

Public Health Law Bench Book for Michigan Courts



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Acknowledgements

This *Public Health Law Bench Book for Michigan Courts* has been revised and updated from the 2007 version under the leadership of Michigan Attorney General Bill Schuette. Among other things, it accounts for changes that have occurred in the public health and legal landscape.

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Preface

In recent years, increased attention has been devoted to public health legal preparedness: assessing and updating current public health laws and educating the people who enforce and interpret these laws. Such increased attention seeks to ensure adequate and efficient responses to both traditional and emerging public health threats. 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.¹ Despite this central role, many members of the judiciary have received little, if any, formal public health law training.

Public health law is primarily state law, and its judicial interpretation is complicated by several considerations:

First, the majority of public health cases addressing infectious diseases or other conditions requiring the intervention of county or local health departments date back to at least the early twentieth century. Thus, 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 terms and methods that must be applied to a public health context. For example, in law, the following four definitions could each be used to describe the term "quarantine," depending on the context in which the word is used: (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; (c) the segregation of plants and animals to prevent the spread of agricultural diseases; or (d) the placement of a prisoner into solitary confinement. While several of these definitions are clearly health-related, none specifically capture the most common public health usage of the term "quarantine" - the limitation of a healthy individual's activities after (s)he has been exposed to a communicable disease in order to prevent the disease from spreading during its period of communicability.

Third, many public health laws 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

¹ *Jacobson v. Massachusetts*, 197 US 11 (1905).

analogous body of law exists in the public health context, and the applicability of criminal law to public health situations in which an individual has not engaged in criminal activity is legally problematic.

Finally, in the event of a public health emergency, the deliberative nature of the judicial process may be strained to keep pace with the rapid response and containment measures sought by members of the public health community.

This *Bench Book* is intended to improve legal preparedness for both public health emergencies and more routine public health cases. In addition, it is our hope that this resource will increase communication between the judiciary and public health agencies at the community, state, and national levels about a variety of public health issues. In this new era of bioterrorism, emerging infectious diseases, and potential pandemics, courts play an increasingly critical role in protecting the public's health. This *Bench Book* is a reference tool that judges may use as they confront the broad range of public health issues that come into their courtrooms.

We recognize that it would be impracticable to address each and every aspect of the legal system potentially impacted by public health concerns. Bench books are not tomes of law; rather, they are readily-accessible legal references for judges to use in the courtroom, providing procedural frameworks, statutory texts, relevant case law summaries, and model orders.

The opening chapters of this particular *Bench Book* are devoted 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 Michigan judiciary and the Michigan public health system. These introductory chapters consider questions such as: What does Michigan's public health system look like? Who are the leaders of the Michigan public health system? And, what authority do they have?

After a consideration of these issues, the *Bench Book* transitions into four key topical areas in which the intersection of public health and the law is particularly salient:

- (1) searches, seizures, and other similar government actions to ensure the public health;
- (2) judicial proceedings concerning the curtailment of certain individual liberties 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.

After examining these topical areas, the *Bench Book* concludes with an extended Appendix section that offers a series of model court orders to implement key public health powers of the state and localities. Additional appended materials further address various aspects of public health law and practice. It is our hope that Michigan judges will find this *Bench Book* a valuable tool in their courts' public health legal preparedness.

May, 2016

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1.00 Jurisdiction of Public Health Issues



A court's role in a public health case is determined firstly by the scope of its jurisdiction. This introductory chapter examines the principles that govern a court's jurisdiction in the context of such cases.

1.10 Federal vs. State

When a court exercises jurisdiction over public health cases, it does so pursuant to legal principles established under both federal and state law. These principles are further outlined in the subsections that follow.

1.11 The United States Constitution and Public Health

A. Federal Constitution Generally Silent

The United States Constitution's "general welfare" provision is the closest the document comes to addressing the issue of public health. Found in the Constitution's Preamble, the general welfare provision states as follows:

We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, 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. preamble.

Aside from this provision, the federal Constitution, including its Amendments, outlines no role for the federal government in matters of public health. The silence of the U.S. Constitution, 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.² In addition, the federal government is responsible for protecting the public health in discrete geographic areas under its direct 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.³ In all other cases, the states bear the primary responsibility for preventing and responding to public health threats.⁴

² *Carolene Products Co. v. Evaporated Milk Ass'n.*, 93 F.2d 202, 204 (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.)

³ *Id.*

⁴ *Compagnie Francaise de Navigation a Vapeur v. Louisiana 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.

1.12 States as Primary Actors

A. The Michigan Constitution

According to the Michigan Constitution, protection of the public health is a primary purpose of state government.

1. The purpose of state government includes protection of the public welfare. We the people of the State of Michigan, grateful to the Almighty God for the blessings of freedom, and earnestly desiring to secure these blessings undiminished to ourselves and our posterity, do ordain and establish this constitution. MI Const 1963, preamble.

2. All political power is inherent in the people. Government is instituted for the public's equal benefit, security, and protection. Mich. Const 1963, art. I, §1.

3. The public health and general welfare of the people of the State are hereby declared to be matters of primary public concern. The legislature shall pass suitable laws for the protection and promotion of the public health. Mich. Const 1963, art. IV, §51.

B. Sources of a State's Public Health Authority

The power of a state to protect the public health is derived from two sources of authority: the police power and the *parens patriae* power.

1. 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.⁵

2. *Parens patriae* power. The *parens patriae* power is the power of the state to serve as guardian of legally disabled persons, such as juveniles or the insane.⁶

⁵ *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 lives, limbs, health, comfort, and quiet of all persons."] (Internal citations omitted.);

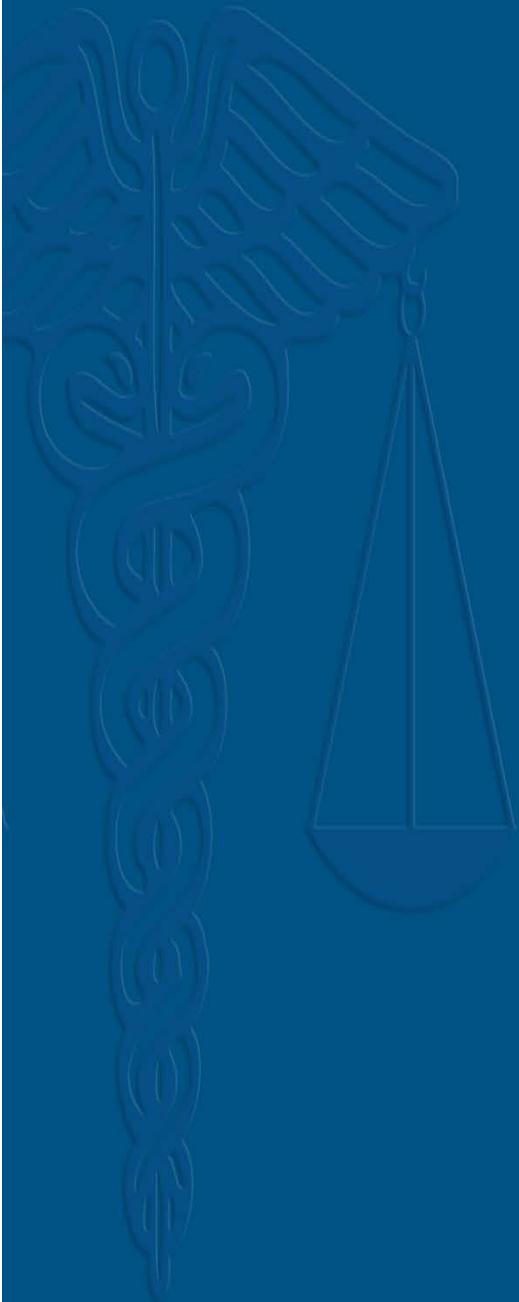
Black's Law Dictionary, p. 1278 (9th ed. 2009) (citing Ernst Freund, *The Police Power*, § 3, at 3 (1904)).

⁶ *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, p 1221 (9th ed 2009).

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2.00 Health Agencies and Boards



Chapter Two focuses on the legal nature and authority of the institutions that make up Michigan's public health system. The Michigan Department of Health and Human Services (MDHHS) and local health departments are covered in the sections that follow. The relationship between MDHHS and local health departments is also briefly addressed.

2.10 Michigan Department of Health and Human Services (MDHHS)

This section focuses on the role of the Michigan Department of Health and Human Services. The role of the department's director is described, and the department's powers, duties, programs, and activities are outlined.

2.11 Department Director

A. Appointment and Term

Under MCL 333.2202(1), the governor shall appoint the director of public health by the method and for a term prescribed by MCL 16.608. Under MCL 16.608, when a single executive is the head of a principal department, unless elected as provided in the state constitution, (s) he shall be appointed by the governor by and with the advice and consent of the senate, and (s) he shall serve at the pleasure of the governor.

B. Qualifications

The qualifications of the director of public health are set forth in MCL 333.2202. Under subsection (1), the director shall be qualified in the general field of health administration. This qualification may be demonstrated by either (a) not less than eight years of administrative experience, of which not less than five years have been in the field of health administration; or (b) a degree beyond the level of baccalaureate in a field related to public health or administration, and not less than 5 years of administrative experience in the field of health administration. Under subsection (3), "administrative experience" is defined as service in a management or supervisory capacity.

Under subsection (2), if the director is not a physician, he or she shall designate a physician as chief medical executive of the department. The chief medical executive shall be a full-time employee and shall be responsible to the director for the medical content of policies and programs.

2.12 Department Powers, Programs, Duties, and Activities

A. Department Powers

The powers of MDHHS are defined in MCL 333.2226. Under this section, MDHHS may (a) engage in research programs and staff professional training programs; (b) advise governmental entities or other persons as to the location, drainage, water supply, disposal of solid waste, heating, and ventilation of buildings; and (c) enter into an agreement, contract, or arrangement

with governmental entities or other persons necessary or appropriate to assist the department in carrying out its duties and functions.

Furthermore, the department may (d) exercise authority and promulgate rules to safeguard the public health; to prevent the spread of diseases and the existence of sources of contamination; and to implement and carry out the powers and duties vested by law in the department. Finally, MDHHS may (e) accept gifts, grants, bequests, and other donations in the name of the State of Michigan, to be used as directed by its donor and in accordance with all applicable law and rules; and (f) develop and deliver health services to vulnerable population groups, either directly or by interagency contract.

B. Department Programs

Under MCL 333.2221(1), MDHHS is required to organize certain public health programs. Such programs shall continually and diligently endeavor to prevent disease, prolong life, and promote the public health. Specific programs required under the statute include programs that prevent and control environmental health hazards, diseases, and health problems of particularly vulnerable population groups. Programs to develop and regulate health care facilities and agencies and health services delivery systems are also required.

C. Department Duties

The duties of MDHHS include the performance of general duties, the promotion of local health services, and the provision of public health information and health education.

1. General Duties. MCL 333.2221(2) sets forth a variety of general duties that MDHHS must fulfill. Under this provision, MDHHS must (a) exercise general supervision of the interests of the health and life of Michigan residents; (b) implement and enforce laws for which responsibility is vested in the department; (c) collect and utilize vital and health statistics and provide for epidemiological and other research studies for the purpose of protecting the public health; (d) make investigations and inquiries concerning the causes of disease (especially epidemics), morbidity, and mortality; as well as the causes, prevention, and control of environmental health hazards, nuisances, and sources of illness.

An epidemic is “any increase in the number of cases, above the number of expected cases, of any disease, infection, or other condition in a specific time period, area, or demographic segment.” MI Admin Code R 325.171(1)(f). If the director of MDHHS determines that control of an epidemic is necessary to protect the public health, the director may, by emergency order, prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws. In such scenarios, emergency procedures are not limited to the Public Health Code. MCL 333.2253(1).

The term “investigate” is not defined in the Public Health Code or the Administrative Rules, nor is there case law to clarify what the duty to investigate

entails. However, an opinion of the Attorney General provides insight into this duty, explaining that the Department fulfills the duty to investigate diseases and epidemics by securing all available information that will assist in protecting the health of all people of the state. OAG, 1985-1986, No 6376, p 10 (June 30, 1986). This opinion states, “The receiving and monitoring of reports of reportable diseases is an important function of the Department of Public Health in the detection, treatment and prevention of diseases, but such activities fall short of the statutory mandate that the Department of Public Health [now MDHHS] shall both investigate the causes of disease and diligently endeavor to prevent disease.” Id. at 4.

Furthermore, MCL 333.2221(2) also requires MDHHS to (e) plan, implement, and evaluate health education by the provision of expert technical assistance and financial support; and to (f) take appropriate affirmative action to promote equal employment opportunity within the department and local health departments and to promote equal access to governmental financed health services to all individuals in the state in need of service. Finally, MDHHS must (g) exercise powers necessary or appropriate to perform its lawful duties; and (h) plan, implement, and evaluate nutrition services by the provision of expert technical assistance and financial support.

2. Promotion of Local Health Services. Under MCL 333.2224, the department shall promote an adequate and appropriate system of local health services throughout the state and shall endeavor to develop and establish arrangements and procedures for the effective coordination and integration of all public health services, including effective cooperation between public and nonpublic entities to provide a unified system of statewide health care.

3. Furnishing Public Health Information. MCL 333.2231(2) requires MDHHS to report periodically to the governor and legislature as to the activities carried on under the Public Health Code. To assist the department in this duty, subsection (1) requires state officials and persons transacting business in Michigan to furnish MDHHS with information relating to public health that may be requested by the department.

4. Health Education. Pursuant to MCL 333.2237, MDHHS has certain duties related to health education. Subsection 2 defines “health education” as that dimension of health care that directs attention of individuals to their health behavior with the goal of enabling the individuals to make reasoned decisions about their own health practices and those within the various communities in which the individuals live, work, and play.

The basic components of reasoned health decision-making education include both (a) the acquisition of accurate, unbiased, authoritative knowledge of subjects such as human biology, efficacy of early prevention, disease detection and control, nutritional practices, detection and control of environmental hazards, alternative health practices and the consequences of each, and the

affective assessment of an individual's own beliefs on health outcomes; and (b) the acquisition of the behavior skills required to carry out the desired alternative.

Under subsection (1), the department is required to (a) exercise overall leadership in recognizing the importance of public health education objectives in the planning, development, and execution of public health programs within the department's jurisdiction; (b) encourage local health departments to give priority to community health education activities as an essential part of local health programs; (c) develop and apply standards for the evaluation of public health education activities at both the state and local level and in cooperation with other public and private agencies; and to (d) collect and disseminate information about public health education activities and research in Michigan.

D. Department Activities

There are additional activities in which MDHHS may engage under specific circumstances described in the Public Health Code. These activities involve managing imminent dangers and epidemics, rulemaking, and enforcement activities.

1. Imminent Dangers. Under MCL 333.2251(1), upon a determination that an imminent danger to the health or lives of individuals exists, the MDHHS director is required to immediately inform the individuals affected by the imminent danger and issue an order which shall be delivered to a person authorized to avoid, correct, or remove the imminent danger or be posted at or near the imminent danger. MCL 2251(5)(b) defines “imminent danger” as a condition or practice that exists which could reasonably be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided.

Subsection (1) further states that the order issued by the director shall incorporate the director's findings and require immediate action necessary to avoid, correct, or remove the imminent danger. The order may specify action to be taken or prohibit the presence of individuals in locations or under conditions where the imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove the imminent danger.

Under subsection (2), upon failure of a person to comply promptly with a department order issued under §2251, MDHHS may petition the circuit court having jurisdiction to restrain a condition or practice which the director determines causes the imminent danger; or to require action to avoid, correct, or remove the imminent danger. If the director determines that conditions anywhere in Michigan constitute a menace to the public health, the director may take full charge of the administration of state and local health laws, rules, regulations, and ordinances in addressing the threat pursuant to subsection (3).

2. Epidemics. MCL 333.2253(1) states that if the director determines that control of an epidemic is necessary to protect the public health, the director may, by

emergency order, prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws. In such scenarios, emergency procedures are not limited to the Public Health Code.

3. Rulemaking. Under MCL 333.2233(1), the department may promulgate rules necessary or appropriate to implement and carry out the duties or functions vested by law in the department pursuant to MCL 333.2233(1). Under subsection (2), if the Michigan Supreme Court rules that §45 and §46 of the Administrative Procedures Act, MCL 24.245 and 24.246, are unconstitutional, and a statute requiring legislative review of administrative rules is not enacted within ninety days after the Supreme Court ruling, the department shall not promulgate rules under §2233.

4. Enforcement Mechanisms. Under MCL 333.2255, the department, without posting bond, may maintain an injunctive action in the name of the people of Michigan to restrain, prevent, or correct a violation of a law, rule, or order which the department has the duty to enforce; or to restrain, prevent, or correct an activity or condition which the department believes adversely affects the public health.

MCL 333.2261 provides that, except as otherwise provided in the Public Health Code, a person who violates a rule or order of the department is guilty of a misdemeanor punishable by imprisonment for not more than six months, or a fine of not more than \$200.00, or both.

Pursuant to MCL 333.2262(1), MDHHS may promulgate rules to adopt a schedule of monetary civil penalties, not to exceed \$1,000.00 for each violation or day that a violation continues. Subsection (2) further states that if a department representative believes that a person has violated the Public Health Code or a rule promulgated or an order issued under it which MDHHS has the authority and duty to enforce, the representative may issue a citation at that time or not later than ninety days after discovery of the alleged violation. The citation shall be written and shall state with particularity the nature of the violation, including reference to the section, rule, or order alleged to have been violated, the civil penalty established for the violation, if any, and the right to appeal the citation pursuant to §2263. The citation shall be delivered or sent by registered mail to the alleged violator.

MCL 333.2263(1) states that not later than twenty days after receipt of the citation, the alleged violator may petition the department for an administrative hearing, which shall be held within sixty days after receipt of the petition by the department. The administrative hearing may be conducted by a hearings officer who may affirm, dismiss, or modify the citation. The decision of the hearings officer is final, unless the director grants a review of the citation within thirty days. Upon review, the director may affirm, dismiss, or modify the citation. A civil

penalty shall become final if a petition for an administrative hearing is not received within the time specified.

According to subsection (2), hearings and appeals under §2263 shall conform to the Administrative Procedures Act of 1969. Subsection (3) further states that a civil penalty imposed shall be paid to the state treasury for deposit in the general fund. A civil penalty may be recovered in a civil action brought in the county in which the violation occurred or the defendant resides.

2.20 Local Health Departments

The Department may delegate some of its duties to local health departments. MCL 333.2235(1). The director, in determining the services and programs the Department will offer, must consider a local health department as the “primary organization responsible for the organization, coordination, and delivery of those services and programs in the area.” MCL 333.2235(2). This section examines Michigan’s local health departments. Their composition, requirements, and powers are set forth in the subsections below.

2.21 Composition of Local Health Departments

A. County Health Departments

Under MCL 333.2413, the local governing entity of a county shall provide for a county health department and may appoint a county board of health, unless a district health department is created pursuant to §2415.

B. District Health Departments

Under MCL 333.2415, two or more counties or a city having a population of 750,000 or more and one or more counties, by a majority vote of each local governing entity and with approval of the department, may unite to create a district health department. The district board of health shall be composed of two members from each county board of commissioners, or in case of a city-county district, two members from each county board of commissioners and two representatives appointed by the mayor of the city. With the consent of the local governing entities affected, a county or city may have a greater number of representatives.

C. City Health Departments

Under MCL 333.2421, a city having a population of 750,000 or more may create a city health department which shall be considered a local health department for purposes of the Public Health Code, if the requirements of §2422 - §2424 are met. If a city creates a health department, that department and its local governing entity shall have the powers and duties of a local health department or local governing entity.

D. Local Health Officers

Under MCL 333.2428(1), a local health department shall have a full-time local health officer appointed by the local governing entity, or in case of a district health department, by the district board of health. This provision requires the officer to possess professional qualifications for administration of a local health department as prescribed by the department.

Pursuant to subsection (2), the local health officer shall act as the administrative officer of the board of health and local health department and may take actions and make determinations necessary or appropriate to carry out the local health department's functions and to protect the public health and prevent disease.

2.22 Requirements of Local Health Departments

A. General Requirements

Generally, MCL 333.2431(1) requires local health departments to (a) have a plan of organization approved by MDHHS; (b) demonstrate ability to provide required services; (c) demonstrate ability to defend and indemnify employees for civil liability sustained in the performance of official duties except for wanton and willful misconduct; and (d) meet §2431's other requirements.

B. Reporting Requirement

MCL 333.2431(2) requires each local health department to report to MDHHS at least annually on its activities, including information required by the department.

C. Plan Review Requirement

According to MCL 333.2431(3), in reviewing a plan for organization of a local health department, MDHHS shall consider the fiscal capacity and public health effort of the applicant and shall encourage boundaries consistent with those of planning agencies established pursuant to federal law.

D. Waiver of Requirements

Under MCL 333.2431(4), the department may waive a requirement of this section during the option period specified in §2422 based on acceptable plan development during the planning period described in §2424 and thereafter based on acceptable progress toward implementation of the plan as determined by the department.

2.23 Powers of Local Health Departments

A. General Powers

MCL 333.2433(1) requires a local health department to continually and diligently endeavor to prevent disease, prolong life, and promote the public health through organized programs, including prevention and control of environmental health hazards; prevention and control of diseases; prevention and control of health problems of particularly vulnerable population groups; development of health care facilities and health services delivery systems; and regulation of health care facilities and health services delivery systems to the extent provided by law.

Subsection (2) also requires a local health department to (a) implement and enforce laws for which responsibility is vested in the local health department; (b) utilize vital and health statistics and provide for epidemiological and other research studies for the purpose of protecting the public health; and (c) make investigations and inquiries as to the causes of disease (especially epidemics), the causes of morbidity and mortality, and the causes, prevention, and control of environmental health hazards, nuisances, and sources of illness.

Furthermore, a local health department must (d) plan, implement, and evaluate health education through the provision of expert technical assistance, or financial support, or both; (e) provide or demonstrate the provision of required services as set forth in §2473(2); and (f) have powers necessary or appropriate to perform the duties and exercise the powers given by law to the local health officer and which are not otherwise prohibited by law. Finally, a local health department must (g) plan, implement, and evaluate nutrition services by provision of expert technical assistance or financial support, or both.

B. Additional Powers

Local health departments have certain additional powers under the Public Health Code. For example, pursuant to MCL 333.2435, they may (a) engage in research programs and staff professional training programs; (b) advise other local agencies and persons as to the location, drainage, water supply, disposal of solid waste, heating, and ventilation of buildings; and (c) enter into agreements, contracts, or arrangements with a governmental entity or other person to assist the local health department in carrying out its duties and functions unless otherwise prohibited by law.

Furthermore, local health department can also (d) adopt regulations to properly safeguard the public health and to prevent the spread of diseases and sources of contamination; (e) accept gifts, grants, bequests, and other donations for use in performing their functions; (f) sell and convey real estate owned by the local health department; (g) provide services not inconsistent with the Public Health Code; (h) participate in the cost reimbursement program set forth in §2471 - §2498; and (i) perform a delegated function unless otherwise prohibited by law.

Finally, the Public Health Code allows local health officers to take injunctive action pursuant to MCL 333.2465. Under subsection (1), a local health officer, without posting bond, may maintain injunctive action to restrain, prevent, or correct a violation of a law, rule, or order which the officer has the duty to enforce; or to restrain, prevent, or correct an activity or condition which the officer believes adversely affects the public health. Under subsection (2), a local health officer or an employee or representative of a local health department is not personally liable for damages sustained in the performance of local health department functions, except for wanton and willful misconduct.

2.30 Relationships between MDHHS and Local Health Departments

Under MCL 333.2437, MDHHS may exercise any power vested in a local health department in an area where the local health department does not meet its statutory requirements.

As indicated earlier, however, the local health department is the “primary organization responsible for the organization, coordination, and delivery, of [health] services and programs in the area.” MCL 333.2235(2).

3.00 Searches, Seizures, and Other Government Actions to Ensure Public Health



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

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

3.10 Searches and Seizures Generally

This section offers an analysis of the constitutional law governing searches and seizures. Special attention is devoted to the topic of search warrants due to the procurement and confidentiality issues that often arise in these types of cases.

3.11 Constitutional Analysis

A. The United States Constitution

In the Fourth Amendment, the federal Constitution limits the scope of government's ability to conduct searches and seizures. A substantial amount of case law clarifies the applicability of the Fourth Amendment in various scenarios.

- 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.** Case law has helped further define the language and application of the Fourth Amendment.

(a) Government action. The Fourth Amendment applies to government actions. These include all acts of all state officials, including both civil and criminal authorities. State hospital employees are considered government actors.⁷ Staff at state hospitals are also government actors subject to Fourth Amendment requirements.⁸

(b) Search. A search occurs when government action infringes upon an expectation of privacy that society recognizes as reasonable.⁹

(c) Seizure. A seizure of an individual occurs when government action meaningfully interferes with an individual's freedom of movement.¹⁰ The duration of the interference is irrelevant; government's meaningful interference with an individual's freedom of movement constitutes a seizure, however brief.¹¹ A seizure of property occurs when government action meaningfully interferes with an individual's possessory interest in that property.¹²

(d) Probable cause. Probable cause exists when there are reasonable grounds for belief of guilt that is particularized with respect to the person, place, or items to be searched or seized.¹³

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.¹⁴

4. Applicability of Fourth Amendment to physical evidence obtained from individuals. The Fourth Amendment is implicated when the government seeks to obtain physical evidence from an individual. 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.¹⁵ 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.¹⁶

⁷ *New Jersey v. T.L.O.*, 469 U.S. 325, 335 (1985).

⁸ *Ferguson v. City of Charleston*, 532 U.S. 67, 76 (2001).

⁹ *United States v. Jacobsen*, 466 U.S. 109, 113 (1984);

Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

¹⁰ *Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602, 616 (1989).

¹¹ *Id.*

¹² *Jacobsen*, *supra*, 466 U.S. at 113.

¹³ *Maryland v. Pringle*, 540 U.S. 366, 370-371 (2003).

¹⁴ *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, 533-534 (1967).

¹⁵ *Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602, 616 (1989).

¹⁶ *Ferguson*, *supra*, 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 v. Cal., 384 U.S. 757, 767 (compelled blood draw analyzed for alcohol content constitutes search subject to 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.¹⁷

With regard to significantly invasive or newly emerging medical procedures, the Supreme Court has held on at least one occasion that obtaining physical evidence from an individual via surgical intrusion is an unreasonable search.¹⁸ The reasonableness of invasive medical intrusions must ultimately be determined on a case-by-case basis.¹⁹ 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 will be revealed; (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.²⁰

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 information.²¹ The character of the premises at issue may be determinative when analyzing the applicability of the Fourth Amendment to information obtained without physical intrusion of premises.²² The acquisition of information about an individual's lawful activities is likely to constitute a search subject to the Fourth Amendment.²³ The acquisition of information using technology *not in general public use* may be more likely to constitute a search subject to the Fourth Amendment.²⁴

6. Reasonableness Analyzed. The permissibility of government action is assessed by balancing the intrusion upon an individual's Fourth Amendment interests (*e.g.*,

¹⁷ *United States v. Dionisio*, 410 U.S. 1, 14-15 (1973) (voice exemplars); *United States v. Doe*, 457 F.2d 895, 898 (2d Cir. 1972) ("[T]here is no 'reasonable expectation of privacy' about one's face."); *Davis v. Mississippi*, 394 U.S. 761, 727 (1969) (fingerprints).

