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行政院衛生署疾病管制局 103 年委託科技研究計畫

計畫名稱：提審法實施對傳染病防治實務影響之法律研究

103 年 度/全 程 研 究 報 告

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目錄

中文摘要

新修正提審法已自一百零三年七月八日起施行，傳染病防治措施中涉及剝奪人身自由之手段亦須遵守此部保障人民人身自由的重要法令。本研究目的在於1.評估分析傳染病防治法中屬於逮捕或拘禁之防疫手段；2.檢討符合逮捕或拘禁定義之防疫手段，實際程序上如何踐行提審法告知、通知之要求；3.檢視傳染病防治涉及剝奪人身自由之措施是否符合憲法第八條正當法律程序之要求並提出修法建議。研究發現：傳染病防治法中所授權之防疫手段中涉及限制人身自由者眾多，但明確符合逮捕、拘禁之定義者有第四十四、四十五條隔離治療、第四十八條及第五十八條之檢疫手段；提審法要求逮捕、拘禁機關應於二十四小時內以書面方式告知本人及其本人指定之親友逮捕拘禁之原因，衛生機關以上述法源為依據所實施之隔離治療或檢疫，應以書面為之，並將提審權利告知及通知親友內容整合於處分書中，即時交付相對人；依近來司法院有關人身自由保障之解釋意旨，建議傳染病防治法之隔離、檢疫手段應強化實體要件，短暫、合理期間內之隔離、檢疫雖無須由法院審查決定，但應賦予相對人即時向法院請求救濟之程序保障。

英文摘要

The newly revised Habeas Corpus Act has taken effect on July 8, 2014. Public health officials who use control measures involving deprivation of individuals' personal liberty must also comply with this new law. This research aims to answers the following questions: 1. what measures authorized by the Communicable Disease Control Act are legally required to comply with the requirements of the Habeas Corpus Act? 2. How should these legal requirements of the Habeas Corpus Act, particularly the written notice and written delineation of rights, be integrated into the current public health practices and procedures? 3. To what extent do the measures involving deprivation of individuals' personal liberty authorized by the Communicable Disease Control Act fulfill Constitutional procedural due process? This research finds that there are several articles in the Communicable Disease Control Act involving measures that may constitute limitation of individuals' personal liberty but only measures authorized under article 44, 45, 48 and 58 clearly involve deprivation of individuals' personal liberty. Health authorities who use isolation or quarantine measures authorized in these articles may integrate the 24-hour written notice and relatives informing requirements into current practices. According to recent Judicial Yuan Interpretations, the Communicable Disease Control Act needs to be revised to give isolation and quarantine measures clear definition and elements as well as to improve procedural protection, providing immediate judicial relief to individuals subject to isolation and quarantine measures.

報告本文

一、 前言

（一） 問題背景

1. 提審法適用範圍之擴張

過去司法實務上多認為，依照憲法第八條第二項規定，提審對象應限於「因犯罪嫌疑而被逮捕拘禁」者，因此非因犯罪嫌疑被逮捕拘禁而向法院聲請提審者，多數遭法院裁定駁回。然而，司法院統計從民國八十七年至一百零二年一百六十六件聲請案中有五件聲請提審成功案例，分別涉及外國人收容及大陸人士留置事由聲請提審，法院認為提審有理由而當庭釋放，足見司法實務上已有法官認為提審法不應僅適用於因犯罪嫌疑而被逮捕拘禁。再者，民國九十八年十二月十日公佈施行之「公民與政治權利國際公約及經濟社會文化權利國際公約施行法」第2條規定，前述兩公約所揭示保障人權之規定，自一百年十二月十日起施行，具有國內法律之效力。公民與政治權利國際公約第九條第四項，明文規定「任何人因逮捕或拘禁而被剝奪自由時，有權聲請法院提審，以迅速決定其拘禁是否合法，如屬非法，應即令釋放」，其所謂「因逮捕拘禁而被剝奪自由」，適用於不論任何原因而被逮捕、拘禁之任何人，因此，不論是因為涉及刑事案件或精神疾病、藥癮、遊蕩、吸毒，抑或是為教育目的、管制移民等情形，均得聲請法院提審。此外，司法院大法官於一百零二年二月六日做成釋字第七百零八號解釋，解釋理由書闡明:「入出國及移民法第三十八條第一項之收容，係嚴重干預人民身體自由之強制處分，依憲法第八條第一項規定意旨，自須踐行必要之司法程序或其他正當法律程序。基於上述憲法意旨，為落實及時有效之保障功能，對上述處分仍應賦予受暫時性收容之外國人有立即聲請法院審理決定之救濟機會。」司法院大法官雖未提及「提審」二字，但認為「非因犯罪嫌疑」而被嚴重干預人民

身體自由之處分，依憲法第八條第一項實質正當法律程序之意旨，應賦予受拘束人有立即聲請法院審查決定之救濟機會，所謂救濟機會實質上與聲請提審無異。

基於前揭實務上運作現況、國際人權公約內國法化之影響以及司法院大法官解釋意旨，原提審法第一條規定「人民被法院以外之任何機關逮捕拘禁」，在文義解釋上，不論是否「因犯罪嫌疑」而被逮捕或拘禁，均應有其適用。提審法於民國一百零三年一月八日修正時，修正說明中亦特別闡明上述適用範圍。經前揭立法修正，提審法適用範圍明確及於非因犯罪嫌疑而被逮捕拘禁者，因此只要符合「以強制力將人之身體自由予以拘束」或「拘束人身之自由使其難於脫離一定空間」，即有提審法之適用，傳染病防治法中若有涉及前揭逮捕、拘禁之手段者，自然亦須遵循提審法之要求。

2. 傳染病防治法與提審法之接軌

提審法修正施行後，凡符合逮捕或拘禁定義之防疫手段，均須踐行提審法之要求。傳統上涉及限制人身自由之防疫手段有隔離(isolation)及檢疫(quarantine)，但傳染病防治法中屬剝奪人身自由態樣之手段卻散落各處，究竟哪一個條文所授權施行的何種措施，因符合逮捕或拘禁之定義而有提審法之適用，有必要一一檢視與釐清。再者，有提審法適用之防疫手段，必須依提審法要求以書面告知被限制人法定事項，此等限時書面告知與權利告知之要求，需適當與現行實務之執行流程結合，始能使第一線公衛人員適時踐行提審要求。例如目前依照傳染病防治法第四十四條及第四十五條授權實施之隔離治療手段，應於施行隔離治療後三日內送達病人隔離治療通知書，提審法與傳染病防治法均有書面之要求，在內容上應加以整合，盡可能簡化第一線公衛人員之執行流程，俾利公衛人員運用防疫手段時更有效率。其他符合逮捕或拘禁定義之防疫手段，亦應制定書面表格，供公衛人員參考與運用。此外，新修正提審法固然賦予人民於人身自由遭限制時向法院聲請提審之權利，較過去給予人民更高的程序保障，但歷年來司法院解釋人身自由限制之程序保障，特別是釋字三百九十二號有關刑事訴訟羈押程序、五百八十八號行政執行法拘提管收程序、六百六十四號有關少年事件處理法收容及令少年入感化教育處所施以感化教育之程序、七百零八號與七百一十號有關收容外

籍人士及大陸人士之程序等，均強調非刑事被告之逮捕拘禁亦有由法院決定之必要性。基此，如何從憲法第八條規定之高度，檢討傳染病防治法中限制人身自由手段之程序上正當法律程序，做為將來通盤檢討拘束人身自由之防疫手段之程序保障的依據，亦是新提審法施行後主管機關必須面對的問題。

（二） 研究目標

基於上述問題背景，本研究之目標有三：

1.從法律規範評估分析傳染病防治法中涉及逮捕或拘禁定義之防疫手段。

2.檢討涉及逮捕或拘禁定義之防疫手段如何於實務程序上踐行提審法要求。

3.分析歷年司法院有關人身自由保障之解釋，對傳染病防治涉及人身自由限制之手段應具備之程序保障提出修法建議。

二、 材料與方法

本研究以文獻回顧及論理分析為主要研究方法，針對三個主要研究目標分別進行資料收集。第一個研究目標係檢討現行傳染病防治法中有那些條文所授權之手段屬於提審法所規定的逮捕、拘禁，故本研究逐一檢視傳染病防治法條文，依照司法院第三百九十二號解釋理由對逮捕、拘禁之定義，找出必須踐行提審法要求之防疫手段。

第二個研究目標係整合須踐行提審法要求之防疫手段與現行實務流程，包括檢討實務上最常運用之隔離治療及傳染病流行時經常使用之檢疫手段。傳染病防治法中符合提審法逮捕或拘禁定義之手段，須依提審法要求踐行書面告知權利及通知親友之程序。為符合前揭要求，本研究審閱主管機關現行相關表單，並設計單獨提審權利告知表單，以利限制人身自由防疫手段之實際執行。

第三個研究目標為檢討限制人身自由防疫手段之程序上正當法律程序。此部份研究將以歷年司法院有關人身自由保障之解釋為基礎，分析傳染病防治法第四十四條、四十五條隔離治療、第四十八條隔離、第五十八條檢疫等手段，是否除應符合提審法要求外，有必要依憲法第八條規定，提供人民密度更高之程序保障。

例如由法院決定是否限制人身自由，抑或另於傳染病防治法中提供被限制人即時請求救濟之機會；若傳染病防治法中另提供被限制人及時救濟管道，則依提審法第一條第一項規定即無須踐行提審法之要求。

三、 結果

（一） 何種防疫手段涉及逮捕或拘禁?

傳染病防治法中可能涉及限制或剝奪人民人身自由之手段散落各章，包括：

1. 第三十六條：「民眾於傳染病發生或有發生之虞時，應配合接受主管機關之檢查、治療、預防接種或其他防疫、檢疫措施。」
2. 第四十三條：「（第一項）地方主管機關接獲傳染病或疑似傳染病之報告或通知時，應迅速檢驗診斷，調查傳染病來源或採行其他必要之措施，並報告中央主管機關。（第二項）傳染病或疑似傳染病病人及相關人員對於前項之檢驗診斷、調查及處置，不得拒絕、規避或妨礙。」
3. 第四十四條：「（第一項）主管機關對於傳染病病人之處置措施如下：一、第一類傳染病病人，應於指定隔離治療機構施行隔離治療。二、第二類、第三類傳染病病人，必要時，得於指定隔離治療機構施行隔離治療。第四類、、第五類傳染病病人，依中央主管機關公告之防治措施處置。（第二項）主管機關對傳染病病人施行隔離治療時，應於強制隔離治療之次日起三日內作成隔離治療通知書，送達本人或其家屬，並副知隔離治療機構。（第三項）第一項各款傳染病病人經主管機關施行隔離治療者，其費用由中央主管機關編列預算支應之。」
4. 第四十五條：「（第一項）傳染病病人經主管機關通知於指定隔離治療機構施行隔離治療時，應依指示於隔離病房內接受治療，不得任意離開；如有不服指示情形，醫療機構應報請地方主管機關通知警察機關協助處理。（第二項）主管機關對於前項受隔離治療者，應提供必要之治療並隨時評估
；經治療、評估結果，認為無繼續隔離治療之必要時，應即解除其隔離治療之處置，並自解除之次日起三日內作成解除隔離治療通知書，送達本人或其

家屬，並副知隔離治療機構。（第三項）地方主管機關於前項隔離治療期間超過三十日者，應至遲每隔三十日另請二位以上專科醫師重新鑑定有無繼續隔離治療之必要。」

5. 第四十八條:「（第一項）主管機關對於曾與傳染病病人接觸或疑似被傳染者，得予以留驗；必要時，並得令遷入指定之處所檢查、施行預防接種、投藥、指定特定區域實施管制或隔離等必要之處置。（第二項）中央主管機關得就傳染病之危險群及特定對象實施防疫措施；其實施對象、範圍及其他應遵行事項之辦法，由中央主管機關定之。」

6. 第五十八條:「主管機關對入、出國（境）之人員，得施行下列檢疫或措施，並得徵收費用：

一、對前往疫區之人員提供檢疫資訊、防疫藥物、預防接種或提出警示等措施。

二、命依中央主管機關規定詳實申報傳染病書表，並視需要提出健康證明或其他有關證件。

三、施行健康評估或其他檢疫措施。

四、對自感染區入境、接觸或疑似接觸之人員、傳染病或疑似傳染病病人，採行居家檢疫、集中檢疫、隔離治療或其他必要措施。

五、對未治癒且顯有傳染他人之虞之傳染病病人，通知入出國管理機關，限制其出國（境）。

六、商請相關機關停止發給特定國家或地區人員之入國（境）許可或提供其他協助。

前項第五款人員，已無傳染他人之虞，主管機關應立即通知入出國管理機關廢止其出國（境）之限制。

入、出國（境）之人員，對主管機關施行第一項檢疫或措施，不得拒絕、規避或妨礙。」

藉由控制個人人身自由手段來防治傳染病，向來是公共衛生防疫工作的重要措施，公共衛生學及世界衛生組織所制定的國際衛生條例(International Health Regulations)，均以限制對象是否已有臨床症狀可確認感染為標準，將限制人身自由手段區分為隔離(isolation)與檢疫(quarantine)，由此分類觀察傳染病防治法內容可發現明確符合逮捕、拘禁定義者，包括 1.傳染病防治法第四十四條及第四十五

條針對傳染病病人所實施之隔離治療；2.傳染病防治法第四十八條第一項規定之留驗、令遷入指定之處所檢查、指定特定區域實施管制或隔離等必要之處置；3.傳染病防治法第五十八條之居家檢疫、集中檢疫、隔離治療或其他必要措施。

至於傳染病防治法第三十六條及第四十三條之規範，內容雖著重於配合主管機關之檢查及調查，但由於欠缺明確定義、方式與程序，難以判斷是否符合提審法之逮捕、拘禁定義。但若實際執行上涉及以強制力將人之身體自由予以拘禁或拘束人身之自由使之其難於脫離一定空間，仍受提審法之拘束。

（二） 如何整合傳防法與提審法要求?

當防疫手段符合提審法所稱逮捕拘禁之定義時，衛生機關有義務依照提審法第二條第一項之要求，於逮捕、拘禁後二十四小時內，將逮捕、拘禁之原因，以書面告知本人及其本人指定之親友，至遲不得逾二十四小時；若被逮捕、拘禁者聲請提審，衛生機關亦有義務依提審法第七條第一項規定，將被限制人解交法院。為符合提審法之告知與通知義務，衛生機關應製作各種傳染病防治手段可通用之「提審權利告知書」及「告知親友提審權利通知」(參見表一、表二)。

另外，提審法第二條第一項規定要求逮捕或拘禁機關於逮捕、拘禁後二十四小時內，將逮捕、拘禁之原因，以書面告知本人；目前主管機關所設計的隔離治療通知書表單中亦要求記載本人姓名、傳染病名稱、指定隔離治療醫療機構及隔離治療之法源依據，且隔離治療通知書應於強制隔離治療之次日起三日送達本人或其家屬。為滿足提審法及傳染病防治法之程序要求，可於隔離治療通知書中納入提審權利告知，並在實施隔離治療時交予病人本人簽收(表三)。

（三） 剝奪人身自由之防疫手段以滿足提審法要求為已足?

