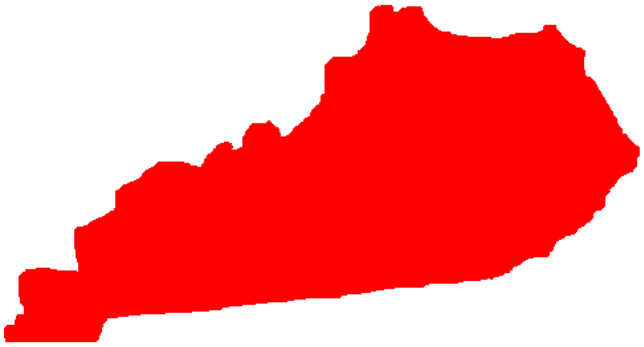
Public Health Law Judicial Reference Guide For Kentucky Courts

CENTER FOR PUBLIC HEALTH LAW PARTNERSHIPS

UNIVERSITY OF LOUISVILLE

A COLLABORATING CENTER OF
THE PUBLIC HEALTH LAW PROGRAM
Centers for **D**isease **C**ontrol & Prevention



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Acknowledgement

The authors would like to thank the Kentucky judges and court administrators who helped facilitate the publication of this Reference Guide. We would especially like to recognize Judge Julia Adams, Michael Losavio, and Judge James Shake.

The authors would also like to thank Robert Klein for his outstanding efforts in formatting the manuscript and directing the administration of this project.

Disclaimers

This Reference Guide has been reviewed by the Kentucky Circuit Judges Education Committee, but it is not an official publication of the Committee; it is not a rule of the Kentucky Supreme Court; and it is not a "manual" within the meaning of Civil Rule 1. It has been prepared to assist judges in the conduct of their duties.

This publication was supported by Cooperative Agreement No. U50/CCU423386 from the Public Health Law Program of the Centers for Disease Control and Prevention (CDC). Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the CDC.

Preface

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

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

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

This Judicial Reference Guide was created as a significant part of the current public health emergency legal preparedness initiative underway at the Public Health Law Program of the Centers for Disease Control and Prevention (CDC). This work, initiated in early 2001, has generated draft model

state public health legislation; training materials and programs for public health personnel, law enforcement agents, emergency management, and state attorneys general addressing issues such as the legal bases for coordinated responses to public health emergencies; checklists and other tools for assessing county- and state-level public health legal preparedness; and the CDC Public Health Emergency Legal Preparedness Clearinghouse, among other products and services. The Center for Public Health Law Partnerships was founded in October 2003, with funding from the Public Health Law Program, to improve legal preparedness by developing partnerships with public health agencies, judicial education organizations, and law enforcement training organizations.

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

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

Before delving into these four topical areas, we have devoted the opening chapters of the Reference Guide to an overview of issues regarding the legal nature and authority of each of the institutions whose intersection is at the heart of this document – the Kentucky judiciary and the Kentucky public health system. These introductory chapters consider questions such as: Which Kentucky courts have jurisdiction over public health matters? What does the public health system in Kentucky look like? and Who are the leaders of the Kentucky public health system and what authority do they have? The Reference Guide concludes with a series of model court orders to implement key public health powers of the state and localities. Appended materials further address various aspects of public health practice and public health law and include a *Public Health Primer* (Appendix A), a *Public Health Glossary* (Appendix B), an *Index of Statutes* (Appendix C), an *Index of Cited* Cases (Appendix D), a map of Kentucky's Public Health Preparedness Districts (Appendix E), and a Kentucky Reportable Disease Form (Appendix F).

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

August 2006

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1.00 JURISDICTION OF PUBLIC HEALTH ISSUES

1.10 FEDERAL V. STATE

1.11 The United States Constitution and Public Health

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

A. ***Federal Constitution Generally Silent***. The preamble's stated purpose of promoting the "general Welfare" is the closest the federal Constitution comes to addressing public health. The remainder of the Constitution, including the Amendments, provides no role for the federal government in matters of public health. This silence, viewed in conjunction with the Tenth Amendment's reservation of undelegated powers to the states, indicates that the federal government's public health powers extend only to the boundaries permitted by its defense, interstate commerce, and tax powers. *See, e.g.*, *Carolene Products Co. v. Evaporated Milk Assn.*, 93 F.2d 202, 204 (7th Cir. 1937) ("While the police power is ordinarily said to be reserved by the states, it is obvious that it extends fully likewise to the federal government in so far as that government acts within its constitutional jurisdiction… . The police power referred to extends to all the great public needs…. Its dimensions are identical with the dimensions of the government's duty to protect and promote the public welfare." (internal citations omitted)). In addition, the federal government is responsible for protecting the public health in discrete geographic areas directly under its control (e.g., military bases).

B. ***Exemplary Federal Public Health Powers***. Pursuant to its itemized powers, the federal government may, for example, assume responsibility for public health emergencies precipitated by acts of war or terrorism.

1.12 States as Primary Actors

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

instance, for that commonwealth to guard and protect. They are matters that do not ordinarily concern the national government."); *Compagnie Francaise de Navigation à Vapeur v. State Board of Health*, 186 U.S. 380, 387 (1902) ("That from an early day the power of the states to enact and enforce quarantine laws for the safety and the protection of the health of their inhabitants has been recognized by Congress is beyond question. That until Congress has exercised its power on the subject, such state quarantine laws and state laws for the purpose of preventing, eradicating, or controlling the spread of contagious or infectious diseases, are not repugnant to the Constitution of the United States, although their operation affects interstate or foreign commerce, is not an open question.").

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

A. ***The Kentucky Constitution***. The Kentucky Constitution does not explicitly address the authority of the state to act to protect public health or welfare.

B. ***Sources of a State's Public Health Authority***. The power of a state to protect the public's health is derived from two sources of authority – the police power and the *parens patriae* power.

1. **The police power.** The "police power" is the power to promote the public safety, health, and morals by restraining and regulating the use of liberty and property. *See Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996) ("Throughout our history the several States have exercised their police powers to protect the health and safety of their citizens. Because these are primarily, and historically, matters of local concern, the States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons." (internal citations omitted)); *Chambers v. Stengel*, 37 S.W.3d 741, 743 (Ky. 2001); BLACK'S LAW DICTIONARY 1196 (8th ed. 2004); ERNST FREUND, THE POLICE POWER: PUBLIC POLICY & CONSTITUTIONAL RIGHTS iii (1976).

2. **The *parens patriae* power**. The *parens patriae* power is the power of the state to serve as guardian of persons under legal disability, such as juveniles or the insane. *See Heller v. Doe*, 509 U.S. 312, 332 (1993) ("[T]he state has a legitimate interest under its parens patriae powers in providing care to its citizens who are unable to care for themselves….") (internal citations omitted);

Alfred L. Snapp & Son, Inc. v. Puerto Rico, 458 U.S. 592, 607 (1982) ("In order to maintain [a parens patriae] action, the State must articulate an interest apart from the interests of particular private parties, i.e., the State must be more than a nominal party. The State must express a quasi-sovereign interest….[A] state has a quasi-sovereign interest in the health and well-being – both physical and economic – of its residents in general."); BLACK'S LAW DICTIONARY 1144 (8th ed. 2004).

1.20 STATE AND LOCAL VENUE DETERMINATIONS

1.21 Courts of Jurisdiction

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

1. **Circuit Courts have original and unlimited jurisdiction**. The Circuit Courts of Kentucky, as courts of general jurisdiction, are vested with original and unlimited jurisdiction over public health matters arising in the state that are not vested in another court. *See* KY. REV. STAT. ANN. § 23A.010.
   a. **Judicial review of agency final orders.** A party can appeal a final order of a state agency by filing a petition with the Circuit Court of venue. KY. REV. STAT. ANN. §§ 23A.010, 13B.140(1).
      i. Such an appeal constitutes an original action. KY. REV. STAT. ANN. § 23A.010(4).
      ii. Filing an appeal to a state agency's final order is only available after all administrative remedies have been exhausted. KY. REV. STAT. ANN. § 13B.140(2).

2. **District Courts generally have original jurisdiction**. As courts of limited jurisdiction, the District Courts' original jurisdiction is limited to certain matters, including civil cases in which the amount in controversy does not exceed four thousand dollars ($4,000) and non-adversarial probate cases. KY. REV. STAT. ANN. §§ 24A.010, 120. The District Court handles juvenile matters, probate of uncontested wills, and cases involving civil commitments and guardianship.

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

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

1. **Circuit Courts.** The Circuit Courts have authority to hear appeals from the District Court. KY. REV. STAT. ANN. § 23A.080.

2. **Court of Appeals.** The Kentucky Court of Appeals is vested with appellate jurisdiction over:
   a. All public health cases in which a final judgment has been entered by the Circuit Court; and

b. All interlocutory appeals from the Circuit Court in civil cases, as authorized by the Supreme Court. See KY. REV. STAT. ANN. § 22A.020(1)-(2).

3. **Supreme Court**. The Kentucky Supreme Court is vested with appellate jurisdiction over:
   a. All public health cases in which a final judgment has been entered by the Kentucky Court of Appeals; and
   b. All cases in which a motion for transfer has been granted. *See* KY. REV. STAT. ANN. § 21A.50; KY. R. CIV. PROC. 74.02.

1.22 Courts of Record

A. ***Record of proceedings required***. A complete record should be made at any public health proceeding; under no circumstances should proceedings be conducted off record.
1. **Dockets.** All Kentucky trial courts must document issued public health orders in the docket. KY. R. CIV. PROC. 79.01(1).
   a. **Appellate dockets.** Circuit Court clerks must keep separate appellate dockets for each action appealed to that court. KY. R. CIV. PROC. 79.01(2).

1.23 Venue

A. ***Proper venue.***
1. **Any court having jurisdiction.** A case involving public health matters may be commenced in any Kentucky court having jurisdiction as specified, *supra*, at Section 1.21(A).

NOTE: Is it an abuse of process to knowingly file suit in a county or court of nonpreferred venue?

2. **Transfer of venue**. Upon motion of a party requesting transfer due to improper venue, the judge of the court in which the case was filed must transfer the case to the court with proper venue. KY. REV. STAT. ANN. § 452.105.
   a. **Preferred venue.** The Kentucky statutes list several specific provisions for venue. Relevant to public health cases, are the following preferred venues:
      i. **Injury to person property, or character**. In the county in which the defendant resides, or in which the injury occurs. KY. REV. STAT. ANN. § 452.460.
      ii. **Transitory actions**. In any county in which the defendant, or one of the several defendants, resides or is summoned. KY. REV. STAT. ANN. § 452.480.

B. ***Change of venue.***
1. **By consent**. The parties may agree to remove a case to another Circuit Court. KY. REV. STAT. ANN. § 452.010(1).

2. **By application**. An applicant must be granted a change in venue from a court or judge when it appears that the party cannot have a fair and impartial trial in that court due to:
   a. Undue influence of the adversary;
   b. An odium attached to the applicant or his cause of action;
   c. Circumstance or nature of the case. KY. REV. STAT. ANN. §§ 452.010(2), 452.030.

3. **Limitations.** Each party is limited to one (1) change of venue from a court or judge. KY. REV. STAT. ANN. § 452.040.

1.30 ADMINSTRATIVE PROCESS v. TRIAL COURT

Although the administrative law processes of state agencies are contained in both the Kentucky statutes and the Kentucky Administrative Regulations, neither generally provides administrative process requirements for local governmental entities. Thus, the necessity of exhausting an administrative hearing process prior to accessing the trial courts varies depending upon the issue under consideration and the relevant local ordinances. *See, e.g.*, *Kentucky Retirement Systems v. Lewis*, 163 S.W.3d 1 (Ky. 2005) (local health department employee was required to exhaust all of her administrative remedies before she could seek judicial review of the procedures by which her application for disability retirement benefits was reviewed by the Kentucky Employees Retirement Systems). Some local ordinances may contain an administrative appeals process for public health matters.

NOTE: In the event of a declared public health emergency (discussed *infra* at Section 6.00), the political subdivisions of the state and other agencies designated or appointed by the Governor may make, amend, and rescind orders, rules, and regulations as necessary. KY. REV. STAT. ANN. § 39A.180. However, the ability to limit or alter the Rules of Court may be limited by principles of Due Process and Separation of Powers.

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

As a general rule, public health cases are conducted in the same manner as other proceedings in Kentucky courts. That is, all rules of court, including those of administration, evidence, trial procedure, and appellate procedure, apply to public health cases. Although some public health cases will present unique factual scenarios and practical exigencies, the Supreme Court Rules make no specific procedural exceptions for cases involving public health emergencies. In such cases, the court should utilize routine procedures for resolving and/or expediting urgent matters on their dockets. For example, the court may issue temporary restraining orders and other injunctive relief in the context of public health

emergencies. However, these extraordinary relief measures remain subject to all applicable rules of court.

2.00 HEALTH AGENCIES AND BOARDS

2.10 CABINET FOR HEALTH AND FAMILY SERVICES

The General Assembly of the Commonwealth of Kentucky recognizes and hereby declares that it is an essential function, duty and responsibility of the government of this Commonwealth to adequately safeguard the health of all its citizens, and to establish, maintain, implement, promote and conduct appropriate facilities and services for the purpose of protecting the public health. KY. REV. STAT. ANN. § 211.005.

Prior to 1998, many public health functions were carried out by the Cabinet for Human Resources. Although that Cabinet was dismantled in 1998, there are still multiple Kentucky statutes and regulations referring to it. The Cabinet for Human Resources was succeeded by two agencies: the Cabinet for Health Services (now the Cabinet for Health and Family Services) and the Cabinet for Families and Children. Because the Cabinet for Health and Family Services is the successor for public health related duties, *see* H.B. 132 Legis. Reg. Sess. (Ky.1998), for the purposes of this Reference Guide it will be assumed that wherever the Cabinet for Human Resources is mentioned in relation to public health matters, the duty now belongs to the Cabinet for Health and Family Services.

2.11 Composition of the Cabinet for Health and Family Services

A. ***Major Organizational units.*** The Cabinet for Health and Family Services is composed of several agencies that work together to protect the public health of Kentucky. Some of the relevant agencies include:

1. **The Office of the Secretary.** The Office of the Secretary contains three (3) units:
   - a. **The Office of Legislative and Public Affairs**
     - i. **Duties.** The Office of Legislative and Public Affairs is responsible for developing and implementing cabinet legislative and policy initiatives. KY. REV. STAT. ANN. § 194A.010(1)(a).
     - ii. **Head.** The Office of Legislative and Public Affairs is headed by an executive director who is appointed by the Secretary with gubernatorial approval. KY. REV. STAT. ANN. § 194A.010(1)(a).
   - b. **The Office of Legal Services**
     - i. **Duties.** The Office of Legal Services is responsible for providing legal advice and assistance to all units of the

Cabinet for Health and Family Services. KY. REV. STAT. ANN. § 194A.030(1)(b).

ii. **Head.** The Office of Legal Services is headed by a general counsel appointed by the Secretary with gubernatorial approval. KY. REV. STAT. ANN.§ 194A.030(1)(b).

c. **The Office of Inspector General**

i. **Duties.** The Office of the Inspector General is responsible for conducting audits and investigations for the detection of fraud and abuse by organizations that have contracted with the Cabinet, licensing and functions delegated by the Secretary, review of health facilities involved in transplant programs for violations, and sharing information with law enforcement involving criminal violations. KY. REV. STAT. ANN. § 194A.030(1)(c).

ii. **Head.** The Office of the Inspector General is headed by an inspector general appointed by the Secretary with gubernatorial approval. KY. REV. STAT. ANN. § 194A.030(1)(c).

2. **The Department for Medicaid Services**.

a. **Duties**. The Department for Medicaid Services administers federal Medicaid benefits. KY. REV. STAT. ANN. § 194A.030(2).

b. **Head.** The Department for Medicaid Services is headed by a commissioner for Medicaid Services appointed by the Secretary with gubernatorial approval. KY. REV. STAT. ANN. § 194A.030(2).

3. **The Department for Public Health**.

a. **Duties.** The Department of Public Health is responsible for developing and operating all programs of the Cabinet that provide health services and all programs for assessing the health status of the population, for the promotion of health, and for the prevention of disease, injury, disability, and premature death. KY. REV. STAT. ANN. § 194A.030(3).

b. **Head.** The Department of Public Health is headed by a commissioner for public health appointed by the Secretary with gubernatorial approval. KY. REV. STAT. ANN. § 194A.030(3).

4. **The Department for Mental Health and Mental Retardation Services**.
   a. **Duties.** The Department for Mental Health and Mental Retardation Services is responsible for developing and administering programs for the prevention of mental illness, mental retardation, brain injury, developmental disabilities, and substance abuse disorders and developing and administering services and support for the treatment, habilitation, and rehabilitation of persons who suffer with those health conditions. KY. REV. STAT. ANN. § 194A.030(4).
   b. **Head.** The Department for Mental Health and Mental Retardation Services is headed by a commissioner for mental health and mental retardation who is appointed by the Secretary with gubernatorial approval. KY. REV. STAT. ANN. § 194A.030(4).

5. **The Commission for Children with Special Health Care Needs.**
   a. **Duties.** The Commission's duties include advocating for the rights of children with disabilities and, with available funding, providing the appropriate services and facilities for children with disabilities. KY. REV. STAT. ANN. § 194A.031(5).
   b. **Composition.** Seven (7) members appointed by the Governor.
      i. **Head.** The Executive Director of the Commission for Children with Special Health Care Needs is appointed by the Governor. KY. REV. STAT. ANN. § 194A.031(5).
   c. **Term.** Members serve a term of office of four (4) years. KY. REV. STAT. ANN. § 194A.031(5).

6. **The Office of Certificate of Need.**
   a. **Duties.** The Office of Certificate of Need exercises the duties, responsibilities, and authority relating to the certificate of need functions and the licensure appeal functions. KY. REV. STAT. ANN. § 194A.030(6).

7. **The Department for Community Based Services**.
   a. **Duties.** The Department for Community Based Services is responsible for child and adult protection, foster care and adoption, permanency, and services to enhance family self-sufficiency, including child care, social services, public assistance, and family and child support. KY. REV. STAT. ANN. § 194A.030(13).
   b. **Head.** The Department of Community Based Services is

headed by a commissioner appointed by the Secretary with gubernatorial approval. KY. REV. STAT. ANN. § 194A.030(13).

8. **The Department for Disability Determination Services**.
   a. **Duties.** The Department for Disability Determination Services is responsible for determining disability for those who file applications for disability with the Social Security Administration. KY. REV. STAT. ANN. § 194A.030(14).
   b. **Head.** The Department for Disability Determination is headed by a commissioner appointed by the Secretary with gubernatorial approval. KY. REV. STAT. ANN. § 194A.030(14).

B. ***Secretary of Cabinet for Health and Family Services.*** The Secretary acts as head of the Cabinet.

1. **Appointed by Governor**. The Secretary of the Cabinet for Health and Family Services is appointed by the governor. KY. REV. STAT. ANN. § 12.040(1).

2. **Term.** The Secretary is appointed for a four (4) year term. KY. REV. STAT. ANN § 12.040(1).

3. **Powers**. The Secretary directs and controls the Cabinet and is responsible for, among other things:
   a. Appointing local boards of health;
   b. Hearing and deciding appeals from rulings, decisions, and actions of the Cabinet;
   c. Issuing or denying hospital licenses;
   d. Approving or disapproving the establishment of proposed hospital service corporations;
   e. Enforcing other provisions related to physicians. KY. REV. STAT. ANN. § 211.090.

4. **Delegation of duties**. The Secretary may delegate any duties of the office of secretary to employees of the cabinet as the Secretary deems necessary and appropriate, unless otherwise prohibited by statutes. KY. REV. STAT. ANN. § 194A.025.

5. **Rulemaking Authority**. The Secretary is empowered to adopt rules and regulations necessary to regulate and control public

health matters. Permissible subject matters include:

a. Detection, prevention, and control of diseases in humans, occupational diseases and health hazards peculiar to industry, home accidents and health hazards, animal diseases which are transmissible to humans, and other diseases and health hazards that may be controlled;

b. The adoption of regulations specifying the information required in and a minimum time period for reporting a sexually transmitted disease;

c. The control of insects, rodents, and other vectors of disease;

d. The safe handling of food and food products;

e. The safety of cosmetics;

f. The control of narcotics, barbiturates, and other drugs as provided by law;

g. The sanitation of schools, buildings, public gatherings, recreational areas, public rest rooms, and establishments furnishing public sleeping accommodations;

h. Construction and equipment related to food-handling in food-handling establishments;

i. The licensure of hospitals;

j. Sewage disposal systems;

k. Protection and improvement of the health of expectant mothers, infants, preschool, and school-age children;

l. The practice of midwifery;

m. Nutrition.

KY. REV. STAT. ANN. §§ 211.090, 211.180.

2.12 Authority of the Cabinet for Health and Family Services

A. ***General Powers.***

1. **All necessary powers.** The Cabinet for Health and Family Services possesses all the powers necessary to "protect and improve the health of the people" of the state of Kentucky. KY. REV. STAT. ANN. § 211.025.

B. ***Itemized Powers.***

1. **Inspection of property.** The Cabinet for Health and Family Services is empowered to make:

a. Inspections of property to prevent the spread of communicable diseases**.** 902 KAR 2:030.

b. Inspections of commercial buildings involved in the manufacturing, processing, packing or sale of foods, drugs, devices or cosmetics. KY. REV. STAT. ANN. § 217.155.

c. Inspections of food establishments**.** KY. REV. STAT. ANN. § 217.380. Upon entering, the agents may inspect:
i. The premises;
ii. The utensils;
iii. The fixtures;
iv. The furniture;
v. The machinery. KY. REV. STAT. ANN. § 217.380.

2. **Health Data Collection.** The Cabinet for Health and Family Services is empowered to collect, analyze, and disseminate information on the cost, quality, and outcomes of health services provided by health facilities and healthcare providers in the state. KY. REV. STAT. ANN. § 216.2925.

3. **Sanitation of public and semipublic buildings and public gatherings**. The Cabinet for Health and Family Services is responsible for overseeing the sanitation of schools, industrial establishments, and other public and semipublic buildings and the sanitation of state and county fairs and other similar public gatherings; the sanitation of public and semipublic recreational areas; the sanitation of public rest rooms, trailer courts, hotels, tourist courts, and other establishments furnishing public sleeping accommodations. KY. REV. STAT. ANN. § 211.280.

4. **Disease.**
a. **Establishing policies**. The Cabinet for Health and Family Services is responsible for establishing and executing policies, plans, and programs for the detection, prevention, and control of:
i. Communicable diseases;
ii. Chronic and degenerative diseases;
iii. Dental diseases and abnormalities;
iv. Occupational diseases and health hazards peculiar to industry;
v. Home accidents and health hazards;
vi. Animal diseases transmissible to humans;
vii. Other diseases and health hazards that may be controlled. KY. REV. STAT. ANN. § 211.280.
b. **Testing.** The Cabinet for Health and Family Services is empowered to test people suspected or known to be infected with a sexually transmitted disease, 902 KAR 2:080(2), and to periodically test selected occupational groups, 902 KAR 2:040.

c. **Investigation.** The duties of the Cabinet for Health and Family Services include the investigation of persons known or reasonably suspected of being infected with a communicable disease, and the Cabinet is empowered to direct medical examinations, including interviews regarding contacts. *See* 902 KAR 2:080, 902 KAR 2:050.

d. **Quarantine**. The Cabinet for Health and Family Services has the power to establish quarantine to accomplish its statutorily assigned duty of preventing the introduction and spread of diseases within the state. KY. REV. STAT. ANN. § 214.020.

e. **Examination and abatement of causative conditions**. The Cabinet for Health and Family Services is empowered to investigate all nuisances, sources of filth, and causes of sickness that may be injurious to the health and may order their abatement. KY. REV. STAT. ANN. §§ 211.210, 212.210.

5. **Hospitals.** The Cabinet for Health and Family Services is responsible for the licensing of hospitals. KY. REV. STAT. ANN. § 211.280.

6. **Buildings.** The Cabinet for Health and Family Services is responsible for the review, approval, or disapproval of plans for construction, modification, or extension of equipment related to food-handling in food-handling establishments.

7. **Vital records.** The Cabinet for Health and Family Services is responsible for the central registrations of births, deaths, and other vital records and the furnishing of copies of records to the general public in the manner prescribed by law. KY. REV. STAT. ANN. § 211.190.

8. **Public Health Laboratories**. The Cabinet for Health and Family Services is empowered to establish, maintain, and operate public health laboratories. KY. REV. STAT. ANN. § 211.190.

9. **Water fluoridation**. The Cabinet for Health and Family Services is responsible for the water fluoridation programs. KY. REV. STAT. ANN. § 211.190.

10. **Midwifery.** The Cabinet for Health and Family Services oversees the practice of midwifery. KY. REV. STAT. ANN. § 211.180.

11. **Oversee local health departments**. In overseeing local health departments of the State, the Cabinet for Health and Family Services must, among other things:
    a. Establish policies governing the activities and practices of local health departments;
    b. Supervise the financial, personnel, program, administrative, and other functions of local health departments;
    c. Establish standards of operation in accordance with KY. REV. STAT. ANN. § 212.120;
    d. Evaluate the organization and activities of local health departments;
    e. Conduct state and district conferences for local health officers and local health department personnel;
    f. Allocate, modify or cancel allotments of state funds to local health departments pursuant to KY. REV. STAT. ANN. § 212.120; and
    g. Promote the establishment of local health departments. KY. REV. STAT. ANN. § 211.170.

C. ***Enforcement Power.*** The Cabinet for Health and Family Services may bring actions to enforce all public health laws and all regulations of the Secretary. KY. REV. STAT. ANN. §211.025.

2.20 LOCAL HEALTH DEPARTMENTS

2.21 Composition of County Health Departments

Many Kentucky statutes refer to "local health departments," yet there are actually five types of local health departments addressed in the statutes: county health departments, city-county health departments, district health departments, urban-county health departments, and independent district health departments. All five possess generally equivalent powers and duties within the designated jurisdictions. *See* KY. REV. STAT. ANN. §§ 212.230 ("all powers and authority of the local board of health under existing statutes are transferred to the county department of health"), 212.245 (listing powers of county, city-county, and district health departments).

A. ***Establishment.***

1. **By fiscal court**. The fiscal court of each county may establish and maintain a county health department.

KY. REV. STAT. ANN. § 212.040. The citizens of the county may block the establishment of a county health department through an election. If the fiscal court does not create a county health department, the citizens of the county may establish one through an election. KY. REV. STAT. ANN. §§ 212.060, 212.070.

B. ***County Boards of Health.***

1. **Governance of county health department**. A county board of health governs the corresponding county health department. KY. REV. STAT. ANN. § 212.140.
2. **Membership**. A local board of health consists of ten (10) members, eight (8) of whom are appointed by the Cabinet for Health and Family Services. KY. REV. STAT. ANN. § 212.020.
   a. **Qualification criteria.** The ten (10) members must be qualified as follows:
      i. Three (3) qualified, licensed, and practicing physicians;
      ii. One (1) qualified, licensed, and practicing dentist;
      iii. One (1) qualified, licensed, and practicing nurse;
      iv. One (1) licensed engineer engaged in the practice of civil or sanitary engineering;
      v. One (1) licensed pharmacist;
      vi. One (1) qualified, licensed, and practicing optometrist;
      vii. One (1) licensed and practicing veterinarian;
      viii. One (1) lay person knowledgeable in consumer affairs;
      ix. One (1) person appointed by the fiscal court; and,
      x. The county judge/executive. KY. REV. STAT. ANN. § 212.020(1).

3. **Term.** Members of the local board of health are appointed for staggered terms of two (2) years. KY. REV. STAT. ANN. § 212.020.
   a. **Removal for cause only**. Members of a local board of health may be removed by the Secretary upon:
      i. Absence from three (3) consecutive scheduled board meetings;
      ii. Failure to adequately perform duties of the office due to inefficiency, neglect of duty, malfeasance, or conflict of interest. KY. REV. STAT. ANN. §§ 212.020, 65.007.

4. **Compensation.** The members of the board are to receive no compensation for their services. KY. REV. STAT. ANN. § 212.020.

5. **Conducting business.**
   a. **Frequency of meetings.** Meetings must occur regularly at least once every three (3) months, except that county or city-county boards whose counties are members of a district health department must meet at least once every twelve (12) months. KY. REV. STAT. ANN. § 212.230.
   b. **Minutes must be kept.** Full minutes must be kept of all the health board proceedings. KY. REV. STAT. ANN. § 212.230(1)(b).

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

1. **Appointed by county board of health.** Each local board of health must appoint a local health officer, whose appointment is approved by the Cabinet for Health and Family Services. KY. REV. STAT. ANN. § 212.170(1).
   a. The Secretary for Health and Family Services or his/her duly appointed representative may serve as health officer for the county when the local health officer position is vacant. KY. REV. STAT. ANN. § 212.170(5).

2. **Qualifications.** A local health officer must be a licensed physician. KY. REV. STAT. ANN. § 212.180.

3. **Relationship to local health department and board of health.** The local health officer may serve as chief administrative officer of the health department and secretary for the county board of health. KY. REV. STAT. ANN. § 212.260.

4. **Term.** There is no legislated term for a local health officer; rather he/she can be removed, subject to merit system rules, at the discretion of the local board and the Cabinet for Health and Family Services. *See* KY. REV. STAT. ANN. § 212.170(1).

5. **Compensation.** A local health officer is eligible to receive compensation for the performance of his/her duties in an amount determined to be appropriate by the county board of health. KY. REV. STAT. ANN. § 212.190.

2.22 Authority of Local Boards of Health and Health Officers

A. ***General Powers.***

1. **Power to perform all necessary function.** Local health boards are empowered to perform all functions necessary to carry out the provisions of law and the regulations relating to their powers. *See* KY. REV. STAT. ANN. § 212.890.

2. **Powers are those of "local boards of health."** All powers and authority of the local board of health under existing statutes are transferred to the county department of health. KY. REV. STAT. ANN. § 212.230.

3. **Geographic scope.** The power of county health departments is limited to the boundaries of the county and all cities and towns within that county. *See* KY. REV. STAT. ANN. § 212.240.

B. ***Itemized Powers*.**

1. **Inspection of property.** A local health officer or the officer's designee is empowered to:
   a. Make sanitary inspections and surveys of all public buildings and institutions; and
   b. Enter upon and inspect private property regarding the cause, source, and presence of disease. *See* 902 KAR 2:030, 2:050.

2. **Disease.**
   a. **Communicable disease control.** Local health departments are empowered to:
      i. Isolate individuals, restrict employment, and use other control procedures to prevent transmission of infection from a person who has been implicated as a source of infection of a communicable disease. 902 KAR 2:050.
      ii. Institute an animal control program to prevent the spread of disease. KY. REV. STAT. ANN. § 67.082, 902 KAR 2:050.
      iii. Examine and order the abatement of nuisances, sources of filth, or causes of sickness existing on any private property or upon any watercourse in the state. KY. REV. STAT. ANN. § 212.210.
      iv. Issue orders to prevent the outbreak and spread of communicable diseases and require the heads of families and other persons to execute the orders to prevent the outbreak and spread of communicable

diseases;

v. Issue written orders directing compliance with applicable public health laws of this state and all regulations of the Cabinet for Health and Family Services or the county board of health. KY. REV. STAT. ANN. §212.245.

3. **Personnel.**

a. **Appointment and employment**. A local health officer is empowered to employ and fix the compensation of public health and administrative personnel necessary for the maintenance and operation of the local health department. KY. REV. STAT. ANN. § 212.170 (3)- (4).

i. **Approval by Cabinet for Health and Family Services required**. All appointed and employed personnel must be approved by the Cabinet for Health and Family Services. KY. REV. STAT. ANN. § 212.170(4).

4. **Lead poisoning**. By adopting applicable local regulations, county boards of health may establish programs for the prevention, screening, diagnosis, and treatment of lead poisoning. KY. REV. STAT. ANN. § 211.901.

5. **Reports.** County health departments must make statistical and other reports relating to the activities of the department as deemed necessary or as may be required by the county board of health or the Cabinet for Health and Family Services. KY. REV. STAT. ANN. § 212.240(3).

C. ***Rulemaking Authority*.** The local board of health is empowered to adopt administrative regulations not in conflict with the administrative regulations of the Cabinet for Health and Family Services necessary to protect the health of the people or to effectuate any state law relating to public health. KY. REV. STAT. ANN. § 212.230(c).

D. ***Enforcement Powers***.

1. **General.** A local health officer must enforce all applicable public health laws of the Commonwealth and all of the rules and regulations of the Secretary of the Cabinet for Health and Family Services and those issued by the county board of health**.** KY. REV. STAT. ANN. § 212.240.

2. **Use of courts**. Any health officer may institute and maintain mandatory or prohibitory injunction proceedings in the appropriate Circuit Court to abate nuisances that are menacing to the health of people of the state, and to compel compliance with the public health laws of the state, and the rules and regulations promulgated by, and orders to remedy nuisances issued by the local health department or the Cabinet. KY. REV. STAT. ANN. § 212.245(6).

2.30 VARIANTS OF LOCAL HEALTH DEPARTMENTS

A. *City-County Health Departments*.

1. **Establishment.** A city-county health department can be established in counties in Kentucky in which there are cities of the first class or a consolidated local government, KY. REV. STAT. ANN. § 212.350, or in any county containing a city of the second class. KY. REV. STAT. ANN. § 212.640.
   a. **First class city**. Louisville in Jefferson County is the only first class city. KY. REV. STAT. ANN. § 81.010.
   b. **Second class cities.** Second class cities are:
      i. Ashland, Boyd County;
      ii. Bowling Green, Warren County;
      iii. Covington, Kenton County;
      iv. Frankfort, Franklin County;
      v. Henderson, Henderson County;
      vi. Hopkinsville, Christian County;
      vii. Jeffersontown, Jefferson County;
      viii. Lexington, Fayette County;
      ix. Newport, Campbell County;
      x. Owensboro, Daviess County;
      xi. Paducah, McCracken County;
      xii. Radcliff, Hardin County;
      xiii Richmond, Madison County.
   c. **Consolidated local government.** A consolidated local government is created when voters of a county approve through election the consolidation of the governmental and corporate functions of a city of the first class and those of its county. KY. REV. STAT. ANN. § 67C.101.

2. **Membership**
   a. **County containing first class city without a consolidated government**. In a county containing a first class city, the board is composed of ten (10) members,
      i. Two (2) must be the mayor of the city, and the county judge/executive of the county, as members ex officio;

ii. Four (4) must be appointed by the mayor of the city; and,
iii. Four (4) must be appointed by the county judge/executive of the county with the approval of the fiscal court. KY. REV. STAT. ANN. § 212.380.

b. **Where a consolidated government is in place**. In a county where there is a consolidated government the board is composed of ten (10) members:
i. The mayor and
ii. Nine (9) members who must be appointed by the mayor of the consolidated local government pursuant to KY. REV. STAT. ANN. § 212.380(5).

c. **County containing a second class city**. In a county containing a second class city, the board is composed of twelve (12) members;
i. One (1) of whom must be either the mayor, city manager, or the designee of the city manager of the city;
ii. The county/judge executive; and,
iii. Ten (10) appointed members.

4. **Qualifications.**

a. **Generally.** Except in a county containing a consolidated government, in each county containing a first class city, each appointed member of the board must be:
i. Older than thirty (30) years of age, intelligent, discreet, and
ii. A continuous resident of the county for at least two (2) years prior to the date of his or her appointment; and,
iii. At least one (1) but not more than three (3) of the appointed members must be physicians, one (1) of the appointed members must be a dentist, one (1) of the appointed members must be a licensed pharmacist, and at least one (1) of the appointed members must be a registered nurse. KY. REV. STAT. ANN. § 212.380(1).

b. **County with a Second Class City.** In a county containing a second class city, the appointed members must include:
i. One (1) person who is either the mayor, city manager, or the designee of the city manager;
ii. The county judge/executive;
iii. One (1) dentist;
iv. One (1) registered nurse;
v. Three (3) physicians;
vi. One (1) veterinarian;

vii. One (1) engineer practicing in civil or sanitary engineering;
viii. One (1) optometrist;
ix. One (1) lay person knowledgeable in consumer affairs. KY. REV. STAT. ANN. § 212.640.

5. **Term.**

a. **Generally.** The successor to each member is appointed by the county judge/executive and the mayor for a four (4) year term KY. REV. STAT. ANN. § 212.380(2).

b. **City and County Compact**. When a city of the first class and a county containing a city have in effect a compact under KY. REV. STAT. ANN. §§ 79.310 to 79.330, the members on the board are appointed for three (3) year terms. KY. REV. STAT. ANN. § 212.380(4).

6. **Vacancies; resignations**

a. **Authority to declare a vacancy.** The original appointing authority holds the exclusive power and authority to determine and declare when a vacancy exists. KY. REV. STAT. ANN. § 212.390(1).

b. **Filling of vacancy**. Vacancies on the board are to be filled in the same manner as the original appointment of the vacated position was made. KY. REV. STAT. ANN. § 212.390(1).

c. **Failure to fill vacancy.**

i. **In a county generally.** If a county/judge executive or mayor fails to appoint someone to fill a member position, the position must be filled by a majority vote of a board composed of the county judge/county executive, the mayor, and the president of the board of the tuberculosis hospital in the county and city. In the event the county judge/executive and the mayor fail to make an appointment to fill any vacancy on the board within thirty (30) days after a vacancy occurs, the board itself has the power and is authorized to make the appointment to fill the vacancy. KY. REV. STAT. ANN. § 212.390(2).