¹⁸ *Winston v. Lee*, 470 U.S. 753, 755 (1985) (surgical intrusion in chest area to retrieve bullet unreasonable under Fourth Amendment).

¹⁹ *Id.* at 760.

²⁰ *Id.* at 760-65.

²¹ *Kyllo v. United States*, 533 U.S. 27 (2001) (holding that the use of thermal imaging scanner to obtain information about temperature within defendant's home constituted a search subject to Fourth Amendment protections despite the fact that scan occurred from streets outside home).

²² Contrast *Kyllo*, *supra*, 533 U.S. 27 (thermal imaging scan of home is a search subject to Fourth Amendment) with *Dow Chemical Co. v. United States*, 476 U.S. 227 (1986) (aerial surveillance of industrial complex not a search).

²³ *Illinois v. Caballes*, 125 S.Ct. 834, 838 (2005) (holding use of dog sniff to detect illegal narcotics during legal traffic stop was not a search subject to the Fourth Amendment, noting that "[c]ritical to [the *Kyllo*] decision was the fact that the device was capable of detecting lawful activity... the legitimate expectation that information about perfectly lawful activity will remain private is categorically distinguishable from respondent's hopes or expectations concerning the non-detection of contraband in the trunk of his car.").

²⁴ *Kyllo*, *supra*, 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.)

dignity, privacy, and personal security) against the promotion of legitimate government interests.²⁵

The reasonableness of a search or seizure depends on the context in which it takes place.²⁶ Furthermore, the reasonableness of a search or seizure does not depend on whether the government uses the least intrusive means practicable.²⁷ Finally, as a general rule, government searches and seizures conducted without a valid warrant are presumed to be unreasonable.²⁸

7. Warrant Requirement. The consent or warrant requirement applies to searches of and seizures on both residential and commercial property.²⁹ To be valid, a warrant must be based on probable cause, as determined by a neutral magistrate.³⁰ Probable cause to search or seize an individual is not satisfied merely by the existence of probable cause to search another in proximity to the individual or the premises upon which the individual is located.³¹

8. 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, including:

(a) 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.³² The voluntariness of an individual's consent to a search or seizure is evaluated with reference to all surrounding circumstances.³³ A warrantless consent search or seizure is limited to the scope provided by the consent.³⁴

(b) Special needs. The warrant requirement is inapplicable when special needs beyond the ordinary need for law enforcement are implicated.³⁵ Under the

²⁵ *New Jersey v. T.L.O.*, 469 U.S. 325, 337 (1985);

Delaware v. Prouse, 440 U.S. 648, 653-54 (1979).

²⁶ *T.L.O.*, *supra*, 469 U.S. at 337.

²⁷ *Vernonia School District v. Acton*, 515 U.S. 646, 663 (1995).

²⁸ *Camara*, *supra*, 387 U.S. at 528-529.

²⁹ *Camara*, *supra*, 387 U.S. 523 (search of residence);

See v. City of Seattle, 387 U.S. 541 (1967) (search of commercial property).

³⁰ *Pringle*, *supra*, 540 U.S. 366.

³¹ *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979).

³² *Illinois v. Rodriguez*, 497 U.S. 177, 181 (2000).

³³ *Ohio v. Robinette*, 519 U.S. 33, 40 (1996).

³⁴ *Florida v. Jeno*, 500 U.S. 248, 252 (1991).

³⁵ *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, *supra*, 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 railroad employees involved in train accidents or found to be in violation of certain safety rules);

Love v. Superior Court of San Francisco, 226 Cal. App. 3d. 736 (1990) (upholding warrantless AIDS testing of prostitutes to protect the health of state citizens).

But see Chandler v. Miller, 520 U.S. 305 (1997) (rejecting Georgia's "special needs" justification for warrantless, suspicionless drug testing of all candidates for certain state offices);

Willis v. Anderson Comm. School Corp., 158 F.3d 415 (7th Cir. 1998) (holding school district's drug testing of all students

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, with consideration of relevant context-specific factors. These factors include the nature of the privacy interest affected by government action, the character of the government intrusion on the individual's privacy interest, and the nature and immediacy of concerns giving rise to government action and the efficacy of the action in addressing those concerns.³⁶

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.³⁷ 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.³⁸ However, 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.³⁹

The probable cause standard is often unsuited to circumstances outside the criminal context, such as those covered by the special needs exception.⁴⁰ Specifically, the probable cause standard is often unsuited to determining the reasonableness of administrative searches when government action seeks to prevent the development of hazardous conditions or detect latent or hidden violations that rarely generate articulable grounds for searching a particular place or person.⁴¹

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.⁴² The requirement may be suspended when the

suspended for fighting violated Fourth Amendment; "special needs" exception inapplicable given feasibility of suspicion-based testing program);

Glover v. Eastern Nebraska Community 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).

³⁶ *Earls*, supra, 536 U.S. at 830-38;

Acton, supra, 515 U.S. at 652-64.

³⁷ *Ferguson*, supra, 532 U.S. at 81;

Chandler, supra, 520 U.S. at 319-22.

³⁸ *Ferguson*, supra, 532 U.S. at 82-82 (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, supra, 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).

³⁹ *Ferguson*, supra, 532 U.S. at 78, 80-81.

⁴⁰ *Von Raab*, supra, 489 U.S. at 667-68.

⁴¹ *Earls*, supra, 536 U.S. at 828.

⁴² *Earls*, supra, 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 searches without any measure of individualized suspicion.");

Skinner, supra, 489 U.S. at 624.

privacy interests implicated by the search or seizure are minimal; an important government interest furthered by the search or seizure would be placed in jeopardy by a requirement of individualized suspicion; and 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.⁴³ For example, 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.⁴⁴

(c) Administrative inspections. Administrative inspections implicate the individual interests protected by the Fourth Amendment and may be conducted only upon issuance of a valid warrant.⁴⁵ However, administrative warrants may issue upon a “modified probable cause” standard, which is satisfied by a showing of specific evidence of an existing violation, or reasonable legislative or administrative standards for conducting an inspection of a particular individual or establishment.⁴⁶

(d) Pervasively regulated industries. Warrantless searches of certain pervasively regulated 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 expectation of privacy in their merchandise.⁴⁷ Warrantless inspections of pervasively regulated businesses are deemed reasonable if a substantial government interest informs the regulatory scheme pursuant to which the inspection is made; the warrantless inspection is necessary to further the regulatory scheme; and the regulatory inspection program provides a constitutionally adequate substitute for a warrant in terms of the certainty and regularity of its application. In other words, 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.⁴⁸

⁴³ *Id.*;

T.L.O., supra, 469 U.S. at 342.

⁴⁴ *Dunn v. White*, 880 F.2d 1188, 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.”);

People v. Adams, 597 N.E.2d 574, 582 (upholding mandatory HIV testing of prostitutes and noting HIV provides few articulable grounds for testing other than “categories of risk”).

⁴⁵ *Barlow’s, Inc.*, supra, 436 U.S. at 316-20 (requiring warrant for OSHA inspection of business);

Camara, supra, 387 U.S. at 534 (requiring warrant for housing code inspection of apartment building).

⁴⁶ *Barlow’s, Inc.*, supra, 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 (1978) (holding warrant for housing code inspection could properly issue upon showing of factors such as the nature of the building, the condition of the entire area, and the passage of time rather than specific knowledge of the condition of a particular dwelling).

⁴⁷ *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).

⁴⁸ *Burger*, supra, 482 U.S. at 702-03.

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.”⁴⁹

(e) Checkpoints and other "blanket searches" for limited purposes related to safety. Government actors may establish warrantless, suspicionless checkpoints to ensure public safety and prevent illegal immigration.⁵⁰ The reasonableness of warrantless, suspicionless checkpoints is determined by balancing "the nature of the [privacy] interests threatened and their connection to the particular law enforcement practices at issue."⁵¹ The gravity of the threat to public safety is not alone dispositive when determining means appropriate for use by law enforcement.⁵² However, urgent public safety considerations must be considered in all Fourth Amendment deliberations.⁵³

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.⁵⁴ The use of motor vehicle checkpoints for the primary purpose of uncovering evidence of criminal wrongdoing violates the Fourth Amendment.⁵⁵

(f) Reasonable searches incident to lawful arrests. A warrantless search incident to a lawful arrest may be permissible if it is reasonable under the circumstances.⁵⁶ 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.

⁴⁹*Barlow's Inc.*, supra, 436 U.S. at 313;

See also *Burger*, supra, 482 U.S. at 704-07 (noting "extensive" provisions regulating automobile junkyard businesses and existence of junk shop regulations for over 140 years).

⁵⁰ *City of Indianapolis v. Edmond*, 531 U.S. 32, 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, supra, 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.");

Prouse, supra, 440 U.S. at 663 (suggesting verification of licensing, registration, and vehicle inspection requirements at roadblock-type stops is permissible means of promoting highway safety).

⁵¹ *City of Indianapolis*, supra, 531 U.S. at 42-43.

⁵² *Id.* at 42.

⁵³ *Edmond v. Goldsmith*, 183 F.3d 659, 663 (7th Cir. 1999) ("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.")

⁵⁴ *City of Indianapolis*, supra, 531 U.S. at 45-46.

⁵⁵ *Id.* at 53-54.

⁵⁶ See, e.g., *Schmerber*, supra, 84 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*, supra, 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 intrusion).

(g) Investigatory stops based on reasonable suspicion. A warrantless investigatory stop of an individual (and associated "pat-down") is permissible if based upon reasonable suspicion.⁵⁷ 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.⁵⁸

(h) 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.⁵⁹ A warrantless search justified by exigent circumstances is limited in scope to the exigencies that justify its initiation.⁵⁸

9. State bears burden to justify exception. The State bears the burden of proving that a departure from the warrant requirement is justified.⁵⁹ The State must prove such a departure is justified by a preponderance of the evidence.⁶⁰

B. The Michigan Constitution

1. No unreasonable searches and seizures. The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation. The provisions of this section shall not be construed to bar from evidence in any criminal proceeding any narcotic drug, firearm, bomb, explosive or any other dangerous weapon, seized by a peace officer outside the curtilage of any dwelling house in this state. Mich. Const. 1963, art. 1, §11.

2. Analysis distinct from that of Fourth Amendment claims. The court's analysis of unreasonable search and seizure claims made with reference to Article I, Section 11 of the Michigan Constitution is separate and distinct from that undertaken for federal constitutional claims, despite the nearly identical wording of the federal and state provisions. Michigan's constitutional prohibition against unreasonable searches and seizures is to be construed to provide the same protection as that secured by the Fourth Amendment of the federal constitution, absent compelling reason to impose a different interpretation.⁶¹ However, Article I, Section 11 of the Michigan Constitution does not provide a *greater* degree of protection than federal Constitution.⁶²

3. Definitions. Case law provides further definition to the language of Article I, Section 11 of the Michigan Constitution.

⁵⁷ *Terry v. Ohio*, 392 U.S. 1 (1968).

⁵⁸ *Id.* at 21.

⁵⁹ *United States v. Matlock*, 415 U.S. 164 (1974).

⁶⁰ *Id.*

⁶¹ *People v Green*, 260 Mich. App 392; 677 N.W.2d 363 (2004);

People v. Carter, 250 Mich. App. 510; 655 N.W.2d 236 (2002).

⁶² *Kivela v. Department of Treasury*, 449 Mich. 220; 536 N.W.2d 498 (1995).

(a) Search. A search occurs when an expectation of privacy that society considers reasonable is infringed.⁶³ An individual's expectation of privacy in an object or area is deemed reasonable under Michigan law if the individual has exhibited an actual, subjective expectation of privacy in the object or area, and the expectation of privacy is one which society would recognize as reasonable.⁶⁴

(b) Seizure. A seizure of an individual occurs when government action intrudes upon the individual's privacy and meaningfully interferes with the individual's freedom of movement.⁶⁵

(c) Probable cause. Probable cause exists upon a showing of a probability of or the existence of specified items in a certain place.⁶⁶

4. Standing requirement. An individual must establish ownership, control, possession, or interest in the premises searched or property seized in order to challenge government action under Article I, Section 11.⁶⁷

5. Reasonableness analyzed. Government conduct is permissible if, in the totality of the circumstances, the conduct is reasonable.⁶⁸ The reasonableness of the behavior of state agents is determined on a case-by-case basis.⁶⁹ When analyzing search and seizure issues under Article I, Section 11, the state bears the burden of proving the search or seizure was reasonable.⁷⁰ Houses and premises of citizens are afforded the highest protection under Article I, Section 11 of the

Michigan Constitution. As a general rule, government searches and seizures must be conducted pursuant to a valid warrant in order to be reasonable.⁷¹

Typically, reasonableness requires that a valid warrant be issued by a neutral magistrate and be based upon probable cause, supported by oath or affirmation.⁷² The general requirement that searches and seizures must be conducted pursuant to a valid warrant is subject to the same exceptions applicable in the Fourth Amendment context above. Furthermore, the balancing test for reasonableness under Article I, Section 11 of the Michigan Constitution is generally consistent with the principles of federal law.⁷³

⁶³ *People v. Mack*, 100 Mich. App. 45; 298 N.W.2d 657 (1980).

⁶⁴ *Id.* at 659.

⁶⁵ *People v. Williams*, 63 Mich. App. 398; 234 N.W.2d 541, 544 (1975).

⁶⁶ *People v. Coffey*, 61 Mich. App. 110; 232 N.W.2d 320, 321 (1975).

⁶⁷ *People v. Goepfner*, 20 Mich. App. 425; 174 N.W.2d 143, 146 (1969).

⁶⁸ *People v. Juliet*, 439 Mich. 34; 475 N.W.2d 786, 790 (1991).

⁶⁹ *People v. Martin*, 99 Mich. App. 570; 297 N.W.2d 718, 719 (1980).

⁷⁰ *People v. Wade*, 157 Mich. App. 481; 403 N.W.2d 578, 585 (1975).

⁷¹ *People v. De La Mater*, 213 Mich. 167; 182 N.W. 57, 62 (1921).

⁷² *Id.* at 62.

⁷³ *People v. Rice*, 192 Mich. App. 512; 482 N.W.2d 192 (1992).

3.12 Search Warrants

A. Warrant Procurement

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. However, given the highly sensitive nature of the information that may be revealed in the course of a public health search or seizure (*i.e.* an individual's private medical information) and the unpredictable, time-sensitive nature of public health emergencies, several of these procedures require special consideration.

- 1. Affidavits not made in person.** Under MCL 780.651, an affidavit for a search warrant may be made by any electronic or electromagnetic means of communication, including by facsimile or over a computer network, if (a) the judge or district court magistrate orally administers the oath or affirmation to an applicant for a search warrant who submits an affidavit under this subsection; and (b) the affiant signs the affidavit. Proof that the affiant has signed the affidavit may consist of an electronically or electromagnetically-transmitted facsimile of the signed affidavit or an electronic signature on an affidavit transmitted over a computer network.
- 2. Oaths given electronically.** If an oath or affirmation is orally administered by electronic or electromagnetic means of communication under MCL 780.651, the oath or affirmation is considered to be administered before the judge or district court magistrate pursuant to subsection (6).
- 3. Approved warrant transmitted by electronic means.** Pursuant to subsection (5), the peace officer or department receiving an electronically or electromagnetically-issued search warrant shall receive proof that the issuing judge or district court magistrate has signed the warrant before the warrant is executed. Proof that the issuing judge or district court magistrate has signed the warrant may consist of an electronically or electromagnetically-transmitted facsimile of the signed warrant or an electronic signature on a warrant transmitted over a computer network.

B. Confidentiality

- 1. Warrant applications and issued warrants are not public records.** Under MCL 780.651(8), an affidavit for a search warrant is generally nonpublic information.
- 2. Suppression orders.** Pursuant to subsection (9), on the fifty-sixth day following the issuance of a search warrant, the search warrant affidavit contained in any court file or court record retention system becomes public information unless, before the fifty-sixth day after the search warrant is issued, a peace officer or prosecuting attorney obtains a suppression order from a magistrate. Under this subsection:
 - (a) There must be a showing that suppression is necessary.** A suppression order is issued upon a showing under oath that suppression is necessary to protect an ongoing investigation, the privacy of a victim or witness, or the safety of a victim or witness.

(b) Method of obtaining suppression. The suppression order may be obtained ex-parte in the same manner that the search warrant was issued.

(c) Expiration of suppression. An initial suppression order issued under this subsection expires on the fifty-sixth day after the order is issued.

(d) Subsequent suppression. A second or subsequent suppression order may be obtained in the same manner as the initial suppression order and shall expire on a date specified in the order.

3.20 Searches of Persons

In addition to the general principles surrounding searches, Michigan law contains several provisions specifically addressing searches of persons in various public health contexts. This law is examined in the subsections that follow.

3.21 Procurement of Physical Evidence from an Individual's Body

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

Michigan law has explicitly recognized certain bodily intrusions as searches subject to both federal and state Constitutional protection. These include blood tests,⁷⁴ urinalysis,⁷⁵ penile secretion swabs,⁷⁶ teeth imprints,⁷⁷ and fingernail scrapings.⁷⁸

B. Factors Relevant to Search Determination

In determining whether a bodily intrusion constitutes a search subject to constitutional protections, Michigan courts have considered factors like the degree of touching by government officials required to obtain physical evidence (it is not necessary that an intrusion involve probing beneath the body's surface in order to be deemed a search); the degree of fear, humiliation, and anxiety created by intrusion; and the nature of the information revealed by the physical evidence.⁷⁹

⁷⁴ *Lebel v Swincicki*, 454 Mich. 427; 93 N.W.2d 281; (1958)

⁷⁵ *People v. Miller*, 357 Mich. 400; 98 N.W.2d 524 (1959).

⁷⁶ *People v. Elston*, 462 Mich. 751, 98 N.W.2d 524; (2002)

⁷⁷ *People v. Marsh*, 177 Mich. App 161; 98 N.W.2d 524 (1989).

⁷⁸ *People v. Wesley*, 103 Mich. App. 241; 303 N.W.2d 194 (1981).

⁷⁹ See *People v. Lovett*, 85 Mich. App. 534; 272 N.W.2d 126, 127 (1978); *People v. Holloway*, 416 Mich. 288; 330 N.W.2d 405 (1982).

3.22 Medical Testing

The state health director and local health officers are empowered to seek the cooperation of individuals to prevent the spread of communicable diseases. In so doing, the director and local health officers must implement the least restrictive, but medically necessary, procedures to protect the public health. These procedures will vary by disease and may include confirmatory medical testing.

3 Testing for Communicable Diseases and Diseases Dangerous to Health

1. Authority to test. Under MCL 333.5207(1), to protect the public health in an emergency, upon the filing of an affidavit by an MDHHS representative or a local health officer, the circuit court may order the department representative, local health officer, or a peace officer to take an individual whom the court has reasonable cause to believe is a carrier and is a health threat to others into custody. The individual may be transported to an appropriate emergency care or treatment facility for observation, examination, testing, diagnosis, or treatment and, if determined necessary by the court, temporary detention.

2. Standard of determination. Subsection (1) further states that a court must make a determination that reasonable cause exists to believe that there is a substantial likelihood that the individual is a carrier and a health threat to others. Under MCL 333.5201(b), a “health threat to others” means that an individual who is a carrier has demonstrated an inability or unwillingness to conduct himself or herself in such a manner as to not place others at risk of exposure to a serious communicable disease or infection. A health threat to others includes, but is not limited to, one or more of the following: (i) behavior by the carrier that has been demonstrated epidemiologically to transmit, or that evidences a careless disregard for transmission of, a serious communicable disease or infection to others; (ii) a substantial likelihood that the carrier will transmit a serious communicable disease or infection to others, as evidenced by the carrier's past behavior or statements made by the carrier that are credible indicators of the carrier's intention to do so; and (iii) affirmative misrepresentation by the carrier of his or her status as a carrier before engaging in behavior that has been demonstrated epidemiologically to transmit the serious communicable disease or infection.

4 Human Immunodeficiency Virus (HIV) / Acquired Immune Deficiency Syndrome (AIDS)

4.42 HIV-infected test subject. Under MCL 333.5114(1), a person or governmental entity that obtains a test result from a test subject indicating that the test subject is HIV infected; or a test result from a test subject who has already been diagnosed as HIV infected ordered to evaluate immune system status, quantify HIV levels, or diagnose acquired immunodeficiency syndrome, shall report to the appropriate local health department or MDHHS (if requested) all of the following information (if available):

(a) The name and address of the person or governmental entity that submits the report;

- (b) The name, address, and telephone number of the health care provider who diagnosed the test subject or who ordered the test;
- (c) The name, date of birth, race, sex, address, and telephone number of the test subject;
- (d) The date on which the specimen was collected for testing;
- (e) The type of test performed;
- (f) The test result;
- (g) If known, whether or not the test subject has tested positive for the presence of HIV or an antibody to HIV on a previous occasion;
- (h) The probable method of transmission;
- (i) The purpose of the test; and
- (j) Any other medical or epidemiological information considered necessary by MDHHS for the surveillance, control, and prevention of HIV infections. Information added by the department under this subdivision shall be promulgated as rules.

If available, this information must be reported within seven days after obtaining a diagnostic test result, or for a non-diagnostic test result, within a time frame as determined by MDHHS.

4.43 Anonymity. Pursuant to MCL 333.5114(2), an individual who undergoes a test for HIV or an antibody to HIV in a physician's private practice office or the office of a physician employed by or under contract to a health maintenance organization, or who submits a specimen for either of those tests to that physician, may request that the report made by the physician not include the name, address, and telephone number of the test subject. Except as otherwise provided in §5114a, if such a request is made under this subsection, the physician shall comply with the request and submit the specimen to the laboratory without the name, address, or telephone number of the test subject.

4.44 Health department may not maintain roster. Under MCL 333.5114(3), a local health department shall not maintain a roster of names obtained under §5114, but shall maintain individual case files that are encoded to protect the identities of the individual test subjects.

4.45 Individuals applying for marriage licenses. MCL 333.5119(3) states that if either applicant for a marriage license undergoes a test for HIV or an antibody to HIV, and if the test results indicate that an applicant is HIV infected, the physician or a designee of the physician, the physician's assistant, the certified nurse midwife, or the certified nurse practitioner or the local health officer or designee of the local health

officer administering the test immediately shall inform both applicants of the test results, and shall counsel both applicants regarding the modes of HIV transmission, the potential for HIV transmission to a fetus, and protective measures.

4.46 Infected minor may act as someone who has reached age of majority. MCL 333.5127(1) states that, subject to §5133, the consent to the provision of medical or surgical care, treatment, or services by a hospital, clinic, or physician that is executed by a minor who is or professes to be infected with a venereal disease or HIV is valid and binding as if the minor had achieved the age of majority. The consent is not subject to later disaffirmance by reason of minority. The consent of any other person, including a spouse, parent, or guardian, or person in *loco parentis*, is not necessary to authorize the services described in subsection (1) to be provided to a minor.

4.47 Informing others of infected minor. Under MCL 333.5127(2), for medical reasons a treating physician, and on the advice and direction of the treating physician, a physician, a member of the medical staff of a hospital or clinic, or other health professional, may, but is not obligated to, inform the spouse, parent, guardian, or person in *loco parentis* as to the treatment given or needed. The information may be given to or withheld from these persons without consent of the minor and notwithstanding the express refusal of the minor to the providing of the information.

7. Financial responsibility for treatment of a minor. A spouse, parent, guardian, or person in *loco parentis* of a minor is not financially responsible for surgical care, treatment, or services provided under §5127, pursuant to MCL 333.5127(3).

3.30 Searches of Premises

Michigan law also contains several provisions specifically addressing searches of premises in various public health contexts. These provisions are described in the following subsections.

3.31 Inspections to Contain Infectious Diseases and Uphold Sanitation Standards

A. Right to Inspect Private Property

To assure compliance with laws enforced by the department, MDHHS may inspect, investigate, or authorize an inspection or investigation to be made of *any* matter, thing, premises, place, person, record, vehicle, incident, or event pursuant to MCL 333.2241(1).

B. Inspection Warrants

MCL 333.2241(2) allows MDHHS to apply for an inspection or investigation warrant under §2242 to carry out an inspection.

- 1. Affidavit.** Under MCL 333.2242, an affidavit is required for the issuance of a warrant. Upon receipt of an affidavit made on oath establishing grounds for issuing a warrant pursuant to §2243, a magistrate shall issue an inspection or investigation warrant authorizing the department to conduct an inspection or investigation.
- 2. Issuance.** According to MCL 333.2243, there must be grounds for issuance of a warrant. A magistrate shall issue an inspection or investigation warrant if either (a) reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular thing, premises, place, person, record, vehicle, incident, or event; or (b) there is reason to believe that noncompliance with laws enforced by the state or local health department may exist with respect to the particular thing, premises, place, person, record, vehicle, incident, or event.
- 3. Cause.** Under MCL 333.2244, a magistrate's finding of cause shall be based on the facts stated in the affidavit. The affidavit may be based upon reliable information supplied to the applicant from a credible individual, named or unnamed, if the affidavit contains affirmative allegations that the individual spoke with personal knowledge of the matters contained in the affidavit.
- 4. Contents.** MCL 333.2245 allows an inspection or investigation warrant to be directed to the sheriff or any law enforcement officer, commanding the officer to assist the state or local health department in the inspection or investigation. A warrant shall designate and describe the location or thing to be inspected and the property or thing to be seized. The warrant shall state the grounds or cause for its issuance, or a copy of the affidavit shall be attached to the warrant.
- 5. Execution.** Under MCL 333.2246, the officer to whom an inspection or investigation warrant is directed or a person assisting the officer may break an outer or inner door or window of a house or building, or anything therein, to execute the warrant, if, after notice of his or her authority and purpose, the officer is refused admittance, or when necessary to liberate the officer or person assisting the officer in execution of the warrant.
- 6. Malicious procurement.** A warrant must not be procured maliciously and without cause. A person who maliciously and without cause procures an inspection or investigation warrant to be issued and executed is guilty of a misdemeanor under MCL 333.2247.

3.32 Food Establishment Inspections

A. Food Establishment Defined.

MCL 289.1107(p) defines a food establishment as an operation where food is processed, packed, canned, preserved, frozen, fabricated, stored, prepared, served, sold, or offered for sale. The

definition includes, but is not limited to, a food processor, a food warehouse, a food service establishment, and a retail grocery.

A food establishment does not include the following: a charitable, religious, fraternal, or other nonprofit organization operating a home-prepared baked goods sale or serving only home-prepared food in connection with its meetings or as part of a fund-raising event; an inpatient food operation located in a health facility or agency subject to licensure under article 17 of the Public Health Code; or a food operation located in a prison, jail, state mental health institute, boarding house, fraternity or sorority house, convent, or other facility where the facility is the primary residence for the occupants and the food operation is limited to serving meals to the occupants as part of their living arrangement.

B. Right to Enter and Inspect Food Establishments

1. Compliance Evaluations. MCL 289.3123 requires that a compliance evaluation of each food service establishment be performed by the director of the Michigan Department of Agriculture and Rural Development (MDARD) at least once every six months or as required by a statewide department-approved risk-based schedule. Risk-based schedules shall be developed in consultation with local health departments. A food service establishment which operates for nine or fewer months each year shall be inspected at least once during the period of operation by the director or as prescribed in the department's risk-based schedule.