傳染病防治法中可能涉及限制人身自由之手段眾多，經檢討後若符合提審法所規範之逮捕與拘禁，衛生機關固然有義務依照提審法之要求，踐行告知、通知與解交義務。然而，依照提審法給予人民聲請法院介入審查之機會，僅為憲法第八條所規範的保障人身自由正當法律程序中之最低要求，就此等非刑事被告人身

自由之剝奪與限制應有如何之「法定程序」始為正當，實為新修正提審法施行後衛生主管機關必須面對的下一個問題。詳言之，當防疫手段符合司法院第 392 號解釋理由書中所稱「拘束人身之自由使其難於脫離一定空間」之拘禁定義時，此涉及剝奪人身自由之措施，除了實體要件受到比例原則限制外，程序上須符合憲法第八條第一項「依法定程序」為之的要求。所謂法定程序，司法院第 588 號解釋已指出對非刑事被告與非刑事被告之人身自由限制，因本質上差異，其須踐行之司法程序或其他正當法律程序無須完全相同。既無須完全相同，那麼隔離治療或檢疫此種拘禁非刑事被告的正當法律程序內涵、要素為何？什麼樣的程序保障程度可通過違憲審查？

要回答上述問題，必須先檢討司法院於民國一百年九月三十日公布的第六百九十號解釋，因為此號解釋係因民國九十二年四月間發生台北市立和平醫院 SARS 事件，台北市政府依據當時的傳防法第三十七條第一項採取了召回員工之「集中隔離」措施，這是大法官會議首次針對傳染病防治中之人身自由限制手段之合憲性表示意見。大法官認為強制隔離與刑罰不同，程序保障無須與刑事程序之保障相同，且因強制隔離事件具有專業性與時效性，行政機關應有決定權力，無須採取法官保留，且強制隔離處分可循一般行政訴訟途徑救濟，並不因未賦予人民直接向法院提起爭訟而違背憲法第八條之意旨。然而，基於以下理由，不論是隔離治療或檢疫之程序保障密度，應高於釋字第六百九十號之要求:

1. 依第六百九十號解釋所建立之標準，將可能使衛生機關有權長期、甚至是無限期剝奪結核病病人之人身自由，與憲法第八條以四項規範論述人身自由保障之意旨相違。雖然拘禁非刑事被告之程序保障無須與刑事被告一致，但並不代表可以完全不顧法官保留或法院保留之憲法要求。大法官在司法院第一百六十六及二百五十一號解釋中，已主張違警罰法中之拘留、罰役及命於一定處所學習技能等處分，依照憲法第八條第一項規定應由法院為之。司法院第五百八十八號解釋審查行政執行法拘提管收制度合憲性時雖強調「刑事與非刑事之人身自由限制，畢竟有其本質上之差異，是其必須踐行之司法程序或其他正當法律程序，自非均須同一不可」，但同時也認為管收係於一定期間內拘

束人民身體自由於一定之處所，屬憲法第八條第一項所規定之拘禁，其於決定管收之前，自應踐行必要之程序，即由中立、公正第三者之法院審問。大法官在這幾號解釋中並未因為是非刑事被告之拘禁而認為毋須法官（院）保留。此外，以行政機關具專業性為由而肯定行政機關得限制人身自由，忽略了不論刑事或非刑事人身自由限制都某程度涉及行政專業，行政機關相對於法院，當然就其所執掌領域之事務更具專業性，在專責事務處理上當然比法院更迅速，但非如此即可謂行政機關之權限不受限制，憲法對於人身自由保障之重點，在於如何制衡行政機關之權限，使行政機關不至於濫權，也就是在什麼樣的要件、範圍、期間下，我們可以允許行政機關拘束人民的人身自由。人民可藉由行政訴訟提起救濟，至多是符合了憲法所保障之訴訟權，以人民可依行政爭訟程序提起救濟為由，否定非刑事被告之拘禁應由法官或法院決定或至少有介入審查機制之必要，將使憲法第 8 條名存實亡。事實上，六百九十號解釋雖一方面稱舊傳染病防治法第三十七條第一項規定「與憲法第八條依正當法律程序之意旨尚無違背」，但又稱「宜明確規範強制隔離應有合理之最長期限，及決定施行強制隔離處置相關之組織、程序等辦法以資依循，並建立受隔離者或其親屬不服得及時請求法院救濟」法制，顯然多數大法官也認同及時救濟對保障人身自由的重要性，並未全然認為事後救濟即可。

2. 司法院於六百九十號解釋公布後，又對行政機關剝奪人身自由措施合憲性公布了第七百零八及七百一十號解釋。這兩號解釋認為主管機關得在合理之遣送作業期間內，短暫收容受驅逐出國處分之外國人及受強制出境處分之大陸地區人民，不違反憲法第八條第一項保障人身自由之意旨，且無須經由法院為之。但為落實即時有效之保障功能，應賦予受暫時收容者有立即聲請法院審查決定之救濟機會；倘受收容人於暫時收容期間內，對於暫時收容處分表示不服，或要求由法院審查決定是否予以收容，主管機關應即於二十四小時內將受收容人移送法院迅速裁定是否予以收容；另考量現行作業實務，就外國人遣送出國前之暫時收容期間，大法官認為上限不得超過十五日；暫時收容期間將屆滿而主管機關認有繼續收容之必要者，大法官認為事涉長期剝奪

人身自由，基於憲法第八條第一項保障人身自由之正當法律程序要求，逾越暫時收容期間之收容，應由公正、獨立審判之法院依法審查決定，故而主管機關應於暫時收容期間屆滿之前，將受暫時收容人移送法院聲請裁定收容，始能續予收容；其後有延長收容必要者，亦同。對照第六百九十號解釋與第七百零八、七百一十號解釋，大法官雖然仍維持行政機關可獨立為剝奪人身自由處分之見解，但已加上依剝奪人身自由目的判斷之「合理期間」及「短暫」等限制，更重要的是，即便行政機關可以短暫剝奪人身自由，人民在這短暫期間內具有向法院聲請即時救濟之權，這顯然修正了第六百九十號解釋認為給予受限制人民行政爭訟救濟為已足的看法。更重要的是，大法官參考了執行實務，為短暫剝奪人身自由劃下十五天的界限，超越此期間的人身自由剝奪及其後需延長期間者，需由法院決定，此一見解將剝奪非刑事被告人身自由之程序保障內涵具體化，對其他行政機關剝奪人身自由之處分具有指標意義。

3. 退萬步言，第六百九十號解釋所涉情境是新興傳染病流行而實施大規模檢疫，同時剝奪眾多疑似感染者之人身自由，這種急迫的、群體的檢疫是典型的緊急公共衛生事件，與其他生物醫學及流行病學上已知之甚詳的傳染病不同，目前已知的傳染病多針對個別感染者或潛在感染者進行隔離治療或檢疫，這兩種情境下的限制對象、目的、方法、期間、地點均有不同，故而在程序保障密度上，包括如何通知、送達、是否事前或事後由法院決定、剝奪人身自由期間、延長期間之定期審查機制上，應有差異。

相較於司法院第六百九十號解釋認同非刑事被告遭拘禁時得由行政機關決定施行，第七百零八、七百一十號解釋則試圖在法院保留全無或全有之外找尋一條中間路線，對於類型化、精緻化非刑事被告之人身自由程序保障更有參考意義。對照 SARS 與結核病的防治經驗，衛生機關對於不同態樣的傳染病（新興或已知）或對處於不同情境、階段的病人（確知感染或曾接觸感染源但無症狀），所採取的剝奪人身自由手段與程序保障密度應加以區分。本研究認為，隔離治療及檢疫手段，至少應以司法院第七百零八、七百一十號解釋為準據，設計其程序保障機

制，始能通過違憲審查，包括:

1. 衛生人員得以檢驗為目的，將疑似感染者移送並留置於特定場所進行檢驗，直到檢驗結果出爐，確認其是否感染為止。之後衛生人員得再視檢驗結果及其他證據，決定是否對病人實施其他介入措施，例如對疑似感染者進行檢疫、繼續觀察或要求完成治療、隔離治療或強制住院；若無符合其他介入措施之情形，衛生機關即應釋放並人。不論如何，受檢驗處分人如有不服，得隨時向法院請求介入審查。
2. 衛生人員得對曾暴露於感染源但目前無症狀者實施檢疫，直到確認感染或潛伏期經過確認無感染為止。檢疫期間若屬在合理、短暫期間內之拘禁，亦得由行政機關決定，無需由法院決定。但受檢疫處分人如有不服，同樣得隨時向法院請求介入審查
3. 衛生人員得對確認感染者或有高度可能性已感染者實施隔離治療，直到感染者無傳染性為止。同樣，隔離治療期間若屬合理、短暫(例如結核病應可採十四日)，得由行政機關決定，無需由法院決定。但受隔離處分人如有不服，同樣得隨時向法院請求介入審查
4. 前揭檢疫及隔離治療處分若期間超過「短暫」之標準，則較為長期的人身自由剝奪必須取得法院許可始得為之。換言之，即使受處分人未表示不服,較為長期的人身自由剝奪或不定期的人身自由剝奪,應由法院審查是否得繼續為檢疫或隔離治療，以及延長檢疫與隔離治療之期間。法院審查決定後尚須有定期審查制度，例如結核病之強制住院至治癒之期間長達數月，可由法院每六十日重新審查，行政機關必須期滿前向法院請求許可，始得繼續剝奪人民之人身自由。
5. 對於無傳染性但有住院治療必要之感染者，衛生人員得對之為強制住院處分，但如前所述，超過短暫期間之長期住院，必須由法院審查決定，並應由法院定期審查。
6. 若檢驗、檢疫、隔離治療、強制住院之被處分人有不服，向法院請求釋放，為符合及時救濟之意旨，衛生機關應即於二十四小時內將

被處分人移送法院，由法院迅速裁定是否予以拘禁；法院審查時，原處分雖仍繼續有效，但法院應就處分原因是否符合法定實體要件予以審查，於處分原因不合法時，法院得撤銷該處分並釋放被處分人。此外，為落實病人請求法院即時審查權利，目前傳防法第四十四條第二項要求施行隔離治療之主管機關「應於強制隔離治療之次日起三日內作成隔離治療通知書，送達本人或其家屬，並副知隔離治療機構」的規範不足以保障病人的知悉權。按病人就在主管機關的實力支配下，即時告知並給予書面通知執行上應無困難，傳防法應要求主管機關於處分後，立即以書面告知病人遭拘禁之原因、法律依據及不服處分之司法救濟途徑，並通知其指定親友。

7. 涉及剝奪人身自由之防疫手段在被處分人自動履行下固無問題，但若被處分人拒絕自願履行，衛生人員得請求警察及消防人員協助執行。

8. 被處分人聲請釋放後於法院審查程序中應享有之程序上權利包括：書面通知、書面告知權利、聘請律師的權利、提出證據、訊問證人之權利、閱卷及上訴之權利。

四、 討論

（一） 須踐行提審法要求之防疫手段

剝奪人身自由之防治措施包括隔離（isolation）及檢疫（quarantine）兩類，所謂隔離，指的是對於確認已感染（例如有檢驗結果或有臨床症狀）的病人，為防止感染擴散及提供治療，而將病人與他人分離，因此就呼吸道感染症言，實施隔離的最佳場所是醫療院所中的負壓隔離病房。至於檢疫，則是對尚未確認感染、無症狀、但因曾暴露於感染源、有可能處於潛伏期之人，為了觀察、確認是否感染以及避免在潛伏期中感染他人，因而在潛伏期內將其與他人分離之手段。由於檢疫對象尚未確認感染，檢疫的實施方式有很多態樣，包括「機構場所檢疫」（Institutional Quarantine）、「一定地理範圍之檢疫」（Geographic Quarantine）、

「工作檢疫」（Work Quarantine；活動區域限於工作場所及家中兩定點，例如照顧傳染病病人的醫護人員可採取此種限制方式）、居家檢疫（Home Quarantine；病人在家觀察，不得外出）等。

以上述隔離及檢疫之分類為準據，審視傳染病防治法的內容可以發現，明確符合逮捕、拘禁之定義而有提審法之適用者包括傳染病防治法第四十四、四十五條為法源之隔離治療，及以第四十八條和第五十八條為法源之檢疫手段：

1. 傳染病防治法第四十四、四十五條之隔離治療明確針對「傳染病病人」，並限制其身體自由於隔離治療機構內，屬前揭分類中的「隔離」（isolation）手段，且病人人身自由遭剝奪的程度，亦符合「拘束人身自由於一定空間、使其難以脫離」之拘禁內涵，因此以傳染病防治法第四十四、四十五條為依據所實施的隔離治療，有提審法之適用。

2. 傳染病防治法第四十八條第一項規定「主管機關對於曾與傳染病病人接觸或疑似被傳染者，得予以留驗；必要時，並得令遷入指定之處所檢查、施行預防接種、投藥、指定特定區域實施管制或隔離等必要之處置。」本條文係針對曾暴露於感染源但尚未確認感染者進行人身自由拘束，屬於前揭分類中「檢疫」的手段，且其中所稱之「留驗」、「遷入指定之處所」、「指定特定區域實施管制」、「隔離」等措施，從實際執行之客觀情狀觀察，亦涉及不論人民之意願而將其行動自由拘束於一定空間、無法脫離，符合拘禁之定義。

3. 傳染病防治法第五十八條第一項規定「主管機關…得….對自感染區入境、接觸或疑似接觸之人員、傳染病或疑似傳染病病人，採行居家檢疫、集中檢疫、隔離治療或其他必要措施。」本條文中所稱「居家檢疫、集中檢疫」主要針對無症狀的潛在感染者，而「隔離治療」係針對已確認感染或有高度可能性已感染者，雖然條文中對前揭手段並無具體定義規定，但由「檢疫」、「隔離」等文字之文義解釋，可知該條項授權之手段從客觀情狀上觀察，應與拘禁之定義相符，因此以傳染病防治法第五十八條第 1 項規定為法源所實施之防疫措施，若客觀上達到剝奪人身自由之程度，即有提審法之適用。

故以傳染病防治法第四十四、四十五條、第四十八條和第五十八條為法源之

隔離或檢疫手段，若實質上已使人民身體自由局限於一定空間、難以脫離，衛生機關需依提審法要求踐行告知、通知與解交義務。

（二） 現行隔離治療與檢疫流程檢討

在各類剝奪人身自由之防疫手段中，隔離治療是實務上最常見的措施，新制定的隔離治療通知書，已將提審權利告知的內容納入，地方衛生局只須送達在實施隔離治療後二十四小時內，將新版的隔離治療通知書送至醫院請病人簽收即可符合傳染病防治法及提審法之送達要求。但自新提審法施行後，地方衛生人員執行面遇到兩個問題:

