



OFFICE OF THE DIRECTOR OF POLICE  
THE UNIVERSITY OF TEXAS SYSTEM  
TRAINING BULLETIN 008



REVIEW AND SUMMARY OF PERTINENT CASE  
LAW ON ISOLATION AND QUARANTINE  
Revised: FEBRUARY 19, 2020

I. PURPOSE

The purpose of this training bulletin is to provide University of Texas System Police (UTSP) personnel a review and summary of pertinent case law on isolation and quarantine issues.

This training bulletin shall be read in conjunction with ODOP/UTSP Policy 846, "UTSP Encounters with Communicable Diseases;" Training Bulletin 006 "Ebola Virus Disease Officer Guidelines" October 13, 2014 and Training Bulletin 007 "Control And Reports Of Communicable Diseases" dated October 17, 2014 (revised February 19, 2020).

II. KEY CASE LAW CONCERNING QUARANTINE AND ISOLATION

A. Listed below in chronological order is key case law from across the United States concerning quarantine and isolation issues.

1. Gibbons v. Ogden, In 1824 the Supreme Court "alluded to a state's authority to quarantine under the police powers". (Source: <http://www.casebriefs.com/blog/law/constitutional-law/constitutional-law-keyed-to-stone/the-powers-of-congress/gibbons-v-ogden-3/>)
2. Wong Wai v. Williamson, In 1900, the San Francisco Board of Health "ordered all Chinese residents to be inoculated against bubonic plague, restricting their right to leave the city, citing nine deaths allegedly from plague. The inoculations were tainted, causing severe consequences". According to the court, it was "determined that the authority to pass the order was not within the legitimate police powers of the state." (Source: <https://case-law.vlex.com/vid/103-f-384-n-595184566> )
3. Jew Ho v. Williamson, A 1900 case in which a quarantine was found to be discriminatory since it applied only to Chinese residents, a violation of the Fourteenth Amendment. It questioned whether the plague actually caused the deaths. (Source: <https://www.sciencedirect.com/topics/computer-science/equal-protection-clause> )

4. White v. City of San Antonio, A 1901 case in which the Texas “Supreme Court noted that statutes then in force made all county and municipal (quarantine) actions subject to such rules and regulations as the governor or state health officer might prescribe, and that local health officers were bound to obey them.” (Source: <https://www.texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/1979/mw0113.pdf>)
5. Compagnie Francaise de Navigation a Vapeur v. Louisiana State Board of Health, In 1902 this case addressed a state's power to quarantine an entire geographic area. The Supreme Court held constitutional the involuntary quarantine of a ship’s passenger and cargo, even though it had been inspected and found free from any infectious diseases, from docking in New Orleans while the city suffered an outbreak of a communicable disease. (Source: <http://www.law.cornell.edu/supremecourt/text/186/380>)
6. Jacobson v. Massachusetts, A 1905 case that upheld the use of police powers to protect the public’s health. The court held that the state may delegate public health authority to local health authorities and imposed limits on individual liberty if necessary to protect public health. (Source: [https://biotech.law.lsu.edu/cases/vaccines/Jacobson\\_v\\_Massachusetts.htm](https://biotech.law.lsu.edu/cases/vaccines/Jacobson_v_Massachusetts.htm))
7. Crayton v. Larabee, In 1911 the plaintiff sued the health department stating that her smallpox quarantine was false imprisonment. The Court ruled that it was a reasonable and valid health regulation under the police power of the state. (Source: [http://biotech.law.lsu.edu/cphl/history/cases/Crayton\\_v\\_Larabee.htm](http://biotech.law.lsu.edu/cphl/history/cases/Crayton_v_Larabee.htm))
8. People ex rel. Barmore v. Robertson, This is a 1922 case in which a woman who operated a boarding house and boarded an infected person, was quarantined in her home as a carrier of typhoid fever. (Source: <http://tinyurl.com/o6lugz7>)
9. Moore v. Draper, In this 1952 case, the Supreme Court of Florida denied habeas corpus to a tuberculosis patient who claimed that the statute in question was unconstitutional and that he was denied due process of law. The petition for the writ of habeas corpus was denied. The court ruled “The enactment and enforcement of necessary and appropriate health laws and regulations is a legitimate exercise of the police power...” (source: [http://biotech.law.lsu.edu/cases/pp/moore\\_v\\_draper.htm](http://biotech.law.lsu.edu/cases/pp/moore_v_draper.htm))
10. U.S. v. Shinnick , In 1963, a female passenger was placed in isolation when she could not prove she had been vaccinated after arriving in the US from a smallpox-infected area in Stockholm, Sweden. (Source: [http://scholar.google.com/scholar\\_case?case=17671582847752514749&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](http://scholar.google.com/scholar_case?case=17671582847752514749&hl=en&as_sdt=6&as_vis=1&oi=scholar))

