

## [Pennsylvania Public Health Bench Book](#)

1. Discusses Pennsylvania court cases and legal issues related to the Disease Control and Prevention Law and Public Health orders/emergencies.

## [Erie County Masking Orders August 2021](#) ([Wayback Machine archive link](#))

The Erie County Department of Health is authorized by Section 5 of the Pennsylvania Disease Prevention and Control Law of 1955 ("DPCL") to respond to a threat to public health by carrying out appropriate control measures. See 35 Pa. Stat. Ann. Section 521.5 and related regulations, and Section 2102 of the Administrative Code, 71 Pa. Stat. Ann. Section 532. COVID-19, and in particular its recent rapid community spread, clearly represents such a threat. Accordingly, pursuant to Section 5 of the DPCL, I hereby order:

## [Disease Control and Prevention Act](#) Section 5:

(2101 amended Dec. 23, 2003, P.L.282, No.47)  
Section 2102. General Health Administration.--The Department of Health shall have the power, and its duty shall be:  
(a) To protect the health of the people of this Commonwealth, and to determine and employ the most efficient and practical means for the prevention and suppression of disease;

## Other sections of note:

(a.2) The secretary or the local health officer may file a petition in the court of common pleas of the county in which the person is present to commit such person to an appropriate institution designated by the department or by the local board or department of health for safekeeping and treatment until such time as the disease has been rendered non-communicable. Upon filing of such petition, the court shall, within twenty-four hours after service of a copy thereof upon the respondent, hold a hearing, without a jury, to ascertain whether the person named in the petition has refused to submit to treatment. Upon a finding that the person has refused to submit to such treatment, the court shall forthwith order such person to be committed to an appropriate institution or hospital designated by the department or by the local board or department of health. ((a.2) added Sept. 11, 1959, P.L.866, No.344)

Section 14.1. Treatment of Minors.--Any person under the age of twenty-one years infected with a venereal disease may be given appropriate treatment by a physician. If the minor consents to undergo treatment, approval or consent of his parents or persons in loco parentis shall not be necessary and the physician shall not be sued or held liable for properly administering appropriate treatment to the minor.

(14.1 added Dec. 1, 1971, P.L.590, No.156)

~~Other circumstances shall not be affected.~~

Section 19. Penalties, Prosecutions and Disposition of Fines.--

(a) Any person afflicted with communicable tuberculosis, quarantined or caused to be quarantined in a State institution, who leaves without the consent of the medical director of the

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institution, is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or undergo imprisonment for not less than thirty days nor more than six months, or both.

(b) Any person afflicted with communicable tuberculosis, quarantined or caused to be quarantined under the provisions of this act in a State institution, who leaves without the consent of the medical director of the institution may be apprehended and returned thereto by any sheriff, constable or police officer or any health officer, at the expense of the county.

(c) Whoever delivers, or causes to be delivered, any alcoholic or other intoxicating or narcotic substance to any patient in any State sanatoria used for the treatment of tuberculosis without the knowledge of the medical director thereof, is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not less than twenty-five dollars (\$25) nor more than fifty dollars (\$50), or to undergo imprisonment for not less than fifteen days nor more than three months, or both.

**Note:** These penalties *only* apply to those with tuberculosis

Section 20. Penalties, Prosecutions and Disposition of Fines.--

(a) Any person who violates any of the provisions of this act or any regulation shall, for each offense, upon conviction thereof in a summary proceeding before any magistrate, alderman or justice of the peace in the county wherein the offense was committed, be sentenced to pay a fine of not less than twenty-five dollars (\$25) and not more than three hundred dollars (\$300), together with costs, and in default of payment of the fine and costs, to be imprisoned in the county jail for a period not to exceed thirty (30) days.

(b) Prosecutions may be instituted by the department, by a local board or department of health or by any person having knowledge of a violation of any provisions of this act or any regulation.

(c) Any fine imposed for a violation occurring in a municipality which has its own local board or department of health shall be paid to the municipality. Any fine imposed for a violation occurring in a municipality served by a county department of health shall be paid to the county wherein the offense was committed. All other fines shall be paid into the General Fund of the Commonwealth. This disposition of fines shall be controlling regardless of the party instituting the prosecution.

