

What You Should Know About the Legal Power of Quarantine and Isolation in Connecticut, with particular importance to how New Haven treats its most vulnerable

- 1. Connecticut law regulates who has the authority to mandate quarantine and isolation, and the conditions under which they may do so, in a public health state of emergency. Governor Lamont has issued such an order, which shall remain in effect until September 9th, 2020 unless declared otherwise.¹ However, during a health emergency as during non-emergency times, CT law is still subject to constitutional challenge and review: guiding what courts will do with these challenges is a focus of health justice advocates.**

Under a state of emergency, Connecticut state law says that the Connecticut Public Health Commissioner or any town, city, borough or district's director of health authorized by the Health Commissioner, can order the mandatory quarantine or isolation of any individual whom she has "reasonable grounds" to believe to be infected with, or exposed to, a communicable disease [...] if the commissioner determines that such individual or individuals pose a significant threat to the public health."²

- This means that there must be legally and scientifically sufficient reason to think someone has been exposed to make quarantine justifiable, and sufficient evidence that a person is infected to make isolation legally permissible.
- * NB: "Reasonable grounds to believe," the term used in Connecticut state law is arguably an inapt and an outdated legal term: this standard as grounds for mandatory quarantine/isolation is currently being challenged in federal court.³
 - The constantly changing scientific knowledge on COVID-19 and the shortage of testing, will also likely present crucial problems for mandatory quarantine/isolation orders.
 - While testing is the preferred basis for such orders, we are concerned that given limited ability to test even symptomatic persons, officials may seek to use other metrics to determine "reasonable grounds." We do not yet know what those metrics will be: the issue is how to ensure that they comport with public health and legal criteria (including equal protection and non-discrimination standards) for mandatory quarantine/isolation.
 - Further discussion of the limits on the State's ability to issue and enforce mandatory isolation/quarantine orders, as well as existing legal and public health criteria for assessing risk of infection can be found in Part I of this Memo

Any mandatory isolation/quarantine order must be "necessary and the least restrictive alternative to protect or preserve the public health."⁴

¹ <https://portal.ct.gov/-/media/Office-of-the-Governor/News/20200310-declaration-of-civil-preparedness-and-public-health-emergency.pdf?la=en>

² CONN. GEN. STAT. § 19a-131b(b)

³ For more information on the current litigation, please see: <https://law.yale.edu/yls-today/news/clinic-lawsuit-challenges-ebola-quarantines>

⁴ CONN. GEN. STAT. § 19a-131b(b)

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- Further discussion of “least restrictive means” and its implications for preferring voluntary to mandatory isolation/quarantine orders, see draft legal memo, Part II

2. Media and policy statements have frequently used the terms “quarantine” and “isolation” interchangeably. However, the terms have distinct definitions.⁵

The CDC defines Quarantine and Isolation in the following ways:

Isolation: Separates sick people with an infectious disease from people who are not sick

Quarantine: Separates and restricts the movement of people who were exposed to a contagious disease to see if they become sick.

Quarantined and isolated persons must, according to CT law, be kept separate from each other

While both groups of people have the same due process rights, the medical and public health criteria for isolation and quarantine differ.⁶

3. The State can adopt either *mandatory* or *voluntary* quarantine/isolation procedures during a State of Emergency. *Voluntary policies* are preferable from both a legal and public health perspective.

- Public health research, to which current policymakers look for guidance, often does not clearly distinguish between voluntary and mandatory self-quarantine and isolation in their case studies. Voluntary and mandatory containment aim at the same purpose: physically separating those infected or exposed from those who are not, to reduce the spread of transmission.

Many public health advocates and scholars, however, argue that voluntary measures are preferable. Mandatory orders erode the public trust, which is crucial to successful resolution of a public health emergency.⁷

From a *legal* perspective mandatory quarantine/isolation orders also differ from voluntary guidelines in significant ways.

- Mandatory quarantine and isolation orders are *deprivations of liberty and as such, implicate fundamental constitutional rights*: the right to be free of unreasonable seizure, free association, freedom from restraint, and freedom to travel.
- Individuals are also constitutionally due certain “process” rights including the right to notice, counsel, and judicial review.⁸

⁵ Further information from the CDC on understanding quarantine vs isolation can be found here: <https://www.cdc.gov/quarantine/quarantineisolation.html>

⁶ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>

⁷ Further information from public health experts can be found here: https://law.yale.edu/sites/default/files/area/center/ghjp/documents/final_covid-19_letter_from_public_health_and_legal_experts.pdf

⁸ More information on constitutional barriers to mandatory quarantine can be found here: https://www.aclu.org/sites/default/files/field_document/aclu-ebolareport.pdf