NOTE: There are no longer tuberculosis hospitals in the state; therefore there is no president of the board to act in this instance.

ii. **In a county containing a consolidated local government.** In a county containing a consolidated local government, the mayor must fill a vacancy to the board no later than thirty (30) days after the occurrence of the vacancy. In the event the mayor fails to make the appointment within thirty (30) days, the appointment must be made by the remaining

members of the board. KY. REV. STAT. ANN. § 212.390(2).

d. **Previous knowledge of vacancy**. If the board has advance knowledge that a vacancy on the board will occur for any reason, the board must report in writing to the appointing authority in advance of the occurrence of the vacancy. KY. REV. STAT. ANN. § 212.390(3).

e. **Resignation.** A resignation of a member of the board must be in writing addressed and submitted to the appointing authority and a copy of the resignation must be furnished to the chairman of the board. KY. REV. STAT. ANN. § 212.390(4).

7. **Compensation of board members.** Members of the board receive fifty dollars ($50) for each meeting of the board they attend, but no member of the board is allowed to receive more than six hundred dollars ($600) during any fiscal year, nor for more than twelve (12) meetings held during any fiscal year of the board. KY. REV. STAT. ANN. § 212.400.

8. **Conducting business**

a. **Election of chairman and vice chairman**. After establishment, the board, including the ex officio members, must organize and elect from among its appointed members a chairman and a vice chairman to serve for one (1) year and be eligible for reelection. KY. REV. STAT. ANN. § 212.410.

b. **Quorum**. A majority of the members of the board constitute a quorum for the transaction of business. KY. REV. STAT. ANN. § 212.410.

c. **Divisions**. The board is authorized to create necessary administrative divisions at its discretion, and may adopt "any and all necessary and appropriate" rules and regulations for conducting its business and for carrying out relevant provisions of the statutes. KY. REV. STAT. ANN. § 212.410.

d. **Record Keeping**. The board must keep a record of its resolutions, transactions, findings and determinations, which is a public record. KY. REV. STAT. ANN. § 212.410.

e. **Meetings.** The board must hold at least one (1) regular meeting each month, and any other meetings the chairman of the board calls as necessary. KY. REV. STAT. ANN. § 212.410.

f. **Appointment of director of health**. The board must appoint a director of health, who serves as secretary to and be administrative officer for the board, and performs any other duties the board may direct. KY. REV. STAT. ANN. § 212.410.
   i. **Qualifications**. The director of health must be a physician, qualified as a public health administrator and licensed or eligible for license as a medical practitioner in the Commonwealth of Kentucky.
   ii. **Compensation.** The director is entitled to an annual salary of five thousand dollars ($5,000), payable as other salaries are paid.
   iii. **Term.** The director of health is removable at the will of the board. KY. REV. STAT. ANN. § 212.420.
   iv. **Organization by Director**. The director of health supervises and controls the administrative divisions created by the board, and the director is responsible for organizing the divisions that may be necessary for the proper conduct of the business of the board. KY. REV. STAT. ANN. § 212.410
g. **Personnel**. The board is authorized, with some statutory limitations, to employ agents and employees as it determines necessary to effectively carry out its work. KY. REV. STAT. ANN. §§ 212.400, 212.410.
h. **Compensation of employees.** The board is empowered to set reasonable compensation for all agents and employees of the board. KY. REV. STAT. ANN. § 212.430.

9. **Reports to Cabinet for Health and Family Services, fiscal court, and board of aldermen.** The board must make a detailed annual report of its yearly fiscal and other operations to the Cabinet for Health and Family Services of Kentucky, the fiscal court of the county and to the legislative body of the city, to be filed within sixty (60) days after the close of the board's fiscal year. KY. REV. STAT. ANN. § 212.570.

B. ***District health departments***

1. **Establishment.**
   a. **Delineating district boundaries**. The Cabinet for Health and Family Services is responsible for delineating and defining geographical boundaries within which district health departments can be established. KY. REV. STAT. ANN. § 212.840.

b. **Forming a district**. Within the boundaries delineated by the Cabinet, the fiscal courts may by resolution, passed by a majority vote of the members present, unite the counties into a district for the purpose of creating, establishing, maintaining, and operating a district health department. KY. REV. STAT. ANN. § 212.840.
   i. Once a resolution is passed by the fiscal courts of all counties uniting to establish a district health department, a copy must be certified to the Cabinet of Health and Family Services. KY. REV. STAT. ANN. § 212.850.
   ii. Then, if appropriate under the provisions of KY. REV. STAT. ANN. §§ 212.810 to 212.930 and if the appropriations are adequate, the cabinet must enter an order declaring the district to be established and a copy of the order must be filed with the Secretary of State and with the county clerk of each county concerned. KY. REV. STAT. ANN. § 212.850.

c. **Establishment in a county containing a city of first or second class.** In any county containing a city of the first or second class, the fiscal court of the county and the legislative body of the city may unite with a district health department. KY. REV. STAT. ANN. § 212.910.

d. **Powers and duties.** When a district department of health is created, all powers and duties of the county boards of health, except as otherwise provided in KY. REV. STAT. ANN. §212.920, under existing statutes are transferred to the district board of health. KY. REV. STAT. ANN. § 212.850.

e. **Costs and expenses**. The counties comprising the district are responsible for paying the cost of creating and establishing the district health department in proportion to the taxable property of each county. The annual expense of maintaining and operating the district health department is the responsibility of each county. KY. REV. STAT. ANN. § 212.840.
   i. When a city of the first or second class unites with a district health department the city legislative body and fiscal court set the proportion of cost to be paid by agreement. KY. REV. STAT. ANN. §212.910.

2. **Membership**

a. **Members**. Except for district health departments that

serve a county containing a city of the first class, an urban-county government, or that are part of an interstate metropolitan statistical area where the Kentucky population of the metropolitan statistical area exceeded two hundred fifty thousand (250,000) people on July 1, 1989, in any county containing a city of the first or second class, a district board of health consists of the following members:

i. The county judge/executive or his/her designee from each county in the district as an ex officio voting member; and

ii. One (1) additional resident member per county per fifteen thousand (15,000) population or fraction thereof, which must include the mayor, city manager, or the designee of the city manager of each city of the second class as an ex officio voting member, except that the total number of members from any county in a district may not exceed seven (7) members. KY. REV. STAT. ANN. § 212.855.

b. **Appointment.** All members except for the county judges/executives and the mayors of second class cities are appointed by the county or city-county boards of health from the membership of each county or city-county board of health must appoint one (1) of its members to fill each vacant position from that county. KY. REV. STAT. ANN. § 212.855.

c. **Qualifications.**

i. At least twenty-five percent (25%) or the nearest whole number to twenty-five percent (25%) of the appointed members of the district board must be doctors of medicine or osteopathy qualified, licensed, and practicing in the Commonwealth;

ii. There must be at least one (1) qualified, licensed, and practicing registered nurse;

iii. One (1) qualified, licensed, and practicing dentist;

iv. One (1) licensed pharmacist;

v. One (1) qualified licensed engineer engaged in the practice of civil or sanitary engineering;

vi. One (1) qualified, licensed, and practicing optometrist; and,

vii. One (1) qualified, licensed, and practicing veterinarian, when available, among the membership of the board.

viii. The remaining members of the district board must be concerned community leaders residing within the

NOTE: The statutory qualifications for pharmacists differ from the other health professionals.

county which they will serve.

d. **Certification by secretary**. The secretary must certify the names of members of the district board appointed by the county or city-county board of health members.
e. **Vacancy**. Vacancies are filled by the county or city-county board of health from which the seat was originally appointed. KY. REV. STAT. ANN. § 212.855(3).
f. **Term**. The appointed members of the district board of health hold staggered terms of two (2) years. KY. REV. STAT. ANN. § 212.855(4).
g. **Removal**. The secretary must remove any appointed member who fails to attend three (3) consecutive scheduled meetings. KY. REV. STAT. ANN. § 212.855.

3. **Conducting Business**
   a. **Quorum** A majority of all the members of the district board of health constitutes a quorum.
   b. **Election of officer**s. The board elects a chairman and vice chairman and any other officers as it deems necessary for the board to conduct business.
   c. **Executive committee representative**. The district board of health may elect an executive committee representative of the district, for the conduct of duties delegated by the board.
   d. **Meetings.** The committee must meet as determined by the board or at the call of the district health officer. KY. REV. STAT. ANN. § 212.860.

4. **Compensation**
   a. **No compensation.** Members of district boards of health are not entitled to compensation but may be reimbursed for expenses incurred in connection with such service in accordance with state travel regulations and the policies of the cabinet. KY. REV. STAT. ANN. § 212.860(2).

5. **The Appointment of a health officer**. The district board of health must appoint a health officer and fix his/her salary subject to the approval of the cabinet and applicable merit system regulations. KY. REV. STAT. ANN. § 212.860.
   a. **Vacancy in health officer position**. In the absence of a district health officer, the Secretary of the Cabinet for Health and Family Services or his or her duly appointed representative serves as health officer for the district health department. KY. REV. STAT. ANN. § 212.870.

b. **Duties of the health officer.**
   i. The health officer must devote his or her time to the duties of the office and must not engage in the private practice of medicine.
   ii. He or she may also be secretary of the district board of health and keep full minutes of the proceedings of the board in a book provided for that purpose.
   iii. He or she may also be the chief administrative officer of the district health department. KY. REV. STAT. ANN. § 212.900.

6. **Personnel**
   a. **Hiring employees**. A district health officer may employ and fix the compensation of all employees necessary for the maintenance and operation of the district health department in accordance with standards and merit system provisions prescribed by the cabinet.
   b. **Vacancies.** All vacancies are filled by appointment by the mayor. KY. REV. STAT. ANN. § 212.627.

3. **Conducting business.**
   a. **Election of officers**. The board must elect one of its members as chairman. KY. REV. STAT. ANN. § 212.633.
   b. **Approval by Cabinet**. Employment and compensation of employees are subject to the approval of the Cabinet for Health and Family Services.
   c. **County health department employees become district health department employees.** All employees of county health departments that join a district health department become employees of the district health department. KY. REV. STAT. ANN. § 212.870.

C. ***Urban-County Health Boards***

1. **Establishment**
   a. **At merger**. An urban-county department of health is created in any county in the state containing a city with a population over one hundred thousand (100,000) at the time of the merger that created an urban-county form of government. KY. REV. STAT. ANN. § 212.627.
   b. **Jurisdiction.** The urban-county board of health has jurisdiction throughout the boundaries of the county. KY. REV. STAT. ANN. § 212.627
   c. **Succeeds city-county health departmen**t. Once formed, the urban-county board of health succeeds to and is vested with

all the duties, powers, functions, etc. of the city-county board of health. KY. REV. STAT. ANN. § 212.627.

2. **Membership**
   a. **Members.** An urban-county board of health must be composed of a total of thirteen (13) members:
      i. The mayor as an ex officio member;
      ii. A member of the urban-county government legislative body as an ex officio member;
      iii. Eleven (11) appointed members. KY. REV. STAT. ANN. § 212.632.
   b. **Appointment.** All appointed members are appointed by the mayor with the approval of the urban-county government legislative body. KY. REV. STAT. ANN. § 212.627.
   c. **Quorum.** A quorum for meetings consists of a majority of the members, except for the selection or dismissal of the commissioner which requires a minimum of ten (10) of the thirteen (13) members. KY. REV. STAT. ANN. § 212.633.
   d. **Administration.** The board is empowered to adopt rules and regulations for conducting business and carrying out its duties and functions. KY. REV. STAT. ANN. § 212.633.
   e. **Meetings.** The board must meet at least once each month and when the chairman deems necessary. KY. REV. STAT. ANN. § 212.633.
   f. **Record.** Records of the board meetings and actions are public record. KY. REV. STAT. ANN. § 212.633.

4. **Commissioner.**
   a. **Qualifications.** The commissioner must be a physician either licensed or eligible to practice in the state and trained in public health, preventative medicine, and public administration. KY. REV. STAT. ANN. § 212.635.
   b. **Salary.** The commissioner receives a salary as determined by the board.
   c. **Term and removal**. The commissioner serves at the discretion of the board and can be removed at any time by the board.
      i. **Removal hearing.** Before removal, the commissioner must have an opportunity to request a hearing in writing. Once a hearing is held, the board's decision is final. KY. REV. STAT. ANN. § 212.635(3).

d. **Duties.**

a. **Chief administrative officer**. The commissioner is the chief administrative office of the urban-county health department. KY. REV. STAT. ANN. § 212.635(4).

b. **Secretary of the board**. The commissioner serves as secretary of the board and keeps minutes of the board meetings. KY. REV. STAT. ANN. § 212.635.

c. **Personnel.** The commissioner may employ and set compensation of all employees required for the department. KY. REV. STAT. ANN. § 212.635.

D. ***Independent district board of health***

1. **Purpose.** Independent district departments of health are governed by independent district boards of health, which are corporate organizations. Independent boards of health have corporate powers to acquire property, dispose of property, contract and sue or be sued independent of the Cabinet. KY. REV. STAT. ANN. § 212.784.

2. **Establishment.**

a. An independent district department of health may be established in an area where the existing district board of health and district department of health include a county which is part of an interstate metropolitan statistical area (MSA) and the Kentucky population of that MSA was more than two hundred fifty thousand (250,000) on July 1, 1989. KY. REV. STAT. ANN. § 212.782.

b. The county fiscal courts, by resolution passed by a majority vote of members present, may establish an independent district department of health. KY. REV. STAT. ANN.§ 212.782.

3. **Successor to district health department and local boards of health**. KY. REV. STAT. ANN. § 212.784(2).

4. **Membership**. The independent district board of health must be composed of:

a. The judge/executive or his/her designee as an ex officio member for each participating county;

b. The chairman from each participating local board of health as an ex officio member;

c. Members appointed by the judge/executive. KY. REV. STAT. ANN. § 212.786.

i. Appointments must be based on population. Each county must have an appointment of one (1) member for the first fifteen thousand (15,000) people. Counties may have an

additional member per fifteen thousand (15,000) people. The mayor of each city of the second class serving as an ex officio member of the district board counts as one of the population based appointments.

5. **Qualifications**. Of the appointed members:
   a. Twenty-five percent (25%) must be licensed physicians;
   b. Twenty-five percent (25%) must be licensed, registered nurses;
   c. Ten percent (10%) must be licensed dentists;
   d. Ten percent (10%) must be licensed veterinarians;
   e. Ten percent (10%) must be pharmacists;
   f. Twenty percent (20%) must be consumers. KY. REV. STAT. ANN. § 212.786.

6. **Term.** Each member serves a two (2) year term and a maximum of three (3) consecutive terns,. However, ex officio members may continue to serve. KY. REV. STAT. ANN. § 212.786.

7. **Vacancies.** The county/judge executive is responsible for filling vacancies. KY. REV. STAT. ANN. § 212.786(4).

8. **Conducting Business**
   i. **Quorum**. The majority of all members of an independent district board of health constitutes a quorum.
   ii. **Electing officers**. The board must elect a chairman and vice chairman and other officers as deemed necessary.
   (1) The chairman and vice chairman serve for one (1) year terms.
   (2) The independent district board of health may elect an executive committee for the conduct of such business and the discharge of such duties as the board may delegate. KY. REV. STAT. ANN. § 212.788.

9. **Compensation.** Members of an independent district board of health receive no compensation but may be reimbursed for expenses. KY. REV. STAT. ANN. § 212.788(2).

10. **Administrative powers.** The board may create committees it deems necessary, adopt any rules and regulations for the conduct of business and for carrying out the provisions of KY. REV. STAT. ANN. §§ 212.780 to 212.794, 212.788.

11. **Meetings.** The board must hold at least four (4) regular meetings a year.
    a. **Public Record**. The board must keep a record of all actions. The records are public records. KY. REV. STAT. ANN. § 212.788(3).

12. **Director of Health**.
    a. The board must appoint a district director of health for the department. KY. REV. STAT. ANN. § 212.790.
    b. **Qualifications.** The district director of health may be a physician, qualified by training in public health, preventive medicine and public administration, and licensed or eligible to practice as a medical practitioner in the state, or may be a nonphysician with a master's degree in public health or related field and at least five (5) years' experience in a management capacity with a health department. KY. REV. STAT. ANN. § 212.790(2).
    c. **Compensation.** The district director of health receives an annual salary determined by the board.
    d. **Removal**. The director of health can be removed at the discretion of the board.
        i. **Removal hearing.** Before removal, the commissioner must have an opportunity to request a hearing in writing. Once a hearing is held, the board's decision is final. KY. REV. STAT. ANN. § 212.790(2).
    e. **Duties.**
        i. **Chief administrative officer**. The commissioner is the chief administrative officer of the urban-county health department. KY. REV. STAT. ANN. § 212.790(4).
        ii. **Secretary of the board**. The commissioner serves as secretary of the board and keeps minutes of the board meetings. KY. REV. STAT. ANN. § 212.790(4).
        iii. **Personnel.** The commissioner may employ and set compensation of all employees required for the department. KY. REV. STAT. ANN. § 212.790(4).

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

3.10 SEARCHES AND SEIZURES GENERALLY

3.11 Constitutional Analysis

A. *The United States Constitution*.

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

2. **Definitions.**
   a. **Search.** A search occurs when government action infringes upon an expectation of privacy that society recognizes as reasonable. *See United States v. Jacobsen*, 466 U.S. 109, 113 (1984); *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).
   b. **Seizure.**
      i. **Of individual**. A seizure of an individual occurs when government action meaningfully interferes with an individual's freedom of movement. *See Michigan v. Summers*, 452 U.S. 692, 696 (1981).
         (A) Duration of interference irrelevant. Government's meaningful interference with an individual's freedom of movement constitutes a seizure, "however brief." *See id*.
      ii. **Of property.** A seizure of property occurs when government action meaningfully interferes with an individual's possessory interest in that property. *See Jacobsen*, 466 U.S. at 113.
   c. **Government action.** The Fourth Amendment applies to the acts of all state officials, including both civil and criminal authorities. *See New Jersey v. T.L.O.*, 469 U.S. 325, 335 (1985).
      i. **State hospital employees are government actors.** Staff at state hospitals are considered government actors, subject to Fourth Amendment requirements. *See Ferguson v. City of Charleston*, 532 U.S. 67, 76 (2001).

d. **Probable cause.** Probable cause exists when, under the circumstances, there are reasonable grounds for a belief of guilt that is particularized with respect to the person, place, or items to be searched or seized. *See Maryland v. Pringle*, 540 U.S. 366, 370-71 (2003).

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

4. **Applicability of Fourth Amendment to physical evidence obtained from individual.** The Fourth Amendment is implicated when the government seeks to obtain physical evidence from an individual.

   a. **Detention to obtain evidence as seizure.** The detention of an individual necessary to produce the evidence sought is a seizure if it amounts to a meaningful interference with the individual's freedom of movement. *See Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 616 (1989); *Schmerber v. California*, 384 U.S. 757, 767 (1966).

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

   b. **Obtaining and examining evidence as search.** Both obtaining physical evidence from an individual and examining that evidence are searches if these acts infringe upon an expectation of privacy that society recognizes as reasonable. *See Ferguson*, 532 U.S. at 76 (urine tests are searches subject to the Fourth Amendment); *Cupp v. Murphy*, 412 U.S. 291, 295 (1973) (fingernail scraping constitutes search subject to Fourth Amendment); *Schmerber*, 384 U.S. at 767 (compelled blood draw analyzed for alcohol content constitutes search subject to Fourth Amendment). A further discussion of these issues may be found, *infra*, at Section 3.31.

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

   c. **Physical characteristics exposed to public not protected by Fourth Amendment**. Because an individual has no reasonable expectation of privacy in physical characteristics constantly exposed to the public, such as vocal tones, facial features, and fingerprints, the Fourth Amendment is inapplicable to government action to obtain such evidence. *See United States v. Dionisio*, 410 U.S. 1, 14-15 (1973) (voice exemplars);

Davis v. Mississippi, 394 U.S. 721, 727 (1969) (fingerprints); *United States v. Doe*, 457 F.2d 895, 894 (2d Cir. 1972) ("[T]here is no 'reasonable expectation of privacy' about one's face.").

d. **Obtaining physical evidence via significantly invasive or newly emerging medical procedures unreasonable in certain circumstances.** The Supreme Court has held on at least one occasion that obtaining physical evidence from an individual via surgical intrusion is an unreasonable search. *See Winston v. Lee*, 470 U.S. 753 (1985) (surgical intrusion in chest area to retrieve bullet unreasonable under Fourth Amendment).

i. **Case-by-case analysis.** The reasonableness of invasive medical intrusions must be determined on a case-by-case basis. *See id.* at 760.

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

5. **Applicability of Fourth Amendment to information obtained without physical intrusion of premises or persons.** The Fourth Amendment applies to information obtained from premises or persons even when no physical intrusion is required to obtain the information. *See Kyllo v. United States*, 533 U.S. 27 (2001) (holding use of thermal imaging scanner to obtain information about temperature within defendant's home constituted a search subject to Fourth Amendment protections despite fact that scan occurred from streets outside home).

a. **Character of premises highly relevant to analysis.** The character of the premises at issue may well be determinative when analyzing the applicability of the Fourth Amendment to information obtained without

physical intrusion of premises. *Compare Kyllo*, 533 U.S. 27 (thermal imaging scan of home is search subject to Fourth Amendment) *with Dow Chemical Co. v. United States*, 476 U.S. 227 (1986) (aerial surveillance of industrial complex not search).

b. **Character and extent of information obtained relevant to analysis.** The acquisition of information about an individual's lawful activities is likely to constitute a search subject to the Fourth Amendment. *See Illinois v. Caballes*, 543 U.S. 405 (2005) (holding use of dog sniff to detect illegal narcotics during legal traffic stop was not a search subject to the Fourth Amendment, noting that "[c]ritical to [the *Kyllo*] decision was the fact that the device was capable of detecting lawful activity…The legitimate expectation that information about perfectly lawful activity will remain private is categorically distinguishable from respondent's hopes or expectations concerning the nondetection of contraband in the trunk of his car.").

c. **Character of technology may be relevant to analysis**. The acquisition of information using technology not in general public use may be more likely to constitute a search subject to the Fourth Amendment. *See Kyllo*, 533 U.S. at 34 ("We think that obtaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical intrusion into a constitutionally protected area constitutes a search – at least where (as here) the technology in question is not in general public use." (internal citations omitted)).

6. **Reasonableness analyzed**. The permissibility of government action is assessed by balancing the intrusion upon the individual's Fourth Amendment interests (e.g., dignity, privacy, and personal security) against the promotion of legitimate government interests. *See T.L.O.*, 469 U.S. at 337; *Delaware v. Prouse*, 440 U.S. 648, 653-54 (1979).

   a. **Context-specific inquiry.** The reasonableness of a search or seizure depends upon the context in which it takes place. *See T.L.O.*, 469 U.S. at 337.

   b. **No "least intrusive" requirement.** The reasonableness of a search or seizure does not depend upon whether the government uses the least intrusive means practicable. *See, e.g.*, *Vernonia School District v. Acton*, 515 U.S. 646, 663 (1995).

c. **Warrant generally required.** As a general rule, government searches and seizures conducted without a valid warrant are presumed to be unreasonable. *See Camara*, 387 U.S. at 528-29; *Gillum v. Commonwealth*, 925 S.W.2d 189 (Ky. Ct. App. 1995). *But see Starzenski*, 659 N.E.2d at 1138-39 (holding warrant or its equivalent necessary to due process and reasonableness).

   i. **Character of individual interests involved not dispositive.** The consent or warrant requirement applies to searches of and seizures on both residential and commercial property. *See Camara*, 387 U.S. 523 (search of residence); *See v. City of Seattle*, 387 U.S. 541 (1967) (search of commercial property).

   ii. **Valid warrants**. To be valid, a warrant must be based upon probable cause, as determined by a neutral magistrate. *See Pringle*, 540 U.S. 366.

   (A) No guilt by association. Probable cause to search or seize an individual is not satisfied merely by the existence of probable cause to search another. Does this principle apply to the individual or the premises upon which the individual is located? *See Ybarra v. Illinois*, U.S. 85, 91 (1979).

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

   i. **Consent.** A knowing and voluntary consent by an individual with actual or apparent authority over the premises to be searched or items to be seized obviates the need for a valid warrant. *See Illinois v. Rodriguez*, 497 U.S. 177, 181 (2000); *Baltimore v. Commonwealth*,119 S.W.3d 532 (Ky. Ct. App. 2003).

   (A) **Voluntariness of consent is fact-specific.** The voluntariness of an individual's consent to a search or seizure is evaluated with reference to all surrounding circumstances. *See Ohio v. Robinette*, 519 U.S. 33, 40 (1996); *Cook v. Commonwealth*, 998 S.W.2d 329, 331 (Ky. 1992).

   (B) **Scope of consent limits search or seizure**. A warrantless, consent search or seizure is limited to the scope provided in the consent. *See Florida v. Jimeno*, 500 U.S. 248, 252 (1991).

   ii. **Special needs.** The warrant requirement is inapplicable when special needs, beyond the ordinary need for law

enforcement, are implicated. *Board of Education v. Earls*, 536 U.S. 822, 829 (2002) (upholding warrantless, random drug testing of students participating in public school's extracurricular activities); *Acton*, 515 U.S. at 653 (upholding random drug testing of student athletes in public schools); *National Treasury Employees Union v. Von Raab*, 489 U.S. 656, 665-66 (1989) (upholding warrantless drug testing of all customs officials applying for positions involving drug interdiction or use of firearms); *TLO*, 469 U.S. at 341-42 (upholding warrantless search of student property by public school officials); *Skinner*, 489 U.S. at 633-34 (upholding warrantless drug testing of railroad employees involved in train accidents or found to be in violation of certain safety rules); *U.S. v. Loney*, 331 F.3d 516, 520 (6th Cir. 2003) (upholding warrantless search based on "special needs" of state to closely supervise probationers); *Stogner v. Commonwealth*, 638 F. Supp.1 (W.D. Ky. 1985) (approving warrantless search based on closely regulated industry exception); *Love v. Superior Court of San Francisco*, 226 Cal. App. 3d. 736 (1990) (upholding warrantless HIV testing of prostitutes to protect the health of state citizens). *But see Chandler v. Miller*, 520 U.S. 305 (1997) (rejecting Georgia's "special needs" justification for warrantless, suspicionless drug testing of all candidates for certain state offices); *Willis v. Anderson Comm. School Corp.*, 158 F.3d 415 (7th Cir.1998) (holding school district's drug testing of all students suspended for fighting violated Fourth Amendment; "special needs" exception inapplicable given feasibility of suspicion-based testing program); *Glover v. Eastern Neb. Comm. Office of Retardation*, 867 F.2d 461 (8th Cir. 1989) (holding agency's requirement that all employees working with mentally retarded submit to hepatitis and HIV tests violated Fourth Amendment given virtually non-existent risk of disease transmission from clients to employees).

(A) **Test.** Under the "special needs" exception, a search or seizure must be reasonable under all the circumstances. This determination is made by balancing the individual's privacy interests against the government's legitimate interests, as previously indicated, *supra*, at Section 3.11(A)(6),with

consideration of the context-specific factors identified below. *See Earls*, 536 U.S. at 830-38; *Acton*, 515 U.S. at 652-64.

(1) **Nature of the privacy interest affected by government action.**
   (a) Relevant factors:
   (i) Legitimate privacy expectations of the affected individual;
      - Certain populations of individuals are presumed to have reduced expectations of privacy. *See United States v. Knights*, 532 U.S. 112 (2001) (probationers); *Dunn v. White*, 880 F.2d 1188 (10th Cir. 1989) (prisoners); *People v. Adams*, 597 N.E.2d 574 (Ill. 1992) (persons convicted of certain offenses).
   (ii) Relationship between the affected individual and the government; and
   (iii) Existence of voluntary individual conduct that triggers government action.

NOTE: Probable cause may be impracticable for infectious diseases having "latent periods" in which illness is not outwardly manifested. *See People v. Adams*, 597 N.E.2d 574 (Ill.1992).

(2) **Character of the government intrusion on the individual's privacy interest.**
   (a) Relevant factors:
   (i) Manner in which the search or seizure is conducted;
   (ii) Level of confidentiality afforded private information obtained during the search or seizure; and
   (iii) Degree to which the use of private information obtained during the search or seizure is limited.

(3) **Nature and immediacy of concerns giving rise to government action and the efficacy of the action in addressing those concerns**.
   (a) Relevant factors:
   (i) Practicability of the warrant and probable cause
   (ii) Importance of government concern;
   (iii) Implicated health and safety issues;
   (iv) Need of government to prevent great harm;
   (v) Heightened government responsibility with respect to affected individual(s); and
   (vi) Degree to which government action is narrowly tailored to address concern.

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

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

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

(i) ***But* mandatory reporting requirements for medical personnel not Fourth Amendment violation even if information ultimately provided to law enforcement.** Mandatory legal and ethical reporting schemes for information obtained by medical personnel during the ordinary course of treatment do not violate the Fourth Amendment, even if that information is ultimately provided to law enforcement. *See Ferguson*, 532 U.S. at 78, 80-81.

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

(B) **Probable cause requirement**. The probable cause standard is often unsuited to circumstances outside the criminal context, such as those covered by the "special needs" exception. *See Von Raab*, 489 U.S. at 667-68. The practicability of the probable cause requirement is considered in the balancing test provided above, *supra*, at Section 3.11(A)(6)(d)(ii)(A). Specifically, the probable cause standard is often unsuited to determining the reasonableness of administrative searches when government action seeks to:

(1) Prevent the development of hazardous conditions; or

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

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

CRIMINAL LAW ANALOGY NOTE: Individualized suspicion may be impracticable in the context of infectious diseases characterized by "latent periods" in which illness is not outwardly manifested.

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

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

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

(c) Other safeguards are available to assure that the affected individual's reasonable expectation of privacy is not subject to the discretion of the official(s) in the field. *See Skinner*, 489 U.S. at 624; *T.L.O.*, 469 U.S. at 342 n.8.

(2) **Membership in suspicious class or group subject to heightened risk may be sufficient.** In cases where individualized suspicion is impracticable, membership in a suspicious class may provide sufficient justification for a search or seizure

pursuant to the "special needs" exception. *See Dunn*, 990 F.2d at 1195 ("[I]n the area of public health, this court has suggested that testing of all those within a suspicious class sometimes may be justified."); *Adams*, 597 N.E.2d at 582 (upholding mandatory HIV testing of prostitutes and noting HIV provides few articulable grounds for testing other than "categories of risk").

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

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

(1) Specific evidence of an existing violation; or

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

iv. **Pervasively regulated businesses.** Warrantless searches of certain industries are permitted based upon the theory that their extensive history of government oversight and pervasive regulation prevents those engaged in the industry from holding any reasonable expectations of privacy in their merchandise.

See New York v. Burger, 482 U.S. 692 (1987) (junkyard owners); *Donovan v. Dewey*, 452 U.S. 594 (1981) (federally regulated stone quarries); *United States v. Biswell*, 406 U.S. 311 (1972) (federally licensed firearms dealers); *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970) (federally licensed alcoholic beverage dealers); *Thacker v. Commonwealth*, 80 S.W.3d 451 (Ky. Ct. App. 2002) (sale and distribution of pharmaceuticals).

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

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

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

(3) The regulatory inspection program provides a constitutionally-adequate substitute for a warrant in terms of the certainty and regularity of its application (i.e., the regulatory scheme performs the two basic functions of a warrant: (i) it advises the owner of the premises that a search of defined scope is being made pursuant to the law and (ii) it limits the discretion of the inspecting officers). *See Burger*, 482 U.S. at 702-03; *Thacker*, 80 S.W.3d 451.)

(B) **Exception limited to businesses in "unique circumstances."** The pervasively regulated business exception to the warrant requirement is narrowly construed; the mere fact that a business is involved in interstate commerce or subject to federal regulation and/or supervision is insufficient to trigger the exception. Rather, the critical element is the "long tradition of government supervision, of which any person who chooses to enter such a business must already be aware…. The businessman in a regulated industry in effect consents to the restrictions placed upon him." *Barlow's Inc.*, 436 U.S. at 313; *see also Burger*, 482 U.S. at 704-07 (noting "extensive" provisions regulating automobile junkyard businesses and existence of junk shop regulations for over 140 years). *Cf. Wright*, 371 N.E.2d at 1302 (upholding

warrantless inspection of massage parlor, noting "[i]t is a business which is being inspected and one which has a history of regulation, albeit not as extensive as the liquor or firearms industries, and as a member of a regulated business, a licensee does impliedly consent to inspections at any and all reasonable times and places by obtaining a license" (internal citations omitted)).

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

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

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

(3) Police officers, rather than administrative inspectors, conduct the inspections. *Burger*, 482 U.S. at 71217; *Ferguson*, 532 U.S. at 83 n.21. *But see United States v. Johnson*, 994 F.2d 740, 742-43 (10th Cir. 1993) (holding warrantless inspection of taxidermy shop initiated by and participated in by federal antismuggling agent violated Fourth Amendment and pervasively regulated business exception did not apply; "an administrative inspection may not be used as a pretext solely to gather evidence of criminal activity").

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

Is the use of noninvasive technology (e.g., thermal imagery) on a suspicionless basis to obtain information necessary to protect the public's health and safety permissible pursuant to this exception provided the search is appropriately limited in scope and unrelated to a criminal investigation? *Cf. Illinois v. Caballes*, 543 U.S. 405 (2005) (Ginsburg, J., dissenting) (suggesting warrantless, suspicionless use of dogs to detect explosives falls within public safety exception pursuant to reasoning of Sitz); Jon S. Vernick et al., *Technologies to Detect Concealed Weapons: Fourth Amendment Limits on a New Public Health and Law Enforcement Tool*, 31 J. L. Med. & Ethics 567, 575 (2003) (analyzing warrantless, suspicionless use of gun scanners pursuant to "public safety" exception).

inspection requirements at roadblock-type stops is permissible means of promoting highway safety); *Commonwealth v. Buchanon*, 122 S.W.3d 565 (Ky. 2003).

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

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

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

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

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

detention given threat of evidence destruction and limited nature of the intrusion).

(C) **Threat to officer safety or survival of evidence usually necessary.** A search incident to a lawful arrest must be justified by a need to ensure the arresting officer's safety or prevent the destruction of evidence. *See Marifam v. Buil*, 494 U.S. 325 (1990).

vii. **Investigatory stops based on reasonable suspicion.** A warrantless investigatory stop of an individual (and associated "pat-down") is permissible if based upon reasonable suspicion. *See Terry v. Ohio*, 392 U.S. 1 (1968); *Williams v. Commonwealth*, 147 S.W.3d 1, 5 (Ky. 2004) (warrantless stop based on reasonable suspicion).

(D) **Reasonable suspicion defined.** Reasonable suspicion exists when, based on specific and articulable facts considered together with the rational inferences drawn from those facts, there is a particularized and objective basis to suspect criminal activity. *See Terry*, 392 U.S. at 21; *Kotila v. Commonwealth*, 114 S.W.3d 226, 232 (Ky. 2003)

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

viii. **Exigent circumstances**. A warrantless search or seizure may be permissible if the delay associated with obtaining a warrant is likely to lead to injury, public harm, or the destruction of evidence. *See Mincey v. Arizona*, 437 U.S. 385, 393-94 (1978); *Tyler*, 436 U.S. at 509 (fire constitutes exigency sufficient to render warrantless entry reasonable); *Schmerber*, 384 U.S. at 770-71; *Williams v. Commonwealth*, 147 S.W.3d 1, 8 (Ky. 2003) (The probability of destruction of drugs satisfies exigent circumstances exception to the general warrant requirement); *Blankenship v. Commonwealth*, 740 S.W.2d 164, 166 (Ky. Ct. App. 1982) (assistance of unidentified, seriously injured person made officer's warrantless entry into vehicle reasonable).

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

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

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

B. ***The Kentucky Constitution***.

1. ***No unreasonable searches and seizures***.
   The people shall be secure in their persons, houses, papers and possessions, from unreasonable search and seizure; and no warrant shall issue to search any place, or seize any person or thing, without describing them as nearly as may be, nor without probable cause supported by oath or affirmation. KY. CONST. §10.
   a. **Purpose.** The purpose of Section 10 is to secure "one's right of unmolested privacy in his occupied premises and his freedom from disturbance of his possession of the articles and things forbidden by such provisions to be searched without a warrant therefore." *West v. Commonwealth* 117 S.W.2d 998, 1000 (Ky. Ct. App.1938).
   b. **Focus on reasonableness.** The focus of any analysis under Section 10 must be the reasonableness of the government action. *See Commonwealth v. Buchanon*, 122 S.W.3d 565, 568 (Ky. 2003).

2. **Analysis is analogous to Fourth Amendment claims**. With nearly identical wording, Section 10 is generally interpreted consonant with the Fourth Amendment. *Holbrook v. Knopf*, 847 S.W.2d 52, 522 (Ky. 1992). Although the Kentucky Supreme Court has stated multiple times that Section 10 provides no more protection of individual rights than does the Fourth Amendment, *LaFollette v. Commonwealth*, 915 S.W.2d 747, 748 (Ky. 1996), there have been a few occasions where the Kentucky constitutional protection exceeded that in the U.S. Constitution. *Commonwealth v. Cooper*, 899 S.W. 2d 78 (Ky. 1995). Although Kentucky courts hesitate to diverge from the parallel federal constitutional rights, they have done so where the language of the text, debates of the Constitutional Convention, history, tradition, and relevant precedent support such a decision. *See id.*

3. **Definitions.**
   a. **Search**. A search occurs when a legitimate expectation of privacy is infringed upon. *See LaFollette v. Commonwealth*, 915 S.W.2d at 748.
      i. **Expectation of privacy.** An individual's expectation of privacy in an object or area is deemed reasonable

under Kentucky law if:

(A) The individual manifests a subjective expectation of privacy in the object of the challenged search; and,

(B) The expectation is one that society is willing to recognize as reasonable. *Id.* at 749 (citing *Katz v. United States*, 389 U.S. 347, 361 (1967)).

b. **Seizure.**

i. **Of individual.** A seizure has occurred when under all circumstances surrounding the incident, the government action would lead a reasonable person to conclude that he or she was not free to go. *See Williams v. Commonwealth*, 147 S.W.3d 1, 11 (2004).