11. Miller v. Campbell City, A 1984 case concerning leaking methane and hydrogen gases that prompted an entire area quarantine which was violated by a resident who attempted to return home. The court decided that the quarantine was not in bad faith or malicious. (Source: <http://biotech.law.lsu.edu/cases/immunity/miller.htm>)
12. Best v. Bellevue Hospital Center, In 2003, a man diagnosed with tuberculosis was hospitalized in New York. However, prior to completion of his inpatient treatment, the plaintiff declined further treatment, expressed his intent to leave the hospital and move to another state. He was kept in the hospital through a series of court orders and hearings concerning his continued detention. Although he claimed his due process was violated, the US District Court held that “(g)iven the availability of hearings, counsel, and periodic status review(s)...(as well as) the City (New York) defendants' strict compliance with these procedures, (the plaintiff) has failed to state a claim that his procedural due process rights have been violated...” (Source: <https://casetext.com/case/best-v-st-vincent-hospital>)
13. City Of Milwaukee, V. Ruby Washington, A 2006 case in which the State of Wisconsin’s Court of Appeals ruled that that appellant should be housed in a criminal justice facility during her quarantine period for tuberculosis. The appellant “did not cooperate with attempts to help her overcome her pulmonary tuberculosis and to keep her from infecting others....(by) miss(ing) two appointments and ‘disappear(ing) from public view.’” She was also given a court order requiring her to complete a treatment regimen which “she did not comply with....”. (Source: <http://biotech.law.lsu.edu/cases/pp/ruby1.htm>)

### **III. ARTICLES AND REFERENCE MATERIALS CONCERNING CASE LAW ON ISOLATION AND QUARANTINE**

- A. The below articles and reference materials contain applicable information regarding legal authority and rights concerning case law on isolation and quarantine.

(1) **Quarantine Law Summary** (by *Alisa C. Kuehn, Esq & Melissa L. Markey, Esq; Hall Render Killian Heath & Lyman PC; [www.healthlawyers.org](http://www.healthlawyers.org), undated*)

“Originally, state quarantine laws were developed for certain common contagious diseases, such as tuberculosis. While some states continue to focus on specific contagious diseases, many others have recently updated their statutes to more generally cover any contagious disease that poses a public health threat, including new and emerging diseases.”

“Most states do not specifically address enforcement of quarantine orders. For those that do, enforcement of quarantine law rests with the local law enforcement and the local board of health.”

“However, the reality of quarantine enforcement, particularly in the case of wide-spread illness such as an epidemic or pandemic, is not clear. There has been little experience in modern America regarding the willingness of law enforcement to enforce quarantine orders. In many cases, it may be difficult for law enforcement personnel to exert force to enforce quarantine, both due to a perception that enforcing quarantine is not a ‘proper’ use of law enforcement to concerns regarding the officer's own health.”

“The federal government has the authority to authorize quarantine under certain circumstances identified in the Public Health Service Act. Federal quarantine authority arises under the Commerce Clause authority and focuses on preventing the introduction of communicable diseases from foreign countries and transmission between states, if the state response is insufficient. The federal government recognizes that state and local governments are responsible for maintaining public health and views the federal role as providing support and assisting state efforts. If, however, the state is unwilling or unable to impose appropriate and effective protection, federal regulations permit more direct intervention by the Centers for Disease Control and Prevention. As with state laws, the federal regulations have proven to be cumbersome and inefficient given increased globalization and international travel and the emergence of new communicable diseases (and re-emergence of diseases thought to have been eradicated).”