2. Evaluation Reports. Under MCL 289.3127, the findings of an evaluation of a food service establishment shall be recorded on an evaluation report form approved by MDARD. The evaluation report shall summarize findings relative to compliance with the requirements of the Michigan Food Law, MCL 289.1101 et seq. The report form shall be signed and dated by the director. Upon completion of the evaluation, a copy of the completed evaluation report form shall be furnished to the person in charge of the food service establishment. If the person in charge does not sign the report form acknowledging receipt, delivery of the report form to the person in charge shall be otherwise documented by the director.

C. Penalties upon Discovery of Violations

The standards by which food establishments must operate are extensively outlined in Chapter VI of the Michigan Food Law, MCL 289.6101 et seq. In addition, the statute sets forth numerous prohibited acts in Chapter V, MCL 289.5101 et seq. When a violation of the Act is found, a variety of penalties are potentially applicable.

1. Administrative fines. Under MCL 289.5105(1), upon finding that a person has violated a provision of the Food Law or a rule promulgated under the Act, MDARD may impose an administrative fine of not more than \$500.00 for the first offense and not more than \$1,000.00 for a second or subsequent offense and the actual costs of the investigation of the violation. Each day of a continuing violation is not considered a separate violation of the Act or a rule promulgated under the Act. MDARD shall not impose upon any licensee or registrant administrative fines in the

aggregate amount of more than \$4,000.00 per location for a firm with annual gross receipts of \$500,000.00 or less and \$8,000.00 per location for a firm with annual gross receipts of over \$500,000.00 during any 12-month period.

Subsection (3) states that MDARD is not required to issue an administrative fine for minor violations of this Act if the department believes that the public interest will be adequately served under the circumstances by a suitable written notice or warning.

2. Misdemeanor. Except as otherwise provided under the Food Law, a person who violates any provision of the Act or rules promulgated under the Act is guilty of a misdemeanor and shall be punished by a fine of not less than \$250.00 or more than \$2,500.00, or by imprisonment for not more than 90 days, or both. MCL 289.5107(1).

3. Restraining order. In addition to the remedies provided for in the Food Law, the department may apply to the circuit court for, and the court shall have jurisdiction upon hearing and for cause shown, a temporary or permanent injunction restraining any person from violating any provision of the Act or rules promulgated under the Act, irrespective of whether or not there exists an adequate remedy at law. MCL 289.5111.

4. Application of remedies. The regulatory authority shall justly apply the remedies according to the Food Law and other laws consistent with the licensee's right to due process. When a license holder or registrant has exhausted all administrative remedies available under the Act and is aggrieved by a final decision or order in a contested case, the decision or order is subject to direct review by the courts as provided by law. MCL 289.5113 and §5115.

3.40 Information Collection and Sharing

The collection and analysis of health information is an essential function of any public health system. However, the government's collection and use of person medical information implicates both the Fourth Amendment's protections against unreasonable invasions of privacy and the Fourteenth Amendment's Due Process protections. In addition to the general principles surrounding the collection of medical information during searches of persons and premises, Michigan law contains several provisions specifically addressing the collection and distribution of personal medical information.

3.41 Public Health Surveillance

There are two types of public health 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. 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. Active surveillance is most commonly used to identify cases of infectious disease.

A. Comprehensive Health Information System

1. Establishment. MCL 333.2616 mandates MDHHS to establish a comprehensive health information system providing for the collection, compilation, coordination, analysis, indexing, dissemination, and utilization of both purposefully collected and extant health-related data and statistics. This includes the training of producers and users of the data and statistics in a manner involving the collaboration at the policy and technical levels of major state and local health operational, planning, professional, and university groups and agencies which require the data in their work. As part of these functions, physicians, health care providers, and laboratories are required to report certain enumerated conditions to the Michigan Disease Surveillance System (MDSS) or the local health department within twenty-four hours for most conditions. MCL 333.5111(2).

2. Statistics. MCL 333.2617 requires the health information system to include statistics relative to:

(a) The causes, effects, extent, and nature of illness and disability of Michigan residents, or a grouping of its people, which may include the incidence and prevalence of various acute and chronic illnesses and infant and maternal morbidity and mortality;

(b) The impact of illness and disability of Michigan residents on the state's economy and on other aspects of the well-being of its people or a grouping of its people;

(c) Environmental, social, and other health hazards and health knowledge and practices of Michigan residents;

(d) Determinants of health and nutritional practices and status, including behavior related to health;

(e) Health resources, which may include health care institutions;

(f) The utilization of health care, which may include the utilization of ambulatory health services by specialties and types of practice of the health professionals providing the services, and services of health facilities and agencies defined in §20106 and other health care institutions; and

(g) Health care costs and financing, which may include the trends in health care prices and costs, the sources of payments for health care services, and federal, state, and local governmental expenditures for health care services.

3. Publications. Under MCL 333.2618, MDHHS shall publish and make available periodically to agencies and individuals health statistics publications of general interest, publications bringing health statistics into focus on priority programmatic issues, and health profiles. An annual report on the health information system shall be made available to the governor and the legislature and to collaborating agencies. A summary report of each area described in §2616 and §2617 shall be included in the annual report not less than once each five years. The department shall include in the

report a statement of the limitations of the data used in terms of their quality, accuracy, and completeness.

B. Cancer Registry

1. Establishment. Michigan law authorizes MDHHS to establish a cancer registry. Per MCL 333.2619(1), the department shall establish a registry to record cases of cancer and other specified tumorous and precancerous diseases that occur in the state, and to record information concerning these cases as the department considers necessary and appropriate in order to conduct epidemiologic surveys of cancer and cancer-related diseases in the state.

2. Case reporting. Under subsection (2), each diagnosed case of cancer and other specified tumorous and precancerous diseases shall be reported to the department pursuant to subsection (4), or reported to a cancer reporting registry if the registry meets standards established pursuant to subsection (4) to ensure the accuracy and completeness of the reported information. A person or facility required to report a diagnosis pursuant to subsection (4) may elect to report the diagnosis to the state through an existing cancer registry only if the registry meets minimum reporting standards established by the department.

3. Maintaining records. Under subsection (3), the department shall maintain comprehensive records of all reports submitted pursuant to §2619. These reports shall be subject to the same requirements of confidentiality as provided in §2631 for data or records concerning medical research projects.

4. Rules. Under subsection (4), the director shall promulgate rules which provide (a) a list of tumorous and precancerous diseases other than cancer to be reported pursuant to subsection (2); (b) the quality and manner in which the cases and other information described in subsection (1) are reported to the department; and (c) the terms and conditions under which records disclosing the name and medical condition of a specific individual and kept pursuant to this section are released by the department.

5. Does not compel submission. Section 2619 does not compel an individual to submit to medical or department examination or supervision. MCL 333.2619(5).

6. Contracting. The department may contract for the collection and analysis of, and research related to, the epidemiologic data required under §2619. MCL 333.2619(6).

7. Reporting of collected information. MDHHS is required to evaluate the reports collected pursuant to subsection (2). The department shall publish and make available to the public reports summarizing the information collected. The first summary report shall be published not later than 180 days after the end of the first two full calendar years after the effective date of this section. Subsequent annual summary reports shall be made on a full calendar year basis and published not later than 180 days after the end of each calendar year. MCL § 333.2619(7).

C. Immunization Registry

1. Establishment. MCL 333.9207(1) directs MDHHS to establish a registry to record information regarding immunizations. The department shall enter information received under §2821 and §9206 into the registry.

2. Confidentiality of information. Subsection (2) indicates that the information contained in the childhood immunization registry is subject to the confidentiality and disclosure requirements of §9207, §2637, and §2888 and to the rules promulgated under §9227.

3. Uses for information. Subsection (2) further states that the department shall use the information in the registry when necessary to fulfill its duties. Under Subsection (3), upon receipt of a written request from an individual who is twenty years of age or older, the department shall make any immunization information in the registry pertaining to that individual inaccessible.

4. Reporting of information. Unless the parent, guardian, or person in *loco parentis* of the child who received the immunizing agent objects by written notice received by the health care provider prior to reporting, a health care provider shall report to the department each immunization administered by the health care provider, pursuant to rules promulgated under §9227. If the parent, guardian, or person in *loco parentis* of the child who was immunized objects to the reporting requirement by written notice received by the health care provider prior to notification, the health care provider shall not report the immunization under MCL 333.9206(3).

D. Birth Defects Registry

1. Establishment. Under MCL 333.5721(1), each diagnosed incidence of a birth defect, including a congenital or structural malformation, or a biochemical or genetic disease, and any information relevant to incidents of birth defects, shall be reported to the department.

2. Comprehensive record maintenance. Subsection (2) requires the department to maintain comprehensive statewide records of all information reported to the birth defects registry. The information reported shall be subject to the same requirements of confidentiality as provided in §2631 for data or records concerning medical research projects.

3. Rule Promulgation. Pursuant to subsection (3), the director shall promulgate rules which provide for (a) a list of birth defects, including, but not limited to, congenital and structural malformations, and biochemical or genetic diseases, and other relevant information to be reported; (b) the quality and manner in which the incidents of birth defects and other information is to be reported; and (c) the terms and conditions under which records maintained under this section, including any records containing the name and medical condition of a specific individual, may be released by the department.

4. No compulsion for testing. Subsection (4) states that §5721 does not compel an individual to submit to medical examination or supervision by the department or otherwise.

5. Department may contract. Per subsection (5), the MDHHS may contract for the collection and analysis of, and research related to, the data required under §5721.

6. Evaluation of information. Subsection (6) directs the department to evaluate the information reported to the birth defects registry. MDHHS shall publish and make available to the public reports summarizing the information collected. Annual summary reports shall be made on a full calendar year basis and published not later than 180 days after the end of each calendar year.

E. Policy for Conducting and Supporting Research

1. Establishment. MCL 333.2621(1) directs the department to establish a comprehensive policy pursuant to and consistent with §2611(2) for the conduct and support of research and demonstration activities related to the department's responsibility for the health care needs of the people of this state.

2. Included activities. The department shall conduct research and demonstration activities related to the department's responsibility for the environmental, preventive, and personal health needs of the communities and people of this state, including:

- (a) The causes, effects, and methods of prevention of illness.
- (b) The determinants of health, including behavior related to health.
- (c) The accessibility, acceptability, availability, organization, distribution, utilization, quality, and financing of health care, especially those services for the medically needy. MCL 333.2621(2).

3. Demonstration projects. The department may conduct and support demonstration projects to carry out subsection (2). MCL 333.2621(3).

4. Determining the value of programs. The department shall conduct or support the conduct of scientific evaluations of the effectiveness, efficiency, and relevance of programs conducted or supported by the department. MCL 333.2621(4).

5. Publication and dissemination of information. Under MCL 333.2623, the department may (a) publish, make available, and disseminate, promptly and on as broad a basis as practicable, the results of health services research, demonstrations, and evaluations conducted and supported under §2621. The department may also (b) provide indexing, abstracting, translation, publication, and other services leading to a more effective and timely dissemination of information as to health services, research, demonstrations, and evaluations to

public and private entities and persons engaged in the improvement of health and to the general public.

F. Procedure Protecting Confidentiality

1. Protecting confidentiality. The department is mandated under MCL 333.2637(1) to establish procedures pursuant to §2678 to protect the confidentiality of, and regulate the disclosure of, data and records contained in a departmental data system or system of records.

2. Confidentiality should be consistent with other policies. The procedures established under subsection (1) shall be consistent with the policy established under §2611 and §2613. MCL 333.2637(2).

3. Data not disclosed unless confidentiality maintained. Except as provided in §2640, the procedures established under subsection (1) shall specify the data contained in a departmental data system or system of records that shall not be disclosed unless items identifying a person by name, address, number, symbol, or any other identifying particular are deleted. MCL 333.2637(3).

4. Persons receiving data shall not disclose. The procedures established under subsection (1) shall regulate the use and disclosure of data contained in a departmental data system or system of records released to researchers, other persons, including designated medical research projects as described in §2631, or governmental entities. A person who receives data pursuant to this section shall not disclose an item of information contained in the data, except in conformance with the authority granted by the department and with the purpose for which the data was originally requested by the researcher. The director may contract with researchers or other persons to implement and enforce this subsection. A contract made pursuant to this subsection shall (a) require the department to provide monitoring to assure compliance with this section; and (b) provide for termination if this section or the contract is violated. MCL 333.2637(4).

5. Department employees shall not disclose information. Under subsection (5), an officer or employee of the department shall not disclose data contained in a departmental data system or system of records except as authorized in the procedures adopted pursuant to §2637.

6. Department shall review procedures. According to subsection (6), the department shall periodically review the procedures adopted under §2637.

7. Persons who violate procedure shall no longer have access to information. Under subsection (7), a person whose contract is terminated pursuant to subsection (4)(b) is not eligible to make a subsequent contract with the department.

3.42 Public Health Reporting

Michigan law contains several provisions which require reporting. The types of reporting requirements vary. Some are obligations on health departments to report to individuals; others are obligations on health care providers to report to health departments.

A. Reporting of Disease

1. Local health department shall communicate with individuals. Under MCL 333.2451(1), upon a determination that an imminent danger to the health or lives of individuals exists in the area served by the local health department, the local health officer shall immediately inform the individuals affected by the imminent danger and issue an order which shall be delivered to a person authorized to avoid, correct, or remove the imminent danger or be posted at or near the imminent danger. The order shall incorporate the findings of the local health department and require immediate action necessary to avoid, correct, or remove the imminent danger. The order may specify action to be taken or prohibit the presence of individuals in locations or under conditions where the imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove the imminent danger.

2. Imminent Danger Defined. According to MCL 333.2451(3)(a), “imminent danger” means a condition or practice which could reasonably be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided.

B. Warning Notice

1. Nature of warning. Upon a determination by an MDHHS representative or a local health officer that an individual is a carrier and is a health threat to others, the department representative or local health officer shall issue a warning notice to the individual requiring the individual to cooperate with the department or local health department in efforts to prevent or control transmission of serious communicable diseases or infections. The warning notice may also require the individual to participate in education, counseling, or treatment programs, and to undergo medical tests to verify the person's status as a carrier. MCL 333.5203(1).

2. Written and oral warnings. A warning notice issued under subsection (1) shall be in writing, except that in urgent circumstances, the warning notice may be an oral statement, followed by a written statement within three days. A warning notice shall be individual and specific and shall not be issued to a class of persons. A written warning notice shall be served either by registered mail, return receipt requested, or personally by an individual who is employed by, or under contract to, the department or a local health department. MCL 333.5203(2).

3. Warning includes notice of possible judicial action. A warning notice issued under subsection (1) shall include a statement that unless the individual takes the action requested in the warning notice, the department representative or local health officer

shall seek an order from the probate court. The warning notice shall also state that, except in cases of emergency, the individual to whom the warning notice is issued has the right to notice and a hearing before the probate court issues an order. MCL 333.5203(3).

C. MDHHS Reporting Procedures

1. General requirement. Under MCL 333.5111(2)(a), MDHHS may promulgate rules that establish requirements for reporting and other surveillance methods for measuring the occurrence of diseases, infections, and disabilities and the potential for epidemics. Rules promulgated under this subdivision may require a licensed health professional or health facility to submit to the department or a local health department, on a form provided by the department, a report of the occurrence of a communicable disease, serious communicable disease or infection, or disability. The rules promulgated under this subdivision may require a report to be submitted to the department not more than twenty-four hours after a licensed health professional or health facility determines that an individual has a serious communicable disease or infection.

2. Communicable diseases and infections. Under subsection (2)(h), the department may promulgate rules for the discovery, care, and reporting of an individual having or suspected of having a communicable disease or a serious communicable disease or infection, and to establish approved tests under §5125 and approved prophylaxes under §5127. Subsection (3) requires the department to promulgate rules to provide for the confidentiality of reports, records, and data pertaining to testing, care, treatment, reporting, and research associated with communicable diseases and serious communicable diseases or infections.

3. Chronic diseases. The chronic disease program shall include the reporting of cases. MCL 333.5412(1).

4. Birth Defects. As previously noted, under MCL 333.5721(1), each diagnosed incidence of a birth defect, including a congenital or structural malformation, or a biochemical or genetic disease, and any information relevant to incidents of birth defects, shall be reported to the department.

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 - usually an employee of the local health department - interviews the patient; the patient's family members, physicians, nurses; and anyone else who may have knowledge of the patient's recent contacts and activities. The goal of this investigation is to identify persons who may have been exposed to the disease, as well as persons, animals, or places that may have been the source of the disease. Identified contacts are then screened for the disease and treated as necessary.

The investigative process is ideally repeated until the source of the disease (referred to as the "index case" if the source is a person) is identified and all known contacts have been screened.

The type of contacts screened depends upon the nature of the disease in question. Investigation of a sexually transmitted disease (*i.e.* HIV/AIDS) only requires screening of the sexual partners of infected individuals. In contrast, a disease that is spread by respiratory droplets, such as tuberculosis, may require extensive screening of all casual contacts and persons in proximity to infected individuals.⁸⁰

A. Investigation of Communicable Disease Carriers

1. Power of MDHHS. MDHHS shall make investigations and inquiries as to the causes of disease, especially epidemics; the causes of morbidity and mortality; and the causes, prevention, and control of environmental health hazards, nuisances, and sources of illness. MCL 333.2221(d)(i)-(iii).

2. Power of local health department. A local health department is required to utilize vital and health statistics and provide for epidemiological and other research studies for the purpose of protecting the public health. MCL 333.2433(2)(b). They must also make investigations and inquiries as to the causes of disease and especially of epidemics; the causes of morbidity and mortality; and the causes, prevention, and control of environmental health hazards, nuisances, and sources of illness. MCL 333.2433(c)(i)-(iii).

MCL 333.2446 further states that to assure compliance with laws enforced by a local health department, the local health department may inspect, investigate, or authorize an inspection or investigation to be made of any matter, thing, premise, place, person, record, vehicle, incident, or event.

B. Occupational Diseases

1. Investigation of occupational diseases. Upon receiving a report under §5611, or upon believing that a case or suspected case of occupational disease exists in Michigan, MDHHS may investigate to determine the accuracy of the report and the cause of the disease. MCL § 333.5613(1).

2. Confidentiality of investigation. Under MCL 333.5613, to aid in the diagnosis or treatment of an occupational disease, the department shall advise the physician in charge of a patient of the nature of the hazardous substance or agent and the conditions of exposure of the patient as established by the investigation. In so doing, the department shall protect the confidentiality of trade secrets or privileged information disclosed by the investigations in accordance with MCL 15.243.

⁸⁰ *Contact Tracing*. The Medical & Public Health Law Site. Louisiana State University Law Center. <http://biotech.law.lsu.edu/Books/lbb/x578.htm>. (Last visited April 7, 2016).

3.44 Sexual Partner Notification and the Duty to Warn

In an attempt to prevent the transmission of certain communicable diseases, Michigan law requires that individuals infected with these diseases inform third parties of their disease status prior to engaging those third parties in personal activities scientifically proven to be associated with a high risk of disease transmission. In certain situations, Michigan law also empowers persons other than the infected individual to warn third parties.

A. Diseases Subject to Duty to Warn

Michigan's duty to warn applies to such diseases as acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV). MCL 333.5210(1).

B. Partner Notification

1. Necessary information shall be provided. A person or governmental entity that refers an individual to a local health department under MCL 333.5114a(1) shall provide the local health department with information determined necessary by the local health department to carry out partner notification. Required information may include, but is not limited to, the name, address, and telephone number of the individual test subject. MCL 333.5114a(2).

2. Informing individual of duty to warn. Under subsection (3), a local health department to which an individual is referred shall inform the individual that he or she has a legal obligation to inform each of his or her sexual partners of the individual's HIV infection before engaging in sexual relations with that sexual partner, and that the individual may be subject to criminal sanctions for failure to so inform a sexual partner.

3. Partner notification. Subsection (4) states that a partner notification program operated by a local health department shall include notification of individuals who are sexual or hypodermic needle-sharing partners of the individual tested under subsection (1). Partner notification shall be confidential and conducted in the form of a direct, one-on-one conversation between the employee of the local health department and the partner of the test subject.

4. HIV notification. Under MCL 333.5114a(5), if a local health department receives a report under §5114(1) indicating that a Michigan resident or an individual located in the state is HIV infected, the local health department shall make it a priority to:

(a) Interview. Attempt to interview the individual and offer to contact the individual's sexual partners and, if applicable, hypodermic needle-sharing or drug-sharing partners. If the subject of the report is determined to have been infected with HIV in utero, the local health department shall attempt to interview the individual's parent or legal guardian, or both. The interview conducted shall be voluntary on the part of the individual being interviewed.

The interview or attempted interview shall be performed by a local health department within fourteen days after receipt of a report under §5114(1).

(b) Inform. Contact each individual identified as a sexual or hypodermic needle-sharing or drug-sharing partner regarding the individual's possible exposure to HIV within thirty-five days after the interview in a confidential, private, discreet manner. The local health department shall not reveal to an individual identified as a partner the identity of the individual who has tested positive for HIV or an antibody to HIV except if authorized to do so by the individual who named the contact, and if needed to protect others from exposure to HIV or from transmitting HIV. The local health department shall provide each individual interviewed under subdivision (a) and each individual contacted under this subdivision with (i) available medical tests for HIV, an antibody to HIV, and any other indicator of HIV infection; (ii) steps to take in order to avoid transmission of HIV; and (iii) other information considered appropriate by the department.

4.00 Proceedings Regarding Limitations on Individual Liberties



Chapter Four addresses the subject of court proceedings at which individual liberties are subject to curtailment. Personal, property, and privacy limitations are all considered in the sections that follow.

4.10 Personal Limitations

In public health cases, it is not uncommon for courts to impose certain personal limitations to preserve public safety. This section begins with a discussion of the important topics of isolation and quarantine. The topics of civil commitment, mandatory testing, and writ of habeas corpus are also examined.

4.11 Isolation and Quarantine

Isolation and quarantine are historically-recognized public health techniques used to contain the spread of infectious diseases.⁸¹ Both techniques require the separation of infected and potentially-infected persons 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 on the nature of the implicated disease and the available facilities.

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 Michigan, the Supreme Court has long recognized the authority of state and local health officers to issue reasonable orders or regulations to control the spread of disease.⁸²

In many cases, individuals will voluntarily undertake isolation and quarantine procedures at the request of the state or local health department, and courts will not be required to intervene. However, in situations where individuals are unwilling to undertake isolation or quarantine procedures or become noncompliant with procedures already in place, the courts' 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, courts should be attuned to the due process, economic, and logistical concerns of those potentially subject to such measures and attempt to address these concerns when issuing orders.

A. Definitions

1. 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.⁸³

2. Quarantine. The restriction of the activities of healthy persons who have been exposed to a communicable disease, during its period of communicability, to prevent

⁸¹ See, e.g., *Compagnie Francaise de Navigation a 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).

⁸² *People ex rel. Hill v Board of Education of City of Lansing*, 224 Mich. 388; 195 N.W. 95 (1923).

⁸³ Stedman's Medical Dictionary (28th ed. 2006).

disease transmission during the incubation period if infection should occur.⁸⁴

B. General Powers of Isolation and Quarantine

1. MDHHS powers. Under MCL 333.2226(d), MDHHS may exercise authority and promulgate rules to safeguard the public health properly; to prevent the spread of diseases and the existence of sources of contamination; and to implement and carry out the powers and duties vested by law in the department.

2. Local health department powers. Pursuant to MCL 333.2453(1), if a local health officer determines that control of an epidemic is necessary to protect the public health, the officer may issue an emergency order to prohibit the gathering of people for any purpose and may establish procedures to be followed by persons, including a local governmental entity, during the epidemic to insure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to the Public Health Code. Under subsection (2), a local health department or MDHHS may provide for the involuntary detention and treatment of individuals with hazardous communicable disease in the manner prescribed in §5201 to §5238.

C. Court Proceedings

1. Emergency detention. Under MCL 333.5207(1), to protect the public health in an emergency, upon the filing of an affidavit by an MDHHS representative or a local health officer, the circuit court may order the department representative, local health officer, or a peace officer to take an individual whom the court has reasonable cause to believe is a carrier and is a health threat to others into custody and transport the individual to an appropriate emergency care or treatment facility for observation, examination, testing, diagnosis, or treatment, and if determined necessary by the court, temporary detention.

(a) “Health threat to others.” As defined in MCL 333.5201(b), a “health threat to others” means that an individual who is a carrier has demonstrated an inability or unwillingness to conduct himself or herself in such a manner as to not place others at risk of exposure to a serious communicable disease or infection. This definition includes, but is not limited to, (i) behavior by the carrier that has been demonstrated epidemiologically to transmit, or that evidences a careless disregard for transmission of, a serious communicable disease or infection to others; (ii) a substantial likelihood that the carrier will transmit a serious communicable disease or infection to others, as evidenced by the carrier's past behavior or statements made by the carrier that are credible indicators of the carrier's intention to do so; and (iii) affirmative misrepresentation by the carrier of his or her status as a carrier before engaging in behavior that has been demonstrated epidemiologically to transmit the serious communicable disease or infection.

(b) Burden of proof. The court shall issue an order under MCL 333.5207(1) upon a determination that reasonable cause exists to believe that there is a

⁸⁴ *Id.*

substantial likelihood that the individual is a carrier and a health threat to others. The order may be executed on any day and at any time, and shall be served upon the individual who is the subject of the order immediately upon apprehension or detention. An order issued under this subsection may be issued in an ex-parte proceeding upon an affidavit of a department representative or a local health officer.

(c) Sufficiency of affidavit. Under MCL 333.5207(2), the affidavit must set forth the specific facts upon which the order is sought.

(d) Continuation of emergency detentions. An individual held by an emergency detention order shall not be held for more than seventy-two hours without a court hearing to determine whether the detention should continue. The seventy-two hours does not include Saturdays, Sundays, or legal holidays. MCL §333.5207(3).

Notice of the hearing to determine whether the detention should continue must be served on the individual not less than twenty-four hours before the hearing is held. The notice of the hearing must contain the time, date, and place of the hearing; the grounds underlying the facts on which continued detention is sought; the individual's right to appear at the hearing; the individual's right to present and cross-examine witnesses; and the individual's right to counsel, including the right to counsel designated by the circuit court, as described in MCL 333.5205(12). MCL 333.5207(4).

The circuit court may order that the individual continue to be temporarily detained if the court finds, by a preponderance of the evidence, that the individual would pose a health threat to others if released. An order of continued temporary detention shall not continue longer than five days, unless a petition is filed under §5205. If a petition is filed under §5205, the temporary detention shall continue until a hearing on the petition is held. MCL 333.5207(5).

2. Non-emergency detention. Under MCL 333.5205(1)-(2), if an MDHHS representative or a local health officer knows or has reasonable grounds to believe that an individual is a health threat to others and has failed or refused to comply with a warning notice issued under §5203, the department or local health department may petition the Ingham County Circuit Court or for the county served by the local health department for an order restricting the individual. Under MCL 333.5205(6), MDHHS or the local health department must prove the allegations set forth in the petition by clear and convincing evidence.

3. Prior considerations. In addition to the evidentiary standards that must be met, courts should undertake the following additional considerations prior to issuing isolation or quarantine orders. To the extent possible, these considerations should be addressed in the court's order:

(a) Has sufficient 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 the appropriate standard of proof, that the individual poses a risk to the public's health sufficient to necessitate deprivation of that individual's liberty.⁸⁵

(b) Is the health concern at issue a newly-emerging disease? If so, much scientific information surrounding the disease may be unknown. However, this does not necessarily prevent the state from meeting the standard of proof, as the standard does not measure the scientific data itself but rather the ability of that data to be reasonably interpreted as evidence of a public health threat justifying government action.⁸⁶ In the context of newly-emerging diseases, an order should both reflect available scientific information and identify knowledge gaps in order to preserve all available testimony and information for appellate review.