1. 提審法權利告知有二十四小時之時限要求，此二十四小時的起算點為何？
2. 隔離治療通知書之送達可否由醫療院所執行？

就第一個時限起算點問題言，提審法權利告知有二十四小時內為之的限制，起算點可能影響衛生人員之執行是否符合提審法之要求，特別是目前隔離治療可分為由醫療院所（醫師）所發動及由地方衛生人員發動兩種途徑，依這兩種途徑所實施的隔離治療，是從哪個時點開始起算二十四小時？理論上，提審法所規定的二十四小時時限，是從人民的人身自由被剝奪時起算，因此，當隔離治療程序是由衛生人員發動時，自衛生人員向病人表達依法實施隔離治療之意時起，病人的身體自由實質上已在衛生機關的掌握之中，符合逮捕、拘禁的內涵。因此，至遲從送醫之時起，即已起算二十四小時時限。較有疑義的是當隔離治療係由醫師發動時，要從什麼時間點開始起算？這個問題涉及目前實務上會發生由醫師填寫建議單至地方衛生局時，病人實際上已由醫師收治入院，其後始由地方衛生局審核建議單後核發隔離治療通知書之情形。這樣的運作實況雖可理解，但混淆了醫、病及衛生機關三方間的法律關係。按病人接受醫師建議、同意住院，則病人與醫師、醫院間形成醫療上的契約關係，由醫院及醫師依其專業照護標準提供醫療服務，此時不涉及衛生機關公權力之行使，亦不涉及以強制力剝奪病人的人身自由，沒有逮捕、拘禁可言；同時，由於病人同意醫師建議、住院治療，病人對公眾健康並無重大風險，此時衛生機關並沒有實施隔離治療之必要，無須做成隔離治療的行政處分、開立隔離治療通知書。故在上述情形，既然沒有逮捕、拘禁的事實，

當然也沒有適用提審法的問題。但若要遷就實際狀況，勉強將地方衛生局同意醫師建議單、開立隔離治療通知書的行為解釋為符合「逮捕、拘禁」之內涵，那麼權利告知與通知親友的二十四小時時限理論上應從地方衛生局做成實施隔離治療之決定、並將此決定的意思對外表達時起算，參照疾病管制署於民國一百零三年七月修正之「法定傳染病病患隔離治療及重新鑑定隔離治療之作業流程」，最遲應從地方衛生局做成書面隔離治療通知書時起算。

其次，就隔離治療通知書之送達機關問題，過去地方衛生局經常是將隔離治療通知書傳真至隔離治療機構，由機構內個管師或護理人員交予病人簽收，故而在提審法修正施行後，有提審權利告知能否由隔離治療機構執行之疑問。依照提審法第二條第一項規定，人民被逮捕、拘禁時，逮捕、拘禁之機關應即將逮捕、拘禁之原因、時間、地點及得依本法聲請提審之意旨，以書面告知本人及其指定之親友，至遲不得逾二十四小時。由此條文可以看出，負有告知義務者為逮捕拘禁之機關。在依傳染病第四十四條對病人實施隔離治療之情形，地方衛生局為逮捕拘禁機關，因此，應由地方衛生局負告知義務。又，此一告知義務之履行，依前揭規定必須以書面為之，換言之，必須向病人「送達」提審權利告知書。送達的方式依照行政程序法第六十八條第一項規定「送達由行政機關自行或交由郵政機關送達」，且行政程序法中並未允許行政機關委託第三人送達(請參照行政程序法第六十七至九十一條有關送達之規定)。因此，不論是隔離治療通知書或提審權利告知書，都應由行政機關為送達而非醫療院所。

此外，國際港埠旅客後送就醫檢查時所開立「入境健康異常旅客配合衛生措施及健康管理敬告單」，雖名為敬告單，但查其內容已符合行政處分之要件，衛生機關應區別自願性措施與非自願性措施，如屬建議旅客自主管理或至醫療院所進一步檢查，表單宜用「建議」、「指引」、「須知」等名稱，如屬非自願性措施（亦即不論相對人之意願如何而要求相對人履行一定義務），宜明確表明法源依據與課予相對人公法上義務之意，表單宜用「處分書」。若課予相對人之義務涉及剝奪其人身自由，例如相對人應至後送醫院或特定醫院進行檢驗、相對人應至隔離治療機構進行隔離治療或相對人應於特定地點進行檢疫，衛生人員宜將處分書及提審權利告知書一併交付相對人。

（三） 剝奪人身自由防疫手段之正當程序

依憲法第八條及第二十三條，國家欲剝奪人民身體之自由，應由立法機關制定法律加以規範，且其內容須實質正當。目前隔離與檢疫雖有傳防法第四十四、四十五、四十八及五十八條作為法源依據，但問題在於條文皆以「必要時」做為構成要件，就法明確性而言尚嫌不足，傳防法有必要將隔離與檢疫手段之定義做明確規範，區分兩種手段之對象與目的。此外，針對罹患傳染病但已不具傳染性卻尚未治癒之病人，傳防法亦宜明確授權衛生機關得強制病人住院治療直至完成治療或完成適當療程。詳言之，剝奪人身自由之防疫手段可分為隔離、檢疫與強制住院三類。

再就防疫手段如何符合比例原則言，隔離、檢疫與強制住院手段宜以控制風險為目的，不宜以病人之特徵或社經地位為標準，而應以病人的行為所產生的公眾健康風險為準，同時應慎重選擇拘禁地點，確保剝奪人身自由手段能達成控制風險目的，且不至於使病人受過度負擔。

除法律保留、法明確性及比例原則等實體要求外，剝奪人身自由手段必須符合憲法第八條之程序保障，此等程序保障不但是為了避免人身自由遭受不當剝奪，更是為了使權力行使之程序明確化，使第一線的衛生人員不至於因為程序不明確而怯於在公眾健康有危險時採取此等手段。依前揭司法院第七百零八、七百一十號解釋意旨，行政機關得在合理、短暫期間內剝奪非刑事被告之人身自由，無須得法院許可或由法院審查決定，但相對人得隨時請求法院釋放；且在合理與短暫期間經過後欲繼續拘禁者，行政機關必須取得法院許可始得為之，之後亦須由法院定期介入審查，始得繼續延長拘禁期間。依此意旨，不論是為檢驗目的而留置病人或隔離、檢疫、強制住院，傳防法得授權衛生機關短暫剝奪相對人之人身自由，參考目前結核病隔離治療實務以十四天為第一階段期間及司法院第七百零八號解釋以十五天為界，傳防法可規定不超過十四天之合理必要期間的留置、隔離、檢疫與強制住院，得由衛生機關以書面處分為之，但相對人得隨時向法院請求救濟，法院並應於聲請繫屬後二十四小時內開庭審理，審查該等措施之實體要件與程序要件是否滿足要求；超過該合理必要期間仍需繼續剝奪人身自由者，衛生機關應於期滿前取得法院許可始得繼續拘禁病人，其後並應由法院每三十日重新審

查，而非如現行隔離治療法制，由行政機關自己審查自己。

然而，若發生如同 SARS 之新興傳染病或其他公共衛生上緊急狀況（例如生物恐怖攻擊或輻射外洩)，運用剝奪個人人身自由之控制手段恐難以避免，在此等緊急情況下，程序保障之密度是否應有調整空間? 有關緊急公共事件下隔離與檢疫之程序，可借鏡美國疾病管制局（Centers for Disease Control and Prevention）委託約翰霍普金斯大學（Johns Hopkins University）及喬治城大學（Georgetown University）的法律與公共衛生中心（Center for Law and the Public's Health）所草擬的「州緊急衛生權力模範法」（Model State Emergency Health Powers Act，以下簡稱「MSEHPA」)。「MSEHPA」明確授權政府面對緊急公共衛生狀態時，得以行使特別（extraordinary）的權力或功能，同時也特別就人民自由、身體及隱私等權利之維護進行規範。

依「MSEHPA」內容，一般情形下主管機關欲實施隔離或檢疫前，必須以書面詳細說明對象、地點、開始時間、傳染病名稱（如已知）、事實依據等資訊，檢附宣誓書（sworn affidavit）或其他相關文件向法院聲請授權命令（order），並於二十四小時內將聲請通知送達（notice）人民；法院原則上應於接獲聲請後五日內舉行聽證（hearing)。如主管機關能以優勢證據（preponderance of evidence）證明隔離或檢疫之實施，乃避免或限制（潛在）傳染病傳染的合理需要（reasonably necessary）措施時，法院應准許其聲請，指定不超過三十日之執行期間、對象、理由及其他注意事項，將書面裁定送達應受隔離或檢疫之人民；在此執行期間屆滿前，主管機關得再向法院聲請延長，每次延長以三十日為限、沒有次數限制。但若延遲實施隔離或檢疫將嚴重損及傳染病防治工作，主管機關得先以書面指示（written directive）載明對象、地點、開始時間、傳染病名稱（如已知）、法律條文依據等資訊，各別交付每位對象後暫時執行之，但若檢疫或隔離對象屬一群體，各別交付書面指示不可行時，得以張貼於執行處所明顯位置代替之；主管機關必須在暫時隔離或檢疫開始後十日內向法院提出聲請，獲得授權命令後方得繼續執行（圖一）。

依照「MSEHPA」區分一般情形與緊急情況下為不同程序設計之精神，若前揭依照司法院解釋所設計之隔離與檢疫程序可謂為一般情形下的程序，那麼面對緊急公衛危機下的檢疫與隔離，傳防法可另為授權，使主管機關擁有更富彈性的

權力。例如當延遲實施隔離或檢疫將嚴重妨礙傳染病防治工作時，衛生機關得逕行對個人或群體實施隔離或檢疫，隔離或檢疫處分以交付書面處分書為原則，但大規模的群體隔離或檢疫，得以張貼處分書於隔離、檢疫場所明顯處之方式為送達；主管機關須於實施緊急隔離或檢疫後十四日內向法院聲請繼續實施隔離或檢疫；法院應於聲請繫屬後三日內開庭審理並裁定是否許可繼續實施；若法院許可繼續執行，執行期間應以不超過三十日之合理必要期間為限，其後並應每三十日重新審查是否延長，但不論如何，相對人均得隨時向法院請求救濟，由法院於二十四小時內審理決定。

五、 結論與建議

不論是目前傳染病防治法第四十四條及第四十五條所授權實施之隔離治療，抑或第五十八條對入出國人員所實施之檢疫或後送就醫，均是第一線公衛人員每天面對的工作，此等手段一方面是防疫的最後手段，一方面也會對病人構成嚴重的自由侵害，如何在適當執行防疫工作與保護個人權利間取得平衡，仰賴主管機關制定明確的法令與工作指引，更需要公衛人員嫻熟相關法令之要求。就落實提審法要求言，目前隔離治療已將提審權利告知通知納入通知書中，有利於第一線人員遵循，國際港埠後送就醫及檢疫措施部分，應再檢討相關表單內容，區分自願性與非自願性措施，強化非自願性措施之實體與程序要件，以協助公衛人員適當遵循新提審法之要求，避免公衛人員因對法令不理解而怯於在必要時運用限制手段。

除遵循提審法要求外，傳染病防治法中涉及剝奪人身自由的防疫手段應依司法院解釋進行修正，具體修正建議包括:

1. 架構性修正:區分平時、已知傳染病之防疫手段及緊急公共衛生事件時之防疫手段，特別是緊急公共衛生事件中常涉及大規模的隔離或檢疫，如何平衡防疫需求與人民之自由權利，仰賴明確的授權與程序。
2. 依照司法院第七百零八、七百一十號解釋，建構隔離與檢疫法制之原則性程序規範，合理短暫期間內之隔離檢疫，得由衛生機關為之，

但給予相對人隨時請求法院及時救濟之機會以及納入法院定期介入審查機制。

3. 由於結核病的傳染途徑、風險、治療方法等均已有相當程度之共識，且結核病隔離治療已是目前防治策略的重要一環，傳染病防治法應強化結核病隔離治療之實體與程序要件，確保隔離治療手段之適當、有效與必要。

六、 重要研究成果及具體建議

本研究之部分成果已撰寫完成「提審法修正施行對傳染病隔離治療措施之影響」一文，經《疫情報導》雙向匿名審查通過。

七、 參考文獻

中文文獻

李建良 a，從正當法律程序觀點透析 SARS 防疫相關措施，台灣本土法學雜誌，第 49 期，頁 88-89、93-95（2003）。

李建良 b，論人身自由之憲法保障——兼談 SARS 防疫措施的合憲性，思與言，第 41 卷第 4 期，頁 128-131、138（2003）。

李建良 c，人身自由的憲法保障與強制隔離的違憲審查──釋字第 690 號解釋，台灣法學雜誌，第 186 期，頁 60-79（2011）。

林欣柔，從美國紐約市結核病拘禁法令評析臺灣結核病隔離治療制度，政大法學評論，125 期，頁 287-367，2012 年 2 月。

林超駿，非刑事預防性拘禁之法官（院）保留──兼評釋字第六九○號解釋，月旦法學雜誌，第 207 期，頁 176-200（2012）。

柯秉志，論傳染病防治法第 48 條「隔離」之正當法律程序，交通大學科技法律研究所碩士論文，2014 年。

陳英鈐 a，SARS 防治與人權保障——隔離與疫情發佈的憲法界線，憲政時代，29 卷 3 期，頁 391-444，2004 年 1 月。

陳英鈐 b，抗煞——要人權就不要命？——隔離與人身自由的保障，月旦法學雜誌，98 期，頁 196，2003 年 7 月。

陳愛娥，疾病控制的憲法問題──以我國政府在 SARS 事件中的應變措施作為反省基礎，月旦法學雜誌，第 105 期，頁 31-47（2004）。

英文文獻

書籍

Lawrence O. Gostin, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT, 2008.

Lawrence O. Gostin, Global HEALTH LAW, 2014

Barry Furrow & Thomas Greane, HEALTH LAW, CASES, MATERIALS AND PROBLEMS, 2013.
Anthony Gregory, THE POWER OF HABEAS CORPUS IN AMERICA: FROM THE KING'S PREROGATIVE TO THE WAR ON TERROR, 2014.

Lawrence Gostin, Peter Jacobson, David Studdert, LAW AND THE HEALTH SYSTEM, 2014.

期刊

Barbera, Joseph et al., Large-Scale Quarantine Following Biological Terrorism in the United States: Scientific Examination, Logistic and Legal Limits, and Possible Consequences, 286 J. Am. Med. Assoc. 2711 (2001).

Bayer, Ronald, Public Health Policy and the AIDS Epidemic: An End to HIV Exceptionalism, 324 New England Journal of Medicine 1500, 1501 (1991).

