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MEMORANDUM

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TO: Mary Selecky, Secretary
Bill White, Deputy Secretary
Department of Health, MS 47890

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SUBJECT: **Public Health Emergencies – Update to January 31, 2002 Legal Authority Memo**

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I. INTRODUCTION

On January 31, 2002, following the tragic events on September 11, 2001 in New York and Washington, D.C. and the widespread national concern about bioterrorism after letters containing anthrax were discovered in Florida, Washington, D.C., and New York, I prepared a memorandum describing the legal authorities of the different entities within the local and state government in responding to an emergency involving the public health. The public health system has a long history of responding to emergencies which trigger high mortality and morbidity for human populations. However, with the advent of modern medicine and environmental protections, such as wastewater treatment, immunizations, standards for drinking water, the public health system's work in nations such as the United States went unnoticed and underappreciated by the average citizen in the twentieth century. We now take for granted the public health protections put in place prior to and during our lifetime.

While public health officials were already concerned about the potential for bioterrorism and the rapid spread of diseases as greater numbers of the world's population began to travel quickly by air from one location to another and our nation's economy became increasingly dependent upon international trade, the public health infrastructure, taken for granted for so long in the United States, was being minimally maintained. The events following September 11, 2001 raised public awareness of the need to prepare for a bioterrorism event or a novel disease, such as SARS which affected large populations in Toronto, particularly with the imposition of quarantines. Public health officials realized that the pace of their planning needed to be accelerated. Several public health events (anthrax, monkeypox, SARS, bovine spongiform encephalopathy, west Nile virus, high pathology avian influenza, e coli in food), highlighted the need for a quick, decisive response and accurate communications among a variety of interested parties.

These events, even when we did not have active cases in our state, tested the public health system in Washington. Washington's public health system is comprised of a number of governmental agencies at the state and local levels. The purpose of this memo is to update the discussion of the roles of these various agencies and their intersection with other entities involved in emergency preparation and response, sharing a common mission of protecting the people of this state. Most of the roles overlap to some degree, which benefits the public with a deeper blend of resources to meet the public health emergency than a single authority may be able to provide. The alacrity with which the authorities must respond demands that each of the entities understand its own role and the roles of the other agencies, as well as becoming familiar with the available resources within the entire system. The government agencies need to partner with each other and with private entities to effectively fulfill this mission. Ultimately, every person should be prepared to protect and respond for oneself and one's family during an emergency; assisting neighbors, the community, and the government responders to the extent possible.

The memo commences with a description of the authority of the local health jurisdictions, as Washington's public health and emergency management systems recognize the primacy of local

governments for both public health delivery and emergency management through the local health boards, local health officers, local emergency management, and heads of political subdivisions. The local health jurisdictions provide services tailored to the public health needs of the communities in which they serve. The local health jurisdictions are generally more familiar with the health providers, facilities, and other resources within their communities. The memo then describes the authorities of state agencies, both the public health agencies and the emergency management agency. The memo concludes with a description of the governor's authority.

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1. Local Health Officers and Boards

Local health officers and boards have broad authority to protect the life and health of the people within their jurisdictions. As discussed below, the courts have upheld a number of different actions taken by the local officers and boards under this broad authority.

The authority for local health officers and boards is contained in chapter 70.05 RCW. Local boards of health are granted the authority to "[supervise] all matters pertaining to the preservation of the life and health of the people within its jurisdiction." RCW 70.05.060. Local boards of health are directed, in RCW 70.05.060, to take the following actions to preserve the life and health of the people within their jurisdiction:

> (1) Enforce through the local health officer . . . the public health statutes of the state and rules promulgated by the state board of health and the Secretary of health;
> (2) Supervise the maintenance of all health and sanitary measures for the protection of the public health within its jurisdiction;
> (3) Enact such local rules and regulations as are necessary in order to preserve, promote and improve the public health and provide for the enforcement thereof;

> (4) Provide for the control and prevention of any dangerous, contagious or infectious disease within the jurisdiction of the local health department;
> (5) Provide for the prevention, control and abatement of nuisances detrimental to the public health;
> (6) Make such reports to the state board of health through the local health officer or the administrative officer as the state board of health may require;
> . . .

Local health officers act under the direction of local boards of health and, under RCW 70.05.070, are mandated to:

> (1) Enforce the public health statutes of the state, rules of the state board of health and the Secretary of health, and all local health rules, regulations and ordinances within his or her jurisdiction . . .;
> (2) Take such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction;
> (3) Control and prevent the spread of any dangerous, contagious or infectious diseases that may occur within his or her jurisdiction;
> (4) Inform the public as to the causes, nature, and prevention of disease and disability and the preservation, promotion and improvement of health within his or her jurisdiction;
> (5) Prevent, control or abate nuisances which are detrimental to the public health;
> . . .;
> (9) Take such measures as he or she deems necessary in order to promote the public health, ...

