



**Emergency Response to Bioterrorism:
The Authority of First Responders**
MIKE COX
ATTORNEY GENERAL
Presented by: Robert Ianni
Senior Deputy Director
Consumer Protection Bureau



I. Three Tiers of Authority

Generally there are three sources where you will find your legal authority.



- A. Emergency Powers
- B. Codes & Other Statutory Powers
- C. Common Law Powers

II. Emergency Powers

A. Emergency powers are usually found in state or federal Emergency Management Statutes and are intended to maximize the Government's ability or respond to natural or man-made emergencies.

Emergency Powers are the gold standard when it comes to emergency response, in terms of the authority they provide.

Emergency Powers

B. Governor's Emergency Power

1. Act 302 (1945)

Allows Governor to proclaim a state of emergency and to issue orders, rules and regulations to protect life and property.

Emergency Powers

2. Act 390 (1976), MCL 30.401 *et seq*:

Sec. 5. (1) In addition to the general authority granted to the governor by this act, the governor may, upon the declaration of a state of disaster or a state of emergency for in the event of acts or threats of terrorism, a "heightened state of alert"] do 1 or more of the following:

(a) Suspend a regulatory statute, order, or rule prescribing the procedures for conduct of state business . . .

**Michigan Emergency Management Act,
(MCL 30.401 *et seq*), *cont'd*:**

(c) Transfer the direction, personnel, or functions of state departments, agencies, or units thereof for the purpose of performing or facilitating emergency management.

(d) [C]ommandeer or utilize private property necessary to cope with the disaster or emergency.

(e) Direct and compel the evacuation of all or part of the population from a stricken or threatened area. . .

**Michigan Emergency Management Act,
(MCL 30.401 et seq), cont'd:**

* * *

(h) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles.

**Michigan Emergency Management Act,
(MCL 30.401 et seq), cont'd:**

(2) A person who willfully disobeys or interferes with the implementation of a rule, order, or directive issued by the governor pursuant to this section is guilty of misdemeanor. (MCL 30.405)

Executive Proclamation



Acrobat Document

Executive Order



Acrobat Document

Michigan Emergency Management Act,
(MCL 30.401 *et seq*) *cont'd*

Governor's authority over the Nat'l Guard

(MCL 32.579)

(2) If any portion of the organized militia is called into active service, active state service, or the service of the United States to execute the laws, engage in disaster relief, suppress or prevent actual or threatened riot or insurrection, repel invasion, respond to acts or threats of terrorism or safeguard military or other vital resources of this state or of the United States, . . . a commanding officer shall use his or her own judgment in apprehending or dispersing a sniper, a rioter, a mob, or an unlawful assembly.

National Guard Officers have broad authority

That commanding officer shall determine the amount and kind of force to be used in preserving the peace and carrying out the orders of the governor. Except as provided in subsection (3), that commanding officer's honest and reasonable judgment under the circumstances then existing, in the exercise of his or her duty, is full protection, civilly and criminally, for an act done in the line of duty, and a member of the organized militia in active service, active state service, or the service of the United States is not liable civilly or criminally for an act committed by him or her in the performance of his or her duty.

Michigan Emergency Management Act,
(MCL 30.401 *et seq*) *cont'd*

Special attention for emergency medical personnel

(5) A . . . licensed paramedical person, . . . during a state of disaster declared by the governor, may practice, in addition to the authority granted by other statutes of this state, the administration of anesthetics; minor surgery; intravenous, subcutaneous, or intramuscular procedure; or oral and topical medication; or a combination of these under the supervision of a member of the medical staff of a licensed hospital of this state, and may assist the staff member in other medical and surgical proceedings. (MCL 30.411)

Local Emergency Declaration

(10) EMA provides that a county or municipality may declare a local state of emergency "if circumstances within the county or municipality indicate that the occurrence or threat of widespread or severe damage, injury, or loss of life or property . . . exists . . ." (MCL 30.410)

Local Emergency Power

Chief Executive Official of county or municipality, upon declaration of an emergency, may issue travel restrictions on county or local roads. (MCL 30.410)

Declaration triggers mutual assistance, state aid, money, etc.