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

c. **Probable cause.** In Kentucky, the probable cause inquiry is limited to the affidavit supporting the search warrant. In testing the sufficiency of an affidavit, the "totality of circumstances" approach is utilized. Under this approach, an issuing judge is required to examine the totality of circumstances from the facts as presented in the affidavit to determine whether there is a fair probability that the evidence or information sought will be found in a particular place. *Commonwealth v. Smith*, 898 S.W.2d 496, 503 & n.2 (Ky. Ct. App. 1995) (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983) (adopted by *Beemer v. Commonwealth*, 665 S.W.2d 912, 914 (Ky. 1984) for purposes of the Kentucky Constitution)).

4. **Standing requirement.** An individual must have a legitimate expectation of privacy in the premises searched or property seized in order to challenge government action under Section 10. *Foley v. Commonwealth*, 953 S.W.2d 924, 934 (Ky. 1997).

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

5. **Reasonableness analyzed.** Government conduct is permissible if, in the totality of the circumstances, the conduct is reasonable.

a. **Two-fold inquiry**. There is a two-fold inquiry into the reasonableness of any government search:

i. Whether the search was "justified at its inception"; and

ii. Whether the search was "reasonably related in scope to the circumstances which justified the [search]." *Lamb v. Holmes*, 162 S.W.3d 902 (Ky. 2005) (quoting *Terry v. Ohio*, 392 U.S. 1 (1968)).

b. **Heightened privacy interest.** Kentucky recognizes a heightened privacy interest in an individual's home. *Colbert v. Commonwealth*, 43 S.W.3d 777 (Ky. 2001).

c. **Warrant generally required.** As a general rule, government searches and seizures must be conducted pursuant to a valid warrant to be reasonable. *Gillum v. Commonwealth*, 925 S.W.2d 189 (Ky. Ct. App. 1995).

   i. **Valid warrants.** A valid warrant must be issued by a detached and neutral magistrate. *Dixon v. Commonwealth*, 890 S.W.2d 629 (Ky. Ct. App. 1994). A valid search warrant requires a supporting affidavit alleging probable cause. *Beemer*, 665 S.W.2d at 914.

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

d. **Exceptions to warrant requirement potentially applicable in the public health context.** The general requirement that searches and seizures must be conducted pursuant to a valid warrant is subject to the same exceptions discussed, *supra*, at Section 3.11(A)(6)(d) for the Fourth Amendment. *See, e.g., Richardson v. Commonwealth*, 975 S.W.2d 932, 933 (Ky. Ct. App. 1998) (listing four exceptions).

e. **Application of totality of circumstances test for reasonableness consistent with federal law.** The test for reasonableness under Section 10 of the Kentucky Constitution is generally consistent with the principles of federal law discussed, *supra*, Section 3.11(A). *See, e.g.*, *Baker v. Commonwealth*, 5 S.W.3d 142, 145 (Ky. 1999) (requiring totality of circumstances analysis in determining reasonableness of seizure); *Davis v. Commonwealth*, 120 S.W.3d 185, 194 (Ky. Ct. App. 2003) (stating that "Whether a search is reasonable as incident to a lawful arrest depends on the particular circumstances involved.").

3.12 Search Warrants

As a general rule, the procedures for obtaining and executing search warrants in the public health context are identical to those applicable in the criminal context. *See, e.g.*, KY. R. CRIM. PROC. 13.10 (specifying process for execution of court-issued warrants). However, given the highly sensitive nature of information that may be revealed in the course of a public health search or seizure (e.g., an individual's medical information) and the unpredictable, time-sensitive nature of public health emergencies, several of these procedures require special consideration.

A. *Procurement of a Warrant After Hours*.

Kentucky law does not provide a specific statewide process for procuring a search warrant after hours. It appears, though, that each judicial district may provide for the issuance of a warrant after hours through "duty judges," judges rotating after hours shifts, see

Jefferson Cir. Ct. R. 207, and/or justices of the peace, *Richmond v. Commonwealth*, 637 S.W.2d 642, 645 n.1 (Ky.1982).

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

1. **Copy of Warrant and Affidavit Public record**. Warrants and affidavits are public records, and as such, may be inspected and copied by any person. *See* KY. REV. STAT. ANN. § 61.872; KY. R. CRIM. PROC. 13.10(2) (A copy of the search warrant and affidavit are to be retained by the issuing officer and filed by the officer with the clerk of the court to which the warrant will be returned).

a. **Exceptions.** The following public records are among those exempt from the public access requirement:

i. Public records containing information of a personal nature that if disclosed would clearly constitute an unwarranted invasion of privacy;

ii. Records of law enforcement agencies and agencies involved in administrative adjudication that were compiled in the process of detecting and investigating statutory or regulatory violations, if in revealing the information the agency's investigation would be harmed;

iii. Records that the disclosure of would be reasonably likely to threaten the public safety by exposing vulnerability in preventing, protecting against, mitigating, or responding to a terrorist attack. KY. REV. STAT. ANN. § 61.878.

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

3.20 SEARCHES AND INSPECTIONS OF PREMISES

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

3.21 Inspections to Prevent and Contain Infectious Diseases

A. ***Right to Enter Premises to Prevent Spread of Disease.***

Authority is given to local health departments and the Cabinet for Health and Family Services to inspect "any premises that they have reasonable grounds to believe are in a condition conducive to the spread of any communicable disease." This broad allocation of power does not include any explicit provisions to protect the individual rights of property owners or persons affected found on the inspected premises (*e.g.*, notice, warrant). 902 KAR 2:030.

B. ***Right to Inspect for Purposes of Enforcing Public Health Laws.***

In Kentucky, personnel of the Cabinet for Health and

Family Services have the right to enter any premises whenever necessary to inspect and investigate in the enforcement of the public health laws. KY. REV. STAT. ANN. § 211.220. The statute discusses the proper manner of service of process, but does not provide any other explicit limitations on inspectors.

3.22 Food, Drugs, and Cosmetics Inspections

A. ***Right to Enter and Inspect Certain Commercial Buildings and Vehicles.*** The Cabinet for Health and Family Services may inspect at all reasonable times any factory, warehouse or other establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed or held for sale, or are held after receipt in commerce, or to enter any vehicle being used to transport or hold those same types of products. KY. REV. STAT. ANN. § 217.155.

1. **Publication of Reports.** The Cabinet for Health and Family Services may publish reports of all judgments, decrees, and court orders rendered under the Food, Drug and Cosmetic Act. KY. REV. STAT. ANN. § 217.165.
2. **Dissemination of Information.** The Cabinet may also disseminate information regarding food, drugs, devices, and cosmetics necessary in the interest of public health and protection against consumer fraud. KY. REV. STAT. ANN. § 217.165.

B. ***Right to Inspect Dwellings***. Local health departments and the Cabinet for Health and Family Services may make sanitary and health inspections to ensure public health. KY. REV. STAT. ANN. § 212.245; 902 KAR 2:030 (Cabinet for Health and Family Services and local health department authority to inspect regarding causes and sources of disease); KY. REV. STAT. ANN. § 211.220 (Cabinet for Health and Family Services power to inspect to enforce public health laws).

3.23 Food Establishment Inspections

A. ***"Food Establishment" Defined.*** Food establishment includes "[e]very building, room, enclosure or premises occupied, used or maintained for the preparation, manufacture, packing, storage, sale or distribution of any food intended for sale." KY. REV. STAT. ANN. § 217.280.

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

1. Be properly and adequately lit; drained, plumbed, and ventilated, (KY. REV. STAT.ANN. § 217.280);

2. Be kept sanitary as described in section 217.290 of the Kentucky Revised Statutes;
3. Maintain adequate, sanitary toilet rooms and lavatories. KY. REV. STAT. ANN. § 217.320.

C. ***Right to Enter and Inspect Food Establishments.*** Officials in charge of enforcing the pure food laws, the Cabinet for Health and Family Services, local health officers, and agents of all these organizations, may enter any building, room, enclosure, or premises suspected of being occupied or used for the preparation or manufacture for sale, or the storage, sale, distribution, or transportation of food. KY. REV. STAT. ANN. § 217.380. Upon entering, the agent/s may inspect:

1. The premises;
2. The utensils;
3. The fixtures;
4. The furniture;
5. The machinery. *Id.*

D. ***Procedures Upon Discovery of Violations.*** If, upon inspection of a food establishment, if any violations are found or it is found that the preparation, manufacture storage, sale, distribution, or transportation of food is being carried out in a manner detrimental to the health of the employees or to the character or quality of the food, the agent/agents must report the conditions and violations to the chief pure food official, the Secretary of Health and Family Services, or the chief local health officer. KY. REV. STAT. ANN. § 217.380(2).

1. **Order of abatement.** The officer will then issue a written order to the violator to abate the violation or to make changes necessary for abatement.
   a. Notice of the order may be served by personal delivery or certified mail. KY. REV. STAT. ANN. § 217.380(3).

2. **Hearing.** The violator has the right to appear in person or by attorney before the issuing officer within the time allotted in the order and is given an opportunity to be heard and show why the order should not be obeyed. KY. REV. STAT. ANN. § 217.380(3).

3. **Failure to abate**. If any person fails to comply with the order, when no hearing is demanded, or with the final order after a hearing, the violator will be prosecuted for applicable fines and penalties. KY. REV. STAT. ANN. § 217.380(3).

3.30 SEARCHES OF PERSONS

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

3.31 Procurement of Physical Evidence from an Individual's Body

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

A. ***Types of Bodily Intrusions Deemed Searches.*** Kentucky law has recognized the following bodily intrusions as searches subject to the protections of the Fourth Amendment of the United States Constitution and Section 10 of the Kentucky Constitution:

1. Taking a urine sample;
2. Taking a blood sample;
3. Taking a breath sample;
4. Taking a saliva sample. *See Speers v. Commonwealth*, 828 S.W.3d 638, 641 (Ky. 1992).

3.32 Medical Testing

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

1. **Testing of individuals.** Testing designed to detect HIV infection may be performed if:
   a. The individual has given consent to be tested;
   b. The individual has signed a general consent form for the performance of medical procedures, which form instructs the patient that such test could be ordered by the doctor for diagnostic purposes while the general consent is in effect;
   c. The test is ordered during an emergency situation in which prior informed consent cannot reasonably be obtained;
   d. A court has ordered an individual to submit to testing under demonstration of compelling need for the test results which cannot be accommodated by other means. In assessing compelling need the court must weigh the privacy interest of the individual to be tested against

the public interest in obtaining test results. KY. REV. STAT. ANN. §§ 214.181(5)(c)(9)(a), 214.625(5)(c)(10)(a);

e. The individual is convicted of prostitution or procuring another to commit prostitution under KY. REV. STAT. ANN. § 529.020;

f. The individual is convicted of a crime containing sexual intercourse or sexual contact as an element. KY. REV. STAT. ANN. § 510.320(3).

2. **Disclosure of test information from HIV testing.** Because information from HIV testing is confidential in Kentucky, KY. REV. STAT. ANN. § 214.420(2), neither the identity of an individual tested nor test results that would permit the individual tested to be identified may be disclosed to anyone but the specific persons listed in KY. REV. STAT. ANN. § 214.181(5)(c) , KY. REV. STAT. ANN. § 214.420(3), and KY. REV. STAT. ANN. § 214.625(5)(c). Whenever a permitted disclosure is made it must be accompanied by a written notice regarding confidentiality. KY. REV. STAT. ANN. § 214.181(5).

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

3. **Penalty for disclosure.** Intentionally violating disclosure restrictions in KY. REV. STAT. ANN. § 214.181(5)(c) and KY. REV. STAT. ANN. § 214.625(5)(c) is a Class A misdemeanor.

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

1. **Testing of pregnant women for syphilis.** A physician and every other person permitted by law to attend a pregnant woman must as soon as he or she has reasonable grounds to believe the woman is pregnant obtain a blood specimen from the woman to be delivered to the laboratory of the Cabinet for Health and Family Services or a laboratory approved by the Cabinet for syphilis testing. KY. REV. STAT. ANN. § 214.160(1).

   a. **Deadline for reporting syphilis.** Every blood specimen taken from a pregnant woman for syphilis testing may be labeled when given to the laboratory for testing. The laboratory must report any positive tests to the Cabinet for Health and Family Services not later than one (1) week after the examination is made. KY. REV. STAT. ANN. § 214.170.

2. **Testing of pregnant women for hepatitis B.** A physician and every other person permitted by law to attend a pregnant woman must obtain a blood specimen from the woman to be delivered to a laboratory certified by the United States Department of Health and Human Services for testing for the presence of hepatitis B. KY. REV. STAT. ANN. § 214.160(7).

3. **No warrant, probable cause, or individualized suspicion requirements and no right to refusal.**
   a. Kentucky law does not require a warrant, probable cause, or individualized suspicion to test a pregnant woman for syphilis or hepatitis B.
   b. Kentucky law does not provide a pregnant woman with a right to refuse a syphilis or hepatitis B test, even if the refusal is grounded in religious beliefs, as some states allow.

C. ***Testing of Criminal Defendants, Inmates and State Patients***.

1. **Mandatory testing.** Any of the following individuals may be forced to submit to testing for HIV, hepatitis B and C viruses, or any other disease that may be recommended for testing by the CDC:
   a. Inmate
   b. Parolee
   c. Probationer
   d. Patient or resident of any health facility operated by the state if any of his or her blood or body fluids has come in contact with the skin or unprotected clothing of one of the following:
   e. A public servant
      i. "Public servant" defined. A public servant is:
         (1) Any public officer or employee of the state or any political subdivision thereof or of any governmental instrumentality within the state; or
         (2) Any person exercising the functions of any such public officer or employee; or
         (3) Any person participating as advisor, consultant, or otherwise in performing a government function, but not including witnesses; or
         (4) Any person elected, appointed, or designated to become a public servant although not yet occupying that position.
   f. A health care professional who is licensed or certified under the laws of the state.

g. An employee of a health facility licensed under the laws of the state.
h. A victim of a crime. KY. REV. STAT. ANN. § 438.250.

2. **Test results not public.** The results of the test are to be made available to both the individual tested and the person exposed, but not made public. KY. REV. STAT. ANN. § 438.250.

3. **Sanctions for refusal to be tested.** If an individual refuses to be tested, he or she may be held in contempt of court, and will be compelled by the judge to submit to testing. KY. REV. STAT. ANN. § 438.250.

4. **Individual in state custody bears the costs of the testing.** The individual tested must pay for the costs of the testing, unless he is determined to be unable to pay for the test by the court and the Department of Corrections. KY. REV. STAT. ANN. § 438.250.

D. ***Tests/Examinations of Selected Groups***

1. **Occupations subject to state testing.** Periodic medical examinations may be required by the Cabinet for Health and Family Services or local health departments for selected occupational groups, including
   a. Barbers;
   b. Beauticians;
   c. School teachers and school employees; and
   d. Others who come into intimate contact with the public. 902 KAR 2:040.

3.41 Public Health Surveillance

There are two types of surveillance. In passive surveillance, health departments gather information about disease occurrence within a population primarily through disease reporting by hospitals, physicians, and other community sources. A discussion of Kentucky reporting requirements is provided *infra*, at Section 3.42. In active surveillance, health departments take measures to identify all cases of disease, primarily by contacting and soliciting information from physicians, hospitals, clinics, laboratories, and other sources. *See* 902 KAR 2:020.

Active surveillance is most commonly used to identify cases of infectious disease.

A. ***Kentucky Health Data Collection.*** Kentucky law requires the Cabinet for Health and Family Services to collect, analyze, and disseminate information on the cost, quality, and outcomes of health services provided by health facilities and healthcare providers in the state.

1. **Purpose.** The Cabinet is to make every effort to make health data findings in order to educate consumers, providers, and state and local leaders in health policy for the purpose of improving patient morbidity and mortality outcomes.
2. **Health data to be collected**.
   a. Reports by every hospital and ambulatory facility including information regarding the charge for and quality and procedures and health services performed;
   b. Statistical information concerning the status of women's health, including patient age, ethnicity, geographic region, and payor sources;
   c. Reports by provider groups, including but not limited to:
      i. A list of medical conditions, health services, and procedures
      ii. Risk-adjusted charge, quality, and outcome information, including mortality and morbidity data;
      iii. Procedures pertaining to the confidentiality of data collected. KY. REV. STAT. ANN. § 216.2925.
3. **Secretary as chief officer**. The Secretary of the Cabinet for Health and Family Services serves as chief administrative officer for health data collection functions.
4. **No liability.** No employee of the Cabinet will be liable for any loss sustained or damage suffered as a consequence of the health data collection statutes.
5. **Confidentiality of individual medical information.** Medical information collected by the Cabinet that includes identity or could be used to identify any individual patient or member of the general public must be kept confidential and not published or otherwise released by the Cabinet.
   a. Collection of data about individuals shall be in a nonidentifying numeric form, not including the patient's name or Social Security number.
   b. All data and information collected must be kept in a secure location and under lock and key when responsible personnel are absent.

c. Only designated cabinet staff is allowed access to raw data and information. These staff members will be made aware of their duty to maintain confidentiality and must sign a statement indicating their knowledge and acceptance of penalties if confidentiality is breached. KY. REV. STAT. ANN. § 216.2927.

d. **Penalties.** An employee who violates the confidentiality of any heath data collected will be fined up to $500 for each violation and/or jailed for up to 6 months, and will be terminated from employment or removed from office.

B. ***Surveillance of carriers of specified infectious diseases.*** Carriers of cholera, amoebic dysentery, bacillary dysentery, diphtheria, typhoid, and paratyphoid fever are subject to supervision by the local health department or the Cabinet for Health and Family Services. 902 KAR 2:040(1).

C. ***Surveillance of Newborns.*** The Cabinet for Health and Family Services has the duty of reviewing all cases of newborns with HIV and those exposed to HIV perinatallly. KY. REV. STAT. ANN. § 214.650.

Surveillance: A type of observational study that involves continuous monitoring of disease occurrence within a population. *See* STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

D. ***Reporting of immunizations.***

1. **Health care providers required to report**. Any health care provider who administers or supervises an immunization may be requested or required to report information about the immunization to the Department of Public Health. All information provided must be consistent with the federal HIPAA law. KY. REV. STAT. ANN. § 214.015.
2. **Schools required to report.** Every public and private elementary or secondary school has a duty to report immunization results to its local health department. KY. REV. STAT. ANN. § 158.037.

3.42 Disease Reporting/Disease Notification

Kentucky law requires licensed health professionals and licensed health facilities to report confirmed and suspected cases of certain communicable diseases. 902 KAR 2:010. The time period in which reporting is required varies by disease and the pattern of cases, ranging from immediate reporting for dangerous, highly contagious diseases (*e.g.*, smallpox) to up to five (5) business days for reporting diseases that pose less of an immediate threat (*e.g.,* syphilis). 902 KAR 2:010.

A. ***Communicable Diseases***.

1. **Reportable communicable diseases specifically identified in Cabinet for Health and Family Services Department for Public Health regulations.** The Cabinet for Health and Family Services regulations specify those communicable diseases for which reporting is required and the time in which the report must be filed. *See generally* 902 KAR 2:010.
   a. **Other non-reportable diseases also require reporting**. Cabinet for Health and Family Services regulations mandate reporting of certain types of otherwise non-reportable diseases, such as foodborne and waterborne diseases and influenza.
   b. **Outbreaks or Unusual Public Health Occurrences.** Indications of newly-recognized infectious agents, outbreaks, epidemics, related public health hazards, or an act of bioterrorism requires immediate reporting to the local health department and the Department of Public Health. 902 KAR 2:010.

Outbreak: A sudden rise in the number of new cases of a disease during a specified period in a specified population. STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

2. **Persons and entities having duty to report.**
   a. **Health care professional**. Health care professionals, including physicians, physician assistants, emergency personnel, and nurses, as well as hospital administrators have a duty to report the diseases specified in 902 KAR 2:020.
   b. **Directors of medical laboratories.** Directors of clinical laboratories have a duty to report the same communicable diseases as health care professionals and hospitals. *See* 902 KAR 2:020(1)(5).
   c. **Heads of families**. Heads of families are required to report any reportable diseases known to exist within their families. KY. REV. STAT. ANN. § 214.010.

3. **Laboratory report satisfies obligation of hospital and laboratory.** The single report by a hospital of a condition diagnosed by a test from a hospital laboratory constitutes notification on behalf of that hospital administrator and laboratory director, but not the physician. *See* 902 KAR 2:020(1)(2)(a).

4. **To whom the report should be made**.
   a. Health care professionals and health facilities must report confirmed or suspected cases of the communicable diseases specified in the Cabinet for

Health and Family Services Department for Public Health regulations to the local health department serving the jurisdiction in which the patient resides and the Department of Public Health 902 KAR 2:020(1)(2)(a).

b. Heads of families must report to the local health department. KY. REV. STAT. ANN. § 214.010

6. **Report contents**. A report required by the Cabinet for Health and Family Services Department for Public Health regulations must contain:
   a. The patient's name, birthdate, address, county of residence, and telephone number;
   b. Clinical, epidemiological, and laboratory information pertinent to the disease. 902 KAR 2:020(1).

7. **Duties upon receipt of report**. Duties of the local health department upon receipt of a report of disease vary by disease, but generally include notifying the Public Health Department investigating the report, carrying out public health measures appropriate to the disease, or assisting the Public Health Department in carrying out such measures. 902 KAR 2:020(3).

B. ***Duty to Report Specific Communicable Diseases Under Alternate Provisions.***

1. **Cholera, amoebic dysentery, bacillary dysentery, diphtheria, typhoid, and paratyphoid fever.** Physicians and local health departments are also required to report immediately all carriers of cholera, amoebic dysentery, bacillary dysentery, diphtheria, typhoid, and paratyphoid fever to the Cabinet for Health and Family Services. 902 KAR 2:040.

2. **Tuberculosis.** Any health service, health facility, or health provider licensed by the state, and any person who has knowledge of a person with active tuberculosis must report the case to the local health department. KY. REV. STAT. ANN. § 215.590.

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

1. **Kentucky Cancer Registry.** All confirmed cases of cancer treated or diagnosed in Kentucky must be reported to the Cancer Registry. KY. REV. STAT. ANN. § 214.556(1).
2. **Entities having duty to report.** All health facilities licensed in Kentucky are subject to Kentucky's cancer reporting requirements. KY. REV. STAT. ANN. § 214.556.

3. **Confidentiality of patients' identities.** The identity of any person whose condition or treatment is reported to the Cancer Registry is confidential, except:
   a. **Sharing patient information.** The Cancer Registry may exchange patient-specific data with any other cancer control agency or clinical facility for the purpose of obtaining information necessary to complete a case record.
   b. **Contacting patients.** The Cancer Registry may contact individual patients if necessary to obtain follow-up information which is not available from a reporting health facility. KY. REV. STAT. ANN. § 214.556(5).

4. **Remainder of reported information privileged.** All the information furnished and any findings or conclusions resulting from studies is privileged information. KY. REV. STAT. ANN. § 214.556(6).

5. **Immunity for reporting health facilities.** Health facilities are not liable for complying with the requirements of this section. KY. REV. STAT. ANN. § 214.556(4).

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

1. **Kentucky birth surveillance registry.** The Department of Public Health has established the Kentucky birth surveillance registry as a system of collections of information concerning birth defects, stillbirths, and high-risk conditions.
2. **Information collected.**
   a. The department may require all licensed general acute-care hospitals to maintain and list all inpatients up to the age of five (5) years old with a primary diagnosis of a birth defect or high-risk condition. Hospitals may choose to provide this same information on their outpatients. KY. REV. STAT. ANN. § 211.660(3)(a).
   b. The department may require licensed medical laboratories to maintain medical records of all people up to age five (5) years old with a primary diagnosis of birth defect or high-risk condition. KY. REV. STAT. ANN. § 211.660(3)(b).
3. **Immunity for reporting birth defects**. No organization or entity can be held liable for providing information under this section. KY. REV. STAT. ANN. § 211.660(5).

3.43 Disease Investigation and Contact Tracing

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

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

The type of contacts screened depends upon the nature of the disease in question. Investigation of a sexually transmitted disease (e.g., HIV/AIDS) only requires screening of the sexual partners of infected individuals. In contrast, a disease spread by respiratory droplets, such as tuberculosis, may require extensive screening of all casual contacts and persons in proximity to infected individuals. *See* The Medical & Public Health Law Site, Louisiana State University Law Ctr., *Contact Tracing, at* http://biotech.law.lsu.edu/Books/lbb/x578.htm (last visited Jan. 1, 2006).

Kentucky law does not explicitly provide for contact tracing. However, due to the broad powers given to designated government entities to prevent the spread of disease, it is reasonable to assume that their powers include the duty to perform contact tracing.

A. *Investigation of Sources of Communicable Disease Infection.*

1**. Power vested in local health departments and the Cabinet for Health and Family Services.**

a. When any person has been indicated as a possible source of infection of a communicable disease, the local health department and the Cabinet for Health and Family Services are required to take the necessary steps to prevent transmission of the disease. 902 KAR 2:050. Such broad authority may implicate the tracing of contacts.

b. It is the duty of the local health departments and the Cabinet for Health and Family Services to investigate premises in a condition conducive to the spread of

communicable disease and to collect information regarding:

i. Clinical diagnosis;
ii. Reservoir;
iii. Time, place, and source of infection; and,
iv. Contacts. 902 KAR 2:030.

2**. Investigation of contacts of those infected with sexually transmitted diseases.**

a. **Duty of Cabinet for Health and Family Services and Local Department.** The duties of the Cabinet for Health and Family Services and the local health departments include the investigation of persons known or reasonably suspected of being infected, involving the power to direct medical examinations, which includes testing for the STD, and perform a possible controlled interview regarding contacts. *See* 902 KAR 2:080(1)(5) & (2).

   i. A person reasonably suspected of being infected with an STD is any person who had sexual contact with an infected person or a lab result indicating likelihood of STD. *See* 902 KAR 2:080(5)

b. **Sexually transmitted diseases capable of being rendered noninfectious**:

   i. Syphilis;
   ii. Gonorrhea;
   iii. Chancroid;
   iv. Granuloma inguinale;
   v. Nongonococcal urethritis;
   vi. Mucopurulent cervicitis;
   vii. Chlamydia trachomatis infections. 902 KAR 2:080(2).

c. **Mandatory treatment.** If found to be infected or incubating the disease the individual may be directed to undergo treatment to render him or her noninfectious or to prevent the onset of the disease. 902 KAR 2:080.

d. **Confidentiality**. All information concerning a person infected with or suspected of being infected with an STD is strictly confidential and only employees of the local health departments and the Cabinet for Health and Family Services who are assigned to STD control activities are to have access to the information. KY. REV. STAT. ANN. § 214.420(2).

B. ***Investigation of Private Property.***

1. **Power vested in local health department and Cabinet for Health and Family Services.** The Cabinet for Health and Family Services or local health department may inspect any premises that it has reasonable grounds to believe are in a condition conducive to the spread of any communicable disease (902 KAR 2:030) and may take appropriate measures to clean, disinfect, or otherwise implement control procedures on private property to prevent transmission of infection. 902 KAR 2:050.
   a. The Cabinet for Health and Family Services and local health departments also have broad discretion to institute measures necessary to prevent widespread infection or a threatened epidemic. *See* 902 KAR 2:050(1)(f).
   b. Agents and officers of local health departments may enter upon any premises when necessary for the purpose of making inspections and investigations and view evidence and interrogate persons to the extent required in the performance of their duties and responsibilities. KY. REV. STAT. ANN. § 212.245.
2. **Power vested in Cabinet for Health and Family Services.** The Cabinet for Health and Family Services is authorized to inspect and investigate any premises in the enforcement of public health laws. KY. REV. STAT. ANN. § 211.220.
3. **Due Process protections.** The Due Process protections applicable to such investigations of private property are discussed, *supra*, at Section 3.21.

3.44 Sexual Partner Notification

Although Kentucky law appears to allow for the tracing of sexual contacts, see *supra* § 3.43(A), it also provides for the confidentiality of information concerning persons infected with an STD, KY. REV. STAT. ANN. § 214.420(2), and no law explicitly allows the release of identifying information to sexual contacts. Thus, one may be investigated and tested as a sexual contact but may not be able to discover the name of the infected individual with whom he or she had intimate contact, because sexual contacts are not listed among the designated individuals to whom confidential testing information may be disclosed. *See* KY. REV. STAT. ANN. §§ 214.181(5)(c), 214.420(3), 214.625(5)(c). However, the law does allow disclosure of information necessary

to carry out sexually transmitted disease prevention and control under the rules and regulations of the Cabinet for Health and Family Services, and this broad discretion to disclose may allow for sexual partner notification by particular state agencies and agents for the prevention of disease. *See* KY. REV. STAT. ANN. § 214.420; 902 KAR 2:080. There is clearly no Kentucky law requiring people infected with communicable diseases to inform third parties of their disease status prior to engaging those third parties in personal activities scientifically proven to be associated with a high risk of disease transmission. Nor does the law require or allow physicians of those infected individuals to warn third parties who may be at risk because they are engaged in those high risk personal activities with the infected individual. *See, e.g.*, KY. REV. STAT. ANN. §§ 214.181(5)(c), 214.420(3), 214.625(5)(c). Yet, an infected person who exposes another to a communicable disease without notification of his or her infected status could be subject to criminal liability. *See Hancock v. Commonwealth*, 998 S.W. 2d 496 (1998) (man convicted of wanton endangerment for exposing a sexual partner to HIV without notifying her of his HIV positive status).

4.00 PROCEEDINGS REGARDING LIMITATIONS ON INDIVIDUAL LIBERTIES

4.10 LIMITATIONS ON THE PERSON

4.11 Isolation and Quarantine

Isolation: The separation, for the period of communicability, of known infected persons in such places and under such conditions as to prevent or limit the transmission of the infectious agent. See STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

Quarantine: The restriction of the activities of healthy persons who have been exposed to a communicable disease, during its period of communicability, to prevent disease transmission during the incubation period if infection should occur. *See* STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

Incubation period: The period of time between a disease agent's entry into an organism and the organism's initial display of disease symptoms. During the incubation period, the disease is developing. Incubation periods are disease specific and may range from hours to weeks. See STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

Isolation and quarantine are historically-recognized public health techniques used to contain the spread of infectious diseases. *See, e.g.*, *Compagnie Francaise de Navigation à Vapeur v. State Board of Health*, 186 U.S. 380 (1902) (recognizing power of states to institute quarantine to protect their citizens from infectious diseases). Isolation and quarantine require the separation of infected and potentially infected persons, respectively, from the public. This separation is achieved by confinement of the infected and/or potentially infected person(s) to treatment facilities, residences, and/or other locations, depending upon the nature of the implicated disease and the available facilities. Thus, both isolation and quarantine measures may severely curtail the freedom of persons to whom they are applied, particularly in the case of diseases characterized by prolonged incubation periods. In many cases, individuals will voluntarily undertake isolation and quarantine procedures at the request of the state or local health department, and the court will not be required to intervene. However, in those situations in which individuals are unwilling to undertake isolation or quarantine procedures or become noncompliant with procedures already in place, the court's assistance may be required. Given the inherently limiting nature of both isolation and quarantine, as well as the state of anxiety and tension likely to accompany these proceedings, the court should be attuned to the due process, economic, and logistical concerns of those potentially subject to isolation and quarantine measures and attempt to address these concerns when issuing its orders. A checklist of issues recommended for the court's consideration prior to the issuance of isolation and quarantine orders is provided, *infra*, at Section 4.11.

A. ***Powers of Isolation and Quarantine*.**

1**. In whom powers vested.**

a. **The Cabinet for Health and Family Services**. The Cabinet for Health and Family Services has the power to establish quarantine to accomplish its statutorily assigned duty of preventing the introduction and spread of diseases within the state. KY. REV. STAT. ANN. § 214.020; *see also* 902 KAR 2:030; 902 KAR 2:080.

b. **Local health departments**. A local health department has the same power to establish and maintain quarantine, etc. as the Cabinet for Health and Family Services. 902 KAR 2:030; 902 KAR 2:080.

c. **Physician.** Any physician attending a patient must, immediately upon discovering or suspecting a case of any communicable disease for which isolation procedures are specified, secure the isolation of the patient. 902 KAR 2:030(2).

NOTE: A recent study has indicated that at least some of these considerations influence the likelihood of public compliance with emergency plans intended to protect the public's health, such as administration of the smallpox vaccine. *See* R. D. Lasker, Redefining Readiness: Terrorism Planning Through the Eyes of the Public (N.Y. Acad. Med., 2004),*available at* http://www.cacsh.org/eptpp.html.

2. **Quarantine and isolation of individuals infected with tuberculosis**

a. A person infected with tuberculosis is required by Kentucky law to take "reasonable precautions" to prevent the spread of the infection to others and cannot by law refuse to submit to examination or treatment upon a reasonable request by the Cabinet or a local health department. KY. REV. STAT. ANN. § 215.550(1).

b. If an individual with active tuberculosis is suspected of failing to take the necessary precautions required by law to prevent the transmission of the infection, another person may file an affidavit attesting to this fact with the local health department of the jurisdiction where the infected person resides or where the violation occurred. KY. REV. STAT. § 215.560(1).

   i. The affidavit must state the details of the violation as completely and accurately as possible

c. The local health department must make an investigation and may order steps taken to prevent the transmission of the disease, including quarantine, isolation, examination, and and/or treatment. KY. REV. STAT. § 215.560(a).

   i. Even in the absence of an affidavit, if the local health department determines in the course of providing services

that a violation has occurred, it may issue an order. KY. REV. STAT. 215.560(1).

B. ***Court Proceedings*.**

1. **Courts of jurisdiction**.
   a. **District Court**. The District Court has jurisdiction over disease control actions brought by local health departments against those violating the provisions applicable to tuberculosis control. KY. REV. STAT. ANN. § 215.560.
   b. **Circuit Court.** Violation of quarantine and isolation orders related to any other disease are within the jurisdiction of the circuit courts. KY. REV. STAT. ANN. § 212.245.

2. **Isolation and quarantine proceedings for tuberculosis infected individuals**
   The only Kentucky statutes dealing specifically with court proceedings involving quarantine and isolation are those addressing tuberculosis. Although these statutes provide general guidance, there are important considerations, discussed in the next sub-section, that are not mentioned in the statutes but should be addressed in a court's order.
   a. If a person refuses to comply with an order of the local health department, and the need for intervention still exists, the health department must file a verified petition for relief with the District Court of the county of its principal office. KY. REV. STAT. § 215.560(2).
      i. The health department must include all pertinent details in its petition.
      ii. The defendant must be afforded the right to be represented by counsel.
      iii. The case must be handled in the same manner as a civil case in every other regard. KY. REV. STAT. § 215.560(2).
   b. If, the court finds by a preponderance of the evidence or upon admission by the defendant that the defendant is in violation of the legal requirements to take reasonable precautions, the court must enter an order that the appropriate precautions, examinations, or treatment be carried out. KY. REV. STAT. § 215.560(2).
   c. Penalties
      i. If after the order of the court, an individual is found in violation of that order, that individual is guilty of a misdemeanor and will be subject to criminal penalties. If, however, the Cabinet recommends a course of treatment

in an inpatient facility or a less restrictive treatment alternative is available, the court may prescribe a course of treatment in lieu of penalties, and place the individual on probation. If the individual fails to enter the facility, leaves the facility against medical advice, or does not adhere to a less restrictive treatment alternative the court can immediately revoke the probation. KY. REV. STAT. § 215.570.

ii. An individual who is found to be in violation of an order issued by the court must pay a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000), or may be imprisoned for not less than six (6) nor more than twelve (12) months, or both. KY. REV. STAT. § 215.570.

3. **Enforcement by the court**

a. **Injunction**.

i. **To enforce public health laws.** Under KY. REV. STAT. § 212.245(6) "any health officer may institute and maintain mandatory or prohibitory injunction proceedings in the appropriate Circuit Courts of this state to abate nuisances that are or may be a menace to the health of the people of the state or community, and to compel compliance with the public health laws of this state and the rules and regulations of the Cabinet for Health and Family Services and the county board of health…." KY. REV. STAT. § 212.245(6).

ii. **Civil Rule 65.** Even absent explicit statutory authority to apply for an injunction, health officials may seek to enforce orders under Civil Rule 65. Under the rule plaintiffs are required to show a clear right to relief as well as urgent necessity. *McCloud v. City of Cadiz*, 548 S.w.2d 158, 161 (Ky. App. 1977). Because courts have consistently recognized public health as the "most important municipal function," *Lexington Fayette County Food and Beverage Ass'n v. Lexington-Fayette Urban County Government*, 131 S.W.3d 745, 750 (Ky. 2004); *Nourse v. City of Russellville* 78 S.W.2d 761, 764 (Ky. App. 1935), and expansive statutory powers to protect the public health have been bestowed on health departments in the state, Kentucky courts are likely to take a broad view of the permissible scope of relief

that is not tied to a particular statutory provision. *Cf. Payne v. Com. Natural Resources and Environmental Protection Cabinet*, 746 S.W.2d 90 (Ky. App. 1988) (court applied broad view of statutory basis for injunction in mining case).

b. **Important considerations prior to issuance of an isolation or quarantine order.** The court should consider the following issues prior to issuing an order of isolation or quarantine. To the extent possible, these considerations should be addressed in a court's order(s).

