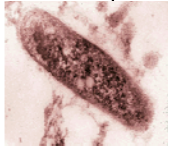


● ● ● | **The Role and Implications
of Legal Interventions for
TB Control**



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● ● ● | **Disclaimer**

This information is for instructional use only and is not intended as a substitute for professional legal or other advice. While every effort has been made to verify the accuracy of the information, legal authorities and requirements may vary from jurisdiction to jurisdiction. Always seek the advice of an attorney or other qualified professional with any questions you may have regarding a legal matter.

● ● ● | **Legal Framework for TB
Control**

U.S. Constitution – Sources of Power

- Federalism: the relationship and distribution of power between individual states and national government
- The Constitution authorizes some federal public health-related activities (Art. I, Sec.8)
 - Commerce Clause
 - Tax and Spend Clause
- States retain primary authority over public health through the 10th Amendment

State Public Health Authority

- Tenth Amendment: *The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people*
- States exercise “police powers” to protect the public’s health
- Police powers defined: Powers exercised by the states to enact legislation and regulations to protect the **public health**, welfare, and morals, and to promote the common good

Tuberculosis Control Law

- Implementing the police power to control the spread of infectious disease, including TB
- Respecting the limits
- Creating responsibilities

TB Case Rates,* United States, 2008

Legend:
 ■ ≤ 3.5 (year 2000 target)
 ■ 3.6-4.2
 ■ > 4.2 (national average)

*Cases per 100,000. CDC

● ● ● | **Types of Legal Authority**

- The following laws serve as mechanisms by which to control the spread of TB:
 - **Statutes:** enacted by state legislatures
 - **Regulations:** promulgated by agencies, usually more detailed than statutory provisions
 - **Case Law:** decisions by judges interpreting laws; at the appellate level, creates binding precedent



State TB Control Provisions

● ● ● | **State TB Control Provisions**

- TB control law varies considerably from state-to-state
- State statutory provisions and regulations usually address the following areas of TB control:
 - Case identification
 - Management of TB cases
 - Other Protections

Case Identification

- Reporting Requirements
 - Persons required to report
 - Time frame for reporting
 - Penalty for failure to report
- Screening
 - Prerequisite for certain types of employment
 - Exclusion from certain places
 - High-risk congregate settings



Management of TB Cases



- Investigation of TB cases
 - Examination
 - Contact tracing
- Provision of treatment
 - Immediate treatment
 - Compel treatment
 - Directly observed therapy
- Penalty for nonadherent patients

Management of TB Cases cont.

- Detention in treatment facility
 - If involuntary, court order may be issued
 - Due process protections
 - Length of detention
- Restrictions for persons with active TB
 - Isolation
 - Restriction from certain activities
- Treatment facilities
- Financing of treatment



Other Protections

- Religious exemptions for treatment
- Confidentiality, protection of identifiable health information
- Specific due process procedures
- Anti-discrimination provisions



Constitutional Issues



Constitutional Issues

- Public health officials do not have unlimited authority to control TB
- State laws must comport with constitutional provisions
- Constitutional provisions that may arise in TB control law include the 1st, 4th, 8th, and 14th Amendments

● ● ● | **Fourteenth Amendment Due Process Clause**

- 14th Amendment Due Process Clause: “...nor shall any State deprive any person of life, liberty, or property, without due process of law”
 - **Substantive due process:** The government must have adequate justification for laws or other official actions that affect life, liberty, or property
 - **Procedural due process:** The procedures the government uses when depriving a person’s liberty must be fair and reasonable

● ● ● | **Fourteenth Amendment Substantive Due Process Clause**

- Case Example: *Newark v. J.S.*
 - Nonadherent patient
 - Liberty interest in freedom from confinement
 - Controlling interest in protecting public health
 - Involuntary hospitalization the least restrictive means

● ● ● | **Fourteenth Amendment Procedural Due Process Clause**

- Case Example: *Greene v. Edwards*
 - Involuntary commitment of active TB patient
 - Lack of reasonable access to legal counsel
 - Articulation of due process procedural elements
 - Written notice
 - Right to counsel
 - Right to be present, cross-examine witnesses
 - Standard of proof – clear & convincing evidence
 - Right to a transcript of the proceeding

● ● ● | **Fourteenth Amendment
Equal Protection Clause**

- The 14th Amendment of the U.S. Constitution also prohibits States from denying “any person within its jurisdiction the **equal protection** of the laws.”
- The Equal Protection Clause is different from the Due Process Clause in that it focuses on the rights of groups rather than individuals
 - Individuals within the group are certainly protected – may assert rights
- Government may not arbitrarily discriminate against a group of people just because they fall into a particular category

● ● ● | **Fourteenth Amendment
Equal Protection Clause cont.**

- Case Example: *Jew Ho v. Williamson*
 - Quarantine of Chinatown district during bubonic plague outbreak
 - Residents of Chinese descent subject to quarantine but white residents/business owners were not
 - Violation of equal protection because quarantine was underinclusive

● ● ● | **First Amendment**

- 1st Amendment: “*Congress shall make no law respecting an establishment of religion, or prohibiting the **free exercise** thereof.*”
- An individual’s right to free exercise of religion is not violated if the law is **neutral** and of **general applicability**



First Amendment cont.