(2) **Federal and State Isolation and Quarantine Authority** (by Angie A. Welborn; Congressional Research Service, January 18, 2005)

“Currently, state and local governments have the primary authority to control the spread of dangerous diseases within their jurisdiction, with the federal government’s role limited to interstate and foreign quarantine.”

“Public health experts have developed a Model State Emergency Health Powers Act to guide states as they reevaluate their emergency response plans.” (see

<http://www.publichealthlaw.net/MSEHPA/MSEHPA.pdf>, (02/12/2020 – link no longer active)

*It appears that Texas has adopted many of these in the 83rd Legislature. Effective June 14, 2013.)*

“...the Director of the CDC is authorized to take measures as may be necessary to prevent the spread of a communicable disease from one state or possession to any other state or possession if he or she determines that measures taken by local health authorities are inadequate to prevent the spread of the disease.

The Supreme Court alluded to a state’s authority to enact quarantine laws in 1824, *Gibbons v. Ogden*. In *Gibbons*, the Court noted that while quarantine laws may affect commerce, they are,

by nature, health laws, and thus under the authority of state and local governments. Courts have noted that the duty to insure that the public health is preserved is inherent to the police power of a state and cannot be surrendered.”

“One common characteristic of most state quarantine laws is their ‘overall antiquity,’ with many statutes being between forty and one hundred years old. The more antiquated laws ‘often do not reflect contemporary scientific understandings of disease, [or] current treatments of choice.’ State laws were often enacted with a focus on a particular disease, such as tuberculosis or typhoid fever, leading to inconsistent approaches in addressing other diseases.”

“In 1902, the Court directly addressed a state’s power to quarantine an entire geographic area in *Compagnie Francaise de Navigation a Vapeur v. Louisiana State Board of Health*, where both

the law and its implementation were upheld as valid exercises of the state’s police power.... The Court...(held) that although the statute may have had an (e)ffect on commerce, it was not unconstitutional.”

“Courts have recognized an individual’s right to challenge his or her isolation or quarantine by petitioning for writ of habeas corpus.... Due process is a concern, though courts are reluctant to interfere with a state’s exercise of police powers with regard to public health matters ‘except where the regulations adopted for the protection of the public health are arbitrary, oppressive and unreasonable.’ The courts appear to give

deference to the determinations of state boards of health and generally uphold such detentions as valid.....”

“In *People ex rel. Barmore v. Robertson*, the court refused to grant the petition for writ of habeas corpus of a woman who (operated) a boarding house where a person infected with typhoid fever had boarded.....(the) court noted that “[i]t is not necessary that one be actually sick, as that term is usually applied, in order that the health authorities have the right to restrain his liberties by quarantine regulations.”

“In *Moore v. Draper*, the court stated that, “[t]he constitutional guarantees of life, liberty and property, of which a person cannot be deprived without due process of law, do not limit the exercise of the police power of the State to preserve the public health so long as that power is reasonably and fairly exercised and not abused.”

Source: <https://www2.law.umaryland.edu/marshall/crsreports/crsdocuments/RL3133301182005.pdf>

**(3) Federal and State Quarantine and Isolation Authority** (by Jared P. Cole; Congressional Research Service, October 9, 2014)

“Primary quarantine authority typically resides with state health departments and health officials; however, the federal government has jurisdiction over interstate and foreign quarantine. In addition, the federal government may assist with or take over the management of an intrastate incident if requested by a state or if the federal government determines local efforts are inadequate.....”

“Generally, federal regulations authorizing the apprehension, detention, examination, or conditional release of individuals are applicable only to individuals coming into a state or possession from a foreign country or possession.”

“Criminal sanctions are prescribed for violations of federal (laws)... Violation of a federal quarantine or isolation order is a criminal misdemeanor, and individuals may be subject to a fine of up to \$100,000, one year in jail, or both...”

“Federal district courts may enjoin individuals and organizations from violation of CDC quarantine regulations.”

