

Indiana Bench Book Update

The Indiana General Assembly has enacted significant changes to the Indiana Public Health Law. The changes are effective July 1, 2006.

The first improvement is that Indiana now has a statutory definition of isolation and quarantine. The additional details providing guidance for the public health authority are also helpful.

DEFINITIONS

"Isolation," for purposes of I.C. 16-41-9, means the physical separation, including confinement or restriction, of an individual or a group of individuals from the general public if the individual or group is infected with a dangerous communicable disease (as described in I.C. 16-18-2-91 and 410 IAC 1-2.3-47), in order to prevent or limit the transmission of the disease to an uninfected individual. I.C. 16-18-2-194.5

"Quarantine," for purposes of I.C. 16-41-9, means the physical separation, including confinement or restriction of movement, of an individual or a group of individuals who have been exposed to a dangerous communicable disease (as described in I.C. 16-18-2-91 and 410 IAC 1-2.3-47), during the disease's period of communicability, in order to prevent or limit the transmission of the disease to an uninfected individual. I.C. 16-18-2-302.6

The 2006 additions to the public health code also lay out specific directions for obtaining the courts' enforcement of isolation and quarantine orders.

JURISDICTION

A public health authority may petition a circuit or superior court for an order of isolation or quarantine by filing a civil action in accordance with I.C. 16-41-9.

VENUE

1. Preferred venue for a petition is:
 - (1) the county or counties (if the area of isolation or quarantine includes more than one (1) county) where the individual, premises, or location to be isolated or quarantined is located; or
 - (2) a county adjacent to the county or counties (if the area of isolation or quarantine includes more than one (1) county) where the individual, premises, or location to be isolated or quarantined is located. This subsection does not preclude a change of venue for good cause shown.

Unless otherwise provided by law, a change of venue from the county may not be granted for court proceedings initiated under this section.

2. Change of judge

A change of venue from a judge must meet the requirements in I.C. 34-35-3-3 [sic] for court proceedings initiated under this section.

WHO MAY SEEK AN ORDER OF ISOLATION OR QUARANTINE?

Only a "public health authority," as defined by statute, may seek an order of isolation or quarantine.

For purposes of I.C. 16-22-8 and I.C. 16-41-9, public health authority is defined as follows:

- (1) the state health commissioner of the state department;
- (2) a deputy or an assistant state health commissioner appointed by the state health commissioner, or an agent expressly authorized by the state health commissioner;
- (3) the local health officer; or
- (4) a health and hospital corporation established under I.C. 16-22-8-6.

WHEN MAY A PUBLIC HEALTH OFFICER SEEK TO ISOLATE OR QUARANTINE?

If the public health authority has reason to believe that:

- (1) an individual
 - (A) has been infected with; or
 - (B) has been exposed to;
a dangerous communicable disease or outbreak; and
- (2) the individual is likely to cause the infection of an uninfected individual if the individual is not restricted in the individual's ability to come into contact with an uninfected individual;
the public health authority may petition a circuit or superior court for an order imposing isolation or quarantine on the individual. I.C. 16-41-9-1.5

WHAT ARE THE REQUIREMENTS FOR THE PETITION REQUESTING AN ISOLATION OR QUARANTINE ORDER?

- 1) The petition must be filed by someone authorized by the statute to file.
- 2) A petition for isolation or quarantine filed under this subsection must be verified.
- 3) A petition must include
 - i) a brief description of the facts supporting the public health authority's belief that isolation or quarantine should be imposed on an individual; and,
 - ii) a description of any efforts the public health authority made to obtain the individual's voluntary compliance with isolation or quarantine before filing the petition.

WHAT ARE THE NOTICE REQUIREMENTS?

An individual described in subsection (a) is entitled to notice. That notice is not defined so one should assume that the Indiana Rules of Trial Procedure apply.

Rule 4.1. Summons: Service on individuals

(A) In General. Service may be made upon an individual, or an individual acting in a representative capacity, by:

- (1) sending a copy of the summons and complaint by registered or certified mail or other public means by which a written acknowledgment of receipt may be requested and obtained to his residence, place of business or employment with return receipt requested and returned showing receipt of the letter; or
- (2) delivering a copy of the summons and complaint to him personally; or
- (3) leaving a copy of the summons and complaint at his dwelling house or usual place of abode;
or
- (4) serving his agent as provided by rule, statute or valid agreement.

(B) Copy Service to Be Followed With Mail. Whenever service is made under Clause (3) or (4) of subdivision (A), the person making the service also shall send by first class mail, a copy of the

summons without the complaint to the last known address of the person being served, and this fact shall be shown upon the return.

