

ISOLATION AND QUARANTINE BENCHBOOK



**MINNESOTA
JUDICIAL
BRANCH**

MINNESOTA ISOLATION AND QUARANTINE PROCEDURES

***MINNESOTA JUDICIAL BRANCH
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INTRODUCTION

Public health law governs “the legal powers and duties of the state to assure the conditions for people to be healthy (e.g., to identify, prevent, and ameliorate risks to health in the population) and the limitations on the power of the state to constrain the autonomy, privacy, liberty, or other legally protected interests of individuals for the protection or promotion of community health.”¹ In recent years, the focus of public health law has turned increasingly to determining how these principles should be implemented in the event of an outbreak of a life-threatening communicable disease, whether naturally occurring (such as severe acute respiratory syndrome [SARS] or avian flu) or resulting from a bioterrorism attack.²

Plans for a public-health response to such a crisis necessarily include the possibility of isolation or quarantine (I/Q) – that is, the confinement within a proscribed area of persons who have been exposed to or contracted a communicable disease, to guard against the spread of the disease to the general public.³ In 2002, the Minnesota legislature amended the state’s [health care statutes](#)⁴ to include new provisions setting forth the standards for when, where, how long, and under what conditions I/Q is permissible, as well as the procedures that must be followed – both by the Executive Branch and by the courts – in order to place and keep individuals under I/Q.⁵ The

¹ Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint* xviii (2000).

² As part of its response to the terrorist attacks of September 11, 2001 and the anthrax events later that year, the federal [Centers for Disease Control \(CDC\)](#) urged the health departments of the various states to review their statutes for certain “target capabilities.” These target capabilities included having laws in place establishing the legal authority for isolation and quarantine, and a procedure for exercising that authority, in the event of a public health emergency. The CDC distributed a [Model State Emergency Health Powers Act](#), which included suggested isolation and quarantine provisions. The worldwide SARS outbreak later demonstrated that a scenario requiring isolation and/or quarantine could arise not only as the result of a bioterrorism attack, but organically as well. (In February 2003, SARS came as close as [Toronto](#), causing 44 deaths. The efforts of Canadian authorities, which included the quarantine of approximately 27,000 people, were widely credited with preventing the SARS outbreak from spreading further and causing additional casualties.)

³ The specific definitions of “isolation” and “quarantine” applicable to Minnesota law are discussed *infra* in Section 1.00. Depending on the nature of the emergency, the public health response may include or be limited to other intervention measures, such as “social distancing” (recommending or requiring that persons remain one yard or more apart, that business meetings be held by teleconference, *et cetera*). Centers for Disease Control, [Interim Pre-pandemic Planning Guidance: Community Strategy for Pandemic Influenza Mitigation in the United States](#) (Feb. 2007); [Homeland Security Council, Implementation Plan for the National Strategy for Pandemic Influenza](#) 107-08 (May 2006). Minnesota’s Pandemic Influenza Plan includes similar social distancing measures. [Press Release, “Governor Pawlenty Outlines State Response to Avian and Pandemic Flu”](#) (Nov. 3, 2005).

⁴ Minnesota and its municipalities have primary responsibility for addressing public health emergencies within their jurisdictions, including I/Q. [CRS Report for Congress, Federal and State Isolation and Quarantine Authority](#) 1, 3 (Jan. 18, 2005). The U.S. and Minnesota Supreme Courts have agreed that the police power reserved by the state under the 10th Amendment to the U.S. Constitution carries with it the power to act to protect public health and public safety, including the power to impose I/Q, as long as the action taken is reasonable and not arbitrary. See [Jacobson v. Commonwealth of Massachusetts](#), 197 U.S. 11, 25-28 (1905); [Gibbons v. Ogden](#), 22 U.S. 1, 87 (1824); [Schulte v. Fitch](#), 202 N.W. 719 (Minn. 1925). I/Q authority is also incident to Minnesota’s right to execute its inspection laws, which is protected under Article I, Section 10 of the U.S. Constitution. Gostin, *supra* at 211.

⁵ Minn. Stat. §§ 144.419 and 144.4195 (2006). A discussion of the statutory history of the I/Q law and the ways in which the state statute diverges from the CDC’s model statute is included in the Appendix.

I/Q-related provisions (referred to herein collectively as the “I/Q law”) were amended in 2005.⁶ Certain sections are now scheduled to expire in August 2009.⁷

Minnesota public health and court administration officials agree that if it ever becomes necessary to seek an I/Q order from a district court judge, the judge will be called upon to respond very quickly, due to both the requirements of the I/Q law and the critical nature of the emergency. In addition, Minnesota may be responding to a rare or novel form of a virus, where the efficiency of transmission and other characteristics of the disease are not yet known.⁸ Under such circumstances, striking the appropriate balance between community health and individual liberties will pose special challenges to the judiciary.

The purpose of this Benchbook⁹ is for a judge assigned to an I/Q proceeding to have relevant information and analysis readily available, and to assist the judge in making rulings that are both expeditious and well-informed.¹⁰ The Benchbook is also meant to ensure that I/Q proceedings are undertaken in a manner that protects the health and safety of court employees, law enforcement personnel, and others.

The development of this Benchbook was funded through a federal grant, under the auspices of an interagency agreement between the [Department of Health](#) and the [Office of the State Court Administrator](#). The Benchbook was researched and written by Isaac Kaufman, under the supervision of Kelly Mitchell, Minnesota Judicial Branch, Court Services Division. Special thanks are extended to Franci Livingston, Steve Shakman and Kathy Como-Sabetti, Minnesota Department of Health; Audrey Kaiser Manka, Office of the Minnesota Attorney General; Assistant United States Attorney Mary Trippler; and Professors Alan Erbsen and David Stras, University of Minnesota Law School, for the information and guidance that they have contributed toward the completion of this project.

⁶ [Laws 2005, ch. 149](#), § 8 (codified as Minn. Stat. §§ 144.419 and 144.4195). The complete text of the current I/Q law is included in the Appendix.

⁷ Minn. Stat. § 144.4195, subs. 1(d) and 2.

⁸ While medical and scientific progress has given us “a better understanding of the influenza virus and the disease that causes it than ever before . . . [w]e do not understand why some influenza viruses are efficiently transmitted and others are not.” Homeland Security Council, *Implementation Plan* at 99-100.

⁹ Other states, including but not limited to Alaska, Florida, [Indiana](#), [Michigan](#), [Pennsylvania](#), South Carolina, Texas, Utah and [Washington](#), have already developed public health Benchbooks which interpret those states’ respective I/Q statutes and provide guidance on I/Q proceedings.

¹⁰ A pandemic has been analogized to a wildfire requiring the evacuation of a populated area, in terms of the need to respond quickly and the need for coordination of interagency functions, including court functions. [Bureau of Justice Assistance, Justice and Public Health Systems Planning: Confronting a Pandemic Outbreak](#) 16-18 (May 24-25, 2006). A tabletop exercise regarding the Minnesota I/Q law was conducted in June 2007, including representatives from the Office of the State Court Administrator, the Department of Health, the District Court judiciary, the [Minnesota Attorney General’s Office](#), and the [Office of the U.S. Attorney for the District of Minnesota](#). These individuals worked through a hypothetical I/Q scenario, discussing the practical implications and identifying problems that might arise in the course of implementing and enforcing the I/Q law. The Minnesota courts’ internal protocols for responding to I/Q matters, which had been drafted prior to this tabletop exercise, were modified based on the results of that exercise and later adopted by the Chief Judge of the Ramsey County District Court. *See State of Minnesota Court Procedures and Protocol for Isolation and Quarantine Cases*. The complete text of those protocols is contained in the Appendix.

1.00 **IMPORTANT DEFINITIONS**

1.10 “ISOLATION” v. “QUARANTINE”

The Minnesota I/Q law distinguishes between isolation and quarantine. **Isolation** means the separation of a person who has already been infected with a communicable disease, in order to prevent the transmission of the infection to others.¹¹ **Quarantine** means restriction on the movement of an otherwise healthy person who has been exposed to a communicable disease, in order to prevent transmission in the event that the person has indeed been infected.¹²

1.20 “COMMUNICABLE DISEASE”

Under the I/Q law, the [Health Commissioner](#) may initiate an I/Q proceeding to prevent or limit the transmission of a communicable or potentially communicable disease to others. A communicable disease is “a disease caused by a living organism or virus and believed to be caused by bioterrorism or a new or novel previously controlled or eradicated infectious agent or biological toxin that can be transmitted person to person,” and for which I/Q is an effective control strategy. Specifically excluded from the definition of “communicable disease” are sexually transmitted diseases and diseases that are predominantly bloodborne or transmitted by skin contact.¹³

¹¹ Minn. Stat. § 144.419, subd. 1(3).

¹² *Id.* subd. 1(4); *see also* Jason W. Sapsin, *Public Health Legal Preparedness Briefing Memorandum #4: Overview of Federal and State Quarantine Authority* 7 (2002). It typically takes between one and two days for a person infected with influenza to exhibit symptoms, but this period varies for other diseases. Authorities imposing quarantine would also be concerned regarding “asymptomatic shedding” – that is, the transmission of a communicable disease by a person who is exposed but never becomes sick him- or herself. Homeland Security Council, *Implementation Plan* at 100.

¹³ Minn. Stat. § 144.419, subd. 2; *see also* Minn. Stat. § 144.4172, subd. 5 (2006).

2.00 STAGES OF AN I/Q PROCEEDING

Under the Minnesota I/Q law, an I/Q proceeding may have three stages – a temporary hold directive, an ex parte order, and a court hearing. Both the Department of Health and the court are required to adhere to a strict timeline that applies to the stages of an I/Q proceeding. Persons under I/Q must also be properly notified of their rights at each stage of the proceeding.

2.10 TEMPORARY HOLD DIRECTIVE

When is a temporary hold permissible? The Health Commissioner may issue a temporary hold directive when a delay in isolating or quarantining a person or group of persons would significantly jeopardize the Health Commissioner's ability to prevent or limit the transmission of a communicable or potentially communicable life-threatening disease to others.¹⁴

Who may issue a temporary hold directive? Only the Health Commissioner has the authority to issue a temporary hold directive to place an individual under I/Q without court action. This authority may not be delegated to a local public health agency.¹⁵

What information must be provided to someone under a temporary hold?

Mandatory notice. The Department of Health or the delegated public health agency must provide notice of the right to a hearing and the right to counsel to a person placed under a temporary hold. Providing this notice does not require service as defined in the [Rules of Civil Procedure](#).¹⁶

¹⁴ Minn. Stat. § 144.4195, subd. 2(a).

¹⁵ *Id.*

¹⁶ The law requires that this notice be “provided,” which differs from personal service. The Department of Health and the Attorney General’s Office agree that this was a deliberate distinction by the legislature, and that personal service of notice of a temporary hold directive should not be required, first, because a process server should not be exposed to a potentially life-threatening communicable disease; and second, because public health officials’ response to an emerging pandemic must be extremely rapid, and should not be disrupted or delayed by possible defects in completion of service. In some cases, members of a group who have been exposed to or infected by a communicable disease may have already dispersed, and their location may be unknown. Under these circumstances, it may be necessary to provide notice of the temporary hold through media such as radio, television or newspaper. Although no formal proof of service is required, the judge assigned to the later stages of an I/Q proceeding has the discretion to direct the Department of Health to verify that notice was in fact provided.

Notice to large groups. If providing individual notice to all persons under a temporary hold directive is not practicable, the notice may be posted in a conspicuous place where the persons under I/Q have adequate access.¹⁷

Statement of the incubation period. A temporary hold directive must state the period of incubation or communicability of the disease. When the disease is unknown, the temporary hold directive must provide an estimate of the period of incubation or communicability based on the Health Commissioner's best medical judgment.¹⁸

How long may a temporary hold directive remain in effect? If the Court has not issued a written *ex parte* order within 36 hours after the issuance of a temporary hold directive, the directive expires automatically.¹⁹ A temporary hold directive otherwise remains in effect for the period specified in the directive, unless amended by the Health Commissioner or superseded by court order.²⁰

Notification of government officials. Simultaneously with the initiation of the application process for a written *ex parte* order, the Health Commissioner must notify the [Governor](#), the majority and minority leaders of both houses of the legislature, and the chairs and ranking minority members of the relevant legislative committees that a temporary hold directive has been issued.²¹

Expiration of temporary hold provisions. The statutory provisions authorizing and establishing the procedures for a temporary hold are set to expire on August 1, 2009.²²

2.20 EX PARTE I/Q ORDER

When is the Health Commissioner required to request an ex parte I/Q order? The Health Commissioner must initiate the application process for a written *ex parte* order from the district court **immediately** after issuing a temporary hold directive.²³ The Health Commissioner may also apply for an *ex parte* I/Q order without first issuing a temporary hold directive.

How quickly must the Court rule on an application for an ex parte I/Q order? When an individual is under a temporary hold, and the Health Commissioner files

¹⁷ Minn. Stat. § 144.4195, subd. 2(a).

¹⁸ *Id.*

¹⁹ *Id.* The maximum duration of a temporary hold, which was 48 hours under the I/Q law as originally enacted in 2002, was reduced to 36 hours under the 2005 amendments, reflecting the legislature's desire to place strict limitations on the government's power to impose I/Q without court oversight. This issue is likely to be revisited by the legislature prior to the expiration of the temporary hold provisions in 2009.

²⁰ Minn. Stat. § 144.4195, subd. 2(a).

²¹ *Id.* subd. 2(b).

²² *Id.* subd. 2(e).

²³ *Id.* subd. 2(a).

an application for an *ex parte* order to keep that individual under I/Q, **the court must rule on that request within 24 hours after the application is filed.**²⁴ As explained above, **if the court has not acted within 36 hours after the temporary hold directive is issued, the directive expires automatically, and the person(s) subject to the directive must be released.**

In what county will an ex parte I/Q proceeding be venued? By statute, an *ex parte* I/Q order may be obtained from the district court of (a) [Ramsey County](#), (b) the county where the person(s) subject to the order are located, or (c) a county adjoining the county where the person(s) subject to the order are located.²⁵ It is the intent of the Department of Health to initiate all I/Q proceedings in Ramsey County.²⁶ However, depending on the circumstances of a particular case, it may be necessary for the Department of Health to seek an *ex parte* order from the district court of another county.

How will judges be assigned to ex parte I/Q proceedings? If the application process for an *ex parte* I/Q order is initiated during regular court business hours (Monday-Friday, 8:00 a.m. to 4:30 p.m. in Ramsey County), the matter will be assigned to a judge in accordance with the court's standard case-assignment protocol.²⁷ However, because of the particular circumstances of an I/Q matter and the short duration of a temporary hold directive, it may be necessary to initiate the application process for an *ex parte* order at a time when the court is closed (*i.e.*, nights, holidays and/or weekends). Under these circumstances, the Health Commissioner will contact the on-call judge, either directly or through the [City of Saint Paul Police Department](#), to request an *ex parte* order.²⁸

What documents must be filed in support of an application for an ex parte I/Q order? Documents filed in support of an application for an *ex parte* I/Q order will include a petition from the Health Commissioner, a proposed order, and supporting documents (affidavits and memorandum of law). If the Health Commissioner has issued a temporary hold directive, a copy of the directive and description of the notice provided to the person(s) subject to the directive²⁹ will also be included with the *ex parte* application. These documents will be deemed filed upon delivery by hand or facsimile to the court or the on-call judge, after which the judge must rule on the application within 24 hours. No filing fees are required.³⁰

²⁴ *Id.*

²⁵ *Id.* subd. 1(a).

²⁶ *Court Procedures and Protocol for I/Q Cases* at 3 fn.3.

²⁷ The Office of the State Court Administrator has considered designating a panel of specially trained district court judges for assignment of I/Q matters, analogous to the judicial panel that the Supreme Court is authorized to establish to preside over civil commitment proceedings for sex offenders. See Minn. Stat. § 253B.185, subd. 4 (2006). To date, however, no such designation has taken place.

²⁸ *Court Procedures and Protocol for I/Q Cases* at 4. An I/Q matter is also subject to reassignment by the Chief Judge or Civil Presiding Judge if a hearing is requested after the *ex parte* proceedings. *Id.* at 6.

²⁹ *Id.* at 5. Note that proof of service of a temporary hold directive is not specifically required under the I/Q law.

³⁰ *Id.* at 5.

How may a judge take evidence before ruling on an application for an ex parte I/Q order? Evidence in support of an application for an *ex parte* I/Q order may be taken by telephone, facsimile transmission, video equipment, or other electronic communication,³¹ as well as by live testimony or affidavit.

What standard must a judge apply when ruling on an application for an ex parte I/Q order? An *ex parte* order to place or keep an individual under I/Q shall be issued upon a finding that **probable cause** exists to believe that I/Q is warranted to protect the public health.³²

What are the required contents of an ex parte I/Q order? If granted, the *ex parte* I/Q order must state the specific facts justifying I/Q. The order must also state that the person(s) subject to the order have the right to a hearing and to representation by counsel.³³

When and how must notice be provided to a person subject to an ex parte I/Q order? Immediately upon issuance of an *ex parte* I/Q order, the Department of Health or the delegated public health agency must provide copies to each person subject to the order.³⁴ Providing this order and notice does not require service as defined in the Rules of Civil Procedure.³⁵ If it is impracticable to issue *ex parte* orders for each individual in a group of persons who have been commonly infected with or exposed to a communicable disease, then a single order is sufficient.³⁶ Where a single *ex parte* order is issued for a commonly infected or exposed group, the group shall be notified by having the order and notice posted in a conspicuous place where all members of the group have adequate access, or by other best means available as determined by the court.³⁷

³¹ Minn. Stat. § 144.4195, subd. 1(a).

