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## A Legislator's Guide to Isolation and Quarantine Laws in the Commonwealth

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### **Introduction**

Communicable diseases pose significant threats to public health and well-being. The Code of Virginia grants the Board of Health (the Board) and the State Health Commissioner (the Commissioner) significant powers to respond to threats to public health and well-being posed by communicable diseases. Among the most significant powers granted to the Commissioner is the power to isolate and quarantine persons infected, suspected to be infected, exposed, or suspected to be exposed to communicable diseases in certain situations. This Legislator's Guide will explain the current statutory duties and authorities of the Board and the Commissioner related to protecting public health from communicable diseases generally, as well as the authority of the Commissioner to order the isolation and quarantine of persons infected, suspected to be infected, exposed, or suspected to be exposed to communicable diseases.

### **Powers and Duties of the State Health Commissioner Related to Infectious Disease Control Generally**

The Board and the Department of Health (the Department) are charged with protecting, improving, and preserving public health, including administering and providing a comprehensive program of preventive, curative, restorative, and environmental health services; educating citizens on matters related to health; developing and implementing health resource plans; collecting and preserving vital records and health statistics; assisting in research related to health; and abating health hazards and nuisances. These obligations exist in times of emergency and otherwise. (§ 32.1-2)

While the Board is responsible for adopting and enforcing regulations (§ 32.1-12), the Department, led by the Commissioner, administers the health and public health programs of the Commonwealth and carries out the day-to-day tasks of planning, implementing, and overseeing programs and services necessary to protect, improve, and preserve public health. (§ 32.1-16). The Commissioner is required by law to be a physician licensed to practice medicine in the Commonwealth who is (i) certified by the American Board of Preventive Medicine or a recognized board in a primary care specialty approved by the American Board of Medical Specialties; (ii) experienced in public health duties, sanitary science, and environmental health; and (iii) otherwise qualified to execute the duties incumbent on him by law. (§ 32.1-17) The Commissioner is appointed by the Governor and subject to confirmation by each house of the General Assembly. (§ 32.1-17)

As the head of the Department, the Commissioner is vested with significant responsibility related to public health activities generally and disease prevention and control measures specifically. With regard to disease prevention and control measures, the Commissioner is charged with:

- Surveillance of and investigation into all preventable diseases and epidemics in the Commonwealth and the means for preventing such diseases and epidemics (§ 32.1-39);
- Ordering, overseeing, and enforcing the quarantine, isolation, decontamination, immunization, or treatment of any individual or group of individuals when he determines any such measure is necessary to control the spread of any disease of public health importance (§ 32.1-43); and
- Enforcing regulations and orders adopted by the Board to address or prevent a public health emergency caused by diseases dangerous to public health.

In addition, during a public health emergency or disaster, the Commissioner may authorize persons not otherwise authorized by law to administer or dispense drugs or devices to administer or dispense all necessary drugs or devices in accordance with protocols established by the Commissioner when such authorization is necessary to permit the provision of needed drugs and devices. (§ 32.1-42.1)

The powers granted to and duties imposed on the Commissioner by the Code of Virginia ensure that the Commissioner and, by extension, the Department play a significant role in responding to public health emergencies related to communicable diseases. The scope of the Commissioner's powers and duties varies depending on the nature and scope of the threat and the steps necessary to address the threat. Among the most significant tools available to the Commissioner to address public health threats created by communicable diseases is the ability to order the isolation and quarantine of individuals infected with or exposed to a communicable disease of public health significance.