**Note:** This would be the maximum penalty for all orders whose authority is based on the Disease and Control Prevention Act of 1955.

**71 Pa. Stat. 532** (cited in Mask Order, explains authority of health department but not penalties for violating orders):

**35 Pa. Stat. § 521.5** (cited in Mask Order, section of the Disease and Prevention and Control Act):

# 71 Pa. Stat. § 532

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Current through P.A. Acts 2020-95, 2020-97 through 2020-113, and 2020-115 through 2020-140

Section 532 - General health administration (Adm. Code Section 2102)

The Department of Health shall have the power, and its duty shall be:

- (a) To protect the health of the people of this Commonwealth, and to determine and employ the most efficient and practical means for the prevention and suppression of disease;
- (b) To cause examination to be made of nuisances, or questions affecting the security of life and health, in any locality, and, for that purpose, without fee or hindrance, to enter, examine and survey all grounds, vehicles, apartments, buildings, and places, within the Commonwealth, and all persons, authorized by the department to enter, examine and survey such grounds, vehicles, apartments, buildings and places, shall have the powers and authority conferred by law upon constables;
- (c) To order nuisances, detrimental to the public health, or the causes of disease and mortality, to be abated and removed, and to enforce quarantine regulations;
- (d) If the owner or occupant of any premises, whereon any nuisance detrimental to the public health exists, fails to comply with any order of the department for the abatement or removal thereof, to enter upon the premises, to which such order relates, and abate or remove such nuisance, as may now or hereafter be provided by law;

- (e) For the purpose of collecting or recovering the expense of the abatement or removal of a nuisance, to file a claim, or maintain an action, in such manner as may now or hereafter be provided by law, against the owner or occupant of the premises upon or from which such nuisance shall have been abated or removed by the department;
- (f) To revoke or modify any order, regulation, by-law, or ordinance, of a local board of health, concerning a matter which, in the judgment of the department, affects the public health beyond the territory over which such local board has jurisdiction;
- (g) To promulgate its rules and regulations;
- (h) Whenever, in the opinion of the department, conditions exist in any borough, or any township of the first class, within the Commonwealth, which constitute a menace to the lives and health of the people living outside the corporate limits of such borough or township, or, after it be known to the department that any borough or any township of the first class is without an existing or efficient board of health, to enter and take full charge of and administer the health laws, regulations, and ordinances, of such borough or township, and to continue in charge thereof, until the department shall decide that a competent and efficient board of health has been appointed and qualified for such borough or township and is ready, able, and willing to assume and carry into effect the duties imposed upon it by law, and to collect all expenses incurred by the department in performing its duties hereunder, as may now or hereafter be provided by law;
- (i) To take over the administration of the health laws in any such borough or township, at the expense of the department, whenever the borough or township shall request the department to do so, and the department shall deem it advisable to comply with such request;
- (j) To prescribe standard requirements for the conduct of the medical inspection of the pupils of the public schools throughout the Commonwealth, and to appoint medical inspectors to make such school inspections, as may now or hereafter be provided by law;
- (k) To investigate, hold hearings upon and determine any question of fact regarding the purity of water supplied to the public by any public utility over which the Pennsylvania Public Utility Commission has jurisdiction, whenever said commission shall certify such question to the department.

The findings of the department upon any such questions shall be incorporated in and made a part of the determination or decision of said commission of the controversy or other proceeding in connection with which the question arose and shall be binding upon the parties to such controversy or other proceeding unless either party shall take an appeal from the commission's determination or decision as may now or hereafter be provided by law.

(l) To train and make available appropriate facilities to train certain otherwise qualified State, county and municipal employes in the field of public health work, to become more familiar with, and therefore better understand, the various administrative and technical problems peculiar to public health services.

(m) To make a bacteriological examination and report of any sample of water sent by any person to the department's laboratory at Philadelphia or Pittsburgh. A fee of one dollar (\$1.00) shall be charged for the service rendered in making the examination and report.

