

# State Courts and Public Health: Building Partnerships to Enhance Preparedness

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## SYNOPSIS

Laws and regulations can facilitate or impede emergency preparedness and response activities. State legislators, judges, and lawyers play critically important roles in creating and interpreting laws that affect the ability of public health practitioners and their partners to effectively respond to emergencies. In an age when political unrest, global travel, and emerging biological threats can combine to create social and economic havoc worldwide, it is critical that those responsible for upholding the rule of law during emergencies understand the law and its implications.

In 2003, the University of Pittsburgh Center for Public Health Preparedness (UP-CPHP) created a Preparedness Law and Policy Program to advance legal preparedness for public health emergencies across Pennsylvania and the nation. To achieve this goal, UP-CPHP has partnered with local, state, and national organizations. In the course of these activities, Pennsylvania judges, the Administrative Office of Pennsylvania Courts, UP-CPHP, and the Centers for Disease Control and Prevention's Public Health Law Program have developed a strong and enduring collaborative relationship that has put the Pennsylvania judiciary in a better position today to plan for and respond to a public health crisis than it has been at any other point in its history. The tools and resources developed through this collaboration can readily be adapted to assist other jurisdictions nationwide in their efforts to ensure that their judicial systems are similarly prepared.

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The Centers for Disease Control and Prevention (CDC) established the Centers for Public Health Preparedness (CPHP) program in 2000 to strengthen terrorism and emergency preparedness by linking academic expertise to state and local health agency needs. That same year, the CDC Public Health Law Program (PHLP) was established. Guided by the mission to “advance the public’s health through law,”<sup>1</sup> the PHLP in early 2001 undertook an initiative to improve legal preparedness by establishing or improving relationships between public health agencies and their law-related partners.

In 2002, the University of Pittsburgh Center for Public Health Preparedness (UP-CPHP) was created with a mission to train professionals and students in public health and other organizations to respond to all-hazards public health threats and emergencies. UP-CPHP does this by linking academic and practical expertise to individual and agency needs through broad and successful collaboration, a dedication to in-depth teaching, which provides lifelong skills to the recipient, and a desire to continually evaluate programs for effectiveness. UP-CPHP is housed in the Graduate School of Public Health at the University of Pittsburgh.

In recognizing the vital role that the legal system plays in emergency preparedness and the maintenance of public health and safety, UP-CPHP established a Preparedness Law and Policy Program in 2003. Working to advance legal preparedness for public health emergencies across Pennsylvania and the nation, UP-CPHP has collaborated extensively with state and local public health officials, leaders of the Pennsylvania judiciary, the Administrative Office of Pennsylvania Courts (AOPC), CDC, and the PHLP to produce a variety of educational and practice-based legal preparedness resources, including the following publications and projects:

- *Courthouse Preparedness for Public Health Emergencies*
- *Pennsylvania Public Health Law Bench Book*
- *Continuity of Operations (COOP) Planning: A Toolkit for Pennsylvania Courts* (hereafter, *Pennsylvania Court COOP Planning Guide*)
- *Legal Preparedness Toolkit for Pennsylvania Local Health Departments*
- Joint State Government Commission Advisory Committee on Public Health Law
- An Introduction to Public Health Law and Science: A Seminar for Judges

This article describes the development of each of these key resources and their potential for assisting other jurisdictions nationwide in efforts to ensure the preparedness of state judicial systems for public health emergencies.

## PROJECTS AND PUBLICATIONS

### *Courthouse Preparedness for Public Health Emergencies*

In the aftermath of the mailing of aerosolized anthrax to congressional leaders and members of the national media in the fall of 2001, courthouses across the country received mail with “white powder threats,” and the Pennsylvania court system was no exception. Several Pennsylvania courthouses received letters containing threats and suspicious substances. While the Pennsylvania court system had a very sophisticated safety program, this type of threat was unprecedented. As a result, courts and judges from different jurisdictions responded to these letters in disparate ways—ranging from sheltering in place with the powder to mass evacuation without a complete record of who came in contact with the powder. Uncertain as to the best course of action, but recognizing that both of these reactions could not be correct, the Pennsylvania court system reached out to UP-CPHP for assistance in developing a uniform procedure that could protect courthouse staff, judges, and the public in such circumstances.