### **Isolation of Certain Persons with Communicable Disease of Public Health Significance**

The Commissioner's power to order the isolation of persons infected with a communicable disease of public health significance gives the Commissioner the authority to require the physical separation of such persons to prevent or limit the transmission of the communicable disease to uninfected and unexposed individuals. The Commissioner's isolation authorities, set forth in Article 3.01 (§ 32.1-48.01 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia are triggered when the Commissioner receives at least two verified reports or medical evidence that a person who is reputed to know that he is infected with a communicable disease of public health significance is engaging in at-risk behavior. (§ 32.1-48.02) A communicable disease of public health significance is an illness of public health significance, as determined by the Commissioner, caused by a specific or suspected infectious agent that may be transmitted directly or indirectly from one individual to another. (§ 32.1-48.01) A person is engaging in at-risk behavior when he is engaging in acts that a person who has been informed that he is infected with a communicable disease of public health significance knows may infect other persons absent appropriate precautions to protect the health of others. (§ 32.1-48.01)

#### *Investigation of Reports of At-Risk Behavior by Person Infected with Communicable Disease of Public Health Significance*

Upon receipt of two or more verified reports that a person who is reputed to know that he is infected with a communicable disease of public health significance is engaging in at-risk



behavior, the Commissioner may conduct an investigation to determine whether the person (i) has a communicable disease of public health significance and (ii) is engaging in at-risk behavior. The investigation may include an examination of the Department's records and other medical records. If the Commissioner determines, following the investigation, that the person does have a communicable disease of public health significance and he is engaging in at risk behavior, the Commissioner may take steps to isolate the individual. Depending on the results of the investigation, there are two options available to the Commissioner with regard to isolation of the person. (subsection A of § 32.1-48.02)

*Order for Counseling and Isolation – Communicable Diseases Caused by Non-Airborne Microorganisms*

If the investigation indicates that the person has a communicable disease of public health significance caused by a non-airborne microorganism and there is probable cause to believe that he is engaging in at-risk behavior, the Commissioner may issue an order requiring the person to report to his local health department to receive counseling on the etiology, effects, and prevention of the specific disease of public health significance. The person providing counseling must document (i) that the person who is the subject of the order has been counseled about what constitutes at-risk behavior, appropriate precautions to prevent the exposure and infection of others, and the need to use appropriate precautions and (ii) any statements indicating the intentions or understanding of the person counseled. (subsection B of § 32.1-48.02)

In cases in which a person who has a communicable disease of public health significance caused by a non-airborne microorganism continues to engage in at-risk behavior despite appropriate counseling by the local or regional health department, the Commissioner may petition the general district court of the county or city in which the person resides to order such person to appear before the court to determine whether isolation of the person is necessary to protect the public health from the risk of infection with the communicable disease of public health significance. (subsection A of § 32.1-48.03) If the person cannot be brought before the court, the court may issue an order for temporary detention confining the person to his residence or the residence of another person or in some convenient and willing institution or other willing place until such time as a hearing on the petition can be held. The period of temporary detention pursuant to the order may not exceed 48 hours. (subsection B of § 32.1-48.03)

Prior to any hearing on a petition for isolation, the person who is the subject of the petition shall be notified of his right to be represented by counsel and shall be fully informed of the basis for his detention, the basis upon which he may be isolated, and his right to appeal a decision regarding isolation. The court may enter an order for isolation of the person upon a finding that the following conditions are met: (i) the person is infected with a communicable disease of public health significance, (ii) the person is engaging in at-risk behavior, (iii) the person has demonstrated an intentional disregard for the health of the public by engaging in behavior that has placed others at risk for infection with the communicable disease of public health significance, and (iv) there is no other reasonable alternative means of reducing the risk to public health. The order may require the isolation of the person in his residence or the residence of another, or an institution or other place, including a jail when no other reasonable alternative is available, and may impose additional requirements, such as participation in counseling and education programs. The period of isolation shall be for no more than 120 days. A person may be released from isolation before the running of the specified period if the Commissioner or the court determines that the person no longer poses a substantial threat to public health. An order



for isolation shall not be renewed without affording all rights conferred in Article 3 (§ 32.1-42 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia. A person for whom an order of isolation is issued has the right to appeal the order to the circuit court in the jurisdiction in which he resides. The appeal must be made within 30 days of the date of the initial order of isolation and shall be heard de novo.