(n) To designate the Health Care Policy Board to adjudicate appeals, in accordance with 2 Pa.C.S. (relating to administrative law and procedure), of decisions made under Chapters 7 and 8 of the act of July 19, 1979 (P.L. 130, No. 48), known as the "Health Care Facilities Act." The department shall promulgate regulations establishing appeal procedures to be followed. Until such time as final regulations have been promulgated, procedures set forth in 37 Pa. Code Ch. 197 (relating to practice and procedure) and 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) shall be followed for these appeals.

## [Pennsylvania Statutes Title 35 P.S. Health and Safety § 521.20. Penalties, prosecutions and disposition of fines:](#)

FINDLAW / CODES / PENNSYLVANIA / TITLE 35 P.S. HEALTH AND SAFETY / § 521.20

### Pennsylvania Statutes Title 35 P.S. Health and Safety § 521.20. Penalties, prosecutions and disposition of fines

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(a) Any person who violates any of the provisions of this act or any regulation shall, for each offense, upon conviction thereof in a summary proceeding before any magistrate, alderman or justice of the peace<sup>1</sup> in the county wherein the offense was committed, be sentenced to pay a fine of not less than twenty-five dollars (\$25) and not more than three hundred dollars (\$300), together with costs, and in default of payment of the fine and costs, to be imprisoned in the county jail for a period not to exceed thirty (30) days.

(b) Prosecutions may be instituted by the department, by a local board or department of health or by any person having knowledge of a violation of any provisions of this act or any regulation.

(c) Any fine imposed for a violation occurring in a municipality which has its own local board or department of health shall be paid to the municipality. Any fine imposed for a violation occurring in a municipality served by a county department of health shall be paid to the county wherein the offense was committed. All other fines shall be paid into the General Fund of the Commonwealth. This disposition of fines shall be controlling regardless of the party instituting the prosecution.

**Notes:** This would be the Maximum Penalty for violations of orders whose authority is based on the Disease and Prevention Control Act, 521.2

**Notes:** It appears the maximum penalty is \$25-\$300 and, absent payment, up to 30 days in jail.

The Mask Order's authority lies within:

1) [The Disease Control and Prevention Law \(Section 20](#) outlines penalties):

Section 20. Penalties, Prosecutions and Disposition of Fines.-- (a) Any person who violates any of the provisions of this act or any regulation shall, for each offense, upon conviction thereof in a summary proceeding before any magistrate, alderman or justice of the peace in the county wherein the offense was committed, **be sentenced to pay a fine of not less than twenty-five dollars (\$25) and not more than three hundred dollars (\$300), together with costs, and in default of payment of the fine and costs, to be imprisoned in the county jail for a period not to exceed thirty (30) days.**

2) [Pennsylvania Statutes Title 35 P.S. Health and Safety § 521.20. Penalties, prosecutions and disposition of fines:](#)

(a) Any person who violates any of the provisions of this act or any regulation shall, for each offense, upon conviction thereof in a summary proceeding before any *magistrate*, alderman or justice of the peace in the county wherein the offense was committed, **be sentenced to pay a fine of not less than twenty-five dollars (\$25) and not more than three hundred dollars (\$300), together with costs, and in default of payment of the fine and costs, to be imprisoned in the county jail for a period not to exceed thirty (30) days.**

## [Pennsylvania State Wide Mask Order Update from PA DOH:](#)

COVID-19 is a threat to the public's health, for which the Secretary of Health may order general control measures, including, but not limited to, closure, isolation, and quarantine. This authority is granted to the Secretary of Health pursuant to Pennsylvania law. See section 5 of the Disease Prevention and Control Law, 35 P.S. § 521.5; sections 2102(a) and 2106 of the Administrative Code of 1929, 71 P.S. §§ 532(a), and 536; and the Department of Health's regulations at 28 Pa. Code §§ 27.60-27.68 (relating to disease control measures; isolation;

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quarantine; movement of persons subject to isolation or quarantine; and release from isolation and quarantine). Particularly, the Department of Health has the authority to take any disease control measure appropriate to protect the public from the spread of infectious disease. See 35 P.S. § 521.5; 71 P.S. §§ 532(a), and 1403(a); 28 Pa. Code § 27.60.