Bayer, Ronald & Claire Edington, HIV Testing, Human Rights, and Global AIDS Policy: Exceptionalism and Its Discontents, 34(3) J Health Polit Policy Law 301 (2009).

Bayer, Ronald & Amy L. Fairchild, Changing the Paradigm for HIV Testing — The End of Exceptionalism, 355 N Engl J Med 647, 649 (2006).

Branson, Bernard M., Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings, 55 MMWR 1 (2006).

Childress, J. F.,. R. R. Faden, R. D. Gaare, L. O. Gostin, J. Kahn, R. J. Bonnie, N. E. Kass, A. C. Mastroianni, J. D. Moreno & P. Nieburg, Public Health Ethics: Mapping the Terrain," 30(1) J.L. Med. & Ethics 169 (2002).

Chua1, Arlene C., Yee Sin Leo, Philippe Cavailler, Christine Chu, Aloysius Ng, Oon Tek Ng, Prabha Krishnan, Opt-out of Voluntary HIV Testing: A Singapore Hospital's Experience, PLoS ONE 7(4): e34663. doi:10.1371/journal.pone.0034663 (2012).

Coker, Richard J., National Survey of Detention and TB, 56(10) Thorax 818 (2001).

Duffy, ST., The Power of Detention in the Management of Non-compliance with Tuberculosis Treatment: A survey of Irish practitioners and analysis of potential legal liability, 123 Public Health 81 (2009).

Gasner, Rose M., The Use of Legal Action in New York City to Ensure Treatment of

Tuberculosis, 340(5) New Eng. J. Med. 359 (1999).

Gostin, Lawrence O., HIV Screening in Health Care Settings: Public Health and Civil Liberties in Conflict? 296(16) JAMA 2023 (2006).

Lin, Shin-Rou, A Costly Illusion?: An Empirical Study of Taiwan's Use of Isolation to Control Tuberculosis Transmission and its Implications for Public Health Law and Policymaking, 14(3) Asian-Pacific Law & Policy Journal 107-166 (2013). http://blog.hawaii.edu/aplpj/files/2013/05/APLPJ_14-3_Lin_FINAL.pdf

Reilly, Rosemary G. Combating the Tuberculosis Epidemic: The Legality of Coercive Treatment Measures, 27 Colum. J.L. & Soc. Probs. 101, 111 (1993).

Sapsin, Jason W., Lawrence O. Gostin, Jon S. Vernick, Scott Burris & Stephen P. Teret, SARS and International Legal Preparedness, 77 Temple L. Rev. 155 (2004).

Svoboda, Tomislav, Bonnie Henry, Leslie Shulman, Erin Kennedy, Elizabeth Rea, Tamara Wallington, Barbara Yaffe, Effie Gournis, Elisa Vicencio, Sheela Basrur & Richard H. Glazier, Public Health Measures to Control the Spread of the Severe Acute Respiratory Syndrome During the Outbreak in Toronto, 350 New Eng. J. Med. 2352 (2004).

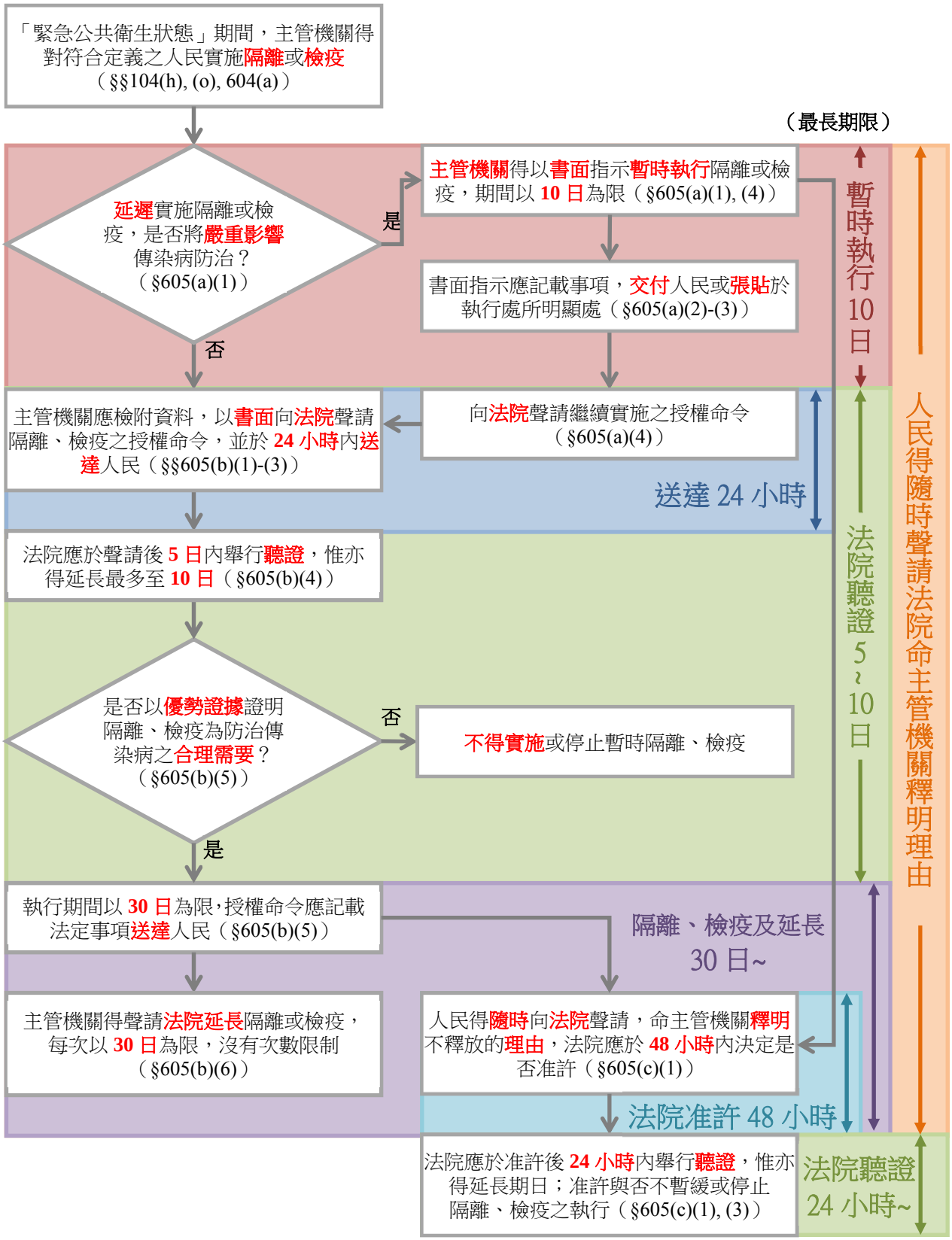
Weiler-Ravell, D. et al., Compulsory Detention of Recalcitrant Tuberculosis Patients in the Context of a New Tuberculosis Control Programme in Israel, 118 Public Health 323 (2004).

World Health Organization, Joint United Nations Programme on HIV/AIDS (UNAIDS). Guidance on provider-initiated on HIV testing and counselling in health facilities (2007), available at: www.who.int/hiv/pub/guidelines/9789241595568_en.pdf.

其他英文文獻

Hodge, James G., Jr. & Lawrence O. Gostin, Commentary on the Model State Health Emergency Powers Act, http://www.publichealthlaw.net/MSEHPA/.

八、 圖、表



圖一 美國緊急衛生權力模範法（2001 年 12 月 21 日）隔離、檢疫流程圖

表一提審權利告知書

提審權利告知書

告知時間:　　年　　月　　日　　時　　分

您，，　因罹患法定傳染病或有可能罹患法定傳染病，為保護您及其他人的健康，已由(主管機關)依下列法律規定實施防疫措施

☐ 依傳染病防治法第 44 條、第 45 條及第 67 條規定，為法定傳染病病人，需施行隔離治療。

☐ 依傳染病防治法第 48 條第 1 項及第 67 條規定，為傳染病病人之接觸者或疑似被傳染者，需施行留驗、檢查、預防接種、投藥、隔離等必要處置。

☐ 依傳染病防治法第 69 條第 2 項規定，對於入、出國(境)之人員，不遵守主管機關依第 58 條第 3 項、第 59 條第 3 項之檢疫措施時所為之強制處分。

☐ 其他：依據傳染病防治法第　　條　　項　　款

依照提審法之要求，特告知您以下事項：

一、 前揭防疫措施之執行原因（可能罹患之病名或事由）：

二、 執行時間：民國　　年　　月　　日　　時　　分。

三、 執行地點（地址或可認定具體地點之記載）：

四、 您或您的親友有權利依照提審法的規定，向地方法院聲請提審。

五、 您可提供執行人員您親友之姓名、地址或電話，執行機關將盡合理努力通知您的親友。

六、 執行人員聯絡方式：

姓名與職稱：

電話號碼：

本告知書一式二份；第一聯送交本人或其法定代理人、監護人或保護人　　第二聯由通知機關隨執行卷宗存查

提審權利告知書送達證明

本人 _____已於　　年　　月　　日　　時　　分

收悉 _____（主管機關）所提供之提審權利告知書。

本人

☐ 不請求執行機關通知親友。

☐ 請求執行機關通知以下親友

第一位親友
姓名
住址
電話

第二位親友
姓名
住址
電話

本人簽名 _____

若本人拒絕簽名，執行人員請填以下表格

執行人員 _____，已向本人解釋其聲請提審之相關權利，並要求本人於提審權利告知書簽名，但本人拒絕簽名。

執行人員簽名 _____

偕同執行人員簽名 _____

本告知書一式二份；第一聯送交本人或其法定代理人、監護人或保護人　　第二聯由通知機關隨執行卷宗存查

表二告知親友提審權利通知

告知親友提審權利通知書

您的親友　　先生　，　身分證字號：
女士(護照號碼)
因罹患法定傳染病或有可能罹患法定傳染病，已由 _____(主管機關)依下列法律規定實施防疫措施

☐ 依傳染病防治法第 44 條、第 45 條及第 67 條規定，為法定傳染病病人，需施行隔離治療。

☐ 依傳染病防治法第 48 條第 1 項及第 67 條規定，為傳染病病人之接觸者或疑似被傳染者，需施行留驗、檢查、預防接種、投藥、隔離等必要處置。

☐ 依傳染病防治法第 69 條第 2 項規定，對於入、出國(境)之人員，不遵守主管機關依第 58 條第 3 項 第 59 條第 3 項之檢疫措施時所為之強制處分、。

☐ 其他：依據傳染病防治法第 ____條____項_____款_____

由於您的親友指定您為提審法相關權利之受通知者，特此通知您以下事項：

一、 前揭防疫措施之執行原因（可能罹患之病名或事由）：

_____

二、 執行時間：民國 ____年____月____日____時____分。

三、 執行地點（地址或可認定具體地點之記載）： _____

四、 您有權利依照提審法的規定，向地方法院聲請提審。

五、 通知時間：民國 ____年____月____日____時____分。

六、 通知方式(載明或勾選下方欄位)： _____

☐ 現場親自簽收。
☐ 電話告知後，通知書以雙掛號方式郵寄該親友。
☐ 傳真或電郵告知後，通知書以雙掛號方式郵寄該親友。

七、 執行機關聯絡人

姓名與職稱：　　電話號碼：

被通知人簽名 _____

若該親友拒絕簽名，執行告知人員請填以下表格

執行告知人員已向該親友遞送告知親友提審權利通知書，並要求該親友於通知書簽名，但該親友拒絕簽名。

執行告知人員簽名 _____

偕同執行人員簽名 _____

表三隔離治療通知書

縣（市）政府法定傳染病隔離治療通知書

送達時間： 年　　月　日　時　　分

受文者 姓名：　　身分證字號/護照號碼：

住址：　　電話：

法定傳染病隔離治療建議單開立醫院及診斷醫師（無者免填）：

您經醫師診斷罹患　　（屬第　類傳染病），為保護您及其他人的健康，

縣(市)政府依傳染病防治法第 44 條及第 45 條規定通知台端，請您自　　年　月___日起至 __年__月__日止，於以下隔離治療機構接受治療：　　（醫院)。

違反隔離治療之指示者，主管機關得依傳染病防治法第 67 條第 1 項第 3 款處以罰鍰。

為保障您的權益，特告知您以下事項:

一、　您或您的親友有權利依照提審法的規定，向地方法院聲請提審；您亦得依據訴願法第 14 條第 1 項及第 58 條第 1 項規定，自本通知書送達之次日起 30 日內（以實際收受訴願書之日為準，而非投遞日），繕具訴願書遞交本府（地址:_____），經由本府向訴願管轄機關衛生福利部提出訴願。

二、　您可提供執行人員您親友之姓名、地址或電話，執行機關將盡合理努力通知您的親友有關您接受隔離治療之訊息。

三、　不論您是否聲請提審或訴願，執行人員將隨時評估您是否有隔離治療之必要，若無隔離治療之必要時，縣(市)政府將即解除隔離治療之處置；縣(市)政府至遲每隔三十日將重新鑑定，評估您是否有繼續隔離治療之必要。

四、　如您有任何問題，可與以下執行人員聯絡

執行人員姓名與職稱：　　電話號碼：

中華民國　　年　　月　　日　　（戳記）

本人 _____已於　　年　　月　　日　　時　　分

收悉 _____縣(市)政府法定傳染病隔離治療通知書，並了解本人或本人之親友有權利依提審法規定向地方法院聲請提審。

本人

☐ 不請求執行機關通知親友。

☐ 請求執行機關通知以下親友

第一位親友
姓名
住址
電話

第二位親友
姓名
住址
電話

本人簽名 _____ 日期 _____

隔離治療通知書及提審權利告知送達證書

若本人拒絕簽名，執行人員請填以下表格

執行人員 _____，已向本人解釋其聲請提審之相關權利，並要求本人於提審權利告知書簽名，但本人拒絕簽名。

執行人員簽名 _____日期 _____

附錄

The Model State Emergency Health Powers Act[1]

As of December 21, 2001

A Draft for Discussion Prepared by:

The Center for Law and the Public's Health
at Georgetown and Johns Hopkins Universities

For the Centers for Disease Control and Prevention [CDC]

To Assist:
National Governors Association [NGA],
National Conference of State Legislatures [NCSL],
Association of State and Territorial Health Officials [ASTHO], and
National Association of County and City Health Officials [NACCHO]

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Members of the National Association of Attorneys General (NAAG) also provided input and suggestions to the drafters of the Model Act. The language and content of this draft Model State Emergency Health Powers Act do not represent the official policy, endorsement, or views of the *Center for Law and the Public's Health*, the CDC, NGA, NCSL, ASTHO, NACCHO, or NAAG, or other governmental or private agencies, departments, institutions, or organizations which have provided funding or guidance to the *Center for Law and the Public's Health.* This draft is prepared to facilitate and encourage communication among the various interested parties and stakeholders about the complex issues pertaining to the use of state emergency health powers.

