When Declared by Local Official.***

1. **Consent of local governing board required for extension.** A declared local disaster emergency may only be continued for more than seven (7) days upon consent of the governing board of the

political subdivision. IND. CODE § 10-14-3-29(a)(2).

6.20 POWERS OF GOVERNMENT DURING A DECLARED EMERGENCY

6.21 Gubernatorial Powers

A. ***Broad Powers.*** The powers of the governor during a declared disaster emergency are extremely broad. *See* IND. CODE §§ 10-14-3-11, -12.

B. ***Powers Relevant to Public Health Law.*** Of relevance to public health law are the governor's powers to:

1. **Employ any measure and give any direction to the ISDH or local boards of health as is reasonably necessary** for securing compliance with Indiana's emergency management laws or the findings or recommendations of the ISDH or local boards of health because of conditions arising from an actual or threatened national security emergency or manmade or natural disaster or emergency (IND. CODE § 10-14-3-11(b)(4));

2. **Give any order to state and local law enforcement officers and agencies as is reasonable and necessary** to secure compliance with Indiana's emergency management laws (IND. CODE §§ 10-14-3-11(b)(3), -24);

3. **Serve as commander-in-chief of the organized and unorganized militia and all other forces** available for emergency duty (IND. CODE § 10-14-3-12(c));

4. **Control ingress to and egress from a disaster area**, as well as the movement of persons within the disaster area and the occupancy of premises in the disaster area (IND. CODE § 10-14-3-12(d)(7));

5. **Give authority to allocate drugs, food, and other essential materials and services** (IND. CODE § 10-14-3-12(d)(11));

6. **Commandeer or use private property as necessary** to cope with the disaster emergency (IND. CODE § 10-14-3-12(d)(4)) *subject to the compensation requirements of* IND. CODE § 10-14-3-31, discussed, *infra*, at Section 6.21(C)(2); and

7. **Allow persons holding licenses to practice medicine, dentistry, pharmacy, nursing, and other similar professions to practice their respective profession in Indiana during the disaster emergency**, *provided* the state in which the person's license was issued has executed a mutual aid compact for emergency management with Indiana (IND. CODE § 10-14-3-12(d)(10)).

C. ***Limitations on Governor's Powers.***

1. **Refusal of medical treatment.** An individual may not be compelled to submit to physical examination, medical treatment, or immunization if such person relies in good faith upon spiritual means or prayer to prevent or cure disease or suffering. IND. CODE § 10-14-3-23.
   a. **Written refusal required.** Such a refusal to submit to examination, treatment, or immunization for religious reasons must be provided in writing. Id.

2. **Compensation.** Although the governor is entitled to commandeer or use private property to the extent necessary during a disaster emergency, compensation must be paid to the property owner(s) under certain circumstances.
   a. **When due.** An individual is entitled to compensation for the taking or use of the individual's property only if:
      i. The taking or use exceeds the individual's obligation, pursuant to IND. CODE § 10-14-3-31(a), to permit appropriate use or restrictions on the use of his/her property during a disaster emergency;
      ii. The individual did not volunteer the use of his/her property without compensation;
      iii. The property was commandeered or otherwise used to cope with a disaster emergency; and
      iv. The use or destruction of the property was ordered by the governor or a member of Indiana's disaster emergency forces. IND. CODE § 10-14-3-31.
   b. **Exceptions.** The government is not required to provide compensation for:
      i. The destruction of standing timber or other property in order to provide a fire break; or
      ii. The release of waters or the breach of impoundments in order to reduce pressure or other danger from actual or threatened flood. IND. CODE § 10-14-3-31(e).

6.22 Powers of Local Officials

A. ***General Authority.*** A political subdivision may make, amend, or rescind orders, rules, and regulations as necessary for emergency management purposes *provided* such orders, rules, and regulations are not inconsistent with those adopted by the governor or state agencies or those provided in the subdivision's emergency management plans. IND. CODE § 10-14-3-22.

6.30 IMMUNITY OF GOVERNMENT ACTORS DURING A DECLARED EMERGENCY

6.31 Extent of Immunity

A. ***Emergency Management is Governmental Function.*** All emergency management functions and activities are deemed governmental functions. IND. CODE § 10-14-3-15(a).

B. ***Government Actors Immune for Death, Injury, and Property Damage.*** The following actors are immune from liability for death or injury to any person or for damage to property as a result of any activity taken to comply or reasonably attempt to comply with Indiana's emergency management laws:

1. The state;

2. All political subdivisions of the state;

3. Any agencies of the state or of political subdivisions of the state; and

4. Any emergency management worker not engaging in willful misconduct, gross negligence, or bad faith. IND. CODE § 10-14-3-15.
   a. **Immunity of employees acting outside political subdivision.** An employee of a political subdivision who renders aid outside of that subdivision during a disaster emergency remains immune from liability. IND. CODE § 10-14-3-18(a).

C. ***Individuals Immune for Negligent Death, Injury, and Property Damage on Volunteered Premises.*** An individual, corporation, firm, or limited liability company owning property that voluntarily and without compensation permits the use of that property during an actual or pending emergency cannot be held civilly liable for the death or injury of any person or damage to any property occurring on the property *provided* such death, injury, or damage arose from the negligent condition of the property or the negligent conduct of persons engaged in directing or seeking shelter on the property. IND. CODE § 10-14-3-25(e).

6.40 OPERATION OF THE COURTS DURING A DECLARED EMERGENCY

Indiana's emergency management laws contain no explicit provisions regarding operation of Indiana courts during a declared disaster emergency. A discussion of some of the challenges that will face courts during a public health emergency, as well as potential solutions, may be found *supra*, at Section 5.00.

7.00 MODEL ORDERS

7.10 ORDERS TO PROCURE BIOLOGICAL EVIDENCE FROM AN INDIVIDUAL'S PERSON

7.11 Model Order to Take Body Substance Sample

STATE OF INDIANA IN THE [*insert court name*] COURT
COUNTY OF [*insert county name*] CASE NO. [*insert case number*]
IN RE SEARCH OF [*insert subject individual's name*]

ORDER

This matter having come before the COURT upon the application of [*insert name of petitioning party and applicable title*], the COURT having received evidence, heard sworn testimony in support thereof on [*insert hearing date*], and being otherwise sufficiently advised,

The COURT now FINDS:

1. The petitioner, [*insert petitioner's name*], [*insert petitioner's title as health officer*] has reasonable grounds to believe [*insert subject individual's name*] is infected with [*insert name of applicable communicable or dangerous disease*].
2. The petitioner, [*insert petitioner's name*], further has reasonable grounds to believe [*insert subject individual's name*] poses a serious and present threat to the health of others because [*insert subject individual's name*] has engaged in the following conduct: [*specifically list conduct showing behavior or threatened behavior capable of transmitting disease or failure of individual to meet his/her duty to warn*].
3. The petitioner, as an officer of [*insert name of local health department*] has requested that [*insert subject individual's name*] undergo medical testing to confirm the presence of [*insert name of applicable disease*].
4. [*Insert subject individual's name*] has refused such testing.

The COURT now MAKES the following conclusions:

1. Pursuant to IND. CODE § 16-41-6-2(b), the petitioner, in his role as [*insert petitioner's title as health officer*] is empowered to request [*insert subject individual's name*] to submit to medical testing to determine whether [*insert subject individual's name*] is infected with [*insert name of applicable disease*].
2. If [*insert subject individual's name*] refuses to submit to such medical testing, petitioner, in his roles as [*insert petitioner's title as health officer*] may petition this court to compel the testing pursuant to IND. CODE § 16-41-6-2(c).
3. As a matter of law and pursuant to IND. CODE § 16-41-6-2(c), this court

> may compel [*insert subject individual's name*] to submit to medical testing to determine whether [*insert subject individual's name*] is infected with [*insert name of applicable disease*] because clear and convincing evidence has shown that [*insert subject individual's name*] poses a serious and present health threat to others given [*insert subject individual's name*]'s conduct identified, above, at Findings ¶ 2.

Therefore, IT is ORDERED, ADJUDGED, and DECREED that the sheriff of this COURT shall arrange for [*insert individual's name*] to be transported to the [*insert name of appropriate medical facility*], where a licensed medical doctor shall cause a [*insert type of sample (e.g., blood, fluid, tissue)*] sample to be removed from [*insert subject individual's name*]'s body and subjected to a test that has been scientifically demonstrated to reveal whether [*insert individual's name*] is infected with [*insert name of communicable or dangerous disease being screened for*].

It is further ORDERED, ADJUDGED, and DECREED that The sample procurement and test shall be conducted in the least intrusive manner reasonably possible under the circumstances. In the event [*insert individual's name*] refuses to submit to the test ordered herein, [*insert petitioner's title as health officer*] shall return to this court to obtain an order authorizing the use of force to conduct the necessary test.

It is finally ORDERED, ADJUDGED, and DECREED that the results of this test shall be disclosed only to [*insert subject individual's name*], [*insert petitioner's name*], and other individuals legally authorized to access such information.

SO ORDERED this [*insert day*] day of [*insert month*], [*insert year*].

[*Insert signature of judge*]
[*Insert printed name of judge*]
[*Insert title of judge*]
[*Insert name of court*]

7.12 Model Search Warrant/Order to Take Body Substance Sample by Necessary Force

STATE OF INDIANA IN THE [*insert court name*] COURT
COUNTY OF [*insert county name*] CAUSE NO. [*insert cause number*]
IN RE SEARCH OF [*insert subject individual's name*]

ORDER

TO: [*insert names of applicable police departments*]
INDIANA STATE POLICE
OR ANY LAW ENFORCEMENT OFFICER
[*insert names of applicable medical facilities*]
OR ANY PHYSICIAN OR STAFF AT [*insert names of applicable medical facilities*]
OR ANY EMPLOYEE OR AGENT OF [*insert names of applicable medical facilities*]
AS REQUIRED FOR ASSISTANCE

The COURT having reviewed the affidavit of [*insert name(s) of affiant(s)*] and being duly advised in the premises, now finds that probable cause for the issuance of this search warrant has been established.

NOTE: The affidavit should be attached to the Search Warrant/ Order and specifically identify all reasons why the use of force is necessary to obtain the body substance sample.

You are authorized and ordered, in the name of the State of Indiana, with the necessary and proper medical and/or other appropriate health care assistance to obtain and remove a [*insert sample type (e.g., blood, tissue)*] sample from:
[*Insert name of individual*]
[*Insert individual's date of birth or other identifier*]
and to use reasonable force to obtain such sample. You are ordered to seize the sample obtained on such search and to forward it to an appropriate laboratory facility for chemical analysis.

SO ORDERED this [*insert day*] day of [*insert month*], [*insert year*].

[*Insert signature of judge*]
[*Insert printed name of judge*]
[*Insert title of judge*]
[*Insert name of court*]

7.20 ISOLATION AND QUARANTINE ORDERS

7.21 Model Summons for Individual to Appear at Hearing Regarding Court Enforcement of Isolation or Quarantine Order

STATE OF INDIANA IN THE [*insert court name*] COURT
COUNTY OF [*insert county name*] CASE NO. [*insert case number*]
IN RE [*insert "isolation" or "quarantine" as applicable*] OF [*insert subject individual's name*]

SUMMONS

TO: [*insert individual's name*]
[*insert individual's address*]

1. You are hereby notified that the [*insert local health department name*] has filed a petition requesting that a court order of [*insert "isolation" or "quarantine" as applicable*] be issued against you. The nature of this request is stated in the petition which is attached to this summons. The petition also states, with specificity, the relief sought or the demand made against you by [*insert local health department name*].

2. YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY IN THIS MATTER. IF YOU CANNOT AFFORD AN ATTORNEY, ONE WILL BE APPOINTED FOR YOU.

3. YOU HAVE THE RIGHT TO APPEAR AT ANY HEARING HELD REGARDING THIS MATTER. A hearing date has been set for [*insert applicable date, time, and location of hearing*].

4. IF YOU AND/OR YOUR ATTORNEY DO NOT APPEAR AT THE TIME AND PLACE INDICATED ABOVE, AN ORDER OF [*insert "isolation" or "quarantine" as applicable*] WILL BE ISSUED AGAINST YOU AS REQUESTED BY THE [*insert local health department name*].

Dated: [*insert date*]
[*insert seal*]
[*insert name of issuing clerk*], [*insert name of Court*]

The following manner of Service of Summons is hereby designated:

_____ Registered / Certified Mail to be sent by the Clerk

_____ Service by Sheriff on Individual at address shown above

_____ Service by Sheriff at Individual's place of employment, [*insert name and address of individual's employer*]

SHERIFF'S RETURN OF SERVICE OF SUMMONS

I hereby certify that I have served this summons on the [*insert date*] day of [*insert month*], [*insert year*]:

(1) By delivering a copy of the Summons and a copy of the Petition to the Individual, [*insert individual's name*], identified on the 1st page of the Summons.

(2) By delivering a copy of the Summons and a copy of the Petition to the Individual, [*insert individual's name*], identified on the 1st page of the Summons.

(3) By delivering a copy of the Summons and a copy of the Petition to the Individual, [*insert individual's name*], identified on the 1st page of the Summons.

(4) By leaving a copy of the Summons and a copy of the Petition at [*insert address*], which is the dwelling place or usual place of abode of [*insert individual's name*] <u>and</u> by mailing a copy of the Summons to [*insert individual's name*] at the above address.

Other Service or Remarks: [*insert as applicable*].

[*Insert Sheriff's Costs*]

[*Insert Sheriff's Name*]
By: [*Insert Deputy's Signature*]
Deputy

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on the [*insert date*] day of [*insert month*], [*insert year*] I mailed a copy of this Summons and a copy of the Petition to the Individual, [*insert individual's name*], identified on the 1st page of the Summons by [*insert mail type*] mail, requesting a return receipt, at the address provided by the Petitioner.

[*Insert Clerk's Signature*]
Clerk, [*insert county name*] County

Dated: [*insert date*]

By: [*Insert Deputy's Signature*] Deputy

RETURN OF SERVICE OF SUMMONS BY MAIL

I hereby certify that the attached receipt was received by me showing that the Summons and a copy of the Petition mailed to the Individual, [*insert individual's name*], identified on the 1st page of this Summons was accepted by the Individual on the [*insert date*] day of [*insert month*], [*insert year*].

I hereby certify that the attached return receipt was received by me showing

that the Summons and a copy of the Petition was returned not accepted on the [*insert date*] day of [*insert month*], [*insert* year].

I hereby certify that the attached return receipt was received by me showing that the Summons and a copy of the Petition mailed to the Individual, [*insert individual's name*], identified on the 1st page of this Summons was accepted by [*insert name of person accepting Summons*] on behalf of the Individual on the [*insert date*] day of [*insert month*], [*insert year*].

[*Insert Clerk's Signature*]
Clerk, [*insert county name*] County

By: [*Insert Deputy's Signature*] Deputy

7.22 Model Order for Isolation of Individual Pursuant to IND. CODE § 16-20-1-21 (Including Findings of Fact and Conclusions)

STATE OF INDIANA IN THE [*insert court name*] COURT
COUNTY OF [*insert county name*] CASE NO. [*insert case number*]
IN RE ISOLATION OF [*insert subject individual's name*]

ORDER

The COURT, having received evidence, exhibits, and argument, and being duly advised in the premises, now FINDS:

1. The [*insert local health department name*] has received reports of increasing numbers of ill people exhibiting symptoms of a disease that has in its common course severe disability or death.
2. That since [*insert date of first case report*] until the time at which a hearing on this matter was held, over [*insert applicable number*] people have been stricken with this disease and [*insert applicable number*] people have died.
3. The biological agent causing this disease has not been conclusively identified at this time.
4. The symptoms that characterize this disease include: [*list physical symptoms with specificity*]
5. Clear and convincing evidence shows that those people who are in physical contact with or in the proximity of [*insert applicable number*] feet or less of an individual infected with this disease are likely to exhibit symptoms within [*insert applicable number*] days, which period of time is referred to herein as the "incubation period". [*Insert any other known information about the method of disease transmission*]. Thus, the clear and convincing evidence suggests this disease is easily transmissible from person-to-person.
6. There are no known preventive medications for this disease at this time.
7. The most effective method currently known to medical science to contain and curtail the spread of this disease is the isolation of anyone who has the symptoms identified above at ¶ 4, and the quarantine of those who have been exposed to a person infected with this disease for the duration of the incubation period, as identified above at ¶ 5.
8. The testimony of qualified witnesses, including [*insert names and titles of relevant witnesses*], has indicated that [*insert individual's name*] is exhibiting the following symptoms: [*list individual's exhibited physical symptoms with specificity*].
9. The testimony of qualified witnesses, including [*insert names of relevant witnesses and describe their association with the individual*], has indicated that [*insert individual's name*] comes into contact with numerous individuals on a regular basis through his/her activities as [*list applicable profession or personal undertakings*] and that [*insert individual's name*] has undertaken these activities since becoming

EVIDENTIARY NOTE: Indiana law does not specify the burden of proof applicable in court proceedings to enforce isolation and quarantine orders issued by public health authorities. Given the equitable nature of these proceedings and the severe deprivation of individual liberty at stake, Courts should require clear

infected with this disease.

10. Due to [*insert individual's name*]'s display of the symptoms recited above at ¶ 8, [*insert individual's name*] requires skilled medical care in an appropriate medical facility.
11. Isolation of [*insert individual's name*] in a medical facility will reasonably protect those with whom [*insert individual's name*] would otherwise come in contact from acquiring this disease from [*insert individual's name*].
12. The [*insert local health department name*] is the agency with the authority to control the spread of infectious diseases and the responsibility to provide medical care and supervision for [*insert individual's name*] pursuant to exercises of such authority.
13. Pursuant to such authority and in an attempt to prevent [*insert individual's name*] from undertaking activities potentially harmful to the public's health, the [*insert local health department name*] issued an order of isolation to [*insert individual's name*] on [*insert date of order's issuance*], which the COURT has received as Exhibit [*insert applicable Exhibit number*].
14. The testimony of qualified witnesses, including [*insert names and titles of relevant witnesses*], has indicated that [*insert individual's name*] has failed to comply with this order, as evidenced by: [*list activities demonstrating noncompliance in detail*].

and convincing evidence that an individual poses a public health threat before issuing an isolation or quarantine order.