III. Curfews

Local Authority

MCL 722.754 – Local ordinances may impose curfews on minors. No emergency needed.

MCL 30.410 – Control of local roads following declaration of emergency. (need ordinance to make it a misdemeanor)

Walsh v City of River Rouge,
385 Mich 623 (1971)

No inherent authority for local units of government to impose curfews.

“The invocation of a curfew or restriction on the right to assemble or prohibiting the right to carry on business licensed by the State of Michigan involving the suspension of constitutional liberties of the people. It, in effect, suspends normal civil government.”

State Level

Upon declaration of an emergency by the Governor, ingress and egress to or from stricken area, removal of persons from area, occupancy of premises within area, may be controlled.

(MCL 30.405)

Violation: misdemeanor

IV. Quarantine

Brief History

"The history of pestilence is the history of quarantine."

Etymology = "Quaresma"

•Biblical references demonstrate the separation of lepers, as was the law in ancient Greece & Rome.

Quarantine

•First formal "Quarantine" – 15th Century Venice Health Council had power of life and death over those who violated the regulation for health, no appeal was allowed.

•17th Century London enacted formal quarantine procedures.

•19th Century U.S. – laws passed to protect against yellow fever and smallpox.

Quarantine

Common Law: Government has the inherent power to protect public health and safety. (Parens Patriae)

Early Cases:

Campagne Francaise de Navigation a Vapeur v Louisiana State Board of Health, 186 US 380 (1902)

Quarantine held to be:

- Legitimate exercise of police power
- No violation of Commerce Clause

Quarantine

Jacobson v Massachusetts, 197 US 11 (1905)

- Involved mandatory vaccinations, not quarantine.
- Based on earlier quarantine decisions, valid exercise of state's police power.
- Expressly recognized power of local administrative agencies to develop and implement health regulations.

Quarantine

Rock v Carney, 216 Mich 280 (1921):

- Plaintiff quarantined by local authorities for 12 weeks. Lower court upheld exercises of police power.
- Supreme Court reversed, but recognized:
"That the power exists in the boards of health acting through their respective health officers to quarantine persons infected with these diseases either in their homes or in detention hospitals, such detention to continue so long as the diseases are in their infectious state . . ."

Quarantine

"When sufficient reasonable cause exists to believe that a person is afflicted with a quarantinable disease, there is no doubt of the right of the health authorities to examine into the case . . . remembering that the persons so affected are to be treated as patients, and not as criminals."

V. Codes & Other Statutory Powers

A. One level down from statutes authorizing the exercise of emergency powers are a variety of other state and federal statutes which collectively **authorize** government employees to act in response to emergencies.

V. Codes & Other Statutory Powers

These statutes permit the issuance of orders and quarantines:

**Public Health Code
Section 2253**

If the director or local health officer determines that control of an epidemic is necessary to protect the public health, the director or local health officer, by emergency order, may 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. Emergency procedures shall not be limited to this code.
(MCL 333.2453 [local])

V. Codes & Other Statutory Powers

Section 5203

WARNING NOTICE

- Allows director or local health officer who determines "that an individual is a carrier and is a health threat to others" to issue a warning notice requiring person to cooperate in preventing or controlling transmission of disease.
- Requires court order if person disregards notice.
- Except in emergency, right to prior hearing exists.