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ARTICLE V SPECIAL POWERS DURING A STATE OF PUBLIC HEALTH EMERGENCY: MANAGEMENT OF PROPERTY

PREAMBLE

In the wake of the tragic events of September 11, 2001, our nation realizes that the government's foremost responsibility is to protect the health, safety, and well being of its citizens. New and emerging dangers—including emergent and resurgent infectious diseases and incidents of civilian mass casualties—pose serious and immediate threats to the population. A renewed focus on the prevention, detection, management, and containment of public health emergencies is thus called for.

Emergency health threats, including those caused by bioterrorism and epidemics, require the exercise of essential government functions. Because each state is responsible for safeguarding the health, security, and well being of its people, state and local governments must be able to respond, rapidly and effectively, to public health emergencies. The Model State Emergency Health Powers Act (the "Act") therefore grants specific emergency powers to state governors and public health authorities.

The Act requires the development of a comprehensive plan to provide a coordinated, appropriate response in the event of a public health emergency. It facilitates the early detection of a health emergency by authorizing the reporting and collection of data and records, and allows for immediate investigation by granting access to individuals' health information under specified circumstances. During a public health emergency, state and local officials are authorized to use and appropriate property as necessary for the care, treatment, and housing of patients, and to destroy contaminated facilities or materials. They are also empowered to provide care, testing and treatment, and vaccination to persons who are ill or who have been exposed to a contagious disease, and to separate affected individuals from the population at large to interrupt disease transmission.

At the same time, the Act recognizes that a state's ability to respond to a public health emergency must respect the dignity and rights of persons. The exercise of emergency health powers is designed to promote the common good. Emergency powers must be grounded in a thorough scientific understanding of public health threats and disease transmission. Guided by principles of justice, state and local governments have a duty to act with fairness and tolerance towards individuals and groups. The Act thus provides that, in the event of the exercise of emergency powers, the civil rights, liberties, and needs of infected or exposed persons will be protected to the fullest extent possible consistent with the primary goal of controlling serious health threats.

Public health laws and our courts have traditionally balanced the common good with individual civil liberties. As Justice Harlan wrote in the seminal United States Supreme Court case of *Jacobson v. Massachusetts,* "the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the 'common good.'" The Act strikes such a balance. It provides state and local officials with the ability to prevent, detect, manage, and contain emergency health threats without unduly interfering with civil rights and liberties. The Act seeks to ensures a strong,

effective, and timely response to public health emergencies, while fostering respect for individuals from all groups and backgrounds.

Although modernizing public health law is an important part of protecting the population during public health emergencies, the public health system itself needs improvement. Preparing for a public health emergency requires a well trained public health workforce, efficient data systems, and sufficient laboratory capacity.

ARTICLE I TITLE, FINDINGS, PURPOSES, AND DEFINITIONS

Section 101 **Short title.** This Act may be cited as the "Model State Emergency Health Powers Act."

Section 102 **Legislative findings.** The [state *legislature]* finds that—

(a) The government must do more to protect the health, safety, and general well being of its citizens.

(b) New and emerging dangers—including emergent and resurgent infectious diseases and incidents of civilian mass casualties—pose serious and immediate threats.

(c) A renewed focus on the prevention, detection, management, and containment of public health emergencies is needed.

(d) Emergency health threats, including those caused by bioterrorism may require the exercise of extraordinary government powers and functions.

(e) This State must have the ability to respond, rapidly and effectively, to potential or actual public health emergencies.

(f) The exercise of emergency health powers must promote the common good.

(g) Emergency health powers must be grounded in a thorough scientific understanding of public health threats and disease transmission.

(h) Guided by principles of justice and antidiscrimination, it is the duty of this State to act with fairness and tolerance towards individuals and groups.

(i) The rights of people to liberty, bodily integrity, and privacy must be respected to the fullest extent possible consistent with maintaining and preserving the public's health and security.

(j) This Act is necessary to protect the health and safety of the citizens of this State.

Section 103 **Purposes.** The purposes of this Act are—

(a) To require the development of a comprehensive plan to provide for a coordinated, appropriate response in the event of a public health emergency.

(b) To authorize the reporting and collection of data and records, the management of property, the protection of persons, and access to communications.

(c) To facilitate the early detection of a health emergency, and allow for immediate investigation of such an emergency by granting access to individuals' health information under specified circumstances.

(d) To grant State and local officials the authority to use and appropriate property as necessary for the care, treatment, vaccination, and housing of patients, and to destroy contaminated facilities or materials.

(e) To grant State and local officials the authority to provide care, treatment, and vaccination to persons who are ill or who have been exposed to contagious diseases, and to separate affected individuals from the population at large to interrupt disease transmission.

(f) To ensure that the needs of infected or exposed persons are properly addressed to the fullest extent possible, given the primary goal of controlling serious health threats.

(g) To provide State and local officials with the ability to prevent, detect, manage, and contain emergency health threats without unduly interfering with civil rights and liberties.

Section 104 **Definitions** .

(a) "Bioterrorism" is the intentional use of any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, to cause death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism in order to influence the conduct of government or to intimidate or coerce a civilian population.

(b) "Chain **of custody"** is the methodology of tracking specimens for the purpose of maintaining control and accountability from initial collection to final disposition of the specimens and providing for accountability at each stage of collecting, handling, testing, storing, and transporting the specimens and reporting test results.

(c) "Contagious **disease"** is an infectious disease that can be transmitted from person to person.

(d) "Health **care facility"** means any non-federal institution, building, or agency or portion thereof, whether public or private (for-profit or nonprofit) that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. This includes, but is not limited to: ambulatory surgical facilities, home health agencies, hospices, hospitals, infirmaries, intermediate care facilities, kidney treatment centers, long term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential treatments facilities, skilled nursing facilities, and adult day-care centers. This also includes, but is not limited to, the following related property when used for or in connection with the foregoing: laboratories; research facilities; pharmacies; laundry facilities; health personnel training and lodging facilities; patient, guest, and health personnel food service facilities; and offices and office buildings for persons engaged in health care professions or services.

(e) "Health **care provider"** is any person or entity who provides health care services including, but not limited to, hospitals, medical clinics and offices, special care facilities, medical laboratories, physicians, pharmacists, dentists, physician assistants, nurse practitioners, registered and other nurses, paramedics, emergency medical or laboratory technicians, and ambulance and emergency medical workers.

(f) "Infectious **disease"** is a disease caused by a living organism or other pathogen, including a fungus, bacteria, parasite, protozoan, or virus. An infectious disease may, or may not, be transmissible from person to person, animal to person, or insect to person.

(g) "Infectious **waste"** is—

(i) "biological **waste,"** which includes blood and blood products, excretions, exudates, secretions, suctioning and other body fluids, and waste materials saturated with blood or body fluids;

(ii) "cultures **and stocks,"** which includes etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate, and mix cultures, wastes from production of biologicals and serums, and discarded live and attenuated vaccines;

(iii) "pathological **waste,"** which includes biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, necropsy or autopsy and laboratory procedures, and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals, but does not include teeth or formaldehyde or other preservative agents; and

(iv) "sharps," which includes needles, I.V. tubing with needles attached, scalpel blades, lancets, breakable glass tubes, and syringes that have been removed from their original sterile containers.

"Isolation" is the physical separation and confinement of an individual or groups of individuals who are infected or reasonably believed to be infected with a contagious or possibly contagious disease from non-isolated individuals, to prevent or limit the transmission of the disease to non-isolated individuals.

(h) "Mental **health support personnel"** includes, but is not limited to, psychiatrists, psychologists, social workers, and volunteer crisis counseling groups.

"Organized **militia"** includes the State National Guard, the army national guard, the air national guard, or any other military force organized under the laws of this state.

(i) "Protected **health information"** is any information, whether oral, written, electronic, visual, or any other form, 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 that reveals the identity of the individual whose health care is the subject of the information, or where there is a reasonable basis to believe such information could

(j)

(k)

be utilized (either alone or with other information that is, or should reasonably be known to be, available to predictable recipients of such information) to reveal the identity of that individual.

(l) "Public **health authority"** is the [insert *the title of the state's primary public health agency, department, division, or bureau];* or any local government agency that acts principally to protect or preserve the public's health; or any person directly authorized to act on behalf of the [insert *the title of the state's primary public health agency, department, division, or bureau]* or local public health agency.

(m) A "public **health emergency"** is an occurrence or imminent threat of an illness or health condition that:

(1) is believed to be caused by any of the following:

(i) bioterrorism;

(ii) the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin;

(iii) [a *natural disaster;]*

(iv) [a *chemical attack or accidental release; or]*

(v) [a *nuclear attack or accident];* and

(2) poses a high probability of any of the following harms:

(i) a large number of deaths in the affected population;

(ii) a large number of serious or long-term disabilities in the affected population; or

(iii) widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.

(n) "Public **safety authority"** means the [insert *the title of the state's primary public safety agency, department, division, or bureau];* or any local government agency that acts principally to protect or preserve the public safety; or any person directly authorized to act on behalf of the [insert *the title of the state's primary public safety agency, department, division, or bureau]* or local agency.

(o) "Quarantine" is the physical separation and confinement of an individual or groups of individuals, who are or may have been exposed to a contagious or possibly contagious disease and who do not show signs or symptoms of a contagious disease, from non-quarantined individuals, to prevent or limit the transmission of the disease to non-quarantined individuals.

(p) "Specimens " include, but are not limited to, blood, sputum, urine, stool, other bodily fluids, wastes, tissues, and cultures necessary to perform required tests.

(q) "Tests" include, but are not limited to, any diagnostic or investigative analyses necessary to prevent the spread of disease or protect the public's health, safety, and welfare.

(r) "Trial **court"** is the trial court for the district in which isolation or quarantine is to occur, a court designated by the Public Health Emergency Plan under Article II of this Act, or to the trial court for the district in which a public health emergency has been declared.

Legislative History. The definition for "bioterrorism" was adapted from its definition in 18 U.S.C.A. § 178 (West 2000) and from definitions used by the General Accounting Office. The definitions of "chain of custody," "specimens," and "tests" were adapted from ALA . CODE § 25-5-331 (2000). The definition of "health care facility" was adapted from ARK. CODE ANN. § 20-13-901 (Michie 2000); CAL. BUS. & PROF. CODE § 4027 (West 2001); FLA . STAT . ANN. § 159.27 (West 2000). The definition of "health care provider" was adapted from OKLA . STAT . ANN. tit. 74, § 1304 (West 2001). The definition of "infectious waste" was adapted from OR. REV. STAT . § 459.386 (1999). The definition for "organized militia" was adapted from NY CLS MILITARY § 1 (2001), MISS CODE ANN § 33-1-1 (2001), O.C.G.A. § 38-2-2 (2000), and CONN. GEN. STAT. § 27-141 (2001). The definitions of "public health authority" and "protected health information" were adapted from LAWRENCE O. GOSTIN AND JAMES G. HODGE, JR., THE MODEL STATE PUBLIC HEALTH PRIVACY ACT OF 1999. The definition of a "public health emergency" was adapted from COLO . REV. STAT . ANN. § 24-32-2103(1.5) (West 2001).

ARTICLE II PLANNING FOR A PUBLIC HEALTH EMERGENCY

Section 201 **Public Health Emergency Planning Commission.** The Governor shall appoint a Public Health Emergency Planning Commission ("the Commission"), consisting of the State directors, or their designees, of agencies the Governor deems relevant to public health emergency preparedness, a representative group of state legislators, members of the judiciary, and any other persons chosen by the Governor. The Governor shall also designate the chair of the Commission.

Legislative History. Section 201 is adapted from COLO. REV. STAT. ANN. § 24-32-2104 (West 2001); 2001 ILL. LAWS 73(5).

Section 202 **Public Health Emergency Plan.**

(a) **Content.** The Commission shall, within six months of its appointment, deliver to the Governor a plan for responding to a public health emergency, that includes provisions or guidelines on the following:
(1) Notifying and communicating with the population during a state of public health emergency in compliance with this Act;
(2) Central coordination of resources, manpower, and services, including coordination of responses by State, local, tribal, and federal agencies;
(3) The location, procurement, storage, transportation, maintenance, and distribution of essential materials, including but not limited to medical supplies, drugs, vaccines, food, shelter, clothing and beds;
(4) Compliance with the reporting requirements in Section 301;
(5) The continued, effective operation of the judicial system including, if deemed necessary, the identification and training of personnel to serve as emergency judges regarding matters of isolation and quarantine as described in this Act;
(6) The method of evacuating populations, and housing and feeding the evacuated populations;
(7) The identification and training of health care providers to diagnose and treat persons with infectious diseases;
(8) The vaccination of persons, in compliance with the provisions of this Act;
(9) The treatment of persons who have been exposed to or who are infected with diseases or health conditions that may be the cause of a public health emergency.
(10) The safe disposal of infectious wastes and human remains in compliance with the provisions of this Act;
(11) The safe and effective control of persons isolated, quarantined, vaccinated, tested, or treated during a state of public health emergency;

(12) Tracking the source and outcomes of infected persons;
(13) Ensuring that each city and county within the State identifies the following—
(i) sites where persons can be isolated or quarantined in compliance with the conditions and principles for isolation or quarantine of this Act;
(ii) sites where medical supplies, food, and other essentials can be distributed to the population;
(iii) sites where public health and emergency workers can be housed and fed; and
(iv) routes and means of transportation of people and materials;
(14) Cultural norms, values, religious principles, and traditions that may be relevant; and
(15) Other measures necessary to carry out the purposes of this Act.

(b) **Distribution.** The Commission shall distribute this plan to those who will be responsible for its implementation, other interested persons, and the public, and seek their review and comments.

Review. The Commission shall annually review its plan for responding to a public health emergency.

(c)

Legislative History. Section 202 is adapted from COLO. REV. STAT. ANN. § 24-32-2104 (West 2001); 2001 ILL. LAWS 73(5).

ARTICLE III MEASURES TO DETECT AND TRACK PUBLIC HEALTH EMERGENCIES

Section 301 Reporting.

(a) **Illness or health condition.** A health care provider, coroner, or medical examiner shall report all cases of persons who harbor any illness or health condition that may be potential causes of a public health emergency. Reportable illnesses and health conditions include, but are not limited to, the diseases caused by the biological agents listed in 42 C.F.R. § 72, app. A (2000) and any illnesses or health conditions identified by the public health authority.

(b) **Pharmacists.** In addition to the foregoing requirements for health care providers, a pharmacist shall report any unusual or increased prescription rates, unusual types of prescriptions, or unusual trends in pharmacy visits that may be potential causes of a public health emergency. Prescription-related events that require a report include, but are not limited to—

(1) an unusual increase in the number of prescriptions or over-the-counter pharmaceuticals to treat conditions that the public health authority identifies through regulations;

(2) an unusual increase in the number of prescriptions for antibiotics; and

(3) any prescription that treats a disease that is relatively uncommon or may be associated with bioterrorism.