The COURT now MAKES the following conclusions:

1. The [*insert local health department name*] had the authority to issue an order of isolation to [*insert individual's name*] pursuant to IND. CODE § 16-20-1-21 and IND. ADMIN. CODE tit. 410, r. 1-2.3-51(6).
2. This [*insert "Circuit" or "Superior" as applicable*] COURT has jurisdiction over this action pursuant to IND. CODE § 16-20-1-26(a).
3. Pursuant to IND. CODE § 16-20-1-26(a), this COURT has the power to issue an injunction compelling [*insert individual's name*] to comply with the [*insert local health department name*]'s isolation order.
4. The nature of the disease at issue (as recited above at ¶ 1), the symptoms exhibited by [*insert individual's name*] (as recited above at ¶ 8), and the conduct of [*insert individual's name*] (as recited above at ¶¶ 9 and 14), constitute clear and convincing evidence that [*insert individual's name*] must be placed under an order of isolation so as to protect the public's health.

Therefore, IT is ORDERED, ADJUDGED, and DECREED that [*insert individual's name*] be confined to a medical isolation unit at the [*insert medical facility name*] for a period of [*insert period of time based upon the incubation period of the communicable disease most closely resembling the disease at issue, as established by the testimony of qualified experts, which period is consistent with the incubation period identified above at ¶ 5*] days. [*Insert individual's name*] is enjoined from leaving the [*insert medical facility*

name] until this period of time has elapsed.

It is further ORDERED, ADJUDGED, and DECREED that upon the expiration of said period of time, [*insert individual's name*] shall be released from confinement and the [*insert local health department name*] shall file a final report regarding disposition of this matter with this COURT. In the event the [*insert local health department name*] believes further confinement of [*insert individual's name*] will be necessary after expiration of said period of time, it shall commence appropriate proceedings to that effect in this COURT prior to the expiration of said period of time.

It is finally ORDERED, ADJUDGED, and DECREED that the COURT sheriff shall arrange for transportation of [*insert individual's name*] to the [*insert medical facility name*]. The [*insert local health department name*] bears the logistical and financial responsibility for all necessary medical care and other facility costs associated with [*insert individual's name*]'s confinement at the [*insert medical facility name*].

This order shall expire [*insert applicable number of days*] after its issuance.

So ordered this [*insert day*] of [*insert month*], [*insert year*].

[*Insert signature of judge*]
[*Insert printed name of judge*]
[*Insert judge's title*]
[*Insert court name*]

7.23 Model Order for Quarantine of Individual Pursuant to IND. CODE § 16-20-1-21 (Including Findings of Fact and Conclusions)

STATE OF INDIANA IN THE [*insert court name*] COURT
COUNTY OF [*insert county name*] CASE NO. [*insert case number*]
IN RE QUARANTINE OF [*insert subject individual's name*]

ORDER

The COURT, having received evidence, exhibits, and argument, and being duly advised in the premises, now FINDS:

1. The [*insert local health department name*] Department of Health has received reports of increasing numbers of ill people exhibiting symptoms of a disease that has in its common course severe disability or death.
2. That since [*insert date of first case report*] until the time at which a hearing on this matter was held, over [*insert applicable number*] people have been stricken with this disease and [*insert applicable number*] people have died.
3. The biological agent causing this disease has not been conclusively identified at this time.
4. The symptoms that characterize this disease include: [*list physical symptoms with specificity*]
5. Clear and convincing evidence shows that those people who are in physical contact with or in the proximity of [*insert applicable number*] feet or less of an individual infected with this disease are likely to exhibit symptoms within [*insert applicable number*] days, which period of time is referred to herein as the "incubation period". Thus, the clear and convincing evidence suggests that this disease is easily transmissible from person-to-person.
6. There are no known preventive medications for this disease at this time.
7. The most effective method currently known to medical science to contain and curtail the spread of this disease is the isolation of anyone who has the symptoms identified above at ¶ 4, and the quarantine of those who have been exposed to a person infected with this disease for the duration of the incubation period, as identified above at ¶ 5.
8. The testimony of qualified witnesses, including [*insert names and titles of relevant witnesses and describe their association with the individual, where applicable*], has indicated that [*insert individual's name*] has come into come into contact with [*identify individual(s) infected with the disease*], who is infected with this disease, on [*insert date(s) of contact*] in the following manner: [*list means of contact in detail*].
9. The testimony of qualified witnesses, including [*insert names and titles of relevant witnesses*], has indicated that this contact is sufficient for [*identify individual(s) infected with the disease*] to have transmitted this disease to [*insert individual's name*].
10. The testimony of qualified witnesses, including [*insert names of*

EVIDENTIARY NOTE: Indiana law does not specify the burden of proof applicable in court proceedings to enforce isolation and quarantine orders issued by public health authorities. Given the equitable nature of these proceedings and the severe deprivation of individual liberty at stake, Courts should require clear

relevant witnesses and describe their association with the individual], has indicated that [*insert individual's name*] comes into contact with numerous individuals on a regular basis through his/her activities as [*list applicable profession or personal undertakings*] and that [*insert individual's name*] has undertaken these activities since coming into contact with [*identify individual(s) infected with the disease*].

and convincing evidence that an individual poses a public health threat before issuing an isolation or quarantine order.

11. Quarantine of [*insert individual's name*] in [*insert individual's name*]'s home or other appropriate facility will reasonably protect those with whom [*insert individual's name*] would otherwise come in contact with from acquiring this disease from [*insert individual's name*] in the event [*insert individual's name*] is infected with this disease.
12. The [*insert local health department name*] is the agency with the authority to control the spread of infectious diseases and the responsibility to provide medical care, supervision, and other necessities for [*insert individual's name*] pursuant to exercises of such authority.
13. Pursuant to such authority and in an attempt to prevent [*insert individual's name*] from undertaking activities potentially harmful to the public's health, the [*insert local health department's name*] issued an order of quarantine to [*insert individual's name*] on [*insert date of order's issuance*], which the COURT has received as Exhibit [*insert applicable Exhibit number*].
14. The testimony of qualified witnesses, including [*insert names and titles of relevant witnesses*], has indicated that [*insert individual's name*] has failed to comply with this order, as evidenced by:
[*list activities demonstrating noncompliance in detail*].

The COURT now MAKES the following conclusions:

1. The [*insert local health department's name*] had the authority to issue an order of quarantine to [*insert individual's name*] pursuant to IND. CODE § 16-20-1-21 and IND. ADMIN. CODE tit. 410, r. 1-2.3-51(6).
2. This [*insert "Circuit" or "Superior" as applicable*] COURT has jurisdiction over this action pursuant to IND. CODE § 16-20-1-26(a).
3. Pursuant to IND. CODE § 16-20-1-26(a), this COURT has the power to issue an injunction compelling [*insert individual's name*] to comply with the [*insert local health department name*]'s quarantine order.
4. The nature of the disease at issue (as recited above at ¶ 1), [*insert individual's name*] contact with [*identify individual(s) infected with the disease*] (as recited above at ¶¶ 8 and 9), and the conduct of [*insert individual's name*] (as recited above at ¶¶ 10 and 15), constitute clear and convincing evidence that [*insert individual's name*] must be placed under an order of quarantine so as to protect the public's health.

Therefore, IT is ORDERED, ADJUDGED, and DECREED that [*insert individual's name*] be confined to [*insert appropriate site of confinement, (e.g. the individual's home), as established by the testimony of qualified*

experts] for a period of [*insert period of time based upon the incubation period of the communicable disease most closely resembling the disease at issue, as established by the testimony of qualified experts, which period should be consistent with the incubation period identified above at ¶ 5*] days. [*Insert individual's name*] is enjoined from leaving [*insert appropriate site of confinement*] until this period of time has elapsed.

It is further ORDERED, ADJUDGED, and DECREED that upon the expiration of said period of time, [*insert individual's name*] shall be released from confinement and the [*insert local health department name*] shall file a final report regarding disposition of this matter with this COURT. In the event the [*insert local health department name*] believes further confinement of [*insert individual's name*] will be necessary after the expiration of said period of time, it shall commence appropriate proceedings to that effect in this court prior to the expiration of said period of time.

It is finally ORDERED, ADJUDGED, and DECREED that the COURT sheriff shall arrange for transportation of [*insert individual's name*] to the [*insert appropriate site of confinement*]. The [*insert local health department name*] bears the logistical and financial responsibility for all necessary medical care and other costs associated with [*insert individual's name*]'s confinement for the duration of this quarantine order.

This order shall expire [*insert applicable number of days*] after its issuance.

So ordered this [*insert day*] of [*insert month*], [*insert year*].

[*Insert signature of judge*]
[*Insert printed name of judge*]
[*Insert judge's title*]
[*Insert court name*]

7.24 Model Order for Non-Emergency Isolation of Individual Pursuant to IND. CODE § 16-41-9-1 (Including Findings of Fact and Conclusions)

STATE OF INDIANA IN THE [*insert court name*] COURT
COUNTY OF [*insert county name*] CASE NO. [*insert case number*]
IN RE ISOLATION OF [*insert subject individual's name*]

ORDER

The COURT, having received evidence, exhibits, and argument, and being duly advised in the premises, now FINDS:

1. The testimony of qualified witnesses, including [*insert names and titles of relevant witnesses*], has indicated that [*insert individual's name*] is infected with [*insert applicable disease name, e.g.,* active pulmonary tuberculosis (TB)].
2. [*Insert applicable disease name, e.g.* active pulmonary TB] is a communicable disease characterized by the following symptoms and course of progression: [*list physical symptoms associated with disease, e.g.* active pulmonary TB, *with specificity*].
3. [*Insert applicable disease name, e.g.* active pulmonary TB] is transmitted in the following manner: [*identify means of transmission with specificity*].
4. The [*insert "state health commissioner", "state health commissioner's legally authorized agent", or "local health officer of [insert name of applicable locality]" as appropriate*] has determined that [*insert individual's name*] poses a serious and present danger to the health of others, as evidenced by: [*list activities constituting "serious and present danger". N.B.: These activities must include (a) repeated behavior that has been epidemiologically demonstrated to transmit the disease, e.g.,* TB, *or indicates a careless disregard for transmission of the disease, e.g.,* active pulmonary TB, *to others; or (b) past behavior or statements that indicate an imminent danger the individual will transmit the disease, e.g.,* active pulmonary TB, *to others.*].

The COURT now MAKES the following conclusions:

1. This [*insert "Circuit" or "Superior" as applicable*] COURT has jurisdiction over this action pursuant to IND. CODE §§ [*insert "33-28-1-2" if Circuit Court or "33-29-1-4" if Superior Court*] and 16-41-9-1.
2. [*Insert individual's name*]'s conduct, recited above at ¶ 4, constitutes clear and convincing evidence that [*insert individual's name*] is a serious a present danger to the health of others, as contemplated by IND. CODE §§ 16-18-2-328, 16-41-7-2(a), and 16-41-9-1(a).

Therefore, IT is ORDERED, ADJUDGED, and DECREED that [*insert individual's name*] be confined to a respiratory medical isolation unit at the [*insert applicable tuberculosis hospital name (as defined and governed by*

IND. CODE § 16-24) or name of other appropriate medical facility] until rendered non-contagious by treatment with appropriate medication(s), as determined by standard medical test(s), or no longer a serious and present danger to others, whichever occurs first.

It is further ORDERED, ADJUDGED, and DECREED that upon the occurrence of either of the above-indicated conditions, [*insert individual's name*] shall be released from confinement and the [*insert "state health commissioner", "state health commissioner's legally authorized agent", or "local health officer of [insert name of applicable locality]" as appropriate*] shall file a final report regarding disposition of this matter with this COURT. In the event the [*insert "state health commissioner", "state health commissioner's legally authorized agent", or "local health officer of [insert name of applicable locality]" as appropriate*] believes further confinement of [*insert individual's name*] is necessary after the occurrence of either of the above-indicated conditions, he/she shall commence appropriate proceedings to that effect in this COURT.

It is finally ORDERED, ADJUDGED, and DECREED that the COURT sheriff shall arrange for transportation of [*insert individual's name*] to the [*insert applicable tuberculosis hospital name (as defined and governed by IND. CODE § 16-24) or name of other appropriate medical facility*]. The [*insert "ISDH" or local health department name*] bears the logistical and financial responsibility for all necessary medical care and other facility costs associated with [*insert individual's name*] confinement at the [*insert applicable tuberculosis hospital name (as defined and governed by IND. CODE § 16-24) or name of other appropriate medical facility*].

This order shall expire [*insert applicable number of days*] after its issuance.

So ordered this [*insert day*] or [*insert month*], [*insert year*].

[*Insert signature of judge*]
[*Insert printed name of judge*]
[*Insert judge's title*]
[*Insert court name*]

APPENDIX A

PUBLIC HEALTH PRIMER

A. What is Public Health?

Public health is frequently defined as "what we, as a society, do collectively to assure the conditions in which people can be healthy."[1]

In first proposing this definition nearly twenty years ago, the Institute of Medicine stressed three key components of public health. First, the mission of public health is to fulfill society's interest in assuring the conditions in which people can be healthy. Second, the substance of public health is organized community efforts aimed at the prevention of disease and the promotion of health. Third, the organizational framework of public health encompasses both activities undertaken within the formal structures of government and the associated efforts of private organizations and individuals.[2]

Although public health draws upon numerous scientific disciplines, its core science is epidemiology, the study of disease within populations and the factors that determine disease spread. In contrast to the practice of medicine, which is concerned with the health and treatment of individuals, public health is dedicated to promoting the health of the population as a whole. For example, while medical explanations for death focus on pathological causes, such as cancer or heart disease, public health seeks to understand why these pathologies exist in society and the societal measures capable of reducing or eliminating them. To attain this understanding, public health agents examine the environmental, social, and behavioral factors that contribute to disease, such as pollutant levels, diet patterns, and tobacco use.[3] These data are then used to craft public health interventions, such as regulation of industrial emissions, school cafeteria nutrition requirements, and targeted smoking cessation programs. Scientific knowledge is, therefore, the foundation of public health decision-making.

In practice, public health encompasses an extremely broad range of activities, varying across the country with geography, community demographics, and resource availability. The public health priorities of New York City, for example, differ in many respects from those of rural Indiana towns. Still, it is possible to identify several essential public health activities and services:

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[1] INST. OF MEDICINE, THE FUTURE OF THE PUBLIC'S HEALTH IN THE 21ST CENTURY 2 (National Academies Press 2003) [*hereinafter* INST. OF MEDICINE 2003].
[2] *See* INST. OF MEDICINE, THE FUTURE OF PUBLIC HEALTH 38-42 (National Academies Press 1988) [*hereinafter* INST. OF MEDICINE 1988].
[3] *See* LAWRENCE O. GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 14 (University of California Press 2000).

- *Monitoring community health status* (data collection, vital statistics, health interview surveys, health trends analyses);
- *Diagnosing and investigating health problems* (disease screening, laboratory analyses, epidemiology);
- *Informing and educating people about health* (health promotion, disease prevention, tobacco cessation campaigns);
- *Mobilizing community partnerships to improve health* (joint drafting of legislation by legislative and public health officials, utilization of physician associations for public education, needle distribution programs at AIDS clinics);
- *Developing and enforcing health and safety protections* (food and milk control, product safety requirements, premises inspections, sewage disposal, water quality monitoring, hazardous waste management);
- *Linking people to needed personal health services* (maternal and child health interventions, immunizations, substance abuse and mental illness treatment, home health programs);
- *Assuring a competent health workforce* (licensing, development of competency sets, public health school curriculum recommendations);
- *Fostering health-enhancing public policies* (seat-belt and motorcycle helmet laws, public smoking bans, health care for the indigent, needle exchange programs)
- *Evaluating the quality and effectiveness of services* (monitoring of health indicators such as immunization rates, prevalence of sexually-transmitted diseases, and number of teenage pregnancies, assessment of pulmonary disease following institution of public smoking bans); and
- *Researching new insights and innovations* (publicly- and privately-funded commissions on disease factors and treatments; intervention comparisons).[4]

B. A Brief History of Public Health

Organized community efforts have long been utilized to protect the public's health. Quarantine- and isolation-type measures were used as early as 532 B.C.E., when the Emperor Justinian of the Eastern Roman Empire commanded that persons arriving into the Empire's capital city from contaminated localities be housed in special cleansing facilities.[5] During the fourteenth and fifteenth centuries, ships entering the port of Venice from certain localities were forced to remain offshore, in isolation, for a period of forty days (*quaranta giorni*) before persons and goods were permitted to debark.[6] Other ports and cities throughout Europe and Asia developed similar isolation procedures in subsequent centuries.[7]

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[4] *See* INST. OF MEDICINE 2003, *supra* note 1, at 31-33; INST. OF MEDICINE 1988, *supra* note 2, at 87-98; GOSTIN, *supra* note 3, at 17; INST. OF MEDICINE, WHO WILL KEEP THE PUBLIC HEALTHY: EDUCATING PUBLIC HEALTH PROFESSIONALS FOR THE 21ST CENTURY (National Academies Press 2003).
[5] *See* INST. FOR BIOETHICS, HEALTH POLICY & LAW, UNIVERSITY OF LOUISVILLE SCHOOL OF MEDICINE, QUARANTINE & ISOLATION: LESSONS LEARNED FROM SARS – A REPORT TO THE CENTERS FOR DISEASE CONTROL & PREVENTION 17 (2003).
[6] *See id.*
[7] *See id.*, at 17-19.

