



Emergency Detention of Persons Deemed a Danger to Themselves or Others During Public Health Emergencies

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Introduction. While national or regional emergencies or disasters are well-known for causing an array of harms to physical health, they can also have a significant impact on individuals' mental and behavioral health. Existing mental health conditions, such as schizophrenia and depression, may be exacerbated by an emergency. Large-scale emergencies may affect the mental and behavioral health of first responders, public health officials, health care workers, and others involved in response efforts. The mental health of certain vulnerable populations, including children, the elderly, individuals in group facilities, and persons from socially or economically disadvantaged groups, may also be impacted. Depending on the particular mental and behavioral health issues that arise, individuals may need to access mental health services during and/or after a declared emergency.

In September 2008, the Centers for Disease Control and Prevention (CDC) established a Preparedness and Emergency Response Research Center (PERRC) at the Johns Hopkins Bloomberg School of Public Health. One of the Center's goals is to identify, research, and analyze the legal and ethical issues that arise during emergencies relative to mental and behavioral health. As part of this effort, scholars and researchers at the Johns Hopkins PERRC, in collaboration with the ASU Sandra Day O'Connor College of Law, have created a series of translational tools on relevant legal and ethical issues.

Purpose. This tool is intended as a resource for health care providers and administrators, public health officials, emergency planners, clergy, and their public and private sector partners who seek to identify key legal issues concerning the emergency detention of individuals deemed a danger to themselves or others during a disaster. This tool provides general information and is not intended to offer jurisdiction-specific guidance.

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Disclaimer. While this document was prepared with support from CDC (5P01TP000288), its contents do not represent the official legal position of CDC or other project partners. *This document does not provide specific legal advice.* Practitioners should consult with their legal counsel for a more detailed understanding of federal laws and to understand the implications of relevant state laws.

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Background: One of the front-line functions of the mental health system in the United States is to identify persons who might be an imminent danger to themselves or others. While brief emergency detentions for such persons generally do not require the participation of the justice system, full civil commitments require additional due process safeguards. Due process ordinarily requires notice to the individual, a hearing, and opportunity to be represented by counsel. These procedural safeguards require a functioning legal system to provide the judge and lawyers, a forum for the hearing (such as a courthouse), and a record of the proceedings.

Courts in Emergencies: During a public health emergency—such as a natural disaster or mass disease outbreak—court facilities and/or personnel may be unavailable for short or long periods.¹ For example, following Hurricane Katrina, many court facilities were damaged and personnel evacuated for weeks.² While courts may be inoperable, during a public health emergency increasing numbers of persons may be more likely to suffer from mental or behavioral health conditions. These may include new conditions brought on by the disaster as well as the exacerbation of existing conditions. Some of these persons may become a danger to themselves or others due to these conditions, creating a need for an emergency detention and perhaps civil commitment proceedings.

State Law and Emergency Detentions: Most states have at least a two-step system for identifying persons who may be a danger to themselves or others due to mental conditions, requiring a brief detention and/or civil commitment. State law varies greatly regarding who may initiate an emergency detention and the duration of the detention. For example, in many states physicians (or other health care providers) and law enforcement personnel can initiate an emergency detention. In other states, the list of potential initiators might also include friends, relatives, clergy, or judges. The typical maximum duration of an emergency detention, before a full-blown civil commitment proceeding must be initiated, is 24-72 hours. However, some states provide for longer emergency detention periods, which, in some states, range from 4-10 days. Many states also permit extensions of the initial emergency detention period if needed to make an accurate diagnosis or to begin the process of an involuntary commitment. Extensions of the emergency detention period often require some form of certification by a health care provider.

Emergency Detentions during Public Health Emergencies: Most states do not have provisions in their laws to anticipate the need for emergency detention extensions, short of a full civil commitment, in the event that usual court processes are unavailable. Some states, however, such as Texas, allow for disaster-related extensions: “If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may, by written order made each day, extend by an additional 24 hours the period during which the person may be detained.”³ In addition, some states grant the Governor or other official broad powers to suspend certain laws and regulations during declared emergencies, which may be sufficiently broad to permit the extension of an emergency detention without additional due process.⁴ State-level implementation of a crisis standard of care, consistent with the Institute of Medicine’s criteria, may also allow specific adjustments to existing mental health practices.⁵

Recommendations for Emergency Planners and Policymakers:

- 1) State law should anticipate the need to temporarily extend emergency detentions during public health emergencies without requiring all of the procedural safeguards necessary for an involuntary civil commitment.
- 2) States should ensure that powers associated with emergency declarations are broad enough to cover the brief extension of the duration for emergency detention.
- 3) Because emergency detention (like civil commitment) may involve a profound loss of autonomy, circumstances under which extensions are permitted must be carefully defined and limited to the shortest extension necessary to cope with the disaster.
- 4) To prepare for disasters of extended duration, states should develop plans for the continuity of function of the court system.⁶

References

¹ Stier DD, Nicks D, Cowan GJ. The courts, public health, and legal preparedness. *American Journal of Public Health* 2007;97:S69-S73.

² Birkland TA, Schneider CA. Emergency management in the courts: trends after September 11 and Hurricane Katrina. *Justice System Journal*. 2007;28(1):20-35.

³ Tex. Health and Safety Code § 573.021.

⁴ Network for Public Health Law. The Model State Emergency Health Powers Act: Summary Matrix; 2012, http://www.networkforphl.org/_asset/80p3y7/MSEHPA-States-Table-022812.pdf.

⁵ Comm. on Guidance for Establishing Crisis Standards of Care for Use in Disaster Situations, Inst. of Med. of the Nat'l Acads., *Crisis Standards of Care: A Systems Framework for Catastrophic Disaster Response* (Dan Hanfling et al., eds. 2012).

⁶ Colodner M, ed. *New York State Public Health Legal Manual: A Guide for Judges, Attorneys and Public Health Professionals*. New York State Unified Court System, New York State Bar Association; 2011.