(c) Were all the parties granted access to the available scientific evidence to the extent reasonably possible?

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

(e) Does the order specify the 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 the disease, the period of confinement is less likely to be a disputed issue, as it will coincide in duration with the period necessary for medical treatment.

(f) In the event the disease at issue is a newly-emerging disease, the incubation period may be unknown. In such cases, 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.

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

⁸⁵ 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.)

⁸⁶ *Id.* at 429 ("[T]he factual aspects represent only the beginning of the inquiry. Whether the individual is mentally ill and dangerous to 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.)

(h) Does the order adequately address the care and support of the individual's dependents during confinement?

(i) Has the court considered the impact of the confinement on the individual's financial livelihood and employment?

(j) Has the court considered any unique cultural or personal circumstances of the individual?

(k) Who will bear the costs associated with the individual's confinement and treatment?

(l) 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.

4. Right of counsel. An individual who is the subject of a petition filed under §5205 or an affidavit filed under §5207 has the right to counsel at all stages of the proceedings. If the individual is unable to pay the cost of counsel, the circuit court shall appoint counsel for the individual. MCL 333.5205(12).

D. Nonresidents

1. Financial responsibility. Under MCL 333.5303(1), upon determination by the county department of social services that the place of domicile of an individual receiving care under §5117 is in another county, care shall be provided where the individual is found at the expense of the county where the individual is domiciled. The county department of social services, not later than one month after the commencement of care, shall mail written notice to the local department of social services of the individual's county of domicile, advising that care is being provided. The local health department of the county of domicile may provide for the return of the individual to, and care in, that county.

2. Acknowledgement by the county of domicile. Under subsection (2), if the domicile of the individual is not acknowledged by the alleged county of domicile within one month after mailing the notice under subsection (1), the question of domicile may be submitted for decision to MDHHS. If a disputed or contested claim arises between two or more counties as to the county of domicile, the MDHHS director shall determine the county of domicile when so requested or on his or her own motion. The decision of the director is final. However, pending determination, the county in which the individual is found shall provide the necessary care.

E. Violations

Under MCL 333.2261, except as otherwise provided by the Public Health Code, a person who violates a rule or order of the department is guilty of a misdemeanor punishable by

imprisonment for not more than six months, or a fine of not more than \$200.00, or both.

4.12 Civil Commitment

A. Definition

“Civil commitment” is a term commonly used to refer to the voluntary or involuntary commitment of a mentally-ill individual to a treatment facility.⁸⁷ In Michigan, other individuals, such as those suffering from alcoholism, incapacitation due to alcohol, or drug addiction may also be civilly committed.

In many cases, individuals will voluntarily commit themselves to treatment facilities for mental illness or substance abuse. However, in situations where individuals are unwilling or unable to undertake voluntary commitment, the court may be requested to issue a civil commitment order. Given the severe impact of compulsory civil commitment on an individual's liberty, the court should order the least-restrictive commitment procedures necessary.

B. Court Proceedings

1. Venue. Hearings may be held in such quarters as the court directs; either inside or outside the county in which the court has its principal office, in a hospital or other convenient place. Whenever practicable, the court shall convene hearings in a hospital. The subject of a petition, any interested person, or the court on its own motion may request a change of venue because of residence, convenience to parties, witnesses, or the court, or the individual's mental or physical condition. MCL 330.1456(1)-(2).

2. Civil proceedings. These court hearings shall be governed by MCL 330.452 to 330.465. MCL 330.1451.

3. Commencement of hearing. Under MCL 330.1452, hearings shall be convened promptly, but not more than seven days, excluding Sundays and holidays, after the court's receipt of any of the following:

(a) Application. An application for hospitalization, which shall serve as a petition for a determination that an individual is a person requiring treatment, a clinical certificate executed by a physician or a licensed psychologist, and a clinical certificate executed by a psychiatrist.

⁸⁷ See Stedman's Medical Dictionary (28th ed. 2006).

(b) Petition for requiring treatment. A petition for a determination that an individual is a person requiring treatment, a clinical certificate executed by a physician or a licensed psychologist, and a clinical certificate executed by a psychiatrist.

(c) Petition for continuing treatment. A petition for a determination that an individual continues to be a person requiring treatment and a clinical certificate executed by a psychiatrist.

(d) Discharge. A petition for discharge filed under §484. Pursuant to MCL 330.1484, if the report required under §483 concludes that the individual requires continuing involuntary mental health treatment and the individual or the executive director objects to the conclusions, the individual or the executive director has the right to a hearing and may petition the court for discharge of the individual from the treatment program. This petition shall be presented to the court within seven days, excluding Sundays and holidays, after the report is received.

(e) Discharge certificate. A petition for discharge filed under §485a and a physician's or a licensed psychologist's clinical certificate. Pursuant to MCL 330.1485a(1), upon a hearing under §484, if the court finds that an individual under an order of involuntary mental health treatment no longer requires treatment, the court shall enter a finding to that effect and shall order that the individual be discharged. Under subsection (2), upon a hearing under §484, if the court finds that an individual under a one-year order of involuntary mental health treatment continues to be a person requiring treatment, and after consideration of complaints submitted under §483(2), the court shall either continue the order; or issue a new continuing order for involuntary mental health treatment under §472a(3) or (4).

(f) Demand for notification. A demand or notification that a hearing that has been temporarily deferred under §455(5) be convened. Pursuant to MCL 330.1455(5), the subject of a petition under section 452(a) or (b) who is hospitalized pending the court hearing may file with the court a request to temporarily defer the hearing for not longer than sixty days if the individual chooses to remain hospitalized, or ninety days if the individual chooses alternative treatment or a combination of hospitalization and alternative treatment. The request shall include a stipulation that the individual agrees to remain hospitalized and to accept treatment as may be prescribed for the deferral period, or to accept and follow the proposed plan of treatment as described in subsection (2)(c) for the deferral period, and further agrees that at any time the individual may refuse treatment and demand a hearing under section 452. The request to temporarily defer the hearing shall be on a form provided by MDHHS and signed by the individual in the presence of his or her legal counsel and shall be filed with the court by legal counsel.

4. Standard. A judge or jury shall not find that an individual is a person requiring treatment unless that fact has been established by clear and convincing evidence. MCL 330.1465.

5. Involuntary hospitalization. Upon entry of a court order directing that an individual be involuntarily hospitalized or that an individual involuntarily undergo a program of alternative treatment or a program of combined hospitalization and alternative treatment, the court shall immediately order the Department of State Police to enter the court order into the law enforcement information network. The Department of State Police shall remove the court order from the law enforcement information network only upon receipt of a subsequent court order for that removal. MCL 330.1464a(1). Under subsection (2), the Department of State Police shall immediately enter an order into the law enforcement information network or shall immediately remove an order from the law enforcement information network as ordered by the court.

6. Hospital Initiation. Hospitalization of an individual can be initiated in several ways under the Mental Health Code.

(a) Application for hospitalization. Under MCL 330.1424(1), an application for hospitalization of an individual under §423 shall contain an assertion that the individual is a person requiring treatment as defined in §401, the alleged facts that are the basis for the assertion, the names and addresses, if known, of any witnesses to alleged and relevant facts, and if known the name and address of the nearest relative or guardian, or if none, a friend if known, of the individual. Under subsection (2), the application may be made by any person eighteen years of age or over, shall have been executed not more than ten days prior to the filing of the application with the hospital, and shall be made under penalty of perjury.

(b) Psychiatrist's certificate. A hospital designated by the department or by a community mental health services program shall hospitalize an individual presented to the hospital, pending receipt of a clinical certificate by a psychiatrist stating that the individual is a person requiring treatment, if an application, a physician's or a licensed psychologist's clinical certificate, and an authorization by a pre-admission screening unit have been executed. MCL 330.1423.

(c) Clinical certificate. A physician's or a licensed psychologist's clinical certificate required for hospitalization of an individual under §423 shall have been executed after personal examination of the individual named in the clinical certificate, and within seventy-two hours before the time the clinical certificate is filed with the hospital. The clinical certificate may be executed by any physician or licensed psychologist, including a staff member or employee of the hospital with which the application and clinical certificate are filed. MCL 330.1425.

(d) Petition. Hospitalization proceedings may be initiated by petition. Under MCL 330.1433(1), any individual eighteen years of age or over may file a petition with the court that asserts that an individual meets the criteria for assisted outpatient treatment specified in §401(d). The petition shall contain the facts that are the basis for the assertion, the names and addresses (if known) of any witnesses to the facts, the name and address of the mental health professional currently providing care to the individual who is the subject

of the petition (if known) and the name and address of the nearest relative or guardian (if known) or, if none, a friend (if known) of the individual who is the subject of the petition.

Under subsection (2), upon receipt of a petition, the court shall inform the subject of the petition and the community mental health services program serving the community in which the subject of the petition resides that the court shall hold a hearing to determine whether the subject of the petition meets the criteria for assisted outpatient treatment. Notice shall be provided as set forth in §453. The hearing shall be governed by §454, §458 to §464, and §465.

Under subsection (3), if in the hearing, the court verifies that the subject of the petition meets the criteria for assisted outpatient treatment and he or she is not scheduled to begin a course of outpatient mental health treatment that includes case management services or assertive community treatment team services, the court shall order the subject of the petition to receive assisted outpatient treatment through his or her local community mental health services program. The order shall include case management services. The order may include medication, individual or group therapy, and a variety of other services, including any other service prescribed to treat the individual's mental illness and to either assist the individual in living and functioning in the community or to help prevent a relapse or deterioration that may reasonably be predicted to result in suicide or the need for hospitalization.

Under subsection (4), to fulfill the requirements of an assisted outpatient treatment plan, the court's order may specify the service role that a publicly-funded entity other than the community mental health services program shall take.

Under subsection (5), in developing an order under §433, the court shall consider any preferences and medication experiences reported by the subject of the petition or his or her designated representative, whether or not the subject of the petition has an existing individual plan of services under §712, and any directions included in a durable power of attorney or advance directive that exists. If the subject of the petition has not previously designated a patient advocate or executed an advance directive, the responsible community mental health services program shall, before the expiration of the assisted outpatient treatment order, ascertain whether the subject of the petition desires to establish an advance directive. If so, the community mental health services program shall direct the subject of the petition to the appropriate community resources for assistance in developing an advance directive.

Under subsection (6), if an assisted outpatient treatment order conflicts with the provisions of an existing advance directive, durable power of attorney, or individual plan of services developed under §712, the assisted outpatient treatment order shall be reviewed for possible adjustment by a psychiatrist not previously involved with developing the assisted outpatient treatment order. If an assisted outpatient treatment order conflicts with the provisions of an

existing advance directive, durable power of attorney, or individual plan of services developed under §712, the court shall state the court's findings on the record or in writing if the court takes the matter under advisement, including the reason for the conflict. MCL § 330.1433.

Under subsection (7), nothing in §433 negates or interferes with an individual's rights to appeal under any other state law or Michigan court rule.

MCL 330.1434 further addresses the petition filing process. Under subsection (1), any individual eighteen years of age or over may file with the court a petition that asserts that an individual is a person requiring treatment as defined in §401. Under subsection (2), the petition shall contain the facts that are the basis for the assertion, the names and addresses (if known) of any witnesses to the facts, and (if known) the name and address of the nearest relative or guardian, or, if none, a friend (if known) of the individual.

Under subsection (3), the petition shall be accompanied by the clinical certificate of a physician or a licensed psychologist, unless after reasonable effort the petitioner could not secure an examination. If a clinical certificate does not accompany the petition, an affidavit setting forth the reasons an examination could not be secured shall also be filed. The petition may also be accompanied by a second clinical certificate. If two clinical certificates accompany the petition, at least one clinical certificate shall have been executed by a psychiatrist. Under subsection (4), a clinical certificate that accompanies a petition shall have been executed within seventy-two hours before the filing of the petition, and after personal examination of the individual.

7. Protective custody. An individual may be taken into protective custody before hospitalization.

(a) Peace officer with an application and certificate. Upon delivery to a peace officer of an application and physician's or licensed psychologist's clinical certificate, the peace officer shall take the individual named in the application into protective custody and transport the individual immediately to the pre-admission screening unit or hospital designated by the community mental health services program for hospitalization under §423. If the individual taken to a pre-admission screening unit meets the requirements for hospitalization, then unless the community mental health services program makes other transportation arrangements, the peace officer shall take the individual to a hospital designated by the community mental health services program. Transportation to another hospital due to a transfer is the responsibility of the community mental health services program. MCL 330.1426.

(b) Peace officer acting pursuant to his own belief. Under MCL 330.1427(1), if a peace officer observes an individual conducting himself or herself in a manner that causes the peace officer to reasonably believe that the individual is a person requiring treatment as defined in §401, the peace officer may take the individual into protective custody and transport the individual to a pre-

admission screening unit designated by a community mental health services program for examination under §429 or for mental health intervention services. The pre-admission screening unit shall provide those mental health intervention services that it considers appropriate or shall provide an examination under §429. The pre-admission screening services may be provided at the site of the pre-admission screening unit or at a site designated by the pre-admission screening unit.

Upon arrival at the pre-admission screening unit or site designated by the unit, the peace officer shall execute an application for hospitalization of the individual. As soon as practical, the unit shall offer to contact an immediate family member of the recipient to let the family know that the recipient has been taken into protective custody and where he or she is located. The pre-admission screening unit shall honor the recipient's decision as to whether an immediate family member is to be contacted and shall document that decision in the recipient's record.

In the course of providing services, the pre-admission screening unit may provide advice and consultation to the peace officer, which may include a recommendation to transport the individual to a hospital for examination under §429, or to release the individual from protective custody. However, the unit shall ensure that an examination is conducted by a physician or licensed psychologist prior to a recommendation to release the individual. The unit shall ensure provision of follow-up counseling and diagnostic and referral services if needed if it is determined under §429 that the person does not meet the requirements for hospitalization.

(c) Peace officer not financially liable. Under subsection (2), a peace officer is not financially responsible for the cost of care of an individual for whom a peace officer has executed an application.

(d) Notification. Under subsection (3), a hospital receiving an individual who has been referred by a community mental health services program's pre-admission screening unit shall notify that unit of the results of an examination of that individual conducted by the hospital.

(e) Use of force. If a peace officer is taking an individual into protective custody, the peace officer may use that kind and degree of force that would be lawful if the peace officer were affecting an arrest for a misdemeanor without a warrant. In taking the individual into custody, a peace officer may take reasonable steps for self-protection. The protective steps may include a pat-down search of the individual in the individual's immediate surroundings, but only to the extent necessary to discover and seize a dangerous weapon that may be used against the officer or other persons present. These protective steps shall be taken by the peace officer before the individual is transported to a pre-admission screening unit or a hospital designated by the community mental health services program. MCL 330.1427a(1).

(f) Informing the individual. The taking of an individual to a community mental health services program's pre-admission screening unit or a hospital under §427 is not an arrest, but is a taking into protective custody. The peace officer shall inform the individual that he or she is being held in protective custody and is not under arrest. An entry shall be made indicating the date, time, and place of the taking, but the entry shall not be treated for any purpose as an arrest or criminal record. MCL 330.1427a(2).

(g) Liability of peace officer. A peace officer who acts in compliance with the Mental Health Code is acting in the course of official duty and is not civilly liable for the action taken. This does not apply to a peace officer who, while acting in compliance with the Act, engages in behavior involving gross negligence or willful and wanton misconduct. MCL 330.1427b(1)-(2).

8. Review. Persons involuntarily hospitalized shall have their status reviewed periodically.

(a) Right to adequate and prompt review. Each individual subject to a one-year order of involuntary mental health treatment has the right to adequate and prompt review of his or her current status as a person requiring treatment. Six months from the date of a one-year order of involuntary mental health treatment, the executive director of the community mental health services program responsible for treatment or, if private arrangements for the reimbursement of mental health treatment services have been made, the hospital director or director of the alternative treatment program shall assign a physician or licensed psychologist to review the individual's clinical status as a person requiring treatment. MCL 330.1482.

(b) Review made part of record. The results of each periodic review shall be made part of the individual's record and shall be filed within five days of the review in the form of a written report with the court that last ordered the individual's treatment. Within those five days, the executive director or director of the hospital or treatment program with which private reimbursement arrangements have been made shall give notice of the results of the review and information on the individual's right to petition for discharge to the individual, the individual's attorney, the individual's guardian, and the individual's nearest relative or a person designated by the individual. MCL 330.1483(1).

(c) Complaint regarding treatment. An individual under a one-year order of involuntary mental health treatment or a person designated by the individual may submit a complaint to the provider of services at any time regarding the quality and appropriateness of the treatment provided. A copy of each complaint and the provider's response to each complaint shall be submitted to the executive director or director of the private program and the court along with the written report required by subsection (1). MCL 330.1483(2).

(d) Objection to continuing treatment. If the report concludes that the individual requires continuing involuntary mental health treatment and the individual or the executive director objects to the conclusions, the individual or the executive director has the right to a hearing and may petition the court for discharge of the individual from the treatment program. This petition shall be presented to the court within 7 days, excluding Sundays and holidays, after the report is received. MCL 330.1484.

9. Habeas Corpus. Nothing shall prevent the filing or deprive any individual of the benefits of a writ of habeas corpus. MCL 330.1486.

10. Legal competence. Prior findings shall not be determinative of legal competence.

(a) No presumption of incompetence. No determination that a person requires treatment, no order of court authorizing hospitalization or alternative treatment, nor any form of admission to a hospital shall give rise to a presumption of, constitute a finding of, or operate as an adjudication of legal incompetence. MCL 330.1489(1).

(b) Previous commitment not a finding of incompetence. No order of commitment under any previous Michigan statute shall, in the absence of a concomitant appointment of a guardian, constitute a finding of or operate as an adjudication of legal incompetence. MCL 330.1489(2).

4.13 Civil Admission of Minors

Michigan law provides different statutes governing civil admission of emotionally disturbed minors.

A. Hospitalization

1. Conditions for hospitalization. Under MCL 330.1498a, a minor shall be hospitalized only pursuant to the provisions of Chapter 4A of the Mental Health Code. Section 498d states that a minor of any age may be hospitalized if both of the following conditions are met:

(a) The minor's parent, guardian, or a person acting in *loco parentis* for the minor or, in compliance with subsection (2) or (3), MDHHS or county juvenile agency, as applicable, requests hospitalization of the minor; and

(b) The minor is found to be suitable for hospitalization.

2. Conditions for MDHHS or county requests. Under subsection (2), MDHHS may request hospitalization of a minor who is committed to the department under MCL 400.201 to 400.214. Further, under subsection (3), as applicable, MDHHS may request hospitalization of, or the county juvenile agency may request an evaluation for hospitalization of, a minor who is one of the following:

(a) Award of the court under Chapter X or XIA of 1939 PA 288, MCL 710.21 to 710.70 and 712a.1 to 712a.32, if the department or county juvenile agency is specifically empowered to do so by court order.

(b) Committed to the department or county juvenile agency under the Youth Rehabilitation Services Act, 1974 PA 150, MCL 803.301 to 803.309, except that if the minor is residing with his or her custodial parent, the consent of the custodial parent is required.

3. Hospitalization of a minor 14 or older. Under MCL 330.1498d(4) and subject to sections 498e, 498f, and 498j, a minor who is fourteen years of age or older may be hospitalized if both of the following conditions are met:

(a) The minor requests hospitalization under this chapter; and

(b) The minor is found to be suitable for hospitalization.

4. Making the determination. Under MCL 330.1498d(5), in making the determination of suitability for hospitalization, a minor shall not be determined to be a minor requiring treatment solely on the basis of one or more of the following conditions:

(a) Epilepsy;

(b) Developmental disability;

(c) Brief periods of intoxication caused by substances such as alcohol or drugs or by dependence upon or addiction to those substances;

(d) Juvenile offenses, including school truancy, home truancy, or incorrigibility;

(e) Sexual activity;

(f) Religious activity or beliefs; and

(g) Political activity or beliefs.

5. County juvenile agency. Under MCL 330.1498d(6), a "county juvenile agency" means that term as defined in §2 of the County Juvenile Agency Act, MCL 45.622(a).

B. Evaluation and Admission of Minors

1. Evaluation. Under MCL 330.1498(e)(1), a minor requesting hospitalization or for whom a request for hospitalization was made shall be evaluated to determine suitability for hospitalization as soon as possible after the request is made.

2. Role of director in evaluation. Per subsection (2), the executive director of the community mental health services program that is responsible for providing services in the county of residence of a minor requesting hospitalization or for whom a request for

hospitalization was made shall evaluate the minor to determine his or her suitability for hospitalization pursuant to this section. In making a determination of a minor's suitability for hospitalization, the executive director shall utilize the community mental health services program's children's diagnostic and treatment service. If a children's diagnostic and treatment service does not exist in the community mental health services program, the executive director shall, through written agreement, arrange to have a determination made by the children's diagnostic and treatment service of another community mental health services program, or by the appropriate hospital.

3. Actions the director shall take. Pursuant to subsection(3), in evaluating a minor's suitability for hospitalization, the executive director shall do all of the following:

(a) Determine (i) whether the minor is a minor requiring treatment; and (ii) whether the minor requires hospitalization and is expected to benefit from hospitalization.

(b) Determine whether there is an appropriate, available alternative to hospitalization, and if there is, refer the minor to that program.

(c) Consult with the appropriate school, hospital, and other public or private agencies.

(d) If the minor is determined to be suitable for hospitalization under subdivision (a), refer the minor to the appropriate hospital.

(e) If the minor is determined not to be suitable for hospitalization under subdivision (a), determine if the minor needs mental health services. If it is determined that the minor needs mental health services, the executive director shall offer an appropriate treatment program for the minor, if the program is available, or refer the minor to any other appropriate agency for services.

(f) If a minor is assessed and found not to be clinically suitable for hospitalization, the executive director shall inform the individual or individuals requesting hospitalization of the minor of appropriate available alternative services to which a referral should be made and of the process for a request of a second opinion under subsection (4).

4. Second opinion. Under subsection (4), if the children's diagnostic and treatment service of the community mental health services program denies hospitalization, the parent or guardian of the minor may request a second opinion from the executive director. The executive director shall arrange for an additional evaluation by a psychiatrist, other physician, or licensed psychologist to be performed within three days, excluding Sundays and legal holidays, after the executive director receives the request. If the conclusion of the second opinion is different from the conclusion of the children's diagnostic and treatment service, the executive director, in conjunction with the medical director, shall make a decision based on all clinical information available. The executive director's decision shall be confirmed in writing to the individual who requested the second opinion, and the confirming document shall include the signatures of the

executive director and medical director or verification that the decision was made in conjunction with the medical director.

5. Transfer. Subsection (5) states that if a minor has been admitted to a hospital not operated by or under contract with MDHHS or a community mental health services program and the hospital considers it necessary to transfer the minor to a hospital under contract with a community mental health services program, the hospital shall submit an application for transfer to the appropriate community mental health services program. The executive director shall determine if there is an appropriate, available alternative to hospitalization of the minor. If the executive director determines that there is an appropriate available alternative program, the minor shall be referred to that program. If the executive director determines that there is not an appropriate alternative program, the minor shall be referred to a hospital under contract with the community mental health services program.

6. Applicability. Under subsection (6), except as provided in subsections (1) and (5), §498e only applies to hospitals operated under contract with a community mental health services program.

7. Admission. If a minor is referred to a hospital by an executive director pursuant to §498e, the hospital director may accept the referral and admit the minor, or the hospital director may order an examination of the minor to confirm the minor's suitability for hospitalization. The examination shall begin immediately. If the hospital director confirms the minor's suitability for hospitalization, the minor shall be scheduled for admission to the hospital. If the minor cannot be admitted immediately because of insufficient space in the hospital, the minor shall be placed on a waiting list and the executive director shall provide necessary interim services, including periodic reassessment of the suitability for hospitalization. The minor may be referred to another hospital. If the hospital director does not confirm the minor's suitability for hospitalization, the minor shall be referred to the executive director, who shall offer an appropriate treatment plan for the minor or refer the minor to any other agency for services. MCL 330.1498f.

8. Examination. Under MCL 330.1498g, if a minor is admitted to a hospital, the director of the hospital shall cause the minor to be examined by a child psychiatrist within forty-eight hours after the admission of the minor and shall immediately initiate any of the following tests and evaluations of the minor pursuant to §498j which, in the hospital director's opinion, may aid in the preparation of a treatment plan for the minor:

- (a) A comprehensive social and family history including family relationships.
- (b) A comprehensive educational test and an assessment of educational development.
- (c) Psychological testing.
- (d) An evaluation by the staff participating in the treatment of the minor.

(e) Any relevant test, assessment, or study of, or related to, the minor.

9. Emergency admission of minor.

(a) Request by guardian. A minor's parent, guardian, or person in *loco parentis* may request emergency admission of the minor to a hospital, if the person making the request has reason to believe that the minor requires treatment and presents a serious danger to himself or others. MCL 330.1498h(1).

(b) Request made to hospital. If the hospital to which the request for emergency admission is made is not under contract to the community mental health services program, the request for emergency hospitalization shall be made directly to the hospital. If the hospital director agrees that the minor needs emergency admission, the minor shall be hospitalized. If the hospital director does not agree, the person making the request may request hospitalization of the minor under §498d. MCL 330.1498h(2).

(c) Request made to pre-admission screening unit. If the hospital to which the request for emergency admission is made is under contract to the community mental health services program, the request shall be made to the pre-admission screening unit of the community mental health services program serving in the county where the minor resides. If the community mental health services program has a children's diagnostic and treatment service, the pre-admission screening unit shall refer the person making the request to that service.

In counties where there is no children's diagnostic and treatment service, the pre-admission screening unit shall refer the person making the request to the appropriate hospital. If it is determined that emergency admission is not necessary, the person may request hospitalization of the minor under §498d. If it is determined that emergency admission is necessary, the minor shall be hospitalized or placed in an appropriate alternative program. MCL 330.1498h(3).

(d) Inform of alternatives. If a minor is assessed by the pre-admission screening unit and found not to be clinically suitable for hospitalization, the pre-admission screening unit shall inform the individual or individuals requesting hospitalization of the minor of appropriate available alternative services to which a referral should be made and of the process for a request of a second opinion under subsection (5). MCL 330.1498h(4).

(e) Notification of parents. If a person in *loco parentis* makes a request for emergency admission and the minor is admitted to a hospital under this section, the hospital director or the executive director of the community mental health services program immediately shall notify the minor's parent or parents or guardian. MCL § 330.1498h(6).

(f) Notification of director. If a minor is hospitalized in a hospital that is operated under contract with a community mental health services program, the

hospital director shall notify the appropriate executive director within twenty-four hours after the hospitalization occurs. MCL 330.1498h(7).

(g) Peace officer. If a peace officer, as a result of personal observation, has reasonable grounds to believe that a minor requires treatment and that the minor presents a serious danger to himself or others and if after a reasonable effort to locate the minor's parent, guardian, or person in *loco parentis*, the minor's parent, guardian, or person in *loco parentis* cannot be located, the peace officer may take the minor into protective custody and transport the minor to the appropriate community mental health pre-admission screening unit, if the community mental health services program has a children's diagnostic and treatment service, or to a hospital if it does not have a children's diagnostic and treatment service.