³² *Id.*

³³ *Id.* subd. 1(b).

³⁴ *Id.*

³⁵ Although court protocols provide that an affidavit of service shall be filed within a reasonable time following delivery or posting of the *ex parte* order and notice, *Court Procedures and Protocol for I/Q Cases* at 9, no such filing is required under the I/Q law. The law requires that notice of an *ex parte* I/Q order be “provided,” which differs from personal service. The Department of Health and the Attorney General’s office agree that this was a deliberate distinction by the legislature, and that personal service of an *ex parte* I/Q order should not be required, first, because a process server should not be exposed to a potentially life-threatening communicable disease; and second, because public health officials’ response to an emerging pandemic must be extremely rapid, and should not be disrupted or delayed by possible defects in completion of service. The judge assigned to an *ex parte* I/Q proceeding has the discretion to specify how notice should be given, and should determine the best means available under the circumstances. In some cases, members of a group who have been exposed to or infected by a communicable disease may have already dispersed, and their location may be unknown. Under these circumstances, it may be necessary to provide notice of the *ex parte* I/Q order through media such as radio, television or newspaper. Although no formal proof of service is required, the judge may also direct the Department of Health to report back to the Court to verify that notice was provided.

³⁶ Minn. Stat. § 144.4195, subd. 1(c).

³⁷ *Id.*

Providing the estimated length of I/Q. Where feasible, the Health Commissioner shall give each person subject to the *ex parte* order an estimate of the expected duration of the person's I/Q.³⁸ It is not required that this information be included in the *ex parte* order and notice.

Notification of government officials. After ruling on an application for an *ex parte* I/Q order, the court must notify the Health Commissioner of its decision.³⁹ If the application has been granted, the Health Commissioner is then required to provide copies of the *ex parte* order to the Commissioner of Public Safety and to other peace officers known to have jurisdiction over the location of the I/Q.⁴⁰

How long may an ex parte I/Q order remain in effect? An *ex parte* I/Q order expires automatically **21 days** after issuance, or on the expiration date of the order, whichever is earlier.⁴¹ Where a person subject to an *ex parte* order exercises his or her right to request a hearing, the *ex parte* order may be superseded by a new order following the hearing.⁴²

2.30 COURT HEARING

A person subject to a temporary hold directive or an *ex parte* order has the right at any time to request a court hearing to have the I/Q lifted. Alternatively, the Health Commissioner may petition the court for a hearing to extend I/Q beyond 21 days, which is the maximum duration of an *ex parte* order.

How may an I/Q hearing be requested? A petition for an I/Q hearing will be deemed filed upon receipt by the court by any means feasible, including facsimile and email; no filing fees are required.⁴³

What is the standard of proof applicable to I/Q hearings? A court order following a hearing under the I/Q law shall be based on **clear and convincing**

³⁸ *Id.* subd. 1(b).

³⁹ According to court protocols, this notification shall be provided by sending a copy of the order to the Attorney General's office, either by hand delivery or facsimile. *Court Procedures and Protocol for I/Q Cases* at 8.

⁴⁰ Minn. Stat. § 144.4195, subd. 1(b).

⁴¹ *Id.* subd. 1(e); Minn. Stat. § 144.419, subd. 3. The number of days that the Health Commissioner seeks to keep a person under I/Q pursuant to an *ex parte* order will be based on consultation with the [State Epidemiologist](#). The proposed duration of I/Q will typically be equal to the period of communicability, which varies depending on the disease in question, and also varies depending on the age and health of the person(s) subject to I/Q. According to Department of Health protocols, persons under isolation for pandemic influenza should remain under isolation until they are no longer infectious, which will depend on the influenza strain's epidemiological and clinical characteristics. Persons exposed to pandemic influenza may be subject to quarantine for up to ten (10) days. Minnesota Department of Health, *Draft Procedures for Conducting Isolation and Quarantine Monitoring Calls 4* (May 1, 2008). However, the length of quarantine will be dictated by the particular epidemiology of each strain of the disease.

⁴² Minn. Stat. § 144.4195, subds. 1(e), 3(a).

⁴³ *Court Procedures and Protocol for I/Q Cases* at 10.

evidence, and a written record of the disposition of the case shall be made and retained.⁴⁴

Does a person subject to I/Q have the right to be represented by an attorney?
Any person subject to I/Q has the right to be represented by an attorney.⁴⁵

Under what circumstances does a person subject to I/Q have the right to a court-appointed attorney? For purposes of a hearing and appeal under the I/Q law, **counsel must be appointed by the Court on request.**⁴⁶ The court may appoint one attorney to represent a group of similarly situated persons. Services provided by a court-appointed attorney in an I/Q proceeding shall be **at the expense of the Department of Health** or a local public health board that has entered into a delegation agreement with the Department of Health.⁴⁷ Counsel shall be appointed according to procedures developed by the Minnesota Supreme Court, which shall include standards for determining indigency for purposes of appeal.⁴⁸

May an attorney appointed to represent a person in an I/Q proceeding withdraw from representation? Court-appointed counsel must be allowed to withdraw from representation.

How should attorneys in an I/Q proceeding be protected from exposure to the communicable disease? On request from any attorney in an I/Q proceeding – whether court-appointed or not – the Health Commissioner or an agent of the local board of health shall advise the attorney of protective measures recommended to safeguard against transmission of a communicable disease.⁴⁹

How may evidence be taken in an I/Q hearing, while limiting the risk of transmission of the communicable disease? An I/Q hearing carries with it the risk of exposing court employees and others to a communicable life-threatening disease. To reduce this risk and to maintain I/Q precautions, the court may choose to conduct an I/Q hearing via **telephone, interactive video, or other**

⁴⁴ Minn. Stat. § 144.4195, subd. 5(a).

⁴⁵ *Id.* subd. 5(b).

⁴⁶ *Court Procedures and Protocol for I/Q Cases* at 14. The Office of the State Court Administrator is in the process of recruiting and training a panel of attorneys to serve as court-appointed counsel in I/Q proceedings.

⁴⁷ *Id.* at 12 fn.27.

⁴⁸ The I/Q law, as currently written, is inconsistent regarding the need to demonstrate indigence. Under Minn. Stat. § 144.4195, subd. 5(b), a person who is the subject of a court hearing under the I/Q law may request a court-appointed attorney, and the indigence standard is relevant only on appeal, when a person who does not meet that standard may be required to reimburse the Department of Health or local public health board for the fees and costs incurred through the appeal. However, under Minn. Stat. § 144.4195, subd. 3(c), the information contained in the notice of a court hearing must include “the right, *if indigent*, to be represented by counsel designated by the court or county of venue” (emphasis added) – suggesting that a person who does not meet the indigence standard is not entitled to a court-appointed attorney at the hearing. The Department of Health intends to ask the legislature to clarify this inconsistency during the 2009 legislative session. In the interim, the Department of Health’s position is that a person under I/Q who requests a court-appointed attorney to represent him or her at an I/Q hearing should be provided one, at public expense, without the need to demonstrate indigence.

⁴⁹ Minn. Stat. § 144.4195, subd. 5(b).

electronic means.⁵⁰ The means chosen for the hearing must be interactive, in order to provide the person(s) subject to I/Q with a meaningful opportunity to appear and be heard. At the time that a hearing request is received, the court should determine the manner of appearance for all persons involved, including the judge, the parties and their attorneys, witnesses, court reporters, clerks and interpreters.⁵¹

Special emergency rules. I/Q hearings shall be conducted in accordance with any rules developed by the courts for use during a national security or peacetime emergency.⁵²

*Hearings to have I/Q lifted*⁵³

Who may petition the Court for a hearing to have I/Q lifted? A petition for a hearing to have I/Q lifted may be filed at any time by a person subject to a temporary hold directive or an *ex parte* I/Q order, or by that person's representative.⁵⁴

When a petition is filed for a hearing to have I/Q lifted, how quickly must the hearing be held? A hearing to have I/Q lifted must be held within **72 hours** after the petition for the hearing is filed.⁵⁵ However, the I/Q law does not state how quickly the court must issue a ruling following the hearing.

What county is the proper venue for a hearing to have I/Q lifted, and how will a judge be assigned to that hearing? The I/Q law does not specify the proper venue for a court hearing to have I/Q lifted, nor is it required that the judge who ruled on the underlying *ex parte* application preside over subsequent hearings.⁵⁶ Where a person under I/Q requests a hearing to have I/Q lifted, this would be in the nature of a claim against the state and would be properly venued in Ramsey County

⁵⁰ *Id.* subd. 5(c). According to court protocols, a hearing by telephone conference is presumed to be the first choice. *Court Procedures and Protocol for I/Q Cases* at 11. The Department of Health, together with staff from the Ramsey County courts, have conducted a review of courtrooms to determine which would be most appropriate for I/Q hearings, *i.e.*, where security and interpretation services could most easily be provided, and where a person under I/Q could enter and leave the courtroom without access to public areas. However, the Department of Health has recommended that, whenever possible, I/Q hearings be held by remote electronic means.

⁵¹ *Court Procedures and Protocol for I/Q Cases* at 17.

⁵² Minn. Stat. § 144.4195, subd. 5(c); *see also* Minn. Stat. § 12.31 (2006).

⁵³ Note that a petition to have I/Q lifted under the statutory standards contained in the I/Q law may be accompanied by constitutional claims, *e.g.*, assertions that the person under I/Q was not afforded due process, or that the I/Q violates the Equal Protection Clause of the 14th Amendment.

⁵⁴ Minn. Stat. § 144.4195, subd. 3(a). A representative may be an attorney, a parent of the person under I/Q (if that person is a minor), legal guardian or conservator, or a person designated in writing by the person under I/Q. *Court Procedures and Protocol for I/Q Cases* at 11.

⁵⁵ Minn. Stat. § 144.4195, subd. 3(a).

⁵⁶ According to court protocols, an I/Q matter that is assigned to a judge for *ex parte* proceedings is subject to reassignment by the Chief Judge or Civil Presiding Judge in the event of a hearing. *Court Procedures and Protocol for I/Q Cases* at 6.

District Court.⁵⁷ However, venue may be changed for the convenience of witnesses,⁵⁸ or if a change of venue would be in the interests of justice and would expedite the proceeding, without prejudicing any party.⁵⁹

Does a petition for a hearing to have I/Q lifted stay the enforcement of a temporary hold directive or ex parte I/Q order? A temporary hold directive or *ex parte* order is not stayed by the filing of a petition for a hearing.⁶⁰ Nonetheless, a person under I/Q could petition for a temporary injunction to prevent the enforcement of a temporary hold directive or *ex parte* order prior to the hearing.⁶¹

What is the standard of proof for a hearing to have I/Q lifted, and which party carries the burden of proof? At a hearing to challenge the continuation of I/Q, the Health Commissioner must show by clear and convincing evidence that I/Q is warranted to protect the public health.⁶²

Hearings to extend I/Q beyond 21 days

How may the Department of Health seek to have I/Q extended beyond 21 days? If the Health Commissioner wishes to extend I/Q beyond 21 days, which is the maximum duration of an *ex parte* I/Q order,⁶³ he or she may petition the court for a hearing on the proposed extension.⁶⁴ The I/Q law does not state how quickly after the filing of such a petition the hearing must be held, nor how quickly after the hearing the court must issue its ruling.

What county is the proper venue for a hearing to extend I/Q beyond 21 days, and how will a judge be assigned to that hearing? The I/Q law does not specify the proper venue for a court hearing to extend I/Q beyond 21 days, nor is it required that the judge who ruled on the underlying *ex parte* application preside over subsequent hearings. To the extent possible, however, **the Department of Health intends to maintain these proceedings in Ramsey County.** Where an I/Q proceeding was initiated in Ramsey County, the Ramsey County District

⁵⁷ Minn. Stat. § 542.09 (2006).

⁵⁸ Minn. Stat. § 542.11 (2006).

⁵⁹ Minn. Stat. § 542.18 (2006).

⁶⁰ Minn. Stat. § 144.4195, subd. 3(a).

⁶¹ Minn. R. Civ. P. 65. A person under I/Q may also be able to seek injunctive relief in federal court, as discussed *infra* in section 9.20.

⁶² Minn. Stat. § 144.4195, subs. 3(a), 5(a).

⁶³ The number of days that the Health Commissioner seeks to keep a person under I/Q pursuant to a Court order will be based on consultation with the State Epidemiologist. The proposed duration of I/Q will typically be equal to the period of communicability, which varies depending on the disease in question, and may also vary depending on the age and health of the person(s) subject to I/Q.

⁶⁴ Minn. Stat. § 144.4195, subd. 3(b). This provision refers to extending the I/Q order “past the period of time stated in subdivision 1, paragraph (d).” This appears to be an error in the drafting of the statute -- the 21-day period for an *ex parte* order is contained in paragraph (e) of subdivision 1, not paragraph (d). See [Minn. Stat. § 645.18 \(2006\)](#) (transposition of clauses in statute may be resorted to when provision is without meaning as it stands).

Court will review subsequent hearing requests to determine whether venue should be transferred to another jurisdiction.

What are the required contents of the notice of a hearing to extend I/Q beyond 21 days? Notice of a hearing to extend I/Q beyond 21 days must contain (a) the time, date and place of the hearing; (b) the reason(s) why the Health Commissioner is seeking continuation of I/Q; (c) the person's right to appear at the hearing; and (d) the person's right to be represented by counsel and to have counsel designated by the court or the county of venue.⁶⁵

How and when must notice of a hearing to extend I/Q beyond 21 days be provided? Notice of a hearing to extend I/Q beyond 21 days must be served at least three (3) days before the hearing.⁶⁶

How may notice be provided to a large group under I/Q? If it is impracticable to provide individual notice to a large group under I/Q, the group shall be notified of the hearing by having the notice posted in a conspicuous place where all members of the group have adequate access, or by other best means available as determined by the court.⁶⁷

What is the standard of proof applicable to a hearing to extend I/Q beyond 21 days, and which party carries the burden of proof? Following a hearing to extend I/Q beyond 21 days, the court may order the continuation of I/Q if it finds by **clear and convincing evidence** that the person(s) would pose an **imminent health threat to others** if I/Q were lifted.⁶⁸ The I/Q law does not specify which party carries the burden of proof in a hearing on the proposed extension of I/Q.

⁶⁵ Minn. Stat. § 144.4195, subd. 3(c). The I/Q law, as currently written, is inconsistent regarding the need to demonstrate indigence in order to obtain representation by a court-appointed attorney. Under Minn. Stat. § 144.4195, subd. 5(b), a person who is the subject of a court hearing under the I/Q law may request a court-appointed attorney, and the indigence standard is relevant only on appeal, when a person who does not meet that standard may be required to reimburse the Department of Health or local public health board for the fees and costs incurred through the appeal. However, under Minn. Stat. § 144.4195, subd. 3(c), the information contained in the notice of a court hearing must include “the right, *if indigent*, to be represented by counsel designated by the court or county of venue” (emphasis added) – suggesting that a person who does not meet the indigence standard is not entitled to a court-appointed attorney at the hearing. The Department of Health intends to ask the legislature to clarify this inconsistency during the 2009 legislative session. In the interim, the Department of Health's position is that a person under I/Q who requests a court-appointed attorney to represent him or her at an I/Q hearing should be provided one, at public expense, without the need to demonstrate indigence.

⁶⁶ Minn. Stat. § 144.4195, subd. 3(b). The legislature deliberately required that this notice of hearing be “served,” in contrast with notice of a temporary hold directive or *ex parte* order, which must only be “provided”. The assumption is that by the time of a hearing to extend I/Q beyond 21 days, enough will be known about the disease and the persons subject to I/Q that this additional due process can be provided without disrupting the state's response to the public health threat. However, the I/Q law does not address how or by whom the notice of hearing should be served, or how the person completing service should be protected against the spread of the communicable disease.

⁶⁷ *Id.*

⁶⁸ The I/Q law does not further define “imminent health threat to others.” Note that under the [health threat statutes that predated the I/Q law](#), “health threat to others” means that “a carrier demonstrates an inability or unwillingness to act in such a manner as to not place others at risk of exposure to infection that causes serious illness, serious

How long may the court extend I/Q? The court may order continuation of I/Q for **no more than 30 days** from issuance of the order.⁶⁹ This 30-day limit applies even if the order for the extension is issued before the expiration of the underlying *ex parte* order.

May the court grant additional extensions of I/Q? The Health Commissioner may petition the court for a hearing to extend I/Q for additional periods of up to 30 days each. A petition for an additional extension follows the same notice and hearing procedure as the petition for the first continuation of I/Q.⁷⁰

Appeals. Any decision made following an I/Q hearing may be appealed to the Minnesota Court of Appeals, pursuant to the Rules of Civil Appellate Procedure.

disability, or death.” Minn. Stat. § 144.4172, subd. 8. Regarding indirectly communicable diseases (neither sexually transmitted, bloodborne, nor transmitted through skin contact), “health threat to others” includes “behavior by a carrier which has been demonstrated epidemiologically to transmit or which evidences a careless disregard for the transmission of the disease to others,” or “a substantial likelihood that a carrier will transmit a communicable disease to others as is evidenced by a carrier’s past behavior, or by statements of a carrier that are credible indicators of a carrier’s intention.” *Id.* However, application of the I/Q law does not require any unwillingness to cooperate or other culpable behavior on the part of the carrier – the I/Q law simply addresses incidents of infection with or exposure to a communicable disease for which I/Q has been deemed to be an effective control strategy.