(c) **Manner of reporting.** The report shall be made electronically or in writing within [twenty-four *(24) hours]* to the public health authority. The report shall include as much of the following information as is available: the specific illness or health condition that is the subject of the report; the patient's name, date of birth, sex, race, occupation, and current home and work addresses (including city and county); the name and address of the health care provider, coroner, or medical examiner and of the reporting individual, if different; and any other information needed to locate the patient for follow-up. For cases related to animal or insect bites, the suspected locating information of the biting animal or insect, and the name and address of any known owner, shall be reported.

(d) **Animal diseases.** Every veterinarian, livestock owner, veterinary diagnostic laboratory director, or other person having the care of animals shall report animals having or suspected of having any diseases that may be potential causes of a public health emergency. The report shall be made electronically or in writing within [twenty-*four (24) hours]* to the public health authority and shall include as much of the following information as is available: the specific illness or health condition that is the subject of

the report; the suspected locating information of the animal, the name and address of any known owner, and the name and address of the reporting individual.

(e) **Laboratories.** For the purposes of this Section, the definition of "health **care provider"** shall include out-of-state medical laboratories, provided that such laboratories have agreed to the reporting requirements of this State. Results must be reported by the laboratory that performs the test, but an in-state laboratory that sends specimens to an out-of-state laboratory is also responsible for reporting results.

(f) **Enforcement.** The public health authority may enforce the provisions of this Section in accordance with existing enforcement rules and regulations.

Legislative History. In Section 301, the language used in Subsections (a) - (d) were adapted from 6 COLO . CODE REGS. § 1009-1, reg. 1 (WESTLAW through 2001), except that the lists of events in (b) was adapted from the *Bioterrorism Readiness Plan: A Template for Healthcare Facilities* (Prepared by APIC Bioterrorism Task Force & CDC Hospital Infections Program Bioterrorism Working Group). Subsection (e) was adapted from 6 COLO . CODE REGS. § 1009-1, reg. 3 (WESTLAW through 2001).

Section 302 **Tracking.** The public health authority shall ascertain the existence of cases of an illness or health condition that may be potential causes of a public health emergency; investigate all such cases for sources of infection and to ensure that they are subject to proper control measures; and define the distribution of the illness or health condition. To fulfill these duties, the public health authority shall identify exposed individuals as follows—

(a) **Identification of individuals.** Acting on information developed in accordance with Section 301 of this Act, or other reliable information, the public health authority shall identify all individuals thought to have been exposed to an illness or health condition that may be a potential cause of a public health emergency.

(b) **Interviewing of individuals.** The public health authority shall counsel and interview such individuals where needed to assist in the positive identification of exposed individuals and develop information relating to the source and spread of the illness or health condition. Such information includes the name and address (including city and county) of any person from whom the illness or health condition may have been contracted and to whom the illness or health condition may have spread.

(c) **Examination of facilities or materials.** The public health authority shall, for examination purposes, close, evacuate, or decontaminate any facility or decontaminate or destroy any material when the authority reasonably suspects that such facility or material may endanger the public health.

(d) **Enforcement.** The public health authority may enforce the provisions of this Section in accordance with existing enforcement rules and regulations. An order of the public

health authority given to effectuate the purposes of this Section shall be enforceable immediately by the public safety authority.

Legislative History. In Section 302, the main text under "Tracking" was adapted from CAL. HEALTH & SAFETY CODE § 120575 (West 1996). Subsections (a) and (b) were adapted from FLA. STAT. ANN. § 392.54 (West 1998); CAL. HEALTH & SAFETY CODE § 120555 (West 1996); N.Y. COMP. CODES R. & REGS. tit. 10, § 2.6 (LEXIS through Oct. 12, 2001).

Section 303 **Information sharing.**

(a) Whenever the public safety authority or other state or local government agency learns of a case of a reportable illness or health condition, an unusual cluster, or a suspicious event that may be the cause of a public health emergency, it shall immediately notify the public health authority.

(b) Whenever the public health authority learns of a case of a reportable illness or health condition, an unusual cluster, or a suspicious event that it reasonably believes has the potential to be caused by bioterrorism, it shall immediately notify the public safety authority, tribal authorities, and federal health and public safety authorities.

(c) Sharing of information on reportable illnesses, health conditions, unusual clusters, or suspicious events between public health and safety authorities shall be restricted to the information necessary for the treatment, control, investigation, and prevention of a public health emergency.

Legislative History. Section 303 was adapted from 6 COLO. CODE REGS. § 1009-1, reg. 6 (WESTLAW through 2001).

ARTICLE IV DECLARING A STATE OF PUBLIC HEALTH EMERGENCY

Section 401 **Declaration.** A state of public health emergency may be declared by the Governor upon the occurrence of a "public health emergency" as defined in Section 1-103(m). Prior to such a declaration, the Governor shall consult with the public health authority and may consult with any additional public health or other experts as needed. The Governor may act to declare a public health emergency without consulting with the public health authority or other experts when the situation calls for prompt and timely action.

Legislative History. Section 401 is adapted from language contained in COLO . REV. STAT . ANN. §§ 24-32-2104(3)(a), 4 (West 2001); 42 U.S.C.A. § 247d (West 1991 & Supp. 2001).

Section 402 **Content of declaration.** A state of public health emergency shall be declared by an executive order that specifies:

(a) the nature of the public health emergency,
(b) the political subdivision(s) or geographic area(s) subject to the declaration,
(c) the conditions that have brought about the public health emergency,
(d) the duration of the state of the public health emergency, if less than thirty (30) days, and
(e) the primary public health authority responding to the emergency.

Legislative History. Section 402 is adapted from COLO . REV. STAT . ANN. § 24-32-2104(4) (West 2001); 2001 LA . ACTS 1148.

Section 403 **Effect of declaration.** The declaration of a state of public health emergency shall activate the disaster response and recovery aspects of the State, local, and inter-jurisdictional disaster emergency plans in the affected political subdivision(s) or geographic area(s). Such declaration authorizes the deployment and use of any forces to which the plans apply and the use or distribution of any supplies, equipment, and materials and facilities assembled, stockpiled, or available pursuant to this Act.

(a) **Emergency powers.** During a state of public health emergency, the Governor may:
(1) Suspend the provisions of any regulatory statute prescribing procedures for conducting State business, or the orders, rules and regulations of any State agency, to the extent that strict compliance with the same would prevent, hinder, or delay necessary action (including emergency purchases) by the public health authority to respond to the public health emergency, or increase the health threat to the population.

(2) Utilize all available resources of the State government and its political subdivisions, as reasonably necessary to respond to the public health emergency.
(3) Transfer the direction, personnel, or functions of State departments and agencies in order to perform or facilitate response and recovery programs regarding the public health emergency.
(4) Mobilize all or any part of the organized militia into service of the State. An order directing the organized militia to report for active duty shall state the purpose for which it is mobilized and the objectives to be accomplished.
(5) Provide aid to and seek aid from other states in accordance with any interstate emergency compact made with this State.
(6) Seek aid from the federal government in accordance with federal programs or requirements.

(b) **Coordination.** The public health authority shall coordinate all matters pertaining to the public health emergency response of the State. The public health authority shall have primary jurisdiction, responsibility, and authority for:
(1) Planning and executing public health emergency assessment, mitigation, preparedness response, and recovery for the State;
(2) Coordinating public health emergency response between State and local authorities;
(3) Collaborating with relevant federal government authorities, elected officials of other states, private organizations or companies;
(4) Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies; and
(5) Organizing public information activities regarding public health emergency response operations.

(c) **Identification.** After the declaration of a state of public health emergency, special identification for all public health personnel working during the emergency shall be issued as soon as possible. The identification shall indicate the authority of the bearer to exercise public health functions and emergency powers during the state of public health emergency. Public health personnel shall wear the identification in plain view.

Legislative History. The main text of Section 403 was adapted from COLO. REV. STAT. ANN. § 24-32-2104(5) (West 2001); 2001 ILL. LAWS 73(11). Section 403, Subsection (a) was adapted from 2001 ILL. LAWS 73(7); except that paragraph (4) was adapted from ARIZ. REV. STAT. ANN. § 26-172 (West 2000). Subsection (b) was drafted in consideration of the Emergency Management Assistance Compact and Alaska's Interstate Civil Defense and Disaster Compact, As. § 26.23.130. Subsection (c) was adapted from KY. REV. STAT. ANN. § 39A.050(2)(d) (LEXIS through 2001 Sess.).

Section 404 **Enforcement.** During a state of public health emergency, the public health authority may request assistance in enforcing orders pursuant to this Act from the public safety authority. The public safety authority may request assistance from the organized militia in enforcing the orders of the public health authority.

Legislative History. Section 404 was adapted from ARIZ. REV. STAT. ANN. § 26-172 (West 2000).

Section 405 **Termination of declaration.**

(a) **Executive order.** The Governor shall terminate the declaration of a state of public health emergency by executive order upon finding that the occurrence of an illness or health condition that caused the emergency no longer poses a high probability of a large number of deaths in the affected population, a large number of incidents of serious permanent or long-term disability in the affected population, or a significant risk of substantial future harm to a large number of people in the affected population.

(b) **Automatic termination.** Notwithstanding any other provision of this Act, the declaration of a state of public health emergency shall be terminated automatically after thirty (30) days unless renewed by the Governor under the same standards and procedures set forth in this Article. Any such renewal shall also be terminated automatically after thirty (30) days unless renewed by the Governor under the same standards and procedures set forth in this Article.

(c) **State legislature.** By a majority vote in both chambers, the State legislature may terminate the declaration of a state of public health emergency at any time from the date of original declaration upon finding that the occurrence of an illness or health condition that caused the emergency does not or no longer poses a high probability of a large number of deaths in the affected population, a large number of incidents of serious permanent or long-term disability in the affected population, or a significant risk of substantial future harm to a large number of people in the affected population. Such a termination by the State legislature shall override any renewal by the Governor.

Content of termination order. All orders or legislative actions terminating the declaration of a state of public health emergency shall indicate the nature of the emergency, the area(s) that was threatened, and the conditions that make possible the termination of the declaration.

(d)

Legislative History. Section 405 was adapted from COLO. REV. STAT. ANN. §§ 24-32-2104(3)(a), 4 (West 2001); 42 U.S.C.A. § 247d (West 1991 & Supp. 2001); 2001 LA. ACTS 1148.

ARTICLE V SPECIAL POWERS DURING A STATE OF PUBLIC HEALTH EMERGENCY: MANAGEMENT OF PROPERTY

Section 501 **Emergency measures concerning facilities and materials.** The public health authority may exercise, for such period as the state of public health emergency exists, the following powers over facilities or materials—

(a) **Facilities.** To close, direct and compel the evacuation of, or to decontaminate or cause to be decontaminated any facility of which there is reasonable cause to believe that it may endanger the public health.

(b) **Materials.** To decontaminate or cause to be decontaminated, or destroy any material of which there is reasonable cause to believe that it may endanger the public health.

Legislative History. In Section 501, Subsection (a) was adapted from GA. CODE ANN. § 38-3-51 (1995); Subsection (b) was adapted from COLO . REV. STAT . ANN. § 24-32-2104 (West 2001).

Section 502 **Access to and control of facilities and property - generally.** The public health authority may exercise, for such period as the state of public health emergency exists, the following powers concerning facilities, materials, roads, or public areas —

(a) **Use of materials and facilities.** To procure, by condemnation or otherwise, construct, lease, transport, store, maintain, renovate, or distribute materials and facilities as may be reasonable and necessary to respond to the public health emergency, with the right to take immediate possession thereof. Such materials and facilities include, but are not limited to, communication devices, carriers, real estate, fuels, food, and clothing.

(b) **Use of health care facilities.** To require a health care facility to provide services or the use of its facility if such services or use are reasonable and necessary to respond to the public health emergency as a condition of licensure, authorization or the ability to continue doing business in the state as a health care facility. The use of the health care facility may include transferring the management and supervision of the health care facility to the public health authority for a limited or unlimited period of time, but shall not exceed the termination of the declaration of a state of public health emergency.

(c) **Control of materials.** To inspect, control, restrict, and regulate by rationing and using quotas, prohibitions on shipments, allocation, or other means, the use, sale, dispensing, distribution, or transportation of food, fuel, clothing and other commodities, as may be reasonable and necessary to respond to the public health emergency.

(d) **Control of roads and public areas.**

(1) To prescribe routes, modes of transportation, and destinations in connection with evacuation of persons or the provision of emergency services.

(2) To control or limit ingress and egress to and from any stricken or threatened public area, the movement of persons within the area, and the occupancy of premises therein, if such action is reasonable and necessary to respond to the public health emergency.

Legislative History. In Section 502, Subsections (a) and (b) were adapted from GA. CODE ANN. § 38-3-51 (1995). Subsections (c) and (d) were adapted from 2001 LA . ACTS 1148; 2001 ILL. LAWS 73; except that (d)(2) also had GA. CODE ANN. § 38-3-51 (1995) as a source.

Section 503 **Safe disposal of infectious waste.** The public health authority may exercise, for such period as the state of public health emergency exists, the following powers regarding the safe disposal of infectious waste—

(a) **Adopt measures.** To adopt and enforce measures to provide for the safe disposal of infectious waste as may be reasonable and necessary to respond to the public health emergency. Such measures may include, but are not limited to, the collection, storage, handling, destruction, treatment, transportation, and disposal of infectious waste.

(b) **Control of facilities.** To require any business or facility authorized to collect, store, handle, destroy, treat, transport, and dispose of infectious waste under the laws of this State, and any landfill business or other such property, to accept infectious waste, or provide services or the use of the business, facility, or property if such action is reasonable and necessary to respond to the public health emergency as a condition of licensure, authorization, or the ability to continue doing business in the state as such a business or facility. The use of the business, facility, or property may include transferring the management and supervision of such business, facility, or property to the public health authority for a limited or unlimited period of time, but shall not exceed the termination of the declaration of a state of public health emergency.

(c) **Use of facilities.** To procure, by condemnation or otherwise, any business or facility authorized to collect, store, handle, destroy, treat, transport, and dispose of infectious waste under the laws of this State and any landfill business or other such property as may be reasonable and necessary to respond to the public health emergency, with the right to take immediate possession thereof.

Identification. All bags, boxes, or other containers for infectious waste shall be clearly identified as containing infectious waste, and if known, the type of infectious waste.

(d)

Legislative History. In Section 503, Subsection (d) was adapted from OR. REV. STAT . § 459.390 (1999); MINN. STAT . ANN. § 116.78(2) (West 1997 & Supp. 2001); MONT. CODE ANN. § 75-10-1005 (2001).

Section 504**Safe disposal of human remains.** The public health authority may exercise, for such period as the state of public health emergency exists, the following powers regarding the safe disposal of human remains—

(a) **Adopt measures.** To adopt and enforce measures to provide for the safe disposal of human remains as may be reasonable and necessary to respond to the public health emergency. Such measures may include, but are not limited to, the embalming, burial, cremation, interment, disinterment, transportation, and disposal of human remains.