- Case Example: *Washington v. Armstrong*
 - Board of regents required all students to submit to chest X-ray examination prior to registration
 - Appellant student requested exemption, citing religious views
 - Court held in favor of board of regents
 - Court weighed the public health interest of students and university employees against First Amendment interest of individual student
 - "Infringement of appellant's rights is a necessary consequence of a practical attempt to avoid the danger"



Fourth Amendment

- The 4th Amendment prohibits **unreasonable searches and seizures**
- Courts evaluate the reasonableness of a search by weighing the intrusion into individual privacy against the government's need for information
- Case Example: *Washington v. Cambra*
 - Prison officials subjected appellant to TB test against his will
 - Court held that TB test is considered a search, but prison's TB testing policy was reasonably related to legitimate goal of preventing spread of TB



Eighth Amendment

- 8th Amendment: "*Excessive bail shall not be required, nor excessive fines imposed, nor **cruel and unusual punishments inflicted***"
- Case Example: *McCormick v. State*
 - Appellant prisoner tested positive for TB while in prison
 - Given the choice of isolation or treatment
 - Court held appellant failed to meet burden that prison officials were deliberately indifferent to his serious medical needs



TB Control Law in Practice

- Legal advisors to public health practitioners may be within an agency, such as the state health department
- State health officers and their legal counsel work together to exercise state police powers
- Legal mechanisms by which to control TB can take many forms



Current Issues in TB Control



Current Issues in TB Control

- (1) Interjurisdictional case management
 - No two states have identical TB control laws
 - How can states work together to manage TB cases?
- (2) Where to detain/confine patients
 - Where can patients be detained when they are nonadherent?

● ● ● | **Issue 1: Interjurisdictional Case Management**

- Public health mutual aid agreements
 - Example: Agreement between departments of health of Texas and New Mexico
- Regionalization: New England Public Health Law Project
 - What to do when an interstate compact is not an option
 - U.S. Constitution, Full Faith and Credit Clause: *“Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state...”*

● ● ● | **Issue 2: Where to Detain/Confine Patients**

- What are the options when:
 - A patient demonstrates that he/she is nonadherent to voluntary TB control measures, or
 - A patient is adherent but is not able to be safely isolated in the home?
- Home isolation: what about homeless patients?
- Confinement in a hospital facility: what if this isn't feasible?
- Confinement in a jail: is this appropriate for TB patients?

● ● ● | **Issue 2: Where to Detain/Confine Patients cont.**

- Confinement of TB patients in jail: a controversial issue
- Case Example:
 - *Souvannarath v. Hadden*: MDR TB patient of Laotian descent was detained in a local jail for 10 months pursuant to an isolation order, after she was found nonadherent to her treatment plan. The Court held that detaining TB patients in jail is a violation of California law, and ordered the county to desist from placing nonadherent TB patients in the county jail.

● ● ● | **Issue 2: Where to Detain/Confine Patients cont.**

- Case Example:
 - *Washington v. City of Milwaukee*: A TB patient was repeatedly nonadherent to treatment and was ordered to confinement in a local jail. The Court held that confinement in a jail is allowable under Wisconsin law, so long as a court determines that the facility is a place where proper care and treatment will be provided, and spread of disease will be prevented. A court may consider cost as a factor if faced with a choice between 2 or more facilities that meet the above criteria.

● ● ● | **Summary**

- Legal mechanisms can be effective in preventing the spread of TB
- It is critically important for public health professionals and their legal counsel to coordinate efforts
- State laws must strike the proper balance between controlling the spread of TB and safeguarding individual liberties

● ● ● | **Acknowledgements**

- Division of Tuberculosis Elimination, CDC
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- Division of Global Migration and Quarantine, CDC
- National Tuberculosis Controllers Association
- Advisory Council for the Elimination of Tuberculosis



TB Law Resources

- CDC Scenario-Based Assessment
 - <http://www2a.cdc.gov/phlp/tbcontrol.asp>
- Express Tuberculosis Control Laws in Selected U.S. Jurisdictions
 - <http://www2a.cdc.gov/phlp/tbcontrol.asp>
- Menu of Suggested Provisions for TB Prevention and Control (forthcoming)