⁶⁹ Minn. Stat. § 144.4195, subd. 3(d).

⁷⁰ *Id.*

3.00 LOCATION AND CONDITIONS OF I/Q

The location where a person is placed under I/Q must not be any more restrictive than necessary to control the spread of the communicable disease, and must include monitoring of health status and access to basic needs.

3.10 LOCATIONS OF I/Q

Least restrictive alternative. The location of I/Q may include confinement to private homes or other public or private premises. However, the location must represent the **least restrictive means available** to prevent the spread of communicable disease.⁷¹ This standard is applicable to each individual under I/Q – meaning, for example, that some members of a commonly exposed group may be confined in their homes, while others are confined in a hospital or other more restrictive setting.

What if a person subject to I/Q is already receiving treatment at a health care facility? When a person subject to I/Q is already institutionalized at an appropriate health care facility, the Health Commissioner may direct that facility to hold the person and to take all reasonable measures to prevent the person from exposing others to the communicable disease.⁷²

3.20 CONDITIONS OF I/Q

The Health Commissioner and anyone acting under his or her authority are responsible for ensuring that the conditions of I/Q comply with the requirements below.⁷³

Separation of isolated and quarantined individuals. Persons under isolation (who are already infected with a communicable disease) must be **confined separately**

⁷¹ Minn. Stat. § 144.419, subd. 2(b). In compliance with the “least restrictive alternative” requirement, Department of Health protocols require that, whenever possible, I/Q should take place in the home. The Department of Health has adopted guidelines regarding home isolation for pandemic influenza, based in part on the federal Department of Health and Human Services’ guidelines, requiring that there be functioning telephone, heat, and electricity service, and potable water; a separate room for the person(s) in isolation, with access to a bathroom; and a caregiver available if the person(s) under isolation is under 18 years old. *Draft Procedures for Conducting I/Q Monitoring Calls* at 3. Note also that when placing a person under I/Q at the least restrictive location proves to be an ineffective control measure, *e.g.*, if the person violates the terms of an I/Q order by leaving the home, the Department of Health may petition the Court to have the person moved to a more restrictive location.

⁷² Minn. Stat. § 144.4195, subd. 2(d).

⁷³ Minn. Stat. § 144.419, subd. 2(a).

from persons under quarantine (who have been exposed to a communicable disease but are not known to be infected).⁷⁴

Regular monitoring of persons under I/Q. The health status of individuals under I/Q must be **monitored regularly** to determine if I/Q continues to be justified. Individuals under I/Q must also have **24-hour access to communication with health officials** in order to address emergency health situations.⁷⁵

Providing for the essential needs of persons under I/Q. The needs of individuals under I/Q must be addressed in a systematic and competent fashion, including but not limited to **food, clothing, shelter, medical care, and means of communication with the outside world.**⁷⁶ Where an individual under I/Q is represented by an attorney, he or she should be provided means of confidential telephone contact with that attorney.

Safety and hygiene of I/Q areas. Premises used for I/Q must be maintained in a **safe and hygienic manner** and must be designed to minimize the likelihood of further infection or other harm to persons under I/Q.⁷⁷

3.30 RECLASSIFICATION FROM QUARANTINE TO ISOLATION

What happens if a person under quarantine subsequently becomes infectious? If an individual under quarantine subsequently becomes infectious or is reasonably believed to have become infectious, that individual must be placed in isolation.⁷⁸ Depending on the circumstances, this would not necessarily require that the individual be moved to another location, but may simply be a change in the individual's legal status.

How would a reclassification from quarantine to isolation affect the duration of a temporary hold? The I/Q law does not specifically address whether the maximum period of 36 hours for a temporary hold starts over when an individual is reclassified from quarantine to isolation. It appears that an individual who has been quarantined for up to 36 hours without court action, pursuant to a temporary

⁷⁴ Minn. Stat. § 144.419, subd. 2(c).

⁷⁵ *Id.* subd. 2(d). Department of Health protocols require monitoring calls twice daily, following prewritten scripts, and collecting specific health-related information at the time of each call. Local public health agencies may opt to conduct these monitoring calls themselves and will, in any event, be responsible for responding to service requests and health emergencies from persons under I/Q. Certain aspects of the monitoring protocols are still under development, including procedures for monitoring non-English speakers and for providing disposable cellular phones to persons under I/Q. *Draft Procedures for Conducting I/Q Monitoring Calls* at 7-13.

⁷⁶ Minn. Stat. § 144.419, subd. 2(g). Department of Health protocols require local public health agencies to develop plans for providing food, medication and other essential services to persons under I/Q within their jurisdictions. Note that the I/Q law provides that these essential needs must be “addressed,” but does not specify who is responsible to pay the cost of meeting those needs. The issue of cost allocation is beyond the scope of this Benchbook.

⁷⁷ *Id.* subd. 2(h).

⁷⁸ *Id.* subd. 2(e).

hold directive, and who subsequently becomes infectious, may then be placed in isolation without court action for up to an additional 36 hours, if the Health Commissioner determines that the standard for a new temporary hold directive has been met.

Where an individual has been placed under quarantine pursuant to a court order, must a new order be issued to place that person in isolation? For an individual under quarantine pursuant to an *ex parte* order or following a court hearing, the I/Q law does not specify whether the Health Commissioner must request a new order, or whether an additional hearing must be held, before the individual is reclassified and placed in isolation. If a person voluntarily agrees to move from quarantine to isolation, no further court involvement is necessary. Otherwise, because quarantine orders and isolation orders are separate instruments, it appears that the Health Commissioner would have to petition for a new order to reclassify a person from quarantine to isolation. The maximum period of isolation would begin when the new order is issued – for example, an individual who has been quarantined for up to 21 days pursuant to an *ex parte* order, and who subsequently becomes infectious, may be placed in isolation for up to an additional 21 days pursuant to a second *ex parte* order.

3.40 RIGHT TO REFUSE TREATMENT

Does a person subject to I/Q have the right to refuse treatment? A person subject to I/Q has a fundamental right to refuse medical treatment, testing, physical or mental examination, vaccination, participation in experimental procedures, collection of specimens, and preventive treatment programs.⁷⁹

What would be the consequences if a person subject to I/Q exercises the right to refuse treatment? Notwithstanding this fundamental right, a person who is infected or reasonably believed to have been infected with a communicable disease, and who refuses to submit to medical procedures as directed by the Health Commissioner or someone working under the Health Commissioner's authority, may be subject to continued I/Q.⁸⁰

3.50 RESTRICTED ENTRY ONTO I/Q PREMISES

Who may enter an I/Q area? **No person(s) may enter an I/Q area without authorization from the Health Commissioner** or someone acting under the Health Commissioner's authority. A person who enters an I/Q area without proper authorization and who poses a threat to the public health may him- or herself be subject to I/Q.⁸¹

⁷⁹ Minn. Stat. §§ 12.39, subd. 1 (2006); 144.419, subd. 4. The right to refuse treatment has been recognized as a fundamental constitutional right as well as a statutory right. Gostin, *supra* at 218-19.

⁸⁰ Minn. Stat. §§ 12.39, subd. 1; 144.419, subd. 4.

⁸¹ Minn. Stat. § 144.419, subd. 5(a).

What about the family members of a person under I/Q? A family member of a person under I/Q has a right to enter the I/Q area. “Family member” is not defined in the I/Q law,⁸² nor is there any procedure provided to determine whether someone claiming to be a family member is being truthful. Before entering an I/Q area, the family member must sign a consent form affirming that he or she has been informed of the health risks, guidelines and consequences – including that, after entering the I/Q area, the family member may him- or herself be subject to I/Q. Neither the state nor the Health Commissioner may be held liable for any consequences of a family member’s entry into an I/Q area.⁸³

3.60 HEARINGS TO CHALLENGE I/Q CONDITIONS

How may a person under I/Q challenge the conditions of I/Q? A person under I/Q may request a hearing to challenge his or her **treatment** during I/Q or the **terms and conditions** of I/Q.⁸⁴ The procedures for such a hearing are the same as for other I/Q hearings, discussed *supra* in section 2.30.

What county is the proper venue for a hearing on the conditions of I/Q, and how will a judge be assigned to that hearing? The I/Q law does not specify the proper venue for a court hearing on the conditions of I/Q, nor is it required that the judge who issued the underlying I/Q order(s) preside over subsequent hearings. Although a request for a hearing to challenge the conditions of I/Q would be in the nature of a claim against the state, the Ramsey County Court Administrator has indicated that that court would not be inclined to handle hearings on I/Q conditions in other counties. Venue may also be changed for the convenience of witnesses,⁸⁵ or if a change of venue would be in the interests of justice and would expedite the proceeding, without prejudicing any party.⁸⁶

Where a person under I/Q requests a hearing to challenge the conditions, how soon must the hearing be held? A hearing to challenge the conditions of I/Q must be held within **seven (7) days** of receipt of the request for a hearing.⁸⁷ The I/Q law does not state how soon after a hearing on the conditions of I/Q the court is required to issue its ruling.

What happens when a person under I/Q requests a hearing to have the I/Q lifted, and also challenges the conditions of the I/Q? The I/Q law does not address what happens when a petition is filed for a hearing to challenge both the continuation

⁸² Other than allowing access for all family members, the I/Q law contains no special provisions to enable a parent to enter an I/Q area to accompany or provide care to a child.

⁸³ Minn. Stat. § 144.419, subd. 5(b). The I/Q law uses the word “responsible” rather than “liable,” but this serves to confer immunity from legal liability on the state and the Health Commissioner.

⁸⁴ Minn. Stat. § 144.4195, subd. 4. The I/Q law does not specify whether a hearing to challenge I/Q conditions should be held before the same judge who originally ordered the I/Q.

⁸⁵ Minn. Stat. § 542.11.

⁸⁶ Minn. Stat. § 542.18.

⁸⁷ Minn. Stat. § 144.4195, subd. 4.

and the conditions of I/Q. The court may, at its discretion, hold a single hearing to address both issues. In the interest of due process, the hearing in that circumstance should be held within 72 hours of receipt of the hearing request.⁸⁸

Does a request for a hearing to challenge the conditions of I/Q have any effect on the terms of the I/Q order? The terms and conditions of an I/Q order are not altered by the submission of a request for a hearing to challenge I/Q conditions.⁸⁹

What is the applicable standard for a hearing on the conditions of I/Q? The required conditions of I/Q are discussed *supra* in section 3.20. Following a hearing to challenge whether these conditions have been met, the court shall issue an order based on **clear and convincing evidence**.⁹⁰ The I/Q law does not specify which party carries the burden of proof.⁹¹

What remedies may the Court order regarding the conditions of I/Q? The court may order remedies to bring the conditions of I/Q into compliance with the requirements of the I/Q law, as appropriate to the circumstances of the emergency.⁹²

⁸⁸ *Id.* subd. 3(a).

⁸⁹ *Id.*

⁹⁰ *Id.* subd. 5(a).

⁹¹ Note that under the [Minnesota Rules of Evidence](#), a party generally has the burden of coming forward with evidence to rebut or meet a presumption against that party, although this does not affect the burden of proof. Minn. R. Evid. 301.

⁹² Minn. Stat. § 144.4195, subd. 4.

4.00 ENFORCEMENT OF I/Q

Where necessary, local, state and federal agents may participate in placing and keeping persons under I/Q.

4.10 STATE AND LOCAL PEACE OFFICERS

May state and local law enforcement officers enforce a temporary hold directive? A state or local [peace officer](#) may assist public health officials in apprehending, holding, transporting, quarantining or isolating a person under a temporary hold directive.⁹³ A law enforcement officer may do so upon a request (by telephone, facsimile or other means) from the Health Commissioner or from an agent of a local board of health.⁹⁴

May state and local law enforcement officers enforce an ex parte I/Q order? A state or local law enforcement officer may act to enforce an *ex parte* I/Q order.⁹⁵ A law enforcement officer may act (by telephone, facsimile or other means) upon a request from the Court, the Health Commissioner, an agent of a local board of health, or the [Commissioner of Public Safety](#).⁹⁶

May a law enforcement officer use force to place or keep a person under I/Q? In implementing and enforcing a temporary hold directive or *ex parte* I/Q order, a law enforcement officer must follow [statutory standards on authorized use of force](#).⁹⁷

Where a law enforcement officer is called on to place or keep a person under I/Q, how should the officer be protected from exposure to the communicable disease? On request from a law enforcement officer assisting in the enforcement of a temporary hold or *ex parte* order, the commissioner or an agent of a local board of health must advise the officer of the recommended protective measures to guard against transmission of the communicable disease.⁹⁸

Expiration of peace officer enforcement provisions. The provisions of the I/Q law authorizing state and local peace officers to assist in enforcing a temporary hold directive or an *ex parte* order are set to expire on August 1, 2009.⁹⁹

⁹³ *Id.* subd. 2(c).

⁹⁴ *Id.*

⁹⁵ *Id.* subd. 1(d).

⁹⁶ *Id.*

⁹⁷ *Id.* subds. 1(d) and 2(c); Minn. Stat. §§ 609.06 and 609.066 (2006).

⁹⁸ Minn. Stat. § 144.4195, subds. 1(d), 2(c).

⁹⁹ Minn. Stat. § 144.4195, subds. 1(d), 2(e).

4.20 NATIONAL GUARD

May the Minnesota National Guard assist in placing or keeping persons under I/Q? The [Minnesota National Guard](#) may be deployed by the Governor to assist in responding to a public health emergency.¹⁰⁰ This may include enforcement of a temporary hold directive or an *ex parte* I/Q order.

4.30 FEDERAL-STATE COOPERATION

Under what circumstances may the federal government assist Minnesota in implementing and enforcing its I/Q law? The federal statutes provide several means for the federal government to assist Minnesota in the implementation and enforcement of its I/Q law under certain circumstances:

Department of Health and Human Services. The [Secretary of Health and Human Services](#) is directed to cooperate with and assist states and localities in the enforcement of their quarantine regulations.¹⁰¹ More specifically, the Secretary is required to “ensure that [HHS] is able to provide such assistance as may be needed to state and local health agencies to enable such agencies to respond effectively to bioterrorism attacks.”¹⁰²

Federal civilian law enforcement. When a pandemic or bioterrorism attack presents a law enforcement emergency for which state and local resources are inadequate to protect lives and property, the Governor may apply to the [U.S. Attorney General](#) for assistance.¹⁰³ This assistance may include the deputization of personnel from one or more of the federal law enforcement agencies.¹⁰⁴

U.S. military. When the President determines that state authorities are unable to contain violence or to protect the rights of its citizens as the result of a serious public health emergency, the armed forces of the United States may be deployed to restore public order.¹⁰⁵

¹⁰⁰ See Press Release, “Governor Pawlenty Outlines State Response to Avian and Pandemic Flu” (Nov. 3, 2005).

¹⁰¹ [42 U.S.C. § 243\(a\) \(2006\)](#); 28 C.F.R §§ 549.10, 549.15 (2007).

¹⁰² [42 U.S.C. § 247d-6\(f\) \(2007\)](#).

¹⁰³ [Emergency Law Enforcement Assistance Act, 42 U.S.C. § 10501 \(2007\)](#). While there is no state law specifically authorizing the state to apply for or accept federal assistance in response to a pandemic or bioterrorism attack, the Governor’s powers triggered by the declaration of an emergency include cooperating with appropriate federal officers and agencies. [Minn. Stat. § 12.21, subd. 3\(7\) \(2006\)](#).

¹⁰⁴ [42 U.S.C. § 10502\(1\) \(2007\)](#). These federal agencies include, but are not limited to, the FBI, the Customs Service, the Immigration and Naturalization Service, the U.S. Marshals Service, the Secret Service, the Coast Guard, and the Bureau of Alcohol, Tobacco, Firearms and Explosives. 42 U.S.C. § 10502(2).

¹⁰⁵ [Insurrection Act, 10 U.S.C. § 331\(a\) \(2007\)](#). This is an exception to the prohibition against the use of the armed forces for domestic law enforcement purposes under the [Posse Comitatus Act, 10 U.S.C. § 375 \(2007\)](#).

4.40 VIOLATIONS AND REMEDIES UNDER THE I/Q LAW

*What penalties does a person face if he or she violates the I/Q law, e.g., by improperly entering or leaving an I/Q area? The I/Q law does not provide for any civil or criminal penalty to be imposed on a person who violates I/Q, e.g., by improperly entering or leaving an I/Q area.*¹⁰⁶

Contempt. Civil and, under some circumstances, criminal [contempt](#) is available for violation of a court order issued under the I/Q law. Note that contempt remedies would not be available against a person who violates a temporary hold directive from the Health Commissioner, prior to court involvement.

Civil. Civil contempt proceedings may be initiated against a person who violates a court-ordered I/Q.¹⁰⁷ A person cited for contempt for violating an I/Q order may be arrested and returned to I/Q, subject to the due process requirements for a constructive contempt proceeding.¹⁰⁸

Criminal. Where a person's violation of an I/Q order constitutes willful disobedience or resistance of the lawful process of the court, the person is guilty of a [misdemeanor](#).¹⁰⁹

Other misdemeanor liability. If a person who violates I/Q is found to have willfully exposed him- or herself or others to a contagious or infectious disease in a public place, that person would be guilty of a [misdemeanor](#).¹¹⁰ This provision could be relevant if someone violates a temporary hold directive or I/Q order, although the conduct would have to be willful for this provision to be applicable.