□ Has sufficient scientific evidence been introduced to support issuance of the order? An isolation or quarantine order should only be issued when an individual appears to be suffering from a serious disease capable of being easily transmitted from person-to-person. The government entity seeking the order must show, by clear and convincing evidence, that the individual poses a risk to the public's health sufficient to necessitate deprivation of that individual's liberty. *Cf. Addington v. Texas*, 441 U.S. 418 (1979) (holding Fourteenth Amendment requires "clear and convincing" evidence standard in context of indefinite commitment of individual to a state mental hospital pursuant to state law; "In cases involving individual rights, whether criminal or civil, the standard of proof at a minimum reflects the value society places on individual liberty….We conclude that the individual's interest in the outcome of a civil commitment proceeding is of such weight and gravity that due process requires the state to justify confinement by proof more substantial than a mere preponderance of the evidence." (internal citations omitted)).

In the event the health condition at issue is a newly-emerging disease, much of this scientific information may be unknown. That scientific details may be unknown will not necessarily prevent the state from meeting the clear and convincing standard of proof, as the standard does not measure the scientific data

itself but the ability of that data to be reasonably interpreted as evidence of a public health threat justifying government action. *Cf. id.* at 429 ("[T]he factual aspects represent only the beginning of the inquiry. Whether the individual is mentally ill and dangerous to either himself or others and is in need of confined therapy turns on the *meaning* of the facts which must be interpreted by expert psychiatrists and psychologists." (emphasis in original)).

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

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

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

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

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

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

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

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

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

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

- □ Who will bear the costs associated with the individual's confinement and treatment?

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

NOTE: Kentucky's involuntary hospitalization laws provide substantial due process protections for individuals subject to their provisions. The Reference Guide recommends that the court consider these due process protections instructive in the context of isolation and quarantine, given that similar liberty interests are at stake in both types of proceedings.

4.12 Involuntary hospitalization

"Involuntary hospitalization" is a term commonly used to refer to the admittance of an individual to a hospital against his or her will.

In Kentucky, an individual suffering from mental illness as well as alcohol or other drug abuse may be involuntarily hospitalized. KY. REV. STAT. ANN. § 222.430.

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

Given the severe impact of involuntary hospitalization on an individual's liberty, the court should order the least restrictive hospitalization or treatment procedures necessary.

A. ***Requirements for Involuntary Hospitalization.*** In Kentucky, a person cannot be hospitalized against his or her will unless he or she is:

1. A present danger to self, family, or others;
2. Can reasonably benefit from treatment; and
3. Hospitalization is the least restrictive mode of treatment. KY. REV. STAT. ANN. § 202A.026.

B. ***Court Proceedings***

1. **Jurisdiction.** The District Court of the county where the person to be hospitalized resides or in which he or she is present at the time

the petition is filed has initial jurisdiction over all proceedings for the involuntary hospitalization of mentally ill persons. KY. REV. STAT. ANN. § 202A.014.

2. **Types of commitment proceedings**.
   a. **Immediate detention**.
      i. **Initiation.**
         (A) **By whom**. A peace officer may take into custody and transport to a hospital or psychiatric facility any individual who the officer has a reasonable basis for believing is:
            (1) mentally ill; and,
            (2) presents a threat to self, family, or others. KY. REV. STAT. ANN. § 202A.041.
         (B) **Written statement required**. The peace officer who transports the individual to the facility must file written documentation describing the basis for the officer's actions. Within 18 hours the individual must be evaluated by a qualified mental health professional as to whether the individual meets the criteria for involuntary hospitalization. KY. REV. STAT. ANN. § 202A.041.
      ii. **Further detention**.
         (A) **Appropriate proceedings for involuntary hospitalization must be initiated within 18 hours.** Within eighteen (18) hours the individual must be evaluated by a qualified mental health professional and the procedures for involuntary hospitalization must be initiated.
      iii. **Termination**.
         (A) **Upon determination by mental health professional.** If a qualified mental health professional finds that the individual does not meet the criteria for involuntary hospitalization, the individual must be released immediately and transported back to his or her home county. KY. REV. STAT. ANN. § 202A.041(1).
   b. **Emergency admission.**
      i. **Initiation**
         (A) **By whom**. An individual who is present at, or presented at, a hospital may be detained in an appropriate facility for not more than seventy-two (72) hours upon being admitted by an authorized staff physician. KY. REV. STAT. ANN. § 202A.031.

(B) **Certification of individual's record within twenty four (24) hours.** The staff physician who orders the involuntary emergency admission of an individual must, within 24 hours of the admission, certify the individual's records that in his or her opinion the individual should be involuntarily hospitalized.

c. **Temporary commitment.** An individual alleged to be mentally ill may be the subject of temporary commitment proceedings capable of resulting in commitment of the individual to a facility for either no more than sixty (60) days or no more that three hundred sixty days (360) days. KY. REV. STAT. ANN. § 202A.051.

i. **Initiation.**

(A) **By whom.** A petition for the involuntary hospitalization of an individual may be filed in District Court by:

(1) qualified mental health professional;
(2) peace officer;
(3) county attorney;
(4) Commonwealth's attorney;
(5) spouse, relative, friend, or guardian of the individual;
(6) any other interested person. KY. REV. STAT. ANN. § 202A.051(3).

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

(1) Petitioner's relationship;
(2) The individual's name, residence, and current location, if known;
(3) The name and residence of the individual's parents, if living and known, or the individual's legal guardian, if any and known;
(4) The name and residence of individuals' spouse, if any and known;
(5) The name and residence of the person who has custody of the individual, if any, or if no such person is known, the name and residence of a near relative, or the mention that the person is unknown;
(6) Petitioner's belief that the individual is mentally ill and dangerous, and the facts supporting the belief;
(7) If a petition seeks a three hundred sixty (360) day involuntary hospitalization, the petition must state that the individual has been hospitalized for a

period of thirty (30) days within the preceding six (6) months. KY. REV. STAT. ANN. § 202A.051(4).

ii. **Hearings required.** An individual subject to temporary commitment proceedings is entitled to hearings. KY. REV. STAT. ANN. § 202A.51.

(A) **Timing of proceedings**.

(1) **Examination of the individual by the court and review of the petition.** The court must examine the individual under oath about the petition if the petitioner is someone other than a qualified mental health professional. After examining the individual and reviewing the petition, if the court finds there is probable cause to believe that the individual should be involuntarily hospitalized, and neither the court nor any of the parties object, the court may order the individual transported to a facility, if not already there, to be evaluated by a qualified mental health professional.

(2) **Identification of hearing date upon initiation of temporary proceedings.** The court must set a preliminary hearing date within six (6) days of holding or examination. KY. REV. STAT. ANN. § 202A.071(1).

(3) **Final hearing within 21 days**. If after completion of the preliminary hearing, the court finds there is probable cause to involuntarily commit the individual, the court must order a final hearing within twenty-one (21) days from holding or examination. KY. REV. STAT. ANN. § 202A.071(2).

(a) **Venue.** Following a preliminary hearing the venue for all subsequent proceedings, including the final hearing, must be transferred to the court of the county where the individual is hospitalized, unless the court of the county or one of the parties files a motion for the court of the preliminary hearing to retain venue. KY. REV. STAT. ANN. § 202A.053.

(B) **Notice of hearing.** Adequate notice of a temporary commitment hearing, including the contents of the petition, the date and purpose of the preliminary hearing, and the name, address, and telephone number of the attorney appointed to represent the individual, must be given to:

(1) The individual;

(2) The individual's legal guardian, if any;

(3) If known, the spouse, parents, or nearest relative or friend of the individual.

(C) **Court Order.** Upon completion of the final hearing, the court can involuntarily hospitalize the individual for a period of no more than sixty (60) consecutive days from the date of the court order or three hundred sixty (360) consecutive days from the date of the court order, depending on what was requested in the petition. KY. REV. STAT. ANN. § 202A.051(11).

iii. **Termination.**

(A) **Court determination.** If the court finds that no probable cause exists, the proceedings will be dismissed and the individual must be released. KY. REV. STAT. ANN. § 202A.051(10).

3. **How hearings are conducted**.

a. **Preliminary hearing**

i. The preliminary hearing may be conducted in an informal manner;

ii. The hearing may be held in any suitable place, *e.g.*, court chambers, hospital;

iii. The individual must have the opportunity to testify, present evidence, and cross-examine witnesses testifying against him or her;

iv. The court may exclude all unnecessary persons from the hearing;

v. The individual and his or her attorney may waive the right to a preliminary hearing. KY. REV. STAT. ANN. § 202A.078(1).

b. **Final hearing**

i. The final hearing may be conducted in an informal manner;

ii. The hearing may be held in any suitable place not likely to have a negative effect on the individual's mental or physical health, *e.g.*, court chambers, hospital;

iii. The individual must have the opportunity to testify, present evidence, and cross-examine witnesses testifying against him or her;

iv. The manner of proceeding and rules of evidence applicable are the same as in a criminal proceeding, including beyond a reasonable doubt burden of proof;

v. The hearing is decided by a judge, unless a party requests a jury trial;

vi. The right to a final hearing may not be waived. KY. REV. STAT. ANN. § 202A.078(1).

4. **Outpatient option**. Following the preliminary hearing, but before the final hearing is completed, the court has the option, upon application and agreement by the parties, to send the individual to a community-based outpatient treatment program.

a. **Involuntary hospitalization proceeding not terminated.** If an individual is released for community-based outpatient treatment but not discharged by a staff physician during treatment, the proceedings against that individual for involuntary hospitalization are not terminated. The court may order the individual held at any time without notice if the court, upon being presented with an affidavit, determines that it is in the best interest of the individual and others to be held in custody pending outcome of a final hearing. KY. REV. STAT. ANN. § 202A.081(4).
b. **Final Hearing postponed.** The final hearing may be continued for up to sixty (60) days while the patient undergoes outpatient treatment. Continued outpatient treatment may be ordered for a period of up to sixty (60) days upon application and agreement of the parties. KY. REV. STAT. ANN. § 202A.081(5).

5. **Confidentiality of court records**
   a. **Court records of individual confidential**. The records from proceedings regarding involuntary hospitalization are confidential and cannot be inspected by the public. A district judge may order the disclosure of information upon written motion if he or she finds it is in the best interest of the person or of the public. KY. REV. STAT. ANN. § 202A.091(1) & (3).
   b. **Individual may have records expunged**. Following discharge from a treatment facility based on a court order denying a petition for commitment, an individual can move to have the files pertaining to the involuntary commitment proceedings expunged. KY. REV. STAT. ANN. § 202A.091(2).

6. **Rights of hospitalized patients.** Hospitalized patients have the following rights:
   a. The right to be adequately informed as to their individual treatment program;
   b. The right to assist in the planning of their treatment program;
   c. The right to refuse treatment, subject to statutory provisions;
   d. The right to maintain, keep, and use personal possessions and money;
   e. The right to receive visitors;
   f. The right to receive payment for work performed on behalf of the hospital;
   g. The right to refuse intrusive treatment, subject to statutory provisions;
   h. The right to be free from unreasonable use of seclusion and restraint;
   i. The right to seek relief from participating in their treatment plan. KY. REV. STAT. ANN. § 202A.191.

7. **Refusal by involuntary patient to treatment plan.** If an individual refuses any aspect of his or her treatment plan, a review committee made up of three qualified mental health professionals must meet with the individual and counsel, or some other representative within three (3) days of the refusal to review the patient's treatment plan and make recommendations.
   a. **Petition to District Court.** If the individual continues to refuse, the hospital may petition the District Court for a de novo review of the proposed treatment.
   b. **Hearing within 7 days.** Within seven (7) days a hearing must be conducted consistent with the individual's due process rights. Factors utilized in the court's determination:
      i. Whether the treatment is necessary;
      ii. Whether the patient is incapable of giving informed consent to the proposed treatment;
      iii. Whether any less restrictive alternative treatment exists; and,
      iv. Whether the proposed treatment carries any risk of permanent side effects. KY. REV. STAT. ANN. § 202A.196.

8. **Appeals.** Appeals from final orders or judgments regarding involuntary hospitalization are taken in the same manner as other appeals from District Court to Circuit Court. This appeal is advanced on the Circuit Court docket without motion or notice. KY. REV. STAT. ANN. § 202A.141(2).

9. **Habeas corpus.** The individual or other interested party on behalf of the individual may petition for a writ of habeas corpus requesting a writ for release from the Circuit Court. KY. REV. STAT. ANN. § 202A.151.

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

4.13 Mandatory Testing and Treatment

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

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

1. Reasonable compulsion permissible pursuant to police power. Pursuant to their police powers, state and local governments may compel an individual to submit to reasonable medical testing and treatment in order to protect the public health. *See generally Jacobson v. Massachusetts*, 197 U.S. 11, 25-30 (1905)

("According to settled principles, the police power of a state must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety….It is not, therefore, true that the power of the public to guard itself against imminent danger depends in every case involving the control of one's body upon his willingness to submit to reasonable regulations established by the constituted authorities, under the sanction of the state, for the purpose of protecting the public collectively against such danger."); *Hill v. Bickers*,188 S.W. 766, 767 (Ky. 1916) ("[T]he legislature may… by express provision, in the exercise of its police power, require or empower a local or administrative authority to require vaccination of children, as a condition of their being admitted to the public schools, although smallpox be not prevalent, or its outbreak be not apprehended.")

2. **Explicit statutory provisions.** Where the power to require testing has been expressly asserted in the public health laws, it has been noted in this Reference Guide. *See, e.g.*, KY. REV. STAT. ANN. §§ 214.181(5)(c) (HIV testing, as discussed, *supra*, at Section 3.32(A)(1)), §§ 215.560, 529.090; 902 KAR 2:040.
   a. **Deference to legislative determination.** The court should defer to legislative determinations regarding the necessity and expediency of compulsory testing and treatment provided such determinations are not arbitrary or unreasonable. *See Jacobson*, 197 U.S. at 30-31 ("We must assume that, when the statute in question was passed, the legislature of Massachusetts was not unaware of these opposing theories, and was compelled, of necessity, to choose between them. It was not compelled to commit a matter involving the public health and safety to the final decision of a court or jury. It is no part of the function of a court or a jury to determine which one of two modes was likely to be the most effective for the protection of the public against disease.").

4.14 Emergency Protective Orders for the Protection of Adults

The Kentucky Adult Protection Act, Chapter 209 of the Kentucky Revised Statutes, is specifically designed to "provide for the protection of adults who may be suffering from abuse, neglect, or exploitation, and to bring said cases under the purview of the Circuit or District Court." The definition of "adult" includes those over eighteen years of age who, because of mental or physical dysfunctioning, are "unable to manage [their] own resources, carry out the activity of daily living,

or protect [themselves] from neglect, exploitation, or a hazardous or abusive situation without assistance from others, and who may be in need of protective services." This broad definition means that the Act may be used during an epidemic to provide for those who may be unable to care for themselves due to illness. *See* KY. REV. STAT. ANN. §§ 209.010, 209.020.

A. ***Reporting Abuse, Neglect, Exploitation.***

1. When a person has reasonable cause to suspect that an adult has suffered abuse, neglect, or exploitation, that person has the duty to report or cause reports to be made to the Cabinet for Health and Family Services concerning the circumstances. KY. REV. STAT. ANN. § 209.030(2). The report may be oral or written. KY. REV. STAT. ANN. § 209.030(3).

2. A report should provide the following information, if known:
   a. The name and address of the adult, or of any other person responsible for his care;
   b. The age of the adult;
   c. The nature and extent of the abuse, neglect, or exploitation, including any evidence of previous abuse, neglect, or exploitation;
   d. The identity of the perpetrator, if known;
   e. The identity of the complainant, if possible; and
   f. Any other information that the person believes might be helpful in establishing the cause of abuse, neglect, or exploitation. KY. REV. STAT. ANN. § 209.030(4).

B. ***Investigation.***

1. **Actions subsequent to report.** Once a report is received and the Cabinet has made an initial assessment, the Cabinet is required to:
   a. Notify the appropriate law enforcement agency within twenty-four (24) hours that a report has been made and notify and document notification to the appropriate law enforcement agency if further investigation reveals emergency circumstances or a potential crime;
   b. Notify each appropriate authorized agency;
   c. Initiate an investigation of the complaint; and,
   d. Make a written report of the initial findings and recommendation for any further action. KY. REV. STAT. ANN. § 209.030(5).

2. **Access to premises and documents**. Any representative of the Cabinet may:

a. Enter any health facility or health service licensed by the Cabinet at any reasonable time to carry out the Cabinet's investigative duties. KY. REV. STAT. ANN. § 209.030(7);
b. Access financial records and mental and physical health records of the adult necessary to complete the investigation that are in the possession of any hospital, firm, financial institution, corporation, or other facility. KY. REV. STAT. ANN. § 209.030 (7).
c. Enter any private premises where any adult alleged to be abused, neglected, or exploited is located with the consent of the adult or caretaker;
d. Obtain a search warrant if the adult or caretaker does not consent to the investigation, upon a showing of probable cause that an adult is being abused, neglected, or exploited. KY. REV. STAT. ANN. § 209.030 (8).

C. ***Provision of Services with Consent.*** If through investigation it is determined that protective services are necessary, the Cabinet must provide the necessary services, unless the adult refuses. KY. REV. STAT. ANN. § 209.030 (9).

D. ***Court Ordered Protective Services in an Emergency.***
1. **Basis.** If, in an emergency, an adult lacks the capacity to consent to receive protective services, the services may be ordered by a court on an emergency basis. KY. REV. STAT. ANN. § 209.110.
   a. Services may only be ordered if:
      i. The adult is in a state of abuse or neglect and an emergency exists;
      ii. The adult is in need of protective services;
      iii. The adult lacks the capacity to consent and refuses to consent to such services; and
      iv. No person authorized by law or court order to give consent for the adult is available to consent to emergency protective services or that person refuses to give consent. KY. REV. STAT. ANN. § 209.110.
   b. The court is only permitted to order intervention which it finds to be the least restrictive of the individual's liberty and rights while consistent with his/her welfare and safety. KY. REV. STAT. ANN. § 209.100(2).

2. **Process of obtaining protective services**
   a. **Petition**. A petition entitled "In the interest of---- an adult in

need of protective services" must be filed by the Cabinet for emergency protective services in the court of the adult's residence, or if filed ex parte, the court of the county in which the adult is physically located. The Petition must be verified by an authorized representative and contain:

i. The name, age, and address of the adult in need of protective services;
ii. The nature of the disability of the adult, if determinable;
iii. The proposed protective services;
iv. The petitioner's reasonable belief and the facts supporting that belief, and
v. The facts showing the petitioner's attempts to obtain the adult's consent to the services and the outcomes of those attempts. KY. REV. STAT. ANN. § 209.110(1).

b. **Guardian ad litem**. When a petition for emergency protective services is filed, the court or the clerk must immediately appoint a guardian ad litem to represent the interest of the adult. The duties of a guardian ad litem include:

i. Personally interviewing the adult;
ii. Counseling the adult with respect to the applicable law;
iii. Informing him/her of his/her rights and providing competent representation at all proceedings; and
iv. Any other duties the court may order. KY. REV. SAT. ANN. § 209.110(2).

c. **Notice.** After the filing of a petition, a summons must be issued and served with a copy of the petition upon the adult and his/her guardian or caretaker, or, if no guardian or caretaker, the adult's guardian ad litem.

i. The petition must include notice of the time, date and location of the hearing to be held.
ii. Notice of the hearing must be given to the adult's spouse, or, if none, to his/her adult children or next of kin, unless the court is satisfied that notification would be impractical, but not given to any person who is believed to have perpetrated the abuse, neglect, exploitation.
iii. Service of the petition must be made at least three (3) days prior to the hearing for emergency protective services. KY. REV. STAT. ANN. § 209.110(3).

d. **Hearing.**

i. The hearing on the petition may be held in any county

within the judicial district or circuit served by the court.

ii. The court must give priority to the holdings of the hearings;

ii. The adult or his representative may present evidence and cross-examine witnesses; and

iii. The adult or his/her representative may petition the court to have any order for emergency protective services set aside or modified for good cause. KY. REV. STAT. ANN. § 209.110(4).

e. **Reports.** When protective services are rendered, the Cabinet must submit a report to the court describing the circumstances of the case. The report must be submitted least once or on a monthly basis if protective services are provided for a period longer than one (1) month. KY. REV. STAT. ANN. § 209.110(5).

f. **Issuing order.**

i. Upon petition by the Cabinet and once a hearing is completed, a court may issue an order authorizing the provision of emergency protective services to an adult. It must first be determined based on a preponderance of the evidence that:

(A) The adult is in a state of abuse, neglect, or exploitation and is living in conditions which present a substantial risk of death or immediate and serious physical harm to himself/herself or other;

(B) The adult is in need of protective services;

(C) The adult lacks the capacity to consent to such services; and,

(D) No person authorized by law or court order to give consent for the adult is available to consent to protective services or that person refuses to give consent. KY. REV. STAT. ANN. § 209.120(1).

ii. **Limitations to the court order.**

(A) The court is only to require the protective services, including medical and surgical care and protective placement, necessary to remove the conditions creating the emergency, and must specifically designate those services in its order.

(B) Protective services authorized by the court may only include hospitalization or protective placement if the court specifically finds that that action is necessary

and gives specific approval for such action in its order.

(C) The issuance of an emergency order must not deprive the adult of any rights except to the extent validly provided for in the order. KY. REV. STAT. ANN. § 209.120(2).

g. **Implementation of an order.** To implement an order, the court may authorize forcible entry of the premises of the adult for the purpose of rendering protective services or transporting the adult for the provision of protective services. Authorized forcible entry must be carried out by a peace officer accompanied by a representative of the cabinet. KY. REV. STAT. ANN. § 209.120(2)(d).

E. ***Termination of Protective Services***. If the court finds that protective services are no longer needed by the adult, the court must order the emergency protective services terminated. KY. REV. STAT. ANN. § 209.120(4).

G. ***Ex Parte Orders***

1. Based on an affidavit or sworn testimony of an authorized representative of the cabinet, the court may assume jurisdiction and issue an ex parte order providing that certain specific protective services be provided the adult when:
   a. It appears probable that an adult will suffer immediate and irreparable physical injury or death if protective services are not immediately provided, and
   b. It appears that the adult is incapable of giving consent. KY. REV. STAT. ANN. § 209.130(1).

2. The court may only authorize protective services specifically designed to remove the adult from conditions of immediate and irreparable physical injury or death. KY. REV. STAT. ANN. § 209.130(1).

3. A copy of the order must be served upon the adult and his/her guardian, or caretaker, unless the guardian or caretaker is believed to have perpetrated the abuse, neglect, or exploitation. KY. REV. STAT. ANN. § 209.130(1).

4. To implement an ex parte order, the court may authorize forcible entry of the premises of the adult. Authorized forcible entry must

be must be carried out by a peace officer accompanied by a representative of the cabinet. KY. REV. STAT. ANN. § 209.130(2).

5. Upon the issuance of an ex parte order, the cabinet must file a petition as soon as possible, and a hearing must be held within seventy-two (72) hours, exclusive of Saturdays and Sundays, from the issuance of an ex parte order. KY. REV. STAT. ANN. § 209.130(3).

4.15 Writs of Habeas Corpus

An individual whose liberty has been restrained pursuant to an isolation, quarantine, or commitment order may prosecute a writ of habeas corpus seeking to obtain information about the cause of the restraint and/or to be freed from the restraint. Pursuant to the Kentucky Constitution, the government may not suspend the writ of habeas corpus unless such suspension is necessary to preserve the public safety in the event of rebellion or invasion. KY. CONST. § 16. Thus, in the event of an outbreak of a naturally-occurring infectious disease, individuals subjected to isolation or quarantine orders must be granted access to the courts to file writs of habeas corpus seeking their release. The following discussion briefly addresses habeas corpus procedure, with a particular emphasis on issues germane to public health.

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

A. ***Issuance of Writ of Habeas Corpus.***

1. **Petition.** The individual must file an affidavit showing probable cause that he or she is being detained unlawfully or being imprisoned by law when he or she is entitled to bail. KY. REV. STAT. ANN. § 419.020.
2. **Court of competent jurisdiction.** Any Circuit Court judge may issue a writ on any day at any time. KY. REV. STAT. ANN. § 419.020.
3. **Issuance of writ.** The writ must be signed by the judge and require that the person having custody of or restraining the petitioner to bring the petitioner personally to a circuit judge of the county in which the petitioner is being restrained. KY. REV. STAT. ANN. § 419.030.
   a. The petitioner does not have to be brought before the court if because of sickness, appearing will endanger his or her health. KY. REV. STAT. ANN. § 419.080.
   b. The writ must require that it be returned as soon as possible. KY. REV. STAT. ANN. § 419.030.
   c. If the petitioner is not in the custody of a public officer, the

NOTE: An individual subject to compulsory testing or treatment should be provided with all pertinent information regarding those procedures.

judge issuing the writ may direct the person serving the writ to take the petitioner into custody and produce the petitioner on the return of the writ. KY. REV. STAT. ANN. § 419.050.

4. **Response to writ.** The person receiving the writ may file a response to it, stating:
   a. Whether he or she has the petitioner in custody or is in any way detaining the petitioner;
      i. If so, he or she must state the authority and cause for the detention. Any written proof of such authority must be attached to the response.
      ii. In the event that the petitioner has been transferred into another's custody, the identity of the person now restraining the petitioner and the details of the applicant's transfer must be indicated. KY. REV. STAT. ANN. § 419.070

B. ***Hearing on writ.*** The hearing on the writ is summary in nature. KY. REV. STAT. ANN. § 419.090.

C. ***Appeals.*** A party may appeal a decision made at a habeas corpus hearing to the Court of Appeals within thirty (30) days of entry of judgment. KY. REV. STAT. ANN. § 419.130.

4.20 LIMITATIONS ON PROPERTY AND ECONOMIC INTERESTS

4.21 Public Nuisances

A "public nuisance" is commonly defined as an unreasonable interference with a public right. *See, e.g.*, *Leitchfield Mercantile Co. v. Commonwealth*, 136 S.W. 639, 641 (Ky. 1911). In the context of public health, public nuisances are those actions or uses of property that significantly interfere with the public's health or safety. *See generally* RESTATEMENT (SECOND) OF TORTS § 821(B)(2)(a) (1979).

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

A. ***Nuisance Defined.***

1. **Public v. private nuisance.** Kentucky law recognizes both public and private nuisances.

a. **Public nuisance.** A "public nuisance" is an unreasonable interference with a right common to the general public. *See City of Monticello v. Rankin*, 521 S.W.2d 79 (Ky. Ct. App. 1975) (public nuisance is an invasion of a public right).

i. **Interference with property not required**. Interference with a property right is not a prerequisite to determining that a public nuisance exists. *See Erlanger Kennel Club v. Daugherty* 281 S.W. 826 (Ky. 1926) (enjoining use of property to prevent disorderliness and depression of morals); *Goose v. Commonwealth ex rel. Dummit, Att. Gen*., 205 S.W.2d 326, 328 (Ky. 1947).

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

(A) **Statutorily-defined public nuisances.** The Kentucky statutes explicitly define certain conduct and uses of property as public nuisances. For example, junked or wrecked automobiles, an accumulation of rubbish, or the excessive growth of weeds or grass are public nuisances. KY. REV. STAT. ANN. § 381.770(2).

(1) BUT NOTE the conduct or use of the property must be a nuisance in fact. *See City of Dayton v. South Covington & Cincinnati Street Railway Co.*, 197 S.W. 670, 672 (Ky. 1917) (holding that a municipality in the exercise of its police power has no authority to declare that to be a nuisance which is not such in fact**,** and it may not remove or abate a thing, after having declared it to be a nuisance, when in fact it is not a nuisance); J.E. Macy, *Constitutional Rights of Owner as Against Destruction of Building by Public Authorities*, 14 A.L.R.2d 73, 78 (2004) ("But neither at common law nor under such express power can [a governing body], by mere declaration that specified property is a nuisance, make it one when in fact it is not.").

(B) **Power to declare public nuisance vested in government entities**. The Kentucky statutes empower government entities, such as public health authorities, to determine when conduct or uses of property amount to a public nuisance. For example, the Cabinet for Health and Family Services and local boards may declare any nuisances it finds to be injurious to the health of surrounding individuals. KY. REV. STAT. ANN. § 212.210.

(C) **Judicially-defined public nuisances.** The following have been found by Kentucky courts to constitute public nuisances in abatement actions:
(1) Polluting air and water with dust, filth and waste (*Ohio River Sand Company*, 467 S.W.2d 347 (Ky. 1971)); and,
(2) Operating a noisy and smelly slaughterhouse and meat packing facility (*C. Rice Packing Co. v. Ballinger*, 223 S.W.2d 356 (Ky. 1949)).

b. **Private nuisance**. A "private nuisance" is a use of property that substantially annoys or interferes with the use and enjoyment of another's property. KY. REV. STAT. ANN. § 411.550; *see Owens Corning Fiberglass Corp. v. Parrish*, 58 S.W.3d 467, 478 (Ky. 2001) (quoting RESTATEMENT (SECOND) OF TORTS 433A).

i. **Interference with property required.** Interference with a property right is a prerequisite to determining that a private nuisance exists. *See City of Mt. Sterling v. Donaldson Baking Co*., 155 S.W.2d 237, 239 (Ky. 1941); *Barrett v. Vreeland*, 182 S.W. 605, 606 (Ky. 1916).

ii. **Factors the court should consider when determining whether use of property constitutes a private nuisance:**
(A) The lawful nature of the defendant's use of the property;
(B) The manner in which the defendant has used the property;
(C) The importance of the defendant's use of the property to the community;
(D) The influence of the defendant's use of property to the growth and prosperity of the community;
(E) The kind, volume, and duration of the annoyance or interference with the use and enjoyment of claimant's property caused by the defendant's use of property;
(F) The respective situations of the defendant and claimant; and
(G) The character of the area in which the defendant's property is located, including, but not limited to, all applicable statutes, laws, or regulations. KY. REV. STAT. ANN. § 411.550.

2. **Implicit reasonableness element**. Although the Kentucky statutes do not explicitly require conduct constituting a public nuisance to be unreasonable, Kentucky courts have incorporated reasonableness in the analysis of nuisance

law. *See Illinois Central Railroads v. Covington*, 278 S.W. 109, 110 (Ky. 1925).

3. **Nuisance per se v. nuisance per accidens**. Kentucky law recognizes that a public nuisance may be a nuisance per se or nuisance per accidens.
   a. **Nuisance per se (nuisance at law)**. Some uses of property and conduct are deemed incapable of being maintained without unreasonably interfering with the rights of others. These uses and conduct are termed "nuisances per se" and are unlawful. *See U.S. Mining and Exploration Natural Resources Co., Inc. v. City of Beattyville*, 548 S.W.2d 833, 834 (Ky. 1977).
   b. **Nuisance per accidens (nuisance in fact).** Some uses of property and conduct are deemed to unreasonably interfere with the rights of others only under certain circumstances. These uses and conduct are termed "nuisances per accidens" and must be identified with reference to their contexts, characteristics, and surroundings. *See U.S. Mining & Exploration Natural Resources Co., Inc.*, 548 S.W.2d at 834; *Reynolds v. Community Fuel Co.*, 218 S.W.2d 950, 952 (Ky. 1949) ("In determining whether or not [some use of property or conduct] is a nuisance per accidens**,** we must take in consideration the manner and place or locality in which it was run, and the effect it has upon the average person in the community with normal sensibilities….").

4. **Applicability to both individuals and municipalities.** Both individuals and municipalities are subject to liability for maintaining a nuisance. *See City of Lexington v. Cox*, 481 S.W.2d 645 (Ky. 1972) (holding municipality liable for the pollution of a creek).

5. **Equitable concept.** Nuisance law is an equitable doctrine, and, as such, individuals seeking to enjoin or abate a nuisance must do so with clean hands. *See Collins v. Pigman*, 165 S.W.2d 955, 956 (Ky. 1942).

B. *Remedies.*

1. **Summary abatement.** A state or municipal legislature may, through an act or ordinance, authorize summary abatement of a defined nuisance by a government entity or agent. *See, e.g.,* KY. REV. STAT. ANN. §§ 177.870, 224.10-410.
   a. **Activities dangerous to health and welfare or natural resources**. The Secretary of the Environmental and Public

Protection Cabinet may order the immediate abatement, without a hearing, of conditions dangerous to the health or welfare of the people of the state or resulting in or likely to result in damage to natural resources, where

i. The condition relates to the prevention and abatement powers of the secretary; and
ii. The condition appears to be prejudicial to the interests of the people of the state to delay action until an opportunity for a hearing can be provided.

b. **Hearing provided within 10 days**. As soon as possible after abatement, not to exceed ten (10) days, the secretary must provide the person or persons an opportunity to be heard and to present proof that such condition or activity does not violate the provisions of this section.
c. **Governor to be notified.** The secretary must immediately notify the Governor of any summary abatement order. KY. REV. STAT. ANN. § 224.10-410.

2. **Order of abatement**. Under certain conditions a local government, the Cabinet for Health and Family Services, or a local board of health may order abatement of conditions constituting a public nuisance and may establish ordinances to enforce public nuisance provisions.

a. **Dwellings unfit for human habitation.** A local government, upon determining that a dwelling unfit for human habitation is a public nuisance, must cite the property owner of the property with a notice of violation. KY. REV. STAT. ANN. § 82.715.
i. **Notice and hearing.** Proper notice is required before any action is taken against a public nuisance. A hearing is also required before the demolition of any unit or unsafe structure. KY. REV. STAT. ANN. § 381.770(5).
ii. **Local government must provide for appeal.** An appeal to the determination of a nuisance may be made to the District Court of the county in which the city is located within seven (7) days of the determination.
(A) **Standard of Review.** Appeals are tried de novo and the burden is on the local government to establish that a violation occurred. KY. REV. STAT. ANN. § 82.715(4).
iii. **Appeal.** The decision of the District Court may be appealed to the Circuit Court. KY. REV. STAT. ANN. § 87.715(5).

b. **Nuisances that threaten health.** The Cabinet for Health and Family Services and local boards of health, after determining that a nuisance injurious to health exists, may make a written order requiring the owner or occupant to remove the nuisance within a specified period of time. KY. REV. STAT. ANN. §§ 212.210, 212.245, 212.620(1).
   i. **Contempt.** If the order is not complied with, the Circuit Court may compel obedience by finding the violator in contempt. KY. REV. STAT. ANN. § 212.602(2).
   ii. **Injunction proceedings**. Any health officer may institute and maintain mandatory or prohibitory injunction proceedings in the appropriate Circuit Courts of the state to abate nuisances that are or may be a menace to the health of the people of the state or community, and to compel compliance with the public health laws of the state and their rules and regulations, and the orders to remedy nuisances issued by the local health department or the Cabinet. KY. REV. STAT. ANN. § 212.245.

c. **Any necessary conditions.** Pursuant to its broad power to take all actions reasonably necessary "to protect and improve the health of the people," the Cabinet for Health and Family Services may order the abatement of all conduct and uses of property that are unreasonably harmful to the public's health. KY. REV. STAT. ANN. § 211.025.

3. **Civil Actions to Enjoin and Abate Public Nuisances.** A civil action to enjoin or abate a public nuisance may be brought by an aggrieved individual or municipality.
   a. **Action by individual.** An individual whose property is injuriously affected or whose personal enjoyment is lessened by a public nuisance may maintain an action to abate or enjoin the nuisance, but this is limited to individuals suffering "special injury." Public authorities are generally responsible for addressing wrongs committed against the public as a whole. Thus, the right of an individual to maintain an action to enjoin or recover damages for a public nuisance is limited to those cases in which the individual has suffered a "special injury" distinct from that suffered by the public. *See Taylor v. Barnes*, 198 S.W.2d 297 (Ky. 1946) (dismissing for lack of special injury).
      i. **"Special injury" defined**. A "special injury" is one that is different in both kind and degree from that suffered by the general public. *See id.*
   b. **Action by municipality.** A county, city, or town in which a public nuisance exists may bring an action to abate or enjoin

the nuisance. *See, e.g.*, *City of Pineville v. Pineville Bridge Co.*, 300 S.W. 659 (Ky. 1918) (enjoining the maintenance of a tollgate and the collecting of tolls to a cross bridge).

4. **Destruction v. abatement**. Destruction of property causing or constituting a public nuisance is permissible when:
   a. Destruction of property is necessary to protect the public health and safety of the community, such as preventing the spread of fire or pestilence. *City of Paducah v. Hook Amusement Co.*, 77 S.W.2d 383, 384 (Ky. 1934) (citing *City of Corbin v. Hays*, 50 S.W.2d 31, 32 (Ky. 1932)); *Polsgrove v. Moss*, 157 S. W. 1133, 1136 (1913) ("In the exercise of the police power by the city, property which is a menace to public safety or health may be destroyed without compensation when this is necessary to protect the public, but the public necessity is the limit of the right."); or,
   b. When considering the value of the property, the nuisance cannot be remedied at a reasonable cost. *Polsgrove*, 157 S.W. at 1136.

5. **Property owner not entitled to financial compensation for nuisance abatement.** The abatement or destruction of property deemed a nuisance is an exercise of the government's police powers to enforce a use restriction inherent in the owner's property title and not a taking. As such, the owner of property abated or destroyed as a nuisance is not entitled to financial compensation from the government. *See Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1029 (1992) ("Any limitation [that prohibits all economically beneficial use of land] cannot be newly legislated or decreed (without compensation), but inheret in the title itself, in the restrictions that background principles of the State's law of property and nuisance already place upon land ownership. A law or decree with such an effect must, in other words, do no more than duplicate the result that could have been achieved in the courts – by adjacent landowners or other uniquely affected persons) under the State's law of private nuisance, or by the State under its complementary power to abate nuisances that affect the public generally…."); *Mugler v. Kansas*, 123 U.S. 623, 668-69 (1887) ("The exercise of the police power by the destruction of property which is itself a public nuisance, or the prohibition of its use in a particular way, whereby its value becomes depreciated, is very different from taking property for public use, or from depriving a person of his property without due process of law. In the one case, a nuisance only is abated; in

the other, unoffending property is taken away from an innocent owner."); *see City of Louisville v. Thompson*, 339 S.W. 2d 869 (Ky. 1960) ("A valid exercise of the police power resulting in expense or loss of property is not a taking of property without due process of law or without just compensation, nor does it abridge the equal protection clause of the 14th amendment," citing *Polsgrove*, 157 S.W. at 1136).