However, if the public health authority has reason to believe that an individual described is likely to expose an uninfected individual to a dangerous communicable disease or outbreak before the individual can be provided with notice and an opportunity to be heard, the public health authority may seek in a circuit or superior court an emergency order of quarantine or isolation by filing a verified petition for emergency quarantine or isolation.

WHAT ARE THE RIGHTS OF THE INDIVIDUAL?

1. An opportunity to be heard, in person
2. To be represented by counsel

WHEN CAN THE COURT EXCLUDE AN INDIVIDUAL RESPONDENT FROM HIS OR HER OWN HEARING?

A court may restrict an individual's right to appear in person if the court finds that the individual's personal appearance is likely to expose an uninfected person to a dangerous communicable disease or outbreak.

HOW WILL THE LIBERTY INTERESTS OF INDIVIDUALS BE PROTECTED?

If an individual is restricted from appearing in person under subsection (b), the court shall hold the hearing in a manner that allows all parties to fully and safely participate in the proceedings under the circumstances.

WHEN MAY THE COURT ISSUE AN ORDER OF ISOLATION OR QUARANTINE?

The court may issue an order imposing isolation or quarantine on the individual only when

(a.) If the public health authority proves by clear and convincing evidence that:

- (1) an individual has been infected or exposed to a dangerous communicable disease or outbreak; and
 - (2) the individual is likely to cause the infection of an uninfected individual if the individual is not restricted in the individual's ability to come into contact with an uninfected individual.
- The court may issue an emergency order imposing isolation or quarantine on the individual.

WHAT CONTENT IS REQUIRED IN THE ORDER?

The court shall establish the duration and other conditions of isolation or quarantine. The court shall impose the least restrictive conditions of isolation or quarantine that are consistent with the protection of the public.

WHEN MAY THE COURT ISSUE AN ORDER OF ISOLATION OR QUARANTINE WITHOUT NOTICE?

When the court finds that the individual may expose an uninfected individual to a dangerous communicable disease or outbreak before the individual can be provided with notice and an opportunity to be heard, the court may issue such an order.

WHEN MAY A COURT ISSUE AN EMERGENCY ORDER OF ISOLATION OR QUARANTINE WITHOUT THE VERIFIED PETITION?

A court may issue an emergency order of isolation or quarantine without the verified petition required by statute if the court receives sworn testimony of the same facts required in the verified petition:

- (1) in a nonadversarial, recorded hearing before the judge;
- (2) orally by telephone or radio;
- (3) in writing by facsimile transmission (fax); or
- (4) through other electronic means approved by the court.

WHAT IS THE PROCESS FOR DOCUMENTING THE EMERGENCY ORDER?

When a court issues an emergency order of isolation or quarantine based upon information received without a properly filed petition or in a non-adversarial hearing using electronic means,

1. The court shall direct the public health authority to sign the judge's name and to write the time and date of issuance on the proposed emergency order.

2. If the court agrees to issue an emergency order of isolation or quarantine based upon information received by facsimile transmission, the court shall direct the public health authority to transmit a proposed emergency order to the court, which the court shall sign, add the date of issuance, and transmit back to the public health authority. A court may modify the conditions of a proposed emergency order.

Also, the court shall order the court reporter to retype or copy the facsimile transmission for entry in the record. The court shall certify the transcription or copy and order retained by the judge for entry in the record.

3. If an emergency order of isolation or quarantine is issued as a result of an oral hearing by telephone or radio, the court shall record the conversation on audiotape and order the court reporter to type or transcribe the recording for entry in the record. The court shall certify the audiotape, the transcription, and the order retained by the judge for entry in the record.

Under any of the above circumstances, the clerk shall notify the public health authority who received an emergency order when the transcription or copy required under this section is entered in the record. The public health authority shall sign the typed, transcribed, or copied entry upon receiving notice from the court reporter.

WHEN MAY A PUBLIC HEALTH AUTHORITY ISSUE AN IMMEDIATE ORDER IMPOSING ISOLATION OR QUARANTINE ON AN INDIVIDUAL?

When exigent circumstances, including the number of affected individuals, exist that make it impracticable for the public health authority to seek an order from a court, and obtaining the individual's voluntary compliance is or has proven impracticable or ineffective, the public health authority may issue an immediate order of isolation or quarantine. **Such an order expires after seventy-two (72) hours, excluding Saturdays, Sundays, and legal holidays, unless renewed in accordance with the statute.**

WHAT ARE THE CONDITIONS OF THE ORDER?

The public health authority shall establish the other conditions of isolation or quarantine. The public health authority shall impose the least restrictive conditions of isolation or quarantine that are consistent with the protection of the public. If the immediate order applies to a group of

individuals and it is impracticable to provide individual notice, the public health authority shall post a copy of the order where it is likely to be seen by individuals subject to the order.