¹⁰⁶ I/Q proceedings “are civil measures designed to prevent risks to the public. They are not intended to punish individuals for morally culpable behavior, as with criminal prosecutions.” Gostin, *supra* at 211. “[C]ourts have required few procedural safeguards in public health cases because persons are deprived of liberty to protect the public welfare, not as a punishment. . . . In public health law, administrative deprivations of liberty are tolerated because their purpose is not to punish.” Edward P. Richards, *The Jurisprudence of Prevention: The Right of Societal Self-Defense Against Dangerous Individuals*, 16 *Hastings Const. L. Quarterly* 329 (1989). The Department of Health wants the public to cooperate voluntarily with the imposition of I/Q as much as possible.

¹⁰⁷ Minn. Stat. § 588.01, subd. 3 (2006).

¹⁰⁸ Minn. Stat. §§ 588.04-.15 (2006). Ordinarily, contempt of court is punishable by a fine or by imprisonment in a county jail, workhouse or work farm. However, where a person is unable to “endure the imprisonment,” the court may relieve the person in such manner and upon such terms as may be just. Minn. Stat. § 588.10 (2006). This enables the court to return a person who has violated an I/Q order to the location specified in that order or to another facility, as appropriate to prevent or control the spread of the communicable disease.

¹⁰⁹ Minn. Stat. § 588.20, subd. 2(4), (5) (2006).

¹¹⁰ Minn. Stat. § 145.36 (2006).

5.00 TERMINATION OF I/Q

Individuals under I/Q must be released immediately when they pose no known risk of transmitting a communicable or potentially communicable disease to others.

5.10 EXPIRATION OF ORDER

I/Q must terminate automatically on the expiration date of the court order authorizing the I/Q.¹¹¹

5.20 HEALTH COMMISSIONER'S DETERMINATION

I/Q must terminate before the expiration date if the Health Commissioner determines that I/Q is no longer necessary to protect the public.¹¹² By making such a determination, the Health Commissioner may terminate a court-ordered I/Q without any further court action.

¹¹¹ Minn. Stat. § 144.419, subd. 3.

¹¹² *Id.*

6.00 OTHER RELEVANT MINNESOTA STATUTES

6.10 EMERGENCY MANAGEMENT ACT

The [Minnesota Emergency Management Act of 1996](#)¹¹³ was amended in 2002 to confer certain emergency powers on the Governor. The Governor is authorized to declare a **national security emergency** (for a period not to exceed 30 days), or a **peacetime emergency** (for a period not to exceed 5 days, unless extended up to 30 days by a resolution of the [Executive Council](#) or by vote of the legislature).¹¹⁴ The Emergency Management Act, like the I/Q law, provides that an individual always retains the fundamental right to refuse medical treatment. However, when the Governor has declared a national security or peacetime emergency because of a communicable disease, any person who is infected or reasonably believed to be infected with that disease, and who refuses to submit to medical procedures or protocols as directed by the Health Commissioner, may be subject to the I/Q law.¹¹⁵ Note that the declaration of an emergency by the Governor is **not** a prerequisite for the use of I/Q as a control measure by public health officials.

6.20 PRE-2002 HEALTH THREAT PROCEDURES

Health directives and emergency detention. Statutory provisions predating the enactment of the I/Q law in 2002 set forth standards and procedures for the Health Commissioner to follow with respect to persons who demonstrate an inability or unwillingness to act in such a manner as to not place others at risk of infection from a communicable disease, or who fail or refuse to comply with a health directive.¹¹⁶ Under these provisions, the Health Commissioner may issue a directive for a carrier of a communicable disease to cooperate with health authorities in their efforts to control transmission of the disease, including submitting to medical testing and treatment.¹¹⁷ These provisions also allow the District Court to issue an *ex parte* order for the temporary emergency detention of a person who poses an imminent health threat to others (in the case of an indirectly communicable disease) or a substantial likelihood of an imminent health threat to others (in the case of a directly communicable disease).¹¹⁸ **These health threat provisions operate independently from the I/Q law.**

¹¹³ Minn. Stat. ch. 12.

¹¹⁴ Minn. Stat. § 12.31, subs. 1, 2. Under plans announced by Governor Pawlenty, declaring a state of emergency would be the first step in combating an avian flu epidemic in Minnesota. Press Release, “Governor Pawlenty Outlines State Response to Avian and Pandemic Flu” (Nov. 3, 2005).

¹¹⁵ Minn. Stat. § 12.39, subd. 1.

¹¹⁶ Minn. Stat. §§ 144.4171-.4186.

¹¹⁷ Minn. Stat. § 144.4172, subd. 6.

¹¹⁸ [Minn. Stat. § 144.4182 \(2006\)](#).

Tuberculosis. The Minnesota health statutes include provisions specifically addressing screening for and preventing the spread of tuberculosis. Under one of these provisions, the court may issue an *ex parte* order for the temporary detention of a tuberculosis carrier who may be unlocatable or who is or may become infectious before the conclusion of court proceedings.¹¹⁹ A tuberculosis carrier may be detained for up to six (6) days, based on an *ex parte* finding by the Court that probable cause exists that the carrier poses a threat to public health.¹²⁰ **These tuberculosis-related provisions operate independently from the I/Q law.**

6.30 PRE-2002 RULEMAKING AUTHORITY

Statutory provisions predating the enactment of the [Minnesota Emergency Health Powers Act](#) (“MEHPA”) in 2002 authorize the Health Commissioner to adopt rules pertaining to I/Q. The Health Commissioner may adopt rules for the preservation of public health, which may include rules for “the disinfection and quarantine of persons and places in case of [communicable] diseases.”¹²¹ Similarly, the Health Commissioner “may establish and enforce a system of quarantine against the introduction into the state of any plague or other communicable disease by common carriers doing business across its borders.” Where an interstate carrier is found to be infected with a communicable disease, the Health Department may detain the carrier and place all persons thereon under I/Q until the danger of the communicable disease has been removed.¹²² Although these provisions remain in effect, the Health Commissioner has no current rules promulgated there under.

¹¹⁹ [Minn. Stat. § 144.444 \(2006\).](#)

¹²⁰ [Minn. Stat. § 144.4808, subd. 2 \(2006\).](#)

¹²¹ [Minn. Stat. § 144.12, subd. 1\(7\) \(2006\).](#)

¹²² [Minn. Stat. § 144.14 \(2006\).](#)

7.00 SPECIAL POPULATIONS

Special care must be taken in applying the I/Q law to children and members of certain minority groups.

7.10 NON-ENGLISH SPEAKERS/ PERSONS DISABLED IN COMMUNICATION

*Where a person subject to I/Q is a non-English speaker or has a communication-related disability, how should the court ensure that due process is provided? When a person placed under I/Q is not proficient in the English language, or has a hearing, speech or other communication-related disability, due process requires that a qualified interpreter be appointed to serve throughout the proceedings. The interpreter may participate in the proceedings in person or by telephone. All written notices and other legal documents must also be translated by a qualified interpreter before being provided to the person under I/Q.*¹²³

7.20 NATIVE AMERICANS

*Under what circumstances may Native Americans be placed under I/Q pursuant to the Minnesota I/Q law?*¹²⁴ At present, **the Minnesota I/Q law is not applicable to Native Americans within Indian country.**¹²⁵ Generally, state laws may be enforced against Native Americans in Indian country only if expressly provided by Congress.¹²⁶ Congress has [authorized the adoption of rules for state officials and employees to enter onto Indian country to enforce state health laws](#), including I/Q laws.¹²⁷ However, **no such rules have yet been adopted.** Rules have been proposed that would authorize the CDC Director, with the concurrence of the Director of the [Indian Health Service](#), to allow state personnel to enter Indian country for the sole purpose of enforcing **federal I/Q laws and regulations.**¹²⁸

¹²³ Minn. Stat. §§ 546.43-.44 (2006); Minn. R. Gen. Pract. 8. Note also that the statute regarding proceedings to commit a tuberculosis carrier who poses a danger to public health (which is separate from the I/Q law) specifically provides that the carrier or respondent has the right to the assistance of an interpreter. Minn. Stat. § 144.4805, subd. 3(v) (2006).

¹²⁴ As discussed *infra* in section 9.30, the federal government may place a Native American who is afflicted with a contagious or infectious disease in I/Q, if this is determined to be necessary to protect the health of the Native American or others. 26 U.S.C. § 198 (2007).

¹²⁵ “Indian country” includes (1) Indian reservations under the jurisdiction of the federal government, (2) dependent Indian communities, and (3) Indian allotments under the General Allotment Act of 1897, the Indian titles to which have not been extinguished. *U.S. v. South Dakota*, 665 F.2d 837, 839 (8th Cir. 1981); *Weddell v. Meierhenry*, 636 F.2d 211 (8th Cir. 1980).

¹²⁶ [California v. Cabazon Band of Mission Indians](#), 480 U.S. 202, 207 (1987); see also [Bryan v. Itasca County](#), 426 U.S. 373 (1976) (states do not have general civil regulatory power over Indian reservations).

¹²⁷ 25 U.S.C. § 231(1) (2007).

¹²⁸ [70 Fed. Reg. 71935 \(Nov. 30, 2005\)](#) (proposed 42 C.F.R. § 70.27(d)).

Outside Indian country. There are no barriers to applying the Minnesota I/Q to Native Americans outside Indian country.

7.30 MINORS

Is the I/Q law applicable to minors? The procedure for placing and keeping adults under I/Q is also applicable to minor children (under age 18). The I/Q law contains no special provisions for placing minor children under I/Q.

Where a minor is placed under I/Q, what contact should be provided for parents and other caregivers? When possible, a minor and his or her primary caregiver should remain in the I/Q area. At the same time, it is especially important that people at risk for complications (such as diabetics or the elderly) and those who may be unable to comply with I/Q precautions (such as other children) leave and remain outside the I/Q area.¹²⁹ The Health Department's aim is to make sure that minor children under I/Q are cared for, while at the same time limiting further exposure to a communicable disease. However, as discussed *supra* in section 3.50, a family member has the right to enter the I/Q area, and may then him- or herself be subject to I/Q.¹³⁰

Who has the authority to make medical and legal decisions on behalf of a minor who is under I/Q? When a child under age 18 is placed in I/Q, the child's due process rights may be exercised by his or her birth or adoptive parent(s) or legal guardian(s),¹³¹ which arguably would include the right to request a hearing, to request a court-appointed attorney, and to refuse medical treatment.¹³² All required notices should be provided to the parent(s) or legal guardian(s), whether the parent(s) or guardian(s) are inside or outside the I/Q area.

¹²⁹ *Draft Procedures for I/Q Monitoring Calls* at 3.

¹³⁰ Minn. Stat. § 144.419, subd. 5(b). "Family member" is not defined in the statute. Individuals who wish to enter the I/Q area, and who are related either by law (such as a spouse or adopted child) or by blood, must be notified of the risks of entry and must sign an appropriate waiver in order to enter the I/Q area.

¹³¹ A legally appointed guardian, who may be the [Commissioner of Human Services](#), is responsible for making major life decisions on the child's behalf. [Minn. Stat. § 260C.325, subd. 4 \(2006\)](#). Note that there is no authority for the appointment of a guardian *ad litem* to represent the interests of a minor in an I/Q proceeding.

¹³² See Minn. Stat. § 540.08 (2006) (parent may maintain a legal action for injury to child on child's behalf).

8.00 FEDERAL QUARANTINE

Under certain circumstances, the federal government may impose its own quarantines within Minnesota.

8.10 PUBLIC HEALTH SERVICE ACT

The federal [Public Health Service Act](#) provides that the [U.S. Surgeon General](#), with the approval of the Secretary of Health and Human Services, may make and enforce regulations to prevent introduction or spread of communicable diseases into the United States from a foreign country, or from one state to another.¹³³ These regulations may provide for the apprehension and detention of a person who is reasonably believed to be infected and who is either **moving from one state to another**, or who is the **probable source of infection** of other persons who are moving from one state to another.¹³⁴ HHS has delegated the day-to-day implementation of these provisions of the Public Health Service Act to the CDC's [Division of Global Migration and Quarantine](#).

What diseases are subject to federal quarantine? Not all communicable and/or life-threatening diseases are subject to federal quarantine under the Public Health Service Act. The I/Q regulations adopted under that statute are limited to those communicable diseases listed in a [Presidential Executive Order](#).¹³⁵

Under what circumstances will the federal government act to prevent interstate transmission of a communicable disease? Pursuant to regulations adopted under the Public Health Services Act, whenever the CDC determines that **state and local efforts are insufficient to prevent the spread of a communicable disease to another state**, the CDC may take such measures as it deems reasonably necessary.¹³⁶

Under what circumstances will the federal government act to prevent transmission of a communicable disease into the U.S. from a foreign country? Whenever the CDC has reason to believe that a person arriving in the United

¹³³ 42 U.S.C. § 264(a) (2007).

¹³⁴ 42 U.S.C. § 264(d). Under some scenarios, state and federal jurisdictions would be concurrent and overlapping, such as when persons arriving by airplane at a Minnesota airport have been infected with or exposed to a communicable disease. See <http://www.cdc.gov/ncidod/sars/basics.htm>.

¹³⁵ See Executive Order 13375 (April 1, 2005). This Order amended the earlier [Executive Order 13295 \(April 4, 2003\)](#) to include pandemic influenza resulting from novel or re-emergent viruses. A list of federally quarantinable diseases is contained in the Appendix. Note that a federal quarantine is widely considered to be more restrictive than a quarantine under the Minnesota I/Q law. For example, unlike the I/Q law, federal regulations do not contain any requirements regarding meeting the essential needs of persons under quarantine, such as food, clothing, contact with the outside world, or access to medical care. Furthermore, although federal rules have been proposed that would establish procedural protections for persons under federal quarantine, including the right to a hearing, those rules have not yet been adopted.

¹³⁶ 42 C.F.R. § 70.2 (2007).

States is infected with or has been exposed to any of the diseases listed in a Presidential Executive Order, the CDC may take whatever steps it considers necessary, including I/Q, to prevent the introduction or spread of that disease.¹³⁷ The vehicle itself (aircraft, train, ship, *etc.*) may be detained by the CDC for disinfection.¹³⁸

Time of war. To protect members of the military in a time of war against any communicable disease specified in an Executive Order of the President, the Secretary of Health and Human Services is further empowered to adopt regulations for the apprehension and examination of persons reasonably believed to be infected or a probable source of infection.¹³⁹

What penalties may be imposed on a person who violates a federal quarantine? Any person who violates a federal quarantine under the Public Health Service Act is subject to a fine of up to \$1,000, imprisonment of up to one year, or both.¹⁴⁰

8.20 STAFFORD ACT

When a determination has been made that federal assistance is needed to supplement state and local public health efforts, the President may declare an emergency under the federal [Robert T. Stafford Disaster Relief and Emergency Assistance Act](#) (the “Stafford Act”).¹⁴¹ When an emergency is declared, any federal agency (such as the [Federal Emergency Management Administration \(FEMA\)](#)) may be directed to use its resources to support state and local emergency assistance efforts, including the provision of health and safety measures.¹⁴² Furthermore, because of the nature of a particular emergency, the President may determine that the federal government bears exclusive or primary responsibility and authority for responding to it.¹⁴³ I/Q likely falls within the scope of this statute, although it is not specifically mentioned.

8.30 NATIVE AMERICANS

Federal law authorizes the [isolation or quarantine of an Indian](#) who is afflicted with a contagious or infectious disease, if this is determined to be necessary to protect the health of the Indian or others.¹⁴⁴

¹³⁷ 42 C.F.R. §§ 71.32(a), 71.33 (2007).

¹³⁸ 42 C.F.R. §§ 71.32(b), 71.44. The CDC maintains a [federal quarantine station](#) at the Minneapolis-Saint Paul International Airport, with jurisdiction over all ports in Minnesota, Nebraska, North Dakota and South Dakota.

¹³⁹ [42 U.S.C. § 266 \(2007\)](#).

¹⁴⁰ [42 U.S.C. § 271\(a\) \(2007\)](#); 42 C.F.R. § 71.2 (2007).

¹⁴¹ 42 U.S.C. §§ 5122(1), 5191 (2007).

¹⁴² 42 U.S.C. § 5192 (2007).

¹⁴³ 42 U.S.C. § 5191(b).

¹⁴⁴ 25 U.S.C. § 198. Federal rules have also been proposed, but not yet adopted, that would allow the CDC Director to quarantine persons on tribal lands, after consultations with the federal Indian Health Service and the affected tribe(s), even if there is no interstate travel or transmission involved. 70 Fed. Reg. 71935 (Nov. 30, 2005) (proposed 42 C.F.R. § 70.27(a)). Minnesota’s authority to enforce its own I/Q law with respect to its Native American population is discussed *supra* in section 7.20.

8.40 FEDERAL FACILITIES

The federal government would have jurisdiction over any I/Q situation arising in a federal facility, such as a federal prison, hospital or military base.¹⁴⁵ Such a situation could create an overlap between state and federal jurisdiction – for example, where employees who have been exposed to a communicable disease inside a federal facility leave that facility to return home at the end of the day.

¹⁴⁵ The federal [Bureau of Prisons](#) is charged with the safekeeping, care and protection of federal prisoners. [18 U.S.C. § 4042\(a\) \(2007\)](#). Officials of the federal [Public Health Service](#) may be detailed to provide medical services at federal prisons, including the management of infectious diseases. [18 U.S.C. § 4005\(a\) \(2007\)](#); *see also* 70 Fed. Reg. 71935 (Nov. 30, 2005) (proposed 42 C.F.R. § 70.27(a)).

9.00 FEDERAL COURT REVIEW

While a person subject to the Minnesota I/Q law may seek to challenge the I/Q in federal court, there are limits on a federal court's jurisdiction over such claims.