### Section (5) of the Disease Prevention and Control Law:

(2101 amended Dec. 23, 2003, P.L.282, No.47)  
Section 2102. General Health Administration.--The Department of Health shall have the power, and its duty shall be:  
(a) To protect the health of the people of this Commonwealth, and to determine and employ the most efficient and practical means for the prevention and suppression of disease;

## [Pennsylvania Statutes Title 35 P.S. Health and Safety § 521.5. Control measures:](#)

FINDLAW / CODES / PENNSYLVANIA / TITLE 35 P.S. HEALTH AND SAFETY / § 521.5

## Pennsylvania Statutes Title 35 P.S. Health and Safety § 521.5. Control measures

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Upon the receipt by a local board or department of health or by the department, as the case may be, of a report of a disease which is subject to isolation, quarantine, or any other control measure, the local board or department of health or the department shall carry out the appropriate control measures in such manner and in such place as is provided by rule or regulation.

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[Read this complete Pennsylvania Statutes Title 35 P.S. Health and Safety § 521.5. Control measures on Westlaw](#)

[2102\(a\)](#) of the Administrative Code of 1929 (entirety of 2102 is nearly identical to [71 Pa. Stat. 532](#)):

(2101 amended Dec. 23, 2003, P.L.282, No.47)  
Section 2102. General Health Administration.--The Department of Health shall have the power, and its duty shall be:  
(a) To protect the health of the people of this Commonwealth, and to determine and employ the most efficient and practical means for the prevention and suppression of disease;

[2106](#) of the Administrative Code of 1929:

Section 2106. Quarantines.--The Department of Health shall have the power, and its duty shall be:  
(a) With the approval and concurrence of the Advisory Health Board, to declare certain diseases to be communicable, in addition to those by law declared so to be, and to establish such regulations for the prevention of the spread of such diseases as the department and the Advisory Health Board shall deem necessary and appropriate;  
(b) To establish and enforce quarantines, in such manner, for such period, and with such powers, as may now or hereafter be provided by law, to prevent the spread of diseases declared by law or by the department to be communicable diseases;  
(c) To administer and enforce the laws of this Commonwealth with regard to vaccination and other means of preventing the spread of communicable diseases.

[71 P.S. §§ 532\(a\)](#) (also cited in Erie Masking Order):

# Pennsylvania Statutes Title 71 P.S. State Government § 532. General health administration (Adm. Code § 2102)

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The Department of Health shall have the power, and its duty shall be:

- (a) To protect the health of the people of this Commonwealth, and to determine and employ the most efficient and practical means for the prevention and suppression of disease;

[Pennsylvania Statutes Title 71 P.S. State Government § 536. Quarantines \(Adm. Code § 2106\):](#)

# Pennsylvania Statutes Title 71 P.S. State Government § 536. Quarantines (Adm. Code § 2106)

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The Department of Health shall have the power, and its duty shall be:

- (a) With the approval and concurrence of the Advisory Health Board, to declare certain diseases to be communicable, in addition to those by law declared so to be, and to establish such regulations for the prevention of the spread of such diseases as the department and the Advisory Health Board shall deem necessary and appropriate;
- (b) To establish and enforce quarantines, in such manner, for such period, and with such powers, as may now or hereafter be provided by law, to prevent the spread of diseases declared by law or by the department to be communicable diseases;
- (c) To administer and enforce the laws of this Commonwealth with regard to vaccination and other means of preventing the spread of communicable diseases.

[28 Pa. Code §§ 27.60-27.68](#)

[Statute is related to the Disease Prevention and Control Law:](#)

## **§ 27.2. Specific identified reportable diseases, infections and conditions.**

The diseases, infections and conditions in Subchapter B (relating to the reporting of diseases, infections and conditions) are reportable to the Department or the appropriate local health authority by the persons or entities in the manner and within the time frames set out in this chapter.

### **Authority**

The provisions of this § 27.2 amended under sections 4 and 16 of the **Disease Prevention and Control Law of 1955 (35 P.S. § § 521.4 and 521.16)**; and sections 2102(g) and 2111(b) of The Administrative Code of 1929 (71 P.S. § § 532(g) and 541(b)).