4.22 Government Takings

No person shall … be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. U.S. CONST. amend V. *"[N]or shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him."* KY. CONST. § 13.

As a general rule, the government must pay compensation for private property taken for public use pursuant to its power of eminent domain. This constitutional guarantee is "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104,123-24 (1978) (internal citations omitted). As mentioned *supra*, at Section 4.21(B)(5), this rule does not apply to certain exercises of the government's police power. Decisions of the United States Supreme Court indicate, however, that this is not an absolute rule. Some exercises of the police power, particularly those that entail extensive regulation of private property, may be subject to the compensation rule. *See, e.g., Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1014 (1992) ("If, instead, the uses of private property were subject to unbridled, uncompensated qualification under the police power, the natural tendency of human nature would be to extend the qualification more and more until at last private property disappeared." (internal citations omitted)). These distinctions are addressed in more detail, *infra*, at Section 4.22(B).

A. *Taking Defined*.

1. **Takings Per Se.** There are two types of government use of private property considered takings per se, entitling the property owner to compensation without a case-specific inquiry:

   a. **Physical invasion.** Regulations that compel a property owner to suffer a physical invasion of his or her property, no mater how minute, constitute a taking. *See Lucas*, 505 U.S. at 1015; *see Bader v. Jefferson County*, 119 S. W.2d

870, 871 (Ky. 1938).

b. **Permanent denial of all economically beneficial or productive use**. Regulations that permanently deny all economically beneficial or productive use of property are often referred to as a "total taking" or "confiscatory regulation." *See Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency*, 535 U.S. 302 (2002); *Lucas*, 505 U.S. at 1015-16; *Com., Natural Resources and Environmental Protection Cabinet v. Stearns Coal & Lumber Co.***,** 678 S.W.2d 378, 381 (Ky. 1984).

NOTE: To be proper, a government exercise of its eminent domain must substantially advance legitimate state interests. *See Dolan v. City of Tigard*, 512 U.S. 374, 385-389 (1994).

2. **Case-specific takings.** In those cases in which government regulation denies some, but not all, economically beneficial or productive uses of private property, a taking may nonetheless exist if the impact of the regulation on the property is sufficiently severe. *See Penn Central Transp. Co*., 438 U.S. at 136; *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922) ("[W]hile property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.").
   a. **Relevant factors.** Such determinations are highly fact-specific and necessitate consideration of at least the following factors:
      i. The economic impact of the regulation on the property owner;
      ii. The extent to which the regulation has interfered with reasonable investment-backed expectations;
      iii. The character of the governmental action;
      iv. What uses the regulation permits;
      v. Whether inclusion of the protected property was arbitrary or unreasonable; and,
      vi. Whether judicial review of the agency decision was available. *Penn Central Transp. Co.*, 438 U.S. at 136-37; *Com., Natural Resources & Environmental Protection Cabinet v. Stearns Coal & Lumber*, 678 S.W.2d 378, 381 (Ky. 1984); *see Tahoe-Sierra Pres. Council*, 535 U.S. at 330-32.
   b. **Diminution in value not alone taking.** That a regulation forces a property owner to suffer some diminution in property value is not alone sufficient to render the regulation a taking. *See Department of Highways v. Jackson*, 302 S.W.2d 373, 375 (Ky. 1957) (compensable damages derive from the loss of an actual property right, not just a depreciation in value).
   c. **Denial of most profitable use of property not alone taking.** That a regulation denies a property owner the most profitable use of his or her property is not alone sufficient to render the regulation a taking. *See Bobbie Preece*

Facility v. Com., Dept.of Charitable Gaming, 71 S.W.3d 99, 104-105 (Ky. Ct. App. 2001).

B. ***Relationship to the State's Police Powers.***

1. **Government is not obligated to compensate property owner for abatement or destruction of property pursuant to police power in cases of emergency**. State or local governments may, pursuant to their police powers, abate or destroy private property as necessary in an emergency to prevent public harm or destruction. These emergency exercises of the government's police powers do not entitle property owners to compensation. *See Lucas*, 505 U.S. at 1029, n.16; *Bowditch v. Boston*, 101 U.S. 16, 18 (1879) (destruction of building to prevent spread of fire does not entitle building owner to compensation); *Johnson v. City of Paducah*, 512 S.W.2d 514, 516 (Ky. 1974) (quoting *Polsgrove*, 157 S.W. 1133).

2. **Government must compensate property owner for per se taking pursuant to police power unless proscribed conduct or use was restriction inherent in owner's original title.** State or local governments may, pursuant to their police powers, physically invade private property or enact regulations that deprive the property owner of all economically beneficial uses of his or her property. However, such per se takings must be accompanied by compensation for the property owner unless the taking merely enforces a use restriction inherent in the owner's original title. *See Lucas*, 505 U.S. at 1026-27 ("A fortiori the legislature's recitation of a noxious-use justification cannot be the basis for departing from our categorical rule that total regulatory takings must be compensated….Where the State seeks to sustain regulation that deprives land of all economically beneficial use, we think it may resist compensation only if the logically antecedent inquiry into the nature of the owner's estate shows that the proscribed use interests were not part of his title to begin with.") *Ward v. Harding*, 860 S.W.2d 280, 289 (Ky. 1993); *Bobbie Preece Facility v. Com., Dept. of Charitable Gaming*, 71 S.W.3d 99, 105 (Ky. Ct. App. 2001).

3. **Government is, as a general rule, not obligated to compensate property owner for other regulations that affect property value for public benefit pursuant to police power.** State or local governments may, pursuant to their police power, enact regulations that restrict property use and affect property values for public benefit provided the regulations substantially advance legitimate state interests. Property owners are not entitled to compensation for losses occasioned by such regulations. *See Lucas*, 505 U.S. at 1023-24 ("The 'harmful

or noxious uses' principle was the Court's early attempt to describe in theoretical terms why government may, consistent with the Takings Clause, affect property values by regulation without incurring an obligation to compensate – a reality we nowadays acknowledge explicitly with respect to the full scope of the State's police power….[L]and-use regulation does not effect a taking if it substantially advances legitimate state interests." (internal citations omitted)); *Blancett v. Montgomery*, 398 S.W.2d 877 (Ky. 1966); *Moore v. Ward*, 377 S.W.2d 881, 885 (Ky. 1964).

a. **Judiciary ultimately assesses public nature of benefit.** Although the legislature is granted deference when exercising its police power, the judiciary must ultimately determine whether the benefits of such exercises are sufficiently public to withstand constitutional scrutiny. *See Com., Dept. of Transp., Bureau of Highways v. Knieriem*, 707 S.W.2d 340 (Ky. 1986).

b. **Examples.** The following are examples of cases in which a Kentucky court has upheld state or local regulations as valid exercises of the police power, not entitling affected property owners to compensation:

   i. Municipal ordinance banning commercial driveways along parkways (*Rieke v. City of Louisville*, 827 S.W.2d 694 (Ky. Ct. App. 1991));

   ii. Regulation and prohibition of billboards along certain highways (*Moore v. Ward*, 377 S.W.2d 881 (Ky. 1964));

   iii. Regulation of the bail bond system (*Stephens v. Bonding Ass'n of Kentucky*, 538 S.W.2d 580 (Ky. 1976)).

4. **Government must compensate harmed property owner for improper exercise of police power**. Although a government may abate or destroy private property without compensation in order to enforce use restrictions inherent in the owner's original title (*e.g.*, to abate a nuisance), compensation must be paid to property owners whose property was not injurious to the public health but was harmed or destroyed only through an improper exercise of the police power. *See Ky. Airport Zoning Com'n v. Ky. Power Co.*, 651 S.W.2d 121, 125 (Ky. Ct. App. 1983); *Com. ex rel. Dept. for Natural Resources & Environmental Protection v. Stephens*, 539 S.W.2d 303 (Ky. 1976).

NOTE: Government action that is found to be a case specific, rather than a per se, taking may nonetheless be subject to the compensation rule. Presumably, however, the fact that property rights or value were limited pursuant to a valid exercise of the police power would mitigate against a finding that the action constituted a taking. *See Penn Central Transp*. Co., 438 U.S. 104, 136 (1978), discussed *supra*, at Section 4.23(A)(2) (identifying character of governmental action as factor relevant to case specific takings analysis).

C. ***Procedures***. The Kentucky statutes provide detailed procedures that a state or local government must follow when exercising its power of eminent domain. *See* KY. REV. STAT. ANN. §§ 416.550 to 416.670. The statutes provide both general procedures for the exercise of eminent domain and specific procedures for the exercise of eminent domain by the state government, a city, or

a town for purposes of public works and construction.

1. **General procedures.** Any individual authorized to exercise the power of eminent domain pursuant to Kentucky law must comply with the procedures provided in KY. REV. STAT. ANN. § 416.570.
   a. **Offer to purchase required prior to court action.** An individual authorized to exercise the power of eminent domain must:
      i. **Offer or Agreement**. Make an offer to purchase the relevant property interest or come to some other agreement with the property owner. *See* KY. REV. STAT. ANN. § 416.550; *God's Center Foundation v. Lexington Fayette Urban County Government*,125 S.W.3d 295, 300 (Ky. Ct. App. 2002). If, after reasonable effort, the property owner cannot be found in the state or is unable to negotiate due to disability, no attempt to reach agreement is required. KY. REV. STAT. ANN. § 416.550.
      ii. **Right of entry.** Any individual authorized to exercise the power of eminent domain may enter upon any property for examination and surveying purposes. *See* KY. REV. STAT. ANN. § 416.560.

NOTE: Additional requirements for the condemnation proceedings are provided at KY. REV.STAT. ANN 16.550-670

   b. **Court Action**
      i. **Filing of petition**. A petition must be filed in the Circuit Court of the county where the property is located. The petition must contain:
         (A) A statement that the petition is being filed pursuant to eminent domain provisions of the Kentucky Revised Statutes;
         (B) Sufficient support for the petitioner's right under the law to exercise eminent domain;
         (C) A detailed description of the property and the use and occupation the petitioner intends to condemn; and
         (D) An application to the court to appoint commissioners to award compensation to the owner of the property the petitioner seeks to condemn. KY. REV. STAT. ANN. § 416.570.
      ii. **Twenty days to answer petition.** Upon filing of a petition, a summons is served on the property owner containing a statement of the award and requiring answer, if there is to be one, to be filed within twenty (20) days of service. KY. REV. STAT. ANN. § 416.600.
         (A) Answer may only address the petitioner's right to condemn the property. KY. REV. STAT. ANN. § 416.600.
      iii. **Trial by court.** If an answer is filed, the court must hear and determine whether the petitioner has a right to

condemn the property. If so, the judge issues an interlocutory judgment. If there is no answer, then the judge automatically issues the interlocutory judgment. KY. REV. STAT. ANN. § 416.610.

c. **Post-trial**.
   i. **Exception as to compensation awarded.** Parties may file an exception from the interlocutory judgment within thirty (30) days of the order in the Circuit Court, but only as to the amount of the compensation awarded by the commissioners. KY. REV. STAT. ANN. § 416.620.
   ii. **Appeals.** Appeals may be taken to the Kentucky Court of Appeals. KY. REV. STAT. ANN. § 416.620.

4.23 Sanitary Regulations

As discussed *supra*, at Section 3.22, state and local public health departments, may inspect both public buildings and private dwellings to ensure compliance with sanitary laws and regulations. *See* KY. REV. STAT. ANN. § 210.220. Kentucky law provides for certain remedies upon a finding that a building or dwelling is not in compliance with sanitary standards.

A. ***Dwellings Unfit for Human Habitation.*** If, upon inspection, public inspectors determine that a dwelling is unfit for human habitation due to the existence of an unsanitary condition likely to cause sickness among the dwelling's occupants, local government may declare the dwelling a public nuisance.
   1. **Dwellings unfit for human habitation.** A local government, upon determining that a dwelling unfit for human habitation is a public nuisance, must cite the property owner of the property with a notice of violation. KY. REV. STAT. ANN. § 82.715.
      a. **Notice and hearing.** Proper notice is required before any action is taken against a public nuisance. A hearing is also required before the demolition of any unit or unsafe structure, KY. REV. STAT. ANN. § 381.770(5), but only obtainable in other circumstances if the notice is contested. KY. REV. STAT. ANN. § 82.715.
      b. **Owner of property liable for any penalties**. The owner of the property at the time the violation occurred is liable for all fines, fees, and penalties assessed for the violation. KY. REV. STAT. ANN. § 87.715(3).
      c. **Local government must provide for appeal.** An appeal to the determination of a nuisance may be made to the

District Court of the county in which the property is located within seven (7) days of the determination. Appeals are tried de novo and the burden is on the local government to establish that a violation occurred. KY. REV. STAT. ANN. § 82.715(4).

d. **Appeal.** The decision of the District Court may be appealed to the Circuit Court. KY. REV. STAT. ANN. § 87.715(5).

B. ***Injunctions to enforce sanitation rules and regulations***. Any health officer may institute and maintain mandatory or prohibitory injunction proceedings in the appropriate Circuit Courts of the state to abate nuisances that are or may be a menace to the health of the people of the state or community, and to compel compliance with the public health laws of the state and the rules and regulations of the Cabinet for Health and Family Services and the county board of health and the orders issued by the local boards of health and the Cabinet. KY. REV. STAT. ANN. § 212.245.

4.24 Regulation and Closure of Businesses

In the event of a communicable disease epidemic, public health officials may find it necessary to limit public contact of individuals in affected communities. Neither the Kentucky statutes nor the agency regulations explicitly authorize an agency or a local board of health to close a business in order to prevent or control an epidemic. However, state and local public health authorities presumably possess such powers pursuant to the broad authority given them under the state laws. *See* KY. REV. STAT. ANN. § 211.025 (Cabinet authorized to "do all other things reasonably necessary to protect and improve the health of the people"), 902 KAR 2:030 (authorizing Cabinet for [Health and Family Service] to "[e]stablish and maintain quarantine, isolation or other measures as required by law or by administrative regulations of the Cabinet for [Health Family Services] relating to communicable disease control").

Although business owners would suffer financial losses as a result of such closings, it is unlikely an affected owner would be entitled to recover for the losses given the expansive authority of governments to regulate property for the public health, safety, and welfare, as discussed *supra*, at Section 4.22(A)-(B).

4.25 Animal Health

Animal diseases are relevant to public health for several reasons. First, some animal diseases are directly capable of causing illness in humans. For example, monkey pox is a viral disease found primarily

in rodents, but it may be transmitted from infected animals to humans. In 2003, several Americans became infected with monkey pox from their pet prairie dogs. Second, some animal diseases, although not initially transmissible to humans, may acquire this capability by mutating in certain hosts. For example, many experts believe that gene swapping between flu viruses in pigs created the highly virulent human influenza strains that led to the great flu outbreaks of the past century, including the Spanish Flu of 1918-1919 that claimed the lives of more than 20 million people worldwide (including approximately 500,000 Americans) and the 1957 Asian flu that killed approximately 70,000 Americans. Finally, disease epidemics among animals frequently lead to widespread animal death and slaughter, both of which have the potential to create nuisances and other conditions hazardous to human health. Given these public health threats, Kentucky law empowers both state and local governments to closely monitor animal health and act to prevent disease epidemics among animals within the state. *See e.g.*, KY. REV. STAT. ANN. §§ 257.030, 257.080; 902 KAR 2:020; 902 KAR 2:050.

A. ***Duties regarding animal health.*** Although the responsibilities for animal health are spread through several entities within Kentucky government, the Department of Agriculture is the primary state governmental entity responsible for animal health. KY. REV. STAT. ANN. § 246.030. Within its organizational structure are smaller units with particular duties relating to animal health, including the State Board of Agriculture and the Division of Animal Health. There are also entities outside the Department, including the Cabinet for Health and Family Services, with responsibilities that include duties related to animal health.

1. **The State Board of Agriculture**
   a. **Composition and Conduct.**
      i. The state veterinarian is the chief executive agent of the board, and has supervisory authority over all deputies, inspectors, and agents. KY. REV. STAT. ANN. § 257.230.
         (A) The board appoints the state veterinarian.
         (B) The state veterinarian must be a resident of Kentucky and a licensed graduate veterinarian who has practiced veterinary medicine continuously in Kentucky for five (5) years.
         (C) The state veterinarian serves for a term of four (4) years.
         (D) He or she is subject to removal from office by the board at any time for cause.

ii. **Membership.** The Board of Agriculture consists of eleven (11) voting members and three (3) nonvoting members. KY. REV. STAT. ANN. § 246.120.

(A) **Voting members.** The eleven (11) voting members must consist of the following qualified individuals:

(1) The Commissioner of the Department of Agriculture;

(2) The director of the agricultural experiment station;

(3) Nine (9) experienced and practical farmers or agriculturalists who are citizens of the Commonwealth appointed by the Governor, no more than five (5) of which may belong to the same political party.

(B) **Nonvoting members.** The three (3) nonvoting members are:

(1) The state president of the Future Farmers of America;

(2) The state president of the Young Farmers of America; and

(3) The state president of the 4-H Club. KY. REV. STAT. ANN. § 246.120.

iii. **Term.** Members of the Board of Agriculture are appointed for terms of four (4) years. KY. REV. STAT. ANN. § 246.120(3).

iv. **Compensation.** Members of the board receive fifty dollars ($50) per day and actual traveling expenses while attending meetings of the board. KY. REV. STAT. ANN. § 246.140.

v. **Conducting business.**

(A) **Frequency of meetings**. The Board must meet at least once every two (2) months. KY. REV. STAT. ANN. § 246.120

(B) **Quorum.** Six (6) members of the Board constitutes a quorum for the transaction of business. KY. REV. STAT. ANN. § 246.120.

b. **Authority.**

i. **General supervisory power over livestock and poultry disease control.** The duties of the Board of Agriculture include:

(A) Enforcing the statutory provisions relating to livestock and poultry disease control;

(B) Adopting and enforcing such measures as it deems necessary to improve and protect the livestock industry;
(C) Preventing, controlling, and eradicating any communicable disease of livestock;
(D) Investigating the prevalence of communicable diseases in livestock upon receipt of reports of such diseases;
(E) Issuing such literature as it deems necessary for public distribution;
(F) Giving information and instruction to farmers, breeders, and feeders of livestock, in the nature, cause, prevention, and control of communicable diseases; and
(G) Regulating the importation, sale, use, and distribution of products or materials used in the diagnosis, treatment, or prevention of livestock diseases. KY. REV. STAT. ANN. § 257.020.

ii. **Itemized powers.** The powers of the Board of Agriculture include, *inter alia*:
(A) Conducting the necessary scientific investigations relating to the cause, nature, prevention, and treatment of communicable diseases in livestock in cooperation with the experiment station;
(B) Establishing, maintaining, and enforcing such quarantine and other measures as it deems necessary in controlling the movement of livestock into, through, or within the state;
(C) Ordering and enforcing the cleaning and disinfection of premises and all articles and materials by which communicable diseases may be transmitted, and the destruction of diseased and exposed animals and all such property and materials, as may be necessary in the eradication of disease;
(D) Adopting, issuing, and enforcing such regulations as in its judgment may be necessary for the proper control of livestock and poultry diseases. KY. REV. STAT. ANN. § 257.030.

NOTE: Although Kentucky law also contains provisions for horticultural control, such as plant quarantine and destruction (see KY. REV. STAT. ANN. §§ 249.010, 249.991), these provisions are not be discussed in detail herein due to their limited impact on human health.

2. **The Division of Animal Health.** The Division of Animal Health has the authority to enforce statutory provisions applicable to poultry disease control. Any act of enforcement

must only occur after a public hearing is initiated preceded by appropriate notice. KY. REV. STAT. ANN. § 257.380.

a. The state veterinarian has the power to designate certain employees of the Division of Animal Health as peace officers for enforcing these provisions. KY. REV. STAT. ANN. § 257.490.

3. **The Cabinet for Health and Family Services.** The Cabinet for Health and Family Services is responsible for enforcing administrative regulations for the regulation and control of the detection, prevention, and control of animal diseases which are transmissible to man, and to formulate, promote, establish, and execute policies, plans, and programs. 902 KAR 2.050.

   a. **The Secretary for Health and Family Services and local health departments.** The Secretary for Health and Family Services has the authority through local health departments to promulgate administrative regulations and enforce animal control provisions related to rabies. KY. REV. STAT. ANN. § 258.075.

      i. **Powers**

         (a) Order vaccinations. KY. REV. STAT. ANN. §§ 258.035, 258.055.

         (b) Quarantine animals known or suspected of having rabies or bitten by such an animal, or animals which have bitten a human. KY. REV. STAT. ANN. § 258.085.

         (c) Test and destroy animals suspected of or known to have rabies. KY. REV. STAT. ANN. § 258.085.

         (d) Require animals to be confined to prevent the spread of disease; KY. REV. STAT. ANN. § 258.055.

      ii. **Other local health department duties.** Upon report by a veterinarian of an animal infected with a condition known to be communicable to humans and a confirmation by laboratory test, the local health department must investigate the report and carry out public measures for the control of communicable diseases appropriate to the condition and notify the Department for Public Health of the occurrence, in writing, within five (5) business days. 902 KAR 2:020.

B. ***Infectious Disease Control Among Animals***. One of the primary responsibilities of the Department of Agriculture is to prevent and

suppress outbreaks of infectious diseases among Kentucky's livestock and poultry. The Kentucky animal health laws spread the duties involved with preventing and suppressing infectious diseases among animals across several state entities, creating a dispersed system of oversight for the prevention, identification, and control of infectious diseases.

1. **Mandatory reporting.** Any person, including animal owner and veterinarian, knowing of any communicable disease of livestock must report such information to the county livestock inspector or the state veterinarian immediately. KY. REV. STAT. ANN. § 257.080.
   a. The report must be in writing and include:
      i. a description of the animal;
      ii. the name and exact post office address of the owner;
      iii. the location of the animal;
      iv. the number of susceptible animals exposed to the disease; and
      v. the number of animals that have died of the disease. KY. REV. STAT. ANN. § 257.080.

2. **Inspection by Department of Agriculture.** When the Department of Agriculture or any of its agents or employees determines through inspection or testing that any livestock is infected with a communicable disease, they may enter any premises, after reasonable notice, and remove the diseased livestock, and have the livestock destroyed or slaughtered and the owner indemnified as provided in KY. REV. STAT. ANN. §§ 257.120 to 257.150. When necessary the department or any of its agents or employees may call upon peace officers for assistance. KY. REV. STAT. ANN. § 246.210.

   a. The State Veterinarian or his or her representative has authority to enter and inspect premises after reasonable notice, for the purpose of inspecting and/or testing any cattle for contagious and communicable diseases. 302 KAR 20:030.
   b. The Division of Animal Health may access premises or vehicles for the inspections relating to disease control of poultry. KY. REV. STAT. ANN. § 257.470.

3. **Limitations on animal importation.**
   a. **Restricting transportation of livestock.** The chief livestock sanitary official may restrict the movement of livestock known to be infected with, exposed to, or

displaying symptoms of a communicable disease. 302 KAR 20:150.

i. **Owner may file for retest or redetermination**. The owner of any animal that has been restricted or limited by the chief livestock sanitary official pursuant to Section 1 of this administrative regulation may within ten (10) days after receiving notice of such restriction apply in writing to the chief livestock sanitary official for a retest or redetermination. A licensed, accredited veterinarian selected by the chief livestock sanitary official and the owner of the animal so restricted must conduct the retest or redetermination within ten (10) days after receipt of the application. If no evidence of clinical symptoms or of infection or exposure is found after the retest or redetermination then the animal's movement can no longer be restricted or limited. 302 KAR 20:150 (3).

ii. **Importation restriction by Board of Agriculture**. The Board of Agriculture may restrict importation of livestock with a communicable disease or exposed to a communicable disease. *See* KY. REV. STAT. ANN. § 257.060.

4. **Slaughter.**

a. **To prevent spread of disease**. The Board of Agriculture may, in order to prevent the spread of disease, order the destruction or slaughter of any domestic animal infected with or exposed to a communicable disease. KY. REV. STAT. ANN. § 257.110.

i. **Indemnification available.** The owner of any slaughtered animal may be indemnified in accordance with applicable regulations, and may even receive indemnity for the necessary destruction of property or material, unless:

(A) The animal was not in Kentucky for six months prior to the time of the first test (exceptions made for certain diseases);

(B) The animal belongs to the federal government or the state or any county or city;

(C) The animal was brought into Kentucky contrary to state law;

(D) The owner had any reason to believe the animal was diseased at the time of purchase or first possession; or

(E) Evidence reveals that the owner was negligent in exposing the animal to communicable diseases. KY. REV. STAT. ANN. §§ 257.120, 257.130.

ii. **Due Process**. The Board of Agriculture has authority to kill diseased animals summarily based on an ex parte decision. The Constitution does not require the owner of an animal to be given a hearing before the slaughter. *Spillman v. Beauchamp*, 362 S.W.2d 33, 35 (Ky. 1962) ("The rule is firmly established that under the police power the government may cause the summary killing of an animal believed to be diseased, without giving the owner a prior hearing. All that is required by way of due process is that the owner be given the opportunity subsequently to litigate the question of whether the animal was in fact diseased, and be provided a remedy in damages in the event it is proved that the animal was not diseased.").

5. **Slaughter of swine to prevent spread of pseudorabies**. The Department of Agriculture through the state veterinarian has the authority to depopulate and order the slaughter of swine from psuedorabies infected herds. 302 KAR 20:220(3).
   a. **Similar indemnification is available**. *See* 302 KAR 20:220(6).
   b. **Process.**
      i. **Notification.** Notification to the owner of the order of depopulation shall be hand-delivered to the owner or mailed to the owner's business address by certified mail. This notification must include test results and other appropriate documentation supporting the depopulation order.
      ii. **Appeal.** The owner has fifteen (15) days from receipt of notification of the depopulation order to appeal the order by written request to the state veterinarian stating that he or she disagrees with the order. If no appeal is received within the fifteen (15) day time period, the order of depopulation will be executed. 302 KAR 20:220(3).
      iii. **Owner may submit written arguments or request conference.** The owner may submit written arguments or may request a conference with the state pseudorabies epidemiologist and the state veterinarian within fifteen (15) days of the written request appealing the order.

(A) The owner must be notified by certified mail within seven (7) days of receipt of written arguments or

following the conference date of the state veterinarian's final ruling of the appeal.

6. **Emergency rules and orders.**
   a. **Animal health emergency**. Any county fiscal court may declare all or any portion of its county to be an epidemic area, whenever an epidemic or potential epidemic of a disease transmissible to humans and domestic animals exists or is threatened in any species of wildlife.
      i. **Fiscal court authorized to conduct control programs against wildlife.** Upon declaring an epidemic area, the fiscal court may conduct control programs against any species of wildlife including those that may be serving as reservoirs and/or vectors of any disease transmissible to human beings and/or domestic animals. These control programs may include but are not be limited to hunting, trapping, vaccination, and use of poisons.
      ii. **Other agency assistance available**. Technical and operational assistance for the programs must be made available by the Cabinet for Health and Family Services, the Department of Fish and Wildlife Resources, and the Department of Agriculture. KY. REV. STAT. ANN. § 67.082.

C. ***Nuisance Prevention.*** Several provisions of the Kentucky Revised Statutes specifically address the prevention of public nuisances involving animals. For example:

1. **Disposal of dead animals**. All dead animals must be disposed of within forty-eight (48) hours of death to prevent a nuisance. KY. REV. STAT. ANN. §§ 257.160, 263.090.
2. **Wildlife causing damage.** The Commissioner of the Department of Fish and Wildlife Resources has the authority to destroy or bring under control any wild animal, fish, or wild bird which is causing damage to people, property, or other animals or spreading diseases. KY. REV. STAT. ANN. §150.105.
3. **Roaming dogs**. Dog owners are required to exercise proper care and control of their dogs to prevent nuisances, and dogs found unaccompanied during daylight hours may be seized or destroyed. KY. REV. STAT. ANN. § 258.265.
4. **Control over domestic animals.** An animal owner is prohibited from allowing any animal in their possession infected with a communicable disease to:
   a. Run unrestricted;
   b. Expose other animals to the disease through contact;
   c. Be on or close to a public highway;

d. And except by permit from the Board of Agriculture, be shipped, driven, hauled, sold, offered for sale, traded, or given away. KY. REV. STAT. ANN. § 257.040.

4.30 LIMITATIONS ON PRIVACY

4.31 Disclosure of Medical Information and the Health Insurance Portability and Accountability Act (HIPAA)

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) contains provisions intended to protect the privacy of certain individually identifiable health information (referred to as "protected health information" (PHI)). *See* 42 U.S.C. § 1320d-2 (2005). Generally, HIPAA limits the ability of certain entities to use and disclose an individual's PHI without notifying and/or obtaining authorization from that individual. It is important to note that HIPAA contains numerous exceptions to this general rule. One of the most significant of these exceptions involves uses and disclosures of PHI for public health activities.

A. ***Applicability of HIPAA Requirements.***

1. **Covered entities.** HIPAA's privacy requirements apply to only three types of entities (referred to as "covered entities"):
   a. **Health plan:** An individual or group plan that provides or pays the cost of medical care.
   b. **Health care clearinghouse:** A public or private entity that processes or facilitates the processing of health information.
   c. **Health care provider:** A provider of medical or health services or any person or organization who furnishes, bills, or is paid for health care in the normal course of business. 45 C.F.R. §§ 160.102, 160.103.
2. **Public health departments as covered entities**. Many public health departments and agencies provide health care services and, as such, are covered entities. *See generally* KY. REV. STAT. ANN. § 212.025 (authorizing local health departments to provide health services); 52 M.M.W.R. 1-12 (Apr. 11, 2003) (available online at http://www.cdc.gov/mmwr/preview/mmwrhtml/m2e411a1.htm).
   a. **Hybrid entity status**: A public health department may designate itself as a hybrid entity and designate those healthcare providing components of its organization to which HIPAA applies. Then, the non-designated components of the public health department need not comply with HIPAA's privacy requirements. *See* 45 C.F.R. § 164.504; 52 M.M.W.R. 1-12.

B. ***Uses and Disclosures of PHI for Public Health Activities.*** A covered entity may disclose PHI for public health purposes without an individual's authorization provided such disclosures are made to:

1. A public health authority authorized by law to collect such information to prevent or control disease, injury, or disability;
   a. "**Public health authority" defined**. A "public health authority" is an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency that is responsible for public health matters as part of its official mandate." 45 C.F.R. § 164.501.
2. An official of a foreign government agency that is acting in collaboration with a public health authority;
3. A public health authority or other government authority authorized to receive reports of child abuse or neglect;
4. A person subject to the jurisdiction of the Food and Drug Administration (FDA) for the purpose of activities related to the quality, safety, or effectiveness of an FDA-regulated product or activity;
5. A person who may have been exposed to a communicable disease or is at risk of contracting or spreading a disease if the covered entity is otherwise authorized by law to notify such a person as necessary in the conduct of a public health intervention or investigation; or
6. An employer if such information is related to an employee's workplace injury or workplace medical surveillance. 45 C.F.R. § 164.512(b).

C. ***Other Permitted Uses and Disclosures of PHI.*** A covered entity may also disclose PHI without an individual's authorization for, *inter alia*:

1. Disclosures about victims of abuse, neglect, or domestic violence to a government authority authorized to receive reports of such abuse, neglect, or violence;
2. Uses and disclosures for health oversight activities, such as audits, criminal investigations, or licensing actions;
3. Disclosures for judicial and administrative proceedings in response to a court or tribunal order, subpoena, discovery request, or other lawful process;

4. Disclosures for law enforcement purposes, such as identification of a suspect, apprehension of a criminal suspect, or ascertainment of a potential victim's cause of death or injury;

5. Uses and disclosures about decedents for purposes such as identifying a deceased person or determining a cause of death;

6. Uses and disclosures for cadaveric organ, eye, or tissue donation purposes to organ procurement, banking, or transplantation organizations;

7. Uses and disclosures for public health research purposes regardless of the source of research funding;

8. Uses and disclosures to avert a serious threat to health or safety;

9. Uses and disclosures for specialized governmental functions, such as military activities, intelligence gathering, or law enforcement custodial situations;

10. Disclosures for workers' compensation; and

11. Uses and disclosures otherwise authorized by law. 45 C.F.R. § 164.512 (which includes a more detailed discussion of the requirements for these disclosures).

D. ***Preemption of State Privacy Law.***

1. **Contrary state law preempted by HIPAA.** HIPAA requirements preempt contrary provisions of state law unless:
   a. The state law serves a compelling need related to public health, safety, or welfare;
   b. The principal purpose of the state law relates to the control of any controlled substance;
   c. The state law provides more stringent privacy protections for health information than the applicable HIPAA provisions;
   d. The state law provides for the reporting of disease, injury, child abuse, birth, death, or other public health surveillance or investigation; or
   e. The state law requires health plans to report or provide access to health information for purposes of financial audits or other programmatic monitoring. 45 C.F.R. §160.203.

4.32 Disclosure of Medical Information and State Privacy Law

In general, Kentucky law provides for the confidential treatment of an individual's medical information. *See generally* KY. REV. STAT. ANN. § 61.878(1)(a) (setting general protections for personal information). Additionally, various provisions of Kentucky law require government entities and employees to maintain the confidentiality of specific medical information. Such provisions have been discussed where applicable herein and will not be further addressed in this section. *See, e.g.*, KY. REV. STAT. ANN. § 214.625 (HIV test results from pregnant women confidential, as discussed, *supra*, at Section 3.32(B)(2)); KY. REV. STAT. ANN. § 216.2927 (information collected for surveillance confidential, as discussed, *supra*, at Section 3.41(A)); KY. REV. STAT. ANN. 214.420(2) (reported sexually transmitted disease information confidential, as discussed, *supra*, at Section 3.42(A)).

4.33 Access to Public Records

As a general rule, all persons are entitled to full and complete information regarding the official actions of government agencies, officials, and employees – including those of the judicial branch. KY. REV. STAT. ANN. § 61.878. Kentucky law provides that any person may request access to inspect and copy the public records of any public agency, without stating the purpose of such request during the regular business hours of the public agency. *Id.* Such requests are often referred to as Freedom of Information Act (FOIA) requests. Information regarding the public health actions of federal agencies, officials, and employees are also subject to public disclosure requirements pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552. This general policy of public disclosure may prove problematic in the event of a public health emergency, such as an infectious disease outbreak: disclosing the identity of infected individuals subject to isolation and quarantine orders may subject them to discrimination or retaliatory activities, while disclosing the scope of government containment efforts may intensify public panic. In such situations, the government may seek to maintain the confidentiality of certain public records to protect individuals and the public at large. However, the government's ability to restrict access to public records is extremely limited. *See Hardin County v. Valentine*, 894 S.W.2d 151, 152-153 (Ky. Ct. App. 1995) (medical records are not public records).

A. ***Exceptions to General Rule of Access to All Public Records.*** Kentucky statutes specifically identify the following public records to which public access is allowed only upon order of a court of competent jurisdiction:

1. **Personal information**. Records containing information of a personal nature, and disclosure of such information would clearly constitute an unwarranted invasion of personal privacy;

2. **Records for scientific research**. Records confidentially disclosed to an agency which have been compiled and maintained for scientific research;

3. **Records that would cause an unfair commercial advantage if disclosed.** Records confidentially disclosed to an agency or required by an agency to be disclosed to it, are generally recognized as confidential or proprietary, if openly disclosed they would permit an unfair commercial advantage to competitors of the entity that disclosed the records;

4. **Business documents**. Records confidentially disclosed to an agency or required by an agency to be disclosed to it, are generally recognized as confidential or proprietary, if they are compiled and maintained:
   a. In conjunction with an application for or the administration of a loan or grant;
   b. In conjunction with an application for or the administration of assessments, incentives, inducements, and tax credits as described in Chapter 154 of the Kentucky Revised Statutes;
   c. In conjunction with the regulation of commercial enterprise;
   d. For the grant or review of a license to do business;

5. **Prospective business documents**. Public records pertaining to a prospective location of a business or industry where no previous public disclosure has been made of the business' or industry's interest in locating in, relocating within, or expanding in Kentucky, but not records pertaining to an application to agencies for permits or licenses necessary to do business or to expand business operations within the state, except under certain circumstances;

6. **Documents involved in the regulation or supervision of financial institutions.** Public records developed by an agency in conjunction with the regulation or supervision of financial institutions;

7. **Information regarding property acquisitions by agencies**. The contents of real estate appraisals, engineering or feasibility estimates and evaluations made by or for a public agency relative

to acquisition of property, until all of the property has been acquired;

8. **Testing materials**. Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination unless the exam is no longer in use;

9. **Records of law enforcement agencies**. Records of law enforcement agencies and other administrative adjudicated agencies that were compiled during the detection and investigation of violations, only if the disclosure of the information would harm the agency by revealing the identity of informants not otherwise known or by premature release of information to be used in a prospective law enforcement action or administrative adjudication;

10. **Records of historical, artistic value.** Historically, literarily, artistically, or commemoratively valuable public and private records held by the archivist of a public university, museum, or government depository from a donor or depositor other than a public agency. The exemption applies to the extent that nondisclosure is requested in writing by the donor or depositor of such records;

11. **Drafts, notes, and letters to individuals**. Preliminary drafts, notes, correspondence with private individuals, other than correspondence providing notification of final action of a public agency;

12. **Drafts of recommendations and memoranda expressing opinion and recommendations.** Preliminary recommendations, and preliminary memoranda in which opinions are expressed or policies formulated or recommended;

13. **Records prohibited form disclosure by federal law**. Public records and information which is prohibited from disclosure by federal law or regulation; and,

14. **Records prohibited form disclosure by state law.** Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly. KY. REV. STAT. ANN. § 61.878.