(b) **Possession.** To take possession or control of any human remains.

(c) **Disposal.** To order the disposal of any human remains of a person who has died of a contagious disease through burial or cremation within twenty-four (24) hours after death. To the extent possible, religious, cultural, family, and individual beliefs of the deceased person or his or her family shall be considered when disposing of any human remains.

(d) **Control of facilities.** To require any business or facility authorized to embalm, bury, cremate, inter, disinter, transport, and dispose of human remains under the laws of this State to accept any human remains or provide the use of its business or facility if such actions are reasonable and necessary to respond to the public health emergency as a condition of licensure, authorization, or the ability to continue doing business in the state as such a business or facility. The use of the business or facility may include transferring the management and supervision of such business or facility to the public health authority for a limited or unlimited period of time, but shall not exceed the termination of the declaration of a state of public health emergency.

Use of facilities. To procure, by condemnation or otherwise, any business or facility authorized to embalm, bury, cremate, inter, disinter, transport, and dispose of human remains under the laws of this State as may be reasonable and necessary to respond to the public health emergency, with the right to take immediate possession thereof.

(e) **Labeling.** Every human remains prior to disposal shall be clearly labeled with all available information to identify the decedent and the circumstances of death. Any human remains of a deceased person with a contagious disease shall have an external, clearly visible tag indicating that the human remains is infected and, if known, the contagious disease.

(f) **Identification.** Every person in charge of disposing of any human remains shall maintain a written or electronic record of each human remains and all available information to identify the decedent and the circumstances of death and disposal. If

(g)

human remains cannot be identified prior to disposal, a qualified person shall, to the extent possible, take fingerprints and photographs of the human remains, obtain identifying dental information, and collect a DNA specimen. All information gathered under this paragraph shall be promptly forwarded to the public health authority.

Legislative History. In Section 504, Subsection (a) is adapted from CAL. HEALTH & SAFETY CODE § 102115 (West 1996); GA. CODE ANN. § 43-18-72(b) (1999). Subsection (b) is adapted from CAL. HEALTH & SAFETY CODE § 120140 (West 1996). Subsection (c) is adapted from OHIO REV. CODE ANN. § 3707.19 (Anderson 1999). Subsection (d) is adapted from KY. REV. STAT . ANN. § 39F.020(4) (LEXIS through 2001 Sess.). Subsection (f) is adapted from LA. REV. STAT . ANN. § 40:1099.1 (West 2001). Subsection (g) was adapted from OHIO REV. CODE ANN. § 313.08 (Anderson 1998 & Supp. 2000).

Section 505 **Control of health care supplies.**

(a) **Procurement.** The public health authority may purchase and distribute anti-toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies that it deems advisable in the interest of preparing for or controlling a public health emergency, without any additional legislative authorization.

(b) **Rationing.** If a state of public health emergency results in a state-wide or regional shortage or threatened shortage of any product under (a), whether or not such product has been purchased by the public health authority, the public health authority may control, restrict, and regulate by rationing and using quotas, prohibitions on shipments, allocation, or other means, the use, sale, dispensing, distribution, or transportation of the relevant product necessary to protect the public health, safety, and welfare of the people of the State.

(c) **Priority.** In making rationing or other supply and distribution decisions, the public health authority may give preference to health care providers, disaster response personnel, and mortuary staff.

(d) **Distribution.** During a state of public health emergency, the public health authority may procure, store, or distribute any anti-toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies located within the State as may be reasonable and necessary to respond to the public health emergency, with the right to take immediate possession thereof. If a public health emergency simultaneously affects more than one state, nothing in this Section shall be construed to allow the public health authority to obtain anti-toxins, serums, vaccines, immunizing agents, antibiotics, and other pharmaceutical agents or medical supplies for the primary purpose of hoarding such items or preventing their fair and equitable distribution among affected states.

Legislative History. In Section 505, Subsection (a) was adapted from N.H. REV. STAT . ANN. § 141-C-17 (1996). Subsection (b) was adapted from CONN. GEN . STAT . ANN. § 42-231 (West 1958).

Section 506**Compensation.** The State shall pay just compensation to the owner of any facilities or materials that are lawfully taken or appropriated by a public health authority for its temporary or permanent use under this Article according to the procedures and standards set forth in Section 805 of this Act. Compensation shall not be provided for facilities or materials that are closed, evacuated, decontaminated, or destroyed when there is reasonable cause to believe that they may endanger the public health pursuant to Section 501.

Section 507**Destruction of property.** To the extent practicable consistent with the protection of public health, prior to the destruction of any property under this Article, the public health authority shall institute appropriate civil proceedings against the property to be destroyed in accordance with the existing laws and rules of the courts of this State or any such rules that may be developed by the courts for use during a state of public health emergency. Any property acquired by the public health authority through such proceedings shall, after entry of the decree, be disposed of by destruction as the court may direct.

ARTICLE VI SPECIAL POWERS DURING A STATE OF PUBLIC HEALTH EMERGENCY: PROTECTION OF PERSONS

Section 601 **Protection of persons.** During a state of public health emergency, the public health authority shall use every available means to prevent the transmission of infectious disease and to ensure that all cases of contagious disease are subject to proper control and treatment.

Legislative History. In Section 601, the text immediately following the heading "Protection of individuals" was adapted from CAL. HEALTH & SAFETY CODE § 120575 (West 1996).

Section 602 **Medical examination and testing.** During a state of public health emergency the public health authority may perform physical examinations and/or tests as necessary for the diagnosis or treatment of individuals.

(a) Medical examinations or tests may be performed by any qualified person authorized to do so by the public health authority.

(b) Medical examinations or tests must not be such as are reasonably likely to lead to serious harm to the affected individual.

(c) The public health authority may isolate or quarantine, pursuant to Section 604, any person whose refusal of medical examination or testing results in uncertainty regarding whether he or she has been exposed to or is infected with a contagious or possibly contagious disease or otherwise poses a danger to public health.

Legislative History. Section 602 was adapted from CAL. HEALTH & SAFETY CODE § 120580 (West 1996 & Supp. 2001); CAL. HEALTH & SAFETY CODE § 120540 (West 1996); N.Y. COMP. CODES R. & REGS. tit. 10, § 2.5 (LEXIS through Oct. 12, 2001).

Section 603 **Vaccination and treatment.** During a state of public health emergency the public health authority may exercise the following emergency powers over persons as necessary to address the public health emergency–

(a) **Vaccination.** To vaccinate persons as protection against infectious disease and to prevent the spread of contagious or possibly contagious disease.
   (1) Vaccination may be performed by any qualified person authorized to do so by the public health authority.
   (2) A vaccine to be administered must not be such as is reasonably likely to lead to serious harm to the affected individual.

(3) To prevent the spread of contagious or possibly contagious disease the public health authority may isolate or quarantine, pursuant to Section 604, persons who are unable or unwilling for reasons of health, religion, or conscience to undergo vaccination pursuant to this Section.

(b) **Treatment.** To treat persons exposed to or infected with disease.
(1) Treatment may be administered by any qualified person authorized to do so by the public health authority.
(2) Treatment must not be such as is reasonably likely to lead to serious harm to the affected individual.
(3) To prevent the spread of contagious or possibly contagious disease the public health authority may isolate or quarantine, pursuant to Section 604, persons who are unable or unwilling for reasons of health, religion, or conscience to undergo treatment pursuant to this Section.

Legislative History. Section 603 was adapted from CAL. HEALTH & SAFETY CODE §§ 120175, 120575, 120605 (West 1996); CAL. HEALTH & SAFETY CODE § 120580 (West 1996 & Supp. 2001).

Section 604 **Isolation and quarantine.**

(a) **Authorization.** During the public health emergency, the public health authority may isolate (consistent with the definition of "isolation" in Section 103(h)) or quarantine (consistent with the definition of quarantine in Section 103(o)) an individual or groups of individuals. This includes individuals or groups who have not been vaccinated, treated, tested, or examined pursuant to Sections 602 and 603. The public health authority may also establish and maintain places of isolation and quarantine, and set rules and make orders. Failure to obey these rules, orders, or provisions shall constitute a misdemeanor.

(b) **Conditions and principles.** The public health authority shall adhere to the following conditions and principles when isolating or quarantining individuals or groups of individuals:
(1) Isolation and quarantine must be by the least restrictive means necessary to prevent the spread of a contagious or possibly contagious disease to others and may include, but are not limited to, confinement to private homes or other private and public premises.
(2) Isolated individuals must be confined separately from quarantined individuals.
(3) The health status of isolated and quarantined individuals must be monitored regularly to determine if they require isolation or quarantine.

(4) If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a contagious or possibly contagious disease he or she must promptly be removed to isolation.

(5) Isolated and quarantined individuals must be immediately released when they pose no substantial risk of transmitting a contagious or possibly contagious disease to others.

(6) The needs of persons isolated and quarantined shall be addressed in a systematic and competent fashion, including, but not limited to, providing adequate food, clothing, shelter, means of communication with those in isolation or quarantine and outside these settings, medication, and competent medical care.

(7) Premises used for isolation and quarantine shall be maintained in a safe and hygienic manner and be designed to minimize the likelihood of further transmission of infection or other harms to persons isolated and quarantined.

(8) To the extent possible, cultural and religious beliefs should be considered in addressing the needs of individuals, and establishing and maintaining isolation and quarantine premises.

Cooperation. Persons subject to isolation or quarantine shall obey the public health authority's rules and orders; and shall not go beyond the isolation or quarantine premises. Failure to obey these provisions shall constitute a misdemeanor.

(c) **Entry into isolation or quarantine premises.**

(1) **Authorized entry.** The public health authority may authorize physicians, health care workers, or others access to individuals in isolation or quarantine as necessary to meet the needs of isolated or quarantined individuals.

(d) (2) **Unauthorized entry.** No person, other than a person authorized by the public health authority, shall enter isolation or quarantine premises. Failure to obey this provision shall constitute a misdemeanor.

(3) **Potential isolation or quarantine** . Any person entering an isolation or quarantine premises with or without authorization of the public health authority may be isolated or quarantined pursuant to Section 604(a).

Section 605**Procedures for isolation and quarantine** . During a public health emergency, the isolation and quarantine of an individual or groups of individuals shall be undertaken in accordance with the following procedures.

(a) **Temporary isolation and quarantine without notice.**

(1) **Authorization.** The public health authority may temporarily isolate or quarantine an individual or groups of individuals through a written directive if delay in imposing the isolation or quarantine would significantly jeopardize the public

health authority's ability to prevent or limit the transmission of a contagious or possibly contagious disease to others.

(2) **Content of directive.** The written directive shall specify the following: (i) the identity of the individual(s) or groups of individuals subject to isolation or quarantine; (ii) the premises subject to isolation or quarantine; (iii) the date and time at which isolation or quarantine commences; (iv) the suspected contagious disease if known.; and (v) a copy of Article 6 and relevant definitions of this Act.

(3) **Copies.** A copy of the written directive shall be given to the individual to be isolated or quarantined or, if the order applies to a group of individuals and it is impractical to provide individual copies, it may be posted in a conspicuous place in the isolation or quarantine premises.

(4) **Petition for continued isolation or quarantine.** Within ten (10) days after issuing the written directive, the public health authority shall file a petition pursuant to Section 605(b) for a court order authorizing the continued isolation or quarantine of the isolated or quarantined individual or groups of individuals.

Isolation or quarantine with notice.

(b)

(1) **Authorization.** The public health authority may make a written petition to the trial court for an order authorizing the isolation or quarantine of an individual or groups of individuals.

(2) **Content of petition.** A petition under subsection (b)(1) shall specify the following: (i) the identity of the individual(s) or groups of individuals subject to isolation or quarantine; (ii) the premises subject to isolation or quarantine; (iii) the date and time at which isolation or quarantine commences; (iv) the suspected contagious disease if known; (v) a statement of compliance with the conditions and principles for isolation and quarantine of Section 604(b); and (vi) a statement of the basis upon which isolation or quarantine is justified in compliance with this Article. The petition shall be accompanied by the sworn affidavit of the public health authority attesting to the facts asserted in the petition, together with any further information that may be relevant and material to the court's consideration.

(3) **Notice.** Notice to the individuals or groups of individuals identified in the petition shall be accomplished within twenty-four (24) hours in accordance with the rules of civil procedure.

(4) **Hearing.** A hearing must be held on any petition filed pursuant to this subsection within five (5) days of filing of the petition. In extraordinary circumstances and for good cause shown the public health authority may apply to continue the hearing date on a petition filed pursuant to this Section for up to ten (10) days, which continuance the court may grant in its discretion giving due regard to the rights of the affected individuals, the protection of the public's health, the severity of the emergency and the availability of necessary witnesses and evidence.

(5) **Order.** The court shall grant the petition if, by a preponderance of the evidence, isolation or quarantine is shown to be reasonably necessary to prevent or limit the transmission of a contagious or possibly contagious disease to others.

(i) An order authorizing isolation or quarantine may do so for a period not to exceed thirty (30) days.

(ii) The order shall (a) identify the isolated or quarantined individuals or groups of individuals by name or shared or similar characteristics or circumstances; (b) specify factual findings warranting isolation or quarantine pursuant to this Act; (c) include any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of this Act; and (d) served on affected individuals or groups of individuals in accordance with the rules of civil procedure.

(6) **Continuances.** Prior to the expiration of an order issued pursuant to Section 605(b)(5), the public health authority may move to continue isolation or quarantine for additional periods not to exceed thirty (30) days each. The court shall consider the motion in accordance with standards set forth in Section 605(b)(5).

Relief from isolation and quarantine.

(c)

(1) **Release.** An individual or group of individuals isolated or quarantined pursuant to this Act may apply to the trial court for an order to show cause why the individual or group of individuals should not be released. The court shall rule on the application to show cause within forty-eight (48) hours of its filing. If the court grants the application, the court shall schedule a hearing on the order to show cause within twenty-four (24) hours from issuance of the order to show cause. The issuance of an order to show cause shall not stay or enjoin an isolation or quarantine order.

(2) **Remedies for breach of conditions** . An individual or groups of individuals isolated or quarantined pursuant to this Act may request a hearing in the trial court for remedies regarding breaches to the conditions of isolation or quarantine. A request for a hearing shall not stay or enjoin an isolation or quarantine order.

(i) Upon receipt of a request under this subsection alleging extraordinary circumstances justifying the immediate granting of relief, the court shall fix a date for hearing on the matters alleged not more than twenty-four (24) hours from receipt of the request.

(ii) Otherwise, upon receipt of a request under this subsection the court shall fix a date for hearing on the matters alleged within five (5) days from receipt of the request.