9.10 CHALLENGES TO A FEDERAL QUARANTINE

Where I/Q is imposed by a federal agency (such as the CDC), as authorized by the Public Health Service Act or other federal statute, a court challenge to that action would present a [federal question](#) and would be subject to the original jurisdiction of the [U.S. District Court for the District of Minnesota](#).¹⁴⁶

9.20 FEDERAL CHALLENGE TO STATE I/Q

In addition to (or instead of) exercising the right to a hearing in state court, a person placed under I/Q pursuant to the Minnesota I/Q law may seek injunctive relief in federal court, either by filing a [writ of habeas corpus](#)¹⁴⁷ or by asserting that his or her constitutional rights have been [violated under color of state law](#).¹⁴⁸ Several factors will affect whether the federal court will exercise jurisdiction over such a claim.¹⁴⁹

Availability of injunctive relief. Prospective, injunctive relief is available under Section 1983 to prevent a constitutional violation under color of state law.¹⁵⁰ A Section 1983 claim in federal court to prevent enforcement of the Minnesota I/Q law would state a cause of action (although the merits of the claim may or may not be sufficient for the injunction to be granted).

*Exhaustion of state judicial remedies.*¹⁵¹ Minnesota law provides judicial remedies (a court hearing and an appeal) to persons subject to the I/Q law. Under

¹⁴⁶ 28 U.S.C. § 1331 (2007).

¹⁴⁷ 28 U.S.C. § 2254 (2007). While I/Q differs from imprisonment, I/Q pursuant to a court order probably satisfies the statutory requirement that a writ of *habeas corpus* may be issued only when the petitioner is “in custody.” [28 U.S.C. § 2241\(c\)\(3\) \(2007\)](#). See *Jones v. Cunningham*, 371 U.S. 236 (1963) (petitioner on parole is still in custody, because conditions of parole confine and restrain his freedom); see also *Hensley v. Municipal Court*, 411 U.S. 345 (1973). The same is not necessarily true for a person under a temporary hold directive, because there are no sanctions for violation of a temporary hold directive under the I/Q law.

¹⁴⁸ 42 U.S.C. § 1983 (2007).

¹⁴⁹ Other defenses likely to be raised by the state in a federal court challenge to an I/Q action, such as official and qualified immunity, are beyond the scope of this Benchbook.

¹⁵⁰ *Ex parte Young*, 209 U.S. 123 (1908); *Campbell v. Arkansas Dept. of Correction*, 155 F.3d 950 (8th Cir. 1998).

¹⁵¹ The U.S. Supreme Court has held that, in most circumstances, exhaustion of state administrative remedies is not required prior to proceeding with a Section 1983 action. *Patsy v. Board of Regents of the State of Florida*, 457 U.S. 496 (1982). This doctrine is not applicable to Minnesota I/Q matters, however, because there are no administrative remedies provided under the I/Q law.

federal law, [exhaustion of remedies available in state court](#) is required before a writ of *habeas corpus* may be granted for a person under state custody.¹⁵² However, exhaustion of judicial remedies generally is not required for plaintiffs seeking relief under Section 1983.¹⁵³

Abstention. A federal action brought while an I/Q proceeding is pending in state court may be subject to abstention. The [Younger abstention doctrine](#) applies if (1) there are state proceedings pending, (2) there are important state interests at stake, and (3) the plaintiff will have an adequate opportunity to litigate his federal claims in the state proceeding.¹⁵⁴ Abstention will not apply if the plaintiff faces an immediate threat of significant and irreparable harm.¹⁵⁵

Stay of state proceedings. A federal judge may stay all state court proceedings that are the subject of a *habeas corpus* proceeding.¹⁵⁶ Barring such a stay, a federal filing does not prevent a state court judge from continuing with an I/Q proceeding as set forth herein.

¹⁵² 28 U.S.C. § 2254(b)(1)(A). See *Rose v. Lundy*, 455 U.S. 509 (1982); *Ex parte Royall*, 117 U.S. 241 (1886).

¹⁵³ [Monroe v. Pape](#), 365 U.S. 167 (1961).

¹⁵⁴ *H.C. ex rel. Koppel v. Gordon*, 203 F.3d 610, 613 (9th Cir. 2000) (citing *Younger v. Harris*, 401 U.S. 37, 43 (1971)). *Younger* abstention, which originally applied only to state criminal prosecutions, has been extended to state civil enforcement actions. [Trainor v. Hernandez](#), 431 U.S. 434 (1977). Abstention would not prevent a plaintiff from seeking monetary damages in federal court after the completion of state I/Q proceedings.

¹⁵⁵ *Younger*, 401 U.S. at 44.

¹⁵⁶ [28 U.S.C. § 2251 \(2007\)](#). Under other circumstances, a federal judge is prohibited from staying state court proceedings pursuant to the [Anti-Injunction Act, 28 U.S.C. § 2283 \(2007\)](#).

APPENDIX

THE MINNESOTA I/Q LAW

MINN. STAT. § 144.419 ISOLATION AND QUARANTINE OF PERSONS.

Subd. 1. **Definitions.** For purposes of sections 144.419 to 144.4196, the following definitions apply:

- (1) “bioterrorism” means the intentional use of any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, to cause death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism in order to influence the conduct of government or to intimidate or coerce a civilian population;
- (2) “communicable disease” means a disease caused by a living organism or virus and believed to be caused by bioterrorism or a new or novel or previously controlled or eradicated infectious agent or biological toxin that can be transmitted person to person and for which isolation or quarantine is an effective control strategy, excluding a disease that is directly transmitted as defined under section 144.4172, subdivision 5;
- (3) “isolation” means separation, during the period of communicability, of a person infected with a communicable disease, in a place and under conditions so as to prevent direct or indirect transmission of an infectious agent to others; and
- (4) “quarantine” means restriction, during a period of communicability, of activities or travel of an otherwise healthy person who likely has been exposed to a communicable disease to prevent disease transmission during the period of communicability in the event the person is infected.

Subd. 2. General requirements.

- (a) The commissioner of health or any person acting under the commissioner's authority shall comply with paragraphs (b) to (h) when isolating or quarantining individuals or groups of individuals.
- (b) Isolation and quarantine must be by the least restrictive means necessary to prevent the spread of a communicable or potentially communicable disease to others and may include, but are not limited to, confinement to private homes or other private or public premises.
- (c) Isolated individuals must be confined separately from quarantined individuals.
- (d) The health status of isolated and quarantined individuals must be monitored regularly to determine if they require continued isolation or quarantine. To adequately address emergency health situations, isolated and quarantined individuals shall be given a reliable means to communicate 24 hours a day with health officials and to summon emergency health services.
- (e) If a quarantined individual subsequently becomes infectious or is reasonably believed to have become infectious with a communicable or potentially communicable disease, the individual must be isolated according to section 144.4195.
- (f) Isolated and quarantined individuals must be immediately released when they pose no known risk of transmitting a communicable or potentially communicable disease to others.
- (g) The needs of persons isolated and quarantined shall be addressed in a systematic and competent fashion, including, but not limited to, providing adequate food, clothing, shelter,

means of communication between those in isolation or quarantine and those outside these settings, medication, and competent medical care.

(h) Premises used for isolation and quarantine shall be maintained in a safe and hygienic manner and be designed to minimize the likelihood of further transmission of infection or other harms to persons isolated and quarantined.

Subd. 3. Termination. The isolation or quarantine of a person must terminate automatically on the expiration date of a court order authorizing isolation or quarantine that is issued according to section 144.4195, before the expiration date if the commissioner of health determines that isolation or quarantine of the person is no longer necessary to protect the public.

Subd. 4. Right to refuse treatment. Any person who is isolated or quarantined according to this section and section 144.4195 has a fundamental right to refuse medical treatment, testing, physical or mental examination, vaccination, participation in experimental procedures and protocols, collection of specimens, and preventive treatment programs. A person who has been directed by the commissioner of health or any person acting under the commissioner's authority to submit to medical procedures and protocols because the person is infected with or reasonably believed by the commissioner or by the person acting under the commissioner's authority to be infected with or exposed to a communicable disease and who refuses to submit to them may be subject to continued isolation or quarantine according to the parameters set forth in section 144.4195.

Subd. 5. Restricted entry.

(a) No person, other than a person authorized by the commissioner of health or authorized by any person acting under the commissioner's authority, shall enter an isolation or quarantine area. If, by reason of an unauthorized entry into an isolation or quarantine area, a person poses a danger to public health, the person may be subject to isolation or quarantine according to this section and section 144.4195.

(b) A family member of a person isolated or quarantined has a right to choose to enter into an isolation or quarantine area. The commissioner of health must permit the family member entry into the isolation or quarantine area if the family member signs a consent form stating that the family member has been informed of the potential health risks, isolation and quarantine guidelines, and the consequences of entering the area. The family member may not hold the Department of Health, the commissioner of health, or the state responsible for any consequences of entering the isolation or quarantine area. If, by reason of entry into an isolation or quarantine area under this paragraph, a person poses a danger to public health, the person may be subject to isolation or quarantine according to this section and section 144.4195.

MINN. STAT. § 144.4195 DUE PROCESS FOR ISOLATION OR QUARANTINE OF PERSONS.

Subdivision 1. Ex parte order for isolation or quarantine.

(a) Before isolating or quarantining a person or group of persons, the commissioner of health shall obtain a written, ex parte order authorizing the isolation or quarantine from the District Court of Ramsey County, the county where the person or group of persons is located, or a county adjoining the county where the person or group of persons is located. The evidence or testimony in support of an application may be made or taken by telephone, facsimile transmission, video equipment, or other electronic communication. The court shall grant the order upon a finding that probable cause exists to believe isolation or quarantine is warranted to protect the public health.

(b) The order must state the specific facts justifying isolation or quarantine, must state that the person being isolated or quarantined has a right to a court hearing under this section and a right to be represented by counsel during any proceeding under this section, and must be provided immediately to each person isolated or quarantined. The commissioner of health shall provide a copy of the authorizing order to the commissioner of public safety and other peace officers known to the commissioner to have jurisdiction over the site of the isolation or quarantine. If feasible, the commissioner of health shall give each person being isolated or quarantined an estimate of the expected period of the person's isolation or quarantine.

(c) If it is impracticable to provide individual orders to a group of persons isolated or quarantined, one order shall suffice to isolate or quarantine a group of persons believed to have been commonly infected with or exposed to a communicable disease. A copy of the order and notice shall be posted in a conspicuous place:

(1) in the isolation or quarantine premises, but only if the persons to be isolated or quarantined are already at the isolation or quarantine premises and have adequate access to the order posted there; or

(2) in another location where the group of persons to be isolated or quarantined is located, such that the persons have adequate access to the order posted there.

If the court determines that posting the order according to clause (1) or (2) is impractical due to the number of persons to be isolated or quarantined or the geographical area affected, the court must use the best means available to ensure that the affected persons are fully informed of the order and notice.

(d) Any peace officer, as defined in section 144.4803, subdivision 16, may use force as described by sections 609.06 and 609.066 to apprehend, hold, transport, quarantine, or isolate a person subject to the order if the person flees or forcibly resists the officer. This subdivision is authority to carry out enforcement duties under this section. The commissioner or an agent of a local board of health authorized under section 145A.04 shall advise the peace officer on request of protective measures recommended to protect the officer from possible transmission of the communicable disease. The peace officer may act upon telephone, facsimile, or other electronic notification of the order from the court, commissioner of health, agent of a local board of health, or commissioner of public safety. This paragraph expires August 1, 2009.

(e) No person may be isolated or quarantined pursuant to an order issued under this subdivision for longer than 21 days without a court hearing under subdivision 3 to determine whether isolation or quarantine should continue. A person who is isolated or quarantined may request a court hearing under subdivision 3 at any time before the expiration of the order.

Subd. 2. Temporary hold upon commissioner's directive.

(a) Notwithstanding subdivision 1, the commissioner of health may by directive isolate or quarantine a person or group of persons without first obtaining a written, ex parte order from the court if a delay in isolating or quarantining the person or group of persons would significantly jeopardize the commissioner of health's ability to prevent or limit the transmission of a communicable or potentially communicable life-threatening disease to others. The directive shall specify the known period of incubation or communicability or the estimated period under the commissioner's best medical judgment when the disease is unknown. The directive remains in effect for the period specified unless amended by the commissioner or superseded by a court order. The commissioner must provide the person or group of persons subject to the temporary hold with notice that the person has a right to request a court hearing under this section and a right to be represented by counsel during a proceeding under this section. If it is impracticable to provide individual notice to each person subject to the temporary hold, notice of these rights may be posted in the same manner as the posting of orders under subdivision 1, paragraph (c). Immediately upon executing the directive and initiating notice of the parties subject to it, the commissioner shall initiate the process to apply for a written, ex parte order pursuant to subdivision 1 authorizing the isolation or quarantine. The court must rule within 24 hours of receipt of the application or sooner if practicable or necessary. If the person is under a temporary hold, the person may not be held in isolation or quarantine after the temporary hold expires unless the court issues an ex parte order under subdivision 1. If the court does not rule within 36 hours after the execution of the directive, the directive shall expire.

(b) At the same time the commissioner initiates the process to apply for a written, ex parte order under paragraph (a), the commissioner shall notify the governor, the majority and minority leaders of the senate, the speaker and majority and minority leaders of the house, and the chairs and the ranking minority members of the senate and house committees having jurisdiction over health policy that a directive for a temporary hold has been issued under this subdivision. Notice under this paragraph is governed by the data privacy provisions of subdivision 6.

(c) Any peace officer, as defined in section 144.4803, subdivision 16, may assist a public health official to apprehend, hold, transport, quarantine, or isolate a person subject to the commissioner's directive. The peace officer may use force as described by sections 609.06 and 609.066. The commissioner or an agent of a local board of health authorized under section 145A.04 shall advise the peace officer on request of protective measures recommended to protect the officer from possible transmission of the communicable disease. The peace officer may act upon telephone, facsimile, or other electronic notification of the commissioner's directive or upon the request of an agent of a local board of health.

(d) If a person subject to a commissioner's directive under paragraph (a) is already institutionalized in an appropriate health care facility, the commissioner of health may direct the facility to continue to hold the person. The facility shall take all reasonable measures to prevent the person from exposing others to the communicable disease.

(e) This subdivision expires August 1, 2009.

Subd. 3. Court hearing.

(a) A person isolated or quarantined under an order issued pursuant to subdivision 1 or a temporary hold under subdivision 2 or the person's representative may petition the court to contest the court order or temporary hold at any time prior to the expiration of the order or

temporary hold. If a petition is filed, the court must hold a hearing within 72 hours from the date of the filing. A petition for a hearing does not stay the order of isolation or quarantine. At the hearing, the commissioner of health must show by clear and convincing evidence that the isolation or quarantine is warranted to protect the public health.

(b) If the commissioner of health wishes to extend the order for isolation or quarantine past the period of time stated in subdivision 1, paragraph (d), the commissioner must petition the court to do so. Notice of the hearing must be served upon the person or persons who are being isolated or quarantined at least three days before the hearing. If it is impracticable to provide individual notice to large groups who are isolated or quarantined, a copy of the notice may be posted in the same manner as described under subdivision 1, paragraph (c).

(c) The notice must contain the following information:

(1) the time, date, and place of the hearing;

(2) the grounds and underlying facts upon which continued isolation or quarantine is sought;

(3) the person's right to appear at the hearing; and

(4) the person's right to counsel, including the right, if indigent, to be represented by counsel designated by the court or county of venue.

(d) The court may order the continued isolation or quarantine of the person or group of persons if it finds by clear and convincing evidence that the person or persons would pose an imminent health threat to others if isolation or quarantine was lifted. In no case may the isolation or quarantine continue longer than 30 days from the date of the court order issued under this subdivision unless the commissioner petitions the court for an extension. Any hearing to extend an order is governed by this subdivision.

Subd. 4. Hearing on conditions of isolation or quarantine. A person isolated or quarantined may request a hearing in district court for remedies regarding the treatment during and the terms and conditions of isolation or quarantine. Upon receiving a request for a hearing under this subdivision, the court shall fix a date for a hearing that is within seven days of the receipt of the request by the court. The request for a hearing does not alter the order for isolation or quarantine. If the court finds that the isolation or quarantine of the individual is not in compliance with section 144.419, the court may fashion remedies appropriate to the circumstances of the emergency and in keeping with this chapter.

Subd. 5. Judicial procedures and decisions.

(a) Court orders issued pursuant to subdivision 3 or 4 shall be based upon clear and convincing evidence and a written record of the disposition of the case shall be made and retained.

(b) Any person subject to isolation or quarantine has the right to be represented by counsel.

Persons not otherwise represented may request the court to appoint counsel at the expense of the Department of Health or of a local public health board that has entered into a written delegation agreement with the commissioner under subdivision 7. The court shall appoint counsel when so requested and may have one counsel represent a group of persons similarly situated. The appointments shall be only for representation under subdivisions 3 and 4 and for appeals of orders under subdivisions 3 and 4. On counsel's request, the commissioner or an agent of a local board of health authorized under section 145A.04 shall advise counsel of protective measures recommended to protect counsel from possible transmission of the communicable disease.

Appointments shall be made and counsel compensated according to procedures developed by the Supreme Court. The procedures shall provide standards for determining indigency for purposes

of appeal. A person seeking an appeal who does not meet the indigency standard may, upon motion by the commissioner of health or local public health board and subsequent court order, reimburse the Department of Health or local public health board for the attorney fees and costs incurred in the person's appeal. Counsel appointed for a respondent must be allowed to withdraw from representation and is not required to pursue an appeal if, in the opinion of counsel, there is insufficient basis for proceeding.