After transporting the minor, the peace officer shall execute a written request for emergency hospitalization of the minor stating the reasons, based upon personal observation, that the peace officer believes that emergency hospitalization is necessary. The written request shall include a statement that a reasonable effort was made by the peace officer to locate the minor's parent, guardian, or person in *loco parentis*. If it is determined that emergency hospitalization of the minor is not necessary, the minor shall be returned to his or her parent, guardian, or person in *loco parentis* if an additional attempt to locate the parent, guardian, or person in *loco parentis* is successful. If the minor's parent, guardian, or person in *loco parentis* cannot be located, the minor shall be turned over to the protective services program of the family independence agency.

If it is determined that emergency admission of the minor is necessary, the minor shall be admitted to the appropriate hospital or to an appropriate alternative program. The executive director immediately shall notify the minor's parent, guardian, or person in *loco parentis*. If the hospital is under contract with the community mental health services program, the hospital director shall notify the appropriate executive director within twenty-four hours after the hospitalization occurs. MCL 330.1498h(8).

(h) Evaluation. An evaluation of a minor admitted to a hospital shall begin immediately after the minor is admitted. The evaluation shall be conducted in the same manner as provided in §498e. If the minor is not found to be suitable for hospitalization, the minor shall be released into the custody of his or her parent, guardian, or person in *loco parentis*, and the minor shall be referred to the executive director who shall determine if the minor needs mental health services. If it is determined that the minor needs mental health services, the executive director shall offer an appropriate treatment program for the minor, if the program is available, or refer the minor to another agency for services. MCL 330.1498h(9).

(i) When to proceed under estates and protected individuals code. A hospital director shall proceed under either the Estates and Protected Individuals Code (MCL 700.1101 to 700.8102) or the Probate Code (MCL 712A.1 to 712A.32) as

warranted by the situation and the best interests of the minor if the hospital director cannot locate a parent, guardian, or person in *loco parentis* of a minor admitted to a hospital under subsection (8); or the hospital director cannot locate the parent or guardian of a minor admitted to a hospital by a person in *loco parentis*. MCL 330.1498h(10)(a)-(b).

10. Notice. The parent or guardian of a minor shall be notified immediately of the admission of a minor to a hospital in any case where the parent or guardian of the minor did not execute the application for hospitalization. The notice shall be in the form most likely to reach the person being notified in an expeditious manner, and shall inform the person of the right to participate in any proceedings under the Mental Health Code. MCL 330.1498i.

11. Consent. A hospital shall request a parent or guardian of a minor admitted to a hospital under this chapter to give written consent for the minor's treatment and for the release of information from agencies or individuals involved in treating the minor before the hospitalization considered necessary by the hospital for the minor's treatment. If the hospital cannot obtain consent for treatment, the director of the hospital may proceed under either the Estates and Protected Individuals Code (MCL 700.1101 to 700.8102) or the Probate Code (MCL 712A.1 to 712A.32) as warranted by the situation and the best interests of the minor. MCL § 330.1498j.

12. Leave, transportation and appeal.

(a) Leaving the hospital without permission warrants notification. If a minor who has been admitted to a hospital leaves the hospital without the knowledge and permission of the appropriate hospital staff, the hospital shall immediately notify the minor's parent, guardian, or person in *loco parentis*, the executive director if appropriate, and the appropriate police agency. MCL 330.1498k(1).

(b) Requesting transportation of minor back to hospital. If a minor has left a hospital without the knowledge and permission of the appropriate hospital staff or has refused a request to return to the hospital while on an authorized absence from the hospital, and the hospital director believes that the minor should be returned to the hospital, the hospital director shall request that the minor's parent, guardian, or person in *loco parentis* transport the minor to the hospital. If the parent, guardian, or person in *loco parentis* is unable, after reasonable effort, to transport the minor, a request may be submitted to the court for an order to transport the minor. If the court is satisfied that a reasonable effort was made to transport the minor, the court shall order a peace officer to take the minor into protective custody for the purpose of returning the minor to the hospital. MCL 330.1498k(2).

(c) Appeal. An opportunity for appeal, and notice of that opportunity, shall be provided to any minor and to the parent or guardian of any minor who is returned over the minor's objection from any authorized leave in excess of ten days. In the case of a minor less than fourteen years of age, the appeal shall be

made by the parent or guardian of the minor or person in *loco parentis*. MCL 330.1498k(3).

13. Review.

(a) Review requirement. Not more than ninety days after the admission of a minor to a hospital, and at sixty-day intervals after the expiration of the ninety-day period, the director of the hospital shall perform or arrange to have performed a review of the minor's suitability for hospitalization. If the minor is in a hospital under contract with a community mental health services program, the executive director shall participate in the reviews. MCL 330.1498l(1).

(b) Transmission of review results. Subject to §114a, the reviews of the minor's suitability for continued hospitalization shall be conducted under rules promulgated by the department. Results of the reviews shall be transmitted promptly to the minor, if the minor is fourteen years of age or older; the parent, guardian, or person in *loco parentis* of the minor; the executive director; and the court, if there was a court hearing on the admission of the minor. MCL 330.1498l(2)(a)-(d).

14. Objections.

(a) Persons who can make objections. An objection to the hospitalization of a minor may be made to the court by a person found suitable by the court; the minor's parent, guardian, or person in *loco parentis* if the request for hospitalization was made by the minor pursuant to §498d(3) or by a peace officer pursuant to §498h(6); or the minor who has been hospitalized, if the minor is fourteen years of age or older. MCL 330.1498m(1)(a)-(c).

(b) Timing and contents of objection. An objection made to the court pursuant to subsection (1) shall be made in writing not more than thirty days after the admission of a minor to a hospital, and may be made subsequently within not more than thirty days after the receipt of the periodic review of the minor's suitability for continued hospitalization as provided for in §498l. The objection shall state the basis on which it is being raised. MCL 330.1498m(2).

(c) Assisting a minor in objecting. If a minor who has been hospitalized for not less than seven days informs a hospital employee of the minor's desire to object to hospitalization, the hospital employee or a person designated by the hospital shall assist the minor in properly submitting an objection to hospitalization. An employee of the hospital shall not interfere with or fail to act upon a minor's objection to hospitalization. A person who violates this subsection is guilty of a misdemeanor. MCL 330.1498m(3).

15. Judicial hearings for minors.

(a) Notification of hearing. Upon receipt of an objection to hospitalization filed under §498m, the court shall schedule a hearing to be held within seven days, excluding Sundays and holidays. After receipt of the objection, the court

shall notify all of the following persons of the time and place for the hearing: the parents or guardian of the minor to whom the objection refers; the person filing the objection; the minor to whom the objection refers; the person who executed the application for hospitalization of the minor; the hospital director; and the executive director. MCL 330.1498n(1)(a)-(f).

(b) Court's response to objection. The court shall sustain an objection to hospitalization and order the discharge of the minor unless the court finds by clear and convincing evidence that the minor is suitable for hospitalization. If the court does not sustain the objection, an order shall not be entered, the objection shall be dismissed, and the hospital shall continue to hospitalize the minor. MCL 330.1498n(2).

(c) Rules governing hearing. The hearing required by subsection (1) shall be governed by §451 to §465. MCL 330.1498n(3).

(d) Court shall not refuse to discharge minor if parent refuses to provide care. The court shall not dismiss the objection and refuse to order a discharge of a hospitalized minor on the grounds that the minor's parent or guardian is unwilling or unable to provide or arrange for the management, care, or residence of the minor. If an objection is sustained and the minor's parent or guardian is unwilling or unable to provide or arrange for the management, care, or residence of the minor, the objecting person may, or a person authorized by the court shall, file promptly a petition under MCL 712A.2(b) to ensure that the minor is provided with appropriate management, care, or residence. MCL 330.1498n(4).

(e) Notification of right to object. If a hospital has officially agreed to admit a minor, but admission has been deferred until a subsequent date, an objection to hospitalization of the minor may be made to the court under section 498m before the minor is admitted to the hospital. Subject to §114a, a minor fourteen years of age or older shall be notified of the right to object in accordance with rules promulgated by the department. If the objection is sustained by the court, the minor shall not be hospitalized. MCL 330.1498n(5).

4.14 Mandatory Testing and Treatment

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

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.⁸⁸

2. Explicit statutory provisions. HIV testing may be mandated when an individual poses a serious and present health threat to others. Communicable disease examination may be mandated when an individual poses a serious and present health threat to others. Testing and treatment of individual subject to emergency health detention may be mandated. Testing for dangerous communicable disease may also be mandated, following exposure of emergency medical services provider.

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.⁸⁹

B. Right of Individual to Refuse Treatment Based on Personal Beliefs

Except as otherwise provided in part 52 and §9123, this article and articles 6 and 9 or the rules promulgated under those articles shall not be construed to require the medical treatment, testing, or examination of an individual who objects on the grounds that the medical treatment, testing, or examination violates the personal religious beliefs of the individual or of the parent, guardian, or person in *loco parentis* of a minor.

MCL 333.5113(1).

4.15 Writ 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. MCL 600.4307. Pursuant to article I, §12 of the Michigan Constitution, the government may not suspend the privilege of the writ of habeas corpus unless such suspension is necessary to preserve the public safety in the event of rebellion or invasion. Thus, in the event of an outbreak of a naturally-occurring infectious disease, individuals subjected to isolation or quarantine order must be granted

⁸⁸ *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 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.");

Rock v. Carney, 216 Mich. 280, 294; 185 N.W. 798 (1921) (recognizing that a local health officer may quarantine an individual if sufficient reasonable cause exists to believe that a person is afflicted with a communicable disease, "remembering that the persons so affected are to be treated as patients, not as criminals");

Reynolds v. McNichols, 488 F.2d 1378, 1382 (10th Cir. 1973) ("Involuntary detention, for a limited period of time, of a person reasonably suspected to having a venereal disease for the purpose of permitting an examination of the person thus detained to determine the presence of a venereal disease and providing further for the treatment of such disease, if present, has been upheld by numerous state courts when challenged on a wide variety of constitutional grounds as valid exercise of the police power designed to protect the public health.").

⁸⁹ *Jacobson*, *supra*, 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.").

access to the courts to prosecute writs of habeas corpus seeking their release. The following discussion briefly addresses state habeas corpus procedure, with a particular emphasis on issues germane to public health.

A. In General

1. Who may issue a writ? The writ of habeas corpus to inquire into the cause of detention, or an order to show cause why the writ should not issue, may be issued by (1) the supreme court, or a justice thereof; (2) the court of appeals, or a judge thereof; (3) the circuit courts, or a judge thereof; (4) the municipal courts of record, including but not limited to the recorder's court of the city of Detroit, common pleas court, or a judge thereof; or (5) the district courts, or a judge thereof. MCL § 600.4304.

2. When may an action be brought? An action for habeas corpus to inquire into the cause of detention may be brought by or on the behalf of any person restrained of his liberty within this state under any pretense whatsoever, except as specified in §4310. MCL 600.4307.

3. When is an action prohibited? Under MCL 600.4310(1)-(4), an action for habeas corpus to inquire into the cause of detention may not be brought by or on behalf of the following persons:

(a) Subject to exclusive jurisdiction. Persons detained by virtue of any process issued by any court of the United States, or any judge thereof, in cases where such courts or judges have exclusive jurisdiction under the laws of the United States, or have acquired exclusive jurisdiction by the commencement of suits in such courts;

(b) Cause is plainly expressed in warrant. Persons committed for treason or felony, or for suspicion thereof, or as accessories before the fact to a felony, where the cause is plainly and specially expressed in the warrant of commitment;

(c) Persons in execution of legal process. Persons convicted, or in execution, upon legal process, civil or criminal;

(d) Committed on original process in civil action. Persons committed on original process in any civil action on which they were liable to be arrested and imprisoned, unless excessive and unreasonable bail is required.

B. Person Served

1. Duty to produce the body. If a writ of habeas corpus is issued, the person on whom it is served shall bring the body of the person in his custody according to the command of the writ, except as provided in §4328. MCL 600.4325.

2. Exception to duty to produce body. If, from the sickness or infirmity of the prisoner directed to be produced by any writ of habeas corpus, the prisoner cannot, without

danger, be brought before the court or judge, the party having custody of the prisoner may state that fact in his answer. The court or judge, if satisfied of the truth of the allegation, and if the answer is otherwise sufficient, shall proceed to dispose of the matter on the record. MCL 600.4328.

3. Refusal or neglect to obey writ. If the person upon whom the writ is served refuses to obey it, there are a variety of actions that may be taken under MCL 600.4331:

(a) Judge-ordered arrest. Under subsection (1), if the person upon whom the writ of habeas corpus is duly served refuses or neglects to obey the writ without sufficient excuse, the court or judge before whom the writ was to be answered, upon due proof of the service thereof, shall direct the arrest of such person.

(b) Jailed until compliance with writ. Pursuant to subsection (2), the sheriff of any Michigan county, or other officer, who is directed to make the arrest, shall apprehend such person, and bring him before the court or judge. The person shall be committed to close custody in the jail of the county in which the court or judge is, without being allowed the liberties thereof, until the person complies with the writ.

(c) Arrest of a sheriff. Subsection (3) states that if the person ordered arrested is the sheriff of any county, the order may be directed to any coroner or other person, to be designated therein, who has thereby full power to arrest the sheriff. Such sheriff upon being brought up may be committed to the jail of any county other than his own.

(d) Arresting person shall bring the prisoner named in the writ before the judge. The person directed to make the arrest shall also bring the prisoner named in the writ of habeas corpus before the court or judge that issued the writ per subsection (4).

(e) Arresting person may call upon the county. Under subsection (5), in making the arrest, the sheriff or other person so directed may call to his aid the power of the county as in other cases.

C. Status of Prisoner

1. Custody of prisoner. The court or judge issuing the writ of habeas corpus may commit the prisoner to the custody of such individual(s) as the court or judge considers proper. MCL 600.4349.

2. Discharge of prisoner

(a) If no legal cause is shown for the restraint, or for the continuation thereof, the court or judge shall discharge the person restrained from the restraint under which he is held. MCL 600.4352(1).

(b) Obedience to any order for the discharge of any prisoner may be enforced by the court or judge granting such order, by arrest in the same manner as is provided for disobedience to a writ of habeas corpus, and with like effect in all

respects. The person guilty of disobedience to an order for the discharge of any prisoner is liable to the party aggrieved in the sum of \$1,000.00 damages, in addition to any special damages the party may have sustained. MCL 600.4352(2).

(c) No sheriff or other officer is liable to any civil action for obeying any such order of discharge. MCL 600.4352(3).

3. Remanding of prisoner. Under MCL 600.4355(1)-(4), the court or judge shall remand the person restrained if the person restrained is detained in custody, either:

(a) By virtue of process issued by any court or judge of the United States, in a case where such court or judge has exclusive jurisdiction; or

(b) By virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree; or

(c) For any contempt specially and plainly charged in the commitment by some court, officer, or body having authority to commit for the contempt so charged; and

(d) The time during which such party may be legally detained has not expired.

4. Discharge of prisoner in civil cases. Under MCL 600.4358(1)-(6), if the prisoner is in custody by virtue of civil process from any court legally constituted, or issued by any officer in the course of judicial proceedings before him, authorized by law, the prisoner shall be discharged only if one of the following situations exists:

(a) Where the jurisdiction of the court or officer has been exceeded, either as to matter, place, sum, or person;

(b) Where, though the original imprisonment was lawful, the party is entitled to be discharged;

(c) Where the process is void;

(d) Where the process, though in proper form, has been issued in a case not allowed by law;

(e) Where the person having the custody of the prisoner is not the person empowered by law to detain him; or

(f) Where the process is not authorized by any judgment, order, or decree of any court, nor by any provision of law.

D. Consequences of Noncompliance

1. Recommitment. Under MCL 600.4367(1)-(3), if any person knowingly violates

§4364, or causes §4364 to be violated, or aids or assists in the violation of §4364, he is guilty of a misdemeanor and is liable to the party aggrieved in the sum of \$1,000.00 damages.

2. Concealment of a prisoner as a misdemeanor. Anyone having under his power any person who would be entitled to a writ of habeas corpus to inquire into the cause of his detention, or for whose relief any such writ, warrant, or order to show cause was issued, who shall, with intent to elude the service of the writ, or to avoid the effect thereof, place any such prisoner under the power of another, or conceal him, or change the place of his confinement, is guilty of a misdemeanor. MCL 600.4370.

3. Aiding in concealment of a prisoner as a misdemeanor. Every person who knowingly aids or assists in concealing a prisoner is guilty of a misdemeanor. MCL 600.4373.

4. Penalty for misdemeanor. Every person convicted of any of the misdemeanors specified in §4367, §4370, and §4373 shall be punished by a fine not exceeding \$1,000.00, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment, in the discretion of the court. MCL 600.4376.

4.20 Property / Economic Limitations

Courts may also impose property/economic limitations in some cases. This section covers topics related to such limitations, including public nuisances, government takings, sanitary regulations, business regulation and closure, and animal health.

4.21 Nuisances

A. Public Nuisance

A public nuisance is an unreasonable interference with a right common to the general public.⁹⁰ Although Michigan statute does not explicitly require conduct constituting a public nuisance to be unreasonable, Michigan courts have incorporated a reasonableness standard into their analysis of nuisance law.⁹¹

In the context of public health, determining that an interference with a public right is unreasonable involves consideration of several factors, including: whether the conduct involves a significant interference with the public health, safety, peace, comfort, or convenience; or whether the conduct is proscribed by a statute, ordinance, or administrative regulation; or whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actor knows or has reason to know, has a significant effect upon the public right.⁹² Interference with a property right is *not* a prerequisite to determining that a public nuisance exists.⁹³

⁹⁰ *Sanford v. Detroit*, 143 Mich. App. 194; 371 N.W.2d 904 (1985) (Quoting Restatement (2d), Torts, § 821B.)

⁹¹ *Id.*

⁹² *Dinger v. Department of Natural Resources*, 191 Mich. App. 630; 479 N.W.2d 353 (1991).

⁹³ *Bloss v. Paris Township*, 380 Mich. 466; 157 N.W.2d 260 (1968);
Bronson v. Oscoda Township, 188 Mich 679; 470 N.W.2d 688 (1991).

Pursuant to their police powers, state and local government entities may require remediation of public nuisances.⁹⁴ 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.

1. Statutorily-defined. Michigan statute explicitly defines certain conduct and uses of property as public nuisances. For example, any structure or vehicle in which an alcoholic beverage is sold or possessed in violation of Michigan law is a public nuisance. MCL 600.3801(d).

2. Governmentally-defined. Michigan law empowers government entities, such as public health authorities, to determine when conduct or uses of property amount to a public nuisance. For example, MDHHS, a local health department, or a health officer may declare a dwelling unfit for human habitation a public nuisance.⁹⁵ A dwelling is unfit for human habitation when it is a danger or detriment to health due to infection with contagious disease; danger to life or health by reason of want of repair; of defects in the drainage, plumbing, lighting, ventilation; the construction of the same, or by reason of the existence on the premises of a nuisance likely to cause sickness among the occupants of said dwelling, or for any cause. MCL 125.485.

3. Judicially-defined. Michigan courts have found polluted water and wooden buildings constructed within prohibited fire limits to be public nuisances.⁹⁶

4. Nuisance per se vs. nuisance per accidens. Michigan 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.⁹⁷

(b) Nuisance per accidens (nuisance in fact). Some uses of property and conduct are deemed to unreasonably interfere with the right 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.⁹⁸

⁹⁴ See *Lawton v. Steele*, 152 U.S. 133, 136 (1894).

⁹⁵ *City of Charlotte Municipal Board of Health v. Santee*, 224 Mich. 182;

Township of Kalamazoo v. Lee, 228 Mich. 117; 199 N.W. 609 (1924);

Township of Kalamazoo v. Kalamazoo Garbage Co., 229 Mich. 263; 200 N.W. 953 (1924).

⁹⁶ *Kalamazoo Twp. v. Lee*, 228 Mich. 117; 199 N.W. 609; (1924);

Hines v. Charlotte, 72 Mich. 278; 40 N.W. 333 (1888).

⁹⁷ *Beard v. State*, 106 Mich. App. 121; 308 N.W.2d 185 (1981).

⁹⁸ *Burdick v. Stebbins*, 250 Mich. 665; 231 N.W. 57 (1930);

Cullum v. Topps-Stillman's, Inc., 1 Mich. App. 92; 134 N.W.2d 349 (1965).

B. Private Nuisance

A private nuisance is defined as anything done to the hurt or annoyance of the lands, tenements, or hereditaments of another.⁹⁹ Any unwarrantable, unreasonable, or unlawful use by a person of his own property, real or personal, to the injury of another, falls within this definition and renders the owner or possessor liable for all damages arising from such use.¹⁰⁰ Interference with a property right *is* a prerequisite for determining that a private nuisance exists.¹⁰¹

C. Abatement

A state or municipal legislature may, through an act or ordinance, respectively, authorize summary abatement of a defined nuisance by a government entity or agent, provided the property to be abated is of little value; the use of the property for illegal purposes is clear or its destruction is necessary to effectuate the object of a statute;¹⁰² and due process of law is afforded the property owner.¹⁰³ Furthermore, the Michigan Attorney General, the prosecuting attorney, or any citizen of the county may maintain a civil action for equitable relief in the name of the State of Michigan to abate a nuisance. MCL 600.3805.

Under certain conditions, MDHHS, a local health department, or a health officer may also order the abatement of conditions constituting a public nuisance, including the following:

1. Dwellings unfit for human habitation. MDHHS, a local health department, or a health officer, upon determining that a dwelling unfit for human habitation is a public nuisance, may order the removal, abatement, improvement, or cleaning of the dwelling or structures and items in or about the dwelling. See MCL 125.541(1).

(a) State department must provide right of first action to local health board.

MDHHS may not declare a dwelling a nuisance or order its abatement without first providing the local health department or officer with notice of all information concerning the dwelling and three days to take action after receiving the notice. MCL 125.532(3).

(b) Service order. An order to remove, abate, improve, or clean a dwelling declared to be a public nuisance must be served on the owner of the dwelling or the owner's rental agent and may be served on the tenant in the enforcing agency's discretion. MCL 125.532(2).

(c) Notice. If a building or structure is found to be a dangerous building, the enforcing agency shall issue a notice that the building or structure is a dangerous building. MCL 125.540(1).

⁹⁹ *Whittemore v. Baxter Laundry Co.*, 181 Mich. 564, 565; 148 N.W. 437 (1914) (Citing *Heeg v Licht*, 80 NY 579 (1880)).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² See *Lawton*, *supra*, 152 U.S. at 140-41 (upholding summary destruction of fish nets and endorsing as acceptable "the power to kill diseased cattle; to pull down houses in the path of conflagrations; the destruction of decayed fruit or fish or unwholesome meats, of infected clothing, obscene books or pictures, or instruments which can only be used for illegal purposes.")

¹⁰³ See generally *Moore v. Detroit*, 159 Mich. App. 194; 406 N.W.2d 488 (1987).

(d) Persons who may be served notice. The notice shall be served on the owner, agent, or lessee that is registered with the enforcing agency under §125. If an owner, agent, or lessee is not registered under §125, the notice shall be served on each owner of or party in interest in the building or structure in whose name the property appears on the last local tax assessment records. MCL 125.540(2).

(e) Contents of notice. The notice shall specify the time and place of a hearing on whether the building or structure is a dangerous building. The person to whom the notice is directed shall have the opportunity to show cause at the hearing why the hearing officer should not order the building or structure to be demolished, otherwise made safe, or properly maintained. MCL 125.540(3).

(f) Hearing officer; filing of notice with officer. The hearing officer shall be appointed by the mayor, village president, or township supervisor to serve at his or her pleasure. The hearing officer shall be a person who has expertise in housing matters including, but not limited to, an engineer, architect, building contractor, building inspector, or member of a community housing organization. An employee of the enforcing agency shall not be appointed as hearing officer. The enforcing agency shall file a copy of the notice that the building or structure is a dangerous building with the hearing officer. MCL 125.540(4).

(g) Notice in writing; service. The notice shall be in writing and shall be served upon the person to whom the notice is directed either personally or by certified mail, return receipt requested, addressed to the owner or party in interest at the address shown on the tax records. If a notice is served on a person by certified mail, a copy of the notice shall also be posted upon a conspicuous part of the building or structure. The notice shall be served upon the owner or party in interest at least ten days before the date of the hearing included in the notice. MCL 125.540(5).

(h) Hearing officer receiving testimony and making decision. At a hearing, the hearing officer shall take testimony of the enforcing agency, the owner of the property, and any interested party. Not more than five days after completion of the hearing, the hearing officer shall render a decision either closing the proceedings or ordering the building or structure demolished, otherwise made safe, or properly maintained. MCL 125.541(1).

(i) Specified action. If the hearing officer determines that the building or structure should be demolished, otherwise made safe, or properly maintained, the hearing officer shall enter an order that specifies what action the owner, agent, or lessee shall take and sets a date by which the owner, agent, or lessee shall comply with the order. If the building is a dangerous building under §139(j), the order may require the owner or agent to maintain the exterior of the building and adjoining grounds owned by the owner of the building including, but not limited to, the maintenance of lawns, trees, and shrubs. MCL 125.541(2).

(j) Failure to comply with order. If the owner, agent, or lessee fails to appear or neglects or refuses to comply with the order issued, the hearing officer shall file a report of the findings and a copy of the order with the legislative body of the city, village, or township not more than five days after the date for compliance set in the order and request that necessary action be taken to enforce the order. If the legislative body of the city, village, or township has established a board of appeals under §141c, the hearing officer shall file the report of the findings and a copy of the order with the board of appeals and request that necessary action be taken to enforce the order. A copy of the findings and order of the hearing officer shall be served on the owner, agent, or lessee in the manner prescribed in §140. MCL 125.541(3).

(k) Setting a date. The legislative body or the board of appeals of the city, village, or township, as applicable, shall set a date not less than thirty days after the hearing prescribed in §140 for a hearing on the findings and order of the hearing officer. The legislative body or the board of appeals shall give notice to the owner, agent, or lessee in the manner prescribed in §140 of the time and place of the hearing. At the hearing, the owner, agent, or lessee shall be given the opportunity to show cause why the order should not be enforced. The legislative body or the board of appeals of the city, village, or township shall either approve, disapprove, or modify the order.

If the legislative body or board of appeals approves or modifies the order, the legislative body shall take all necessary action to enforce the order. If the order is approved or modified, the owner, agent, or lessee shall comply with the order within sixty days after the date of the hearing under this subsection.

For an order of demolition, if the legislative body or the board of appeals of the city, village, or township determines that the building or structure has been substantially destroyed by fire, wind, flood, deterioration, neglect, abandonment, vandalism, or other cause, and the cost of repair of the building or structure will be greater than the state equalized value of the building or structure, the owner, agent, or lessee shall comply with the order of demolition within twenty-one days after the date of the hearing under this subsection. If the estimated cost of repair exceeds the state equalized value of the building or structure to be repaired, a rebuttable presumption that the building or structure requires immediate demolition exists. MCL 125.541(4).

(l) Cost of demolition. The cost of demolition includes, but is not limited to, fees paid to hearing officers, costs of title searches or commitments used to determine the parties in interest, recording fees for notices and liens filed with the county register of deeds, demolition and dumping charges, court reporter attendance fees, and costs of the collection of the charges authorized under this act. The cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure incurred by the city, village, or township to bring the property into conformance with this act shall be reimbursed to the city, village, or township by the owner or party in interest in whose name the property appears. MCL 125.541(5).