“In recent years, federal agencies have developed a travel restriction tool to prevent the spread of communicable diseases of public health significance. The public health Do Not Board (DNB) list was developed by DHS (Department of Homeland Security) and the CDC (Centers for Disease Control) and made operational in June 2007.” (Note: Applies only to commercial aircraft departing from or arriving in the United States. It does not apply to ground transportation {busses and trains} or maritime vessels.)

“...the primary authority for quarantine and isolation exists at the state level as an exercise of the state’s police power. CDC acknowledges this deference to state authority...” Source: <https://fas.org/sgp/crs/misc/RL33201.pdf>

**(4) Protecting Civil Liberties During Quarantine and Isolation in Public Health Emergencies** (By Sarah Pope, JD, MA; Nisha Sherry, CPH; and Elizabeth Webster, JD; *Law Practice Today*, April 2011)

“Quarantine and isolation orders must be conducted in accordance with substantive and procedural due process, and any restrictions of civil liberties should be legal and as minimally restrictive as reasonably possible. To this end, states should ensure that the following five threshold requirements are met: 1. the individual must pose an actual threat to the public; 2. the intervention must be reasonable and effective; 3. it must be conducted in a manner that comports with equal protection and due process; 4. individuals must be provided with safe and comfortable conditions; and 5. reasonable compensation for loss of income must be ensured.”

“For the state to comply with due process, quarantined or isolated individuals should be provided with adequate notice, the right to counsel, a hearing, and an appeal.”

“...individuals should be provided with a full written explanation of why and how they are being subject to isolation or quarantine, including duration, location, and method they may employ in contesting the order.”

**(5) Legal Power and Legal Rights — Isolation and Quarantine in the Case of Drug-Resistant Tuberculosis** (by Wendy E. Parmet, J.D.; *New England Journal of Medicine*, August 2, 2007)

“In recent decades, courts have clarified the legal rights of patients with tuberculosis who are subject to compulsory isolation. Drawing an analogy between isolation orders and civil commitment for mental illness, courts have affirmed that patients who are isolated by law have many procedural due-process rights, including the right to counsel and a hearing before an independent decision maker.”

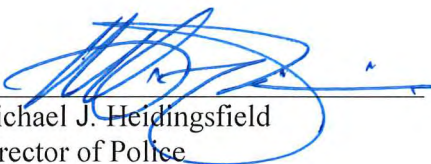
“Many important questions remain. First, courts have not decided how long someone may be held before a hearing is offered or what procedures are necessary in the event of a mass quarantine. Courts have also not yet decided what probability of risk justifies short-term or long-term detention. Nor have they clarified what evidence is needed to determine that a person is or may be infectious or how infectious a person must be to justify isolation. Most critical, courts have not explained what must be shown to conclude that a patient is noncompliant so that detention is the least restrictive alternative.” (Note: see *City Of Milwaukee, V. Ruby Washington* at <http://biotech.law.lsu.edu/cases/pp/ruby1.htm> for an example of a non-compliant issue.)

“...they have not considered how forcefully that advice must be given or what, if anything, the government has to do to facilitate compliance.”

“Another critical question is whether less restrictive tuberculosis-control programs must be in place before isolation can be considered the least restrictive alternative. For example, during the 1990s tuberculosis epidemic, New York City did not rely only on isolation orders; it increased funding for tuberculosis control (measures) and directly observed therapy and granted the commissioner of health the authority to require directly observed therapy measures that researchers credit with helping to stem the epidemic. Courts have pointed to the failure of particular patients to comply with directly observed therapy as a justification for detention. This precedent raises the possibility that compulsory isolation might not be found constitutional in the absence of a directly observed therapy program....”

“...(there are) difficult choices that public health officials face when they contemplate using their powers for isolation and quarantine. Given the rapidity with which diseases may spread around the globe, and the lethality of...tuberculosis and other emerging infections, health officials must be proactive. Unfortunately, in their need to act quickly, they may...rely on information that later is found faulty. Although understandable, this may undermine public trust in public health officials.”

“Compulsory isolation and quarantine alone cannot stop the spread of...tuberculosis. Moreover, excessive reliance on compulsory measures can lull the public into a false sense of security....”*Source: <http://www.nejm.org/doi/full/10.1056/NEJMp078133>*



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