(c) The court may choose to conduct a hearing under subdivision 3 or 4 by telephonic, interactive video, or other electronic means to maintain isolation or quarantine precautions and reduce the risk of spread of a communicable disease. Otherwise, the manner in which the request for a hearing is filed and acted upon shall be in accordance with the existing laws and rules of the courts of this state or, if the isolation or quarantine occurs during a national security or peacetime emergency, any rules that are developed by the courts for use during a national security or peacetime emergency.

Subd. 6. **Data privacy.** Data on individuals contained in the commissioner's directive under subdivision 2 are health data under section 13.3805, subdivision 1.

Subd. 7. **Delegation.** The commissioner may delegate any authority prescribed in subdivision 1 or 3 to the local public health board, according to chapter 145A.

STATUTORY HISTORY OF THE MINNESOTA I/Q LAW

The I/Q law was part of the [Minnesota Emergency Health Powers Act](#) (“MEHPA”), which was enacted on May 22, 2002 and went into effect immediately.¹⁵⁷ MEHPA’s I/Q provisions differed significantly from the CDC’s model statute – for example, while the model statute provided that a person could be isolated or quarantined upon a directive from the state’s health commissioner, without court action, for up to 10 days, the Minnesota legislature initially limited the duration of such a unilateral I/Q (*i.e.*, a temporary hold directive) to only 48 hours.¹⁵⁸

MEHPA directed the Health Commissioner to study and submit recommendations, with public comment and upon consultation with the heads of other affected agencies, regarding additional legislative changes needed to strengthen the state’s capacity to respond to a public health emergency.¹⁵⁹ After meetings with health care professionals, emergency responders and other interested parties during the summer and fall of 2002, the [Health Commissioner’s MEHPA Report](#) was completed on February 14, 2003. Regarding I/Q and due process protections, the report included recommendations that (1) the relevant state agencies should develop procedural protocols for the implementation and enforcement of I/Q; (2) the Department of Health should gather information about the federal government’s enhanced I/Q powers under post-9/11 laws, and coordinate Minnesota’s efforts with federal planning; and (3) the Department of Health and local health agencies should evaluate I/Q protocols to ensure health and safety while providing due process and minimizing the impact on individual rights.¹⁶⁰ The Department of Health also conducted tabletop exercises in June and August 2004 to assess the coordination of government agencies, including the courts, in response to a large-scale public health emergency.

MEHPA was originally set to expire on August 1, 2004.¹⁶¹ The legislature later extended this deadline to August 1, 2005.¹⁶² Among the significant changes made to the I/Q law under the 2005 amendments were (1) a new provision that authorizes peace officers to use force to implement and enforce a temporary hold directive or an *ex parte* I/Q order, upon request from a judicial or public health official, and to receive advice on measures to protect him- or herself from transmission of the communicable disease;¹⁶³ (2) a requirement that in order for the Health Commissioner to impose a temporary hold, the disease in question must be not only communicable or potentially communicable, but also life-threatening, and that a temporary hold directive must include the estimated period of incubation or communicability of the disease, if known;¹⁶⁴ (3) a requirement that the Health Commissioner must initiate the application process for an *ex parte* order immediately after executing the temporary hold and notifying the person(s) subject to it, and providing that if the court has not ruled within 36 hours after the execution of

¹⁵⁷ Laws 2002, ch. 402, §§ 1-21.

¹⁵⁸ *Id.* § 19.

¹⁵⁹ *Id.* § 20.

¹⁶⁰ Minnesota Department of Health, *Minnesota Emergency Health Powers Act: Report to the Minnesota Legislature* 2003 3-4 (Feb. 14, 2003).

¹⁶¹ Laws 2002, ch. 402, §§ 20-21.

¹⁶² Laws 2004, ch. 279, art. 11, § 7.

¹⁶³ Minn. Stat. § 144.4195, subs. 1(d) and 2(c).

¹⁶⁴ *Id.* subd. 2(a).

the temporary hold directive, the directive expires automatically;¹⁶⁵ and (4) a provision that when a person subject to a temporary hold directive is already institutionalized at an appropriate health care facility, the Health Commissioner may direct the facility to continue to hold the person.¹⁶⁶

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* subd. 2(d).

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF

JUDICIAL DISTRICT

Case Type: ["Health Order Enforcement" if in Ramsey County]
Court File No. _____

State of Minnesota
by its Commissioner of Health,
[Name of Commissioner],

Petitioner,

EX PARTE ISOLATION ORDER

vs.

[Name or Identification of Group],

Respondent(s).

A petition has been filed with this Court by the Minnesota Commissioner of Health ("Commissioner") seeking an *ex parte* order to isolate Respondent(s) to protect the public health. In addition, the Commissioner filed a Memorandum of Law in support of the petition and affidavits in support of the petition.

Based upon the evidence submitted by the Commissioner in the above-referenced matter, I make the following:

FINDINGS OF FACT:

1. [Name of disease] is a communicable disease, as defined under Minn. Stat. § 144.419, subd. 1(2). Isolation is an effective control strategy to stop the spread of [name of disease].

2. [Name of disease] is a life-threatening disease.

3. Pursuant to Minn. Stat. § 144.4195, subd. 2, the Commissioner of Health placed Respondent(s) under a temporary hold on [date], at approximately [time] [a.m.] [p.m.].

4. Probable cause exists to believe that isolation of Respondent(s) is warranted to protect the public health because:

a. The Centers for Disease Control (CDC) and World Health Organization (WHO) have determined that [name of disease] is caused by [known facts about disease, such as source (why this is a new, novel, previously controlled disease or the likely product of bioterrorism), morbidity, route of transmission, mortality rate, and/or effectiveness of known treatments].

b. The CDC recommends that [name of disease] patients in the United States be isolated. Isolation refers to the separation of persons who meet clinical and epidemiological criteria indicating that they have probably been infected with a communicable disease. Isolation is a public health measure that allows patients to receive appropriate care while containing the spread of illness, and thus is an effective control strategy for [name of disease].

c. [Facts that indicate Respondent(s) is/are infected with the disease.]

d. [Facts that indicate Respondent(s) has/have not or will not cooperate with voluntary measures to control the spread of the disease, including remaining isolated on a voluntary basis.]

5. Isolation of Respondent(s) is the least restrictive means necessary to prevent the spread of [name of disease] and to protect the public health.

IT IS ORDERED

1. The Commissioner's petition for an *ex parte* Isolation Order is GRANTED.

2. Respondent(s) is/are to be isolated as follows: [Insert conditions of isolation, which must be the least restrictive means to prevent spread of disease to others. Possible

isolation includes a) confinement to a private home, b) confinement to other private or public premises, c) confinement in a hospital or medical facility.] Respondent(s) shall remain isolated until such time as Respondent(s) is/are released from isolation pursuant to further order of this Court, or pursuant to paragraph 11, below.

3. Respondent(s) has/have the right to a court hearing to contest this Order. Such a hearing must be held within 72 hours from the date of filing of a petition.

4. Respondent(s) has/have the right to be represented by counsel during any further court proceeding regarding the isolation of Respondent(s) pursuant to Minn. Stat. § 144.4195. If Respondent(s) does/do not have an attorney, Respondent(s) may contact the Clerk of Court at [contact number -- if Ramsey County, the number is (651) 266-2804] and request that the Court appoint an attorney to represent Respondent(s) at the expense of the Minnesota Department of Health.

5. The Commissioner shall provide a copy of this Order to the Respondent(s) immediately and shall give instructions to the person delivering this Order to Respondent(s) on how to deliver the Order in a manner that minimizes the risk of transmission of [name of disease] to said person. The Commissioner also shall provide a copy of this Order to the Commissioner of Public Safety and other peace officers known to the Commissioner to have jurisdiction over the site of the isolation.

6. If it is impracticable to provide this Order directly to Respondent(s), a copy of this Order shall be posted in a conspicuous place in the isolation area or in another place where Respondent(s) has/have adequate access to this Order. If posting this Order as directed above is impracticable, the Commissioner must use the best means available to ensure that Respondent(s) is/are fully informed of this Order.

7. If feasible, the Commissioner shall provide Respondent(s) with an estimate of the expected period of isolation.

8. The health status of Respondent(s) must be monitored regularly to determine if Respondent(s) require continued isolation. Respondent(s) shall be given a reliable means, 24 hours a day, to communicate with health officials and to summon emergency health services.

9. Respondent(s) has/have the right to refuse medical treatment, testing, physical or mental examination, vaccination, experimental procedures, collection of specimens and preventive treatment programs. Such refusal may subject Respondent(s) to continued isolation.

10. As necessary, the Commissioner shall coordinate the provision to Respondent(s) of adequate food, clothing, shelter, means of communication with those outside of isolation, medication and competent medical care.

11. Respondent(s) shall be released from the terms of this Order immediately, without further action of this Court, when the Commissioner determines that Respondent(s) pose no known risk of transmitting [name of disease] to others.

12. The premises of the isolation area shall be maintained in a safe and hygienic manner and designed to minimize the likelihood of further transmission of infection or other harm to Respondent(s).

13. This Order will terminate 21 days after the date of issuance, unless another court order is issued that extends the isolation beyond that length of time, or unless Respondent(s) is/are released pursuant to paragraph 11, above.

14. As necessary, reasonable means may be used to keep Respondent(s) under isolation for the duration of this Order, without additional action by the Court. These reasonable

means may include, but are not necessarily limited to, the placement of law enforcement officers and/or the use of electronic monitoring bracelets.

Dated: _____

Judge of District Court

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF

JUDICIAL DISTRICT

Case Type: ["Health Order Enforcement" if in Ramsey County]
Court File No. _____

State of Minnesota
by its Commissioner of Health,
[Name of Commissioner],

Petitioner,

EX PARTE QUARANTINE ORDER

vs.

[Name or Identification of Group],

Respondent(s).

A petition has been filed with this Court by the Minnesota Commissioner of Health ("Commissioner") seeking an *ex parte* order to quarantine Respondent(s) to protect the public health. In addition, the Commissioner filed a Memorandum of Law in support of the petition and affidavits in support of the petition.

Based upon the evidence submitted by the Commissioner in the above-referenced matter, I make the following:

FINDINGS OF FACT:

1. [Name of disease] is a communicable disease, as defined under Minn. Stat. § 144.419, subd. 1(2). Quarantine is an effective control strategy to stop the spread of [name of disease].

2. [Name of disease] is a life-threatening disease.

3. Pursuant to Minn. Stat. § 144.4195, subd. 2, the Commissioner of Health placed Respondent(s) under a temporary hold on [date], at approximately [time] [a.m.] [p.m.].

4. Probable cause exists to believe that quarantine of Respondent(s) is warranted to protect the public health because:

a. The Centers for Disease Control (CDC) and World Health Organization (WHO) have determined that [name of disease] is caused by [known facts about disease, such as source (why this is a new, novel, previously controlled disease or the likely product of bioterrorism), morbidity, route of transmission, mortality rate, and/or effectiveness of known treatments].

b. The CDC recommends that persons exposed to [name of disease] in the United States be quarantined. Quarantine refers to the separation of persons who likely have been exposed to and may have been infected with a communicable disease. Quarantine is a public health measure that allows patients to receive appropriate care while containing the spread of illness, and thus is an effective control strategy for [name of disease].

c. [Facts that indicate Respondent(s) has/have been exposed to the disease.]

d. [Facts that indicate Respondent(s) has/have not or will not cooperate with voluntary measures to control the spread of the disease, including remaining in quarantine on a voluntary basis.]

5. Quarantine of Respondent(s) is the least restrictive means necessary to prevent the spread of [name of disease] and to protect the public health.

IT IS ORDERED

1. The Commissioner's petition for an *ex parte* Quarantine Order is GRANTED.
2. Respondent(s) is/are to be quarantined as follows: [Insert conditions of quarantine, which must be the least restrictive means to prevent spread of disease to others.]

Possible quarantine includes a) confinement to a private home, b) confinement to other private or public premises, c) confinement in a hospital or medical facility.] Respondent(s) shall remain under quarantine until such time as Respondent(s) is/are released from quarantine pursuant to further order of this Court, or pursuant to paragraph 12, below.

3. Respondent(s) has/have the right to a court hearing to contest this Order. Such a hearing must be held within 72 hours from the date of filing of a petition.

4. Respondent(s) has/have the right to be represented by counsel during any further court proceeding regarding the quarantine of Respondent(s) pursuant to Minn. Stat. § 144.4195. If Respondent(s) does/do not have an attorney, Respondent(s) may contact the Clerk of Court at [contact number -- if Ramsey County, the number is (651) 266-2804] and request that the Court appoint an attorney to represent Respondent(s) at the expense of the Minnesota Department of Health.

5. The Commissioner shall provide a copy of this Order to the Respondent(s) immediately and shall give instructions to the person delivering this Order to Respondent(s) on how to deliver the Order in a manner that minimizes the risk of transmission of [name of disease] to said person. The Commissioner also shall provide a copy of this Order to the Commissioner of Public Safety and other peace officers known to the Commissioner to have jurisdiction over the site of the quarantine.

6. If it is impracticable to provide this Order directly to Respondent(s), a copy of this Order shall be posted in a conspicuous place in the quarantine area or in another place where Respondent(s) has/have adequate access to this Order. If posting this Order as directed above is impracticable, the Commissioner must use the best means available to ensure that Respondent(s) is/are fully informed of this Order.

7. If feasible, the Commissioner shall provide Respondent(s) with an estimate of the expected period of quarantine.

8. The health status of Respondent(s) must be monitored regularly to determine if Respondent(s) require continued quarantine, and to determine if Respondent(s) has/have become infected with [name of disease]. Respondent(s) shall be given a reliable means, 24 hours a day, to communicate with health officials and to summon emergency health services.

9. If Respondent(s) develop symptoms indicating that they have been infected with [name of disease], they must be moved immediately into isolation, pursuant to Minn. Stat. § 144.419, subd. 2(e). The Commissioner must then immediately file a petition for an *ex parte* Isolation Order, which would supersede this Order.

10. Respondent(s) has/have the right to refuse medical treatment, testing, physical or mental examination, vaccination, experimental procedures, collection of specimens and preventive treatment programs. Such refusal may subject Respondent(s) to continued quarantine.

11. As necessary, the Commissioner shall coordinate the provision to Respondent(s) of adequate food, clothing, shelter, means of communication with those outside of quarantine, medication and competent medical care.

12. Respondent(s) shall be released from the terms of this Order immediately, without further action of this Court, when the Commissioner determines that Respondent(s) pose no known risk of transmitting [name of disease] to others.

13. The premises of the quarantine area shall be maintained in a safe and hygienic manner and designed to minimize the likelihood of further exposure or other harm to Respondent(s).

14. This Order will terminate 21 days after the date of issuance, unless another court order is issued that extends the quarantine beyond that length of time, or unless Respondent(s) is/are released pursuant to paragraph 12, above.

15. As necessary, reasonable means may be used to keep Respondent(s) under quarantine for the duration of this Order, without additional action by the Court. These reasonable means may include, but are not necessarily limited to, the placement of law enforcement officers and/or the use of electronic monitoring bracelets.

Dated: _____

Judge of District Court

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF

JUDICIAL DISTRICT

Case Type: ["Health Order Enforcement" if in Ramsey County]
Court File No. _____

State of Minnesota
by its Commissioner of Health,
[Name of Commissioner],

Petitioner,

NOTICE OF HEARING

vs.

[Name or Identification of Group],

Respondent(s).

You are currently under [isolation] [quarantine] pursuant to the Order of the Court dated [date of *ex parte* Order, or Order following prior hearing]. That Order is scheduled to expire on [date of expiration].

YOU ARE HEREBY PLACED ON NOTICE that on [**date – at least three days after service of notice**], beginning at [**time**], at [**location**], a hearing will be held on the petition by [name of Commissioner], the Minnesota Commissioner of Health, to extend your [isolation] [quarantine] to [**proposed date of extended isolation or quarantine – no more than 30 days beyond current expiration date**].

Commissioner [name] has asked the Court to extend the duration of your [isolation] [quarantine] because [reasons stated in Commissioner's petition].

You have the right to appear at the hearing. Because of the risk of transmission of [name of disease], you may not appear in person, but may appear instead by [remote method chosen by the Court, such as mobile telephone or video conference]. If you choose to appear at

the hearing, please call [**telephone number**] ten (10) minutes prior to the scheduled time of the hearing stated above.

You have the right to be represented by an attorney at the hearing. If you do not have an attorney, you may contact the Clerk of Court at [**contact number -- if Ramsey County, the number is (651) 266-2804**] and request that the Court appoint an attorney to represent you at the hearing. A Court-appointed attorney will be paid for by the Minnesota Department of Health. Your attorney may appear at the hearing in person, whether you choose to appear by [remote method] or not.

Dated: _____

By: _____

[NAME]
Office of the Minnesota Attorney General
1400 Bremer Tower
445 Minnesota Street
Saint Paul, MN 55101-2131
(651) 296-3353

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF

JUDICIAL DISTRICT

Case Type: ["Health Order Enforcement" if in Ramsey County]
Court File No. _____

State of Minnesota
by its Commissioner of Health,
[Name of Commissioner],

Petitioner,

**ORDER GRANTING CONTINUATION
OF [ISOLATION] [QUARANTINE]**

vs.

[Name or Identification of Group],

Respondent(s).