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- Mandatory quarantine/isolation orders also raise constitutional Equal Protection concerns if they are issued or enforced in a discriminatory manner. Some of these concerns may already be present in New Haven.
 - According to public statements, the city is planning to *isolate* homeless persons who have tested positive for COVID-19 at Hill Regional Career High School. The Mayor’s most recent update on April 8, 2020, stated that the city, without explanation of need, in order to ensure people do not leave the facility, will station police at the one entrance and exit of the shelter, and will video surveil the inside of the school.⁹ There has been no comparable discussion of security or law enforcement presence at other isolation facilities: Yale Health’s isolation facility at Payne-Whitney Gymnasium or at Connecticut State University’s isolation facility.
 - Policing and surveilling only the people in isolation at Career High School (currently the legal status of the isolation facility at Career Highschool is unclear) is also, when compared to the non-policing or surveillance of people at other facilities in the city, raises constitutional concerns over differential treatment, Equal Protection, and discrimination.

Quarantine and Isolation in Connecticut

The general state of Public Health Emergency issued by Governor Lamont on March 10th, 2020 calls for *voluntary* quarantine of persons who suspect they may be infected, and *voluntary* isolation of persons who have tested positive for COVID-19. The State also encourages social distancing as part of its “stay safe, stay home” order.

At present time of writing (April 10, 2020) there has been one reported mandatory isolation order in New Haven. However, this order has not been confirmed, and no other isolation/quarantine orders have been reported.

Connecticut’s Department of Health must make clear what the basis and process for issuing mandatory isolation or quarantine order is/will be. Basic rule of law, including US and state constitutional principles require publication.

The Governor should ensure that the policies are clear and that municipalities have the budgetary, material, and informational support they need to carry out both voluntary and involuntary isolation and quarantine in accordance with the law and principle of public health.

4. Connecticut law guarantees certain conditions for persons who have received a mandatory quarantine or isolation order.¹⁰

- The provision of food, clothing, clean and hygienic conditions, and other necessities;
- Frequent monitoring of health status;
- Medication and competent medical care;
 - Although not explicitly elaborated in the law, documented public health experience mandates that medical care should be adequate to a person’s needs in order to fulfill the standards of medical ethics. This means that the care should treat the disease for which

⁹ https://www.newhavenindependent.org/index.php/archives/entry/career_qa/

¹⁰ CONN. GEN. STAT. § 19a-131b(b)

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they are being isolated *and* any other illnesses or health needs, including treatment for substance use addictions the quarantined/isolated individual may experience.

- Safe and hygienic premises; and
- Family members and members of a household must also be kept together, and guardians should be kept with their children or minor wards.

5. Connecticut law also guarantees certain procedural rights to persons who have received mandatory quarantine or isolation orders.¹¹

- The order must be made in writing and include the basis for the commissioner's belief regarding presence of communicable disease
- Any order must inform the person that they have the right to a hearing on their order, the right to consult or be represented by an attorney, and that counsel can be provided at the state's expense if the person cannot afford one.
 - At present, any mandatory quarantine/isolation order is reviewable at the request of the recipient. Litigation is currently pending in the United States Court of Appeals for the Second Circuit that would subject all mandatory orders to *required* review.
- The Connecticut Probate Court reviews orders, and decisions can be appealed to the Superior Court. All hearings must be conducted within 72 hours of the request, excepting weekends and legal holidays.
 - As of this writing, habeas corpus (or basic protections against deprivation of liberty without judicial review) have *not* been suspended by the Federal Government and *are not expected to be*. Courts must establish processes to review any mandatory isolation/quarantine orders as requested, even if the courthouses are not physically open.
- The order can only be issued for twenty days, although it can be renewed as needed for additional twenty-day periods.

6. Enforcement of quarantine and isolation by law enforcement officers is highly circumscribed by law. However, public health needs can often serve as a pretext for furthering non-emergency policing of vulnerable populations.

- Local and state law enforcement officers may only enforce *mandatory* orders of quarantine/isolation, and may do so only if they have been directed through an individual order to do so by the Public Health Commissioner or her authorized delegate.¹²
 - Currently, police in New Haven and Connecticut appear to be using their standard (non-emergency powers) to break up gatherings of more than five people by, for instance, arresting for vague offenses such as disturbing the peace and loitering or issuing tickets.
 - Local governments should review and reconsider the use of law enforcement's arrest and punitive powers is consistent with the general directive to reduce jail use and the most effective means for ensuring public health. Non-coercive policing measures would improve trust in the city, and history shows, improve compliance with those policies which are necessary in a public health emergency.

¹¹ CONN. GEN. STAT. § 19a-131b(c – d)

¹² CONN. GEN. STAT. § 19a-131c