*Order for Outpatient Treatment or Emergency Isolation – Communicable Diseases Caused by Airborne Microorganisms*

If the investigation indicates that the person has a communicable disease of public health significance caused by an airborne microorganism that causes serious disease and can result in death, and that the person has refused or failed to adhere to a prescribed course of treatment and, despite counseling, is engaging in conduct that places uninfected persons at risk of contracting such airborne diseases, the Commissioner may issue an order requiring the person to report to the local or district health department to receive (i) education and counseling regarding the communicable disease of public health significance and (ii) appropriate outpatient treatment for the communicable disease of public health significance. (subsection C of § 32.1-48.02)

In cases in which a person who has a communicable disease of public health significance caused by an airborne microorganism that causes serious disease and can result in death continues to engage in conduct that unreasonably places uninfected persons at risk of exposure to and infection with the disease despite documented and appropriate counseling regarding the communicable disease of public health significance, the Commissioner may issue an order for emergency custody of the person if medical data demonstrates that the person poses an imminent threat to the health of others and the person has (i) refused or failed to report to the local health department despite an order for outpatient treatment, (ii) a documented history of failure to adhere to a prescribed course of treatment, or (iii) indicated that he will not comply with the prescribed treatment and such indication has been documented. Pursuant to the order for emergency custody, the Commissioner may cause the person to be taken into immediate custody and placed in the least restrictive facility capable of and willing to provide appropriate treatment of the person and protection of public health. The period of emergency custody shall not exceed 48 hours. (subsections D and E of § 32.1-48.02)

**Quarantine and Isolation of Persons with Communicable Disease of Public Health Threat**

An order of isolation issued pursuant to Article 3.01 (§ 32.1-48.01 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia allows the Commissioner to physically separate a person infected with a communicable disease of public health significance to prevent or limit the transmission of the communicable disease to uninfected and unexposed individuals. However, in some cases, the threat posed by a communicable disease may be so significant that additional measures are necessary to protect public health. When the Commissioner determines that exceptional circumstances exist relating to one or more persons in the Commonwealth who are known to have been exposed to or infected with or reasonably suspected to have been exposed to or infected with a communicable disease of public health threat and that such exceptional circumstances render the procedures of Article 3.01 (§ 32.1-48.01 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia relating to isolation of persons with certain communicable diseases of public health significance to be insufficient control measures or that persons have failed or refused to comply voluntarily with control measures in response to a communicable disease of public health threat, the Commissioner may invoke the provisions of Article 3.02 (§ 32.1-48.05



et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia relating to quarantine and isolation of persons infected or suspected to be infected with or exposed or suspected to be exposed to a communicable disease of public health threat.

#### *Preliminary Requirements*

Prior to issuing an order of quarantine or isolation, the Commissioner must ensure (i) that any quarantine or isolation is implemented in the least restrictive environment necessary to contain the communicable disease of public health threat; (ii) that quarantined persons are confined separately from isolated persons, to the maximum extent practicable; (iii) that, upon determining that any quarantined person can be reasonably believed to have become infected with a communicable disease of public health threat, the infected person is promptly removed from quarantine and placed in isolation; (iv) that the health and disease status of quarantined and isolated persons is monitored regularly to determine if such persons require continued quarantine or isolation; (v) that quarantined or isolated persons are immediately released from quarantine or isolation upon a determination by the Commissioner that such quarantined or isolated persons pose no risk of transmitting the communicable disease of public health threat to other persons; and (vi) that the site of any quarantine or isolation is, to the extent practicable, safely and hygienically maintained with adequate food, clothing, health care, and other essential needs made available to the persons who are subject to any order of quarantine or isolation. (§ 32.1-48.07)

#### *Order of Quarantine*

Quarantine is the physical separation, including confinement or restriction of movement, of persons who are known to have been exposed to or are reasonably suspected to have been exposed to a communicable disease of public health threat or who are present in an affected area and who do not yet show signs or symptoms of infection with the communicable disease of public health threat. An affected area is any part or the whole of the Commonwealth that has been identified as a place where persons who are known to have been exposed to or infected with or who are reasonably suspected to have been exposed to or infected with a communicable disease of public health threat reside or may be located. A communicable disease of public health threat is an illness of public health significance as determined by the Commissioner that is caused by a specific or suspected infectious agent that may be reasonably expected to or is known to be readily transmitted directly or indirectly from one individual to another and has been found to create a risk of death or significant injury or impairment. The purpose of a quarantine is to prevent or limit the transmission of the communicable disease of public health threat to unexposed and uninfected individuals. (§ 32.1-48.06)