In eighteenth-century America, isolation and quarantine were also widely used to contain disease, and these measures were enforced by appointed councils.[8] At the same time, municipalities and local governments began to undertake programs to address the welfare of their most vulnerable citizens. Public hospitals were established to care for the physically ill, and the first public hospital for the mentally ill was founded in Williamsburg, Virginia in 1773.[9]

The nineteenth century marked the onset of the sanitary movement, often referred to as the "Great Sanitary Awakening." State and local governments began to focus on the environment as a source of disease, a particular challenge in the face of increasing urbanization and industrialization. The public health community also began to utilize health records and vital statistics to influence public policy. Sanitary surveys were performed in both London and Massachusetts during the mid-1800s, and their accompanying reports publicized the poor living conditions in urbanized areas and the disparate health status among socioeconomic classes.[10] These reports emphasized the need for proper drainage systems and waste disposal mechanisms and recommended the establishment of state and local boards of health to enforce sanitary regulations. Consequently, the first public agency for health, the New York City Health Department, was established in 1866, followed by the Massachusetts State Board of Health in 1869.[11] By the end of the nineteenth century, more than 40 states and localities had established health departments.[12]

In 1877, Louis Pasteur discovered that anthrax was caused by a bacterium, ushering in the era of bacteriology and, simultaneously, revolutionizing disease control. Public health laboratories were created in state and local health departments to identify biological causes of disease. Science became the basis of public health, and individuals, in addition to the environment, came to be viewed as agents of disease. Accordingly, the early twentieth century saw a renewed focus on individual treatment and the rise of mandatory disease reporting laws, sexual contact tracing, therapeutic clinics, and educational programs.[13]

Consistent with the overarching political philosophy of the times, the federal government's role in public health increased dramatically during the middle of the twentieth century. In 1930, the national laboratory was relocated to Washington, D.C. and renamed the National Institutes of Health (NIH). The Centers for Disease Control and Prevention (CDC) and the National Center for Health Statistics were founded during World War II. The federal government asserted jurisdiction over adulterated food,

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[8] *See* INST. OF MEDICINE 1988, *supra* note 2, at 57.
[9] *See id.*, at 57-58.
[10] *See id.*, at 59-61 (discussing Edwin Chadwick's *General Report on the Sanitary Conditions of the Labouring Population of Great Britain* (1842), John Griscom's *The Sanitary Condition of the Labouring Population of New York* (1848), and Lemuel Shattuck's *Report of the Massachusetts Sanitary Commission* (1850)).
[11] *See id.*, at 61.
[12] *See id.*
[13] *See id.*, at 63-66; GOSTIN, *supra* note 3, at 10.

established national standards for drinking water, and provided states financial support for public health training.[14]

At the end of the twentieth century, federal involvement in public health dwindled as the rhetoric of cost containment and small government gained popularity. The federal government delegated public health decision-making to states in the form of block grants, leading to the varied public health systems seen across America today.[15] As early as 1988, the Institute of Medicine reported that the American public health system was in "disarray," unable to respond effectively to current and emerging public health threats and unnecessarily threatening the public's health and safety.[16] Although the events of September 2001, the subsequent anthrax mailings, and the 2003 global outbreak of Severe Acute Respiratory Syndrome (SARS) reinvigorated federal involvement in the public health arena, the vast majority of public health decision-making remains at the state and local levels.[17]

C. The Role of Government in Public Health

Although the Institute of Medicine has acknowledged the role of private organizations and individuals in public health, it has repeatedly reaffirmed the central role of government public health agencies as providers of vital services and guardians of the public health mission.[18] Democratically elected governments are alone legitimately capable of undertaking community activity on behalf of the public.[19] Based upon this truth, several commentators have proposed narrower conceptions of public health, one of which limits "public health" to "public officials taking appropriate measures pursuant to specific legal authority, after balancing private rights and public interests, to protect the health of the public."[20]

Regardless of the exclusivity accorded them, government public health agencies serve three core public health functions. First, government agencies are responsible for *assessment* of the health of the communities they serve. To this end, government agencies collect data, conduct epidemiological investigations, and monitor and publish health statistics. Research endeavors are also critical components of assessment. Second, government agencies must actively engage in *policy development* using the scientific knowledge they gain through assessment. Given the constant political struggle for resources, these policy development efforts are most successful when strategic in nature and appropriately prioritized. Third, and finally, government agencies have a duty to provide *assurance* to their communities in the form of services, legislative action, and

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[14] *See* INST. OF MEDICINE 1988, *supra* note 2, at 67-68; GOSTIN, *supra* note 3, at 10-11.
[15] *See* INST. OF MEDICINE 1988, *supra* note 2, at 70-71.
[16] *See id.*, at 1-2.
[17] *See* INST. OF MEDICINE 2003, *supra* note 1, at 26-28.
[18] *See id.*, at 101-104; INST. OF MEDICINE 1988, *supra* note 2, at 7.
[19] *See* GOSTIN, *supra* note 3, at 8.
[20] Mark A. Rothstein, *Rethinking the Meaning of Public Health*, 30 J. L. MED. & ETHICS 144 (2002); *see also* Lawrence O. Gostin, *Public Health, Ethics, and Human Rights: A Tribute to the Late Jonathan Mann*, 29 J. L. MED. & ETHICS 121 (2001).

partnership development. These assurances should include the guaranteed provision of essential health services for the indigent and socially-dependent.[21]

As indicated above, states are the "central force" in public health,[22] exercising their constitutionally-reserved police powers and *parens patriae* powers to protect the public's health, safety, and welfare.[23] Currently, each state has a designated agency for public health. However, states delegate many of their public health responsibilities to localities, whose public health departments vary extensively in organizational structure and may serve municipalities, single counties, or combinations of counties.[24] Federal entities, such as the Public Health Service of the Department of Health and Human Services and the CDC, exist primarily to provide resources and knowledge support to state and local public health agencies.

D. Public Health and Individual Rights

While science forms the basis of public health decision-making in theory, public values and popular opinions determine the feasibility of many public health activities in practice.[25] The power of governmental agencies to coerce individual behavior in the name of community welfare is inherent within public health.[26] Disease reporting requirements impinge upon privacy; mandatory testing and screening curtails autonomy; environmental and industrial regulations impact property and economic interests; and isolation and quarantine restrict liberty.[27] In this sense, public health and the notions of individualism central to American society coexist in a state of constant tension.

This tension suggests that public health activities are most likely to gain popular support when they reflect an appropriate balancing of community and individual interests. For example, quarantine of individuals exposed to tuberculosis, a highly contagious disease, may be appropriate in certain circumstances, while quarantine of individuals exposed to anthrax, a disease that cannot be transmitted from person-to-person, is not. In the latter case, it would be improper for the government to restrain an individual's liberty when his freedom of movement poses no danger to society. Of course, there are many cases in which the appropriate balance between community and individual interests is more difficult to discern. Is an individual properly subjected to quarantine for an extended period of time entitled to government compensation and job protection? What is the appropriate penalty for an individual who violates an appropriate quarantine order? May an individual be forced to undergo mandatory testing and treatment during a public health emergency? What type of procedural due process protections are individuals entitled to in the context of mass quarantine and isolation orders?

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[21] *See* INST. OF MEDICINE 1988, *supra* note 2, at 7-12, 44-47.
[22] *Id.*, at 8.
[23] *See* U.S. CONST., amend. X; GOSTIN, *supra* note 3, at 25-59.
[24] *See* INST. OF MEDICINE 2003, *supra* note 1, at 108-110; INST. OF MEDICINE 1988, *supra* note 2, at 78.
[25] *See* INST. OF MEDICINE 2003, *supra* note 1, at 23-26; INST. OF MEDICINE 1988, *supra* note 2, at 3.
[26] *See* GOSTIN, *supra* note 3, at 18-21; Rothstein, *supra* note 19, at 146.
[27] *See* GOSTIN, *supra* note 3, at 20.

Public health law is concerned with the ongoing struggle to reconcile these competing individual and community interests in the context of public health activities. As recently suggested:

> Public health law [encompasses] legal powers and duties of the state to assure the conditions for people to be healthy (*e.g.*, to identify, prevent, and ameliorate risks to health in the population) and the limitations on the power of the state to constrain the autonomy, privacy, liberty, proprietary, or other legally protected interests of individuals for the protection or promotion of community health.[28]

Though perhaps not identified as such, public health issues have long been present on court dockets.[29] Legal issues such as nuisance abatement, civil commitment, and sentencing of mentally ill or substance-addicted individuals all reflect public health concerns. However, as recently noted by one commentator, "there appear to be few, if any, published manuals on public health emergency law for government and hospital attorneys, 'bench books' for judges to brief themselves on evidentiary standards for public health search warrants and quarantine orders, or databases of extant state and municipal public health emergency statutes and regulations."[30] The renewed focus on public health law prompted by concerns about bioterrorism and emerging infectious diseases presents an opportunity for judges and lawyers to familiarize themselves with the body of public health law and develop new legal approaches to current public health problems.

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[28] *See id.*, at 4.
[29] *See, e.g.,* INST. OF MEDICINE 2003, *supra* note 1, at 104.
[30] Anthony D. Moulton *et al.*, *What is Public Health Legal Preparedness?*, 31 J. L. MED. & ETHICS 672 (2003).

APPENDIX B

PUBLIC HEALTH GLOSSARY

A

acute Of rapid onset; brief. An acute condition may, but need not necessarily, be severe.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

adenopathy Swelling or diseased enlargement of the lymph nodes.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

aerosolize To disperse a substance as particles in air.
OXFORD ENGLISH DICTIONARY (2d. ed. 1989).

analytic validity An index of how well a test measures the property or characteristic it is intended to measure. Analytic validity of a test is affected by the technical accuracy and reliability of the testing procedure, and also by the quality of the laboratory processes (including specimen handling).
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); NAT'L CANCER INSTS., U.S. NAT'L INSTS. OF HEALTH, *Cancer Genetics Overview*, *at* http://www.cancer.gov/cancertopics/pdq/genetics/overview#Section_10 (last modified Dec. 18, 2003).

anthrax A disease caused by the bacterium *Bacillus anthracis*. Anthrax cannot be transmitted from person-to-person. There are three distinct types of anthrax:
cutaneous: An infection of the skin by *B. anthracis*, producing a characteristic lesion that begins as a papule and soon becomes a vesicle and breaks, discharging a bloody liquid. Approximately 36 hours after infection, the vesicle becomes a bluish-black dead mass. Cutaneous anthrax infection is usually accompanied by high fever, vomiting, profuse sweating, and extreme prostration, but is rarely fatal.
(gastro)intestinal: An infection of the digestive track caused by eating foods contaminated with *B. anthracis*. Gastrointestinal anthrax is usually accompanied by chill, high fever, pain in the head, back, and extremities, vomiting, bloody diarrhea, cardiovascular collapse, and, frequently, hemorrhages from the mucous membranes and the skin; gastrointestinal anthrax is often fatal.
inhalation (pulmonary): An infection of the lungs caused by the inhalation of particles containing *B. anthracis*. Inhalation anthrax is usually accompanied by an initial chill followed by pain in the back and legs, rapid respiration, shortness of breath, cough, fever, rapid pulse, and extreme cardiovascular collapse; inhalation anthrax is frequently fatal.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Anthrax: What You Need to Know*, *at* http://www.bt.cdc.gov/agent/anthrax/needtoknow.asp (last modified July 31, 2003).

antibody (Ab) A molecule located in the blood or other body fluids that is produced in response to an antigen. An antibody reacts specifically with its corresponding antigen.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

antigen (Ag) A foreign organism or substance or aberrant native cell that induces the production of its corresponding antibody when introduced into an organism. Production of the corresponding antibodies occurs following an antigen-specific latent period, which typically lasts days or weeks.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

antitoxin An antibody formed in response to an antigen that is a poisonous biological substance. An antitoxin neutralizes the effect of the poison.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

asymptomatic Without symptoms.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

ataxia An inability to coordinate voluntary muscle movement.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

B

bacterium A single-celled microorganism that reproduces by cell division.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Anthrax: What You Need to Know*, *at* http://www.bt.cdc.gov/agent/anthrax/needtoknow.asp (last modified July 31, 2003).

botulism An illness caused by the toxin produced by the bacterium *Clostridium botulinum*. Botulism is typically caused by ingestion of the pre-formed *C. botulinum* toxin; wound botulism may occur when wounds are infected with toxin-secreting *C. botulinum* bacteria. Botulism is characterized by severe paralysis and is often fatal.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Facts About Botulism*, *at* http://www.bt.cdc.gov/agent/botulism/factsheet.asp (last modified Oct. 14, 2001).

brachycardia Slowness of the heartbeat; typically less than 50 beats per minute.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

bradycardia *See* **brachycardia**.

brucellosis An infectious disease caused by the bacterium *Brucella*, of which the most common species are *B. melitensis*, *B. abortis*, *B. canis*, and *B. suis*. The *Brucella* bacterium is primarily transmitted among animals and is transmitted to humans upon contact with infected animals or ingestion of infected meats. Brucellosis is characterized by fever, sweating, weakness, aches, and pains; in rare cases, severe

infections of the central nervous systems or lining of the heart may occur, leading to death. Brucellosis is transmitted through breast-feeding, sexual intercourse, and, rarely, direct person-to-person contact.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); DIV. OF BACTERIAL & MYCOTIC DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Brucellosis*, *at* http://www.cdc.gov/ncidod/dbmd/diseaseinfo/brucellosis_g.htm (last modified Feb. 17, 2004).

C

capillary A small blood vessel.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

case An instance of disease; a patient.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

chickenpox An acute contagious disease, usually occurring in children, caused **(varicella)** by the Varicellovirus, a member of the family *Herpesviridae*. Chickenpox is marked by a sparse eruption of papules, usually on the face, scalp, and/or trunk. The papules become vesicles and then pustules, like that of smallpox although less severe and varying in stages. Chickenpox has an incubation period of approximately 14 to17 days and is usually accompanied by mild constitutional symptoms. In severe cases, most frequently in adults, chickenpox may lead to bacterial infection of the skin, swelling of the brain, and/or pneumonia. Chickenpox is highly contagious and is spread by coughing or sneezing. The varicella vaccine is available to prevent chickenpox.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); NAT'L IMMUNIZATION PROGRAM, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Varicella – In Short*, *at* http://www.cdc.gov/nip/diseases/varicella/vac-chart.htm (last modified Feb. 15, 2001).

cholera An acute epidemic infectious disease caused by infection of the intestine with the bacterium *Vibrio cholerae*. Cholera is characterized by profuse watery diarrhea, extreme loss of fluid and electrolytes, dehydration, and collapse. If untreated, cholera may lead to shock and death. Cholera is transmitted by drinking water or consuming foods contaminated with *V. cholerae* bacteria.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); DIV. OF BACTERIAL & MYCOTIC DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Cholera*, *at* http://www.cdc.gov/ncidod/dbmd/diseaseinfo/cholera_g.htm (last modified Feb. 17, 2004).

clinical utility The likelihood that a test will, by prompting an intervention, result in an improved health outcome. The clinical utility of a test is based on the health benefits of the interventions offered to persons with positive test results.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); NAT'L CANCER INSTS., U.S. NAT'L INSTS. OF HEALTH, *Cancer Genetics Overview*, *at* http://www.cancer.gov/cancertopics/pdq/genetics/overview#Section_10 (last modified Dec. 18, 2003).

clinical validity The predictive value of a test for a given clinical outcome (e.g., the likelihood that cancer will develop in someone with a positive test). Clinical validity is, in large

measure, determined by the ability of a test to accurately identify people with a defined clinical condition.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); NAT'L CANCER INSTS., U.S. NAT'L INSTS. OF HEALTH, *Cancer Genetics Overview*, *at* http://www.cancer.gov/cancertopics/pdq/genetics/overview#Section_10 (last modified Dec. 18, 2003).

communicable Capable of being transmitted from one organism or person to another.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

communicable disease An illness that is transmissible by direct or indirect contact with the sick, their bodily excretions or cell secretions, or a disease vector.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

constitutional symptoms General indications of disease pertaining to the body as a whole.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

contact A person who has been exposed to a contagious disease.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

contact tracing Identification and location of persons who may have been exposed to an infectious disease, which may result in surveillance of those persons. Contact tracing has been used to control contagious diseases for decades. A disease investigation begins when an individual is identified as having a communicable disease. An investigator interviews the patient, family members, physicians, nurses, and anyone else who may have knowledge of the primary patient's contacts, anyone who might have been exposed, and anyone who might have been the source of the disease. Then the contacts are screened to see if they have or have ever had the disease; in certain cases, the process of contact tracing will be repeated for identified contacts as well. The type of contact screened depends on the nature of the disease. A sexually transmitted disease will require interviewing only infected patients and screening only their sex partners. A disease that is spread by respiratory contact, such as tuberculosis, may require screening tens to hundreds of persons.
CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVICES, *Severe Acute Respiratory Syndrome (SARS): Appendix 2 – Glossary*, *at* http://www.cdc.gov/ncidod/sars/guidance/core/app2.htm (last modified Jan. 8, 2004); THE MEDICAL & PUBLIC HEALTH LAW SITE, LOUISIANA STATE UNIVERSITY LAW CTR., *Contact Tracing*, *at* http://biotech.law.lsu.edu/books/lbb/x578.htm (last visited June 7, 2004).

contagious disease *See* **communicable disease**.

cutaneous Relating to the skin.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

cyanosis A dark bluish or purplish discoloration of the skin and mucous membrane due to

deficient oxygen content in the blood.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

D

decontamination The elimination of poisonous or otherwise harmful agents, such as chemicals or radioactive materials, from a person, area, thing, etc.
OXFORD ENGLISH DICTIONARY (2d. ed. 1989); STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

directly observed therapy Visual monitoring of an individual's ingestion of medications by a health care worker to ensure compliance in difficult or long-term regimens, such as in oral treatment for tuberculosis.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

disease An interruption, cessation, or disorder of a body function, system, or organ; a departure from a state of health.
OXFORD ENGLISH DICTIONARY (2d. ed. 1989); STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

disease agent A microorganism whose presence or absence results in disease.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

disease vector *See* **vector**.

distal Situated away from the center of the body; often used in reference to the extremity or distant part of a limb or organ.
OXFORD ENGLISH DICTIONARY (2d. ed. 1989); STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

dysphagia Difficulty swallowing.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

dyspnea Shortness of breath, usually associated with disease of the heart or lungs.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

E

edema **1.** An accumulation of an excess amount of watery fluid in cells, tissues, or body cavities. **2.** A fluid-filled tumor or swelling.
OXFORD ENGLISH DICTIONARY (2d. ed. 1989); STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

effectiveness The extent to which a treatment achieves its intended purpose in an average clinical environment.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

efficacy The extent to which a treatment achieves its intended purpose under ideal circumstances.

STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

encephalitis Inflammation of the brain.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

endemic Denoting a temporal pattern of disease occurrence in a population in which the disease occurs with predictable regularity and only relatively minor fluctuations in its frequency over time.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

enterovirus A large and diverse group of viruses, including poliovirus types 1 to 3, that inhabit the digestive track.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

epidemic The occurrence in a community of cases of illness or health-related events clearly in excess of normal expectancy.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

epidemiology The study of the distribution and determinants of health-related states or events in specified populations, and the application of this study to control of health problems.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

epistaxis Bleeding from the nose.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

erythema Redness due to dilation of the capillaries.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

Escherichia coli A type of bacteria. *E. coli O157:H7* causes foodborne illness and ***(E. coli)*** is characterized by bloody diarrhea and, in severe cases, kidney failure and/or death. *E. coli O157:H7* is transmitted through the ingestion of undercooked, contaminated ground beef, unpasteurized milk, or contaminated water. Non-Shiga toxin-producing *E. coli* (diarrheagenic *E. coli*) causes chronic diarrhea (watery or bloody) associated with abdominal cramps and fever. Non-Shiga toxin-producing *E. coli* is transmitted through ingestion of contaminated food and water, most commonly by international travelers or children in the developing world. In rare cases, non-Shiga toxin-producing *E. coli* may be transmitted through person-to-person contact.
DIV. OF BACTERIAL & MYCOTIC DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Diarrheagenic Escherechia coli*, *at* http://www.cdc.gov/ncidod/diseases/hanta/hps/noframes/generalinfoindex.htm (last modified Feb. 10, 2004); DIV. OF BACTERIAL & MYCOTIC DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Escherichia coli O157:H7*, *at* http://www.cdc.gov/ncidod/dbmd/diseaseinfo/escherichiacoli_g.htm (last modified Jan 27, 2004).

ex vivo Referring to the use of human cells or tissues after their removal from an organism and while they remain viable.

STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

exanthema A skin eruption occurring as a symptom of a viral or bacterial disease, such as measles.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

F

fomite An object (*e.g.*, clothing, towel, utensil) that possibly harbors a disease agent and may be capable of transmitting it.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

G

gastrointestinal (GI) Relating to the stomach and intestines.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

genus A group of species alike in the broad features of their organization but different in detail; species within a genus are incapable of fertile mating.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

H

Hantavirus A genus of *Bunyaviridae* viruses that cause pneumonia and hemorrhagic fevers. At least 7 species within the genus are recognized at the current time (Hantaan, Puumala, Seoul, Prospect Hill, Thailand, Thottapalayam, and Sin Nombre virus), while a number of other species have not yet been classified. Rodents are the asymptomatic carriers of Hantaviruses and shed the viruses in their saliva, urine, and feces. Hantavirus is transmitted from rodents to humans through bites, ingestion of contaminated foods, or inhalation of droplets containing the aerosolized virus; person-to-person spread of Hantavirus is rare.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); SPECIAL PATHOGENS BRANCH, NAT'L CTR. FOR INFECTIOUS DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *All About Hantaviruses*, *at* http://www.cdc.gov/ncidod/diseases/hanta/hps/noframes/generalinfoindex.htm (last modified Nov. 13, 2003).

hematemesis Vomiting of blood.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

hematuria The presence of blood in the urine.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

hemoptysis Spitting of blood from the lungs or bronchial tubes as a result of pulmonary or bronchial hemorrhage.

STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

hemorrhage To bleed.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

hemorrhagic fever *See* **viral hemorrhagic fever.**

hepatitis Inflammation of the liver, due usually to viral infection but sometimes to toxic agents. Previously considered a problem only in the developing world, viral hepatitis now ranks as a major public health problem in industrialized nations. The 3 most common types of viral hepatitis (A, B, and C) afflict millions worldwide. Acute viral hepatitis is characterized by varying degrees of fever, malaise, weakness, anorexia, nausea, and abdominal distress.
hepatitis A is caused by an enterovirus and is most often spread through ingestion of contaminated food or water. The case fatality rate is less than 1%, and recovery is complete. The presence of antibody to hepatitis A virus indicates prior infection, noninfectivity, and immunity to future attacks. An effective vaccine is available for immunization against hepatitis A.
hepatitis B is caused by a small DNA virus and is transmitted through sexual contact, sharing of needles by IV drug abusers, needlestick injuries among health care workers, and from mother to fetus. The incubation period is 6-24 weeks. Some patients become carriers, and in some an immune response to the virus induces a chronic phase leading to liver failure and/or liver cancer. Hepatitis B is more likely to cause death than hepatitis A. Hepatitis B surface antigen (HBsAg) is detectable early in serum; its persistence correlates with chronic infection and infectivity. An effective vaccine is available for immunization against hepatitis B.
hepatitis C is the principal form of transfusion-induced hepatitis, which may develop into a chronic active form of hepatitis. Hepatitis C is more likely to cause death than hepatitis A.
hepatitis D is caused by an RNA virus capable of causing disease only in persons previously infected with hepatitis B.
hepatitis E occurs chiefly in the tropics and resembles hepatitis A in that it is transmitted by the fecal-oral route and does not become chronic or lead to a carrier state. However, hepatitis E has a much higher mortality rate than hepatitis A.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

horizontal transmission Transmission of a disease agent from an infected organism or individual to another, susceptible organism or individual.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

host The organism in or on which a parasite lives.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

hypertension High blood pressure.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

hyperthermia Extremely high fever, often occurring as a side effect of therapeutic regimens.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

hypotension Low blood pressure.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

hypothermia A body temperature significantly below normal body temperature (98.6°F/37°C for humans).
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

I

identifiable health information Information in any form (*e.g.*, oral, written, electronic, visual, pictorial, physical) that relates to an individual's past, present, or future physical or mental health status, condition, treatment, service, products purchased, or provision of care and
(a) reveals the identity of the individual; or
(b) there is a reasonable basis to believe the information could be used, alone or with other information, to reveal the identity of the individual.
PUBLIC HEALTH STATUTE MODERNIZATION NAT'L EXCELLENCE COLLABORATIVE, TURNING POINT, *Model State Public Health Act: A Tool for Assessing Public Health Laws* 13 (Sept. 2003).

immune response Any response of the immune system to an antigen, including antibody production. The immune response to the initial antigenic exposure (primary immune response) is generally detectable only after a lag period of several days to 2 weeks; the immune response to a subsequent stimulus by the same antigen (secondary immune response) is more rapid.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

immune system An intricate complex of interrelated cellular, molecular, and genetic components that provides a defense (immune response) against foreign organisms or substances and aberrant native cells.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

immunogen *See* **antigen**.

in vitro In an artificial environment, such as a test tube or culture media.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

in vivo In the living body.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

incidence The number of specified new events (*e.g.,* new cases of a disease) during a specified period of time in a specified population.

STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

incubation period The period of time between a disease agent's entry into an organism and the organism's initial display of disease symptoms. During the incubation period, the disease is developing. Incubation periods are disease-specific and may range from hours to weeks.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

index case The patient that brings a family, group, or community under study.
OXFORD ENGLISH DICTIONARY (2d. Ed. 1989); STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

infectious agent A microorganism that causes infectious disease through transmission.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

infectious disease A disease resulting from the presence and activity of a microorganism.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

isolation The separation, for the period of communicability, of known infected persons in such places and under such conditions as to prevent or limit the transmission of the infectious agent.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); LAWRENCE O. GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 210 (University of California Press 2000).

J

K

L

latent period *See* **incubation period**.

lymph node One of numerous round, oval, or bean-shaped bodies that form part the immune system. Lymph nodes produce a fluid (lymph) that is circulated throughout the body to remove impurities.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

M

measles An acute respiratory disease caused by a virus of the *Paramyxoviridae* family; one of the most infectious diseases in the world. Measles is usually marked by fever, inflammation of the respiratory mucous membranes, red watery eyes, and a generalized eruption of dusky red papules. The papules first appear on the cheeks in the form of spots (often referred to as "Koplik spots"), a manifestation utilized in early diagnosis. Measles has an average incubation period of 10 to 12 days; the

rash begins approximately 14 days after exposure and lasts 5 to 6 days, progressing downward from the face. Recovery is usually rapid but respiratory complications caused by secondary bacterial infections are common. Severe cases may be accompanied by swelling of the brain. The measles vaccine is available to prevent measles.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); NAT'L IMMUNIZATION PGM., CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Measles*, *at* http://www.cdc.gov/nip/diseases/measles/ (last modified Apr. 15, 2004).

monkeypox A disease found in monkeys and rodents and caused by the monkeypox virus, a member of the family *Poxviridae*. In humans, monkeypox is initially characterized by fever, headache, muscle aches, swelling of the lymph nodes, and fatigue. Approximately 3 days after the onset of these initial symptoms, a rash develops, typically beginning on the face, and progresses into raised pustules. Monkey pox has an incubation period of approximately 12 days. The disease is rarely found in humans, but may be transmitted through contact with the blood, bodily fluid, or rash of an infected animal. Monkeypox may also be transmitted among humans through exposure to large respiratory droplets during long periods of face-to-face contact or by touching the bodily fluids or contaminated objects of an infected individual.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *What You Should Know About Monkeypox*, *at* http://www.cdc.gov/ncidod/monkeypox/factsheet2.htm (last modified June 12, 2003).

mucous membrane A tissue lining found in various bodily structures, including the nose, eyes, and mouth.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

myalgia Muscular pain.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

mydriasis Dilation of the pupil.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

N

necrosis Death of one or more cells or a portion of a tissue or organ due to irreversible damage.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

notifiable disease A disease that, by statutory requirements, must be reported to the public health or veterinary authorities when the diagnosis is made because of its importance to human or animal health.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

O

outbreak A sudden rise in the number of new cases of a disease, usually during a specified period and in a specified population.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); MERRIAM-WEBSTER ONLINE, *at* http://www.merriamwebster.com (last visited Sept. 20, 2004).

P

papule A circumscribed, solid elevation up to 100 cm in diameter on the skin.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

parasite An organism that lives on or in another and draws its nourishment therefrom.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

plague An acute infectious disease caused by the bacterium *Yersinia pestis*. Plague is characterized by high fever, prostration, a hemorrhagic eruption, lymph node enlargement, pneumonia, and hemorrhage from the mucous membranes. Plague is primarily a disease of rodents that is transmitted to humans by fleas that have bitten infected animals. In humans, plague takes one of three main forms:
bubonic: The most common form of plague, caused when an infected flea bites a human or materials contaminated with *Y. pestis* bacteria contact broken skin. Bubonic plague cannot be transmitted person-to-person.
pneumonic: A form of plague that occurs when *Y. pestis* infects the lungs. Pneumonic plague may be transmitted person-to-person through the air by inhalation of respiratory droplets containing *Y. pestis* or aerosolized *Y. pestis*. Pneumonic plague may also develop when an individual with bubonic or septicemic plague goes untreated and *Y. pestis* bacteria spread to the lungs.
septicemic: A form of plague resulting from the presence of *Y. pestis* bacteria in the blood. Septicemic plague may develop from bubonic or pneumonic plague or occur alone. When septicemic plague occurs alone, lymph node enlargement is typically absent.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Facts About Pneumonic Plague*, *at* http://www.bt.cdc.gov/agent/plague/factsheet.pdf (last modified Oct. 14, 2001).

polymerase chain reaction (PCR) A method for the repeated copying of a gene sequence. PCR is widely used to amplify minute quantities of DNA in order to provide adequate specimens for laboratory study.
ALBERTS, B. *ET AL.*, MOLECULAR BIOLOGY OF THE CELL 316-17 (3d. ed. 1994); STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

predictive value (R_f) The likelihood that a given test result correlates with the absence or presence of disease. A positive predictive value is the ratio of patients with the disease who test positive to the entire population of individuals with a positive test result; a negative predictive value is the ratio of patients without the disease who test

negative to the entire population of individuals with a negative test
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

prevalence The number of cases of a disease existing in a given population at a specific period of time (period prevalence) or at a particular moment in time (point prevalence).
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

prostration Extreme physical weakness or exhaustion.
OXFORD ENGLISH DICTIONARY (2d. ed. 1989); STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

proximal Situated nearest to the center or trunk of the body; often used in reference to a portion of a limb, bone, organ, or nerve.
OXFORD ENGLISH DICTIONARY (2d. ed. 1989); STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

pruritus Itching.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

public health A societal effort to assure the conditions in which the population can be healthy.
INST. OF MEDICINE, THE FUTURE OF THE PUBLIC'S HEALTH IN THE 21ST CENTURY 2 (National Academies Press 2003); PUBLIC HEALTH STATUTE MODERNIZATION NAT'L EXCELLENCE COLLABORATIVE, TURNING POINT, *Model State Public Health Act: A Tool for Assessing Public Health Laws* 15 (Sept. 2003).

public health agency Any organization operated by federal, tribal, state, or local government that principally acts to protect or preserve the public's health.
PUBLIC HEALTH STATUTE MODERNIZATION NAT'L EXCELLENCE COLLABORATIVE, TURNING POINT, *Model State Public Health Act: A Tool for Assessing Public Health Laws* 15 (Sept. 2003).

public health emergency An occurrence or imminent threat of an illness or health condition that:
(a) is believed to be caused by (i) bioterrorism, (ii) the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin, or (iii) a natural disaster, chemical attack or accidental release, or nuclear attack or accidental release; or
(b) poses a high probability of (i) a large number of deaths in the affected population, (ii) a large number of serious or long-term illnesses 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.
PUBLIC HEALTH STATUTE MODERNIZATION NAT'L EXCELLENCE COLLABORATIVE, TURNING POINT, *Model State Public Health Act: A Tool for Assessing Public Health Laws* 15 (Sept. 2003).

public health law The study of the legal powers and duties of the state to assure the conditions for people to be healthy (*e.g.*, to identify, prevent, and ameliorate risks to health in the population) and the limitations on the power of the state to constrain the autonomy, privacy, liberty, proprietary, or other legally protected interests of individuals for the protection or promotion of community health.

LAWRENCE O. GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 4 (University of California Press 2000).

public health official — The head officer or official of a state or local public health agency who is responsible for the operation of the agency and has the authority to manage and supervise the agency's activities.
PUBLIC HEALTH STATUTE MODERNIZATION NAT'L EXCELLENCE COLLABORATIVE, TURNING POINT, *Model State Public Health Act: A Tool for Assessing Public Health Laws* 15 (Sept. 2003).

pulmonary — Relating to the lungs.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

pus — A fluid product of inflammation.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

pustule — A circumscribed, superficial elevation of the skin, up to 1.0 cm in diameter, containing pus.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

pyrogenic — Causing fever.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

Q

quarantine — The restriction of the activities of healthy persons who have been exposed to a communicable disease, during its period of communicability, to prevent disease transmission during the incubation period if infection should occur.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); LAWRENCE O. GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 210 (University of California Press 2000).

R

reportable disease — *See* **notifiable disease**.

rhinorrhea — A discharge from the nose.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

ricin — A poison that may be made from the waste materials generated during the processing of castor beans. Ricin may be produced as a powder, a mist, a pellet, or dissolved in water and may be delivered through ingestion, inhalation, or injection. Ricin poisoning cannot be transmitted person-to-person. Treatment for ricin poisoning consists of supportive care only, as there is currently no effective antibiotic or antitoxin treatment available. Death from ricin poisoning may occur within 36 to 72 hours of exposure, depending upon the route of exposure. If death has not occurred within 3 to 5 days, the victim usually recovers. The symptoms of ricin poisoning vary according to the route of exposure:

ingestion: Ingestion of a significant amount of ricin produces vomiting and diarrhea (that may become bloody) within 6 hours. Severe dehydration may result, followed by low blood pressure. Other symptoms may include hallucinations, seizures, and blood in the urine. In severe cases, the liver, spleen, and kidneys may cease to function, producing death.
inhalation: The inhalation of significant amounts of ricin usually produces respiratory distress, fever, cough, nausea, and tightness in the chest within 8 hours. Heavy sweating and fluid build-up in the lungs may follow, and the skin may turn blue. In severe cases, low blood pressure and respiratory failure may occur, leading to death.
CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Facts About Ricin*, *at* http://www.bt.cdc.gov/agent/ricin/facts.asp (last modified Feb. 5, 2004).

Rickettsia A genus of small bacteria often found in lice, fleas, ticks, and mites. Pathogenic species of *Rickettsia* infect humans and other animals, causing epidemic typhus, endemic (murine) typhus, Rocky Mountain spotted fever, tsutsugamushi disease, rickettsialpox, and other diseases.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

S

Salmonella A genus of bacteria found in humans and animals, especially rodents. *Salmonella enterica* is a common species that causes gastroenteritis, enteric fever, and food poisoning in humans. Salmonellosis is characterized by the onset of diarrhea, fever, and abdominal cramps within 12 to 72 hours after infection and usually lasts 4 to 7 days. *Salmonella typhi* causes typhoid fever in humans. *Salmonella* bacteria are transmitted through the ingestion of contaminated food or water. Infection with *Salmonella* is treatable with antibiotics. Most persons recover with treatment, but, in severe cases, the infection may spread to the bloodstream, resulting in death.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); DIV. BACTERIAL & MYCOTIC DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Salmonellosis*, *at* http://www.cdc.gov/ncidod/dbmd/diseaseinfo/salmonellosis_g.htm (last modified June 9, 2003).

sample **1.** A relatively small quantity of material, or an individual object, from which the quality of the mass, group, species, etc. which it represents may be inferred. **2.** A selected subset of a population.
OXFORD ENGLISH DICTIONARY (2d. ed. 1989); STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

screen To systematically apply a test or exam to a defined population.
PUBLIC HEALTH STATUTE MODERNIZATION NAT'L EXCELLENCE COLLABORATIVE, TURNING POINT, *Model State Public Health Act: A Tool for Assessing Public Health Laws* 16 (Sept. 2003).

sensitivity The ability of a test to correctly identify those with a given characteristic or disease.
LEON GORDIS, EPIDEMIOLOGY 59 (W.B. Saunders Co. 1996).