In *Spokane County Health District v. Brockett*, 120 Wn.2d. 140, 839 P.2d 324 (1992), the Washington Supreme Court discussed and applied RCW 70.05.060 and .070. The Spokane County Health District Board of Health had directed its health officer to implement a needle exchange program to "slow the spread of AIDS and other infectious diseased among [intravenous drug users] and those with whom they come into contact." *Supra* at 144. The Spokane County Prosecutor challenged the implementation of the needle exchange program on the grounds that it constituted an unlawful distribution of drug paraphernalia. The court noted that the local health officials had been given a broad grant of powers by the legislature in chapter 70.05 RCW. *Supra* at 148. The court went on to note that chapter 70.05 RCW should be liberally construed "[b]ecause protecting and preserving the health of its citizens from disease is an important governmental function." *Supra* at 149. This governmental function was deemed so important that the court said "[t]he legislatively delegated power to cities and health boards to control contagious diseases gives them extraordinary power which might be unreasonable in another context." *Supra* at 149.[1] The court upheld the needle exchange program as a valid

[1] Interestingly, the court cites to *State ex rel. McBride v. Superior Court*, 103 Wash. 409, 420, 174 P. 973 (1918), one of a series of cases from the early twentieth century discussing the quarantine authority of the state and local health boards. These quarantines were primarily for the diseases of syphilis and smallpox.

exercise of the local health board's police power, noting that the judiciary does not examine "the subject matter and expediency of public health disease prevention measures . . . except as they may violate some constitutional right guaranteed to defendants." *Supra* at 149. *See also Brockett* at 155 ("Moreover, we are persuaded the broad powers given local health boards and officers under Const. art. 11, § 11 and RCW 70.05 authorize them to institute needle exchange programs in an effort to stop the spread of HIV and AIDS.").

Washington cases have upheld the exercise of the authority of local boards and officers to protect the public health in a variety of contexts: limitation on outdoor advertisement of tobacco products [*Lindsey v. Tacoma-Pierce County Health Department*, 8 F. Supp. 2d 1213 (W.D. Wash. 1997)]; regulations on the installation of private sewage disposal systems [*Snohomish County Builders Association v. Snohomish County Health District*, 8 Wn. App. 589, 508 P.2d 617 (1973)]; fluoridation of the water supply [*Kaul v. City of Chehalis*, 45 Wn.2d 616, 277 P.2d 352 (1954)[2]]; smallpox vaccination as a condition of public school attendance [*Lehman v. Partlow*, 119 Wash. 316, 205 P. 420 (1922)]; quarantine of persons possibly infected with smallpox or syphilis [*City of Seattle v. Cottin*, 144 Wash. 572, 258 P. 520 (1927); *State v. Superior Court for King County*, 103 Wash. 409, 174 P. 973 (1918); *Westman v. Superior Court for King County*, 103 Wash. 701, 174 P. 979 (1918)].[3]
The variety of activities, addressing a myriad of public health concerns, upheld by the courts in these cases demonstrates one advantage with the broad grant of legislative authority in the current law. The local authorities have wide flexibility to tailor their activities to address the specific public health needs of the people in their jurisdictions.[4] However, if the legislature has adopted a specific law on a particular topic, vesting authority traditionally within the local health jurisdiction to another entity, then the specific law overrides the broad grant of authority to the local health jurisdiction. *Parkland Light & Water Company v. Tacoma-Pierce County Board of Health*, 151 Wn.2d 428, 90 P.3d 37 (2004).

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[2] The local jurisdiction's authority to require fluoridation of the water supply has been modified by the legislature's specific grant of authority to water districts in RCW 57.08.012. *Parkland Light & Water Company v. Tacoma-Pierce County Board of Health*, 151 Wn.2d 428, 90 P.3d 37 (2004).

[3] The discussion of the broad authority of the local health departments in these quarantine cases remains valid; however, while not explicitly overruled, these cases also held that the persons quarantined did not have access to the courts for review of their detention. In reaching this decision, the courts relied on legislation identifying the state board of health as the final arbiter of the propriety of the quarantine. The courts said that legislation precluded judicial review. More recent decisions make it clear that access to the courts must be available under the procedural due process protections in the state and federal constitutions. *See Brockett, supra* at 149; *Snohomish County Builders Association v. Snohomish Health District, supra* at 623.

[4] This can also raise concern about lack of uniformity; however, under the authority of state agencies, that concern can be addressed at the state level if necessary.

a. Authority to Control Communicable Diseases

In September 2003, the State Board of Health[5] amended the administrative rules to update the authorities and responsibilities of local health officers, consistent with the renewed recognition of public health's key role in protecting the public health, safety and welfare with respect to emerging diseases, food safety, and the potential for bioterrorism. WAC 246-100-036(1) , as amended in 2003, makes it the responsibility of the local health officer to "establish, in consultation with local health care providers, health facilities, emergency management personnel, law enforcement agencies, and any other entity he or she deems necessary, plans, policies, and procedures for instituting emergency measures necessary to prevent the spread of communicable disease or contamination." This amendment recognized the necessity of strong partnerships and collaboration to effectively protect the public.