(m) Owner notification and duty. The owner or party in interest in whose name the property appears upon the last local tax assessment records shall be notified by the assessor of the amount of the cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure by first class mail at the address shown on the records. If the owner or party in interest fails to pay the cost within thirty days after mailing by the assessor of the notice of the amount of the cost, the city, village, or township shall have a lien for the cost incurred by the city, village, or township to bring the property into statutory compliance. The lien shall not take effect until notice of the lien has been filed or recorded as provided by law. A lien provided does not have priority over previously-filed or recorded liens and encumbrances. The lien for the cost shall be collected and treated in the same manner as provided for property tax liens under the General Property Tax Act (MCL 211.1 to 211.157). MCL 125.541(6).

(n) Additional actions. In addition to other remedies under the House Law, the city, village, or township may bring an action against the owner of the building or structure for the full cost of the demolition, of making the building safe, or of maintaining the exterior of the building or structure or grounds adjoining the building or structure. A city, village, or township shall have a lien on the property for the amount of a judgment obtained under this subsection. The lien provided for in this subsection shall not take effect until notice of the lien is filed or recorded as provided by law. The lien does not have priority over prior filed or recorded liens and encumbrances. MCL 125.541(7).

2. Conditions promoting disease. When an inspector or officer of the health department certifies that a dwelling is infected with a contagious disease or that it is unfit for human habitation, or of the existence on the premises of a nuisance likely to cause sickness among the occupants of said dwelling, they may order the dwelling vacated. MCL 125.485.

(a) Order contents. The order must contain the reason; and the action must occur in a time period not less than twenty-four hours nor more than ten days. MCL 125.485.

(b) Enforcement in the event of noncompliance. In case such order is not complied with within the time specified, the health officer or such other appropriate public official as the mayor may designate may cause said dwelling to be vacated. The health officer or such other appropriate public official as the mayor may designate whenever he is satisfied that the danger from said dwelling has ceased to exist, or that it is fit for human habitation may revoke said order or may extend the time within which to comply with it. MCL 125.485.

3. Any necessary conditions. MDHHS or a local health department may issue an order to avoid, correct, or remove, at the owner's expense, a building or condition which violates health laws or which the local health officer or director reasonably believes to be a nuisance, unsanitary condition, or cause of illness. MCL 333.2455(1).

Under subsection (2), if the owner or occupant does not comply with the order, MDHHS or the local health department may cause the violation, nuisance, unsanitary condition, or cause of illness to be removed and may seek a warrant for this purpose. The owner of the premises shall pay the expenses incurred.

C. Destruction v. Abatement

Destruction of property causing or constituting a public nuisance is permissible when the nuisance cannot be effectively abated so as to protect the public; and evidence suggests that the owner will not repair or abate the nuisance.¹⁰⁴ 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.¹⁰⁵

D. Additional Considerations

- 1. Not all dangerous entities and conduct are nuisances.** An entity or conduct is deemed a nuisance only when injury is a reasonable and natural consequence of its existence.¹⁰⁶
- 2. Equitable Doctrine.** Nuisance law is an equitable doctrine, and, as such, individuals seeking to enjoin or abate a nuisance must do so with clean hands.¹⁰⁷
- 3. Liability.** Both individuals and municipalities are subject to liability for maintaining a nuisance.¹⁰⁸

4.22 Government Takings

The protection of public health depends, in part, on the ability of government authorities to maintain safety standards and to prohibit actions that endanger the public or the environment. The government's responsibility to protect the public health, safety, and welfare relies on the exercise of "police power" authority to ensure that such protections exist and are enforced. Pursuant to this authority, the government may properly regulate or limit the use of property to protect the public from nuisance or illegal activity.¹⁰⁹ The government may also lawfully

¹⁰⁴ *Lake Isabella Dev., Inc. v. Vill. of Lake Isabella*, 259 Mich. App. 393; 675 N.W.2d 40 (2003);

Gefetos v. Lincoln Park, 39 Mich. App. 644; 198 N.W.2d 169 (1972).

¹⁰⁵ *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1029 (1992) ("Any limitation [that prohibits all economically beneficial use of land] cannot be newly legislated or decreed (without compensation), but must inhere in the title itself, in the restrictions that background principles of the State's law of property and nuisance already place upon land ownership. A law or decree with such an effect must, in other words, do no more than duplicate the result that could have been achieved in the courts—by adjacent landowners (or other uniquely affected persons) under the State's law of private nuisance, or by the State under its complementary power to abate nuisances that affect the public generally.");

Mugler v. Kansas, 123 U.S. 623, 668-69 (1887) ("The exercise of the police power by the destruction of property which is itself a public nuisance, or the prohibition of its use in a particular way, whereby its value becomes depreciated, is very different from taking property for public use, or from depriving a person of his property without due process of law. In the one case, a nuisance only is abated; in the other, unoffending property is taken away from an innocent owner.");

¹⁰⁶ *Sanford v. Detroit*, 143 Mich. App. 194; 371 N.W.2d 904, 910 (1985);

Fox v. Ogemaw County, 208 Mich. App. 697; 528 N.W.2d 210 (1995).

¹⁰⁷ *Birkenshaw v. Detroit*, 110 Mich. App. 500; 313 N.W.2d 334 (1981) (holding plaintiff was not entitled to enjoin city's abatement because he did not have "clean hands").

¹⁰⁸ *Stremler v. Michigan Dep't of State Highways*, 58 Mich. App. 620; 228 N.W.2d 492 (1975) (holding municipality liable for maintaining a nuisance). *Cf. In re Detroit*, 163 Mich. 229; 128 N.W. 250 (1910).

¹⁰⁹ *Pennsylvania Coal v. Mahon*, 260 U.S. 393, 413 (1922): "Government could hardly go on if to some extent values incident to property could not be diminished without paying for every such change in the general law. As long recognized some values are

implement land use planning, zoning ordinances, building, codes, safety and sanitary codes, environmental laws, and other regulations to protect citizens' health and quality of life.

However, the government's authority over the private use of property has constitutional limits that bar the government from taking property except for public purposes within its constitutional authority, and only upon payment of just compensation.

Both the federal and Michigan constitutions govern the government taking of private property. The Fifth Amendment of the U.S. Constitution states:

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.

Article 10, §2 of the Michigan Constitution states:

Private property shall not be taken for public use without just compensation therefore being first made or secured in a manner prescribed by law... Compensation shall be determined in proceedings in a court of record.

According to these constitutional provisions, as a general rule, the government must pay compensation for private property taken for public use pursuant to its eminent domain power. In addition, regulatory restrictions that go too far, even without physically appropriating property, may constitute a "taking" of property that requires just compensation.¹¹⁰ 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."¹¹¹

The definitions of actions that rise to the level of a taking that requires compensation are outlined below, contrasted with examples of the lawful exercise of governmental police powers for which no compensation is required. Finally, Section C below sets forth an overview of the procedures for the exercise of eminent domain in Michigan.

A. Taking Defined

Where a government intends to acquire property for public use, the appropriate vehicle is an eminent domain or condemnation proceeding. The basic process under Michigan statute is set forth in Section C below. In contrast to a government action to condemn property, a "takings" claim is an action filed by a property owner alleging that the government action or regulation has appropriated the use of the property, but has not paid compensation. There are several categories of takings claims that have been recognized by the Courts:

1. Categorical takings or takings "per se": If a "per se" taking is established, a property owner is entitled to compensation without a case-specific inquiry.

(a) Permanent Physical Occupation. If a government caused or allowed the permanent occupation or destruction of private property, even without seeking to acquire the property, a physical taking will be found, no matter how small the encroachment and no matter whether the public interest is

enjoyed under an implied limitation and must yield to the police power."

¹¹⁰ *Mahon*, 260 U.S. at 415.

¹¹¹ *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 123-124 (1978). (Internal citations omitted.)

involved.¹¹² This principle recognizes that a physical occupation of a person's property, however small, interferes with one of the most important "sticks" in the owner's "bundle of rights" – the right to exclude others. To be deemed a taking without further analysis, the physical occupation must be permanent. A temporary physical invasion through government action must be evaluated through the *Penn Central* balancing test, as discussed in Section 2 below.

(b) Permanent denial of all economically beneficial or productive use.

Regulations that permanently deny *all* economically beneficial or productive use of property (often referred to as "total taking" or "confiscatory regulation").¹¹³

2. Case-specific takings. In cases where 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, determined by application of a balancing test.¹¹⁴

(a) Relevant Factors in the "ad hoc balancing test": The *Penn Central* test that strives to balance the interests of the public with the interests of the property owner recognizes that such determinations are highly fact-specific and necessitate consideration of a variety of factors, including: (1) the economic impact of regulation on the property owner; (2) the extent to which the regulation has interfered with reasonable investment-backed expectations; and (3) the character of the governmental action.¹¹⁵ The Michigan Supreme Court has incorporated the *Penn Central* test into the required evaluation of government actions in Michigan to determine if a taking requiring compensation has occurred.¹¹⁶

(b) Diminution in value alone is not necessarily a taking. The fact that a regulation forces a property owner to suffer some diminution in property value is not alone sufficient to render the regulation a taking.¹¹⁷ The balancing test takes the economic impact into account, but reduction in value is not sufficient, standing alone, to establish a compensable taking.¹¹⁸

(c) Denial of most profitable use of property alone is not necessarily a taking. The fact 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.¹¹⁹

¹¹² *Loretto v. Teleprompter Manhattan CATV Corp*, 458 U.S. 419 (1982) (regulation requiring apartment building owners to allow small cables and equipment to be affixed to the outside walls of the building was a taking).

¹¹³ *Lucas v. South Carolina Coastal Council*, supra, 505 U.S. at 1015-16.

¹¹⁴ *Penn Central Transp. Co.*, supra, 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.")

¹¹⁵ *Tahoe-Sierra Pres. Council*, supra, 535 U.S. at 330-32;

Penn Central Transp. Co., supra, 438 U.S. at 136-37.

¹¹⁶ *K&K Construction v. Department of Natural Resources (K&K I)*, 456 Mich. 570, 576; 575 N.W. 2d 531 (1998).

¹¹⁷ *Paragon Properties v. Novi*, 452 Mich. 568, 579 n. 13; 550 N.W. 2d 772 (1996);

Bevan v. Brandon Twp., 438 Mich. 385, 402-403; 475 N.W.2d 37 (1991).

¹¹⁸ *K&K Construction, Inc., v. Department of Environmental Quality (K&K II)*, 267 Mich. App. 523, 553; 705 N.W.2d 365 (1995).

¹¹⁹ *Carabell v. Department of Natural Resources*, 191 Mich. App. 610; 478 N.W.2d 675 (1991).

(d) “Dedications” or “exactions” may amount to regulatory takings. Where a government demands that a property owner convey either a property interest (dedication) or payments (exaction) in exchange for a land use permit or approval (e.g., an easement), the courts will evaluate (1) whether there is an “essential nexus” between the dedication or exaction and the legitimate interest sought by the government; and (2) whether there is a “rough proportionality” between the harm being addressed by the dedication and the cost of that dedication to the owner.¹²⁰

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. Pursuant to its police powers, the state or local government may 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.¹²¹

2. Government must compensate property owner for *per se* takings pursuant to police power unless proscribed conduct or use was restriction inherent in owner's original title. State or local government may, pursuant to its police powers, physically invade private property or enact regulations that deprive the property owner of all economically beneficial uses of his 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.¹²² Restrictions against the maintenance of conditions significantly threatening public health are deemed “inherent in property titles.”¹²³

3. Examples of court decisions upholding exercise of valid police powers. The following are examples of cases in which a Michigan court has upheld state or local regulations as valid exercises of the police power, not entitling affected property owners to compensation: zoning ordinance limiting occupancy in residential trailers;¹²⁴ formation of drainage districts;¹²⁵ and extension of street across railroad right-of-way.¹²⁶

¹²⁰ *Nollan v. California Coastal Commission*, 485 U.S. 374 (1994);

Dolan v. City of Tigard, 512 U.S. 374 (1994). These types of dedications and exactions are limited in Michigan because of the statutory limits imposed through the Michigan Land Division Act, MCL 560.101 *et seq.*, and the Michigan Zoning Enabling Act, MCL 125.3101 *et seq.*

¹²¹ *Lucas*, *supra*, 505 U.S. at 1029;

Bowditch v. Boston, 101 U.S. 16, 18 (1879) (destruction of building to prevent spread of fire does not entitle building owner to compensation).

¹²² See *Lucas*, *supra*, 505 U.S. at 1026-1027 (“*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.”)

¹²³ *Square Lake Hills Condominium Ass'n v. Bloomfield Township*, 437 Mich. 310; 471 N.W.2d 321 (1991);

Moore v. Harrison, 224 Mich. 512; 195 N.W. 306 (1923).

¹²⁴ *Bane v. Pontiac*, 343 Mich. 481; 72 N.W.2d 134 (1955).

¹²⁵ *Black Marsh Drainage Dist. v. Rowe*, 350 Mich. 470; 87 N.W.2d 65 (1957).

¹²⁶ *Pere Marquette R. Co. v. Michigan Pub. Utilities Com.*, 225 Mich. 12; 195 N.W. 807 (1923).

4. Government must compensate harmed property owner for improper exercise of police power. While a government may abate or destroy private property without compensation in order to enforce use restrictions inherent in the owner's original title (*i.e.* 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 police power.¹²⁷

C. Procedures for Exercising Eminent Domain Powers

Michigan law, through the Uniform Condemnation Procedures Act, provides detailed procedures that a state or local government must follow when exercising its power of eminent domain. MCL 213.51 et seq.

1. General provisions. Any individual or agency authorized to exercise eminent domain must comply with the appropriate procedures.

(a) Offer to purchase required prior to court action. First, there must be an offer to purchase. Under MCL 213.55(1), before initiating negotiations for the purchase of property, the agency shall establish an amount that it believes to be just compensation for the property and shall promptly submit to the owner a good faith written offer to acquire the property for the full amount so established.

If there is more than one owner of a parcel, the agency may make a single, unitary good-faith written offer. The good-faith offer shall state whether the agency reserves or waives its rights to bring federal or state cost recovery actions against the present owner of the property arising out of a release of hazardous substances at the property and the agency's appraisal of just compensation for the property shall reflect such reservation or waiver. The amount shall not be less than the agency's appraisal of just compensation for the property.

If the owner fails to provide documents or information as required, the agency may base its good faith written offer on the information otherwise known to the agency, whether or not the agency has sought a court order. The agency shall provide the owner of the property and the owner's attorney with an opportunity to review the written appraisal, if an appraisal has been prepared, or if an appraisal has not been prepared, the agency shall provide the owner or the owner's attorney with a written statement and summary, showing the basis for the amount the agency established as just compensation for the property.

If an agency is unable to agree with the owner for the purchase of the property, after making a good-faith written offer to purchase the property, the agency may file a complaint for the acquisition of the property in the circuit court in the county in which the property is located. If a parcel of property is situated in two or more counties and an owner resides in one of the counties, the complaint shall be filed in the county in which the owner is a resident. If a parcel of property is situated in two or more counties and an owner does not

¹²⁷ *Board of Education v. Michigan Bell Tel. Co.*, 51 Mich. App. 488; 215 N.W.2d 704 (1974).

reside in one of the counties, the complaint may be filed in any of the counties in which the property is situated. The complaint shall ask that the court ascertain and determine just compensation to be made for the acquisition of the described property.

(b) Agency rights. Pursuant to MCL 213.55(2), during the period in which the agency is establishing just compensation for the owner's parcel, the agency has the right to secure tax returns, financial statements, and other relevant financial information for a period not to exceed five years before the agency's request. The owner shall produce the information within twenty-one business days after receipt of a written request from the agency.

The agency shall reimburse the owner for actual, reasonable costs incurred in reproducing any requested documents, plus other actual, reasonable costs of not more than \$1,000.00 incurred to produce the requested information. Within forty-five days after production of the requested documents and other information, the owner shall provide to the agency a detailed invoice for the costs of reproduction and other costs sought. The owner is not entitled to a reimbursement of costs under subsection (2) if the reimbursement would be duplicative of any other reimbursement to the owner.

If the owner fails to provide all documents and other information requested by the agency, the agency may file a complaint and proposed order to show cause in the circuit court in the county specified. The court shall immediately hold a hearing on the agency's proposed order to show cause.

The court shall order the owner to provide documents and other information requested by the agency that the court finds to be relevant to a determination of just compensation. An agency shall keep documents and other information that an owner provides to the agency confidential. However, the agency and its experts and representatives may utilize the documents and other information to determine just compensation, may utilize the documents and other information in legal proceedings, and may utilize the documents and other information as provided by court order. If the owner unreasonably fails to timely produce the documents and other information, the owner shall be responsible for all expenses incurred by the agency in obtaining the documents and other information.

(c) Owner's claim. Under MCL 213.55(3)(a), if an owner claims that the agency is taking property other than the property described in the good-faith written offer or claims a right to compensation for damage caused by the taking, apart from the value of the property taken, and not described in the good-faith written offer, the owner shall file a written claim with the agency stating the nature and substance of that property or damage. The owner's written claim shall provide sufficient information and detail to enable the agency to evaluate the validity of the claim and to determine its value. The owner shall file the claim within ninety days after the good-faith written offer is made pursuant to §5(1) or 180 days after the complaint is served, whichever is later, unless a later date is set by the court for reasonable cause. If the

appraisal or written estimate of value is provided within the established period for filing written claims, the owner's appraisal or written estimate of value may serve as the written claim. If the owner fails to timely file the written claim, the claim is barred.

(d) Complaint contents. Under MCL 213.55(4)(a)-(e), in addition to other allegations required or permitted by law, the complaint shall contain or have annexed to it all of the following: a plan showing the property to be taken; a statement of purpose for which the property is being acquired, and a request for other relief to which the agency is entitled by law. It shall also contain the name of each known owner of the property being taken; a statement setting forth the time within which motions for review under §6 shall be filed; and the amount that will be awarded and the persons to whom the amount will be paid in the event of a default. Finally, it shall contain the deposit and escrow arrangements made under subsection 5 and a declaration signed by an authorized official of the agency declaring that the property is being taken by the agency. The declaration shall be recorded with the register of deeds of each county within which the property is situated. The declaration shall include all of the following: (i) a description of the property to be acquired sufficient for its identification and the name of each known owner; (ii) a statement of the estate or interest in the property being taken (fluid mineral and gas rights and rights of access to and over the highway are excluded from the rights acquired unless the rights are specifically included); (iii) a statement of the sum of money estimated by the agency to be just compensation for each parcel of property being acquired; and (iv) whether the agency reserves or waives its rights to bring federal or state cost recovery actions against the present owner of the property.

(e) Deposit of amount. Under MCL 213.55(5), when the complaint is filed, the agency shall deposit the amount estimated to be just compensation with a bank, trust company, or title company in the business of handling real estate escrows, or with the state treasurer, municipal treasurer, or county treasurer. The deposit shall be set aside and held for the benefit of the owners, to be disbursed upon order of the court under §8.

4.23 Sanitary Regulations

State and local public health departments, as well as some municipal building inspectors, may inspect both public buildings and private dwellings to ensure compliance with sanitary laws and regulations. Michigan law provides for several remedies upon a finding that a building or dwelling is not in compliance with sanitary standards.

A. Dwelling Unfit for Human Habitation

If, upon inspection, public health personnel or municipal building inspectors determine that a dwelling is unfit for human habitation due to the existence of an unsanitary condition likely to cause sickness among the dwelling's occupants, MDHHS, a local health department, or health officer may declare the building a public nuisance. See MCL 333.2455.

B. Power to Abate Unsanitary Conditions

Under MCL 125.534(5), the court of jurisdiction may enjoin the maintenance of unsafe, unhealthy, or unsanitary conditions, or violations of this act, and may order the defendant to make repairs or corrections necessary to abate the conditions. The court may authorize the enforcing agency to repair or to remove the building or structure. If an occupant is not the cause of an unsafe, unhealthy, or unsanitary condition, or a violation, and is the complainant, the court may authorize the occupant to correct the violation and deduct the cost from the rent upon terms the court determines just. If the court finds that the occupant is the cause of an unsafe, unhealthy, or unsanitary condition, or a violation of this act, the court may authorize the owner to correct the violation and assess the cost against the occupant or the occupant's security deposit.

4.24 Regulation and Closure of Businesses

Neither Michigan law nor MDHHS regulations explicitly authorize the department or a local health board 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 wide range of powers they are proscribed.

Under MCL 333.2453(1), if a local health officer determines that control of an epidemic is necessary to protect the public health, the local health officer may issue an emergency order to prohibit the gathering of people for any purpose and may establish procedures to be followed by persons, including a local governmental entity, during the epidemic to insure continuation of essential public health services and enforcement of health laws.

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.

4.25 Animal Health

Animal health is capable of impacting public health. A number of animal diseases are zoonotic, which means they are capable of being spread between animals and people. One such disease is monkeypox, a viral disease found primarily in rodents. Monkeypox can be transmitted from infected animals to humans. In June, 2003, several Americans became infected with monkeypox from their pet prairie dogs. Another such disease is bovine tuberculosis. Bovine tuberculosis is a chronic bacterial disease that can be transmitted from animals to humans through inhalation of aerosols or ingestion of unpasteurized milk. Michigan has seen numerous cases of bovine tuberculosis in humans.

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 have the potential to create nuisances and other conditions hazardous to human health.

Given these public health threats, Michigan law empowers both state and local governments to closely monitor animal health and act to prevent disease epidemics among animals within the state. MDARD is the state agency that bears the bulk of this responsibility.

A. State Animal Health

1. State Veterinarian. Under Michigan’s Animal Industry Act, MCL 287.701 *et seq.*, the MDARD director is required to appoint a state veterinarian. MCL 287.707(1). The state veterinarian has the power to carry out state and federal laws relating to the health and welfare of animals in Michigan. MCL 287.708(1). This power extends to both public and private land. *Id.* Further, the state veterinarian may enter onto public and private land in order to enforce the Animal Industry Act. MCL 287.708(3).

The state veterinarian is empowered to promulgate rules relating to the use of veterinary biologicals and is required to maintain a list of those veterinary biologicals whose sale, distribution, or administration must be reported to the MDARD director. MCL 287.708(1). Veterinary biologicals are products derived from living organisms or biological processes that are used to diagnose, prevent, or treat animal diseases.

Additionally, the state veterinarian must maintain a list of reportable animal diseases and update the list as necessary. *Id.* The state veterinarian is required to develop and maintain scientifically-based surveillance and monitoring programs for reportable diseases that the director determines will aid in the control and eradication of reportable diseases. *Id.* There are a number of diseases that the state veterinarian has developed surveillance and monitoring programs for, including chronic wasting disease, rabies, and avian influenza. These programs have helped Michigan eradicate diseases like pseudorabies and brucellosis.

B. Diseases among Animals

Animal health officers’ primary responsibility is to prevent and suppress outbreaks of infectious diseases among Michigan’s animals. The Animal Industry Act provides MDARD with a number of tools to prevent, identify, and control animal diseases.

1. Animals affected by disease or toxic substances. The Animal Industry Act requires that a person who discovers, suspects, or has reason to believe that an animal is either affected by a reportable disease or contaminated with a toxic substance report that information to the MDARD director. MCL 287.709(1). The director is then required to investigate the report and may enter the premises where animals are located, examine animals, collect specimens, and impound the animal products or feed located on the premises. *Id.*

MDARD can request assistance from law enforcement agencies to enforce quarantines or the Animal Industry Act. MCL 287.709(3). MDARD is required to establish a program to compensate livestock owners whose animals are injured or die as a result of undergoing required testing for a reportable disease. MCL 287.709(5).

MDARD is prohibited from releasing epidemiological information that identifies the owners of animals and that is gathered in connection with reporting requirements for reportable diseases. MCL 287.709(6). This information is exempt from disclosure under the Freedom of Information Act and may only be released if the MDARD director determines that its disclosure is necessary to protect animal or human health. Id.

2. Animal owners' responsibilities. A person is prohibited from knowingly possessing or harboring animals affected or suspected of being affected by a reportable disease or toxic substance. Id. Animal owners must provide the MDARD director reasonable and necessary assistance during the examination of their animals. MCL 287.709(2).

Owners of cattle, goats, sheep, and privately-owned cervids (members of the cervidae family, including deer, elk, and moose) are responsible for insuring that their animals bear official identification before they leave a premises. MCL 287.711b. Official identification is identification approved by the United States Department of Agriculture and may include ear tags, tattoos, or electronic identification. MCL 287.706(2).

No person is permitted to alter an animal's official identification, and the animal's identity and ownership cannot be misrepresented. MCL 287.709(4). It is also a violation of the Animal Industry Act to misrepresent an animal's health status to a potential buyer. Id.

3. Bovine tuberculosis. Bovine TB is a bacterial disease that affects cattle, cervidae, bison, goats, and other warm-blooded animals. Bovine TB can be transmitted to humans through contact with infected animals and consumption of unpasteurized milk or undercooked meat products.

In 1979, Michigan became one of the last states to achieve bovine TB-free status. However, the disease was rediscovered in Michigan in 1998 and had an immediate effect on Michigan's cattle industry and threatened dairies' ability to ship milk in interstate commerce.

In 2000, the Legislature amended the Animal Industry Act to give MDARD authority to establish and enforce scientifically-based movement restrictions, bovine TB-testing requirements, and official identification requirements for the movement of animals between or within bovine TB disease zones. MCL 287.709(7)-(10). Pursuant to this authority, MDARD has repeatedly issued orders establishing and amending bovine TB disease zones, movement requirements, and animal identification requirements for cattle.

The Animal Industry Act establishes a unique process for MDARD's establishment of movement restriction, bovine TB-testing requirements, and official identification. These requirements are intended to provide public notice and opportunity for public comment. MCL 287.709(9).

Pursuant to this authority, MDARD's current Zoning Order establishes two disease zones - the Modified Accredited Zone and the Bovine Tuberculosis Accredited Free

Zone.¹²⁸ The Zoning Order establishes requirements for official identification of cattle, TB testing, and movement of cattle from and within each zone. Id.

4. Quarantine authority. The MDARD director has the authority to quarantine animals, equipment, vehicles, structures, premises, or any area of the state - including the entire state if necessary - to control or prevent the spread of a known or suspected infectious, contagious, or toxicological disease. MCL 287.712(1).

Quarantine orders take a variety of forms. MDARD routinely quarantines facilities where an infectious disease is suspected or confirmed. MDARD may leave facility-specific quarantines in place until the animals are determined not to be diseased, all diseased animals have been depopulated, or the facility has been decontaminated in a manner approved by MDARD. See MCL 287.712(7). Quarantines may also prevent the movement of certain types of animals statewide. In 2015, following a nationwide avian influenza outbreak that resulted in the deaths of millions of turkeys and chickens, MDARD issued a statewide quarantine that prevented the exhibition or exposition of poultry in Michigan. The quarantine was lifted the following winter after the disease risk diminished.

5. Seizure, slaughter, and destruction of livestock. Under the Animal Industry Act, when it is determined necessary for the control or eradication of disease, MDARD may seize, slaughter, or destroy livestock or domestic animals or the entire herd, flock, or school. MCL 287.714(1). The MDARD director may indemnify the owner of animals that are slaughtered, destroyed, or otherwise disposed of due to a livestock disease or toxicological contaminant. MCL 287.714(2).

If the MDARD director chooses to indemnify an owner, the animals must be inventoried and appraised using agricultural pricing information from commercial livestock or domestic animal auction markets. Id. If an owner accepts compensation under the Animal Industry Act, it constitutes a full and complete release of any claim the owner has against the State of Michigan. MCL 287.714(6).