Severe Acute Respiratory Syndrome (SARS) A viral respiratory illness first identified during a global outbreak in 2003 that originated in China. SARS is usually characterized by a high fever (temperature greater than 100.4°F/38.0°C), headache, an overall feeling of discomfort, and body aches. Some infected individuals also display mild respiratory symptoms, and about 10 to 20 percent of patients have diarrhea. Approximately 2 to 7 days following onset of the illness, infected individuals often develop a dry cough, and many infected individuals will go on to develop pneumonia. SARS is transmitted through close person-to-person contact. The SARS virus appears to be most easily transmitted by respiratory droplets produced when an infected person coughs or sneezes. These expelled droplets may be deposited directly on the mucous membranes of the mouth, nose, or eyes of persons who are nearby or transferred thereto by persons who touch a contaminated surface or object. It remains uncertain whether the SARS virus is able to spread more broadly through the air or in other ways.

CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Basic Information About Ricin*, *at* http://www.cdc.gov/ncidod/sars/factsheet.htm (last modified Jan 13, 2004).

smallpox (*variola*) An acute eruptive contagious disease caused by a virus of the family *Poxviridae*. Smallpox is characterized by initial chills, high fever, backache, and headache; within 2 to 5 days the constitutional symptoms subside and a skin eruption appears as papules, which become pit-like vesicles, develop into pustules, dry, and form scabs that, on falling off, leave a permanent marking of the skin (pock marks). Fatality rates for smallpox may exceed 20 percent. The average incubation period of smallpox is 8 to 14 days. Generally, direct and fairly prolonged face-to-face contact is required to transmit smallpox from one person to another, although smallpox may also be transmitted through direct contact with infected bodily fluids or contaminated objects. Humans are the only natural hosts of smallpox; it is not known to be transmitted by insects or animals. There is no treatment for smallpox, although a vaccine is available to prevent infection. As a result of increasingly aggressive vaccination programs carried out over a period of about 200 years, smallpox has been eradicated; the last naturally occurring case of smallpox was reported in Somalia in 1977.

STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Smallpox Disease Overview*, *at* http://www.bt.cdc.gov/agent/smallpox/overview/disease-facts.asp (last modified Dec. 9, 2002).

species A group of organisms that generally bear a close resemblance to one another in the more essential features of their organization; members of the same species may breed effectively to produce fertile offspring.

STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

specificity The ability of a test to correctly identify those without a given characteristic or disease.

LEON GORDIS, EPIDEMIOLOGY 59 (W.B. Saunders Co. 1996).

sputum Saliva, mucus, blood, or other fluid spit from the mouth.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

Staphylococcus A genus of bacteria found on the skin, in skin glands, on the nasal and other mucous membranes of warm-blooded animals, and in various food products. *Staphylococcus aureus* is a common species found especially on nasal mucous membrane and skin. *S. aureus* produces toxins including those that cause toxic shock syndrome and food poisoning. *Staphylococcus* infections are usually treatable with antibiotics, although antibiotic resistant strains have been identified.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); DIV. OF HEALTHCARE QUALITY PROMOTION, CTRS. FOR DISEASE CONTROL & PREVENTION, *Methicillin Resistant Staphylococcus aureus*, *at* http://www.cdc.gov/ncidod/hip/Aresist/mrsa.htm (last modified Nov. 25, 2003).

surveillance A type of observational study that involves continuous monitoring of disease occurrence within a population.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

T

tachycardia Rapid beating of the heart, typically more than 90 beats per minute.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

toxin A harmful or poisonous substance that is formed during the metabolism and growth of certain microorganisms and some plant and animal species.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

transmissible agent A biological substance that causes disease or infection through conveyance from one organism to another.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); PUBLIC HEALTH STATUTE MODERNIZATION NAT'L EXCELLENCE COLLABORATIVE, TURNING POINT, *Model State Public Health Act: A Tool for Assessing Public Health Laws* 16 (Sept. 2003).

transmission The conveyance of disease from one organism to another.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

tuberculosis (TB) A disease caused by infection with the bacterium *Mycobacterium tuberculosis*, which can affect almost any tissue or organ of the body, but most commonly affects the lungs. Primary tuberculosis is typically a mild or asymptomatic local lung infection that in otherwise health people does not lead to generalized disease because an immune response arrests the spread of the bacteria and walls off the zone of infection. The tuberculosis skin test will, however, become positive within a few weeks of infection and remain positive throughout life. Bacteria involved in primary tuberculosis remain viable and can become reactivated months or years later to initiate secondary tuberculosis. Progression to the secondary stage eventually occurs in 10-15% of people who have had primary tuberculosis. The risk of reactivation and progression is increased by, *inter alia*,

diabetes mellitus and HIV infection and in alcoholics, IV drug abusers, nursing home residents, and those receiving steroid or immunosuppressive therapy. Secondary or reactivation tuberculosis usually results in a chronic, spreading lung infection, most often involving the upper lobes. Rarely, secondary or reactivation tuberculosis results in widespread dissemination of infection throughout the body (miliary tuberculosis). The symptoms of active pulmonary tuberculosis are fatigue, anorexia, weight loss, low-grade fever, night sweats, chronic cough, and hemoptysis. Local symptoms depend on the parts affected. Active pulmonary tuberculosis is relentlessly chronic and, if untreated, leads to progressive destruction of lung tissue.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

tularemia A disease caused by the bacterium *Francisella tularensis*. Tularemia is characterized by symptoms including sudden fever, chills, headaches, diarrhea, muscle aches, joint pain, dry cough, progressive weakness, and swelling of the lymph nodes. In severe cases, infected persons may develop pneumonia, chest pain, bloody sputum, and respiratory distress. Tularemia is not transmissible through person-to-person contact and is most commonly transmitted to humans from rodents, through the bite of a vector, such as a deer fly, tick, or other bloodsucking insect. Tularemia may also be acquired through the bite of an infected animal, handling of an infected animal carcass, ingestion of contaminated food or water, or inhalation of the bacterium. Tularemia is treatable with antibiotics.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Key Facts About Tularemia*, *at* http://www.bt.cdc.gov/agent/tularemia/facts.asp (last modified Oct. 7, 2003).

typhoid fever An acute infectious disease caused by the bacterium *Salmonella typhi*. Typhoid fever is characterized by a continued fever rising in a step-like curve during the first week of infection, severe physical and mental depression, an eruption of rose-colored spots on the chest and abdomen, swelling of the abdomen, early constipation, and subsequent diarrhea. In severe cases, typhoid fever may produce intestinal hemorrhage or perforation of the bowel. The average duration of typhoid fever is approximately 4 weeks, although aborted forms and relapses are not uncommon. *S. typhi* bacteria live only in humans, and typhoid fever is transmitted through the ingestion of contaminated food and water, most frequently in the developing world. Typhoid fever can be treated and prevented with antibiotics.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); DIV. OF BACTERIAL & MYCOTIC DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Typhoid Fever*, *at* http://www.cdc.gov/ncidod/dbmd/diseaseinfo/typhoidfever_g.htm (last modified Feb. 17, 2004).

typhus A group of acute infectious and contagious diseases caused by bacteria belonging to genus *Rickettsia*. Typhus occurs in two principal forms: epidemic typhus and endemic (murine) typhus. Typhus is characterized by severe headaches, shivering and chills, high fever, malaise, and a rash and ranges in duration from short-lived to chronic. Typhus is transmitted to humans by arthropods (*e.g.*, ticks, mites, lice,

fleas); transmission rarely occurs from person to person.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); NAT'L CTR. FOR INFECTIOUS DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Rickettsial Infections*, *at* http://www.cdc.gov/travel/diseases/rickettsial.htm (last modified June 30, 2003).

U

V

vector

An invertebrate animal (*e.g.*, tick, mite, mosquito, bloodsucking fly) capable of transmitting an infectious agent among vertebrates.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

vertical transmission

Transmission of a disease agent from an infected individual to its offspring.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

vesicle

A small, circumscribed elevation of the skin, less than 1.0 cm in diameter, containing fluid.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

viral hemorrhagic fever

An infectious, epidemic disease caused by a number of different viruses in families including *Arenoviridae*, *Bunyviridae*, *Flaviviridae*, and *Filoviridae*. Viral hemorrhagic fever simultaneously affects multiple organs within the body and is characterized by high fever, malaise, muscular pain, vomiting, diarrhea, a body rash, organ bleeding, shock, and tremors. In severe cases, viral hemorrhagic fever results in vomiting of blood, hemorrhaging of blood from the eyes and nose, and kidney damage. At least some viral hemorrhagic fevers are transmitted through person-to-person contact, including Ebola, Marburg disease, and Crimean-Congo fever. Many viral hemorrhagic fevers are life-threatening.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000); SPECIAL PATHOGENS BRANCH, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Viral Hemorrhagic Fevers, at* http://www.cdc.gov/ncidod/dvrd/spb/mnpages/dispages/vhf.htm (last modified Nov. 26, 2003).

viremia

The presence of a virus in the bloodstream.
STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

virus

A term for a group of infectious agents that are incapable of growth or reproduction apart from living cells. A complete virus usually includes either DNA or RNA and is covered by a protein shell. Viruses range in size from 15 nanometers to several hundred nanometers. Classification of a virus depends upon its physiochemical characteristics, mode of transmission, host range, symptomatology, and other factors. Many viruses cause disease.
OXFORD ENGLISH DICTIONARY (2d. ed. 1989); STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

vital statistics Statistics relating to birth, death, marriages, health, and disease.
MERRIAM-WEBSTER ONLINE, *at* http://www.merriamwebster.com (last visited Sept. 20, 2004).

W

X

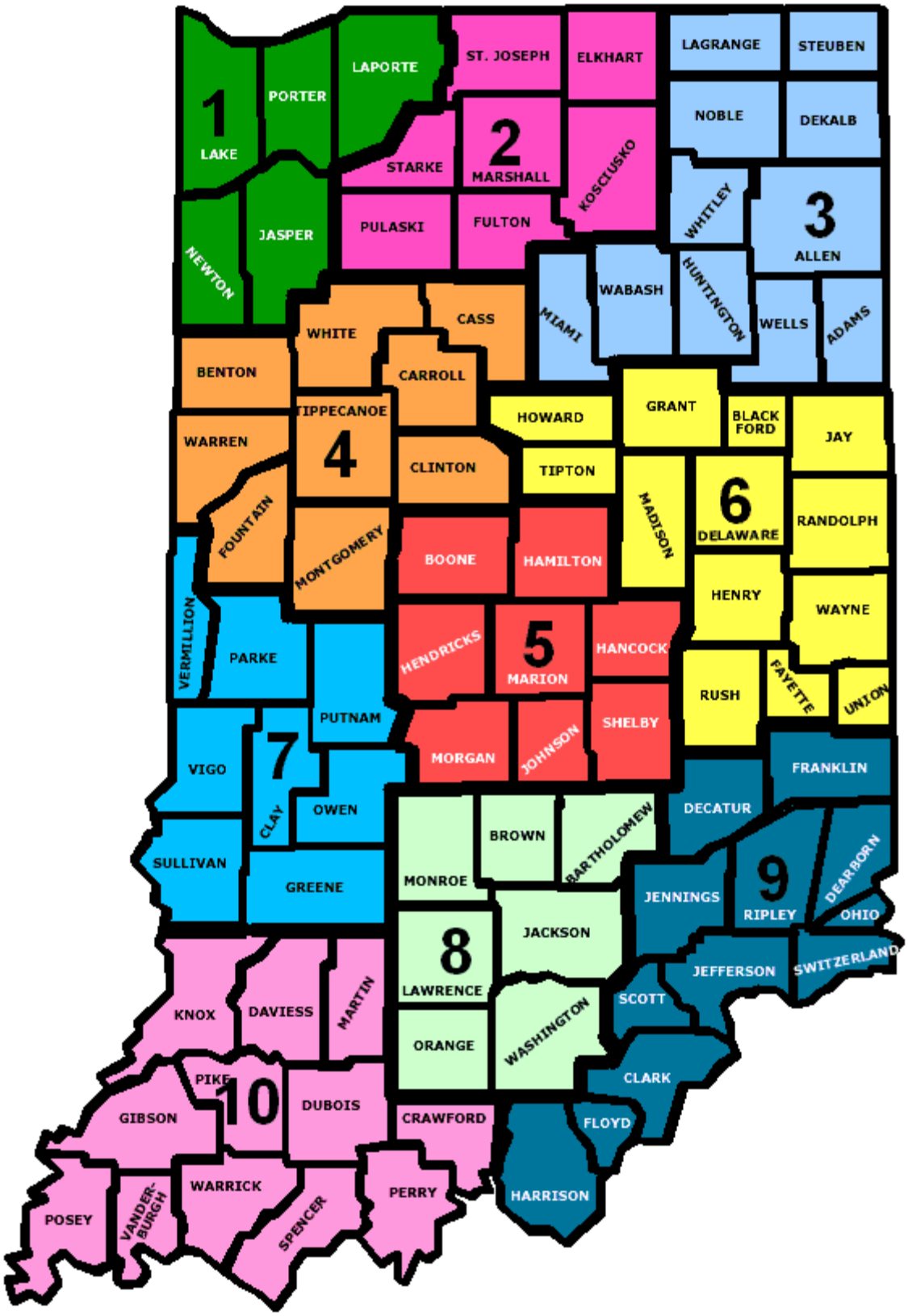
Y

Z

zoonosis A disease transmitted from one kind of animal to another or from animals to humans.
OXFORD ENGLISH DICTIONARY (2d. ed. 1989); STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

APPENDIX C

INDIANA'S PUBLIC HEALTH PREPAREDNESS DISTRICTS


1
LAKE
PORTER
LAPORTE
ST. JOSEPH
ELKHART
LAGRANGE
STEUBEN
NOBLE
DEKALB
2
MARSHALL
STARKE
KOSCIUSKO
WHITLEY
3
ALLEN
NEWTON
JASPER
PULASKI
FULTON
WABASH
HUNTINGTON
WELLS
ADAMS
MIAMI
CASS
WHITE
BENTON
CARROLL
TIPPECANOE
4
WARREN
CLINTON
HOWARD
GRANT
BLACK FORD
JAY
TIPTON
MADISON
6
DELAWARE
RANDOLPH
FOUNTAIN
MONTGOMERY
BOONE
HAMILTON
HENRY
WAYNE
VERMILLION
PARKE
HENDRICKS
5
MARION
HANCOCK
RUSH
FAYETTE
UNION
PUTNAM
MORGAN
JOHNSON
SHELBY
VIGO
7
CLAY
OWEN
FRANKLIN
DECATUR
BROWN
BARTHOLOMEW
SULLIVAN
GREENE
MONROE
JENNINGS
9
RIPLEY
DEARBORN
OHIO
JACKSON
8
LAWRENCE
JEFFERSON
SWITZERLAND
SCOTT
KNOX
DAVIESS
MARTIN
ORANGE
WASHINGTON
CLARK
PIKE
10
GIBSON
DUBOIS
CRAWFORD
FLOYD
WARRICK
PERRY
HARRISON
POSEY
VANDER-BURGH
SPENCER

APPENDIX D

MODEL CONTACT TRACING FORM

Form 2D: Smallpox Contact Tracing Form Instructions

The purpose of Form 2D is: 1) to aid in the locating of primary case contacts and their household members; 2) to initiate surveillance of case household contacts, primary case contacts and primary case household members (secondary contacts); and 3) to record the outcome ('disposition') of each contact investigation. For each case household contacts and primary contacts the case interviewer will fill in Form 2D Items 1 – 27 (items above the heavily **BOLDED** line in Form 2D); the form will be completed later by contact tracers upon their locating and interviewing the contacts. The contact tracer will also identify the household members of each primary contact and will, while in the household, initiate and fill out a Form 2D for each household member.

Information relating to the primary contact identified on Form 2D and where and how the contact may be found can be obtained from the infected person, family, friends, coworkers, or caregivers, or a combination of these sources. Form 2D is a CDC provided pre-printed and pre-numbered 3-part form (NCR form). Supervisors will collect from case interviewers the primary contact Form 2Ds on primary contacts from the case interviewers. Form 2D is used for data entry and contact tracing prioritization and then distributed to contact tracers. Primary contact 2Ds will be completed in the field by the contact tracer who will also complete a Form 2D on each household member of the primary contact. Some of the information needed for Form 2Ds for household members can be found on the primary contact's Form 2D. One copy of the Form 2D will be given to the primary contact and the household member for their identification when they go to get vaccinated. The original 2D is returned to the supervisor and second copy is retained by the tracer.

NOTE: The organization and layout of this form is modeled after the CDC 73.2936A, Sexually Transmitted Disease Epidemiologic Report. This style was chosen in the belief that federal, state and local smallpox contact tracing staff will frequently be staff that have previous experience using this STD form and will thus be familiar with the organization of Form 2D.

1. Last Name, First Name, MI, Suffix, and Alias: Write the last name, first name, middle initial, suffix, and alias of the contact in this space.

2. Street Address and Apt. #: In this space write the contact's street number, name, and apartment number of the residence, or other location at which the person may currently be found.

3. City and State: In this space write the contact's name of the city and state of residence, or other location at which the person may currently be found.

4. Zip: In these boxes, write the contact's zip code of residence, or other location at which the person may currently be found.

5. DOB: Write the DOB of the contact in this space in the following format: MM DD

YYYY.