A hearing was held before this Court on [date], at [location], pursuant to Minn. Stat. § 144.4195, subd. 3(d), regarding the petition filed by the Commissioner of Health (the "Commissioner") to extend the [isolation] [quarantine] of Respondent(s) beyond 21 days from the issuance of the Court's *ex parte* Order. The Commissioner was represented at the hearing by [name of attorney]. Respondent(s) was/were represented at the hearing by [name of attorney(s)].

Based upon the evidence taken at the hearing, I make the following:

FINDINGS OF FACT:

1. Respondent(s) was/were placed under [isolation] [quarantine] pursuant to the Court's *ex parte* Order on [date], pursuant to Minn. Stat. § 144.4195, subd. 1, based on the Court's findings that Respondent(s) likely had been [infected with] [exposed to] [name of disease], a life-threatening communicable disease, and that probable cause existed to believe that [isolation][quarantine] was warranted to protect the public health. The *ex parte* Order will expire on [date -- no later than 21 days after issuance].

2. Clear and convincing evidence demonstrates that if the [isolation] [quarantine] is lifted when the *ex parte* Order expires, Respondent(s) would pose an imminent health threat to others, because:

[Facts showing imminent health threat and need for continuation of isolation or quarantine, including period of communicability of the disease and/or unknown traits of a novel disease.]

IT IS ORDERED

1. The Commissioner's petition for continuation of the [isolation] [quarantine] of Respondent(s) is GRANTED.

2. The [isolation] [quarantine] of Respondent(s) is to be continued until [date – no more than 30 days from issuance of this Order], or until the [isolation] [quarantine] is terminated pursuant to paragraph 5, below. The terms and conditions of the [isolation] [quarantine] specified in the *ex parte* Order otherwise remain in effect.

3. The Commissioner shall serve a copy of this Order on Respondent(s) immediately and shall give instructions to the person completing service of this Order on Respondent(s) on how to minimize the risk of transmission of [name of disease] to said person. Proof of service shall be filed with the Court.

4. If it is impracticable to serve this Order directly on Respondent(s), a copy of this Order shall be posted in a conspicuous place in the [isolation] [quarantine] area or in another place where Respondent(s) has/have adequate access to this Order. If posting this Order as directed above is impracticable, the Commissioner must use the best means available to ensure that Respondent(s) is/are fully informed of this Order.

5. Respondent(s) shall be released from the terms of this Order immediately, without further action of this Court, if and when the Commissioner determines that Respondent(s) pose no known risk of transmitting [name of disease] to others.

6. As necessary, reasonable means may be used to keep Respondent(s) under [isolation] [quarantine] for the duration of this Order, without additional action by the Court. These reasonable means may include, but are not necessarily limited to, the placement of law enforcement officers and/or the use of electronic monitoring bracelets.

Dated: _____

Judge of District Court

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF

JUDICIAL DISTRICT

Case Type: ["Health Order Enforcement" if in Ramsey County]
Court File No. _____

State of Minnesota
by its Commissioner of Health,
[Name of Commissioner],

Petitioner,

**ORDER DENYING CONTINUATION
OF [ISOLATION] [QUARANTINE]**

vs.

[Name or Identification of Group],

Respondent(s).

A hearing was held before this Court on [date], at [location], pursuant to Minn. Stat. § 144.4195, subd. 3(d), regarding the petition filed by the Commissioner of Health (the "Commissioner") to extend the [isolation] [quarantine] of Respondent(s) beyond 21 days from the issuance of the Court's *ex parte* Order. The Commissioner was represented at the hearing by [name of attorney]. Respondent(s) was/were represented at the hearing by [name of attorney(s)].

Based upon the evidence taken at the hearing, I make the following:

FINDINGS OF FACT:

1. Respondent(s) was/were placed under [isolation] [quarantine] pursuant to the Court's *ex parte* Order on [date], pursuant to Minn. Stat. § 144.4195, subd. 1, based on the Court's findings that Respondent(s) likely had been [infected with] [exposed to] [name of disease], a life-threatening communicable disease, and that probable cause existed to believe that [isolation][quarantine] was warranted to protect the public health. The *ex parte* Order will expire on [date -- no later than 21 days after issuance].

2. There has been no showing of clear and convincing evidence to demonstrate that if the [isolation] [quarantine] is lifted when the *ex parte* Order expires, Respondent(s) would pose an imminent health threat to others, because:

[Facts showing that there is no imminent health threat and no need for continuation of isolation or quarantine.]

IT IS ORDERED

1. The Commissioner's petition for continuation of the [isolation] [quarantine] of Respondent(s) is DENIED.

2. Respondent(s) is/are to be released from [isolation] [quarantine] on [day after final effective day of *ex parte* Order], or sooner as provided in paragraph 5, below. Until that time, the terms and conditions of the [isolation] [quarantine] specified in the *ex parte* Order otherwise remain in effect.

3. The Commissioner shall serve a copy of this Order on Respondent(s) immediately and shall give instructions to the person completing service of this Order on Respondent(s) on how to minimize the risk of transmission of [name of disease] to said person. Proof of service shall be filed with the Court.

4. If it is impracticable to serve this Order directly on Respondent(s), a copy of this Order shall be posted in a conspicuous place in the [isolation] [quarantine] area or in another place where Respondent(s) has/have adequate access to this Order. If posting this Order as directed above is impracticable, the Commissioner must use the best means available to ensure that Respondent(s) is/are fully informed of this Order.

5. Prior to the date of release from [isolation] [quarantine] as set forth in Paragraph 2, above, if and when the Commissioner determines that Respondent(s) pose no known risk of

transmitting [name of disease] to others, Respondent(s) shall be released from [isolation]
[quarantine] immediately, without further action of this Court.

Dated: _____

Judge of District Court

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF

JUDICIAL DISTRICT

Case Type: ["Health Order Enforcement" if in Ramsey County]
Court File No. _____

State of Minnesota
by its Commissioner of Health,
[Name of Commissioner],

Petitioner,

**ORDER REGARDING CONDITIONS
OF [ISOLATION] [QUARANTINE]**

vs.

[Name or Identification of Group],

Respondent(s).

A hearing was held before this Court on [date], at [location], pursuant to Minn. Stat. § 144.4195, subd. 4, regarding the petition filed by Respondent(s) to challenge the terms and conditions of their [isolation] [quarantine]. The Commissioner of Health (the "Commissioner") was represented at the hearing by [name of attorney]. Respondent(s) was/were represented at the hearing by [name of attorney(s)].

Based upon the evidence taken at the hearing, I make the following:

FINDINGS OF FACT:

1. Respondent(s) is/are presently under [isolation] [quarantine] pursuant to the Order of the Court dated [date], based upon the Court's findings that they had likely been [infected with] [exposed to] [name of disease], a life-threatening communicable disease, and that [probable cause existed to believe (if *ex parte* order)] [it had been demonstrated by clear and convincing evidence (if following a hearing)] that [isolation] [quarantine] was warranted to protect the public health.

2. Clear and convincing evidence demonstrates that the terms and conditions of the [isolation] [quarantine] [are] [are not] in compliance with Minn. Stat. § 144.419, subd. 2, because:

[Facts relating to terms and conditions of isolation or quarantine, including whether least restrictive methods are being used, regular monitoring of health status, access to medical services and other basic needs, and safety and hygiene of premises.]

IT IS ORDERED

1. The petition to challenge the terms and conditions of [isolation] [quarantine] is [GRANTED] [DENIED].

2. [If petition is granted – ways in which terms and conditions of isolation or quarantine must be modified to comply with the requirements of Minn. Stat. § 144.419, subd. 2, as appropriate to the circumstances of the emergency.]

3. This Order shall remain in effect for the remaining duration of Respondent's(s') [isolation] [quarantine], unless further modified by the Court.

4. The Commissioner shall serve a copy of this Order on Respondent(s) immediately and shall give instructions to the person completing service of this Order on Respondent(s) on how to minimize the risk of transmission of [name of disease] to said person. Proof of service shall be filed with the Court.

5. If it is impracticable to serve this Order directly on Respondent(s), a copy of this Order shall be posted in a conspicuous place in the [isolation] [quarantine] area or in another place where Respondent(s) has/have adequate access to this Order. If posting this Order as

directed above is impracticable, the Commissioner must use the best means available to ensure that Respondent(s) is/are fully informed of this Order.

Dated: _____

Judge of District Court

State of Minnesota
Court Procedures and Protocol
For
Isolation and Quarantine Cases

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Introduction

An ex parte order authorizing isolation or quarantine must be obtained by the commissioner of health [the commissioner] either:

1. before isolating or quarantining a person or group of persons¹; or
2. after a temporary hold has been issued upon the Commissioner's directive²

from the District Court of Ramsey County, the county where the person or group of persons is located, or a county adjoining the county where the person or group of persons is located.³

"Isolation" means separation, during the period of communicability, of a person infected with a communicable disease, in a place and under conditions so as to prevent direct or indirect transmission of an infectious agent to others.⁴

"Quarantine" means restriction, during a period of communicability, of activities or travel of an otherwise healthy person who likely has been exposed to a communicable disease to prevent disease transmission during the period of communicability in the event the person is infected.⁵

Commissioner's Directive / Temporary Hold

The commissioner of health may by directive isolate or quarantine a person or group of persons without first obtaining a written, ex parte order from the court if a delay in isolating or quarantining the person or group of persons would significantly jeopardize the commissioner of health's ability to prevent or limit the transmission of a communicable or potentially communicable life-threatening disease to others.⁶

Immediately upon executing the directive and initiating notice of the parties subject to it, the commissioner shall initiate the process to apply for a written, ex parte order authorizing the isolation or quarantine. The court must rule within 24 hours of receipt of the application for ex parte order or sooner if practicable or necessary. If a person is under a temporary hold, the person may not be held in isolation or quarantine after the temporary hold expires, unless the court issues an ex parte order. If the court does not rule within 36 hours after the execution of the directive, the directive shall expire.⁷

¹ Minn. Stat. § 144.4195, subd. 1(a).

² Minn. Stat. § 144.4195, subd. 2(a).

³ Minn. Stat. § 144.4195, subd. 1(a). The Department of Health intends at the moment to initiate all isolation and quarantine cases in the District Court of Ramsey County. It may be possible that venue may change upon request of a person or group for purposes of a hearing.

⁴ Minn. Stat. § 144.419, subd. 1(3).

⁵ Minn. Stat. § 144.419, subd. 1(4).

⁶ Minn. Stat. § 144.4195, subd. 2(a).

⁷ Minn. Stat. § 144.4195, subd. 2(a).

I. Filing Application for Written, Ex Parte Isolation or Quarantine Order

The commissioner, an agent of the commissioner, or the Attorney General's Office must:

A. Initiate the application process⁸ by contacting the designated Ramsey County District Court personnel, by phone, as follows:

1. During normal court business hours (8 a.m. to 4:30 p.m., M-F) contact:

Civil Commitment Supervisor at 651-266-2807 or
651-266-2804; if not available:

Civil Assignment Supervisor at 651-266-8308

2. After normal court business hours (including weekends and state holidays) contact:

Civil Commitment Supervisor or Civil Court Administrator

AND "ON CALL" Judge at:

Weeknights, Mon-Thurs: 612-238-4500

Weekends, Fri-Sun: 651-238-4500

or via:

St. Paul Police Department 651-291-1111
ask for On Call Judge.

B. File application for ex parte order with the Court as follows:

1. Place of Filing:

a. During normal court business hours (8 a.m. to 4:30 p.m., M-F):

In person: Civil Commitment Office, 6th Floor
Ramsey County Courthouse

By Fax: 651-266-2810
Attn. Civil Commitment Supervisor

b. After normal court business hours (including weekends and state holidays):

In person: At location specified by On Call Judge

⁸ It may be possible that venue may change upon request of a person or group for purposes of a hearing. If venue is changed, apply local contact information in lieu of Ramsey County numbers provided.

By Fax: At number specified by On Call Judge and
651-266-2810
Attn. Civil Commitment Supervisor

2. Documents to be Filed:

- a. Petition for ex parte order to isolate or quarantine
- b. Supporting documents (affidavits, memorandum)
- c. Proposed order

In addition, if temporary hold issued by Commissioner:

- d. Copy of directive and requisite notices⁹
- e. Proof of service of directive and notices¹⁰

3. Fees:

No civil filing fee, facsimile transmission fee, or motion fee shall be required to be paid by the commissioner upon filing of an application for ex parte order for isolation or quarantine, or upon the filing of any other documents by any party in cases filed per Minn. Stat. § 144.4195.

II. Processing Application for Written, Ex Parte Isolation or Quarantine Order

A. Internal Communications:

1. Supervisor who received notice of the initiation of the application process from the commissioner, an agent of the commissioner, or the Attorney General's Office, and in consultation with assigned judge, shall notify the following people of the initiation of the application for a written, ex parte order for isolation or quarantine:
 - a. Civil Presiding Judge
 - b. Civil Division Administrator at 651-266-8255

⁹ Minn. Stat. § 144.4195, subd. 2(a): "The commissioner must provide the person or group of persons subject to the temporary hold with notice that the person has a right to request a court hearing under [Minn. Stat. 144.4195] and a right to be represented by counsel during a proceeding under [Minn. Stat. 144.4195]."

¹⁰ Proof of service of notices may not be available at the time application is filed as the commissioner is to initiate application process "immediately upon executing the directive and initiating notice of the parties subject to it." Minn. Stat. § 144.4195, subd. 2(a). Proof of service may have to be filed after service of notice is completed. NOTE: Service may be personal or posted, under particular circumstances: "If it is impracticable to provide individual notice to each person subject to the temporary hold, notice of these rights may be posted." Minn. Stat. § 144.4195, subd. 2(a). Notice of rights may be posted in the same manner as the posting of orders under Minn. Stat. § 144.4195, subd. 1(c).

2. The Civil Division Administrator shall notify the following people of the initiation of the application for a written, ex parte order for isolation or quarantine, pending steps, and judge assignment:
 - a. District Administrator
 - b. Chief Judge
3. The District Administrator should notify the State Court Administrator by contacting the Deputy State Court Administrator at 651-297-1039.

B. Filing of Application and supporting documents:

1. Date of Filing

The Application for ex parte order and supporting documents shall be deemed filed upon receipt:

- a. in the Civil Commitment Office;
 - b. by facsimile transmission as the date and time identified on the fax, whether received by Civil Commitment Office or other location as directed by the on-call judge after normal business hours; or
 - c. in person to on-call judge after normal business hours
2. Public Health Threat Order Enforcement (PHO) Case Type/File ¹¹
- a. Open case file on MNCIS
 - b. Use PHO Code—Individual or Group
3. Judge Assignment

If the application is/was initiated:

- a. during normal court business hours:

Civil Commitment Office shall assign judge from pool of designated

- b. after normal court business hours (including weekends and state holidays):

Civil Commitment Office shall assign on-call judge who reviewed application and issued ex parte order, subject to reassignment by Chief Judge or Civil Presiding Judge in the event a hearing is needed.

¹¹ Open file regardless of whether petition is granted or denied.

III. Isolation or Quarantine

A. Timing

1. The court must rule on the Petition for Ex Parte Order within 24 hours of receipt of the application or sooner if practicable or necessary.¹²
2. If the court does not rule within 36 hours after the execution of the commissioner's directive, the directive expires.

B. Evidence or Testimony in Support of Application

1. The evidence or testimony in support of an application may be made or taken by¹³:
 - a. Telephone
 - b. Facsimile transmission
 - c. Video equipment
 - d. Other electronic communication
 - e. Affidavit

C. Burden of Proof

1. The Court shall grant the order upon finding Probable Cause exists to believe isolation or quarantine is warranted to protect the public health.¹⁴

D. Contents of Order

1. The order must state¹⁵:
 - a. Specific facts justifying isolation or quarantine
 - b. Person(s) being isolated or quarantined has a right to:
 - i. a court hearing under Minn. Stat. § 144.4195; and
 - ii. representation by counsel during any proceeding under Minn. Stat. § 144.4195.
 - c. Conditions of isolation or quarantine¹⁶
 - i. Least restrictive means necessary to prevent spread of communicable or potentially communicable disease to others. May include, but are not limited to: confinement to private homes or other private or public premises.

¹² Minn. Stat. § 144.4195, subd. 2(a).

¹³ Minn. Stat. § 144.4195, subd. 1.

¹⁴ Minn. Stat. § 144.4195, subd. 1(a).

¹⁵ Minn. Stat. § 144.4195, subd. 1(b).

¹⁶ Minn. Stat. § 144.419, subd. 2(b) – (h).

- ii. Isolated individuals must be confined separately from quarantined individuals.
 - iii. Health status of individuals must be monitored regularly to determine if they require continued isolation or quarantine.
 - iv. Immediate release when individual poses no known risk of transmitting a communicable or potentially communicable disease.
 - v. Needs of individuals shall be addressed in systematic and competent fashion, including but not limited to providing adequate food, clothing, shelter, means of communication, medication, and competent medical care.
 - vi. Premises used for isolation and quarantine shall be maintained in a safe and hygienic manner, designed to minimize the likelihood of further transmission or other harms.
- d. Type of service required.

E. Notice of Order

1. Court Administration shall provide notice of the order for isolation to the Commissioner of the Department of Health by providing a copy of the order directly to an Assistant Attorney General or by faxing a copy to the Attorney General's Office at 651-282-5437.
2. The Commissioner shall provide a copy of the order immediately to:
 - a. Respondents
 - b. The Commissioner of Public Safety and other peace officers known to the commissioner to have jurisdiction over the site of the isolation or quarantine.

F. Types of Notice¹⁷

1. Personal Service

If feasible, the order shall be provided to each person being isolated or quarantined.