C. Livestock import.

Livestock imported into Michigan must be accompanied by an official interstate health certificate; an official interstate certificate of veterinary inspection; an owner-shipper statement (if the animal is going directly to slaughter or directly to a cattle importation lot); a report of sales of hatching eggs, chicks, and poults (which include young domestic chickens, turkeys, pheasants, or fowl); a permit for movement of restricted animals; a fish disease inspection report; or permission from the MDARD director. MCL 287.719(1). If animals are imported into Michigan without the required official tests or documents, the MDARD director may order that the animals be quarantined, the owner to obtain the test or documents at their expense, the animals to be returned to their state of origin, the animals to be slaughtered or destroyed, or that the animals be allowed to be legally imported into another state. MCL 287.722.

¹²⁸ Michigan Department of Agriculture and Rural Development, Zoning Order: Establishment of Zones for Bovine Tuberculosis (Identification, Testing, Certificate, and Movement Requirements), effective October 13, 2014 (available online at https://www.michigan.gov/documents/MDA_TB_Zoning_Order_87805_7.pdf).

Animals that have been affected with or exposed to certain reportable diseases may not be imported without permission from the MDARD director. MCL 287.719(2)-(3). If there is reason to believe that livestock entering the state may pose a threat to public health or livestock health, the MDARD director may refuse those animals entry. MCL 287.719(8). Livestock imported into Michigan cannot originate from a quarantined herd unless the MDARD director has granted permission for the animals to enter. MCL 287.719(8).

Although importation requirements may affect interstate commerce, the United States Supreme Court has long held that requirements of this kind are an exercise of the states' police powers and are not preempted by federal law.¹²⁹

D. Dead Animals.

The bodies of dead animals can be a nuisance and also a conduit for the spread of disease. The Bodies of Dead Animals Act, MCL 287.651 *et seq.*, establishes licensing requirements for animal food manufacturing plants, dead animal dealers, transfer stations, and rendering plants. MCL 287.657. Additionally, the Act requires that dead animals be disposed of within twenty-four hours and establishes methods for their disposal. MCL 287.671(2).

4.30 Privacy Limitations

Finally, privacy limitations govern the disclosure of information in some public health cases. This section covers the disclosure of medical information under both the federal Health Insurance Portability and Accountability Act (HIPAA) and Michigan privacy law. The application of the Michigan Freedom of Information Act to public health law cases is also discussed.

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" or simply PHI). See 42 U.S.C. 1320d. 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 services.

A. Applicability of HIPAA Requirements

- 1. Covered entities.** Pursuant to 45 C.F.R. 160.102, HIPAA's privacy requirements apply to only three types of entities (referred to as "covered entities"):

¹²⁹ See *Reid v. Colorado*, 187 U.S. 137, 152-153 (1902).

(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.

- 2. Business Associates.** The Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA) makes business associates of covered entities directly liable for compliance with certain HIPAA requirements. HITECH Act, Pub. L. No. 111-5. § 13401(a), 123 Stat. 241, 260 (2009); 45 C.F.R. § 160.103 (2006); See also 78 FR 5566. Business associates include persons who, in a capacity other than as an employee of a covered entity, create, receive, maintain, or transmit PHI for such diverse functions as claims processing, quality assurance, legal, actuarial, or consulting activities, among others, and includes subcontractors that create, receive, maintain, or transmit PHI for business associates. See 45 C.F.R. 160.103.

3. Public health departments as covered entities. Many public health departments and agencies provide health care services and, as such, are covered entities.¹³⁰ 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.¹³¹

B. Uses and Disclosures of PHI for Public Health Activities

Under 45 CFR 164.512(b)(1), 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. According to 45 C.F.R. 164.501, 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;
- 2. An official of a foreign government agency** that is acting in collaboration with a public health authority;

¹³⁰ 52 M.M.W.R. 1-12 (Apr. 11 2003) (available online at <http://cdc.gov/mmwr/preview/mmwrhtml/m2e411a1.htm>).

¹³¹ See 45 C.F.R. 164.504;

52 M.M.W.R. 1-12 (Apr. 11 2003) (available online at <http://cdc.gov/mmwr/preview/mmwrhtml/m2e411a1.htm>).

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** 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.

C. Other Permitted Uses and Disclosures of PHI

Under 45 C.F.R. 164.512(c)-(l), a covered entity may also disclose PHI without an individual's authorization for:

1. **Disclosures about victims of abuse, neglect, or domestic violence** to a government authority authorized to receive such reports;
2. **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 or subpoena and, after notice or protective order, to a discovery request or other lawful process not accompanied by an order of a court or tribunal;
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. **Disclosures about decedents** for purposes such as identifying a deceased person or determining a cause or death;
6. **Disclosures for cadaveric organ, eye, or tissue donation purposes** to organ procurement, banking, or transplantation organizations;
7. **Disclosures for public health research purposes** regardless of the source of the research funding, provided that an Institutional Review Board or privacy board has provided a waiver of authorization for release;
8. **Disclosures to avert** a serious threat to health or safety;
9. **Disclosures for specialized governmental functions**, such as military activities, intelligence gathering, or law enforcement custodial situations; and

10. Disclosures for workers' compensation.

D. Preemption of State Privacy Law

HIPAA requirements preempt contrary provisions of state law unless the state law serves a compelling need related to public health, safety, or welfare; the principal purpose of the state law relates to the control of any controlled substance; or the state law provides more stringent privacy protections for health information than the applicable HIPAA provisions. State law may also control in cases where it provides for reporting of disease, injury, child abuse, birth, death, or public health surveillance or investigation; or 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, Michigan law provides for the confidential treatment of individuals' medical information. See generally MCL Chapter 333. Additionally, various provisions of Michigan law require government entities and employees to maintain the confidentiality of specific medical information.

A. Confidentiality of Communicable Disease Information

1. No disclosure. Under 45 CFR 164.512, a person may not disclose or be compelled to disclose, by subpoena or otherwise, medical or epidemiological information involving a communicable disease or other disease that is a danger to health *unless*:

(a) The information is released for statistical purposes in a manner that does not identify an individual;

(b) The information is released pursuant to the written consent of all individuals identified in the information;

(c) The information is released to the extent necessary to enforce the public health laws, juvenile delinquency laws, criminal sentencing laws, or homicide laws;

(d) The information is released to protect the health or life of a named party;
or

(e) The information is about a deceased individual and is released to a coroner.

2. Penalties for reckless, knowing, or intentional disclosure. A person responsible for recording, reporting, or maintaining information required to be reported pursuant to Michigan's reportable disease laws who recklessly, knowingly, or intentionally discloses or fails to protect medical or epidemiological information involving a communicable disease or other disease dangerous to health commits a misdemeanor. MCL 333.5131.

4.33 Access to Public Records

A. General Rule

As a general rule, all persons are entitled to full and complete information regarding the official actions of government agencies, officials, and employees. Freedom of Information Act, 1976 PA 442, MCL 15.321 et seq. Michigan law provides that any person (except an inmate) may request access to inspect and copy the public records of any public agency, without stating the purpose of such request, during the agency's regular business hours. MCL 15.233. Such requests are often referred to as Freedom of Information Act (FOIA) requests. Information regarding the public health actions of federal agencies, officials, and employees are also subject to public disclosure requirements pursuant to the federal Freedom of Information Act. 5 U.S.C. 552 (2005).

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.

B. Exceptions to General Rule of Access to All Public Records

Michigan law provides that a public agency may deny disclosure of certain public records under MCL 15.243:

- 1. Records declared confidential by statute.**
- 2. Patient medical records.** Patient medical records where release of the record constitutes an unwarranted invasion of personal privacy, would be subject to a medical privilege, or would include medical facts or evaluations which would identify the patient.
- 3. Law enforcement investigatory records.** Investigating records compiled for law enforcement purposes may be exempted from disclosure if they interfere with law enforcement proceedings, deprive a person of a right to a fair trial. Constitute an unwarranted invasion of privacy, disclose the identity of informants, disclose investigative techniques, or endanger law enforcement personnel.
- 4. Records indicating vulnerability to terrorist attack.** The public may be prohibited access to any record or part of a record that has a reasonable likelihood of threatening public safety by revealing a vulnerability to a terrorist attack. MCL 15.243(1)(y).
- 5. Public Health Department records.** Such records that contain medical information about an individual are generally confidential and may not be disclosed without the consent of the individual. MCL 333.5715, MCL 333.2637 and MCL 333.6113. Certain sections of the public Health Code also provide confidentiality for:
 - (a) Medical information obtained in the course of a medical research project.** MCL 333.2631.

(b) Vital Records. MCL 333.2888.

(c) HIV and serious communicable disease related records. MCL 333.5114a and MCL 333.5131.

(d) Occupational disease investigations if required to protect trade secrets. MCL 333.5613.

(e) Certain records relating to a substance abuse treatment service. MCL 333.6111.

(f) Childhood immunization registry. MCL 333.9207.

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5.00 Operation of the Court Amid Public Health Threats



The conduct of judicial proceedings involving persons infected or suspected of being infected with a dangerous communicable disease will require the court to alter many of its standard procedures in order to assure the safety of court personnel and parties participating in the proceedings. For example, the court must consider whether an individual suspected of being infected with an unknown, highly-contagious disease should be permitted to physically appear in the courtroom and, if not, how the proceedings will be conducted to ensure the individual's 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. In the event of a public health emergency, such as the widespread outbreak of an infectious disease within a community, the challenges facing the courts will be greater. Court personnel, including judges and sheriffs, may themselves become ill. The court may be forced to relocate to safer and more sanitary premises. Hundreds (if not thousands) of hearings may be required to determine the validity of isolation and quarantine orders. Each of these scenarios will strain the resources of the courts and require innovative solutions that ensure the continued operation of the judicial system while respecting constitutional due process guarantees.

Neither Michigan 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

Although isolation and quarantine orders may, under certain circumstances, be issued following *ex-parte* hearings, an individual affected by such an order is subsequently entitled to attend a full hearing on the subject.¹³²

MCR 8.116(D) provides for public access to court proceedings. Except as otherwise provided by statute or court rule, a court may not limit access by the public to a court proceeding unless (a) a party has filed a written motion that identifies the specific interest to be protected, or the court *sua sponte* has identified a specific interest to be protected, and the court determines that the interest outweighs the right of access; (b) the denial of access is narrowly tailored to accommodate the interest to be protected, and there is no less restrictive means to adequately and effectively protect that interest; and (c) the court states on the record the specific reasons for the decision to limit access to the proceeding. A proceeding for isolation or quarantine generally provides a right of the individual affected to be present at the hearing. MCL 333.5207.

5.11 Appearance by Means Other Than in Person

An individual that is the subject of an isolation or quarantine order may be physically unable to appear in court due to illness. Alternatively, the court may be unwilling to permit an infected or potentially-infected individual to appear in person because of the health threat such an individual poses to court personnel, counsel, and the attending public. In the event an individual is not able or permitted to attend proceedings in person, the court can consider

¹³² See U.S. CONST. amend. V ("No person shall ... be deprived of life, liberty, or property without due process of law..."); Mich. Const 1963, art. I, § 17.

alternative procedures.

Michigan trial courts are permitted to use "communication equipment" for a motion hearing. MCR 2.402. "Communication equipment" is broadly defined to include a telephone or any other electronic device that allows the parties to hear and speak to each other. The court or a party is generally required to give notice before communication equipment is used. However, with the consent of the parties or for good cause, the notice period may be waived.

Communication equipment may also be used to take testimony, if the parties consent or if good cause is shown. A verbatim record of the proceedings is required. The cost associated with the use of communication equipment must be borne by the party seeking to use the equipment. If the Court initiates the use of the equipment, the cost is shared equally, unless otherwise directed.

Although not required by MCR 2.402, the parties may wish to use communication equipment that enables the judge to fully view the out-of-court party and his/her counsel and vice versa. The use of video telecommunications, unlike telephone conferencing, would permit the judge to observe the physical condition of the patient, which will frequently be extremely relevant to assessing the scientific validity of isolation and quarantine orders.

Unless safety reasons dictate otherwise, counsel may wish to be personally present with the out-of-court party when communication equipment is used to conduct hearings. If possible, any communications equipment used to conduct hearings should enable counsel to confer privately with the out-of-court party outside the reach of the camera and audio microphone.

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

5.21 Limiting Public Access to the Courtroom

State law requires that court sittings be open to the public. MCL 600.1420. As a general rule, all civil trials should be open and notorious.¹³³ However, under appropriate circumstances, a judge has discretion to hold hearings and conduct proceedings, other than trials, in chambers.¹³⁴

¹³³ *Bauman v Grand T.W.R. Co.*, 363 Mich. 604; 110 N.W.2d 628 (1961).

¹³⁴ *Detroit Free Press v Macomb County Judge*, 405 Mich. 549; 275 N.W.2d 482 (1978).

In Michigan, film and electronic media coverage shall be allowed upon request in writing. A judge may terminate, suspend, limit, or exclude film or electronic media coverage upon a finding on the record that the fair administration of justice requires such action or that rules governing the use of such equipment have been violated. The court may exclude coverage of certain witnesses. MI R ADMIN Order 1989-1.

5.22 Relocation of Court

A judge, at his or her discretion, may hold hearings and conduct trials in a regular courtroom or at any other location within the state.

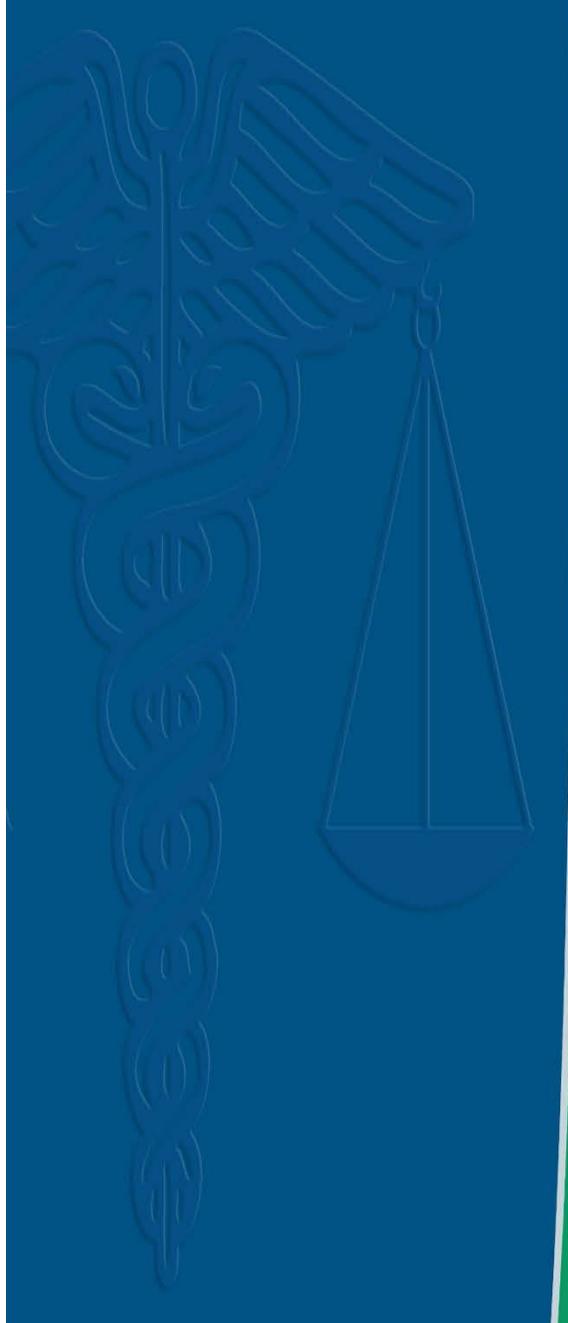
5.30 Proceedings Involving Numerous Persons

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

The number of judges available to hear matters in courts having original jurisdiction over public health matters may be augmented by the assignment by the State Court Administrator or order of the Supreme Court of retired judges, judges from other parts of the state, or judges from other courts within the same jurisdiction.

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, Michigan law provides for emergency management procedures. See Michigan Emergency Management Act, 1976 PA 390, MCL 30.401 et seq. Michigan's emergency management procedures include, but are not limited to, preparation of state emergency plans and preparedness efforts (MCL 30.407a(2)); provision of increased powers to the governor and local agencies (MCL 30.405 and MCL 30.410); enactment of an Interstate Emergency Management and Disaster Compact for the provision of equipment, personnel, and services by other states in the event of an emergency or disaster (2001 PA 247 and 2001 PA 248, MCL 3.991 et seq.); and use of private property to cope with an emergency or disaster and compensation for such use (MCL 30.405(1)(d)).

The provision of necessary medical and health services is included within emergency management. MCL 30.411. Thus, Michigan's emergency management laws will be discussed herein to the extent they affect public health practitioners and public health law.

6.10 Declaring a State of Emergency

A state of emergency may only be declared under certain circumstances, employing certain procedures. These circumstances and procedures are set forth in the following subsections.

6.11 Circumstances

A. Declaration by Governor upon Determination that Disaster Has Occurred or Is Imminent

The governor may declare a disaster or emergency upon determining that a disaster or emergency has occurred or that the occurrence or threat of a disaster or emergency exists. MCL 30.403(3)-(4).

1. "Disaster" defined. A "disaster" is an "occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including, but not limited to, fire, flood, snowstorm, tornado, windstorm, wave action, oil spill, water contamination, utility failure, hazardous peacetime radiological incident, major transportation accident, hazardous material incident, epidemic, air contamination, blight, drought, infestation, explosion, or hostile military action or paramilitary action, or similar occurrences resulting from terrorist activities, riots, or civil disorders." MCL 30.402(e).

2. "Emergency" defined. An emergency is defined as any occasion or instance in which the governor determines that state assistance is needed to supplement local efforts and capabilities to save lives, protect property and public health and safety, or to lessen the threat of a catastrophe. MCL 30.402 (h).

B. Declaration by Local Official

The chief executive officer of a county or municipality or the official designated by charter may declare a local disaster emergency for no more than seven (7) days when appropriate. MCL 30.410(1)(b).

6.12 Procedures

A. When Declared by Governor

Under MCL 30.403(3)-(4), the governor may declare a disaster or emergency by executive order or proclamation. All executive orders or proclamations declaring a disaster emergency must indicate the nature of the disaster; the area(s) threatened; the conditions that have brought about the disaster; and the conditions permitting the termination of the state of disaster or emergency.

A gubernatorial-declared state of emergency remains in effect until the earlier of either the governor determining that the threat or danger has passed or the disaster has been dealt with such that emergency conditions no longer exist; or the passage of twenty-eight days. The legislature, by joint resolution, may extend the state of emergency or disaster for a specified period following the expiration of thirty days.

B. When Declared by Local Official

A declared local disaster emergency may only be continued for more than seven days upon consent of the governing body of the county or municipality. MCL 30.410(b).

6.20 Powers of Government during a Declared Emergency

When a state of emergency is declared, the government is granted certain powers to manage the situation. Gubernatorial and local powers are outlined in this section.

6.21 Gubernatorial Powers

The powers of the governor during a declared disaster or emergency are extremely broad. See MCL 30.405.

A. Powers Relevant to Public Health Law

Of relevance to public health Law, the gubernatorial powers would allow him or her to:

- 1. Employ any measure and give any direction to the Michigan Department of Health and Human Services or local health boards** as is reasonably necessary for securing compliance with Michigan's emergency management laws or the findings or recommendations of the MDHHS or local boards of health; MCL 30.405(c)
- 2. Issue any executive order** to state and local law enforcement officers and agencies as is reasonable and necessary to secure compliance with Michigan's emergency management laws; MCL 30.403(2)
- 3. Serve as commander-in-chief** of the militia and all other forces available for emergency duty; MCL 30.404(1)
- 4. Control ingress to and egress from the disaster area**, as well as the movement of persons within the disaster area and the occupancy of premises in the disaster area;

MCL 30.405(g)

5. Give authority to allocate drugs, food, and other essential materials and services; MCL 30.404(1)

6. Commandeer or use private property as necessary to cope with the disaster emergency *subject to the compensation requirements*; MCL 30.405(d); and

7. Allow persons holding licenses to practice medicine, dentistry, pharmacy, nursing, and other similar professions to practice their respective profession in Michigan during the disaster or emergency. MCL 30.404(3).

B. Limitations on Governor's Powers

Although the governor is entitled to commandeer or use private property to the extent necessary during a disaster or emergency, compensation must be paid to the property owner(s) under certain circumstances. MCL 30.406. An individual is entitled to compensation for the taking or use of the individual's property only if the taking or use exceeds the individual's obligation to permit appropriate use or restrictions on the use of his or her property during a disaster or emergency; the individual did not volunteer the use of his or her property without compensation; the property was commandeered or otherwise used to cope with a disaster or emergency; and the use or destruction of the property was ordered by the governor or the director of the Department of State Police or his designee.

The government is not required to provide compensation for the destruction of standing timber or other property in order to provide a fire break; the release of waters or the breach of impoundments in order to reduce pressure or other danger from actual or threatened flood; or personal services, except pursuant to statute, local law, or ordinance.

6.22 Local Powers

A county, municipality, or other agency designated by the governor may make, amend, and rescind orders, rules, and regulations necessary for emergency management purposes and supplementary to a rule, order, or directive issued by the governor or a state agency exercising a power delegated to it by the governor. A rule or order is temporary and upon declaration by the governor of a state of disaster or emergency, is terminated. MCL 30.412.

6.30 Immunity of Government Actors during a Declared Emergency

All emergency management functions and activities are governmental functions.

A. Government Actors Immune for Death, Injury, and Property Damage

Personnel of "disaster relief forces" engaged in "disaster relief activities" 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 Michigan's emergency management laws. MCL 30.411. Such immunity is that provided in the General Governmental Immunity

Act (MCL 691.1407), which excludes acts of gross negligence, auto accidents, and building maintenance.

"Disaster relief activity" includes training for or responding to an actual, impending, mock, or practice disaster or emergency. MCL 30.411(3). "Disaster relief forces" include all agencies of the state; all political subdivisions of the state; private and volunteer personnel; public officers and employees; all other persons or groups of persons having duties or responsibilities under the Emergency Management Act or pursuant to a lawful order or directive. MCL 30.402(f).

B. Individuals Immune for Negligent Death, Injury, and Property Damage on Volunteered Premises

A "person" eligible for immunity includes an individual, partnership, corporation, association, government entity, or any other entity. MCL 40.402(m). A property owner who without compensation voluntarily allows the use of property during an actual or mock emergency also is immune. MCL 40.411(6). Such property owners are required to disclose any hidden safety hazards or dangers.

C. Other Sources of Immunity

The Emergency Management Assistance Compact Act contains provisions providing immunity for officers and employees of a party state rendering aid in another state, gross negligence excepted. MCL 3.1001 (Article VI).

The Federal Volunteer Protection Act of 1977 (42 USC 14503) provides protection for a volunteer of any non-profit or governmental agency, if the work is within the volunteer's scope of duties, the volunteer is properly licensed, and the conduct is not the result of criminal or willful misconduct. The Non-Paid Temporary Federal Employee Act (42 USC 5159(b)) provides federal immunity for workers assisting pursuant to a federal request. Intermittent disaster response personnel assisting pursuant to the National Disaster Medical System (NAMES) (42 USC 300hh-11(d)(1)) provides a federal license to practice a medical profession, immunity, and reemployment protection. Other laws providing immunity for emergency workers include the Good Samaritan Act (MCL 691.1501); the Emergency Medical Care Act (MCL 691.1502); the Public Health Code (MCL 333.20965); and the Fire Code (MCL 29.7c).

6.40 Operation of the Courts during a Declared Emergency

Michigan's emergency management laws contain no explicit provisions regarding operation of Michigan courts during a declared disaster or emergency. The Michigan Attorney General has entered into an agreement with the State Court Administrator for the appointment of judges to be available to act during an emergency.

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7.00 Appendices



7.1 PUBLIC HEALTH GLOSSARY

A	<u>Acute</u> - Referring to a health effect, usually of rapid onset; brief, not prolonged; sometimes loosely used to mean severe. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Adenopathy</u> - Swelling or morbid enlargement of the lymph nodes. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Aerosolize</u> - To disperse as an aerosol. MERRIAM-WEBSTER ONLINE DICTIONARY (2016).
	<p><u>Anthrax</u> - Infection by the bacterium <i>Bacillus anthracis</i>, which in humans is caused by contact with infected animals or animal products, and ingestion or inhalation of spores of the bacterium. STEDMAN'S MEDICAL DICTIONARY (2006).</p> <p>Cutaneous: dermatologic <i>Bacillus anthracis</i> infection that produces a characteristic lesion that begins as a papule and soon becomes a vesicle and breaks, discharging a bloody serum. In approximately 36 hours, the seat of this vesicle becomes a bluish-black necrotic mass. Constitutional symptoms of septicemia are severe: high fever, vomiting, profuse sweating, and extreme prostration. The infection is often fatal.</p> <p>Gastrointestinal: usually fatal form of anthrax marked by chill, high fever, pain in the head, back, and extremities, vomiting, bloody diarrhea, cardiovascular collapse, and frequently, hemorrhages from the mucous membranes and in the skin (petechiae).</p> <p>Inhaled: a form of anthrax acquired by breathing in spores of <i>Bacillus anthracis</i> in airborne particles less than 5 mcg.</p>
	<u>Antibody (Ab)</u> - An immunoglobulin produced by response to an antigen. B-lymphoid cells that combine specifically with an immunogen or antigen. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Antigen (Ag)</u> - Any substance that, as a result of coming into contact with appropriate cells, induces a state of sensitivity or immune responsiveness and that reacts in a demonstrable way with antibodies or immune cells of the sensitized subject in vivo or in vitro. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Antitoxin</u> -Antibody formed in response to antigenic poisonous substances of biologic origin, such as bacterial exotoxins. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Asymptomatic</u> - Without symptoms, or producing no symptoms. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Ataxia</u> - An inability to coordinate muscle activity during voluntary movement. STEDMAN'S MEDICAL DICTIONARY (2006).
B	<u>Bacterium</u> - A unicellular prokaryotic microorganism that usually multiplies by cell division and has a cell wall that provides a constancy of form. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Botulism</u> - Food poisoning usually caused by the ingestion of the neurotoxin produced by the bacterium <i>Clostridium botulinum</i> from improperly canned or preserved food. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Bradycardia</u> - Slowness of the heartbeat, usually defined (by convention) as a rate under 50 beats/minute. STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).