6. Age (Yrs): Write the age, in years, of the contact in the boxes.

7. Ethnicity: Place an AX@ in the appropriate box for either (H) Hispanic or (N) non-Hispanic.

8. Race: Place an AX@ in the boxes of all that apply for the race of the contact:

AI/AN = American Indian/ Alaskan Native
A = Asian
B = Black, African American
H/PI = Hawaiian/ Pacific Islander
O/U = Other or unknown
W = White

9. Sex: Place an AX@ in the box for either M (male) or F (female).

10. Height: Write the contact's approximate height, in feet and inches (e.g. 5 ft, 8 inches) in the boxes.

11. Size/Build: Write the approximate weight or build of the contact (e.g. heavy, slim, thick, or 200#).

12. Hair: Write a description of the hairstyle and color of the contact (e.g. short, balding, ponytail, weave).

13. Complexion: Write a description of the contact=s complexion (e.g. light, olive, dark, tan).

14. Pregnant: Place an "X" in the appropriate box indicating pregnancy status of the contact.

Y = Yes, pregnant
N = No, not pregnant
U = Unknown pregnancy status

15. Primary Language Spoken: Write the primary language spoken by the contact.

16. English Spoken: Place and "X" in the appropriate box indicating whether the contact speaks English.

Y = Yes
N = No

U = Unknown

17. Name of Employer/School: Write the name of the company that employs the contact: (e.g., Pizza Hut, Sears, IBM), or the name of the school (if the contact is a student).

18. Address of Employer/School: Write the address of the employer/school of the contact.

19. Work Hours: Write the work hours of the contact (e.g. 8am-5pm).

20. Phone Number-Home: Write home phone number of the contact, including area code, in the boxes.

21. Phone Number-Cell: Write the cellular phone number of the contact, including area code, in the boxes.

22. Phone Number-Work: Write the phone number of the workplace of the contact, including area code, in the boxes.

23. Phone Number-Other: Write other phone numbers of the contact, including area code, in the boxes. Identify the type of phone number this represents (e.g. parent=s house, pager) in the Notes box (#30).

24. Exposure Dates: Complete for primary contacts only In the top series of blocks write the beginning date of exposure of the contact to the infected person, in MM DD YYYY format. The exposure period starts no sooner than the date of fever onset in the infected person who names this contact. In the bottom series of blocks write the last (most recent) exposure date of contact to the infected person, in MM DD YYYY format.

25. Reported Case Number: For primary contacts and secondary contacts. Write the Case Report Number of the infected person who named the **primary** contact. Include the two-character State abbreviation (e.g. TX, CA, etc.).

26. Date of Interview of Reported Case: Write the date of interview of the infected person linked to this contact, in MM DD YYYY format.

27. Contact Type: Chose the contact type for the person named on this Form 2D and place an "X" in the appropriate box. (Mark only 1 box)

The four contact types are:

Primary Contact: Someone who is a contact of a case of smallpox.
OOJ Primary Contact: Someone who is a contact of a case of smallpox that is located outside of the jurisdiction (OOJ) of the investigating agency.
Secondary Contact: Someone who is a household contact to a primary contact of

a case of smallpox.

OOJ Secondary Contact: Someone who is a household contact to a primary contact of a case of smallpox that is located outside of the jurisdiction (OOJ) of the investigating agency.

28 Priority Code: Complete for primary contacts only: chose the case contact priority code (category) that reflects the potential smallpox exposure risk for this person. The **5** priority codes are:

1 = (Highest Priority) Case household contacts: all immediate family members; others spending >3 hours in the household since case's onset of rash
2 = Non household contacts with contact <6 feet with Case with rash for ≥3 hours
3 = Non household contacts with contact <6 feet with Case with rash for < 3 hours
4 = Non household contacts with contact ≥6 feet with Case with rash for ≥3 hours
5 = Non household contacts with contact ≥6 feet with Case with rash for <3 hour

29. Primary Contact Form 2D Number: Complete for secondary contacts only: Enter the Form 2D number for the primary contact related to this secondary contact.

30. Location, Epi-notes, and Other Relevant Information: In this box, additional physical or locating information for the contact may be recorded. Include in this box any relevant information about Sites or Events that are related to this investigation. Attempts to notify the contact may be documented on the back of the Form 2D original.

31. Date Form 2D Initiated: Write the date this Form 2D was first initiated (started) for tracing/locating of this contact, in the following format: MM DD YYYY.

32. Initiated By: Write the name, initials or worker number for the worker who initiated this Form 2D.

33. Date of Contact Notification: Write the date that the contact was first notified of potential smallpox case exposure, in the following format: MM DD YYYY.

34. Notified By: Write the name, initials or worker number for the worker who notified the contact of his/her exposure.

35. Disposition Date: Write the date that this Form 2D was dispositioned (all work completed), in the following format: MM DD YYYY. (see #39 for Disposition)

36. Dispo'ed By: Write the name, initials or worker number for the worker who completed the disposition of this Form 2D.

37. Follow-up Assignment Date: If subsequent field investigation of this contact is required, write the date that this Form 2D was assigned for further follow up, in the following format: MM DD YYYY.

38. Follow-up By: If subsequent field investigation of this contact is required, write the name, initials or worker number for the worker assigned to follow up the field investigation of the contact.

39. Dispositions: Place an "X" in the appropriate box that represents the outcome (Disposition) of this smallpox case exposure investigation. In order to process these contact investigations in a timely manner, a Disposition may be determined when, for example, the contact has been successfully referred for vaccination (1A), clinical assessment (1B), hospitalization (1C), or isolation (1D). *NOTE: Following this referral, it will not be the responsibility of the contact investigator to track all subsequent clinical outcomes of the contact as these events will be managed by the smallpox outbreak response component (e.g. vaccination clinic, hospital, or isolation facility) tracking the contact.* (Mark only 1 box)

1A – Referred for Vaccination, Fever or Rash or Cough Not Present
1B – Referred for Clinical Assessment, Fever or Rash or Cough Present
1C – Already Hospitalized as Suspected Case, Fever or Rash or Cough Present
1D – Isolated, Not Vaccinated, Fever or Rash or Cough Not Present
1E – Previously Vaccinated (within the last 6 months), Fever or Rash or Cough Not Present

- Enter the date of vaccination, in MM DD YYYY format (estimate if record is not available)
- Record contact's report of Vaccination Take status: Major, Equivocal, None, or Unknown

2A – Unable to Locate
2B – Moved from jurisdiction to: On this line write the town, city, and country of the contact's new residence
3A – Deceased, Smallpox Suspected
3B – Deceased, Unrelated to Smallpox
4 – Other, list the circumstances for this disposition

40. Smallpox Case ID: If the person named on this Form 2D is infected with smallpox (dispositions 1B, 1C, or 3A), record in this box the Smallpox Case ID number, including the two-character State alpha code. If the contact investigation is closed (dispositioned) with another code and the person is subsequently diagnosed with smallpox, this Smallpox Case ID number may be recorded here if known to the contact investigator.

41. Reviewed By: Write the supervisors name, initials, or worker number who reviewed the Form 2D once the assigned worker has disposition it.

42. Comments: Write any additional comments in this space. Detailed field investigation notes may be recorded on the back of the Form 2D original.

Form 2D: Smallpox Contact Tracing Form

OMB NO. 0920-0008
Exp. Date: 06/2003

1. Last Name: First Name: MI: Suffix: Alias:

2. Street Address: Apt #:

3. City: State:

4. Zip:

5. DOB: M M D D Y Y Y Y

6. Age (Yrs):

7. Ethnicity: H NON-H

8. Race - Mark all that apply: A AN Asian B/AA HPI C/U White

9. Sex: M F

20. Phone Number - Home:

10. Height: 11. Size/Build: 12. Hair: 13. Complexion:

14. Pregnant?: Y N U

15. Primary Language Spoken:

16. English Spoken: Y N U

17. Name of Employer/School:

21. Phone Number - Cell:

24. Exposure Dates:

Date of First Exposure: M M D D 2 0 Y Y

Date of Last Exposure: M M D D 2 0 Y Y

25. Reported Case Number: State

26. Date Interview of Reported Case: M M D D 2 0 Y Y

18. Address of Employer/School:

19. Work Hours:

22. Phone Number - Work:

30. Location, Epi Notes, and Other Relevant Information:

23. Phone Number - Other:

27. Contact Type (Mark One)		28. Priority Code *
Primary Contact		
OOJ Primary Contact		
27. (continued) Secondary Contact		
OOJ Secondary Contact		

29. Primary Contact Form 2D Number: (Complete only for Secondary Contacts)

Case Contact Priority Codes *

1 = Highest Priority - Case household contacts: All immediate family members; others spending > 3 hours in the household since case's onset of rash.

2 = Non household contacts with contact <6 feet with Case with rash for >= 3 hours.

3 = Non household contacts with contact <6 feet with Case with rash for < 3 hours.

4 = Non household contacts with contact >= 6 feet with Case with rash for >= 3 hours.

5 = Non household contacts with contact >= 6 feet with Case with rash for < 3 hours.

31. Date Form 2D Initiated: M M D D 2 0 Y Y — 32. Initiated By:

33. Date of Contact Notification: M M D D 2 0 Y Y — 34. Notified By:

35. Disposition Date: M M D D 2 0 Y Y — 36. Disposed By:

37. Follow-up Assignment Date: M M D D 2 0 Y Y — 38. Follow-up By:

39. **Disposition (Select One)**

1. Located

- 1A Referred for Vaccination, Fever or Rash or Cough Not Present
- 1B Referred for Clinical Assessment, Fever or Rash or Cough Present
- 1C Already Hospitalized as Suspected Case, Fever or Rash or Cough Present
- 1D Isolated, Not Vaccinated (within last 6 months), Fever or Rash or Cough Not Present
- 1E Previously Vaccinated (within last 6 months), Fever or Rash or Cough Not Present

Date of Vaccination: M M D D 2 0 Y Y

Reported Vaccination Take Status: ☐ Major ☐ Equivocal ☐ None ☐ Unknown

2. Not Located

- 2A Unable to Locate
- 2B Moved From Jurisdiction, To: _____

3. Deceased

- 3A Smallpox Suspected
- 3B Unrelated to Smallpox

4. 4 **Other:** _____

40. Smallpox Case ID: State _____

Form 2D Number - **A0001234**

Department of Health and Human Services
Centers for Disease Control and Prevention

41. Reviewed By:

42. Comments:

Public reporting burden of this collection of information is estimated to average __ minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to CDC/ ATSDR Reports Clearance Officer; 1600 Clifton Road NE, MS D-24, Atlanta, Georgia 30333; ATTN: PRA (0920-0008).

Form 2D (Draft 11/26/2002) Version 3

APPENDIX E

GUIDE TO INDIANA'S UNSAFE BUILDING LAW

THE UNSAFE BUILDING LAW - YOUR BEST FRIEND

Local Government has authority to enact ordinances governing the maintenance of property to protect the health, safety, welfare and morals of the community and to establish procedures for enforcing these codes.

Starzenski v. City of Elkhart, 659 N.E.2d 1132 (Ind.Ct.App. 1996), transfer denied 1996 WL 477443, certiorari denied, 519 U.S. 1028, 117 S.Ct. 583, 136 L.Ed.2d 512.

City of Gary v. Ruberto, 171 Ind.App. 1, 354 N.E.2d 786 (Ind.Ct.App. 1976).

I. STATE STATUTE GOVERNS PROCEDURE I.C. 36-7-9.

A. Procedure for local governments

B. Local government must first adopt the Unsafe Building Act by ordinance and incorporate definition of "substantial property interest." 36-7-9-3.
It may then use the ordinance to address those property conditions that do not meet the property maintenance, fire or building code standards it has adopted.

South Bend Municipal Code § 6-37 adopts the act and incorporates the 2000 Edition of the International Property Maintenance Code .

II. UNSAFE BUILDING - DEFINED I.C. 36-7-9-4:

A. Impaired, structural condition makes it unsafe to a person or property

B. Fire hazard

C. Health hazard

D. Public nuisance (local body can define public nuisance - South Bend includes in definition any substandard property)

E. Dangerous to a person or property because of a violation of a statute or ordinance concerning condition or maintenance

F. Vacant and not maintained in a manner that would allow human habitation

G. Unsafe premises includes building and real property where building is located

III. LEGISLATIVE FINDINGS I.C. 36-7-9-4.5

A. Unusual to have a policy statement as a section of the Indiana Code

B. Helpful guidance for local government officials and courts

C. Notes the problems associated with vacant, deteriorated buildings

IV. ORDERS I.C. 36-7-9-5

A. Types of Orders:

1. vacating an unsafe building;
2. sealing against unauthorized intrusion;
3. extermination of vermin inside and out;
4. removal of trash and fire hazardous material inside and out;
5. repair to bring the building into compliance with standards;
6. removal of part of an unsafe building;
7. removal of all of an unsafe building;
8. for a building that will be sealed for more than 90 days -
   sealing against intrusion and effects of weather;
   exterior improvements to make the building compatible with others
   continuing maintenance and upkeep.

Orders under 2, 3, 4 and 5 can be issued without setting a hearing.

Nonhearing order - effective in 10 days. Hearing may be requested

Hearing order -
10 days notice of a hearing
Not the final word - hearing officer decides to affirm, modify or rescind.

B. Requirements for all orders:

1. reasonably related to the condition of the unsafe premises and nature and use of nearby properties;

   Kopinski v. Health and Hospital Corp. of Marion County, 766 N.E.2d 454 (Ind.Ct.App. 2002). (Order was not reasonably related, given all circumstances)

   Kollar v. Civil City of South Bend, 695 N.E.2d 616 (Ind.Ct.App. 1998), *rehearing denied, transfer denied*, 714 N.E.2d 163. (Order was reasonable - Hearing officer should not just consider whether building can be repaired, but also whether it will be)

2. adhere to notice requirements;

3. supercedes all permits.

C. Order must contain the following:

1. copy of order issued;

2. name of person receiving order;

3. legal description or address of property;

4. action required by order;

5. period of time given to accomplish action - we give a date - same as hearing;

6. hearing date, time and place;

7. order becomes final in 10 days if no hearing is required;

8. what action enforcement authority may take if order is not complied with;

9. statement indicating the obligation relating to notification of subsequent interest holders and the enforcement authority;

10. name, address and number of enforcement authority.

11. must allow sufficient time - at least 10 days to accomplish action ordered statute does not allow enforcement authority to give more than 60 days -

D. Shelf Life - Order expires in 2 years unless:

1. complaint for judicial review is filed;

2. contract is let at public bid; or

3. civil action is filed under section 17.

V. **HEARINGS LC. 36-7-9-7**

A. Held on most orders. If order does not require a hearing to become final, a hearing must still be held on request of a person with an interest in the property

B. Hearing authority may continue hearing for not more than 14 days- at the hearing or upon written request five days after notice is given

C. Who may appear at hearing - and present evidence, cross examine witnesses, and present arguments:

1. person to whom order is issued;

2. any person with a substantial property interest; and

3. any other person with an interest in the proceedings

D. Hearing officer may:

1. affirm the order;

2. rescind the order; or

3. modify the order.

Unless the person or counsel is present - Modification may only be less stringent

4. for a willful failure to comply - may also impose a civil penalty not to exceed $5,000

5. may postpone, reduce or strike civil penalty

Freidline v. Civil City of South Bend, 733 N.E.2d 490 (Ind.Ct.App 2000). (Civil penalty does not violate due process or impose criminal sanctions)

E. Action taken is considered final at the time the order is affirmed.

1. This is important for the purpose of appeal.

Read v. City of South Bend, 687 N.E.2d 265 (Ind.Ct.App. 1997), *rehearing denied, transfer denied*, 706 N.E.2d 167.

2. Additional time may be given

3. Performance bond may be required as a condition of the continuance.

VI. APPEALS I.C. 36-7-9-8

A. Must be filed in 10 days and must be verified.
Statutory appeal provision is the exclusive remedy.

Read v. City of South Bend, 687 N.E.2d 265 (Ind.Ct.App. 1997), *rehearing denied, transfer denied*, 706 N.E.2d 167.

Starzenski v. City of Elkhart, 659 N.E.2d 1132 (Ind.Ct.App. 1996), transfer denied 1996 WL 477443, certiorari denied, 519 U.S. 1028, 117 S.Ct. 583, 136 L.Ed.2d 512.

B. Standard of Review - de novo.
Cases give guidance on standard:

Trial court is to affirm the hearing officer's order unless it is arbitrary, capricious, abuse of discretion, in excess of statutory authority, not supported by evidence

Petitioner bears burden of proof at trial

Evidence submitted at the administrative hearing is to be considered - Not later conjecture by petitioner

The record is made at the administrative hearing - you do not need to repeat it at trial.

Kollar v. Civil City of South Bend, 695 N.E.2d 616 (Ind.Ct.App. 1998), *rehearing denied, transfer denied*, 714 N.E.2d 163.

Brown v. Anderson Board of Public Safety, 777 N.E.2d 1106 (Ind.Ct.App. 2002).

409 Land Trust v. City of South Bend, 709 N.E.2d 348 (Ind.Ct.App. 1999, *rehearing denied, transfer denied*, 726 N.E.2d 307.

Groff v. City of Butler, Ind.Ct.App., August 29, 2003 Appellate Cause no. 17A03-0303-CV-78.

VII. ENFORCEMENT OF ORDERS I.C. 36-7-9-10

Enforcement authority may have the action ordered done by a contractor if procedures followed:

A. served order on each person with a substantial interest;

B. order affirmed;

C. order not complied with; and

D. order is not being reviewed on appeal

VIII. INSPECTION WARRANTS I.C. 36-7-9-16

A. Statute allows for inspection to determine if the building is an unsafe building.

B. Owner or possessor must refuse inspection.

C. Affidavit requesting warrant must contain the following statements;

1. legally authorized program of inspection which includes building or that there is probable cause to believe condition, etc., justifies a search;

2. signed under oath or affirmation;

3. court must examine affiant to verify accuracy of the affidavit;

4. valid only if:
   signed by judge with date and hour issued;
   statement that it is valid for 48 hours;
   sufficiently describes building to be searched;
   indicates conditions, etc. inspection is to reveal; and
   is attached to the affidavit.