B. ***Accessing records process***

1. **Public agency has three days to decide.** Upon request, a public agency has three (3) days to decide whether to comply with the request and must notify the individual making the request within the three (3) day period in writing, of its decision.

2. **Written denial required.** Any denial, in whole or part, requires a statement of the specific exception authorizing the withholding and a brief explanation of how the exception applies to the record withheld. 200 KAR 1:020(6)(3).

C. ***Remedies Upon Denial of Access to Public Record.***

1. **Enforcement by Attorney General**.
   a. **Request for Attorney General review of denial**. A party may ask the Attorney General to review a public agency's denial of a request to inspect a public record by forwarding to the Attorney General a copy of the request and response. KY. REV. STAT. ANN. § 61.880(2)(a).
      i. Even if a request has not been denied, if a person feels the access to public records is being made unnecessarily difficult by the imposition of obstacles such as, the imposition of excessive fees or the misdirection of the applicant, the person can ask for a review by the Attorney General. KY. REV. STAT. ANN. § 61.880(4).
   b. **Decision by Attorney General within 20 days**. Typically, the Attorney General will review the request and denial and issue a written decision concerning the legality of the denial within twenty (20) days. However, the time period can be extended up to ten (10) more days due to unusual circumstances. KY. REV. STAT. ANN. § 61.880(2).
   c. **Appeal**. The party has thirty (30) days from the Attorney General's decision to appeal to Circuit Court. KY. REV. STAT. ANN. § 61.880(5).
2. **Enforcement by Circuit Court.** An individual who has been denied access to a requested public record by a public agency may file an action to compel access in the Circuit Court where the public agency has its principal place of business or the Circuit Court of the county where the public record is maintained to enforce open records laws. KY. REV. STAT. ANN. § 61.882.
   a. **Not required to exhaust all administrative remedies.** The individual is not required to have the Attorney General's review result in denial before taking to a Circuit Court. KY. REV. STAT. ANN. § 61.882(2).

b. **Standard of Review for Appeal.** In an appeal of an Attorney General's decision, the court must determine the matter de novo.
c. **Burden of proof on agency.** In an original action or an appeal of an Attorney General's decision, the public agency bears the burden of proof. KY. REV. STAT. ANN. § 61.882(3).
d. ***In camera* review of record permissible.** The court may view the records in controversy in camera before reaching a decision. KY. REV. STAT. ANN. § 61.882(3).
e. **Payment of costs.** If the court decides that the records were willfully withheld, the individual may be awarded costs, including reasonable attorney's fees, incurred in connection with the legal action. The court may also award up to twenty-five dollars ($25) for each day that the individual was denied the right to inspect or copy the public record to be paid by the agency responsible for the denial. KY. REV. STAT. ANN. § 61.882(5).

5.00 OPERATION OF THE COURTS AMID PUBLIC HEALTH THREATS

The conduct of judicial proceedings involving persons infected or suspected of being infected with a dangerous communicable disease will require courts to alter many of their standard procedures in order to ensure the health of court personnel and parties participating in the proceedings. For example, the court must consider whether an individual suspected of being infected with an unknown, highly contagious disease should be permitted to appear physically in the courtroom and, if not, how the proceedings will be conducted to ensure the individual adequate participation. Additional issues, including the adequacy of the individual's access to and consultation with counsel, will also challenge the court in such situations.

CRIMINAL LAW ANALOGY: Courts may face similar considerations when conducting proceedings involving particularly violent criminal defendants.

In the event of a public health emergency, such as the widespread outbreak of an infectious disease within a community, the challenges facing the courts will be greater. Court personnel, including judges and sheriffs, may themselves become ill. The court may be forced to relocate to safer and more sanitary premises. Hundreds (if not thousands) of hearings may be required to determine the validity of isolation and quarantine orders. Each of these scenarios will strain the resources of the courts and require innovative solutions that ensure the continued operation of the judicial system while respecting constitutional due process guarantees.

NOTE: An individual should not be denied the opportunity to appear in person unless reliable scientific evidence indicates: (1) the mere presence of the individual in the courtroom will jeopardize the health of court personnel, counsel, and the attending public, and (2) less extreme preventative measures (e.g., face masks) are unable to adequately protect the court.

Neither Kentucky law nor the rules of court specifically address these challenges in the context of public health emergencies. However, several generalized provisions may be invoked in such situations.

5.10 APPEARANCE OF INDIVIDUALS POSING A POTENTIAL THREAT TO PUBLIC HEALTH

5.11 Appearance by Means Other Than in Person

An individual affected by an isolation or quarantine order is entitled to attend a full hearing on the subject. *See* U.S. CONST. amend. V ("No person shall … be deprived of life, liberty, or property without due process of law…."); KY. CONST. § 14 ("All courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay."). *Cf.* KY. R. CIV. PROC. 43(1). However, an individual who is the subject of an isolation or quarantine order may be physically unable to appear in court due to illness. Alternatively, the court may be unwilling to permit an infected or potentially infected individual to appear in person because of the health threat such an individual poses to

court personnel, counsel, and the attending public. In the event an individual is not able or permitted to attend proceedings in person, the court should consider the alternative procedures that exist. Additional legislation may be needed to provide more efficient mechanisms to deal with providing due process to infected individuals and safety to others, including expanding the discretion of judges to use video and audio telecommunications.

A. ***Telephonic Proceedings.***

1. **Economical litigation**. It is within the discretion of any Kentucky trial judge presiding over a case designated part of the economical litigation docket to order any motion heard or conference held by telephone conference call among the judge and the counsel for all parties. KY. R. CIV. PROC. 91.
   a. The economical litigation docket consists of all cases falling substantially within the following categories:
      i. Contracts;
      ii. Personal injury;
      iii. Property damages;
      iv. Property rights;
      v. Termination of parental rights. KY. R. CIV. PROC. 89.

2. **Prehearing conference**. A judge of the Court of Appeals designated by the Chief Judge of the Court of Appeals or a conference attorney designated by the Chief Judge of the Court of Appeals may direct the attorneys for all parties to attend a prehearing conference, either in person or by telephone. KY. R. CIV. PROC. 76.03(9).

3. **Emergency mental hospitalization of a juvenile**. Upon the filing of a petition for emergency hospitalization of a juvenile, the court may deny the petition or issue an order authorizing the evaluation of the child in an ex parte hearing conducted by telephone. KY. REV. STAT. ANN. § 645.120.

4. **No other cases.** The Kentucky statutes do not provide judges with discretion to hold telephonic proceedings in any other cases.

NOTE: Due to the health threat posed by the out-of-court party, the ability of counsel to be "personally present" with the party will be limited. In such cases, the court will need to ensure the technology enables meaningful consultation between counsel and the out-of-court party while protecting counsel's health.

B. ***Video Telecommunications***.

Kentucky has not established a rule providing judges with the discretion to use video telecommunications in all court proceedings. Without such a rule explicitly authorizing it, it is unclear whether a judge could order this technology to be used in isolation or quarantine hearings.

C. ***Proceedings in which telecommunication has been approved for use***

1. **Child custody proceedings**. In a child custody proceeding, witnesses located in other states are allowed to be deposed or to testify by telephone, video, and other electronic means. KY. REV. STAT. ANN. § 403.818.

2. **Child Witness**. A child witness may testify, under certain circumstances when there is a compelling need, in a room outside the courtroom, while the testimony is televised within the courtroom by closed circuit equipment. Testimony of a child can also, under certain circumstances when there is a compelling need, be recorded for showing in the courtroom at a subsequent time. KY. REV. STAT. ANN. § 421.350.

3. **Certain criminal proceedings**. The Supreme Court of Kentucky has allowed arraignments to be conducted by closed circuit video technology. *Commonwealth v. Ingram*, 46 S.W.3d 569 (Ky. 2001).

5.20 PROTECTION OF COURT PERSONNEL

In the event of an outbreak of infectious disease in a community, the court may find it necessary to adopt the procedures discussed, *supra*, at Section 5.11, to ensure an individual subject to an isolation or quarantine order does not expose court personnel to the disease. In certain circumstances, such as when the outbreak has affected large numbers of persons in the community or the infectious disease is easily transmitted through airborne droplets, the court may need to limit public access to the courtroom. In extreme circumstances, the court itself may need to relocate to a non-affected area to ensure its continued operation.

NOTE: "Secret" proceedings may have a detrimental effect on the public's trust in the courts. Public cooperation will be critical to successful management of any public health emergency, and actions that undermine this cooperative spirit should be taken only when scientifically necessary.

5.21 Limiting Public Access to the Courtroom

A. Limited Access Permissible.

All acts and proceedings, other than trials, may be conducted in chambers. KY. R. CIV. PROC. 77.02(1).

1. **Questionable ability to limit trial access.** The current rules of trial procedure require that all trials be conducted in open court and contain no exception for public health threats. *See* KY. R. CIV. PROC. 77.02(1) ("All trials upon the merits…shall be conducted in open court…."); *see also* KY R. CIV. PROC. 43.04(1) ("In all trials concerning alimony or divorce; the enforcement of a lien or the satisfaction of a judgment; judicial sale; surcharge or accounting; settlement of estates; the division of land;

or the allotment of dower, the testimony shall be taken by deposition, unless the court by order or by local rule directs the testimony to be heard under oath and orally in open court. In all other trials the testimony of witnesses shall be heard under oath and orally in open court….”). Thus, under the current rules, a judge appears unable to limit public access to trials to protect the health of personnel and the public.

2. **Ability to limit media access.** Requests for media coverage, which need not be in any particular form, must be made to the judge presiding over the proceedings. SCR 1.
   a. **No specific criteria for denial.** It is reasonable to assume that a judge has authority to deny the request when appropriate. However, there are no specific criteria for the judge’s denial.

5.22 Relocation of State Actors

A. ***Relocation of Court.*** A judge may hold hearings and proceedings, except jury trials and trials upon the merits, at any place. KY. R. CIV. PROC. 77.02(1) (“All trials upon the merits, except as provided in Rule 43.04, shall be conducted in open court and, so far as convenient, in a regular courtroom. All other acts or proceedings, except jury trials, may be done or conducted by a judge in chambers without the attendance of the clerk or other court officials, and at any place either within or without the judicial district….”).

1. **Parties must consent to proceedings outside state**. A judge may not relocate the court outside the state unless all parties affected by the proceedings consent to the relocation. KY. R. CIV. PROC. 77.02(1).
   a. **Not applicable to *ex parte* hearings**. *Ex parte* hearings may be conducted outside the state without the consent of all parties. KY. R. CIV. PROC. 77.02(1).

2. **Temporary courthouse.** If the county courthouse cannot be used, a county judge/executive may rent a house not farther than a mile and one quarter from the public square or courthouse site to use as a temporary courthouse. KY. REV. STAT. ANN. § 67.160.

B. ***Relocation by Government Officials.*** In the event of an emergency local government and state government may be relocated to a temporary emergency location or locations, as needed. *See* Ky. Const. § 80; KY. REV. STAT. ANN. § 39D.010. Presumably, this includes local and state courts. *See* KY. REV. STAT. ANN. § 39D.020.

1. **Relocation by governor**. During a state emergency, the Governor may relocate the seat of government to a temporary location or locations as deemed advisable under the circumstances. KY. REV. STAT. ANN. § 39D.010. Under the Kentucky Constitution, no formal declaration of emergency is required for the Governor to convene the General Assembly at a place besides the seat of government, if the seat of government becomes unusable due to a threat from an enemy or a contagious disease. KY. CONST. § 80.
   a. **Effect on government actions.** All acts undertaken at any temporary location are valid and binding. KY. REV. STAT. ANN. §§ 39D.010, 39D.020.
   b. **Duration of relocation.** The site designated by the Governor remains the seat of government until:
      i. The Governor, by law, establishes a new location; or
      ii. The emergency ends and the seat of government is returned to its normal location. KY. REV. STAT. ANN. § 39D.010.

2. **Relocation by governing body of local government**. During a state of emergency, the governing body of any county, urban-county, charter county, or city may meet at any location within or without the political subdivision, but within the state, at the direction of the chief executive officer. Upon such meeting, the governing body must establish, by ordinance or resolution, a temporary location where all or any part of the public business may be conducted. KY. REV. STAT. ANN. § 39D.020(1).
   a. **Effect on government actions**. The governing body and subdivision officers possess and may exercise all executive, legislative, administrative, and judicial powers and functions conferred upon them by state law at the temporary location. KY. REV. STAT. ANN. § 39D.020(2).
      i. **Time-consuming formalities not mandatory.** The governing body and officers may exercise their powers and functions, except judicial, "in light of the exigencies of the emergency situation and without regard to or compliance with time consuming procedures and formalities proscribed by law and pertaining thereto." KY. REV. STAT. ANN. § 39D.020(2).

Are some due process procedures "formalities"?

5.30 PROCEEDINGS INVOLVING NUMEROUS PERSONS

In the event of an infectious disease outbreak, the courts may be called upon to issue numerous isolation and quarantine orders while

simultaneously enforcing public health orders regarding premises inspections, searches, and seizures. In a severe outbreak, the sheer number of such proceedings could overwhelm the court system. Judicial surge capacity may be obtained through several logistical and procedural measures.

5.31 Additional Judicial Personnel

A. **Additional Judges.** Under Kentucky law, authority to increase the number of judges available to hear matters in courts having original jurisdiction over public health matters (i.e., circuit courts, as discussed, *supra*, at Section 1.21(A)) is held by multiple state actors.

1. **The Chief Justice of the Kentucky Supreme Court**.
   a. **Appointment of temporary judges.** The Chief Justice may appoint active or retired justices or judges to sit in any court, besides the Supreme Court, when he or she determines it is "necessary for the prompt disposition of causes." KY. CONST. § 110(5)(b).
      i. **Compensation**. A retired justice or judge receives the amount of the difference between 1/250 of annual retirement benefits and 1/250 of the compensation provided the judicial office in which he or she is performing, but no more than one hundred fifty dollars ($150) each day of service. KY. REV. STAT. ANN. § 21A.110.
      ii. **No provision for appointment of non-judges to temporary judicial positions.** There is no provision under Kentucky state law for the appointment of lawyers, who have never been judges, to temporary judge positions.

2. **Chief Regional Circuit Court Judges**. The chief regional circuit judges may appoint current judges to fill special judge positions, but may not appoint retired judges to special judge positions. *Jacobs v. Commonwealth*, 947 S.W.2d 416 (Ky. Ct. App. 1997).

3. **The General Assembly**. The General Assembly has the power upon certification of the necessity by the Supreme Court, to increase the number of circuit judges in any judicial circuit. KY. CONST. § 112(2).

4. **The Governor**. The Governor may make appointments to fill vacancies. *See* SCR 6.00; *Regency Pheasant Run Ltd. v. Karem* 860 S.W.2d 755 (Ky. 1993) (superseded on another issue).

B. ***Appointment of other personnel.***

1. **Trial Commissioners**
   a. **Appointment.** Trial commissioners must be appointed in counties with no district judges, and can be appointed in any judicial districts when necessity is certified by the Supreme Court. KY. CONST. § 113(5); SCR 5.010.
   b. **Qualifications and terms of office**
      i. Must be a resident of the county for which he or she is appointed;
      ii. Must be an attorney if one is qualified and available at the time of such appointment;
      iii. Prior to the appointment of a non-lawyer to serve as trial commissioner, the Chief District Judge shall certify to the Chief Justice in writing that no attorney is qualified and available to serve. SCR 5.020.
   c. **Powers**. Trial commissioners have the authority of a district judge. Their duties include:
      i. Issuing search warrants and warrants of arrest in criminal cases;
      ii. Ordering physical and mental examinations of children before the juvenile court;
      iii. Issuing orders for the temporary custody of children whose welfare is threatened under emergency conditions;
      iv. Appointing executors and administrators of wills and estates, and to fix and approve bond as required;
      v. In mental health cases, conducting all preliminary proceedings relating to involuntary commitments. SCR 5.030.
   d. **Temporary assignment in another county**. A trial commissioner may be temporarily assigned by the chief judge of the district to serve in any county within the district and has the same authority in his temporary assignment as he or she had in the county of residence. SCR 5.040.

2. **Administrative assistants.** The Chief Justice of the Commonwealth is the executive head of the Court of Justice and he or she has the discretion to appoint administrative assistants. KY. CONST. § 110(5)(b).

NOTE: The appointment of additional personnel may be necessary if judges find themselves unable to sit due to illness.

5.32 Consolidation of Cases

A. ***Class Actions.*** The Cabinet for Health and Family Services and local health departments may find it expeditious to bring a judicial action to enforce isolation or quarantine orders against numerous individuals as a class action. KY. R. CIV. PROC. 23.01. If numerous orders are required, class certification may be appropriate given that similar issues of law and objections may predominate in most cases. KY. R. CIV. PROC. 23.01(a)-(b). In the event the court agrees to class certification, it should be certain to:

1. Provide the best notice practicable under the circumstances to all class members, including individual notice when through reasonable effort individuals can be ascertained (KY. R. CIV. PROC. 23.03(2));

2. Advise each member of the class, through the notice, that he or she may request to be excluded from the class (KY. R. CIV. PROC. 23.03(2)(a)); and

3. Carefully describe the members of the class when issuing orders (KY. R. CIV. PROC. 23.03(3)).

NOTE: Given the extensive intrusions upon individual liberties that isolation and quarantine may entail and the limited opportunity that class certification affords affected individuals to present their case to the court, class certification should be implemented only when no other feasible procedure exists for efficiently adjudicating all matters pending before the court.

6.00 STATE OF EMERGENCY

In recognition of the threat to public health and safety posed by emergencies and disasters of both manmade and natural causes, Kentucky law provides for emergency management procedures. *See* KY. REV. STAT. ANN. § 39A.010, *et seq.* Kentucky's emergency management procedures include, but are not limited to, the following:

- Establishment of a Division of Emergency Management (KY. REV. STAT. ANN. § 39A.010);
- Preparation of state emergency plans and preparedness efforts (KY. REV. STAT. ANN. § 39A.050);
- Provision of increased powers to the Governor and local governments (KY. REV. STAT. ANN. § 39A.100);
- Enactment of an Emergency Management Assistance Compact for the provision of equipment, personnel, and services by other states in the event of an emergency or disaster (*See* KY. REV. STAT. ANN. § 39A.950); and,
- Use of private property to cope with an emergency or disaster and compensation for such use (KY. REV. STAT. ANN. § 39A.100(1)(c)).

The provision of necessary medical and health services is included within emergency management. *See* KY. REV. STAT. ANN. §§ 39A.020, 39A.100. Thus, Kentucky's emergency management laws may affect public health practitioners and public health law. Kentucky's emergency management laws may be found in their entirety at KY. REV. STAT. ANN. §§ 39A -39D, *et seq.*

6.10 DECLARING A STATE OF EMERGENCY

6.11 When Appropriate

A. ***By Governor Upon Determination that Disaster Has Occurred or Is Imminent.*** The Governor may declare a state of emergency in the event of the occurrence or threatened or impending occurrence of any threats to public safety and the harmful effects or destruction resulting from all major hazards, including, but not limited to:

1. Severe Storms;
2. Threats to the public involving nuclear, chemical, or biological agents or weapons;
3. Acts of terrorism;
4. Emergencies caused by the spill or release of hazardous materials;
5. Mass-casualty or mass-fatality emergencies. KY. REV. STAT. ANN. § 39A.010.

B. ***By Local Official.*** The chief executive officer of a state subdivision may declare a state of emergency. KY. REV. STAT. ANN. § 39A.100.

6.12 Procedures

A. ***When Declared by Governor***.

1. **Method of declaration**. The Governor may declare that a state of emergency exists in writing. KY. REV. STAT. ANN. § 39A.100.

2. **Duration.** There is no specific provision describing how and when a state of emergency is ended.

B. ***When Declared by Local Official.***

1. **Method of Declaration.** A local chief executive officer may declare a state of emergency in writing. KY. REV. STAT. ANN. § 39A.100(2)(a).

6.20 POWERS OF GOVERNMENT DURING A DECLARED EMERGENCY

6.21 Gubernatorial Powers

A. ***Broad Powers.*** The powers of the Governor during a declared disaster emergency are extremely broad. *See* KY. REV. STAT. ANN. § 39A.100(1)(i).

B. ***Powers Relevant to Public Health Law.*** Of relevance to public health law are the Governor's powers to:

1. **Enforce all laws and administrative regulations relating to disaster and emergency response** and to lead all disaster and emergency response forces and activities within the state (KY. REV. STAT. ANN. § 39A.100(1)(a));

2. **Require state agencies to respond to the emergency or disaster** and to request local governments, local agencies, and special districts to respond, as well (KY. REV. STAT. ANN. § 39A.100(1)(b));

3. **Seize, take, or condemn property** (KY. REV. STAT. ANN. § 39A.100(1)(c));

4. **Exclude individuals from the scene of the emergency**, and to command those persons or groups assembled at the scene to disperse. (KY. REV. STAT. ANN. § 39A.100(1)(f));

5. **Declare curfews** (KY. REV. STAT. ANN. § 39A.100(1)(g));

6. **Prohibit or limit the sale or consumption of goods or commodities**. (KY. REV. STAT. ANN. § 39A.100(1)(h));

7. **Compel by subpoena the attendance of witnesses, and the production of books, papers, records, and documents** of individuals, firms, associations, and corporations in the operation and enforcement of emergency management procedures. (KY. REV. STAT. ANN. § 39A.160).

C. ***Limitations on Governor's Powers.*** Besides requiring that the Governor pay compensation for land used during an emergency (KY. REV. STAT. ANN. § 39A.010) there seem to be no other statutorily provided limitations on the Governor's power during a declared state of emergency.

6.22 Powers of Local Officials

A. ***The local chief executive officer has the following emergency powers to:***

1. **Enforce all laws and administrative regulations relating to disaster and emergency response** and to lead all disaster and emergency response forces and activities within the affected jurisdiction (KY. REV. STAT. ANN. § 39A.100(2)(a));

2. **Exclude individuals from the scene of the emergency**, and to command those persons or groups assembled at the scene to disperse (KY. REV. STAT. ANN. § 39A.100(2)(b));

3. **Declare curfews** (KY. REV. STAT. ANN. § 39A.100(2)(c));

4. **To procure the goods and services essential for protection of public health and safety** or to maintain or to restore essential public services (KY. REV. STAT. ANN. § 39A.100(1)(d));

5. **To request emergency assistance** locally, at the state level, and, through the Governor, federally (KY. REV. STAT. ANN. § 39A.100(2)(e);

6. **To obtain and distribute materials and supplies to victims of emergency** (KY. REV. STAT. ANN. § 39B.070(2));

7. **Employ rescue workers** (KY. REV. STAT. ANN. § 39B.070(3)); and,

8. **In certain instances, waive procedures and formalities** otherwise required by the law (KY. REV. STAT. ANN. § 39B.070(6)).

6.30 IMMUNITY OF GOVERNMENT ACTORS DURING A DECLARED EMERGENCY

6.31 Extent of Immunity

A. ***Government Actors Immune for Death, Injury, and Property Damage***. The following actors are immune from liability for death or injury to any person or for damage to property as a result of any activity taken to comply or reasonably attempt to comply with Kentucky's emergency management laws:

1. The state;
2. All political subdivisions of the state;
3. Any employees, agents, or representatives of the state or of political subdivisions of the state not acting in willful misconduct, gross negligence, or bad faith;
4. Any volunteer or auxiliary emergency management agency or disaster and emergency services organization member or disaster and emergency response worker or member of any agency engaged in any emergency management or disaster and emergency services or disaster and emergency response activity not acting in willful misconduct, gross negligence, or bad faith. KY. REV. STAT. ANN. § 39A.280(3).
   a. **Only applies to registered volunteers and auxiliary workers**. This immunity only applies to volunteer or auxiliary disaster and emergency response workers if they are enrolled or registered with a local disaster and emergency services organization or with the division in accordance with the division's administrative regulations. KY. REV. STAT. ANN. § 39A.280(6).

B. ***Individuals Immune for Negligent Death, Injury, and Property Damage on Volunteered Premises.*** Any person owning or controlling property who voluntarily and without compensation permits the use of that property during an actual, pending, mock, or practice emergency cannot be held civilly liable for the death or injury of any person or damage to any property occurring on the property. This immunity does not apply to the extent that liability insurance or self-insurance is maintained for such an act or omission. KY. REV. STAT. ANN. § 39A.280(5).

6.40 OPERATION OF THE COURTS DURING A DECLARED EMERGENCY

Kentucky's emergency management laws contain no explicit provisions regarding operation of Kentucky courts during a

declared disaster emergency. A discussion of some of the challenges that will face courts during a public health emergency, as well as potential solutions, may be found *supra*, at Section 5.00. However, while current law may provide some potential solutions to challenges that the courts will face in a public health emergency, there are many challenges that cannot be addressed under current law.

7.00 MODEL ORDERS

7.10 ORDERS TO PROCURE BIOLOGICAL EVIDENCE FROM AN INDIVIDUAL'S PERSON

7.11 Model Order to Take Body Substance Sample

COMMONWEALTH OF KENTUCKY
IN THE [*insert court name*]
COURT COUNTY OF [*insert county name*]
CASE NO. [*insert case number*]
IN RE SEARCH OF [*insert subject individual's name*]

ORDER

This matter having come before the COURT upon the application of [*insert name of petitioning party and applicable title*], the COURT having received evidence, heard sworn testimony in support thereof on [*insert hearing date*], and being otherwise sufficiently advised,

The COURT now FINDS:

1. The petitioner, [*insert petitioner's name*], [*insert petitioner's title as health officer*] has reasonable grounds to believe [*insert subject individual's name*] is infected with [*insert name of applicable communicable or dangerous disease*].
2. The petitioner, [*insert petitioner's name*], further has reasonable grounds to believe [*insert subject individual's name*] poses a serious and present threat to the health of others because [*insert subject individual's name*] has engaged in the following conduct: [*specifically list conduct showing behavior or threatened behavior capable of transmitting disease or failure of individual to meet his/her duty to warn*].
3. The petitioner, as an officer of [*insert name of local health department*] has requested that [*insert subject individual's name*] undergo medical testing to confirm the presence of [*insert name of applicable disease*].
4. [*Insert subject individual's name*] has refused such testing.

The COURT now MAKES the following conclusions:

1. Pursuant to 902 KAR 2:050 and KY. REV. STAT ANN. § 212,245, the petitioner, in his role as [*insert petitioner's title as health officer*] is empowered as chief administrative officer of the [*insert jurisdiction of local health department*] health department to require [*insert subject individual's name*] to submit to medical testing to determine whether [*insert subject individual's name*] is infected with [*insert name of applicable disease*].
2. If [*insert subject individual's name*] refuses to submit to such medical testing, petitioner, in his roles as [*insert petitioner's title as health officer*] may petition this court to compel the testing pursuant to.
3. As a matter of law and pursuant to KY. REV. STAT. ANN. § 212.245(6), this court may compel [*insert subject individual's name*] to submit to medical testing to determine whether [*insert subject individual's name*] is infected with [*insert name of applicable disease*].

Therefore, IT is ORDERED, ADJUDGED, and DECREED that the sheriff of this COURT shall arrange for [*insert individual's name*] to be transported to the [*insert name of appropriate medical facility*], where a licensed medical doctor shall cause a [*insert type of sample (e.g., blood, fluid, tissue)*] sample to be removed from [*insert subject individual's name*]'s body and subjected to a test that has been scientifically demonstrated to reveal whether [*insert individual's name]* is infected with [*insert name of communicable or dangerous disease being screened for*].

It is further ORDERED, ADJUDGED, and DECREED that the sample procurement and test shall be conducted in the least intrusive manner reasonably possible under the circumstances. In the event [*insert individual's name*] refuses to submit to the test ordered herein, [*insert petitioner's title as health officer*] shall return to this court to obtain an order authorizing the use of force to conduct the necessary test.

It is finally ORDERED, ADJUDGED, and DECREED that the results of this test shall be disclosed only to [*insert subject individual's name*], [*insert petitioner's name*], and other individuals legally authorized to access such information.

SO ORDERED this [*insert day*] day of [*insert month*], [*insert year*].

[*Insert signature of judge*]
[*Insert printed name of judge*]
[*Insert title of judge*]
[*Insert name of court*]

7.12 Model Search Warrant/Order to Take Body Substance Sample by Necessary Force

COMMONWEALTH OF KENTUCKY
IN THE [*insert court name*] COURT
COUNTY OF [*insert county name*]
CAUSE NO. [*insert cause number*]
IN RE SEARCH OF [*insert subject individual's name*]

ORDER

TO: [*insert names of applicable police departments*]
KENTUCKY STATE POLICE
OR ANY LAW ENFORCEMENT OFFICER
[*insert names of applicable medical facilities*]
OR ANY PHYSICIAN
OR STAFF AT [*insert names of applicablemedical facilities*]
OR ANY EMPLOYEE
OR AGENT OF [*insert names of applicable medical facilities*]
AS REQUIRED FOR ASSISTANCE

The COURT having reviewed the affidavit of [*insert name(s) of affiant(s)*] and being duly advised in the premises, now finds that probable cause for the issuance of this search warrant has been established. You are authorized and ordered, in the name of the Commonwealth of Kentucky, with the necessary and proper medical and/or other appropriate health care assistance to obtain and remove a [*insert sample type (e.g., blood, tissue)*] sample from:

[*Insert name of individual*]
[*Insert individual's date of birth or other identifier*]

and to use reasonable force to obtain such sample. You are ordered to seize the sample obtained on such search and to forward it to an appropriate laboratory facility for chemical analysis.

NOTE: The affidavit should be attached to the Search Warrant/ Order and specifically identify all reasons why the use of force is necessary to obtain the body substance sample.

SO ORDERED this [*insert day*] day of [*insert month*], [*insert year*].

[*Insert signature of judge*]
[*Insert printed name of judge*]
[*Insert title of judge*]
[*Insert name of court*]

7.20 **ISOLATION AND QUARANTINE ORDERS**

7.21 Model Summons for Individual to Appear at Hearing Regarding Court Enforcement of Isolation or Quarantine Order

COMMONWEALTH OF KENTUCKY
IN THE [insert court name] COURT
COUNTY OF [insert county name]
CASE NO. [insert case number]

IN RE [*insert "isolation" or "quarantine" as applicable*] OF [*insert subject individual's name*]

SUMMONS

TO: [*insert individual's name*]
[*insert individual's address*]

1. You are hereby notified that the [*insert local health department name*] has filed a petition requesting that a court order of [*insert "isolation" or "quarantine" as applicable*] be issued against you. The nature of this request is stated in the petition which is attached to this summons. The petition also states, with specificity, the relief sought or the demand made against you by [*insert local health department name*].
2. YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY IN THIS MATTER. IF YOU CANNOT AFFORD AN ATTORNEY, ONE WILL BE APPOINTED FOR YOU.
3. YOU HAVE THE RIGHT TO APPEAR AT ANY HEARING HELD REGARDING THIS MATTER. A hearing date has been set for [*insert applicable date, time, and location of hearing*].
4. IF YOU AND/OR YOUR ATTORNEY DO NOT APPEAR AT THE TIME AND PLACE INDICATED ABOVE, AN ORDER OF [*insert "isolation" or "quarantine" as applicable*] WILL BE ISSUED AGAINST YOU AS REQUESTED BY THE [*insert local health department name*].

Dated: [*insert date*]
[*insert seal*]
[*insert name of issuing clerk*], [*insert name of Court*]

The following manner of Service of Summons is hereby designated:

_____ Registered / Certified Mail to be sent by the Clerk

_____ Service by Sheriff on Individual at address shown above

_____ Service by Sheriff at Individual's place of employment,
[*insert name and address of individual's employer*]

SHERIFF'S RETURN OF SERVICE OF SUMMONS

I hereby certify that I have served this summons on the [*insert date*] day of [*insert month*], [*insert year*]:

(1) By delivering a copy of the Summons and a copy of the Petition to the Individual, [*insert individual's name*], identified on the 1st page of the Summons.
(2) By delivering a copy of the Summons and a copy of the Petition to the Individual, [*insert individual's name*], identified on the 1st page of the Summons.
(3) By delivering a copy of the Summons and a copy of the Petition to the Individual, [*insert individual's name*], identified on the 1st page of the Summons.
(4) By leaving a copy of the Summons and a copy of the Petition at [*insert address*], which is the dwelling place or usual place of abode of *[insert individual's name*] and by mailing a copy of the Summons to [*insert individual's name*] at the above address.

Other Service or Remarks: [*insert as applicable*].

[*Insert Sheriff's Costs*]

[*Insert Sheriff's Name*]
By: [*Insert Deputy's Signature*]
Deputy

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on the [*insert date*] day of [*insert month*], [*insert year*] I mailed a copy of this Summons and a copy of the Petition to the Individual, [*insert individual's name*], identified on the 1st page of the Summons by [*insert mail type*] mail, requesting a return receipt, at the address provided by the Petitioner.

[*Insert Clerk's Signature*]
Clerk, [*insert county name*] County

Dated: [*insert date*]

By: [*Insert Deputy's Signature*] Deputy

RETURN OF SERVICE OF SUMMONS BY MAIL

I hereby certify that the attached receipt was received by me showing that the Summons and a copy of the Petition mailed to the Individual, [*insert individual's name*], identified on the 1st page of this Summons was accepted by the Individual on the [*insert date*] day of [*insert month*], [*insert year*].

I hereby certify that the attached return receipt was received by me showing that the Summons and a copy of the Petition was returned

not accepted on the [*insert date*] day of [*insert month*], [*insert year*].

I hereby certify that the attached return receipt was received by me showing that the Summons and a copy of the Petition mailed to the Individual, [*insert individual's name*], identified on the 1st page of this Summons was accepted by [*insert name of person accepting Summons*] on behalf of the Individual on the [*insert date*] day of [*insert month*], [*insert year*].

[*Insert Clerk's Signature*]
Clerk, [*insert county name]* County
By: [*Insert Deputy's Signature*] Deputy

7.22 Model Order for Isolation of Individual Pursuant to 902 KAR 2:030 (Including Findings of Fact and Conclusions)

COMMONWEALTH OF KENTUCKY
IN THE [*insert court name*] COURT
COUNTY OF [*insert county name*]
CASE NO. [*insert case number*]
IN RE ISOLATION OF [*insert subject individual's name*]

ORDER

The COURT, having received evidence, exhibits, and argument, and being duly advised in the premises, now FINDS:

1. The [*insert local health department name*] has received reports of increasing numbers of ill people exhibiting symptoms of a disease that has in its common course severe disability or death.
2. That since [*insert date of first case report*] until the time at which a hearing on this matter was held, over [*insert applicable number*] people have been stricken with this disease and [*insert applicable number*] people have died.
3. The biological agent causing this disease has not been conclusively identified at this time.
4. The symptoms that characterize this disease include: [*list physical symptoms with specificity*]
5. Clear and convincing evidence shows that those people who are in physical contact with or in the proximity of [*insert applicable number*] feet or less of an individual infected with this disease are likely to exhibit symptoms within [*insert applicable number*] days, which period of time is referred to herein as the "incubation period". [*Insert any other known information about the method of disease transmissio*n].Thus, the clear and convincing evidence suggests this disease is easily transmissible from person-to-person.
6. There are no known preventive medications for this disease at this time.
7. The most effective method currently known to medical science to contain and curtail the spread of this disease is the isolation of anyone who has the symptoms identified above at ¶ 4, and the quarantine of those who have been exposed to a person infected with this disease for the duration of the incubation period, as identified above at ¶ 5.
8. The testimony of qualified witnesses, including [*insert names and titles of relevant witnesses*], has indicated that [*insert individual's name*] is exhibiting the following symptoms: [*list individual's exhibited physical symptoms with specificity*].
9. The testimony of qualified witnesses, including [*insert names of*

EVIDENTIARY NOTE: Kentucky law does not specify the burden of proof applicable in court proceedings to enforce isolation and quarantine orders issued by public health authorities. Given the equitable nature of these proceedings and the severe deprivation of individual liberty at stake, courts should require clear and convincing evidence that an individual poses a public health threat before issuing an isolation or quarantine order.

relevant witnesses and describe their association with the individual], has indicated that [*insert individual's name*] comes into contact with numerous individuals on a regular basis through his/her activities as [*list applicable profession or personal undertakings*] and that [*insert individual's name*] has undertaken these activities since becoming infected with this disease.

10. Due to [*insert individual's name*]'s display of the symptoms recited above at ¶ 8, [*insert individual's name*] requires skilled medical care in an appropriate medical facility.
11. Isolation of [*insert individual's name*] in a medical facility will reasonably protect those with whom [*insert individual's name*] would otherwise come in contact from acquiring this disease from [*insert individual's name*].
12. The [*insert local health department name*] is the agency with the authority to control the spread of infectious diseases and the responsibility to provide medical care and supervision for [*insert individual's name*] pursuant to exercises of such authority.
13. Pursuant to such authority and in an attempt to prevent [*insert individual's name*] from undertaking activities potentially harmful to the public's health, the [*insert local health department name*] issued an order of isolation to [*insert individual's name*] on [*insert date of order's issuance*], which the COURT has received as Exhibit [*insert applicable Exhibit number*].
14. The testimony of qualified witnesses, including [*insert names and titles of relevant witnesses*], has indicated that [*insert individual's name*] has failed to comply with this order, as evidenced by: [*list activities demonstrating noncompliance in detail*].