2. Posting

If impractical to provide a copy of the order to each individual, one order shall suffice and a copy of the order and notice shall be posted in a conspicuous place:

3. Conspicuous Place

¹⁷ Minn. Stat. § 144.4195, subd. 1(b) and (c). Model order identifies all types of notice, but leaves to the discretion of the commissioner depending upon the circumstances.

- i. If the group of individuals is already present at the isolation or quarantine premises, post at the isolation / quarantine premises.
- ii. If individual or group not present at I/Q site, post in another location where the group to be isolated or quarantined is located, such that all persons have adequate access to the posted order.

4. Best Means Available

If the court determines that posting the order is not practical due to the number and/or location of persons to be isolated or quarantined, or the geographic area affected, the court must use the best means available to ensure that the affected persons are fully informed of the order and notice.

G. Filing of Proof of Notice

Within a reasonable time following notice of the ex parte order, the person or agency that provided notice of the order shall complete an affidavit of service and file it with the court:

- i. In person;
- ii. By facsimile transmission at 651-266-2810; or
- iii. By United States Mail sent to:
Civil Commitment Office
Room 600 A
Ramsey County Courthouse
15 West Kellogg Boulevard
St. Paul, MN 55102
- iv. By email sent to Civil Commitment Supervisor and Civil Assignment Supervisor.

IV. Hearings

Three (3) types of hearings may occur in an isolation or quarantine case:

- Hearing to Contest Temporary Hold or Ex Parte Order¹⁸
- Hearing on Conditions¹⁹
- Hearing for Extension of Order²⁰

The General Provisions in section “A” apply to all three types of hearings.

¹⁸ Minn. Stat. § 144.4195, subd. 3(a).

¹⁹ Minn. Stat. § 144.4195, subd. 4.

²⁰ Minn. Stat. § 144.4195, subd. 3(b).

A. General Provisions

Except as otherwise provided by statute, the manner in which the request for a hearing is filed and acted upon shall be in accordance with the existing laws and rules of the courts of this state or, if the isolation or quarantine occurs during a national security or peacetime emergency, any rules that are developed by the courts for use during a national security or peacetime emergency shall prevail.²¹

1. Place of Filing:

Petitions for hearings and written requests for court appointed counsel may be filed:

In person²²: Civil Commitment Office, 6th Floor
Ramsey County Courthouse

By Fax: 651-266-2810
Attn. Civil Commitment Supervisor

By Email: Scan signed documents and email to Civil
Commitment Supervisor and Civil Assignment
Supervisor.

Or by most practicable means feasible.

2. Date of Filing

Petition for hearing shall be deemed filed upon receipt:

- a. in the Civil Commitment Office
- b. by facsimile transmission as the date and time identified on the fax 651-266-2810 (Civil Commitment Office)
- c. by email
- d. by other means if above not feasible.

3. Fees

No civil filing fee, facsimile transmission fee, or motion fee shall be required to be paid by the person subject to a temporary hold or ex parte order, the person's representative, or counsel upon filing of a petition for hearing, or by the commissioner upon filing of a petition for extension of an order.

²¹ Minn. Stat. § 144.4195, subd. 5(c).

²² By someone not subject to isolation or quarantine.

4. Location and Manner of Hearing²³

a. A court may choose to conduct a hearing by telephonic, interactive video, or other electronic means to maintain isolation or quarantine precautions and reduce the risk of spread of a communicable disease.

b. Hearing by telephone conference is presumed to be the first choice.²⁴

i. Arrangements may need to be made to provide respondent with a disposable cellular telephone if the respondent does not have access to a working telephone.

ii. Use of tele-conferencing services may be necessary depending upon the number of people participating from various locations.

c. Regions Hospital civil commitment courtroom²⁵ may be used if respondent requests in person hearing and party is located at the hospital or can be transported to the hospital, subject to approval by court after conferring with MDH.

5. Computation of Time

Apply Rule 6.01 of the Rules of Civil Procedure

6. Representative

A representative may include:

a. Respondent's attorney;

b. A minor's parent or legal guardian;

c. A guardian or conservator; or

d. A person designated in writing by the respondent or, if the respondent is a minor or otherwise subject to a guardianship/conservatorship, by the respondent's parent or legal guardian/conservator.

²³ Minn. Stat. § 144.4195, subd. 5(c).

²⁴ Respondent has a right to appear, but not a right to appear in person. Only a person authorized by the commissioner of health or authorized by any person acting under the commissioner's authority shall enter an isolation or quarantine area. Minn. Stat. § 144.419, subd. 5(a). Other means of conducting a hearing may be used if the necessary technology is available to the respondent.

²⁵ The civil commitment courtroom is capable of controlling negative airflow to contain "new and novel airborne disease," preventing the spread of disease through the hospital. NOTE: Those in the courtroom are not protected and will need to use personal protective equipment and take other precautions as appropriate.

7. Appointment of Counsel²⁶
- a. Any person subject to isolation or quarantine has the right to be represented by counsel.
 - b. Persons not represented by counsel may request the court to appoint counsel.²⁷
 - c. Request for appointment of counsel may be made to the Ramsey County District Court or to a representative of the MDH or local public health either
 - i. Before filing a written petition for hearing;
 - ii. Within a written petition for hearing filed with the court; or
 - iii. After receipt of the notice of hearing.

The request may be made orally or in writing. Written requests may be filed with the Court in the same manner as a petition for hearing.

- d. A request for counsel may be made by respondent or respondent's representative. See IV. A. 6, Representative.
- e. The court shall appoint counsel when so requested.
- f. The court may appoint one counsel to represent a group of persons similarly situated.
- g. The appointments shall be only for representation at hearings or for appeals of orders resulting from a hearing.
- h. Appointments shall be made and counsel compensated according to procedures developed by the Supreme Court.
- i. The procedures shall provide standards for determining indigency for purposes of appeal. A person seeking an appeal who does not meet the indigency standard may, upon motion by the commissioner of health or local public health board and subsequent court order, reimburse the Department of Health or local public health board for attorney fees and costs incurred in the person's appeal.

²⁶ Minn. Stat. § 144.4195, subd. 5(b).

²⁷ Minnesota Department of Health is responsible for paying the expenses of appointed counsel, unless it has entered into a written delegation agreement with the local public health board and it was the local public health board that sought the order.

- j. Counsel appointed for a respondent must be allowed to withdraw from representation and is not required to pursue an appeal if, in the opinion of counsel, there is insufficient basis for proceeding.

8. Interpreters

If respondent or respondent's representative is handicapped in communications, an interpreter will be needed for any court hearing. Comply with Rule 8 of the General Rules of Practice to the extent possible under the circumstances. Interpreters are not authorized entry into an isolation or quarantine area.²⁸

- a. Foreign language.

Interpretation shall be by telephone. The interpreter may be present in the courtroom or participate by telephone from another location.

- b. Deaf and hard of hearing.

Interpretation services may be by video relay interpreting or TTY, or other appropriate means of electronic communication available.

9. Change of Venue

Upon request of respondent or respondent's representative, venue of an isolation and quarantine may be changed by the Court under Minn. Stat. § 542.11 upon written consent of the parties or when convenience of witnesses and the ends of justice would be promoted by the change.

10. Court Orders and Record

Court orders issued as a result of a hearing shall be based upon clear and convincing evidence and a written record of the disposition of the case shall be made and retained.²⁹

11. Closing Court File

Close file upon expiration of isolation or quarantine order.

B. Hearing to Contest Temporary Hold or Ex Parte Order³⁰

A person isolated or quarantined under an ex parte order or a temporary hold, or the person's representative, may petition the court to contest the court order or

²⁸ Minn. Stat. § 144.419, subd. 5.

²⁹ Minn. Stat. § 144.4195, subd. 5(a).

³⁰ Minn. Stat. § 144.4195, subd. 3(a).

temporary hold at any time prior to the expiration of the order or temporary hold. A petition for hearing does not stay the order of isolation or quarantine.³¹

1. Petition for Hearing to Contest Temporary Hold or Ex Parte Order
 - a. A written petition for hearing may be filed by either Respondent or Respondent's representative.
 - b. The petition should include the following information:
 - i. Respondent's name;
 - ii. Representative's name and relationship to Respondent (if applicable);
 - iii. Respondent's contact information – phone number (or request that cellular phone be made available), facsimile number, and email address;
 - iv. Grounds for contesting temporary hold or ex parte order;
 - v. If not represented by an attorney, whether Respondent requests appointment of counsel;
 - vi. Whether Respondent requires an interpreter to participate in the hearing, and if necessary, the language; and
 - vii. Witnesses, if any, with contact information.
 - c. The petition should be signed by the Respondent or Respondent's representative. See Section IV. A. 6.
2. Processing Petition for Hearing
 - a. File petition for hearing in MNCIS.
 - b. Appoint Counsel if requested (and not previously appointed)
 - i. Contact attorney from designated list
 - ii. Confirm availability of counsel
 - iii. Prepare Order appointing counsel
 - iv. Provide copy of Order Appointing Counsel, including need for interpreter, when appropriate, by facsimile or email upon counsel and Attorney General's Office / MDH.
 - v. Provide counsel with Respondent's location and contact information, and notice of protective measures.³²

³¹ Minn. Stat. § 144.4195, subd. 3(a).

³² On counsel's request, the commissioner or an agent of a local board of health authorized under section 145A.04 shall advise counsel of protective measures recommended to protect counsel from possible transmission of the communicable disease. Minn. Stat. § 144.4195, subd. 5(b).

3. Schedule Hearing.
- a. Find a date and time. The hearing must be held within 72 hours from the date of filing.³³

- b. Determine location and manner of appearance of:

Judge & Court Reporter
Court Clerk
Assistant Attorney General
Respondent
Respondent's Counsel
Witnesses (if applicable)
Interpreter (if applicable)

(See Section IV. A. 4 for General Provisions regarding
Location and Manner of Appearance)

4. Notice of hearing

- a. Prepare Notice of Hearing – hearing must be held within 72 hours of the date of filing the petition for hearing.

- b. Notice must contain the following:³⁴

- i. Time, date, and place of hearing
- ii. Grounds and underlying facts upon which continued isolation or quarantine is sought
- iii. Person's right to appear at the hearing and,
- iv. Person's right to counsel, including the right to be represented by counsel designated by the court.

- c. Notice of hearing must be served by mail, facsimile, or other electronic means; if not feasible to serve, notice will be posted in a conspicuous place; must use best means available to ensure persons are fully informed of the hearing. Service should be made as soon as practicable, but not less than 24 hours before the hearing.

5. Burden of Proof

The commissioner of health must show by clear and convincing evidence that the isolation or quarantine order is warranted to protect public health.³⁵

³³ Minn. Stat. § 144.4195, subd. 3(a).

³⁴ Minn. Stat. § 144.4195, subd. 3(c).

³⁵ Minn. Stat. § 144.4195, subd. 3(a).

6. Order

a. Granted

If the burden of proof is not met, the petition is granted and the isolation or quarantine is terminated.

b. Denied

If the burden of proof is met, the petition is denied and the Isolation and Quarantine Order remains in effect.

7. File and Serve Order

a. Process in MNCIS

- i. Occur hearing and enter order
- ii. If Respondent's petition is granted, dismiss ex parte order for isolation or quarantine and close file.

b. Serve order

Provide copies of order to: respondent/attorney of record, and Office of the Attorney General. The order shall be served in the same manner as an ex parte order, except if the Respondent(s) is/are represented by counsel, the court administrator's office shall serve the order by facsimile upon respondent's counsel. Complete certificate of service.

C. Hearing on Conditions³⁶

A person isolated or quarantined may request a hearing in district court for remedies regarding treatment during and terms and conditions of isolation or quarantine.

1. Petition for Hearing on Conditions

A written petition for hearing may be filed by either Respondent or Respondent's representative.

2. The petition should include the following information:

- a. Respondent's name;
- b. Representative's name and relationship to Respondent (if applicable)
- c. Respondent's contact information – phone number; facsimile number; email address

³⁶ Minn. Stat. § 144.4195, subd. 4.

- d. Requested remedies regarding treatment during and terms and conditions of isolation and quarantine;
 - e. If not represented by an attorney, whether Respondent requests appointment of counsel;
 - f. Whether Respondent requires an interpreter to participate in the hearing, and if necessary, the language.
 - g. Witnesses, if any, with contact information
3. Process Petition for Hearing
- a. File petition for hearing in MNCIS.
 - b. Appoint Counsel if requested (and not previously appointed)
 - i. Contact attorney from designated list
 - ii. Confirm availability of counsel
 - iii. Prepare Order appointing counsel
 - iv. Serve Order appointing counsel by facsimile upon counsel and Attorney General's Office / MDH.
 - v. Provide counsel with Respondent's location and contact information, and notice of protective measures.
4. Schedule Hearing
- a. Find a hearing date and time. The hearing must be held within seven (7) days from the date of filing of the petition
 - b. Determine location and manner of appearance of:
 - Judge/Court Reporter
 - Assistant Attorney General
 - Respondent
 - Respondent's Counsel
 - Witnesses (if applicable)
 - Interpreter (if applicable)

(See Section IV. A. 4 for General Provisions regarding Location and Manner of Appearance)
5. Notice of hearing
- a. Prepare Notice of Hearing – hearing must be held within seven (7) days from the date of filing of request/petition.
 - b. Notice must contain the following:
 - i. Time, date, and place of hearing
 - ii. Remedies being requested.
 - iii. Person's right to appear at the hearing and,

- iv. Person's right to counsel, including the right to be represented by counsel designated by the court.
 - c. Notice of hearing must be served by mail, facsimile, or other electronic means; if not feasible to serve, notice will be posted in a conspicuous place; must use best means available to ensure persons are fully informed of the hearing. Service should be made as soon as practicable, but not less than 24 hours before the hearing.
- 6. Burden of Proof

Clear and convincing evidence that the isolation or quarantine is not in compliance with Minn. Stat. § 144.419.
- 7. Issue written Order
 - a. Finding of fact re: conditions of isolation or quarantine.
 - b. Conclusions of law: whether conditions are in compliance with Minn. Stat. § 144.419.
 - c. Remedies, if conditions not in compliance with Minn. Stat. § 144.419: the court may fashion remedies appropriate to the circumstances of the emergency and in keeping with Minn. Stat. ch. 144.³⁷
- 8. File and Provide Notice of Order
 - a. Process in MNCIS
 - i. Occur hearing and enter order.
 - ii. Enter remedies.
 - b. Provide copies of order to respondent/ attorney of record, and Office of the Attorney General. The order shall be served in the same manner as an ex parte order, except if the Respondent(s) is/are represented by counsel, the court administrator's office shall serve the order by facsimile upon respondent's counsel. Complete certificate of service.

D. Hearing for Extension of Order³⁸

If the commissioner of health wishes to extend the order for isolation or quarantine past the expiration of the ex parte order, the commissioner must petition the court to do so.

³⁷ Minn. Stat. § 144.4195, subd. 4.

³⁸ Minn. Stat. § 144.4195, subd. 3(b).

1. Attorney General's Office shall:
 - a. Contact the court for hearing date, time, and location or manner of hearing.
 - b. Serve Notice of Hearing and Petition for Order to Extend Isolation/Quarantine on Respondent(s). Service shall be made at least three (3) days before the hearing³⁹.
 - c. File Petition for Order to Extend Isolation/Quarantine, Notice of Hearing, Affidavit of Service, and proposed Order with the civil commitment office.
2. Notice of Hearing must contain the following information⁴⁰:
 - a. Time, date, and place (manner) of hearing;
 - b. Grounds and underlying facts upon which continued isolation or quarantine is sought;
 - c. The person's right to appear at the hearing;
 - d. The person's right to counsel, including the right to be represented by counsel designated by the court.
3. Appoint Counsel if requested (and not previously appointed)
 - i. Contact attorney from designated list
 - ii. Confirm availability of counsel
 - iii. Prepare Order appointing counsel
 - iv. Serve Order appointing counsel by facsimile upon counsel and Attorney General's Office / MDH.
 - v. Provide counsel with Respondent's location and contact information, and notice of protective measures.
4. Burden of Proof

The commissioner of health must show by clear and convincing evidence that respondent(s) would pose imminent threat to others if isolation or quarantine was lifted.⁴¹

³⁹ Minn. Stat. § 144.4195, subd. 3(b).

⁴⁰ Minn. Stat. § 144.4195, subd. 3(c).

⁴¹ Minn. Stat. § 144.4195, subd. 3(c).

5. Order

a. Granted

If the burden of proof is met, the petition is granted and the Isolation and Quarantine Order is extended. The isolation or quarantine can be continued for no longer than 30 days from the date of the court order for extension.⁴²

b. Denied

If the burden of proof is not met, the petition is denied and the Isolation and Quarantine Order will expire as set forth in that order.

6. File Order

a. Process in MNCIS: Occur hearing and enter order.

7. Service of Order

The order shall be served in the same manner as an ex parte order, except if the Respondent(s) is/are represented by counsel, the court administrator's office shall serve the order by facsimile upon respondent's counsel. Complete certificate of service.

⁴² "In no case may the isolation or quarantine continue longer than 30 days from the date of the court order issued under this subdivision unless the commissioner petitions the court for an extension." Minn. Stat. § 144.4195, subd. 3(c).

DISEASES SUBJECT TO FEDERAL QUARANTINE
AS OF JULY 2008

- Cholera
- Diphtheria
- Infectious Tuberculosis
- Plague
- Smallpox
- Yellow Fever
- Viral Hemorrhagic Fevers (Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named)
- Severe Acute Respiratory Syndrome (SARS)
- Influenza caused by novel or re-emergent influenza viruses that are causing, or have the potential to cause, a pandemic