## **§ 27.3. Reporting outbreaks and unusual diseases, infections and conditions.**

(a) A person required to report under this chapter shall report an outbreak within 24 hours, and in accordance with § 27.4 (relating to reporting cases).

(b) A person required to report under this chapter who suspects a public health emergency, shall report an unusual occurrence of a disease, infection or condition not listed as reportable in Subchapter B (relating to reporting of diseases, infections and conditions) or defined as an outbreak, within 24 hours, and in accordance with § 27.4.

(c) Any unusual or group expression of illness which the Department designates as a public health emergency shall be reported within 24 hours, and in accordance with § 27.4.

## **§ 27.4. Reporting cases.**

(a) Except where otherwise noted in this chapter, a case shall be reported to the Department through the appropriate electronic disease surveillance system.

(b) A reporter may make a preliminary report of a case by telephone. The preliminary report must be followed by a formal report made through the appropriate electronic disease surveillance system.

(c) A case shall be reported using the appropriate case report format. The requested information shall be provided by the reporter, irrespective of the manner in which the report is submitted. Access to the appropriate electronic disease surveillance system may be obtained from the Department upon request.

#### **§ 27.5a. Confidentiality of case reports.**

Case reports submitted to the Department or to an LMRO are confidential. Neither the reports, nor any information contained in them which identifies or is perceived by the Department or the LMRO as capable of being used to identify a person named in a report, will be disclosed to any person who is not an authorized employe or agent of the Department or the LMRO, and who has a legitimate purpose to access case information, except for any of the following reasons:

(1) When disclosure is necessary to carry out a purpose of the act, as determined by the Department or LMRO, and disclosure would not violate another act or regulation.

(2) When disclosure is made for a research purpose for which access to the information has been granted by the Department or an LMRO. Access shall be granted only when disclosure would not violate another act or regulation. The research shall be subject to strict supervision by the LMRO to ensure that the use of information disclosed is limited to the specific research purpose and will not involve the further disclosure of information

which identifies or is perceived as being able to be used to identify a person named in a report.

### **§ 27.6. Disciplinary consequences for violating reporting responsibilities.**

(a) Failure of a clinical laboratory to comply with the reporting provisions of this chapter may result in restrictions being placed upon or revocation of the laboratory's permit to operate as a clinical laboratory, as provided for in the Clinical Laboratory Act (35 P. S. § § 2151—2165) unless failure to report is due to circumstances beyond the control of the clinical laboratory.

(b) Failure of a Department licensed health care facility to comply with the reporting provisions of this chapter may result in restrictions being placed upon or revocation of the health care facility's license, as provided for in the Health Care Facilities Act (35 P. S. § § 448.101—448.904b).

(c) Failure of a health care practitioner to comply with the reporting provisions of this chapter may result in referral of that matter to the appropriate licensure board for disciplinary action.

(d) Failure of a child care group setting to comply with the reporting provisions of this chapter may result in referral of that matter to the appropriate licensing agency for appropriate action.

**Notes:** Penalties limited to professional licensing. I.e, if a doctor or teacher violates the orders, they can lose their license. The penalties for individual citizens who violate the law and do not have a professional license is a \$25-\$300 fine (up to 30 days in jail if you refuse to pay the fine): The criminal penalties for individuals are identical to Section 20 of the Disease Prevention and Control Law of 1955:

### **§ 27.8. Criminal penalties for violating the act or this chapter.**

(a) A person who violates any provision of the act or this chapter shall, for each offense, upon conviction thereof in a summary proceeding before a

district justice in the county wherein the offense was committed, be sentenced to **pay a fine of not less than \$25 and not more than \$300, together with costs, and in default of payment of the fine and costs, shall be imprisoned in the county jail for a period not to exceed 30 days.**

(b) A person afflicted with communicable tuberculosis, ordered to be quarantined or isolated in an institution, who leaves without consent of the medical director of the institution, is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not less than \$100 nor more than \$500, or undergo imprisonment for not less than 30 days nor more than 6 months, or both.

(c) Prosecutions may be instituted by the Department, by a local health authority, or by any person having knowledge of a violation of the act or this chapter.