	<u>Brucellosis</u> - Infectious diseases caused by the bacterium <i>Brucella melitensis</i> biovars, characterized by fever, sweating, weakness, aches, and pains, and transmitted to humans by direct contact with diseased animals or through ingestion of infected meat, milk, or cheese and particularly hazardous to vegetarians, farmers, and slaughterhouse workers. STEDMAN'S MEDICAL DICTIONARY (2006).
C	<u>Capillary</u> - A capillary vessel; e.g. blood c, lymph c. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Case</u> - An instance of disease with its attendant circumstances. Cf. patient. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Chickenpox</u> - See varicella.
	<u>Cholera</u> - An acute epidemic infectious disease caused by the bacterium <i>Vibrio cholerae</i> . STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Clinical</u> - Relating to the bedside of a patient or to the course of the disease. STEDMAN'S MEDICAL DICTIONARY (2006)
	<u>Communicable</u> - Capable of being communicated or transmitted; said especially of disease. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Contact</u> - The touching or apposition of two bodies. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Contagious</u> - See communicable disease. Relating to contagion; communicable or transmissible by contact with the sick or their fresh secretions or excretions. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Cutaneous</u> - Relating to the skin. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Cyanosis</u> - A dark bluish or purplish discoloration of the skin and mucous membrane due to deficient oxygenation of the blood. STEDMAN'S MEDICAL DICTIONARY (2006).
D	<u>Decontamination</u> - Removal or neutralization of poisonous gas or other injurious agents from the environment. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Disease</u> - An interruption, cessation, or disorder of a body, system, or organ structure or function. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Distal</u> - Situated away from the center of the body, or from the point of origin; specifically applied to the extremity or distant part of a limb or organ. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Dysphagia</u> - Difficulty in swallowing. STEDMAN'S MEDICAL DICTIONARY (2006)
	<u>Dyspnea</u> - Shortness of breath, usually associated with disease of the heart or lungs. STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).
E	<u>Edema</u> - An accumulation of an excess amount of watery fluid in cells or intercellular tissues. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Effectiveness</u> - A measure of the accuracy or success of a diagnostic or therapeutic technique when carried out in an average clinical environment. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Efficacy</u> - The extent to which a specific intervention, procedure, regimen or service produces a beneficial result under ideal circumstances. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Encephalitis</u> - Inflammation of the brain. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Endemic</u> - Denoting a temporal pattern of disease occurrence in a population in which the disease occurs with predictable regularity with only relatively minor fluctuations in its frequency over time. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Enterovirus</u> - A large and diverse group of viruses that includes poliovirus types 1 to 3. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Epidemiology</u> - 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 (2006).
	<u>Epistaxis</u> - Bleeding from the nose. STEDMAN'S MEDICAL DICTIONARY (2006).

	<u>Erythema</u> - Redness due to capillary dilation, usually signaling a pathologic condition. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Escherichia coli (E. coli)</u> - A species that occurs normally in the intestines of humans and other vertebrates, is widely distributed in nature, and is a frequent cause of infections of the urogenital tract and of neonatal meningitis and diarrhea in infants; enteropathogenic strains (serovars) of <i>E. coli</i> cause diarrhea due to enterotoxin, the production of which seems to be associated with a transferable episome; the type species of the genus. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Ex vivo</u> - Referring to the use or positioning of a tissue or cell after removal from an organism while the tissue or cells remain viable. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Exanthema</u> - A skin eruption occurring as a symptom of an acute viral or coccal disease, as in scarlet fever or measles. STEDMAN'S MEDICAL DICTIONARY (2006).
F	<u>Fomite Objects</u> - Such as clothing, towels, and utensils that possibly harbor a disease agent and are capable of transmitting it. STEDMAN'S MEDICAL DICTIONARY (2006).
G	<u>Gastrointestinal (GI)</u> - Relating to the stomach and intestines. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Genus</u> - In natural history classification, the taxonomic level of division between the family, or tribe, and the species; a group of species alike in the broad features of their organization but different in detail, and incapable of fertile mating. STEDMAN'S MEDICAL DICTIONARY (2006).
H	<u>Hantavirus</u> - A genus of <i>Bunyaviridae</i> responsible for pneumonia and hemorrhagic fevers. At least 7 members of the genus are thus far recognized: (Hantaan, Puumala, Seoul, Prospect Hill, Thailand, Thottapalayam, and Sin Nombre virus). Other species have not yet been classified. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Hematemesis</u> - Vomiting of blood. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Hematuria</u> - Presence of blood or red blood cells in the urine. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Hemoptysis</u> - Spitting of blood derived from the lungs or bronchial tubes as a result of pulmonary or bronchial hemorrhage. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Hemorrhage</u> - To bleed. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Hepatitis</u> - Inflammation of the liver, due usually to viral infection but sometimes to toxic agents. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Hepatitis A</u> - A viral disease with a short incubation period (usually 15-50 days), caused by h. A virus, a member of the family Picornaviridae, often transmitted by fecal-oral route; may be in apparent, mild, severe, or occasionally fatal and occurs sporadically or in epidemics, commonly in school-age children and young adults; necrosis of periportal liver cells with lymphocytic and plasma cell infiltration is characteristic, and jaundice is a common symptom.
	<u>Hepatitis B</u> - A viral disease with a long incubation period (usually 50-160 days), caused by a h. B virus, a DNA virus and member of the family Hepadnaviridae, usually transmitted by injection of infected blood or blood derivatives or by use of contaminated needles, lancets, or other instruments or by sexual transmission; clinically and pathologically similar to viral h. type A, but there is no cross-protective immunity.
	<u>Hepatitis C</u> - Principal cause of non-A, non-B post transfusion h. caused by an RNA virus that is classified with the Flaviviridae family. The incubation period is 6-8 weeks with about 75% of infections subclinical and giving rise to chronic persistent infection. A high percentage of these develop chronic liver disease leading to cirrhosis and possible hepatocellular carcinoma.

	<u>Hepatitis D</u> - Acute or chronic h. caused by a satellite virus, the h. delta virus, a defective RNA virus requiring HBV for replication because it uses HB8Ag as its own coat.
	<u>Hepatitis E</u> - Caused by a non-enveloped, single-stranded, positive-sense RNA virus 27-34 nm in diameter, unrelated to other h. and belonging to the family Caliciviridae; it is the principal cause of enterically transmitted, waterborne, epidemic NANB hepatitis occurring in Asia, Africa, and South America.
	<u>Host</u> - The organism in or on which a parasite lives, deriving its body substance or energy from the host. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Hypertension</u> - High blood pressure. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Hyperthermia</u> - Exceptionally high fever especially when induced artificially for therapeutic purposes. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Hypotension</u> - Subnormal arterial blood pressure. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Hypothermia</u> - A body temperature significantly less than 98.6°F (37°C). STEDMAN'S MEDICAL DICTIONARY (2006).
I	<u>Individually identifiable health information</u> - Under 45 CFR 160.103, information that is a subset of health information, including demographic information collected from an individual, and: (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment of the provision of health care to an individual; and (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
	<u>Immunogen</u> - See antigen.
	<u>In vitro</u> - /In an artificial environment, referring to a process or reaction occurring therein, as in a test tube or culture medium. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>In vivo</u> - In the living body. Referring to a process or reaction occurring therein. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Incidence</u> - The number of specified new events, e.g., people falling ill with a specified disease, during a specified period in a specified population. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Infectious</u> - A disease capable of being transmitted from person to person, with or without actual contact. STEDMAN'S MEDICAL DICTIONARY (2006).
	<u>Isolation</u> - Separation for the period of communicability of infected people or animals from others, so as to prevent or limit the direct or indirect transmission of the infectious agent from those who are infected to those who are susceptible. STEDMAN'S MEDICAL DICTIONARY (2006).
J	
K	
L	<u>Lymph node</u> - One of numerous round, oval, or bean-shaped bodies located along the course of lymphatic vessels, varying greatly in size (1-25 mm in diameter) and usually presenting a depressed area, the hilum, on one side through which blood vessels enter and efferent lymphatic vessels emerge. STEDMAN'S MEDICAL DICTIONARY (2006).
M	<u>Measles</u> - An acute, eruptive disease, caused by m. virus (genus Morbillivirus), a member of the family <i>Paramyxoviridae</i> ; and marked by fever and other constitutional disturbances, inflammation of the respiratory mucous membranes, and a generalized dusky red maculopapular eruption. STEDMAN'S MEDICAL DICTIONARY (2006).

	Monkeypox - A disease of monkeys and, rarely, of human, caused by the monkeypox virus, a member of the family <i>Poxviridae</i> ; the human disease is a serious and clinically resembles smallpox. STEDMAN'S MEDICAL DICTIONARY (2006).
	Myalgia - Muscular pain. STEDMAN'S MEDICAL DICTIONARY (2006).
	Mydriasis - Dilation of the pupil. STEDMAN'S MEDICAL DICTIONARY (2006).
N	Necrosis - Pathologic death of one or more cells, or a portion of tissue or organ, resulting from irreversible damage. STEDMAN'S MEDICAL DICTIONARY (2006).
O	Outbreak - A sudden start or increase of fighting or disease. MERRIAM-WEBSTER ONLINE DICTIONARY (2016).
P	Pandemic - Denoting a disease affecting or attacking the population of an extensive region, country, continent, global; extensively epidemic. STEDMAN'S MEDICAL DICTIONARY (2006).
	Papule - A circumscribed, solid elevation up to 1 cm in diameter on the skin. STEDMAN'S MEDICAL DICTIONARY (2006).
	Parasite - An organism that lives on or in another and draws its nourishment therefrom. STEDMAN'S MEDICAL DICTIONARY (200).
	Plague - An acute infectious disease caused by the bacterium <i>Yersinia pestis</i> , and marked clinically by high fever, toxemia, prostration, a petechial eruption, lymph node enlargement, pneumonia, or hemorrhage from the mucous membranes. Bubonic: The usual form of plague, manifestations of which include inflammatory enlargement of the lymphatic glands in the groin. Pneumonic: A rapidly progressive and frequently fatal form of p. in which there are areas of pulmonary consolidation, with chills, pain in the side, bloody expectoration, high fever, and possible human-to-human transmission. Septicemic: A generally fatal form of plague in which there is an intense bacteremia with symptoms of profound toxemia. STEDMAN'S MEDICAL DICTIONARY (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 (2006).
	Prostration - A marked loss of strength, as in exhaustion. STEDMAN'S MEDICAL DICTIONARY (2006).
	Proximal - nearest the trunk or the point of origin, said of part of a limb, of an artery or a nerve so situated. STEDMAN'S MEDICAL DICTIONARY (2006).
	Pruritus - Itching. STEDMAN'S MEDICAL DICTIONARY (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).

	<p><u>Public health emergency</u> - 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</p> <p>(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.</p> <p>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).</p>
	<p><u>Public health law</u> - 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.</p> <p>LAWRENCE O. GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 4 (University of California Press 2000).</p>
	<p><u>Public health official</u> - 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).</p>
	<p><u>Pulmonary</u> - Relating to the lungs, to the pulmonary artery, or to the aperture leading from the right ventricle into the pulmonary artery. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
	<p><u>Pus</u> - A fluid product of inflammation, consisting of a liquid containing leukocytes and the debris of dead cells and tissue elements liquefied by the proteolytic and histolytic enzymes (e.g., leukoprotease) that are elaborated by polymorphonuclear leukocytes. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
	<p><u>Pustule</u> - A circumscribed, superficial elevation of the skin, up to 1 cm in diameter, containing purulent material. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
	<p><u>Pyrogenic</u> - Causing fever. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
Q	<p><u>Quarantine</u> – Originally, a period of 40 days of detention of vessels and their passengers coming from an area where an infectious disease prevails. Currently, the limitation of a healthy individual's activities after the person has been exposed to a communicable disease in order to prevent the disease from spreading during its period of communicability. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
R	<p><u>Rhinorrhea</u>-A discharge from the nose. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
	<p><u>Ricin</u> - A highly toxic lectin and hemagglutinin that occurs in castor beans. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
	<p><u>Rickettsia</u> - A genus of bacteria (order Rickettsiales) containing small (i.e., nonfilterable), often pleomorphic, coccoid to rod-shaped, gram-negative organisms that usually occur intracytoplasmically in lice, fleas, ticks, and mites but do not grow in cell-free media; pathogenic species infect humans and other animals, causing epidemic, murine, or endemic typhus, Rocky Mountain spotted fever, tsutsugamushi disease, rickettsialpox, and other diseases. STEDMAN'S MEDICAL DICTIONARY (2006).</p>

S	<p><u>Salmonella</u> - A genus of aerobic to facultatively anaerobic bacteria (family Enterobacteriaceae). Salmonella infection is a common bacterial disease that affects the intestinal tract. Salmonella bacteria typically live in animal and human intestines and are shed through feces. Humans become infected most frequently through contaminated water or food. MAY CLINIC (2016)</p>
	<p><u>Sample</u> - (1) A specimen of a whole entity small enough to involve no threat or damage to the whole; an aliquot. (2) A selected subset of a population. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
	<p><u>Screen</u> - To examine, evaluate; to process a group to select or separate certain individuals from the general population. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
	<p><u>Sensitivity</u> - The ability to appreciate by one or more of the senses. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
	<p><u>Smallpox (<i>variola</i>)</u> - An acute, eruptive, contagious disease caused by a pox virus (Orthopoxvirus, a member of the family <i>Poxviridae</i>) and marked at the onset by chills, high fever, backache, and headache. In 2 to 5 days these constitutional symptoms subside and a skin eruption appears as papules, which become navel-shaped vesicles, develop into pustules, dry, and form scabs that, on falling off, leave a permanent marking of the skin (pock marks). The average incubation period is 8 to 14 days. As a result of increasingly aggressive vaccination programs carried out over a period of about 200 years, smallpox was naturally eradicated in 1980. STEDMAN'S MEDICAL DICTIONARY (2006), MAYO CLINIC (2016).</p>
	<p><u>Species</u> - A group of organisms that generally bear a close resemblance to one another in the more essential features of their organization, and breed effectively producing fertile progeny. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
	<p><u>Specificity</u> - The condition or state of being specific, of having a fixed relation to a single cause or to a definite result; manifested in the relation of a disease to its pathogenic microorganism, of a reaction to a certain chemical union, or of an antibody to its antigen, or the reverse. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
	<p><u>Sputum</u> - Expecterated matter, especially mucus or mucopurulent matter expecterated in diseases of the air passages. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
	<p><u>Staphylococcus (Staph)</u> - A genus of nonmotile, non-spore-forming, aerobic to facultatively anaerobic bacteria (family Micrococcaceae) containing gram-positive, spheric cells, 0.5-1.5 mcm in diameter, which divide in more than one plane to form irregular clusters. Staph infections can turn deadly if the bacteria invade deeper into your body, entering your bloodstream, joints, bones, lungs or heart. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
	<p><u>Surveillance</u> - The collection, collation, analysis, and dissemination of data; a type of observational study that involves continuous monitoring of disease occurrence within a population. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
	<p><u>Tachycardia</u> - Rapid beating of the heart, conventionally applied to rates over 90 beats per minute. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
	<p><u>Toxin</u> - A noxious or poisonous substance that is formed or elaborated either as an integral part of the cell or tissue (endotoxin), as an extracellular product (exotoxin), or as a combination of the two, during the metabolism and growth of certain microorganisms and some higher plant and animal species. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
T	<p><u>Transmission</u> - The conveyance of disease from one person to another. STEDMAN'S MEDICAL DICTIONARY (2006).</p>

	<p>Tuberculosis (TB) - A specific disease caused by infection with the bacterium <i>Mycobacterium tuberculosis</i>, the tubercle bacillus, which can affect almost any tissue or organ of the body, the most common site being the lungs. Primary tuberculosis is typically a mild or asymptomatic local pulmonary infection. Regional lymph nodes may become involved, but in otherwise healthy people generalized disease does not immediately develop. A cell mediated immune response arrests the spread of organisms and walls off the zone of infection. Infected tissues and lymph nodes may eventually calcify. The tuberculin skin test result becomes positive within a few weeks and remains positive throughout life. Organisms in a primary lesion 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. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
	<p>Tularemia - A disease caused by <i>Francisella tularensis</i> and transmitted to humans from rodents through the bite of a deer fly, <i>Chrysops discalis</i>, and other bloodsucking insects; can also be acquired through the bite of an infected animal or through handling of an infected animal carcass; symptoms, similar to those of undulant fever and plague, are a prolonged intermittent or remittent fever and often swelling and suppuration of the lymph nodes draining the site of infection; rabbits are in important reservoir host. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
	<p>Typhus - A group of acute infectious and contagious diseases, caused by <i>rickettsiae</i> that are transmitted by arthropods, and occurring in two principal forms: epidemic typhus and endemic (murine) typhus; typical symptoms include: severe headache, shivering and chills, high fever, malaise, and rash. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
U	
V	<p>Validity - An index of how well a test or procedure in fact measures what it purports to measure; an objective index by which to describe how valid a test or procedure is. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
	<p>Varicella (a/k/a Chicken Pox) - An acute contagious disease, usually occurring in children, caused by the Varicella-Zoster virus genus, Varicellovirus, a member of the family Herpesviridae and marked by sparse eruption of papules, which become vesicles and then pustules, like that of smallpox although less severe and varying in stages, usually with mild constitutional symptoms; incubation period is about 14-17 days. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
	<p>Vector - An invertebrate animal (e.g., tick, mite, mosquito, bloodsucking fly) capable of transmitting an infectious agent among vertebrates. STEDMAN'S MEDICAL DICTIONARY (27th ed. 2000).</p>
	<p>Vesicle - A small bladder or bladder-like structure. STEDMAN'S MEDICAL DICTIONARY (2006).</p>
	<p>Viremia - The presence of a virus in the bloodstream. STEDMAN'S MEDICAL DICTIONARY (2006).</p>

	<p><u>Virus</u> - 1. Formerly, the specific agent of an infectious disease. 2. Specifically, a term for a group of infectious agents, which, with few exceptions, are capable of passing through fine filters that retain most bacteria, are usually not visible through the light microscope, lack independent metabolism, and are incapable of growth or reproduction apart from living cells. They have a prokaryotic genetic apparatus but differ sharply from bacteria in other respects. The complete particle usually contains either DNA or RNA, not both, and is usually covered by a protein shell or capsid that protects the nucleic acid. They range in size from 15 to several hundred nanometers. Classification of viruses depends on physiochemical characteristics of virions as well as on mode of transmission, host range, symptomatology, and other factors. <small>STEDMAN'S MEDICAL DICTIONARY (2006).</small></p>
	<p><u>Vital statistics</u> - Statistics relating to births, deaths, marriages, health, and disease. <small>MERRIAM-WEBSTER ONLINE DICTIONARY (2006).</small></p>
W	
X	
Y	
Z	<p>Zoonosis-An infection or infestation shared in nature by humans and other animals. <small>STEDMAN'S MEDICAL DICTIONARY (2006).</small></p>

7.2 Selected Model Judicial Petitions and Orders

A. Transport and/or Temporary Detention

1. Petition and Ex-Parte Order for Transport and/or Temporary Detention
<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/infectiousdisease/pc110.pdf>
2. Affidavit to Accompany Petition for Transport and/or Temporary Detention
<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/infectiousdisease/pc110.pdf>
3. Notice of Hearing on Petition for Transport and/or Temporary Detention
<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/infectiousdisease/pc111.pdf>
4. Order Following Hearing on Petition to Continue Temporary Detention
<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/infectiousdisease/pc112.pdf>

B. Infectious Disease Treatment

1. Petition for Treatment of Infectious Disease
<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/infectiousdisease/pc104.pdf>
2. Notice of Hearing on Petition for Treatment of Infectious Disease
<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/infectiousdisease/pc105.pdf>
3. Order Following Hearing on Petition for Treatment of Infectious Disease
<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/infectiousdisease/pc106.pdf>
4. Order Following Appeal of Commitment for Treatment of Infectious Disease
<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/infectiousdisease/pc114.pdf>

C. Committee Review Panel

1. Order Appointing Commitment Review Panel
<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/infectiousdisease/pc106.pdf>
2. Recommendation of Commitment Review Panel
<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/infectiousdisease/pc108.pdf>
3. Appeal of Commitment and Order to Reconvene Commitment Review Panel
Order Following Appeal of Commitment for Treatment of Infectious Disease
<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/infectiousdisease/pc114.pdf>

[ase/pc113.pdf](#)

D. Continued Infectious Disease Treatment

1. Petition for Continued Commitment for Treatment of Infectious Disease and Order to Reconvene Commitment Review Panel
<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/infectiousdisease/pc115.pdf>
2. Order Following Hearing on Petition for Continued Treatment of Infectious Disease
<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/infectiousdisease/pc116.pdf>

E. Infectious Disease Testing

1. Petition for Testing of Infectious Disease
<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/infectiousdisease/mc72.pdf>
2. Notice of Hearing on Petition for Testing of Infectious Disease
<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/infectiousdisease/mc73.pdf>
3. Order Following Hearing on Petition for Testing of Infectious Disease
<http://courts.mi.gov/Administration/SCAO/Forms/courtforms/infectiousdisease/mc74.pdf>

7.3 Selected Emergency Statutes

- A. **Michigan Emergency Management Act, 1976 PA 390, MCL 30.401, *et seq.***
[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffe0\)\)/mileg.aspx?page=MclPASearch](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffe0))/mileg.aspx?page=MclPASearch)
- B. **Interstate Emergency Management Assistance Compact; Equipment, 2001 PA 247, MCL 3.991, *et seq.***
[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffe0\)\)/mileg.aspx?page=MclPASearch](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffe0))/mileg.aspx?page=MclPASearch)
- C. **Interstate Emergency Management Assistance Compact; Personnel, 2001 PA 248, MCL 3.1001, *et seq.***
[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffe0\)\)/mileg.aspx?page=MclPASearch](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffe0))/mileg.aspx?page=MclPASearch)

7.4 Selected Provisions of the Michigan Public Health Code

- A. Michigan Department of Health and Human Services (MDHHS) Powers; MCL 333.2226**
[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffl0\)\)/mileg.aspx?page=getObject&objectName=mcl-333-2226](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffl0))/mileg.aspx?page=getObject&objectName=mcl-333-2226)
- B. Issuance and Enforcement of Inspection/Investigation Orders or Warrants**
1. MCL 333.2221
[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffl0\)\)/mileg.aspx?page=getObject&objectName=mcl-333-2221](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffl0))/mileg.aspx?page=getObject&objectName=mcl-333-2221)
 2. MCL 333.2241
[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffl0\)\)/mileg.aspx?page=getObject&objectName=mcl-333-2241](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffl0))/mileg.aspx?page=getObject&objectName=mcl-333-2241)
 3. MCL 333.2433
[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffl0\)\)/mileg.aspx?page=getObject&objectName=mcl-333-2433](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffl0))/mileg.aspx?page=getObject&objectName=mcl-333-2433)
 4. MCL 333.2446
[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffl0\)\)/mileg.aspx?page=getObject&objectName=mcl-333-2446](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffl0))/mileg.aspx?page=getObject&objectName=mcl-333-2446)
- C. Determination of Imminent Danger; MCL 333.2251**
[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffl0\)\)/mileg.aspx?page=getObject&objectName=mcl-333-2251](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffl0))/mileg.aspx?page=getObject&objectName=mcl-333-2251)
- D. Local Health Department Imminent Danger Determination; MCL 333.2451**
[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffl0\)\)/mileg.aspx?page=getObject&objectName=mcl-333-2451](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffl0))/mileg.aspx?page=getObject&objectName=mcl-333-2451)
- E. Emergency Order to Control Epidemic; MCL 333.2253**
[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffl0\)\)/mileg.aspx?page=getObject&objectName=mcl-333-2253](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffl0))/mileg.aspx?page=getObject&objectName=mcl-333-2253)
- F. Local Health Department Emergency Order; MCL 333.2453**
[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffl0\)\)/mileg.aspx?page=getObject&objectName=mcl-333-2453](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffl0))/mileg.aspx?page=getObject&objectName=mcl-333-2453)
- G. Criminal Penalties for Violation of Department Order or Rule; MCL 333.2261**
[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffl0\)\)/mileg.aspx?page=getObject&objectName=mcl-333-2261](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffl0))/mileg.aspx?page=getObject&objectName=mcl-333-2261)
- H. Court Order to Remove or Correct Cause of Illness; MCL 333.2455**
[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffl0\)\)/mileg.aspx?page=getObject&objectName=mcl-333-2455](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffl0))/mileg.aspx?page=getObject&objectName=mcl-333-2455)

I. Injunctive Action by State and Local Health Department

1. MCL 333.2255
[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffe0\)\)/mileg.aspx?page=getObject&objectName=mcl-333-2255](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffe0))/mileg.aspx?page=getObject&objectName=mcl-333-2255)
2. MCL 333.2465
[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffe0\)\)/mileg.aspx?page=getObject&objectName=mcl-333-2465](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffe0))/mileg.aspx?page=getObject&objectName=mcl-333-2465)

J. Definitions

1. MCL 333.5101
[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffe0\)\)/mileg.aspx?page=getObject&objectName=mcl-333-5101](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffe0))/mileg.aspx?page=getObject&objectName=mcl-333-5101)
2. MCL 333.5201
[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffe0\)\)/mileg.aspx?page=getObject&objectName=mcl-333-5201](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffe0))/mileg.aspx?page=getObject&objectName=mcl-333-5201)

K. Objections to Treatment Due to Religious Beliefs; MCL 333.5113

[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffe0\)\)/mileg.aspx?page=getObject&objectName=mcl-333-5113](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffe0))/mileg.aspx?page=getObject&objectName=mcl-333-5113)

L. Department Warning Notice for Involuntary Detention and Treatment of Individuals; MCL 333.5203

[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffe0\)\)/mileg.aspx?page=getObject&objectName=mcl-333-5203](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffe0))/mileg.aspx?page=getObject&objectName=mcl-333-5203)

M. Local Public Health Department Warning Notice; MCL 333.2453

[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffe0\)\)/mileg.aspx?page=getObject&objectName=mcl-333-2453](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffe0))/mileg.aspx?page=getObject&objectName=mcl-333-2453)

N. Failure or Refusal to Comply with Department-Issued Warning Notice or Court Order; MCL 333.5205

[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffe0\)\)/mileg.aspx?page=getObject&objectName=mcl-333-5205](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffe0))/mileg.aspx?page=getObject&objectName=mcl-333-5205)

O. Public Health Emergency Court Petition and Order; MCL 333.5207

[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffe0\)\)/mileg.aspx?page=getObject&objectName=mcl-333-5207](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffe0))/mileg.aspx?page=getObject&objectName=mcl-333-5207)

P. Power of Health Department to Deal with Disease or Infected Individual; MCL 333.5209

[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffe0\)\)/mileg.aspx?page=getObject&objectName=mcl-333-5209](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffe0))/mileg.aspx?page=getObject&objectName=mcl-333-5209)

Q. Department-Issued Emergency Order; MCL 333.13516

[http://www.legislature.mi.gov/\(S\(z1gpxortvqlkvtq5fcdffe0\)\)/mileg.aspx?page=getObject&objectName=mcl-333-13516](http://www.legislature.mi.gov/(S(z1gpxortvqlkvtq5fcdffe0))/mileg.aspx?page=getObject&objectName=mcl-333-13516)

7.5 Selected Rules of the Michigan Department of Health and Human Services (Communicable and Related Diseases)

http://w3.lara.state.mi.us/orr/Files/AdminCode/1472_2014-073CH_AdminCode.pdf

- A. **Definitions; Rule 325.171**
- B. **Disease Reporting; Rule 325.172**
- C. **Reporting and Surveillance Requirements; Rule 325.173**
- D. **Investigation of Diseases, Infections, Epidemics, and Situations with Potential for Causing Diseases; Rule 325.174**
- E. **Procedures for Physicians, Local Health Officers, and Schools for Control of Diseases and Infections; Rule 325.175**

7.6 Selected Court Cases

- A. *Jacobson v. Commonwealth of Massachusetts*, 197 US 11 (1905).
- B. *Compagnie Francaise De Navigation A. Vapeur v. Louisiana State Board of Health*, 186 US 380 (1902).
- C. *Rock v. Carney*, 216 Mich. 280; 85 N.W. 798 (1921).
- D. *People ex rel. Hill v. Board of Education of the City of Lansing*, 224 Mich. 388; 195 N.W. 95 (1923).

Disclaimers

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