AOPC and UP-CPHP convened a planning team of medical, public health, legal, law enforcement, judicial, and emergency management experts to develop a guide designed to give both judicial and county leaders accurate information and practical advice on how to recognize and respond to threats to employees and court facilities from bioterrorist/biohazardous emergencies. The resulting workbook, *Courthouse Preparedness for Public Health Emergencies: Critical Issues in Bioterror/Biohazard Preparedness Planning*,<sup>2</sup> presents facts and recommends immediate actions to be taken by courthouse personnel in the event of a white powder or other biohazardous event before public health, emergency management, or first responders arrive on the scene. In addition, the workbook outlines each of the steps to be taken when developing a biohazard/bioterror incident response plan. The workbook was delivered to every courthouse in the state, but this was just the beginning of UP-CPHP’s work with the courts.

### *Pennsylvania Public Health Law Bench Book*

As concern grew regarding the possibility of a pandemic caused by a highly virulent Avian influenza virus (H5N1), public health officials became increasingly convinced that certain methods of disease control—such as quarantine, isolation, and mandatory vaccination—might be needed to stem the tide of a rapidly spreading infectious disease. However, experts expressed great concern regarding the legal system’s capacity to support such public health orders, considering that these methods have not been widely applied since the early 1900s. Additionally, public

health litigation has been limited and provides little precedence in modern times. Contemporary judges have virtually no experience adjudicating public health cases and, subsequently, are not familiar with public health law. CDC's PHLP recognized that the relationship between public health officials and the judiciary needed attention:

[W]hen a legal issue involving public health needs judicial resolution, judges must be educated about both the relevant law and public health considerations. Depending on the type of case, they, or the juries sitting in their courtrooms, also may need to be fully informed about technical or scientific facts, epidemiologic or otherwise, to make appropriate factual findings.

Just as the judiciary periodically may require enhanced understanding about a public health issue, public health officials must be thoroughly familiar with judicial rules and procedures and ready to inform the presiding jurist about the law and facts. Put simply, public health officials and attorneys must know their way around the courthouse.<sup>3</sup>

This observation led to PHLP efforts to educate public health officials about the courts.<sup>4</sup> Sponsored in part by CDC under a cooperative agreement and in cooperation with the PHLP, UP-CPHP partnered with Pennsylvania judges and AOPC to publish the *Pennsylvania Public Health Law Bench Book*.<sup>5</sup> Initially patterned after bench books and judicial reference guides created by Schofield and Chezem,<sup>6</sup> Rothstein et al.,<sup>7</sup> and others, the *Pennsylvania Public Health Law Bench Book* was developed as a just-in-time resource that Pennsylvania judges can use when confronted with a public health case in the courtroom. As such, the *Bench Book* follows a question-and-answer format to inform judges, issue by issue, of the content of Pennsylvania public health law. The authors' primary objective was to develop a practical and useful resource for judges, separate and distinct from a law handbook for public health practitioners. The authors and the PHLP believe that the objective was fully accomplished.

Since completion of Pennsylvania's *Bench Book* in 2007, UP-CPHP and the PHLP have been recommending its use as a template by other states interested in developing a public health law bench book, and the resource has been widely shared through other CPHPs, the annual National Association of County and City Health Officials' Preparedness Conference, UP-CPHP's website, and other outreach efforts.