The Commissioner may enter an order of quarantine upon the declaration of a state of emergency by the Governor pursuant to § 44-146.17 and a determination that exceptional circumstances exist relating to one or more persons in the Commonwealth who have been exposed to or infected with a communicable disease of public health threat and that such exceptional circumstances render the procedures of Article 3.01 (§ 32.1-48.01 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia to be insufficient control measures or that the individuals have failed or refused to comply voluntarily with the control measures. The order of quarantine must:

- Identify the communicable disease of public health threat that is reasonably believed to be involved and the reasons why exceptional circumstances apply and the quarantine is the necessary means by which the risks of transmission of the disease may be contained;



- Contain sufficient information to provide reasonable notice to persons who are affected by the order that they are subject to the order and specify the means by which the quarantine is to be implemented;
- Clearly establish the geographic parameters of the quarantine, if the order is for an affected area;
- Specify the duration of the quarantine;
- Provide sufficient direction for compliance with the quarantine to enable persons subject to the quarantine to comply;
- Provide timely opportunities, if not readily available under the circumstances, for persons who are subject to the order to notify employers, next of kin or legally authorized representatives, and the attorney of their choice of the situation;
- Specify the penalty or penalties that may be imposed for noncompliance with the order; and
- Include a copy of § 32.1-48.010 to inform any person subject to the order of the right to seek judicial review of the order. (§ 32.1-48.09)

### *Order of Isolation*

Isolation, for the purposes of Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia is the physical separation, including confinement or restriction of movement, of an individual or individuals who are infected with or are reasonably suspected to be infected with a communicable disease of public health threat in order to prevent or limit the transmission of the communicable disease of public health threat to other uninfected and unexposed individuals. (§ 32.1-48.06) The Commissioner may order the isolation of a person who is infected with or is reasonably suspected to be infected with a communicable disease of public health threat upon the declaration of a state of emergency by the Governor pursuant to § 44-146.17 and a determination that that (i) exceptional circumstances exist relating to one or more persons in the Commonwealth who are known to have been exposed to or infected with or reasonably suspected to have been exposed to or infected with a communicable disease of public health threat; (ii) such exceptional circumstances render the procedures of Article 3.01 (§ 32.1-48.01 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia relating to isolation of persons with certain communicable diseases of public health significance to be insufficient control measures; and (iii) isolation is necessary to ensure such isolated person receives appropriate medical treatment and to protect health care workers, others who may come into contact with the person, and public health. The Commissioner must document the findings and information upon which he relied to make a determination that an order for isolation of a person with a communicable disease of public health threat is appropriate. (§ 32.1-48.011)

The order of isolation must (i) identify the person or persons subject to such order, (ii) identify the site of isolation, (iii) specify the date and time that isolation is to commence, (iv) identify the communicable disease of public health threat or the suspected communicable disease of public health threat with which the person is or persons are known or reasonably suspected to be infected, (v) specify the basis for isolation, including why isolation is the necessary means to contain the transmission of the disease, and any conditions for the isolation, (vi) provide timely opportunities, if not readily available under the circumstances, for the person who is or persons who are subject to the order to notify employers, next of kin or legally authorized representatives, and an attorney of his or their choice of the situation, (vii) specify the penalties that may be imposed for noncompliance with the order, and (viii) include a copy of § 32.1-



48.013 to inform the person or persons subject to the order of the right to seek judicial review of the order. (§ 32.1-48.012)

If a person who is the subject of an order of isolation requires hospitalization or other health care services during the period of isolation, the Commissioner may take steps to ensure that necessary health care services are provided. The Commissioner may monitor the condition of a person who is the subject of an order of isolation through such means as the Commissioner deems appropriate, including regular visits to the person by a public health nurse or by other means. (subsections E and F of §32.1-48.011)