The COURT now MAKES the following conclusions:

1. The [*insert local health department name*] had the authority to issue an order of isolation to [*insert individual's name*] pursuant to KY. REV. STAT. ANN. §§ 214.020, 212.245(5), and 902 KAR 2:050.
2. This CIRCUIT COURT has jurisdiction over this action pursuant to KY. REV. STAT. ANN. § 212.245(6).
3. Pursuant to KY. REV. STAT. ANN. § 212.245(6), this COURT has the power to issue an injunction compelling [*insert individual's name*] to comply with the [*insert local health department name*]'s isolation order.
4. The nature of the disease at issue (as recited above at ¶ 1), the symptoms exhibited by [*insert individual's name*] (as recited above at ¶ 8), and the conduct of [*insert individual's name*] (as recited above at ¶¶ 9 and 14), constitute clear and convincing evidence that [*insert individual's name*] must be placed under an order of isolation so as to protect the public's health

Therefore, IT is ORDERED, ADJUDGED, and DECREED that [*insert individual's name*] be confined to a medical isolation unit at the [*insert medical facility name*] for a period of [*insert period of time based upon the incubation period of the communicable disease most closely resembling the disease at issue, as established by the testimony of qualified experts, which period is consistent with the incubation period identified above at ¶ 5*] days. [*Insert individual's name*] is enjoined from leaving the [*insert medical facility name*] until this period of time has elapsed.

It is further ORDERED, ADJUDGED, and DECREED that upon the expiration of said period of time, [*insert individual's name*] shall be released from confinement and the [*insert local health department name*] shall file a final report regarding disposition of this matter with this COURT. In the event the [insert local health department name] believes further confinement of [*insert individual's name*] will be necessary after expiration of said period of time, it shall commence appropriate proceedings to that effect in this COURT prior to the expiration of said period of time.

It is finally ORDERED, ADJUDGED, and DECREED that the COURT sheriff shall arrange for transportation of [*insert individual's name*] to the [*insert medical facility name*]. The [*insert local health department name*] bears the logistical and financial responsibility for all necessary medical care and other facility costs associated with [*insert individual's name*]'s confinement at the [*insert medical facility name*].

This order shall expire [*insert applicable number of days*] after its issuance.

So ordered this [*insert day*] of [*insert month*], [*insert year*].

[*Insert signature of judge*]
[*Insert printed name of judge*]
[*Insert judge's title*]
[*Insert court name*]

7.23 Model Order for Quarantine of Individual Pursuant to KY. REV. STAT. ANN. § 212.245(6)

COMMONWEALTH OF KENTUCKY
IN THE [*insert court name*] COURT
COUNTY OF [*insert county name*]
CASE NO. [*insert case number*]
IN RE QUARANTINE OF [*insert subject individual's name*]

ORDER

The COURT, having received evidence, exhibits, and argument, and being duly advised in the premises, now FINDS:

1. The [*insert local health department name*] Department of Health has received reports of increasing numbers of ill people exhibiting symptoms of a disease that has in its common course severe disability or death.
2. That since [*insert date of first case report*] until the time at which a hearing on this matter was held, over [*insert applicable number*] people have been stricken with this disease and [*insert applicable number*] people have died.
3. The biological agent causing this disease has not been conclusively identified at this time.
4. The symptoms that characterize this disease include: [*list physical symptoms with specificity*]
5. Clear and convincing evidence shows that those people who are in physical contact with or in the proximity of [*insert applicable number*] feet or less of an individual infected with this disease are likely to exhibit symptoms within [*insert applicable number*] days, which period of time is referred to herein as the "incubation period". Thus, the clear and convincing evidence suggests that this disease is easily transmissible from person-to-person.
6. There are no known preventive medications for this disease at this time.
7. The most effective method currently known to medical science to contain and curtail the spread of this disease is the isolation of anyone who has the symptoms identified above at ¶ 4, and the quarantine of those who have been exposed to a person infected with this disease for the duration of the incubation period, as identified above at ¶ 5.
8. The testimony of qualified witnesses, including [*insert names and titles of relevant witnesses and describe their association with the individual, where applicable*], has indicated that [*insert individual's name*] has come into come into contact with [*identify individual(s) infected with the disease]*, who is infected with this disease, on [*insert date(s) of contact*] in the following manner:

EVIDENTIARY NOTE: Kentucky law does not specify the burden of proof applicable in court proceedings to enforce isolation and quarantine orders issued by public health authorities. Given the equitable nature of these proceedings and the severe deprivation of individual liberty at stake, courts should require clear and convincing evidence that an individual poses a public health threat before issuing an isolation or quarantine order.

[*list means of contact in detail*].

9. The testimony of qualified witnesses, including [*insert names and titles of relevant witnesses*], has indicated that this contact is sufficient for [*identify individual(s) infected with the disease*] to have transmitted this disease to [*insert individual's name*].
10. The testimony of qualified witnesses, including [*insert names of relevant witnesses and describe their association with the individual*], has indicated that [*insert individual's name*] comes into contact with numerous individuals on a regular basis through his/her activities as [*list applicable profession or personal undertakings*] and that [*insert individual's name*] has undertaken these activities since coming into contact with [*identify individual(s) infected with the disease*].
11. Quarantine of [*insert individual's name*] in [*insert individual's name*]'s home or other appropriate facility will reasonably protect those with whom [*insert individual's name*] would otherwise come in contact with from acquiring this disease from [*insert individual's name*] in the event [*insert individual's name*] is infected with this disease.
12. The [*insert local health department name*] is the agency with the authority to control the spread of infectious diseases and the responsibility to provide medical care, supervision, and other necessities for [*insert individual's name*] pursuant to exercises of such authority.
13. Pursuant to such authority and in an attempt to prevent [*insert individual's name*] from undertaking activities potentially harmful to the public's health, the [*insert local health department's name*] issued an order of quarantine to [*insert individual's name*] on [*insert date of order's issuance*], which the COURT has received as Exhibit [*insert applicable Exhibit number*].
14. The testimony of qualified witnesses, including [*insert names and titles of relevant witnesses*], has indicated that [*insert individual's name*] has failed to comply with this order, as evidenced by: [*list activities demonstrating noncompliance in detail*].

The COURT now MAKES the following conclusions:

1. The [*insert local health department's name*] had the authority to issue an order of quarantine to [*insert individual's name*] pursuant to KY. REV. STAT. ANN §§ 212.040, 212.245(5), and 902 KAR 2:050.
2. This CIRCUIT COURT has jurisdiction over this action pursuant to KY. REV. STAT. ANN. § 212.245(6).
3. Pursuant to KY. REV. STAT. ANN. § 212.245(6), this COURT has the power to issue an injunction compelling [*insert individual's name*] to comply with the [*insert local health department name*]'s quarantine order.

4. The nature of the disease at issue (as recited above at ¶ 1), [*insert individual's name*] contact with [*identify individual(s) infected with the disease*] (as recited above at ¶¶ 8 and 9), and the conduct of [*insert individual's name*] (as recited above at ¶¶ 10 and 15), constitute clear and convincing evidence that [*insert individual's name*] must be placed under an order of quarantine so as to protect the public's health.

Therefore, IT is ORDERED, ADJUDGED, and DECREED that [*insert individual's name*] be confined to [*insert appropriate site of confinement, (e.g. the individual's home), as established by the testimony of qualified experts*] for a period of [*insert period of time based upon the incubation period of the communicable disease most closely resembling the disease at issue, as established by the testimony of qualified experts, which period should be consistent with the incubation period identified above at ¶ 5*] days. [*Insert individual's name*] is enjoined from leaving [*insert appropriate site of confinement*] until this period of time has elapsed.

It is further ORDERED, ADJUDGED, and DECREED that upon the expiration of said period of time, [*insert individual's name*] shall be released from confinement and the [insert local health department name] shall file a final report regarding disposition of this matter with this COURT. In the event the [*insert local health department name*] believes further confinement of [*insert individual's name*] will be necessary after the expiration of said period of time, it shall commence appropriate proceedings to that effect in this court prior to the expiration of said period of time.

It is finally ORDERED, ADJUDGED, and DECREED that the COURT sheriff shall arrange for transportation of [insert individual's name] to the [*insert appropriate site of confinement*]. The [*insert local health department name*] bears the logistical and financial responsibility for all necessary medical care and other costs associated with [*insert individual's name*]'s confinement for the duration of this quarantine order.

This order shall expire [*insert applicable number of days*] after its issuance.

So ordered this [*insert day*] of [*insert month*], [*insert year*].

[*Insert signature of judge*]
[*Insert printed name of judge*]
[*Insert judge's title*]
[*Insert court name*]

7.24 Model Order for Isolation of Individual Pursuant to KY. REV. STAT. ANN. § 215.560 (Including Findings of Fact and Conclusions)

COMMONWEALTH OF KENTUCKY
IN THE [*insert court name*] COURT
COUNTY OF [*insert county name*]
CASE NO. [*insert case number*]
IN RE ISOLATION OF [*insert subject individual's name*]

ORDER

The COURT, having received evidence, exhibits, and argument, and being duly advised in the premises, now FINDS:

1. The testimony of qualified witnesses, including [*insert names and titles of relevant witnesses*], has indicated that [*insert individual's name*] is infected with [*insert applicable disease name, e.g., active pulmonary tuberculosis (TB)*].
2. [*Insert applicable disease name, e.g. active pulmonary TB*] is a communicable disease characterized by the following symptoms and course of progression: [*list physical symptoms associated with disease, e.g. active pulmonary TB, with specificity*].
3. [*Insert applicable disease name, e.g. active pulmonary TB*] is transmitted in the following manner: [*identify means of transmission with specificity*].
4. The [*insert "Secretary of Health and Family Services", Secretary's legally authorized agent or "local health officer of [insert name of applicable locality*]" *as appropriate*] has determined that [*insert individual's name*] is infected with active tuberculosis and [*insert acts or failures to act, i.e. the failure to prevent transmission of the infection to others that constitutes violations of KY. REV. STAT. ANN. §§ 215.520 –215.600*].

The COURT now MAKES the following conclusions:

1. This DISTRICT COURT has jurisdiction over this action pursuant to KY. REV. STAT. ANN. § 215.560.
2. [*Insert individual's name*]'s conduct, recited above at ¶ 4, is proof by preponderance of the evidence that [*insert individual's name*] is a in violation of KY. REV. STAT. ANN. §§ 215.520 – 215.600.

Therefore, IT is ORDERED, ADJUDGED, and DECREED that [*insert individual's name*] be confined to the [*insert applicable the name of an appropriate medical facility*] until rendered non-contagious by treatment with appropriate medication(s), as determined by standard medical test(s), or no longer a serious and present danger to others, whichever occurs first.

It is further ORDERED, ADJUDGED, and DECREED that upon the occurrence of either of the above-indicated conditions, [*insert individual's name*] shall be released from confinement and

the [*insert "Secretary of Health and Family Services", "Secretary's legally authorized agent", or "local health officer of [insert name of applicable locality*]" *as appropriate*] shall file a final report regarding disposition of this matter with this COURT. In the event the [*insert "Secretary of Cabinet for Health and Family Services", "Secretary's legally authorized agent", or "local health officer of [insert name of applicable locality]" as appropriate*] believes further confinement of [*insert individual's name*] is necessary after the occurrence of either of the above-indicated conditions, he/she shall commence appropriate proceedings to that effect in this COURT.

It is finally ORDERED, ADJUDGED, and DECREED that the COURT sheriff shall arrange for transportation of [*insert individual's name*] to the [*insert name of other appropriate medical facility*]. The [*insert "Cabinet for Health and Family Services" or local health department name*] bears the logistical and financial responsibility for all necessary medical care and other facility costs associated with [*insert individual's name*] confinement at the [*insert name of appropriate medical facility*].

This order shall expire [*insert applicable number of days*] after its issuance.

So ordered this [*insert day*] or [*insert month*], [*insert year*].

[*Insert signature of judge*]
[*Insert printed name of judge*]
[*Insert judge's title*]
[*Insert court name*]

A. What is Public Health?

Public health is frequently defined as "what we, as a society, do collectively to assure the conditions in which people can be healthy."[1] In first proposing this definition nearly twenty years ago, the Institute of Medicine stressed three key components of public health. First, the mission of public health is to fulfill society's interest in assuring the conditions in which people can be healthy. Second, the substance of public health is organized community efforts aimed at the prevention of disease and the promotion of health. Third, the organizational framework of public health encompasses both activities undertaken within the formal structures of government and the associated efforts of private organizations and individuals.[2]

Although public health draws upon numerous scientific disciplines, its core science is epidemiology, the study of disease within populations and the factors that determine disease spread. In contrast to the practice of medicine, which is concerned with the health and treatment of individuals, public health is dedicated to promoting the health of the population as a whole. For example, while medical explanations for death focus on pathological causes, such as cancer or heart disease, public health seeks to understand why these pathologies exist in society and the societal measures capable of reducing or eliminating them. To attain this understanding, public health agents examine the environmental, social, and behavioral factors that contribute to disease, such as pollutant levels, diet patterns, and tobacco use.[3] These data are then used to craft public health interventions, such as regulation of industrial emissions, school cafeteria nutrition requirements, and targeted smoking cessation programs. Scientific knowledge is, therefore, the foundation of public health decision-making.

In practice, public health encompasses an extremely broad range of activities, varying across the country with geography, community demographics, and resource availability. The public health priorities of New York City, for example, differ in many respects from those of rural Kentucky towns. Still, it is possible to identify several essential public health activities and services:

- Monitoring community health status (data collection, vital statistics, health interview surveys, health trends analyses);
- Diagnosing and investigating health problems (disease screening, laboratory analyses, epidemiology);
- Informing and educating people about health (health promotion, disease prevention, tobacco cessation campaigns);

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[1] INST. OF MEDICINE, THE FUTURE OF THE PUBLIC'S HEALTH IN THE 21ST CENTURY 2 (National Academies Press 2003) [*hereinafter* INST. OF MEDICINE 2003].
[2] *See* INST OF MEDICINE, THE FUTURE OF PUBLIC HEALTH 38-42 (National Academies Press 1988) [*hereinafter* INST. OF MEDICINE 1988].
[3] *See* LAWRENCE O. GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 14 (University of California Press 2000).

- Mobilizing community partnerships to improve health (joint drafting of legislation by legislative and public health officials, utilization of physician associations for public education, needle distribution programs at AIDS clinics);
- Developing and enforcing health and safety protections (food and milk control, product safety requirements, premises inspections, sewage disposal, water quality monitoring, hazardous waste management);
- Linking people to needed personal health services (maternal and child health interventions, immunizations, substance abuse and mental illness treatment, home health programs);
- Assuring a competent health workforce (licensing, development of competency sets, public health school curriculum recommendations);
- Fostering health-enhancing public policies (seat-belt and motorcycle helmet laws, public smoking bans, health care for the indigent);
- Evaluating the quality and effectiveness of services (monitoring of health indicators such as immunization rates, prevalence of sexually-transmitted diseases, and number of teenage pregnancies, assessment of pulmonary disease following institution of public smoking bans); and
- Researching new insights and innovations (publicly- and privately-funded commissions on disease factors and treatments; intervention comparisons).[4]

B. A Brief History of Public Health

Organized community efforts have long been utilized to protect the public's health. Quarantine- and isolation-type measures were used as early as 532 B.C.E., when the Emperor Justinian of the Eastern Roman Empire commanded that persons arriving into the Empire's capital city from contaminated localities be housed in special cleansing facilities.[5] During the fourteenth and fifteenth centuries, ships entering the port of Venice from certain localities were forced to remain offshore, in isolation, for a period of forty days (*quaranta giorni*) before persons and goods were permitted to debark.[6] Other ports and cities throughout Europe and Asia developed similar isolation procedures in subsequent centuries.[7]

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[4] *See* INST. OF MEDICINE 2003, *supra note* 1, at 31-33; INST. OF MEDICINE 1988, *supra note* 2, at 87-98; GOSTIN, *supra note* 3, at 17; INST. OF MEDICINE, WHO WILL KEEP THE PUBLIC HEALTHY: EDUCATING PUBLIC HEALTH PROFESSIONALS FOR THE 21ST CENTURY (National Academics Press 2003).
[5] *See* INST. FOR BIOETHICS, HEALTH POLICY & LAW, UNIVERSITY OF LOUISVILLE SCHOOL OF MEDICINE, QUARANTINE & ISOLATION: LESSONS LEARNED FROM SARS – A REPORT TO THE CENTERS FOR DISEASE CONTROL & PREVENTION 17 (2003).
[6] *See id.*
[7] *See id.*

In eighteenth-century America, isolation and quarantine were also widely used to contain disease, and these measures were enforced by appointed councils.[8] At the same time, municipalities and local governments began to undertake programs to address the welfare of their most vulnerable citizens. Public hospitals were established to care for the physically ill, and the first public hospital for the mentally ill was founded in Williamsburg, Virginia in 1773.[9]

The nineteenth century marked the onset of the sanitary movement, often referred to as the "Great Sanitary Awakening." State and local governments began to focus on the environment as a source of disease, a particular challenge in the face of increasing urbanization and industrialization. The public health community also began to utilize health records and vital statistics to influence public policy. Sanitary surveys were performed in both London and Massachusetts during the mid-1800s, and their accompanying reports publicized the poor living conditions in urbanized areas and the disparate health status among socioeconomic classes.[10] These reports emphasized the need for proper drainage systems and waste disposal mechanisms and recommended the establishment of state and local boards of health to enforce sanitary regulations. Consequently, the first public agency for health, the New York City Health Department, was established in 1866, followed by the Massachusetts State Board of Health in 1869.[11] By the end of the nineteenth century, more than 40 states and localities had established health departments.[12]

In 1877, Louis Pasteur discovered that anthrax was caused by a bacterium, ushering in the era of bacteriology and, simultaneously, revolutionizing disease control. Public health laboratories were created in state and local health departments to identify biological causes of disease. Science became the basis of public health, and individuals, in addition to the environment, came to be viewed as agents of disease. Accordingly, the early twentieth century saw a renewed focus on individual treatment and the rise of mandatory disease reporting laws, sexual contact tracing, therapeutic clinics, and educational programs.[13]

Consistent with the overarching political philosophy of the times, the federal government's role in public health increased dramatically during the middle of the twentieth century. In 1930, the national laboratory was relocated to Washington, D.C. and renamed the National Institutes of Health (NIH). The Centers for Disease Control and Prevention (CDC) and the National Center for Health Statistics were founded during World War II. The federal government asserted jurisdiction over adulterated food, established national standards for drinking water, and provided states financial support for public health training.[14]

At the end of the twentieth century, federal involvement in public health dwindled as the rhetoric of cost containment and small government gained popularity. The federal government

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[8] *See* INST. OF MEDICINE 1988, *supra* note 2, at 57.
[9] *See id*., at 57-58.
[10] *See id*., at 59-61 (discussing Edwin Chadwick's *General Report on the Sanitary Conditions of the Labouring Population of Great Britain* (1842), John Griscom's *The Sanitary Condition of the Labouring Population of New York* (1848), and Lemuel Shattuck's *Report of the Massachusetts Sanitary Commission* (1850)).
[11] *See id.*, at 61.
[12] *See id*.
[13] *See id.*, at 63-66; GOSTIN, *supra* note 3, at 10.
[14] *See* INST. OF MEDICINE 1988, *supra* note 2, at 67-68; Gostin, supra note 3, at 10-11.

delegated public health decision-making to states in the form of block grants, leading to the varied public health systems seen across America today.[15] As early as 1988, the Institute of Medicine reported that the American public health system was in "disarray," unable to respond effectively to current and emerging public health threats and unnecessarily threatening the public's health and safety.[16] Although the events of September 2001, the subsequent anthrax mailings, and the 2003 global outbreak of Severe Acute Respiratory Syndrome (SARS) reinvigorated federal involvement in the public health arena, the vast majority of public health decision-making remains at the state and local levels.[17]

C. The Role of Government in Public Health

Although the Institute of Medicine has acknowledged the role of private organizations and individuals in public health, it has repeatedly reaffirmed the central role of government public health agencies as providers of vital services and guardians of the public health mission.[18] Democratically elected governments are alone legitimately capable of undertaking community activity on behalf of the public.[19] Based upon this truth, several commentators have proposed narrower conceptions of public health, one of which limits "public health" to "public officials taking appropriate measures pursuant to specific legal authority, after balancing private rights and public interests, to protect the health of the public."[20]

Regardless of the exclusivity accorded them, government public health agencies serve three core public health functions. First, government agencies are responsible for assessment of the health of the communities they serve. To this end, government agencies collect data, conduct epidemiological investigations, and monitor and publish health statistics. Research endeavors are also critical components of assessment. Second, government agencies must actively engage in policy development using the scientific knowledge they gain through assessment. Given the constant political struggle for resources, these policy development efforts are most successful when strategic in nature and appropriately prioritized. Third, and finally, government agencies have a duty to provide assurance to their communities in the form of services, legislative action, and partnership development. These assurances should include the guaranteed provision of essential health services for the indigent and socially-dependent.[21]

As indicated above, states are the "central force" in public health,[22] exercising their constitutionally-reserved police powers and *parens patriae* powers to protect the public's health, safety, and welfare.[23] Currently, each state has a designated agency for public health. However,

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[15] *See* INST. OF MEDICINE 1988, *supra* note 2, 70-71.
[16] *See id.*, at 1-2.
[17] *See* INST. OF MEDICINE 2003, *supra* note 1, at 26-28.
[18] *See id.*, at 101-104; *See* INST. OF MEDICINE 1988, *supra* note 2, at 7.
[19] *See* GOSTIN, *supra note* 3, at 8.
[20] Mark A. Rothstein, Rethinking the Meaning of Public Health, 30 J. L. MED. & ETHICS 144 (2002); see also Lawrence O. Gostin, Public Health, Ethics, and Human Rights: A Tribute to the Late Jonathan Mann, 29 J. L. MED. & ETHICS 121 (2001).
[21] *See* INST. OF MEDICINE 1988, *supra* note 2, at 7-12. 44-47.
[22] *Id.*, at 8.
[23] *See* U.S. CONST., amend. X; GOSTIN, *supra* note 3, at 25-59.

states delegate many of their public health responsibilities to localities, whose public health departments vary extensively in organizational structure and may serve municipalities, single counties, or combinations of counties.[24] Federal entities, such as the Public Health Service of the Department of Health and Human Services and the CDC, exist primarily to provide resources and knowledge support to state and local public health agencies.

D. Public Health and Individual Rights

While science forms the basis of public health decision-making in theory, public values and popular opinions determine the feasibility of many public health activities in practice.[25] The power of governmental agencies to coerce individual behavior in the name of community welfare is inherent within public health.[26] Disease reporting requirements impinge upon privacy; mandatory testing and screening curtails autonomy; environmental and industrial regulations impact property and economic interests; and isolation and quarantine restrict liberty.[27] In this sense, public health and the notions of individualism central to American society coexist in a state of constant tension. This tension suggests that public health activities are most likely to gain popular support when they reflect an appropriate balancing of community and individual interests. For example, quarantine of individuals exposed to tuberculosis, a highly contagious disease, may be appropriate in certain circumstances, while quarantine of individuals exposed to anthrax, a disease that cannot be transmitted from person-to-person, is not. In the latter case, it would be improper for the government to restrain an individual's liberty when his freedom of movement poses no danger to society. Of course, there are many cases in which the appropriate balance between community and individual interests is more difficult to discern. Is an individual properly subjected to quarantine for an extended period of time entitled to government compensation and job protection? What is the appropriate penalty for an individual who violates an appropriate quarantine order? May an individual be forced to undergo mandatory testing and treatment during a public health emergency? What type of procedural due process protections are individuals entitled to in the context of mass quarantine and isolation orders?

Public health law is concerned with the ongoing struggle to reconcile these competing individual and community interests in the context of public health activities. As recently suggested:

> Public health law [encompasses] legal powers and duties of the state to assure the conditions for people to be healthy (e.g., to identify, prevent, and ameliorate risks to health in the population) and the limitations on the power of the state to constrain the autonomy, privacy, liberty, proprietary, or other legally protected interests of individuals for the protection or promotion of community health.[28]

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[24] *See* INST. OF MEDICINE 2003, *supra* note 1, at 108-110; *See* INST. OF MEDICINE 1988, *supra* note 2, at 78.
[25] *See* INST. OF MEDICINE 2003, supra note 1, at 23-26; *See* INST. OF MEDICINE 1988, *supra* note 2, at 3.
[26] *See* GOSTIN, *supra note* 3, at 18-21; Rothstein, *supra* note 19, at 146.
[27] *See* GOSTIN, *supra note* 3, at 20.
[28] *See id.*, at 4.

Though perhaps not identified as such, public health issues have long been present on court dockets.[29] Legal issues such as nuisance abatement, civil commitment, and sentencing of mentally ill or substance-addicted individuals all reflect public health concerns. However, as recently noted by one commentator, "there appear to be few, if any, published manuals on public health emergency law for government and hospital attorneys, 'bench books' for judges to brief themselves on evidentiary standards for public health search warrants and quarantine orders, or databases of extant state and municipal public health emergency statutes and regulations."[30] The renewed focus on public health law prompted by concerns about bioterrorism and emerging infectious diseases presents an opportunity for judges and lawyers to familiarize themselves with the body of public health law and develop new legal approaches to current public health problems.

[29] *See* INST. OF MEDICINE 1988

[30] Anthony D. Moulton et al., *What is Public Health Legal Preparedness*?, 31 J. L. MED. & ETHICS 672 (2003).

A

acute Of rapid onset; brief. An acute condition may, but need not necessarily, be severe. STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

adenopathy Swelling or diseased enlargement of the lymph nodes.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

aerosolize To disperse a substance as particles in air.
OXFORD ENGLISH DICTIONARY (2d. ed. 1989).

analytic validity An index of how well a test measures the property or characteristic it is intended to measure. Analytic validity of a test is affected by the technical accuracy and reliability of the testing procedure, and also by the quality of the laboratory processes (including specimen handling).
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); NAT'L CANCER INSTS., U.S. NAT'L INSTS. OF HEALTH, CANCER GENETICS OVERVIEW, *at* http://www.cancer.gov/cancertopics/pdq/genetics/overview#Section_10 (last modified June 15, 2004).

anthrax A disease caused by the bacterium *Bacillus anthracis*. Anthrax cannot be transmitted from person-to-person. There are three distinct types of anthrax:
cutaneous: An infection of the skin by *B. anthracis*, producing a characteristic lesion that begins as a papule and soon becomes a vesicle and breaks, discharging a bloody liquid. Approximately 36 hours after infection, the vesicle becomes a bluish-black dead mass. Cutaneous anthrax infection is usually accompanied by high fever, vomiting, profuse sweating, and extreme prostration, but is rarely fatal.
(gastro)intestinal: An infection of the digestive track caused by eating foods contaminated with *B. anthracis*. Gastrointestinal anthrax is usually accompanied by chill, high fever, pain in the head, back, and extremities, vomiting, bloody diarrhea, cardiovascular collapse, and, frequently, hemorrhages from the mucous membranes and the skin; gastrointestinal anthrax is often fatal.
inhalation (pulmonary): An infection of the lungs caused by the inhalation of particles containing *B. anthracis*. Inhalation anthrax is usually accompanied by an initial chill followed by pain in the back and legs, rapid respiration, shortness of breath, cough, fever, rapid pulse, and extreme cardiovascular collapse; inhalation anthrax is frequently fatal.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Anthrax: What You Need to Know*, *at* http://www.bt.cdc.gov/agent/anthrax/needtoknow.asp (last modified July 31, 2003).

antibody (Ab) A molecule located in the blood or other body fluids that is produced in response to an antigen. An antibody reacts specifically with its corresponding antigen.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

antigen (Ag) A foreign organism or substance or aberrant native cell that induces the production of its corresponding antibody when introduced into an organism. Production of the corresponding antibodies occurs following an antigen-specific latent period, which typically lasts days or weeks.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

antitoxin An antibody formed in response to an antigen that is a poisonous biological substance. An antitoxin can neutralize the effect of the poison.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

asymptomatic Without symptoms.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

ataxia An inability to coordinate voluntary muscle movement.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

avian influenza A contagious disease of animals, also called "bird flu," caused by influenza viruses that normally infect only birds and, less commonly, pigs. Avian influenza viruses tend to be species specific, but have on rare occasions passed the species barrier, allowing humans to be infected by animals.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).
WORLD HEALTH ORGANIZATION, *Epidemic and Pandemic Alert Response*, *Avian influenza frequently asked questions*, *at* http://www.who.int/csr/disease/avian_influenza/avian_faqs/en/index.html# whatis (last modified December 5, 2005). See **Influenza.**

B

bacterium A single-celled microorganism that reproduces by cell division.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Anthrax: What You Need to Know*, *at* http://www.bt.cdc.gov/agent/anthrax/needtoknow.asp (last modified July 31, 2003).

botulism An illness caused by the toxin produced by the bacterium *Clostridium botulinum*. Botulism is typically caused by ingestion of the pre-formed *C. botulinum* toxin; wound botulism may occur when wounds are infected with toxin-secreting *C. botulinum* bacteria. Botulism is characterized by severe paralysis and is often fatal.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Facts About Botulism*, *at* http://www.bt.cdc.gov/agent/botulism/factsheet.asp (last reviewed Dec. 5, 2005).

brachycardia Slowness of the heartbeat; typically less than 50 beats per minute.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

bradycardia See **brachycardia**.

brucellosis An infectious disease caused by the bacterium *Brucella*, of which the most common species are *B. melitensis*, *B. abortis*, *B. canis*, and *B. suis*. The *Brucella* bacterium is primarily transmitted among animals and is transmitted to humans upon contact with infected animals or ingestion of infected meats, milk, or cheese. Brucellosis is characterized by fever, sweating, weakness, aches, and pains; in rare cases, severe infections of the central nervous systems or lining of the heart may occur, leading to death. Brucellosis is transmitted through breast-feeding, sexual intercourse, and, rarely, direct person-to-person contact.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); DIV. OF BACTERIAL & MYCOTIC DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Brucellosis*, *at* http://www.cdc.gov/ncidod/dbmd/diseaseinfo/brucellosis_g.htm (last modified Oct. 6, 2005).

C

capillary A small blood vessel.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

case An instance of disease; a patient.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006)

chickenpox (varicella) An acute contagious disease, usually occurring in children, caused by the Varicellovirus, a member of the family *Herpesviridae*. Chickenpox is marked by a sparse eruption of papules, usually on the face, scalp, and/or trunk. The papules become vesicles and then pustules, like that of smallpox although less severe and varying in stages. Chickenpox has an incubation period of approximately 14 to17 days and is usually accompanied by mild constitutional symptoms. In severe cases, most frequently in adults, chickenpox may lead to bacterial infection of the skin, swelling of the brain, and/or pneumonia. Chickenpox is highly contagious and is spread by coughing or sneezing. The varicella vaccine is available to prevent chickenpox.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); NAT'L IMMUNIZATION PROGRAM, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Varicella – In Short*, *at* http://www.cdc.gov/nip/diseases/varicella/vac-chart.htm (last modified Feb. 15, 2001).

cholera An acute epidemic infectious disease caused by infection of the intestine with the bacterium *Vibrio cholerae*. Cholera is characterized by profuse watery diarrhea, extreme loss of fluid and electrolytes, dehydration, and collapse. If untreated, cholera may lead to shock and death. Cholera is transmitted by drinking water or consuming foods contaminated with *V. cholerae* bacteria.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); DIV. OF BACTERIAL & MYCOTIC DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN

SERVS., *Cholera*, *at* http://www.cdc.gov/ncidod/dbmd/diseaseinfo/cholera_g.htm (last modified Oct. 6, 2005).

clinical utility The likelihood that a test will, by prompting an intervention, result in an improved health outcome. The clinical utility of a test is based on the health benefits of the interventions offered to persons with positive test results.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); NAT'L CANCER INST., U.S. NAT'L INSTS. OF HEALTH, *Cancer Genetics Overview*, *at* http://www.cancer.gov/cancertopics/pdq/genetics/overview#Section_10 (last modified June 15, 2004).

clinical validity The predictive value of a test for a given clinical outcome (e.g., the likelihood that cancer will develop in someone with a positive test). Clinical validity is, in large measure, determined by the ability of a test to accurately identify people with a defined clinical condition.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); NAT'L CANCER INST., U.S. NAT'L INSTS. OF HEALTH, *Cancer Genetics Overview*, *at* http://www.cancer.gov/cancertopics/pdq/genetics/overview#Section_10 (last modified June 15, 2004).

communicable Capable of being transmitted from one organism or person to another.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

communicable disease An illness that is transmissible by direct or indirect contact with the sick, their bodily excretions or cell secretions, or a disease vector.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

constitutional symptoms General indications of disease pertaining to the body as a whole.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

contact A person who has been exposed to a contagious disease.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

contact tracing Identification and location of persons who may have been exposed to an infectious disease, which may result in surveillance of those persons. Contact tracing has been used to control contagious diseases for decades. A disease investigation begins when an individual is identified as having a communicable disease. An investigator interviews the patient, family members, physicians, nurses, and anyone else who may have knowledge of the primary patient's contacts, anyone who might have been exposed, and anyone who might have been the source of the disease. Then the contacts are screened to see if they have or have ever had the disease; in certain cases, the process of contact tracing will be repeated for identified contacts as well. The type of contact screened depends on the nature of the disease. A sexually transmitted disease will require interviewing only

infected patients and screening only their sex partners. A disease that is spread by respiratory contact, such as tuberculosis, may require screening tens to hundreds of persons.
CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Severe Acute Respiratory Syndrome (SARS): Appendix 2 – Glossary*, *at* http://www.cdc.gov/ncidod/sars/guidance/core/app2.htm (last modified May 3, 2005); THE MEDICAL & PUBLIC HEALTH LAW SITE, LOUISIANA STATE UNIV. LAW CTR., *Contact Tracing*, *at* http://biotech.law.lsu.edu/books/lbb/x578.htm (last visited January 1, 2006).

contagious See **communicable disease**.

cutaneous Relating to the skin.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

cyanosis A dark bluish or purplish discoloration of the skin and mucous membrane due to deficient oxygen content in the blood.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

D

decontamination The elimination of poisonous or otherwise harmful agents, such as chemicals or radioactive materials, from a person, area, thing, etc.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); OXFORD ENGLISH DICTIONARY (2d. ed. 1989).

directly observed therapy Visual monitoring of an individual's ingestion of medications by a health care worker to ensure compliance in difficult or long-term regimens, such as in oral treatment for tuberculosis.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

disease An interruption, cessation, or disorder of a body function, system, or organ; a departure from a state of health.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); OXFORD ENGLISH DICTIONARY (2d. ed. 1989).

disease agent A microorganism whose presence or absence results in disease.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

disease vector See **vector**.

distal Situated away from the center of the body; often used in reference to the extremity or distant part of a limb or organ.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); OXFORD ENGLISH DICTIONARY (2d. ed. 1989).

dysphagia Difficulty swallowing.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

dyspnea Shortness of breath, usually associated with disease of the heart or lungs.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

E

edema 1. An accumulation of an excess amount of watery fluid in cells, tissues, or body cavities. 2. A fluid-filled tumor or swelling.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); OXFORD ENGLISH DICTIONARY (2d. ed. 1989).

effectiveness The extent to which a treatment achieves its intended purpose in an average clinical environment.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

efficacy The extent to which a treatment achieves its intended purpose under ideal circumstances.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

encephalitis Inflammation of the brain.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

endemic Denoting a temporal pattern of disease occurrence in a population .
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

epidemic The occurrence in a community of cases of illness or health-related events clearly in excess of normal expectancy.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

epidemiology The study of the distribution and determinants of health-related states or events in specified populations, and the application of this study to control of health problems.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

epistaxis Bleeding from the nose.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

erythema Redness due to dilation of the capillaries that can signal an infection.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

***Escherichia coli* (*E. coli*)** A type of bacteria. *E. coli* O157:H7 causes foodborne illness and is characterized by bloody diarrhea and, in severe cases, kidney failure and/or death. *E. coli* O157:H7 is transmitted through the ingestion of undercooked, contaminated ground beef, unpasteurized milk, or contaminated water. Non-Shiga toxin-producing *E. coli* (diarrheagenic *E. coli*) causes chronic diarrhea (watery or bloody) associated with abdominal cramps and fever. Non-Shiga toxin-producing *E. coli* is transmitted through ingestion of contaminated food and water, most commonly by international travelers or children in the developing world. In rare cases, non-Shiga toxin-producing *E. coli* may be transmitted through person-to-person contact.

DIV. OF BACTERIAL & MYCOTIC DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Diarrheagenic Escherechia coli*, at http://www.cdc.gov/ncidod/diseases/hanta/hps/noframes/generalinfoindex.htm (last reviewed Apr. 28, 2005); DIV. OF BACTERIAL & MYCOTIC DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Escherichia coli* O157:H7, *at* http://www.cdc.gov/ncidod/dbmd/diseaseinfo/escherichiacoli_g.htm (last modified Oct. 6, 2005).

ex vivo Referring to the use of human cells or tissues after their removal from an organism and while they remain viable.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

exanthema A skin eruption occurring as a symptom of a viral or bacterial disease, such as measles.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

F

fomite An object (e.g., clothing, towel, utensil) that possibly harbors a disease agent and may be capable of transmitting it.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

G

Gastrointestinal (GI) Relating to the stomach and intestines.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

genus A group of species alike in the broad features of their organization but different in detail; species within a genus are incapable of fertile mating.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

H

Hantavirus A genus of *Bunyaviridae* viruses that cause pneumonia and hemorrhagic fevers. At least 7 species within the genus are recognized at the current time (Hantaan, Puumala, Seoul, Prospect Hill, Thailand, Thottapalayam, and Sin Nombre virus), while a number of other species have not yet been classified. Rodents are the asymptomatic carriers of Hantaviruses and shed the viruses in their saliva, urine, and feces. Hantavirus is transmitted from rodents to humans through bites, ingestion of contaminated foods, or inhalation of droplets containing the aerosolized virus; person-to-person spread of Hantavirus is rare.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).; SPECIAL PATHOGENS BRANCH, NAT'L CTR. FOR INFECTIOUS DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *All About Hantaviruses, at* http://www.cdc.gov/ncidod/diseases/hanta/hps/noframes/generalinfoindex.htm (last modified Apr. 28, 2005).

hematemesis Vomiting of blood.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

hematuria The presence of blood in the urine.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

hemoptysis Spitting of blood from the lungs or bronchial tubes as a result of pulmonary or bronchial hemorrhage.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

hemorrhage To bleed.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

hemorrhagic fever See **viral hemorrhagic fever**.

hepatitis Inflammation of the liver, due usually to viral infection but sometimes to toxic agents. Previously considered a problem only of the developing world, viral hepatitis now ranks as a major public health problem in industrialized nations. The 3 most common types of viral hepatitis (A, B, and C) afflict millions worldwide. Acute viral hepatitis is characterized by varying degrees of fever, malaise, weakness, anorexia, nausea, and abdominal distress.