#### ***Pennsylvania Court COOP Planning Guide***

Following the publication of the *Bench Book*, and in the aftermath of the havoc Hurricanes Katrina and Rita caused in Louisiana and Florida (and their courts),

AOPC again called upon UP-CPHP. Acknowledging that courts have a constitutional duty to administer justice, and recognizing that a disaster or pandemic of such serious magnitude could profoundly jeopardize Pennsylvania court operations, AOPC convened a panel of court administrators and UP-CPHP faculty to create a template for Pennsylvania courts based upon a continuity of operations (COOP) planning model developed by the National Center for State Courts (NCSC).<sup>8</sup> The panel modified the NCSC model to fit the needs and structure of Pennsylvania's Unified Judicial System. The template provided court officials across Pennsylvania with the tools needed to create an organized, consistent, and coherent COOP plan for each of the state's 60 judicial districts. The *Pennsylvania Court COOP Planning Guide* was published in 2007. Simultaneously, UP-CPHP faculty created materials that AOPC utilized to train each state court administrator in the use of the COOP planning template and in the appropriate methods to test and evaluate the effectiveness of established COOP plans. By the end of 2008, virtually all Pennsylvania judicial districts had created and tested their COOP plans.

#### ***Legal Preparedness Toolkit for Pennsylvania Local Health Departments***

The *Bench Book* was published to ensure that the judiciary had ready access to the public health law information they would need in an emergency. However, in the event of a public health emergency, the timely implementation of appropriate disease control measures by local public health officials will be imperative to control infectious disease. Therefore, in an effort to support local health departments that may be called upon to order public health interventions and file petitions with the court to protect the public's health, UP-CPHP next developed the *Legal Preparedness Toolkit for Pennsylvania Local Health Departments*.<sup>9</sup> The *Toolkit* consists of model public health orders and related documents that local health departments and municipal solicitors may use as templates when drafting documents seeking judicial support for local health regulation enforcement. The *Toolkit* appropriately places Pennsylvania statutes and rules into document templates, so that they may be efficiently applied during unusual and challenging public health events to provide optimal efficiency and consistency, and to minimize confusion and uncertainty.

#### **Joint State Government Commission Advisory Committee on Public Health Law**

Formed as a result of the 2007 Senate Resolution No. 194, which expressly cited the *Bench Book* created by

UP-CPHP and AOPC as “showing the need to substantially upgrade Pennsylvania’s public health law,”<sup>10</sup> the Pennsylvania Senate directed the Joint State Government Commission to establish a legislative task force with an advisory committee of experts to review, update, and codify Pennsylvania’s public health law. Four faculty members from UP-CPHP serve on this commission, one of whom has been appointed to chair the project.

Recognizing the magnitude of the task assigned to this Advisory Committee, relevant areas of law have been assigned to subcommittees for full analysis in the following areas: Behavioral Health, Data Collection, Disease Prevention and Health Promotion, Emergency and Disaster Preparedness, and the Public Health System Infrastructure. Work of the subcommittees has begun in earnest; aided by the analysis of public health law already conducted during the development of the *Bench Book*, initial recommendations from the Emergency and Disaster Preparedness subcommittee are currently in development.

#### **An Introduction to Public Health Law and Science: A Seminar for Judges**

Judicial and administrative leadership in the state recognized that while the *Bench Book* provided the judges with a background in Pennsylvania public health law, the science of public health—the epidemiology of infectious disease, potential agents of bioterrorism, and the limitations of science—remained a mystery to them. Consequently, precipitated by judges, discussion ensued about the need for a comprehensive course for judges on public health science and law. Once again, the efforts of UP-CPHP, PHLP, and AOPC were

combined to identify the key topics and create such a course.

Under the leadership of two of the state’s highly esteemed judges and public health champions, an expert panel crafted an intensive public health law and science curriculum tailored specifically for judges (Figure). In May 2009, a select group of 40 trial and appellate court judges from Pennsylvania, Louisiana, Michigan, Kansas, Hawaii, and Guam attended the three-day program in State College, Pennsylvania, called “Public Health Law and Science: A Seminar for Judges.” Faculty for the course (which included CDC and PHLP staff, UP-CPHP faculty, the Dean of the University of Pittsburgh Graduate School of Public Health, law professors, and judges) gave the participants insight into the sometimes confusing and scientifically technical worlds of infectious disease and public health practice, and posed the critical questions judges will be seeking to answer if a public health case were brought before them.