5. Warrant is only valid for 48 hours.

6. Must be served on owner or possessor personally

Noble County Board of Commissioners v. Fahlsing, 714 N.E.2d 1134 (Ind.App. 1999) (a building was subject to safety inspections at reasonable times and county could obtain a warrant upon owner's refusal)

IX. CIVIL ACTIONS - INJUNCTIVE RELIEF AND RECEIVERSHIPS I.C. 36-7-9-17 THROUGH 20

A. A civil action may be brought in the circuit, superior or municipal court for a mandatory or prohibitory injunction, for civil forfeiture or appointment of a receiver.

B. Injunction must be specific in terms, and the court must first find that:

1. an order was issued;

2. the person has a property interest that would allow the person to take the action ordered;

3. the building is an unsafe building; and

4. the order is not under judicial review.

Mitchell v. City of Ft. Wayne, 691 N.E.2d 203 (Ind.Ct.App. 1998) (Judgment of noncompliance could not be entered against land contract purchaser where there was no evidence that the purchaser had a substantial property interest)

Hancz v. City of South Bend, 691 N.E.2d 1322 (Ind.Ct.App. 1998) (Order finding property owner in contempt for violation of vacate and seal order was affirmed, but penalty for contempt was reversed)

C. Receivership is specifically provided in this chapter, and receivers now have power to sell property. Receiver may be a nonprofit organization or neighborhood organization.

X. SERVING NOTICE AND RECORDING ORDERS I.C. 36-7-9-25, 26

A. Applies to notice of orders, notice of bids and other documents and requires:

1. registered or certified mail to residence or place of business;

2. personal delivery; or

3. leaving a copy at dwelling.

4. If these do not accomplish service, may serve by publication.

Read v. City of South Bend, 687 N.E.2d 265 (Ind.Ct.App. 1997), *rehearing denied, transfer denied*, 706 N.E.2d 167. (Statutory notice on a properly appointed representative is sufficient)

B. If you fail to record an interest in property - you consent to action taken.

C. Enforcement authority is to record its orders under section 5 and results of hearings under section 7.

Starzenski v. City of Elkhart, 659 N.E.2d 1132 (Ind.Ct.App. 1996), transfer denied 1996 WL 477443, certiorari denied, 519 U.S. 1028, 117 S.Ct. 583, 136 L.Ed.2d 512. (Service requirements apply to Enforcement Authority's orders, and not to Hearing Authority's orders)

XI. TRANSFERS OF PROPERTY I.C. 36-7-9-27

A. If the owner has not complied with the order the owner must:

1. give full info on the order;

2. within 5 days - supply enforcement authority written copies of the full name, address and number of the person taking an interest and the legal instrument or agreement (Deed, land contract).

APPENDIX F

GUIDANCE ON ISDH FIELD EPIDEMIOLOGIST ACCESS TO CONFIDENTIAL INFORMATION

Indiana State
Department of Health

Guidance on ISDH Field Epidemiologist

Access to Confidential Information

We want to reassure all health care providers that they can release information to Indiana State Department of Health (ISDH) staff during an epidemiological investigation and that this is not prohibited by HIPAA. As part of its mission to protect, promote and provide for public health in the state, ISDH assists local health departments with disease outbreak investigations, contact tracing, case investigation and follow up.

This process requires that ISDH field epidemiologists obtain access to confidential medical or epidemiological information, including, but not limited to, case investigation forms, questionnaires, and reports from hospitals, physicians, and laboratories. The ISDH currently is in the process of such a disease investigation and requests access to and copies of any and all medical and epidemiological records that the ISDH field epidemiologist deems necessary.

The **ISDH**, as part of an **investigation of a disease outbreak** that is potentially dangerous to the public health, **has the authority to inspect and photocopy medical and epidemiological information wherever found**. Authority for this is found at 410 IAC 1-2.3-49(g) which reads as follows:

> **Medical or epidemiological information wherever maintained, concerning reportable cases, shall be made available to the commissioner or the commissioner's designee.**

Any information obtained in the course of public health investigations, such as this one, whether from patient records or other sources, will be maintained by the ISDH as confidential under Indiana Code 16-41-8-1 and 410 IAC 1-2.3-50.

The Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 (HIPAA) does not prevent the disclosure of medical or epidemiological information to public health authorities such as the ISDH. In fact, section 1178(b) of HIPAA reads:

> **Nothing in this part shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, child abuse, birth, or death, public health surveillance, or public health investigation or intervention.**

The HIPAA privacy rule at 45 CFR 164.512(b) echoes the statutory language cited above allowing disclosure of protected health information to a public health authority for purposes of preventing or controlling disease, including public health investigations.

Contact Information
Patrick Hadley, Privacy Officer
Office of HIPAA Compliance
(317) 233-7655
phadley@isdh.state.in.us

6/20/2003

APPENDIX G

MARION COUNTY MODEL PETITIONS, AFFIDAVITS, AND ORDERS

1. Petition, Affidavit, and Order to Inspect Private Property to Ascertain Compliance with the Health and Safety Code

STATE OF INDIANA	)		IN THE SUPERIOR COURT OF
	)	SS:	MARION COUNTY, ROOM NO. F12
COUNTY OF MARION	)		CAUSE NO. [INSERT CAUSE NUMBER]

HEALTH AND HOSPITAL CORPORATION)
OF MARION COUNTY, INDIANA,)
PUBLIC HEALTH DIVISION,)
)
Plaintiff,)
)
vs.)
)
[INSERT DEFENDANT'S NAME])
)
Defendants.)

PETITION FOR ORDER TO INSPECT

Plaintiff, the Health and Hospital Corporation of Marion County, Public Health Division, ("the Corporation") by counsel, respectfully petitions the Court for an Order to Inspect the exterior and interior of the house at [INSERT ADDRESS] , Indianapolis, Indiana, for the following reasons:

1. On [DATE], a bat at [INSERT ADDRESS] bit two children, ages 9 and 12 years old. The bat carries rabies.

2. The mother of the children observed bats, raccoons and opossums at [INSERT ADDRESS]

3. A health inspector attempted to enter [INSERT ADDRESS] to investigate, but no one answered the door.

4. The health inspector observed exterior sanitation violations at [INSERT [ADDRESS].

5. The health inspector observed points of entry on the exterior of the house where bats, raccoons and opossums could enter. (See attached photographs).

6. Section 21-201 of The Code provides that "(a) Upon consent of the owner or occupant, the Health Officer, bearing proper identification may enter any property at any reasonable time to inspect, investigate, evaluate, conduct tests, or take specimens or samples for testing as may be reasonably necessary to determine compliance with The Code.

(b) If the Health Officer is denied entry, the Corporation may seek an administrative search warrant from a court authorizing the investigation, evaluation, inspection, testing or taking of specimens or samples for testing.

7. Section 10-303(a) of The Code prohibits any owner or occupant from allowing "the condition of any inhabited or unoccupied property to cause or produce any health or safety hazard."

8. An order to inspect the exterior and interior of the house is necessary to determine the costs of complying with health and safety codes.

WHEREFORE, based upon the above, the Corporation respectfully requests this Court to order an inspection of the exterior and interior of the house located at [INSERT [ADDRESS] , Indianapolis, Indiana, using any and all force reasonable and necessary to do so, including the assistance of law enforcement and fire officials and for all other proper relief.

Respectfully submitted,

_____

Greg Ullrich, Atty No. 14362-53
Health and Hospital Corporation
3838 North Rural Street
Indianapolis, IN 46205

221-2005
Attorney for Plaintiff

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

AFFIDAVIT

I, [INSERT AFFIANT'S NAMES] , first being duly sworn upon my oath, depose and state the following:

We are least eighteen (18) years of age and competent to testify to the facts herein on the basis of personal knowledge.

On [DATE] a bat at [INSERT ADDRESS] bit two children, ages 9 and 12 years old. The bat carries rabies.

The mother of the children observed bats, raccoons and opossums at [INSERT ADDRESS]

A health inspector attempted to enter the house but no one answered the door.

The health inspector observed exterior sanitation violations at [INSERT [ADDRESS].

The health inspector observed points of entry on the exterior of the house where bats, raccoons and opossums could enter.

We affirm, under the penalties for perjury, that the foregoing representations are true.

_____

[INSERT AFFIANT'S NAME & TITLE]

[INSERT NAME], Administrator

STATE OF INDIANA)		IN THE SUPERIOR COURT OF
)	SS:	MARION COUNTY, ROOM NO. F12
COUNTY OF MARION)		CAUSE NO. [INSERT CAUSE NUMBER]

HEALTH AND HOSPITAL CORPORATION)
OF MARION COUNTY, INDIANA,)
PUBLIC HEALTH DIVISION,)
)
Plaintiff,)
)
vs.)
)
[INSERT DEFENDANT'S NAME])
)
Defendants.)

ORDER

The Health and Hospital Corporation of Marion County presented this Court with an affidavit and petition for an order to inspect.

THEREFORE, IT IS ORDERED that Environmental Health Specialists shall inspect the interior and exterior of the house at [INSERT ADDRESS] , using any and all force reasonable and necessary to do so, including the assistance of law enforcement and fire officials, to determine whether health and safety code violations exist.

Dated: [INSERT DATE OF ORDER]

[INSERT JUDGE'S TITLE]

2. Motion and Order for Imposition of Restrictions Under IND. CODE § 16-41-9-1 and Emergency Detention Under IND. CODE § 16-41-9-11

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	)SS:	
COUNTY OF MARION	)	CAUSE NO. [INSERT CAUSE NUMBER]

THE HEALTH AND HOSPITAL)
CORPORATION OF MARION)
COUNTY, INDIANA,)
)
Petitioner,)
)
v.)
)
[INSERT RESPONDENT'S NAME])
)
Respondent.)

MOTION FOR IMPOSITION OF RESTRICTIONS UNDER IND. CODE §16-41-9-1 AND EMERGENCY DENTENTION UNDER IND. CODE §16-41-9-11

The Health and Hospital Corporation of Marion County, Indiana, by counsel, files a motion for Imposition of Restrictions pursuant to Ind. Code §16-41-9-1 and Emergency Detention under Ind. Code §16-41-9-11 as follows:

1. Tuberculosis is a dangerous, communicable disease. 410 I.A.C. 1-2.3-47.

2. [INSERT NAME] , D.O.B. [DATE] , has tuberculosis.

3. On [INSERT DATE], [INSERT NAME] signed a Health Directive pursuant to Ind. Code §16-18-2-166.

4. On [INSERT DATE], [INSERT NAME] was discharged from Wishard Hospital.

5. The Division of Public Health transported and made arrangements for [INSERT NAME] to live and receive medication at the Good News Mission, 2716 East Washington Street, Indianapolis, Indiana.

6. The Division of Public Health has not had contact with [INSERT NAME] since [INSERT DATE].

7. [INSERT NAME] is in violation of the Health Directive.

8. By failing to comply with the Health Directive, [INSERT NAME] has engaged in noncompliant behavior and presents a serious and present health danger to the health of others.

WHEREFORE, petitioner, The Health and Hospital Corporation of Marion County, Indiana, respectfully requests that this Court issue an order imposing restrictions and detaining [INSERT NAME]

Greg Ullrich
Atty. No. 14362-53
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3838 North Rural Street
Indianapolis, IN 46205-2930
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Attorney for Petitioner
The Health and Hospital Corporation
Of Marion County, Indiana

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	)SS:	CAUSE NO. [INSERT CAUSE NUMBER]
COUNTY OF MARION	)	

THE HEALTH AND HOSPITAL CORPORATION OF MARION COUNTY, INDIANA,

Petitioner,

v.

[INSERT RESPONDENT'S NAME]

Respondent.

ORDER FOR IMPOSITION OF RESTRICTIONS UNDER IND. CODE §16-41-9-1 AND EMERGENCY DETENTION UNDER IND. CODE §16-41-9-11

The Health and Hospital Corporation of Marion County, Indiana, by counsel, filed a Motion for Imposition of Restrictions pursuant to Ind. Code §16-41-9-1, and Emergency Detention pursuant to Ind. Code §16-41-9-11. The Court finds [INSERT NAME] violated the Health Directive signed on [INSERT DATE], and also finds that he presents a serious and present health threat by failing to comply with that Health Directive and that he has a dangerous communicable disease: tuberculosis.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED by the Court that [INSERT NAME], D.O.B. [DATE], shown in the attached photograph, be taken into custody by a health officer or law enforcement officer and transported to an appropriate treatment facility for observation, examination and treatment where he shall comply with the following restrictions:

1. Take prescribed medications by Direct Observed Therapy from the Public Health Nurse or Community Health Worker;

2. Keep scheduled appointments with physicians;

3. Remain at a designated facility for the duration of treatment;

4. Submit sputum samples as directed by the Public Health Nurse and Physician;

5. Follow physicians' orders regarding treatment and medication; and,

6. Refrain from drugs and alcohol use for the duration of treatment.

DATED: [INSERT DATE OF ORDER]

_____

[INSERT JUDGE'S TITLE]

3. Order of Temporary Commitment

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	ROOM #8, PROBATE/MENTAL HEALTH
COUNTY OF MARION	)	CAUSE NO. [INSERT CAUSE NUMBER]

IN THE MATTER OF THE COMMITMENT OF:)
)
[INSERT NAME])

ORDER OF TEMPORARY COMMITMENT

This matter came before the Court on [INSERT DATE], for hearing on a Petition for Commitment where The Health and Hospital Corporation of Marion County, d/b/a Wishard Health Services/Midtown Community Mental Health Center ("Petitioner") appeared by counsel, Greg Ullrich, and Respondent, [NAME] ("Respondent") appeared by counsel, [NAME].

Upon evidence presented, the court finds:

1. Respondent is suffering from Bipolar Disorder, a mental illness as defined by Ind. Code § 12-7-2-130.

2. Respondent is a danger to (_) self or (_) others as defined by Ind. Code § 12-7-2-53.

3. Respondent is (_) gravely disabled as defined by Ind. Code § 12-7-2-96.

4. Respondent is in need of custody, care and treatment at Wishard/Midtown for a period not expected to exceed ninety (90) days.

5. Placement is determined to be the least restrictive environment suitable for treatment and stabilization as well as protecting Respondent while restricting Respondent's liberty to the least degree possible.

6. The treatment plan for Respondent has been fully evaluated, including alternate forms, and is believed to result in benefiting Respondent while outweighing any risk of harm.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED pursuant to Ind. Code § 12-26-6-8(a), that Respondent is committed to the designated facility until _____ unless discharged prior to that date.

IT IS FURTHER ORDERED pursuant to Ind. Code § 12-26-6-8(b), that the superintendent of the facility or the attending physician file a treatment plan with the Court no later than _____.

IT IS FURTHER ORDERED pursuant to Ind. Code § 12-26-14-3, that upon being placed on outpatient status, Respondent shall:

( ) Take medications as prescribed.

( ) Attend medical and psychiatric appointments.

( ) Maintain an address and telephone number with the Court and designated facility.

( ) Not harass family members or others.

( ) Not use alcohol or drugs, other than those prescribed.

( ) _____

_____

IT IS FURTHER ORDERED that the designated facility is granted an Order to Treat unless Respondent does not substantially benefit from the medications. The Order to Treat shall terminate with the Commitment.

DATED: _____

_____

[INSERT JUDGE'S TITLE]

Distribution:

Wishard Health Services
1001West 10th Street, Ott 430
Indianapolis, IN 46202

Greg Ullrich
Health and Hospital Corporation of Marion County
3838 North Rural Street, Room 820
Indianapolis, IN 46205
221-2436
fax 221-2008

[INSERT NAME OF RESPONDENT'S COUNSEL]

4. Order of Regular Commitment

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	ROOM #8, PROBATE/MENTAL HEALTH
COUNTY OF MARION	)	CAUSE NO. [INSERT CAUSE NUMBER]

IN THE MATTER OF THE COMMITMENT OF:)
)
[INSERT RESPONDENT'S NAME])

ORDER OF REGULAR COMMITMENT

This matter came before the Court on [INSERT DATE] for hearing on a Petition for Commitment where The Health and Hospital Corporation of Marion County, d/b/a Wishard Health Services/Midtown Community Mental Health Center ("Petitioner") appeared by counsel, Greg Ullrich, and Respondent, [NAME] ("Respondent") appeared by counsel, [NAME].

Upon evidence presented, the court finds:

1. Respondent is suffering from Schizoaffective Disorder, a mental illness as defined by Ind. Code § 12-7-2-130.

2. Respondent is a danger to (_) self or (_) others as defined by Ind. Code § 12-7-2-53.

3. Respondent is (_) gravely disabled as defined by Ind. Code § 12-7-2-96.

4. Respondent is in need of custody, care and treatment at Wishard/Midtown for a period expected to exceed ninety (90) days.

5. Placement is determined to be the least restrictive environment suitable for treatment and stabilization as well as protecting Respondent while restricting Respondent's liberty to the least degree possible.

6. That the treatment plan for Respondent has been fully evaluated, including alternate forms, and is believed to result in benefiting Respondent while outweighing any risk of harm.

IT IS FURTHER ORDERED that the superintendent of the facility or the attending physician submit a periodic report with the Court no later than _____ at which time the treatment plan will be reevaluated by the Court.

IT IS FURTHER ORDERED pursuant to Ind. Code § 12-26-14-3, that upon being placed on outpatient status, Respondent shall:

( ) Take medications as prescribed.

( ) Attend medical and psychiatric appointments.

( ) Maintain an address and telephone number with the Court and designated facility.

( ) Not harass family members or others.

( ) Not use alcohol or drugs, other than those prescribed.

( ) _____

_____

IT IS FURTHER ORDERED that the designated facility is granted an Order to Treat unless Respondent does not substantially benefit from the medications. The Order to Treat shall be reevaluated by the Court upon the filing of the Periodic Report.