Hepatitis A is caused by an enterovirus and is most often spread through ingestion of contaminated food or water. The case fatality rate is less than 1%, and recovery is complete. The presence of antibody to hepatitis A virus indicates prior infection, noninfectivity, and immunity to future attacks. An effective vaccine is available for immunization against hepatitis A.

Hepatitis B is caused by a small DNA virus and is transmitted through sexual contact, sharing of needles by IV drug abusers, needlestick injuries among health care workers, and from mother to fetus. The incubation period is 6-24 weeks. Some patients become carriers, and in some an immune response to the virus induces a chronic phase leading to liver failure and/or liver cancer. Hepatitis B is more likely to cause death than hepatitis A. Hepatitis B surface antigen (HBsAg) is detectable early in serum; its persistence correlates with chronic infection and infectivity. An effective vaccine is available for immunization against hepatitis B.

Hepatitis C is the principal form of transfusion-induced hepatitis, which may develop into a chronic active form of hepatitis. Hepatitis C is more likely to cause death than hepatitis A.

Hepatitis D is caused by an RNA virus capable of causing disease only in persons previously infected with hepatitis B.

Hepatitis E occurs chiefly in the tropics and resembles hepatitis A in that it is transmitted by the fecal-oral route and does not become chronic or lead to a carrier state. However, hepatitis E has a much higher mortality rate than hepatitis A.

STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

horizontal transmission Transmission of a disease agent from an infected organism or individual to another, susceptible organism or individual.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

host The organism in or on which a parasite lives.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

hypertension High blood pressure.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

hyperthermia Extremely high fever, often occurring as a side effect of therapeutic regimens.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

hypotension Low blood pressure.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

hypothermia A body temperature significantly below normal body temperature (98.6°F/37°C for humans).
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

I

identifiable health information Information in any form (e.g., oral, written, electronic, visual, pictorial, physical) that relates to an individual's past, present, or future physical or mental health status, condition, treatment, service, products purchased, or provision of care and
(a) reveals the identity of the individual; or
(b) there is a reasonable basis to believe the information could be used, alone or with other information, to reveal the identity of the individual.
PUBLIC HEALTH STATUTE MODERNIZATION NAT'L EXCELLENCE COLLABORATIVE, TURNING POINT, MODEL STATE PUBLIC HEALTH ACT: A TOOL FOR ASSESSING PUBLIC HEALTH LAWS 13 (Sept. 2003).

immune response Any response of the immune system to an antigen, including antibody production. The immune response to the initial antigenic exposure (primary immune response) is generally detectable only after a lag period of several days to 2 weeks; the immune response to a subsequent stimulus by the same antigen (secondary immune response) is more rapid.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

immune system An intricate complex of interrelated cellular, molecular, and genetic components that provides a defense (immune response) against foreign organisms or substances and aberrant native cells.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

immunogen See **antigen**.

in vitro In an artificial environment, such as a test tube or culture media.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

in vivo In the living body.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

incidence The number of specified new events (e.g., new cases of a disease) during a specified period of time in a specified population.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

incubation period The period of time between a disease agent's entry into an organism and the organism's initial display of disease symptoms. During the incubation period, the disease is developing. Incubation periods are disease-specific and may range from hours to weeks.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

index case The patient that brings a family, group, or community under study.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); OXFORD ENGLISH DICTIONARY (2d. ed. 1989).

infectious agent A microorganism that causes infectious disease through transmission.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

infectious disease A disease resulting from the presence and activity of a microorganism.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

influenza An acute respiratory disease caused by influenza viruses. The virus is typically inhaled and then attacks the respiratory system, causing chills, fever, headache, loss of strength, muscle aches and a cough. Commonly occurs in epidemics, sometimes pandemics, usually with a low mortality rate.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

isolation The separation, for the period of communicability, of known infected persons in such places and under such conditions as to prevent or limit the transmission of the infectious agent.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); LAWRENCE O. GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 210 (University of California Press 2000).

J

K

L

latent period See **incubation period**.

lymph node One of numerous round, oval, or bean-shaped bodies that form part the immune system. Lymph nodes produce a fluid (lymph) that is circulated throughout the body to remove impurities.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

M

measles An acute respiratory disease caused by a virus of the *Paramyxoviridae* family; one of the most infectious diseases in the world. Measles is usually marked by fever, inflammation of the respiratory mucous membranes, red watery eyes, and a generalized eruption of dusky red papules. The papules first appear on the cheeks in the form of spots (often referred to as "Koplik spots"), a manifestation utilized in early diagnosis. Measles has an average incubation period of 10 to 12 days; the rash begins approximately 14 days after exposure and lasts 5 to 6 days, progressing downward from the face. Recovery is usually rapid but respiratory complications caused by secondary bacterial infections are common. Severe cases may be accompanied by swelling of the brain. The measles vaccine is available to prevent measles.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); NAT'L IMMUNIZATION PGM., CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Measles*, *at* http://www.cdc.gov/nip/diseases/measles/ (last modified Apr. 15, 2004).

monkeypox A disease found in monkeys and rodents and caused by the monkeypox virus, a member of the family *Poxviridae*. In humans, monkeypox is initially characterized by fever, headache, muscle aches, swelling of the lymph nodes, and fatigue. Approximately 3 days after the onset of these initial symptoms, a rash develops, typically beginning on the face, and progresses into raised pustules. Monkey pox has an incubation period of approximately 12 days. The disease is rarely found in humans, but may be

transmitted through contact with the blood, bodily fluid, or rash of an infected animal. Monkeypox may also be transmitted among humans through exposure to large respiratory droplets during long periods of face-to-face contact or by touching the bodily fluids or contaminated objects of an infected individual.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *What You Should Know About Monkeypox*, *at* http://www.cdc.gov/ncidod/monkeypox/factsheet2.htm (last modified June 12, 2003).

mucous membrane A tissue lining found in various bodily structures, including the nose, eyes, and mouth.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

myalgia Muscular pain.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

mydriasis Dilation of the pupil.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

N

necrosis Death of one or more cells or a portion of a tissue or organ due to irreversible damage.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

notifiable disease A disease that, by statutory requirements, must be reported to the public health or veterinary authorities when the diagnosis is made because of its importance to human or animal health.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

O

outbreak A sudden rise in the number of new cases of a disease, usually during a specified period and in a specified population.
MERRIAM-WEBSTER ONLINE, *at* http://www.merriamwebster.com (last visited Jan. 1, 2006).

P

pandemic An occurrence of a disease affecting the population of an extensive geographic area.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006)

papule A circumscribed, solid elevation up to 100 cm in diameter on the skin.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

parasite An organism that lives on or in another and draws its nourishment therefrom.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

plague An acute infectious disease caused by the bacterium *Yersinia pestis*. Plague is characterized by high fever, prostration, a hemorrhagic eruption, lymph node enlargement, pneumonia, and hemorrhage from the mucous membranes. Plague is primarily a disease of rodents that is transmitted to humans by fleas that have bitten infected animals. In humans, plague takes one of three main forms:
bubonic: The most common form of plague, caused when an infected flea bites a human or materials contaminated with *Y. pestis* bacteria contact broken skin. Bubonic plague cannot be transmitted person-to-person.
pneumonic: A form of plague that occurs when *Y. pestis* infects the lungs. Pneumonic plague may be transmitted person-to-person through the air by inhalation of respiratory droplets containing *Y. pestis* or aerosolized *Y. pestis*. Pneumonic plague may also develop when an individual with bubonic or septicemic plague goes untreated and *Y. pestis* bacteria spread to the lungs.
septicemic: A form of plague resulting from the presence of *Y. pestis* bacteria in the blood. Septicemic plague may develop from bubonic or pneumonic plague or occur alone. When septicemic plague occurs alone, lymph node enlargement is typically absent.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Facts About Pneumonic Plague*, *at* http://www.bt.cdc.gov/agent/plague/factsheet.pdf (last modified Oct. 14, 2001).

polymerase chain reaction (PCR) A method for the repeated copying of a gene sequence. PCR is widely used to amplify minute quantities of DNA in order to provide adequate specimens for laboratory study.
BRUCE ALBERTS ET AL., MOLECULAR BIOLOGY OF THE CELL 316-17 (3d. ed. 1994); STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

predictive value The likelihood that a given test result correlates with the absence (R_f) or presence of disease. A positive predictive value is the ratio of patients with the disease who test positive to the entire population of individuals with a positive test result; a negative predictive value is the ratio of patients without the disease who test negative to the entire population of individuals with a negative test.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

prevalence The number of cases of a disease existing in a given population at a specific period of time (period prevalence) or at a particular moment in time (point prevalence).
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

prostration Extreme physical weakness or exhaustion.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); OXFORD ENGLISH DICTIONARY (2d. ed. 1989).

proximal Situated nearest to the center or trunk of the body; often used in reference to a portion of a limb, bone, organ, or nerve.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); OXFORD ENGLISH DICTIONARY (2d. ed. 1989).

pruritus Itching.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

public health A societal effort to assure the conditions in which the population can be healthy.
INST. OF MEDICINE, THE FUTURE OF THE PUBLIC'S HEALTH IN THE 21ST CENTURY 2 (National Academies Press 2003); PUBLIC HEALTH STATUTE MODERNIZATION NAT'L EXCELLENCE COLLABORATIVE, TURNING POINT, MODEL STATE PUBLIC HEALTH ACT: A TOOL FOR ASSESSING PUBLIC HEALTH LAWS 15 (Sept. 2003).

public health agency Any organization operated by federal, tribal, state, or local government that principally acts to protect or preserve the public's health.
PUBLIC HEALTH STATUTE MODERNIZATION NAT'L EXCELLENCE COLLABORATIVE, TURNING POINT, MODEL STATE PUBLIC HEALTH ACT: A TOOL FOR ASSESSING PUBLIC HEALTH LAWS 15 (Sept. 2003).

public health emergency An occurrence or imminent threat of an illness or health condition that: (a) is believed to be caused by (i) bioterrorism, (ii) the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin, or (iii) a natural disaster, chemical attack or accidental release, or nuclear attack or accidental release; or (b) poses a high probability of (i) a large number of deaths in the affected population, (ii) a large number of serious or long-term illnesses in the affected population, or (iii) widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the affected population.
PUBLIC HEALTH STATUTE MODERNIZATION NAT'L EXCELLENCE COLLABORATIVE, TURNING POINT, MODEL STATE PUBLIC HEALTH ACT: A TOOL FOR ASSESSING PUBLIC HEALTH LAWS 15 (Sept. 2003).

public health law The study of the legal powers and duties of the state to assure the conditions for people to be healthy (e.g., to identify, prevent, and ameliorate risks to health in the population) and the limitations on the power of the state to constrain the autonomy, privacy, liberty, proprietary, or other legally protected interests of individuals for the protection or promotion of community health.
LAWRENCE O. GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 4 (University of California Press 2000).

public health official The head officer or official of a state or local public health agency who is responsible for the operation of the agency and has the authority to manage and supervise the agency's activities.
PUBLIC HEALTH STATUTE MODERNIZATION NAT'L EXCELLENCE COLLABORATIVE, TURNING POINT, MODEL STATE PUBLIC HEALTH ACT: A TOOL FOR ASSESSING PUBLIC HEALTH LAWS 15 (Sept. 2003).

pulmonary Relating to the lungs.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

pus A fluid product of inflammation.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

pustule A circumscribed, superficial elevation of the skin, up to 1.0 cm in diameter, containing pus.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

pyrogenic Causing fever.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

Q

quarantine The restriction of the activities of healthy persons who have been exposed to a communicable disease, during its period of communicability, to prevent disease transmission during the incubation period if infection should occur.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); LAWRENCE O. GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 210 (University of California Press 2000).

R

reportable disease See **notifiable disease**.

reservoir The living or non-living material an infectious agent depends on for its survival. The infectious agent multiplies and/or develops in or on the reservoir.
STEDMAN'S MEDICAL DICTIONARY (28th 2006)

rhinorrhea A discharge from the nose.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

ricin A poison that may be made from the waste materials generated during the processing of castor beans. Ricin may be produced as a powder, a mist, a pellet, or dissolved in water and may be delivered through ingestion, inhalation, or injection. Ricin poisoning cannot be transmitted person-to-person. Treatment for ricin poisoning consists of supportive care only, as there is currently no effective antibiotic or antitoxin treatment available.

Death from ricin poisoning may occur within 36 to 72 hours of exposure, depending upon the route of exposure. If death has not occurred within 3 to 5 days, the victim usually recovers. The symptoms of ricin poisoning vary according to the route of exposure:
ingestion: Ingestion of a significant amount of ricin produces vomiting and diarrhea (that may become bloody) within 6 hours. Severe dehydration may result, followed by low blood pressure. Other symptoms may include hallucinations, seizures, and blood in the urine. In severe cases, the liver, spleen, and kidneys may cease to function, producing death.
inhalation: The inhalation of significant amounts of ricin usually produces respiratory distress, fever, cough, nausea, and tightness in the chest within 8 hours. Heavy sweating and fluid build-up in the lungs may follow, and the skin may turn blue. In severe cases, low blood pressure and respiratory failure may occur, leading to death.
CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Facts About Ricin*, at http://www.bt.cdc.gov/agent/ricin/facts.asp (last modified Feb. 5, 2004).

Rickettsia A genus of small bacteria often found in lice, fleas, ticks, and mites. Pathogenic species of *Rickettsia* infect humans and other animals, causing epidemic typhus, endemic (murine) typhus, Rocky Mountain spotted fever, tsutsugamushi disease, rickettsialpox, and other diseases.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

S

salmonella A genus of bacteria found in humans and animals, especially rodents. *Salmonella enterica* is a common species that causes gastroenteritis, enteric fever, and food poisoning in humans. Salmonellosis is characterized by the onset of diarrhea, fever, and abdominal cramps within 12 to 72 hours after infection and usually lasts 4 to 7 days. *Salmonella typhi* causes typhoid fever in humans. *Salmonella* bacteria are transmitted through the ingestion of contaminated food or water. Infection with *Salmonella* is treatable with antibiotics. Most persons recover with treatment, but, in severe cases, the infection may spread to the bloodstream, resulting in death.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); DIV. BACTERIAL & MYCOTIC DISEASE, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Salmonellosis*, *at* http://www.cdc.gov/ncidod/dbmd/diseaseinfo/salmonellosis_g.htm (last modified October 13, 2005).

sample **1.** A relatively small quantity of material, or an individual object, from which the quality of the mass, group, species, etc. which it represents may be inferred. **2.** A selected subset of a population.

OXFORD ENGLISH DICTIONARY (2d. ed. 1989); STEDMAN'S MEDICAL DICTIONARY (28th ed. 2000).

screen To systematically apply a test or exam to a defined population.
PUBLIC HEALTH STATUTE MODERNIZATION NAT'L EXCELLENCE COLLABORATIVE, TURNING POINT, MODEL STATE PUBLIC HEALTH ACT: A TOOL FOR ASSESSING PUBLIC HEALTH LAWS 16 (Sept. 2003).

sensitivity The ability of a test to correctly identify those with a given characteristic or disease.
LEON GORDIS, EPIDEMIOLOGY 59 (W.B. Saunders Co. 1996).

Severe Acute Respiratory Syndrome (SARS) A viral respiratory illness first identified during a global outbreak in 2003 that originated in China. SARS is usually characterized by a high fever (temperature greater than 100.4°F/38.0°C), headache, an overall feeling of discomfort, and body aches. Some infected individuals also display mild respiratory symptoms, and about 10 to 20 percent of patients have diarrhea. Approximately 2 to 7 days following onset of the illness, infected individuals often develop a dry cough, and many infected individuals will go on to develop pneumonia. SARS is transmitted through close person-to-person contact. The SARS virus appears to be most easily transmitted by respiratory droplets produced when an infected person coughs or sneezes. These expelled droplets may be deposited directly on the mucous membranes of the mouth, nose, or eyes of persons who are nearby or transferred thereto by persons who touch a contaminated surface or object. It remains uncertain whether the SARS virus is able to spread more broadly through the air or in other ways.
CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Basic Information About SARS*, *at* http://www.cdc.gov/ncidod/sars/factsheet.htm (last modified May 3, 2005).

smallpox (*variola*) An acute eruptive contagious disease caused by a virus of the family *Poxviridae*. Smallpox is characterized by initial chills, high fever, backache, and headache; within 2 to 5 days the constitutional symptoms subside and a skin eruption appears as papules, which become pit-like vesicles, develop into pustules, dry, and form scabs that, on falling off, leave a permanent marking of the skin (pock marks). Fatality rates for smallpox may exceed 20 percent. The average incubation period of smallpox is 8 to 14 days. Generally, direct and fairly prolonged face-to-face contact is required to transmit smallpox from one person to another, although smallpox may also be transmitted through direct contact with infected bodily fluids or contaminated objects. Humans are the only natural hosts of smallpox; it is not known to be transmitted by insects or

animals. There is no treatment for smallpox, although a vaccine is available to prevent infection. As a result of increasingly aggressive vaccination programs carried out over a period of about 200 years, smallpox has been eradicated; the last naturally occurring case of smallpox was reported in Somalia in 1977. Routine vaccination, discontinued in the 1970s, has been reinstated for military and health personnel and others who will be at high risk if the smallpox virus is ever used as a weapon of biological warfare or bioterrorism.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Smallpox Disease Overview*, *at* http://www.bt.cdc.gov/agent/smallpox/overview/disease-facts.asp (last modified Dec. 30, 2004).

species A group of organisms that generally bear a close resemblance to one another in the more essential features of their organization; members of the same species may breed effectively to produce fertile offspring.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

specificity The ability of a test to correctly identify those without a given characteristic or disease.
LEON GORDIS, EPIDEMIOLOGY 59 (W.B. Saunders Co. 1996).

sputum Saliva, mucus, blood, or other fluid spit from the mouth.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

Staphylococcus A genus of bacteria found on the skin, in skin glands, on the nasal and other mucous membranes of warm-blooded animals, and in various food products. *Staphylococcus aureus* is a common species found especially on nasal mucous membrane and skin. *S.aureus* produces toxins including those that cause toxic shock syndrome and food poisoning. *Staphylococcus* infections are usually treatable with antibiotics, although antibiotic resistant trains have been identified.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); DIV. OF HEALTHCARE QUALITY PROMOTION, CTRS. FOR DISEASE CONTROL & PREVENTION, *Healthcare-Associated Methicillin Resistant Staphylococcus aureus (HA-MRSA)*, *at* http://www.cdc.gov/ncidod/dhqp/ar_mrsa.html (last modified Jun. 1, 2005).

surveillance A type of observational study that involves continuous monitoring of disease occurrence within a population.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

T

tachycardia Rapid beating of the heart, typically more than 90 beats per minute.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

toxin A harmful or poisonous substance that is formed during the metabolism and growth of certain microorganisms and some plant and animal species.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

transmissible agent A biological substance that causes disease or infection through conveyance from one organism to another.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); PUBLIC HEALTH STATUTE MODERNIZATION NAT'L EXCELLENCE COLLABORATIVE, TURNING POINT, MODEL STATE PUBLIC HEALTH ACT: A TOOL FOR ASSESSING PUBLIC HEALTH LAWS 16 (Sept. 2003).

transmission The conveyance of disease from one organism to another.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

Tuberculosis (TB) A disease caused by infection with the bacterium *Mycobacterium tuberculosis*, which can affect almost any tissue or organ of the body, but most commonly affects the lungs. Primary tuberculosis is typically a mild or asymptomatic local lung infection that in otherwise health people does not lead to generalized disease because an immune response arrests the spread of the bacteria and walls off the zone of infection. The tuberculosis skin test will, however, become positive within a few weeks of infection and remain positive throughout life. Bacteria involved in primary tuberculosis remain viable and can become reactivated months or years later to initiate secondary tuberculosis. Progression to the secondary stage eventually occurs in 10-15% of people who have had primary tuberculosis. The risk of reactivation and progression is increased by, *inter alia*, diabetes mellitus and HIV infection and in alcoholics, IV drug abusers, nursing home residents, and those receiving steroid or immunosuppressive therapy. Secondary or reactivation tuberculosis usually results in a chronic, spreading lung infection, most often involving the upper lobes. Rarely, secondary or reactivation tuberculosis results in widespread dissemination of infection throughout the body (military tuberculosis). The symptoms of active pulmonary tuberculosis are fatigue, anorexia, weight loss, low-grade fever, night sweats, chronic cough, and hemoptysis. Local symptoms depend on the parts affected. Active pulmonary tuberculosis is relentlessly chronic and, if untreated, leads to progressive destruction of lung tissue. Tuberculosis ranks first among infectious diseases as a cause of death.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

tularemia A disease caused by the bacterium *Francisella tularensis*. Tularemia is characterized by symptoms including sudden fever, chills, headaches, diarrhea, muscle aches, joint pain, dry cough, progressive weakness, and swelling of the lymph nodes. In severe cases, infected persons may develop pneumonia, chest pain, bloody sputum, and respiratory distress. Tularemia is not transmissible through person-to-person contact and is most commonly transmitted to humans from rodents, through the bite of a vector, such as a deer fly, tick, or other bloodsucking insect. Tularemia may also be acquired through the bite of an infected animal, handling of

an infected animal carcass, ingestion of contaminated food or water, or inhalation of the bacterium. Tularemia is treatable with antibiotics.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Key Facts About Tularemia, at* http://www.bt.cdc.gov/agent/tularemia/facts.asp (last modified Oct. 7, 2003).

typhoid fever An acute infectious disease caused by the bacterium *Salmonella typhi*. Typhoid fever is characterized by a continued fever rising in a step-like curve during the first week of infection, severe physical and mental depression, an eruption of rose-colored spots on the chest and abdomen, swelling of the abdomen, early constipation, and subsequent diarrhea. In severe cases, typhoid fever may produce intestinal hemorrhage or perforation of the bowel. The average duration of typhoid fever is approximately 4 weeks, although aborted forms and relapses are not uncommon. *S. typhi* bacteria live only in humans, and typhoid fever is transmitted through the ingestion of contaminated food and water, most frequently in the developing world. Typhoid fever can be treated and prevented with antibiotics.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); DIV. OF BACTERIAL & MYCOTIC DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Typhoid Fever*, *at* http://www.cdc.gov/ncidod/dbmd/diseaseinfo/typhoidfever_g.htm (last modified Oct. 24, 2005).

typhus A group of acute infectious and contagious diseases caused by bacteria belonging to genus *Rickettsia*. Typhus occurs in two principal forms: epidemic typhus and endemic (murine) typhus. Typhus is characterized by severe headaches, shivering and chills, high fever, malaise, and a rash and ranges in duration from short-lived to chronic. Typhus is transmitted to humans by arthropods (e.g., ticks, mites, lice, fleas); transmission rarely occurs from person to person.
STEDMAN'S MEDICAL DICTIONARY (28th ed.. 2006); NAT'L CTR. FOR INFECTIOUS DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., HEALTH INFORMATION FOR INTERNATIONAL TRAVEL, 2005-2006, THE YELLOW BOOK, *Rickettsial Infections*, *available at* http://www2.ncid.cdc.gov/travel/yb/utils/ybGet.asp?section=dis&obj=rickettsial.htm&cssNav=browseoyb.

U

V

vector An invertebrate animal (e.g., tick, mite, mosquito, bloodsucking fly) capable of transmitting an infectious agent among vertebrates.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

vertical transmission Transmission of a disease agent from an infected individual to its offspring.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

vesicle A small, circumscribed elevation of the skin, less than 1.0 cm in diameter, containing fluid.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

viral hemorrhagic fever An infectious, epidemic disease caused by a number of different viruses in families including *Arenoviridae*, *Bunyviridae*, *Flaviviridae*, and *Filoviridae*. Viral hemorrhagic fever simultaneously affects multiple organs within the body and is characterized by high fever, malaise, muscular pain, vomiting, diarrhea, a body rash, organ bleeding, shock, and tremors. In severe cases, viral hemorrhagic fever results in vomiting of blood, hemorrhaging of blood from the eyes and nose,and kidney damage. At least some viral hemorrhagic fevers are transmitted through person-to-person contact, including Ebola, Marburg disease, and Crimean-Congo fever. Many viral hemorrhagic fevers are life-threatening.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); SPECIAL PATHOGENS BRANCH, NAT'L CTR. FOR INFECTIOUS DISEASES, CTRS. FOR DISEASE CONTROL & PREVENTION, DEPT. OF HEALTH & HUMAN SERVS., *Viral Hemorrhagic Fevers*, *at* http://www.cdc.gov/ncidod/dvrd/spb/mnpages/dispages/vhf.htm (last modified Aug. 23, 2004).

viremia The presence of a virus in the bloodstream.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

virus A term for a group of infectious agents that are incapable of growth or reproduction apart from living cells. A complete virus usually includes either DNA or RNA and is covered by a protein shell. Viruses range in size from 15 nanometers to several hundred nanometers. Classification of a virus depends upon its physiochemical characteristics, mode of transmission, host range, symptomatology, and other factors. Many viruses cause disease.
STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); OXFORD ENGLISH DICTIONARY (2d. ed. 1989).

vital statistics Statistics relating to birth, death, marriages, health, and disease.
MERRIAM-WEBSTER ONLINE, *at* http://www.merriamwebster.com (last visited Jan. 1, 2006).

W

X

Y

Z

zoonosis A disease transmitted from one kind of animal to another or from animals to humans.

STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006); OXFORD ENGLISH DICTIONARY (2d. ed. 1989).

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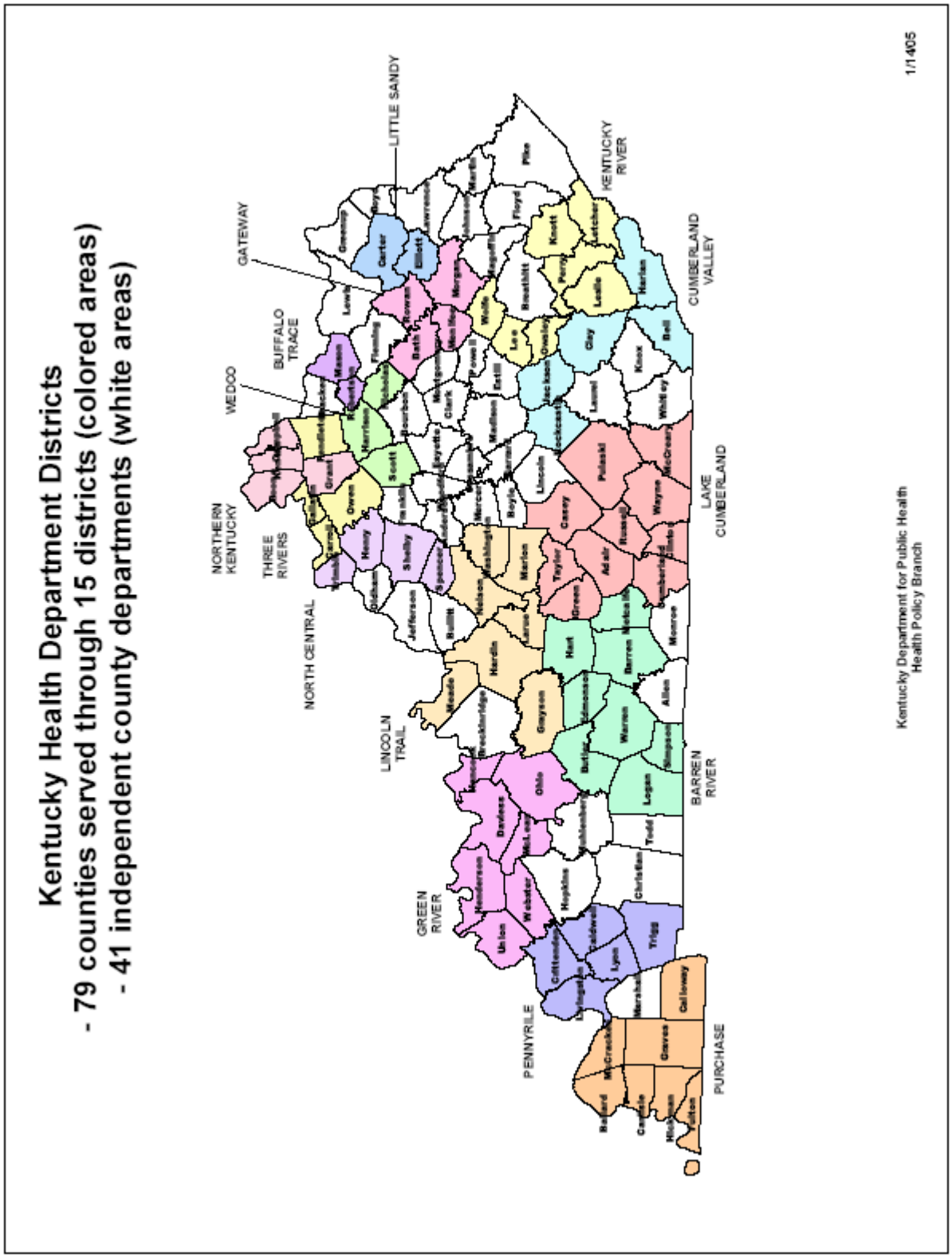
KENTUCKY HEALTH DISTRICTS

Appendix E



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KENTUCKY HEALTH DISTRICTS

Appendix E

15 KHD Districts

PENNYRILE
PURCHASE
GREEN RIVER
LINCOLN TRAIL
BARREN RIVER
LAKE CUMBERLAND
CUMBERLAND VALLEY
KENTUCKYRIVER
LITTLE SANDY
GATEWAY
BUFFALO TRACE
WEDCO
NORTHERN KENTUCKY
NORTH CENTRAL
THREE RIVERS

Ky.counties with the 41 independent County Dep't in **BOLD**

Ballard
Fulton
Hickman
Carlisle
Pike
Ohio
Clay
Hart
Hardin
Bell
Trigg
Pulaski
Logan
Lewis
Christian
Graves
Adair
Warren
Todd
Knox
Barren
Floyd
Wayne
Casey
Harlan
Butler
Laurel
Allen
Hopkins
Leslie
Carter
Perry Knott
Union
Owen
Grayson
Nelson
Daviess
Bath
Whitley
Lee
Shelby
Breathitt
Lyon
Madison
Scott
Morgan
Marion
Estill
Henry
Meade
Bullitt
Clark
Green
Grant
Larue
Lincoln
Breckinridge
McCreary
Calloway
Monroe
Fleming
Taylor
Letcher
Henderson
Lawrence
Rowan
Greenup
Jefferson
Jackson
Muhlenberg
Webster
Boone
Caldwell
Wolfe
Marshall
Elliott
Russell
Mason
Fayette
Harrison
Mercer
Martin
Magoffin
Crittenden
Bourbon
Metcalfe
Livingston
McLean
Boyle
Boyd
Johnson
Garrard
Edmonson
Clinton
Rockcastle
Pendleton
Simpson
Owsley
Powell
Franklin
Menifee
Cumberland
Oldham
Washington
Bracken
McCracken
Spencer
Kenton
Nicholas
Hancock
Anderson
Trimble
Carroll
Woodford
Campbell
Jessamine
Montgomery
Gallatin
Robertson

SOURCE; http://chfs.ky.gov/NR/rdonlyres/BDB27CBC-FA60-4FF5-8595-2D104AD6D162/0/KentuckyHDDistrictsCounties.pdf.

KENTUCKY REPORTABLE DISEASE FORM

Appendix F

EPID 200 (Rev. Jan/03)

Kentucky Reportable Disease Form
Department for Public Health
Division of Epidemiology and Health Planning
275 East Main St., Mailstop HS1E-C
Frankfort, KY 40621-0001

Disease Name_____

Mail Form to Local Health Department

DEMOGRAPHIC DATA

Patient's Last Name	First	M.I.	Date of Birth / /	Age	Gender ☐ M ☐ F ☐ Unk
Address	City	State	Zip		County of Residence
Phone Number	Patient ID Number	Ethnic Origin ☐ His. ☐ Non-His.	Race ☐ W ☐ B ☐ A/PI ☐ Am.Ind. ☐ Other		

DISEASE INFORMATION

Disease/Organism	Date of Onset / /	Date of Diagnosis / /
List Symptoms/Comments	Highest Temperature Days of Diarrhea	

Hospitalized? ☐ Yes ☐ No	Admission Date / /	Discharge Date / /	Died? ☐ Yes ☐ No ☐ Unk	Date of Death / /

Hospital Name: | Is Patient Pregnant? ☐ Yes ☐ No If yes, # wks_____

School/Daycare Associated? ☐ Yes ☐ No
Name of School/Daycare:

Outbreak Associated? ☐ Yes ☐ No
Food Handler? ☐ Yes ☐ No

Person or Agency Completing form:
Name: Agency:
Address:
Phone: Date of Report: / /

Attending Physician:
Name:
Address:
Phone:

LABORATORY INFORMATION

Date	Name or Type of Test	Name of Laboratory	Specimen Source	Results

ADDITIONAL INFORMATION FOR SEXUALLY TRANSMITTED DISEASES ONLY

Method of case detection: ☐ Prenatal ☐ Community & Screening ☐ Delivery ☐ Instit. Screening ☐ Reactor ☐ Provider Report ☐ Volunteer

Disease: ☐ Syphilis
Stage: ☐ Primary (lesion) ☐ Secondary (symptoms) ☐ Early Latent ☐ Late Latent ☐ Congenital ☐ Other

Disease: ☐ Gonorrhea ☐ Chlamydia ☐ Chancroid
Site: (Check all that apply) ☐ Genital, uncomplicated ☐ Pharyngeal ☐ Anorectal ☐ Other_____ ☐ Ophthalmic ☐ PID/Acute Salpingitis
Resistance: ☐ Penicillin ☐ Tetracycline ☐ Other _____

Date of spec. Collection	Laboratory Name	Type of Test	Results	Treatment Date	Medication	Dose

If syphilis, was previous treatment given for this infection? ☐ Yes ☐ No
If yes, give approximate date and place_____

KENTUCKY REPORTABLE DISEASE FORM

Appendix F

902 KAR 2:020 requires health professionals to report the following diseases to the local health departments serving the jurisdiction in which the patient resides or to the Kentucky Department for Public Health (KDPH).
(Copies of 902 KAR 2:020 available upon request)

REPORT IMMEDIATELY by TELEPHONE to the Local Health Department or the KY Department for Public Health:

- **Unexpected pattern of cases, suspected cases or deaths which may indicate a newly recognized infectious agent**
- **An outbreak, epidemic, related public health hazard or act of bioterrorism, such as SMALLPOX**

Kentucky Department for Public Health in Frankfort
Telephone 502-564-3418 or 1-888-9REPORT (973-7678)
FAX 502-696-3803

REPORT WITHIN 24 HOURS

Anthrax
Botulism
Brucellosis
Campylobacteriosis
Cholera
Cryptosporidiosis
Diphtheria
***E. coli* O157:H7**
***E. coli* shiga toxin positive**
Encephalitis, California group
Encephalitis, Eastern Equine
Encephalitis, St. Louis
Encephalitis, Venezuelan Equine
Encephalitis, Western Equine
Encephalitis, West Nile
***Haemophilus influenzae* invasive disease**
Hansen's disease
Hantavirus infection
Hepatitis A
Listeriosis
Measles
Meningococcal infections
Pertussis
Plague
Poliomyelitis
Psittacosis
Q Fever
Rabies, animal
Rabies, human
Rubella
Rubella syndrome, congenital
Salmonellosis
Shigellosis
Syphilis, primary, secondary, early latent or congenital
Tetanus
Tularemia
Typhoid Fever
Vibrio parahaemolyticus
Vibrio vulnificus
Yellow Fever

REPORT WITHIN ONE (1) BUSINESS DAY

Foodborne outbreak
Hepatitis B infection in a pregnant woman or child born in or after 1992
Hepatitis B, acute
Mumps
Streptococcal disease invasive, Group A
Toxic Shock Syndrome
Tuberculosis
Waterborne outbreak

REPORT WITHIN FIVE (5) BUSINESS DAYS

AIDS
Chancroid
***Chlamydia trachomatis* infection**
Ehrlichiosis
Gonorrhea
Granuloma inguinale
Hepatitis C, acute
Histoplasmosis
HIV infection
Lead poisoning
Legionellosis
Lyme disease
Lymphogranuloma venereum
Malaria
Rabies, post exposure prophylaxis
Rocky Mountain spotted fever
***Streptococcus pneumoniae*, drug-resistant invasive disease**
Syphilis, other than primary, secondary, early latent or congenital
Toxoplasmosis

Influenza virus isolates are to be reported weekly by laboratories.
902 KAR 02:065 requires long term care facilities to report an outbreak (2 or more cases) of influenza-like illnesses (ILI) within 24 hours to the local health department or the KDPH.

All cases of HIV infections/AIDS are reportable to a separate surveillance system in accordance with KRS 211.180(1)b. To obtain report forms contact the HIV/AIDS Branch at (502)-564-6539.
DO NOT REPORT ON THIS FORM.

Note: Animal bites shall be reported to local health departments within twelve (12) hours in accordance with KRS 258:065.