HOW MAY THE PUBLIC HEALTH AUTHORITY RENEW AN ORDER OF ISOLATION OR QUARANTINE OR AN IMMEDIATE ORDER OF ISOLATION OR QUARANTINE ISSUED UNDER THIS SECTION?

(1) By filing a petition to renew the emergency order of isolation or quarantine or the immediate order of isolation or quarantine with:

- (A) the court that granted the emergency order of isolation or quarantine; or
- (B) a circuit or superior court, in the case of an immediate order.

The petition for renewal must include a brief description of the facts supporting the public health authority's belief that the individual who is the subject of the petition should remain in isolation or quarantine and a description of any efforts the public health authority made to obtain the individual's voluntary compliance with isolation or quarantine before filing the petition;
AND,

(2) By providing the individual who is the subject of the emergency order of isolation or quarantine or the immediate order of isolation or quarantine with a copy of the petition and notice of the hearing at least twenty-four (24) hours before the time of the hearing **AND;**

(3) By informing the individual who is the subject of the emergency order of isolation or quarantine or the immediate order of isolation or quarantine that the individual has the right to:

- (A) appear, unless the court finds that the individual's personal appearance may expose an uninfected person to a dangerous communicable disease or outbreak;
- (B) cross-examine witnesses; and
- (C) counsel, including court appointed counsel in accordance with subsection (c).

(4) If:

- (A) the petition applies to a group of individuals; and
- (B) it is impracticable to provide individual notice;

by posting the petition in a conspicuous location on the isolation or quarantine premises.

(m) If the public health authority proves by clear and convincing evidence at a hearing under subsection (l) that:

(1) an individual has been infected or exposed to a dangerous communicable disease or outbreak; and

(2) the individual is likely to cause the infection of an uninfected individual if the individual is not restricted in the individual's ability to come into contact with an uninfected individual; the court may renew the existing order of isolation or quarantine or issue a new order imposing isolation or quarantine on the individual.

WHAT CONDITIONS SHOULD A COURT PLACE ON ISOLATION OR QUARANTINE ORDERS?

A court shall establish the conditions of isolation or quarantine as follows:

- A. State the duration of isolation or quarantine.
- B. Impose the least restrictive conditions of isolation or quarantine that are consistent with the protection of the public.
- C. Assure that quarantined individuals have sufficient supplies to remain in their own home.

- D. If an out of home, nonhospital quarantine is imposed on an individual, the individual shall be housed as close as possible to the individual's residence.

WHEN DOES THE QUARANTINE END IF THE PERSON IS NOT CONTAGIOUS?

The local health officer may file a report with the court that states that a carrier who has been detained under this article may be discharged without danger to the health or life of others.

(b) The court may enter an order of release based on information presented by the local health officer or other sources.

WHAT COURTS HAVE JURISDICTION AND WHAT IS PREFERRED VENUE?

A circuit or superior court in any county has jurisdiction. Preferred venue for a petition for isolation and quarantine is:

(1) the county or counties (if the area of isolation or quarantine includes more than one (1) county) where the individual, premises, or location to be isolated or quarantined is located; or

(2) a county adjacent to the county or counties (if the area of isolation or quarantine includes more than one (1) county) where the individual, premises, or location to be isolated or quarantined is located.

This subsection does not preclude a change of venue for good cause shown.

WHEN MAY A COURT CONSOLIDATE CASES FOR HEARING?

A consolidated hearing may be held by the court when

(1) the number of individuals who may be subject to isolation or quarantine, or who are subject to isolation or quarantine, is so large as to render individual participation impractical;

(2) the law and the facts concerning the individuals are similar; and

(3) the individuals have similar rights at issue.

A court may appoint an attorney to represent a group of similarly situated individuals if the individuals can be adequately represented. An individual may retain his or her own counsel, or proceed pro se.

WHAT ABOUT FAMILIES AND THE CHILDREN?

A public health authority that imposes a quarantine that is not in the quarantined person's home:

(1) shall allow the parent or guardian of a child who is quarantined under this section; and

(2) may allow an adult;

to remain with the quarantined individual in quarantine. As a condition of remaining with the quarantined individual, the public health authority may require a person described in subdivision (2) who has not been exposed to a dangerous communicable disease to receive an immunization or treatment for the disease or condition, if an immunization or treatment is available and if requiring immunization or treatment does not violate a constitutional right.