#### *Review of Orders of Quarantine and Isolation*

Upon issuance of an order of quarantine or isolation, the Commissioner must file a petition seeking an ex parte court order to review and confirm the order of quarantine or isolation in the circuit court with jurisdiction over the affected person or area. The petition must include a copy of the order of quarantine or isolation or a statement of all information contained in the Commissioner's order of quarantine or isolation and a summary of the findings upon which the Commissioner relied in deciding to issue the order of quarantine or isolation. In reviewing the petition, the court must give due deference to the specialized expertise of the Commissioner. The court shall grant the petition and confirm the order of quarantine or isolation upon finding probable cause that quarantine or isolation, as appropriate, was the necessary means to contain the disease of public health threat and is being implemented in the least restrictive environment to address the public health threat effectively, given the reasonably available information on effective control measures and the nature of the communicable disease of public health threat. (§§ 32.1-48.09 and 32.1-48.012)

#### *Duration of Order of Quarantine or Isolation*

The duration of an order of quarantine or isolation shall be for a period consistent with the known incubation period of the communicable disease of public health threat or, if the incubation period is unknown, for a period anticipated as being consistent with the incubation period of other similar infectious agents. (subsection C of § 32.1-48.08 and subsection D of § 32.1-48.011) The Commissioner may extend the duration of the quarantine or isolation upon a finding that such extension is necessary. Such extension must be reviewed by the court in the same manner as the review of the original order. (subsection F of § 32.1-48.09 and subsection G of § 32.1-48.012).

#### *Appeal of Orders of Quarantine and Isolation*

As practicable, orders of quarantine or isolation must be delivered to affected persons or otherwise communicated to affected persons. (subsection C of § 32.1-48.09 and subsection C of § 32.1-48.012) Any person who is the subject of an order of quarantine or isolation may appeal the order pursuant to §§ 32.1-48.010 and 32.1-48.013. Such appeal must be made in writing in the circuit court of the city or county in which the person resides and must set forth the grounds on which the quarantine or isolation is challenged. A hearing on the appeal must be held within 48 hours of the filing of the petition. At the hearing, the person who is the subject of the order of quarantine or isolation has the burden of proving that he is not properly the subject of such order. Following the hearing, the court may vacate, modify, or confirm the order. If the court vacates an order of quarantine or isolation with respect to any person, the person shall immediately be released from quarantine or isolation unless an appeal of the decision is filed.



### *Enforcement*

Valid orders of quarantine or isolation are enforced by law-enforcement agencies, as directed by the Commissioner. (subsection J of § 32.1-48.09 and subsection K of § 32.1-48.012) Such enforcement may include detention or arrest of a person who has violated an order of quarantine or isolation or for whom probable cause exists to believe he may fail or refuse to comply with such order. Any person who fails to comply with a valid order of quarantine or isolation is subject to civil and criminal penalties pursuant to § 32.1-27, including potential conviction of a Class 1 misdemeanor. (§ 32.1-48.014)

### *Use of Public or Private Property or Facilities for Quarantine or Isolation*

The Commissioner may require the use of any public or private property, building, or facility to implement any order of quarantine or isolation. (§ 32.1-48.017)

### **Conclusion**

The isolation and quarantine powers granted to the Commissioner provide important tools for the protection of public health during an emergency. The appropriateness of an order of isolation or quarantine is dependent on the specific facts of the case. The Code of Virginia includes specific procedural requirements and clear limits on the authority of the Commissioner intended to protect individual rights while ensuring public health. This Legislator's Guide is intended to provide a basic overview of the statutes and regulations governing isolation and quarantine in the Commonwealth. For additional information, please contact Julia Carlton (jcarlton@dls.virginia.gov), Anna Moir (amoir@dls.virginia.gov) or Sarah Stanton (sstanton@dls.virginia.gov) at the Division of Legislative Services.