(3) **Extensions** . In any proceedings brought for relief under this subsection, in extraordinary circumstances and for good cause shown the public health authority

may move the court to extend the time for a hearing, which extension the court in its discretion may grant giving due regard to the rights of the affected individuals, the protection of the public's health, the severity of the emergency and the availability of necessary witnesses and evidence.

(d) **Proceedings.** A record of the proceedings pursuant to this Section shall be made and retained. In the event that, given a state of public health emergency, parties can not personally appear before the court, proceedings may be conducted by their authorized representatives and be held via any means that allows all parties to fully participate.

(e) **Court to appoint counsel and consolidate claims.**

(1) **Appointment.** The court shall appoint counsel at state expense to represent individuals or groups of individuals who are or who are about to be isolated or quarantined pursuant to the provisions of this Act and who are not otherwise represented by counsel. Appointments shall be made in accordance with the procedures to be specified in the Public Health Emergency Plan and shall last throughout the duration of the isolation or quarantine of the individual or groups of individuals. The public health authority must provide adequate means of communication between such individuals or groups and their counsel.

(2) **Consolidation.** In any proceedings brought pursuant to this Section, to promote the fair and efficient operation of justice and having given due regard to the rights of the affected individuals, the protection of the public's health, the severity of the emergency and the availability of necessary witnesses and evidence, the court may order the consolidation of individual claims into group or claims where:

(i) the number of individuals involved or to be affected is so large as to render individual participation impractical;

(ii) there are questions of law or fact common to the individual claims or rights to be determined;

(iii) the group claims or rights to be determined are typical of the affected individuals' claims or rights; and

(iv) the entire group will be adequately represented in the consolidation.

Legislative History. Sections 604 and 605 were adapted from CAL. HEALTH & SAFETY CODE §§ 120130, 120225 (West 1996); N.H. REV. STAT . ANN. § 141-C:11 -14; CONN. GEN . STAT . ANN. § 19a-221 (West 1958).

Section 606**Collection of laboratory specimens; performance of tests.** The public health authority may, for such period as the state of public health emergency exists, collect specimens and perform tests on living persons as provided in Section 602 and also upon deceased persons and any animal (living or deceased), and acquire any previously collected specimens or test results that are reasonable and necessary to respond to the public health emergency.

(a) **Marking.** All specimens shall be clearly marked.

(b) **Contamination.** Specimen collection, handling, storage, and transport to the testing site shall be performed in a manner that will reasonably preclude specimen contamination or adulteration and provide for the safe collection, storage, handling, and transport of such specimen.

(c) **Chain of custody.** Any person authorized to collect specimens or perform tests shall use chain of custody procedures to ensure proper record keeping, handling, labeling, and identification of specimens to be tested. This requirement applies to all specimens, including specimens collected using on-site testing kits.

(d) **Criminal investigation.** Recognizing that, during a state of public health emergency, any specimen collected or test performed may be evidence in a criminal investigation, any business, facility, or agency authorized to collect specimens or perform tests shall provide such support as is reasonable and necessary to aid in a relevant criminal investigation.

Legislative History. Section 606 was adapted from CAL. BUS. & PROF. CODE § 681 (LEXIS through Aug. 12. 2001); MISS. CODE ANN. § 71-7-9 (2000); GA. CODE ANN. § 34-9-415 (1998 & Supp. 2001); and CAL. PENAL CODE § 13823.11 (LEXIS through Aug. 12, 2001).

Section 607 **Access to and disclosure of protected health information.**

(a) **Access.** Access to protected health information of persons who have participated in medical testing, treatment, vaccination, isolation, or quarantine programs or efforts by the public health authority during a public health emergency shall be limited to those persons having a legitimate need to acquire or use the information to:
(1) provide treatment to the individual who is the subject of the health information,
(2) conduct epidemiologic research, or
(3) investigate the causes of transmission.

(b) **Disclosure** . Protected health information held by the public health authority shall not be disclosed to others without individual written, specific informed consent, except for disclosures made:
(1) directly to the individual;
(2) to the individual's immediate family members or personal representative;
(3) to appropriate federal agencies or authorities pursuant to federal law;
(4) pursuant to a court order to avert a clear danger to an individual or the public health; or
(5) to identify a deceased individual or determine the manner or cause of death.

Legislative History. Section 607 was adapted from LAWRENCE O. GOSTIN AND JAMES G. HODGE, JR., THE MODEL STATE PUBLIC HEALTH PRIVACY ACT OF 1999.

Section 608 **Licensing and appointment of health personnel.** The public health authority may exercise, for such period as the state of public health emergency exists, the following emergency powers regarding licensing and appointment of health personnel—

(a) **Health care providers** . To require in-state health care providers to assist in the performance of vaccination, treatment, examination, or testing of any individual as a condition of licensure, authorization, or the ability to continue to function as a health care provider in this State.

(b) **Health care providers from other jurisdictions.** To appoint and prescribe the duties of such out-of-state emergency health care providers as may be reasonable and necessary to respond to the public health emergency.

(1) The appointment of out-of-state emergency health care providers may be for a limited or unlimited time, but shall not exceed the termination of the declaration of a state of public health emergency. The public health authority may terminate the out-of-state appointments at any time or for any reason provided that any such termination will not jeopardize the health, safety, and welfare of the people of this State.

(2) The public health authority may waive any or all licensing requirements, permits, or fees required by the State code and applicable orders, rules, or regulations for health care providers from other jurisdictions to practice in this State.

(3) Any out-of-state emergency health care provider appointed pursuant to this Section shall not be held liable for any civil damages as a result of medical care or treatment related to the response to the public health emergency unless such damages result from providing, or failing to provide, medical care or treatment under circumstances demonstrating a reckless disregard for the consequences so as to affect the life or health of the patient.

(c) **Personnel to perform duties of medical examiner or coroner.** To authorize the medical examiner or coroner to appoint and prescribe the duties of such emergency assistant medical examiners or coroners as may be required for the proper performance of the duties of the office.

(1) The appointment of emergency assistant medical examiners or coroners may be for a limited or unlimited time, but shall not exceed the termination of the declaration of a state of public health emergency. The medical examiner or coroner may terminate such emergency appointments at any time or for any reason, provided that any such termination will not impede the performance of the duties of the office.

(2) The medical examiner or coroner may waive licensing requirements, permits, or fees required by the State code and applicable orders, rules, or regulations for the performance of these duties.

(3) Any emergency assistant medical examiner or coroner appointed pursuant to this Section and acting without malice and within the scope of the prescribed duties shall be immune from civil liability in the performance of such duties.

Legislative History. Section 608(b) was adapted from FLA. STAT. ANN. § 768.13(2)(b)(1) (West 1997 & Supp. 2001). Subsection (c) was adapted from D.C. CODE ANN. § 2-1605 (2001); KAN. STAT. ANN. § 22a-226(e) (1995); GA. CODE ANN. § 45-16-23 (1990); COLO. REV. STAT. ANN. § 30-10-601 (West 1990).

ARTICLE VII PUBLIC INFORMATION REGARDING PUBLIC HEALTH EMERGENCY

Section 701 **Dissemination of information.** The public health authority shall inform the people of the State when a state of public health emergency has been declared or terminated, how to protect themselves during a state of public health emergency, and what actions are being taken to control the emergency.

(a) **Means of dissemination.** The public health authority shall provide information by all available and reasonable means calculated to bring the information promptly to the attention of the general public.

(b) **Languages.** If the public health authority has reason to believe there are large numbers of people of the State who lack sufficient skills in English to understand the information, the public health authority shall make reasonable efforts to provide the information in the primary languages of those people as well as in English.

(c) **Accessibility.** The provision of information shall be made in a manner accessible to individuals with disabilities.

Legislative History. In Section 701, the main text following the title "Dissemination of information" is adapted from 6 COLO . CODE REGS. § 1009-5, reg. 1 (WESTLAW through Aug. 2001). Subsection (a) is adapted from 2001 ILL. LAWS 73(3); ALASKA STAT . §§ 26.23.020, 26.23.200 (Michie 2000). Subsection (b) is adapted from CAL. ELEC. CODE § 14201(c) (West 1996).

Section 702 **Access to mental health support personnel.** During and after the declaration of a state of public health emergency, the public health authority shall provide information about and referrals to mental health support personnel to address psychological responses to the public health emergency.

Legislative History. Section 702 is adapted from the *Bioterrorism Readiness Plan: A Template for Healthcare Facilities* (Prepared by APIC Bioterrorism Task Force & CDC Hospital Infections Program Bioterrorism Working Group).

ARTICLE VIII MISCELLANEOUS

Section 801 **Titles.** For the purposes of this Act, titles and subtitles of Articles, Sections, and Subsections are instructive, but not binding.

Section 802 **Rules and regulations.** The public health authority and other affected agencies are authorized to promulgate and implement such rules and regulations as are reasonable and necessary to implement and effectuate the provisions of this Act. The public health authority and other affected agencies shall have the power to enforce the provisions of this Act through the imposition of fines and penalties, the issuance of orders, and such other remedies as are provided by law, but nothing in this Section shall be construed to limit specific enforcement powers enumerated in this Act.

Section 803 **Financing and expenses.**

(a) **Transfer of funds.** The Governor may transfer from any fund available to the Governor in the State treasury such sums as may be necessary during a state of public health emergency.

(b) **Repayment.** Monies so transferred shall be repaid to the fund from which they were transferred when monies become available for that purpose, by legislative appropriation or otherwise.

(c) **Conditions.** A transfer of funds by the Governor under the provisions of this Section may be made only when one or more of the following conditions exist:
(1) No appropriation or other authorization is available to meet the public health emergency.
(2) An appropriation is insufficient to meet the public health emergency.
(3) Federal monies available for such a public health emergency require the use of State or other public monies.

(d) **Expenses.** All expenses incurred by the State during a state of public health emergency shall be subject to the following limitations:
(1) No expense shall be incurred against the monies authorized under this Section, without the general approval of the Governor.
(2) The aggregate amount of all expenses incurred pursuant to this Section shall not exceed [state *amount]* for any fiscal year.
(3) Monies authorized for a state of public health emergency in prior fiscal years may be used in subsequent fiscal years only for the public health emergency for which they were authorized. Monies authorized for a public health emergency in prior fiscal years, and expended in subsequent fiscal years for the public health

emergency for which they were authorized, apply toward the [state *amount]* expense limit for the fiscal year in which they were authorized.

Legislative History. In Section 803, Subsections (a) and (b) are adapted from GA. CODE ANN. § 38-3-51 (1995). Subsections (c) and (d) are adapted from ARIZ . REV. STAT . ANN. § 35-192 (West 2000).

Section 804 **Liability.**

(a) **State immunity.** Neither the State, its political subdivisions, nor, except in cases of gross negligence or willful misconduct, the Governor, the public health authority, or any other State or local official referenced in this Act, is liable for the death of or any injury to persons, or damage to property, as a result of complying with or attempting to comply with this Act or any rule or regulations promulgated pursuant to this Act during a state of public health emergency.

(b) **Private liability.**

(1) During a state of public health emergency, any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering persons, together with that person's successors in interest, if any, shall not be civilly liable for negligently causing the death of, or injury to, any person on or about such real estate or premises under such license, privilege, or other permission, or for negligently causing loss of, or damage to, the property of such person.

(2) During a state of public health emergency, any private person, firm or corporation and employees and agents of such person, firm or corporation in the performance of a contract with, and under the direction of, the State or its political subdivisions under the provisions of this Act shall not be civilly liable for causing the death of, or injury to, any person or damage to any property except in the event of gross negligence or willful misconduct.

(3) During a state of public health emergency, any private person, firm or corporation and employees and agents of such person, firm or corporation, who renders assistance or advice at the request of the State or its political subdivisions under the provisions of this Act shall not be civilly liable for causing the death of, or injury to, any person or damage to any property except in the event of gross negligence or willful misconduct.

(4) The immunities provided in this Subsection shall not apply to any private person, firm, or corporation or employees and agents of such person, firm, or corporation

whose act or omission caused in whole or in part the public health emergency and who would otherwise be liable therefor.

Legislative History. Section 804 is adapted from 2001 ILL. LAWS 73(15), (21).

Section 805 **Compensation.**

(a) **Taking.** Compensation for property shall be made only if private property is lawfully taken or appropriated by a public health authority for its temporary or permanent use during a state of public health emergency declared by the Governor pursuant to this Act.

(b) **Actions.** Any action against the State with regard to the payment of compensation shall be brought in the courts of this State in accordance with existing court laws and rules, or any such rules that may be developed by the courts for use during a state of public health emergency.

(c) **Amount.** The amount of compensation shall be calculated in the same manner as compensation due for taking of property pursuant to non-emergency eminent domain procedures, as provided in [State *to insert appropriate statutory citation],* except that the amount of compensation calculated for items obtained under Section 505 shall be limited to the costs incurred to produce the item.

Legislative History. Section 805 is adapted from COLO . REV. STAT . § 24-32-2111.5 (LEXIS through 2001 Sess.).

Section 806**Severability.** The provisions of this Act are severable. If any provision of this Act or its application to any person or circumstances is held invalid in a federal or state court having jurisdiction, the invalidity will not affect other provisions or applications of this Act that can be given effect without the invalid provision or application.

Legislative History. Section 806 is adapted from the LAWRENCE O. GOSTIN AND JAMES G. HODGE, JR., THE MODEL STATE PUBLIC HEALTH PRIVACY ACT OF 1999.

Section 807**Repeals.** The following acts, laws, or parts thereof, are explicitly repealed with the passage of this Act:

(a) [To *be inserted in each state considering passage of the Act]*
(b) [To *be inserted in each state considering passage of the Act]*
(c) [To *be inserted in each state considering passage of the Act]* . . .

Legislative History. Section 807 is adapted from the LAWRENCE O. GOSTIN AND JAMES G. HODGE, JR., THE MODEL STATE PUBLIC HEALTH PRIVACY ACT OF 1999.

Section 808**Saving clause.** This Act does not explicitly preempt other laws or regulations that preserve to a greater degree the powers of the Governor or public health authority, provided such laws or regulations are consistent, and do not otherwise restrict or interfere, with the operation or enforcement of the provisions of this Act.

Legislative History. Section 808 is adapted from the LAWRENCE O. GOSTIN AND JAMES G. HODGE, JR., THE MODEL STATE PUBLIC HEALTH PRIVACY ACT OF 1999.

Section 809 **Conflicting laws.**

(a) **Federal supremacy.** This Act does not restrict any person from complying with federal law or regulations.

(b) **Prior conflicting acts.** In the event of a conflict between this Act and other State or local laws or regulations concerning public health powers, the provisions of this Act apply.

Legislative History. Section 809 is adapted from the LAWRENCE O. GOSTIN AND JAMES G. HODGE, JR., THE MODEL STATE PUBLIC HEALTH PRIVACY ACT OF 1999.

Section 810**Effective date.** The provisions of this Act shall take effect upon signature of the Governor. [State *to insert language appropriate to its legislative process.]*