DATED: _____

_____

[INSERT JUDGE'S TITLE]

Distribution:

Wishard Health Services
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Indianapolis, IN 46202

Greg Ullrich
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[INSERT NAME OF RESPONDENT'S COUNSEL]

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Indiana Bench Book Update

The Indiana General Assembly has enacted significant changes to the Indiana Public Health Law. The changes are effective July 1, 2006.

The first improvement is that Indiana now has a statutory definition of isolation and quarantine. The additional details providing guidance for the public health authority are also helpful.

DEFINITIONS

"Isolation", for purposes of I.C. 16-41-9, means the physical separation, including confinement or restriction, of an individual or a group of individuals from the general public if the individual or group is infected with a dangerous communicable disease (as described in I.C. 16-18-2-91 and 410 IAC 1-2.3-47), in order to prevent or limit the transmission of the disease to an uninfected individual. I.C. 16-18-2-194.5

"Quarantine", for purposes of I.C. 16-41-9, means the physical separation, including confinement or restriction of movement, of an individual or a group of individuals who have been exposed to a dangerous communicable disease (as described in I.C. 16-18-2-91 and 410 IAC 1-2.3-47), during the disease's period of communicability, in order to prevent or limit the transmission of the disease to an uninfected individual. I.C. 16-18-2-302.6

The 2006 additions to the public health code also lay out specific directions for obtaining the courts' enforcement of isolation and quarantine orders.

JURISDICTION

A public health authority may petition a circuit or superior court for an order of isolation or quarantine by filing a civil action in accordance with I.C. 16-41-9.

VENUE

1. Preferred venue for a petition is:

   (1) the county or counties (if the area of isolation or quarantine includes more than one (1) county) where the individual, premises, or location to be isolated or quarantined is located; or

   (2) a county adjacent to the county or counties (if the area of isolation or quarantine includes more than one (1) county) where the individual, premises, or location to be isolated or quarantined is located. This subsection does not preclude a change of venue for good cause shown.

Unless otherwise provided by law, a change of venue from the county may not be granted for court proceedings initiated under this section.

2. Change of judge

A change of venue from a judge must meet the requirements in I.C. 34-35-3-3 [sic] for court proceedings initiated under this section.

WHO MAY SEEK AN ORDER OF ISOLATION OR QUARANTINE?

Only a "public health authority," as defined by statute, may seek an order of isolation or quarantine.

For purposes of I.C. 16-22-8 and I.C. 16-41-9, public health authority is defined as follows:

(1) the state health commissioner of the state department;

(2) a deputy or an assistant state health commissioner appointed by the state health commissioner,

or an agent expressly authorized by the state health commissioner; (3) the local health officer; or
(4) a health and hospital corporation established under I.C. 16-22-8-6.

WHEN MAY A PUBLIC HEALTH OFFICER SEEK TO ISOLATE OR QUARANTINE?
If the public health authority has reason to believe that:
(1) an individual
(A) has been infected with; or
(B) has been exposed to;
a dangerous communicable disease or outbreak; <u>and</u>
(2) the individual is likely to cause the infection of an uninfected individual if the individual is not restricted in the individual's ability to come into contact with an uninfected individual;
the public health authority may petition a circuit or superior court for an order imposing isolation or quarantine on the individual. I.C. 16-41-9-1.5

WHAT ARE THE REQUIREMENTS FOR THE PETITION REQUESTING AN ISOLATION OR QUARANTINE ORDER?
1) The petition must be filed by someone authorized by the statute to file.
2) A petition for isolation or quarantine filed under this subsection must be verified.
3) A petition must include
   i) a brief description of the facts supporting the public health authority's belief that isolation or quarantine should be imposed on an individual; and,
   ii) a description of any efforts the public health authority made to obtain the individual's voluntary compliance with isolation or quarantine before filing the petition.

WHAT ARE THE NOTICE REQUIREMENTS?
An individual described in subsection (a) is entitled to notice. That notice is not defined so one should assume that the Indiana Rules of Trial Procedure apply.
Rule 4.1. Summons: Service on individuals
(A) In General. Service may be made upon an individual, or an individual acting in a representative capacity, by:
(1) sending a copy of the summons and complaint by registered or certified mail or other public means by which a written acknowledgment of receipt may be requested and obtained to his residence, place of business or employment with return receipt requested and returned showing receipt of the letter; or
(2) delivering a copy of the summons and complaint to him personally; or
(3) leaving a copy of the summons and complaint at his dwelling house or usual place of abode; or
(4) serving his agent as provided by rule, statute or valid agreement.

(B) Copy Service to Be Followed With Mail. Whenever service is made under Clause (3) or (4) of subdivision (A), the person making the service also shall send by first class mail, a copy of the summons without the complaint to the last known address of the person being served, and this fact shall be shown upon the return.

However, if the public health authority has reason to believe that an individual described is likely to expose an uninfected individual to a dangerous communicable disease or outbreak before the individual can be provided with notice and an opportunity to be heard, the public health authority may seek in a circuit or superior court an emergency order of quarantine or isolation by filing a verified petition for emergency quarantine or isolation.

WHAT ARE THE RIGHTS OF THE INDIVIDUAL?

1. An opportunity to be heard, in person
2. To be represented by counsel

WHEN CAN THE COURT EXCLUDE AN INDIVIDUAL RESPONDENT FROM HIS OR HER OWN HEARING?

A court may restrict an individual's right to appear in person if the court finds that the individual's personal appearance is likely to expose an uninfected person to a dangerous communicable disease or outbreak**.**

HOW WILL THE LIBERTY INTERESTS OF INDIVIDUALS BE PROTECTED?

If an individual is restricted from appearing in person under subsection (b), the court shall hold the hearing in a manner that allows all parties to fully and safely participate in the proceedings under the circumstances.

WHEN MAY THE COURT ISSUE AN ORDER OF ISOLATION OR QUARANTINE?

The court may issue an order imposing isolation or quarantine on the individual only when

(a.) If the public health authority proves by clear and convincing evidence that:

(1) an individual has been infected or exposed to a dangerous communicable disease or outbreak; and

(2) the individual is likely to cause the infection of an uninfected individual if the individual is not restricted in the individual's ability to come into contact with an uninfected individual.

The court may issue an emergency order imposing isolation or quarantine on the individual.

WHAT CONTENT IS REQUIRED IN THE ORDER?

The court shall establish the duration and other conditions of isolation or quarantine. The court shall impose the least restrictive conditions of isolation or quarantine that are consistent with the protection of the public.

WHEN MAY THE COURT ISSUE AN ORDER OF ISOLATION OR QUARANTINE WITHOUT NOTICE?

When the court finds that the individual may expose an uninfected individual to a dangerous communicable disease or outbreak before the individual can be provided with notice and an opportunity to be heard, the court may issue such an order.

WHEN MAY A COURT ISSUE AN EMERGENCY ORDER OF ISOLATION OR QUARANTINE WITHOUT THE VERIFIED PETITION?

A court may issue an emergency order of isolation or quarantine without the verified petition required by statute if the court receives sworn testimony of the same facts required in the verified petition:

(1) in a nonadversarial, recorded hearing before the judge;

(2) orally by telephone or radio;

(3) in writing by facsimile transmission (fax); or

(4) through other electronic means approved by the court.

WHAT IS THE PROCESS FOR DOCUMENTING THE EMERGENCY ORDER?

When a court issues an emergency order of isolation or quarantine based upon information received without a properly filed petition or in a non-adversarial hearing using electronic means,

1. The court shall direct the public health authority to sign the judge's name and to write the time and date of issuance on the proposed emergency order.

2. If the court agrees to issue an emergency order of isolation or quarantine based upon information received by facsimile transmission, the court shall direct the public health authority to transmit a proposed emergency order to the court, which the court shall sign, add the date of issuance, and transmit back to the public health authority. A court may modify the conditions of a proposed emergency order.

Also, the court shall order the court reporter to retype or copy the facsimile transmission for entry in the record. The court shall certify the transcription or copy and order retained by the judge for entry in the record.

3. If an emergency order of isolation or quarantine is issued as a result of an oral hearing by telephone or radio, the court shall record the conversation on audiotape and order the court reporter to type or transcribe the recording for entry in the record. The court shall certify the audiotape, the transcription, and the order retained by the judge for entry in the record.

Under any of the above circumstances, the clerk shall notify the public health authority who received an emergency order when the transcription or copy required under this section is entered in the record. The public health authority shall sign the typed, transcribed, or copied entry upon receiving notice from the court reporter.

WHEN MAY A PUBLIC HEALTH AUTHORITY ISSUE AN IMMEDIATE ORDER IMPOSING ISOLATION OR QUARANTINE ON AN INDIVIDUAL?

When exigent circumstances, including the number of affected individuals, exist that make it impracticable for the public health authority to seek an order from a court, and obtaining the individual's voluntary compliance is or has proven impracticable or ineffective, the public health authority may issue an immediate order of isolation or quarantine**. Such an order expires after seventy-two (72) hours, excluding Saturdays, Sundays, and legal holidays, unless renewed in accordance with the statute.**

WHAT ARE THE CONDITIONS OF THE ORDER?

The public health authority shall establish the other conditions of isolation or quarantine. The public health authority shall impose the least restrictive conditions of isolation or quarantine that are consistent with the protection of the public. If the immediate order applies to a group of individuals and it is impracticable to provide individual notice, the public health authority shall post a copy of the order where it is likely to be seen by individuals subject to the order.

HOW MAY THE PUBLIC HEALTH AUTHORITY RENEW AN ORDER OF ISOLATION OR QUARANTINE OR AN IMMEDIATE ORDER OF ISOLATION OR QUARANTINE ISSUED UNDER THIS SECTION?

(1) By filing a petition to renew the emergency order of isolation or quarantine or the immediate order of isolation or quarantine with:

(A) the court that granted the emergency order of isolation or quarantine; or

(B) a circuit or superior court, in the case of an immediate order.

The petition for renewal must include a brief description of the facts supporting the public health authority's belief that the individual who is the subject of the petition should remain in isolation or quarantine and a description of any efforts the public health authority made to obtain the individual's voluntary compliance with isolation or quarantine before filing the petition; **AND,**

(2) By providing the individual who is the subject of the emergency order of isolation or quarantine or the immediate order of isolation or quarantine with a copy of the petition and notice of the hearing at least twenty-four (24) hours before the time of the hearing **AND**;

(3) By informing the individual who is the subject of the emergency order of isolation or quarantine or the immediate order of isolation or quarantine that the individual has the right to:

(A) appear, unless the court finds that the individual's personal appearance may expose an

uninfected person to a dangerous communicable disease or outbreak;

(B) cross-examine witnesses; and

(C) counsel, including court appointed counsel in accordance with subsection (c).

(4) If:

(A) the petition applies to a group of individuals; and

(B) it is impracticable to provide individual notice;

by posting the petition in a conspicuous location on the isolation or quarantine premises.

(m) If the public health authority proves by clear and convincing evidence at a hearing under subsection (l) that:

(1) an individual has been infected or exposed to a dangerous communicable disease or outbreak; and

(2) the individual is likely to cause the infection of an uninfected individual if the individual is not restricted in the individual's ability to come into contact with an uninfected individual;

the court may renew the existing order of isolation or quarantine or issue a new order imposing isolation or quarantine on the individual.

WHAT CONDITIONS SHOULD A COURT PLACE ON ISOLATION OR QUARANTINE ORDERS?

A court shall establish the conditions of isolation or quarantine as follows:

A. State the duration of isolation or quarantine.
B. Impose the least restrictive conditions of isolation or quarantine that are consistent with the protection of the public.
C. Assure that quarantined individuals have sufficient supplies to remain in their own home.
D. If an out of home, nonhospital quarantine is imposed on an individual, the individual shall be housed as close as possible to the individual's residence.

WHEN DOES THE QUARANTINE END IF THE PERSON IS NOT CONTAGIOUS?

The local health officer may file a report with the court that states that a carrier who has been detained under this article may be discharged without danger to the health or life of others.

(b) The court may enter an order of release based on information presented by the local health officer or other sources.

WHAT COURTS HAVE JURISDICTION AND WHAT IS PREFERRED VENUE?

A circuit or superior court in any county has jurisdiction. Preferred venue for a petition for isolation and quarantine is:

(1) the county or counties (if the area of isolation or quarantine includes more than one (1) county) where the individual, premises, or location to be isolated or quarantined is located; or

(2) a county adjacent to the county or counties (if the area of isolation or quarantine includes more than one (1) county) where the individual, premises, or location to be isolated or quarantined is located. This subsection does not preclude a change of venue for good cause shown.

WHEN MAY A COURT CONSOLIDATE CASES FOR HEARING?

A consolidated hearing may be held by the court when

(1) the number of individuals who may be subject to isolation or quarantine, or who are subject to isolation or quarantine, is so large as to render individual participation impractical;

(2) the law and the facts concerning the individuals are similar; and

(3) the individuals have similar rights at issue.

A court may appoint an attorney to represent a group of similarly situated individuals if the individuals can be adequately represented. An individual may retain his or her own counsel, or proceed pro se.

WHAT ABOUT FAMILIES AND THE CHILDREN?

A public health authority that imposes a quarantine that is not in the quarantined person's home:

(1) shall allow the parent or guardian of a child who is quarantined under this section; and

(2) may allow an adult;

to remain with the quarantined individual in quarantine. As a condition of remaining with the quarantined individual, the public health authority may require a person described in subdivision (2) who has not been exposed to a dangerous communicable disease to receive an immunization or treatment for the disease or condition, if an immunization or treatment is available and if requiring immunization or treatment does not violate a constitutional right.

(q) If an individual who is quarantined under this section is the sole parent or guardian of one (1) or more children who are not quarantined, the child or children shall be placed in the residence of a relative, friend, or neighbor of the quarantined individual until the quarantine period has expired. Placement under this subsection must be in accordance with the directives of the parent or guardian, if possible.

WHEN IS THE COURT REQUIRED TO APPOINT AN ATTORNEY TO REPRESENT AN INDIGENT INDIVIDUAL IN AN ACTION BROUGHT UNDER THIS CHAPTER OR UNDER I.C. 16-41-6?

Any time an order is sought to isolate and quarantine an indigent person. If funds to pay for the court appointed attorney are not available from any other source, the state department may use the proceeds of a grant or loan to reimburse the county, state, or attorney for the costs of representation.

WHAT ARE THE CRIMINAL PENALITIES FOR VIOLATING A CONDITION OF ISOLATION OR QUARANTINE?

A person who knowingly or intentionally violates a condition of isolation or quarantine under this chapter commits violating quarantine or isolation, a Class A misdemeanor.

WHAT ARE THE DUTIES OF STATE AND LOCAL LAW ENFORCEMENT AGENCIES?

The Indiana statute merely states that they shall cooperate with the public health authority in enforcing an order of isolation or quarantine.

WHAT ARE THE DUTIES OF THE STATE DEPARTMENT OF HEALTH?

The state department of health is required to adopt rules to establish guidelines (not mandates) for:

(1) voluntary compliance with isolation and quarantine;

(2) quarantine locations and logistical support; and

(3) moving individuals to and from a quarantine location.

WHAT ARE OPTIONAL DUTIES OF A PUBLIC HEALTH AUTHORITY?

A public health authority may impose or petition a court to impose a quarantine and do the following:

(1) Distribute information to the public concerning:

(A) the risks of the disease;

(B) how the disease is transmitted;

(C) available precautions to reduce the risk of contracting the disease;

(D) the symptoms of the disease; and

(E) available medical or nonmedical treatments available for the disease.

(2) Instruct the public concerning social distancing.

(3) Request that the public inform the public health authority or a law enforcement agency if a

family member contracts the disease.

(4) Instruct the public on self quarantine and provide a distinctive means of identifying a home that is self-quarantined.

(5) Instruct the public on the use of masks, gloves, disinfectant, and other means of reducing exposure to the disease.

(6) Close schools, athletic events, and other nonessential situations in which people gather.

HOW ARE INDIVIDUALS ABLE TO PROTECT THEMSELVES AND THEIR FIREARMS?

In exercising its powers, the public health authority may not prohibit a person lawfully permitted to possess a firearm from possessing one (1) or more firearms unless the person is quarantined in a mass quarantine location. The public health authority may not remove a firearm from the person's home, even if the person is quarantined in a mass quarantine location.

(d) This section does not prohibit a public health authority from adopting rules and enforcing rules to implement this section if the rules are not inconsistent with this section.

WHAT IS REQUIRED TO ESTABLISH AN IMMUNIZATION PROGRAM BY A PUBLIC HEALTH AUTHORITY TO COMBAT A PUBLIC HEALTH EMERGENCY?

The state health department is the only department required to develop and distribute or post information concerning the risks and benefits of immunization.

(2) No person may be required to receive an immunization without that person's consent. No child may be required to receive an immunization without the consent of the child's parent, guardian, or custodian. The state health department may implement the procedures allowed by law concerning a person who refuses to receive an immunization or the child of a parent, guardian, or custodian who refuses to consent to the child receiving an immunization.

WHO IS GOING TO PAY FOR THE CARE OF THOSE WHO ARE ISOLATED OR QUARANTINED?

The court shall determine what part of the cost of care or treatment ordered by the court, if any, the carrier can pay and whether there are other available sources of public or private funding responsible for payment of the carrier's care or treatment. The carrier shall provide the court documents and other information necessary to determine financial ability. If the carrier cannot pay the full cost of care and other sources of public or private funding responsible for payment of the carrier's care or treatment are not available, the county is responsible for the cost. If the carrier:

(1) provides inaccurate or misleading information; or

(2) later becomes able to pay the full cost of care;

the carrier becomes liable to the county for costs paid by the county.

(b) Except as provided in subsections (c) and (d), the costs incurred by the county under this chapter are limited to the costs incurred this chapter.

(c) However, subsection (b) does not relieve the county of the responsibility for the costs of a carrier who is ordered by the court under this chapter to a county facility.

(d) Costs, other than costs described in subsections (b) and (c) that are incurred by the county for care ordered by the court under this chapter, shall be reimbursed by the state under I.C. 16-21-7 to the extent funds have been appropriated for reimbursement.