(q) If an individual who is quarantined under this section is the sole parent or guardian of one (1) or more children who are not quarantined, the child or children shall be placed in the residence of a relative, friend, or neighbor of the quarantined individual until the quarantine period has expired. Placement under this subsection must be in accordance with the directives of the parent or guardian, if possible.

WHEN IS THE COURT REQUIRED TO APPOINT AN ATTORNEY TO REPRESENT AN INDIGENT INDIVIDUAL IN AN ACTION BROUGHT UNDER THIS CHAPTER OR UNDER I.C. 16-41-6?

Any time an order is sought to isolate and quarantine an indigent person. If funds to pay for the court appointed attorney are not available from any other source, the state department may use the proceeds of a grant or loan to reimburse the county, state, or attorney for the costs of representation.

WHAT ARE THE CRIMINAL PENALTIES FOR VIOLATING A CONDITION OF ISOLATION OR QUARANTINE?

A person who knowingly or intentionally violates a condition of isolation or quarantine under this chapter commits violating quarantine or isolation, a Class A misdemeanor.

WHAT ARE THE DUTIES OF STATE AND LOCAL LAW ENFORCEMENT AGENCIES?

The Indiana statute merely states that they shall cooperate with the public health authority in enforcing an order of isolation or quarantine.

WHAT ARE THE DUTIES OF THE STATE DEPARTMENT OF HEALTH?

The state department of health is required to adopt rules to establish guidelines (not mandates) for:

- (1) voluntary compliance with isolation and quarantine;
- (2) quarantine locations and logistical support; and
- (3) moving individuals to and from a quarantine location.

WHAT ARE OPTIONAL DUTIES OF A PUBLIC HEALTH AUTHORITY?

A public health authority may impose or petition a court to impose a quarantine and do the following:

- (1) Distribute information to the public concerning:
 - (A) the risks of the disease;
 - (B) how the disease is transmitted;
 - (C) available precautions to reduce the risk of contracting the disease;
 - (D) the symptoms of the disease; and
 - (E) available medical or nonmedical treatments available for the disease.
- (2) Instruct the public concerning social distancing.
- (3) Request that the public inform the public health authority or a law enforcement agency if a family member contracts the disease.
- (4) Instruct the public on self quarantine and provide a distinctive means of identifying a home that is self-quarantined.
- (5) Instruct the public on the use of masks, gloves, disinfectant, and other means of reducing exposure to the disease.
- (6) Close schools, athletic events, and other nonessential situations in which people gather.

HOW ARE INDIVIDUALS ABLE TO PROTECT THEMSELVES AND THEIR FIREARMS?

In exercising its powers, the public health authority may not prohibit a person lawfully permitted to possess a firearm from possessing one (1) or more firearms unless the person is quarantined in a mass quarantine location. The public health authority may not remove a firearm from the person's home, even if the person is quarantined in a mass quarantine location.

(d) This section does not prohibit a public health authority from adopting rules and enforcing rules to implement this section if the rules are not inconsistent with this section.

WHAT IS REQUIRED TO ESTABLISH AN IMMUNIZATION PROGRAM BY A PUBLIC HEALTH AUTHORITY TO COMBAT A PUBLIC HEALTH EMERGENCY?

The state health department is the only department required to develop and distribute or post information concerning the risks and benefits of immunization.

(2) No person may be required to receive an immunization without that person's consent. No child may be required to receive an immunization without the consent of the child's parent, guardian, or custodian. The state health department may implement the procedures allowed by law concerning a person who refuses to receive an immunization or the child of a parent, guardian, or custodian who refuses to consent to the child receiving an immunization.

WHO IS GOING TO PAY FOR THE CARE OF THOSE WHO ARE ISOLATED OR QUARANTINED?

The court shall determine what part of the cost of care or treatment ordered by the court, if any, the carrier can pay and whether there are other available sources of public or private funding responsible for payment of the carrier's care or treatment. The carrier shall provide the court documents and other information necessary to determine financial ability. If the carrier cannot pay the full cost of care and other sources of public or private funding responsible for payment of the carrier's care or treatment are not available, the county is responsible for the cost. If the carrier:

- (1) provides inaccurate or misleading information; or
- (2) later becomes able to pay the full cost of care;

the carrier becomes liable to the county for costs paid by the county.

(b) Except as provided in subsections (c) and (d), the costs incurred by the county under this chapter are limited to the costs incurred this chapter.

(c) However, subsection (b) does not relieve the county of the responsibility for the costs of a carrier who is ordered by the court under this chapter to a county facility.

(d) Costs, other than costs described in subsections (b) and (c) that are incurred by the county for care ordered by the court under this chapter, shall be reimbursed by the state under I.C. 16-21-7 to the extent funds have been appropriated for reimbursement.