V. Codes & Other Statutory Powers

Section 5207

(1) To protect the public health in an emergency, upon the filing of an affidavit by a department 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. **(Public Health Code, MCL 333.5207)**

V. Codes & Other Statutory Powers

**Public Health Code
Section 2251**

(1) Upon a determination that an imminent danger to the health or lives of individuals exists in this state, the director [or local health officer] immediately shall inform the individuals affected by the imminent danger and issue an order The order shall incorporate the director's findings and require immediate action necessary to avoid, correct, or remove the imminent danger. **(MCL 333.2451 [local])**

V. Codes & Other Statutory Powers

Section 2253

- Allows Director of Public Health to issue emergency order to protect public health to control an epidemic.
- Order may prohibit gathering of people “for any purpose” and establish procedures to follow to ensure continuation of essential public health services.

(MCL 333.2253)

V. Codes & Other Statutory Powers

Section 2261

"A person who violates a rule or order of the department is guilty of a misdemeanor punishable by imprisonment for not more than 6 months, or a fine of not more than \$200, or both.

(MCL 333.2261)

VI. Arrest & Detention Authority

Conventional Law Enforcement Authorities:

Peace officers may arrest/detain a person without a warrant for a variety of reasons including:

Probable cause to believe a person has committed a felony or the person has committed a crime, including a minor crime in the peace officer's presence. **(MCL 764.15)**

If there is a need to detain, ask: Has some crime, however minor, been committed in the presence of a peace officer?

Emergency Personnel

...if emergency medical services personnel, exercising professional judgment, determine that the individual's condition makes the individual incapable of competently objecting to treatment or transportation, emergency medical services may provide treatment or transportation despite the individual's objection unless the objection is expressly based on the individual's religious beliefs. **(Public Health Code, MCL 333.20969)**

VII. Warrant & Inspection Authority

Conventional Law Enforcement Authority:

Any site of a suspected bioterrorist incident will almost certainly qualify as a crime scene and, as a result, various well established principles of criminal procedure will apply.

"Plain View", "Open Fields", "consent", "Exigent Circumstances" and "abandoned property" doctrines may well allow peace officers to secure the scene of a bioterrorist event to prevent the destruction of evidence or even to inspect the scene itself without a warrant (the "blue canary" phenomenon?)

Warrant & Inspection Authority

- (1) The department may apply for an inspection or investigation warrant under section 2242 to carry out this section.
- (2) To assure compliance with laws enforced by the department, the department may inspect, investigate, or authorize an inspection or investigation to be made of any matter, thing, premises, place, person, record, vehicle, incident, or event. **(Public Health Code, MCL 333.2241)**
- (3) A police officer may enter a dwelling without a warrant where it is reasonably believed that a person inside is in need of medical assistance. **[City of Troy v Ohlinger, 438 Mich 463 (1991)]**

VIII. Environmental Statutes

- (1) In accordance with this section, if the department determines that there may be an imminent and substantial endangerment to the public health, safety, or welfare, or the environment, because of a release or threatened release [of a hazardous substance], the department may require persons who are liable under section 20126 to take necessary action to abate the danger or threat. **(NREPA, MCL 324.20119)**

Thus, even in the absence of a declaration of an emergency there already exist statutes that will assist and if state and local police, fire and medical people are cooperating, the tools are there to mount an adequate emergency response.

It is noteworthy, however, that most of these provisions are not self-enforcing, I.e. if the subject does not comply with the emergency order, directive, etc. it will be necessary to go to court to force compliance, so it is a good idea to get to know your local prosecutor and discuss some of these contingencies with her/him in advance.

**EMERGENCY JUDICIAL
ASSIGNMENT PLAN**

8 JUDGES/2 PER REGION

- Hon. Timothy Kenny - Wayne
- Hon. Peter Maceroni – Macomb
- Hon. William Collette – Ingham
- Hon. Donald Johnson – Kent
- Hon. Nick Holowka – Lapeer
- Hon. Mark Wickens – Lake
- Hon. Dennis Murphy – Otsego
- Hon. Stephen Davis - Delta

Summary and Questions

- 42 USC § 1983

THANK YOU

Robert Ianni

Senior Deputy Director

Consumer Protection Bureau

(517) 335-3571

Ianni@michigan.gov



Department of
Attorney General