Extolling the value of the program, a seminar participant stated, “Until this course, I had very little idea of the organizations that exist to deal with epidemics and who has what authority and responsibilities. This program should be presented to all judges.” Participant comments such as this one, along with positive seminar evaluations, program faculty debriefings, and subsequent discussions among the seminar creators, have resulted in a plan to use this model as the basis for the creation of formalized curricula for nationwide judicial training and have generated inquiry into the feasibility of establishing a national public health judicial training center. As with the *Bench Book*, this

#### **Figure. Curriculum for “Public Health Law and Science: A Seminar for Judges,” held in May 2009 in State College, Pennsylvania**

##### *Day One: Infectious Disease and Public Health*

Topics	The history of threat to the public’s health The nature of infectious disease: little bugs, big problems Public health practice and science Infectious diseases of current concern and related control issues Biological organisms and agents as potential instruments of terrorism
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##### *Day Two: Pennsylvania Law and the Control of Disease*

Topics	Jurisdiction in public health matters Public health law in Pennsylvania Who in Pennsylvania is authorized to take action to control infectious disease? Under what circumstances may a Pennsylvania public health authority take action? What may a Pennsylvania public health authority do to respond to a threat to the public’s health caused by an infectious disease?
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##### *Day Three: The Role of the Courts*

Topics	The role of the courts in the administration of public health law
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program has been hailed as a national model for other states to emulate.

## CONCLUSIONS

The impact and value of UP-CPHP can be measured in many ways: productivity, in terms of the number of resources or products produced by UP-CPHP; networking capacity, evidenced by the number, strength, and endurance of the relationships UP-CPHP has made and maintained; and, finally, the degree to which UP-CPHP has achieved its goal of improving legal preparedness for public health emergencies. As demonstrated by the products and partnerships detailed in this article, UP-CPHP is a valuable resource for public health emergency legal preparedness. UP-CPHP is able to function as a central organizer, impartial and dedicated to the overall goal of greater preparedness and improved response.

Each UP-CPHP project has built upon the work that has preceded it, and the cumulative activities have provided for improved preparedness across Pennsylvania and the nation. In a written memorandum describing the value of the collaborative work between AOPC and UP-CPHP, the Court Administrator of Pennsylvania, stated “[e]ach of these collaborative efforts alone, and taken as a whole have greatly increased judges’ and court officials’ knowledge of the challenges that may arise if a natural or man-made public health emergency should occur.” He added, “[B]ecause of the assistance of UP-CPHP, it is by no means hyperbole to state that the Pennsylvania judiciary is in a better position today to plan for and respond to a public health crisis than it has been at any other point in its history” (Personal communication, Zygmunt Pines, Administrative Office of Pennsylvania Courts, October 2009).

While this is the approach Pennsylvania has taken to improve the emergency response capacity of its judicial system, this work can have significantly broader application. The efforts undertaken in Pennsylvania and the methods, products, and resources that have resulted are readily adaptable to other jurisdictions. In the coming year, at least two additional states will be combining their state public health emergency bench books with the judicial education resources developed by this Pennsylvania/CDC PHLP collaborative to conduct seminars for judges on public health law and science.

These highly collaborative, practice-based applications help state and local jurisdictions create a public health legal system that is ready to mitigate, prepare for, respond to, and help recover from the full range of disasters that can affect their populations.

The projects and publications described in this article are the products of innovative institutional collaboration, which, in turn, reflects the significant effort and dedication of many individuals. In particular, the authors acknowledge the contributions of the Honorable John Cleland for his leadership in the courthouse preparedness, public health, and continuity of operations projects; and the Honorable John Bozza and Mark Bernstein for their guidance in the complex field of public health law.

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