WAC 246-100-036(4) recognizes the importance of these partnerships by authorizing local health departments to "make agreements with tribal governments, with federal authorities or with state agencies or institutions of higher education that empower the local health officer to conduct investigations and institute control measures [for isolation and quarantine] on tribal lands, federal enclaves and military bases, and the campuses of state institutions." "State institutions" are broadly defined in WAC 246-100-036 (4) as including, but not limited to, "state-operated colleges and universities, schools, hospitals, prisons, group homes, juvenile detention centers, institutions for juvenile delinquents, and residential habilitation centers."

In WAC 246-100-036(3), local health officers are charged with "conduct[ing] investigations and institut[ing] *disease control and contamination control measures*, including medical examination, testing, counseling, treatment, vaccination, decontamination of persons or animals, isolation, quarantine, vector control, condemnation of food supplies, and inspection and closure of facilities, consistent with those indicated in the 17th edition, 2000 of the *Control of Communicable Disease Manual*, published by the American Public Health Association, or other measures he or she deems necessary based on his or her professional judgment, current standards of practice and the best available medical and scientific information." "Disease control measures" are defined in WAC 246-100-011(11) as "the management of persons, animals, goods, and facilities that are infected with, suspected to be infected with, exposed to, or suspected to be exposed to an infectious agent in a manner to prevent transmission of the infectious agent to humans." "Contamination control measures" are defined in WAC 246-100-011(8) as "the management of persons, animals, goods, and facilities that are contaminated, or suspected to be contaminated, in a manner to avoid human exposure to the contaminant, prevent the contaminant from spreading, and/or effect decontamination."

RCW 70.05.090 requires physicians to report dangerous contagious or infectious diseases, or any disease required to be reported by the state board of health, to local health officers or the

[5] The authority of the Washington State Board of Health (WSBOH) is discussed in the section addressing authorities of state agencies.

department of health within twenty-four (24) hours of attending to that patient. Physicians who refuse or neglect to report are guilty of a misdemeanor, and if convicted, are fined from ten to two hundred dollars for each case not reported. RCW 70.05.120.[6]

Under RCW 70.05.110, the local boards and officers are required to report to the state board of health certain specified diseases, upon discovery of the diseases. Failure of the local board to report subjects the members of the board to misdemeanor charges and, upon conviction, fines of ten to two hundred dollars.

WAC 246-101-505(10) authorizes the local health officer to:

(a) Carry out additional steps determined to be necessary to verify a diagnosis reported by a health care provider;
(b) Require any person suspected of having a reportable disease or condition to submit to examinations required to determine the presence of the disease or condition;
(c) Investigate any case or suspected case of a reportable disease or condition or other illness, communicable or otherwise, if deemed necessary;
(d) Require the notification of additional conditions of public health importance occurring within the jurisdiction of the local health officer.

The question of whether a person is affected or sick with a dangerous, contagious or infectious disease is solely within the authority of the local health officer, until the state department of health is notified. RCW 70.05.100. The state department of health's "executive officer," or a physician she appoints to examine the case, makes the final determination.

In the last paragraph of RCW 70.05.120, it is declared a misdemeanor, subject to a fine of twenty-five to one hundred dollars and/or up to ninety days imprisonment in the county jail for any person:

(i) violating chapter 70.05 RCW;
(ii) violating, refusing or neglecting to obey the state board, local board or officer's rules, regulations or orders for the prevention, suppression and control of dangerous contagious and infectious diseases;
(iii) who leaves an isolation hospital or quarantined house or place without the consent of the health officer;
(iv) who evades or breaks quarantine or assists in evading or breaking any quarantine; or
(v) who conceals a case of contagious or infectious disease.

[6] RCW 70.05.090 and .120 contain different reporting timelines; RCW 70.05.090 refers to twenty-four hours and RCW 70.05.120 refers to twelve hours. In addition, RCW 70.05.120 allows the physician to report to an "administrative officer" or the "proper health officer" and there is no definition of "administrative officer." This could become an issue in implementing the enforcement provisions of RCW 70.05.120. The differing timelines for reporting are contained in statutes, so clarification of this ambiguity must be by legislation. The definition of "administrative officer" could be clarified by an administrative rule.

b. Authority to Close Schools and Day Care Centers

Under chapter 246-110 WAC, local health officers have the authority, after consultation with the Secretary of the Department of Health or her designee, to take all medically appropriate actions deemed necessary to control or eliminate the spread of disease, including, but not limited to:

- closing the affected schools or day care centers or parts thereof;
- closing other schools or day care centers in the local health officer's jurisdiction;
- ordering the cessation of selected school or day care center activities or functions;
- excluding from schools or day care centers in the jurisdiction any students, staff, and volunteers infected with or susceptible to the disease.

Prior to taking such action, the local health officer must consult with and discuss the ramifications of the proposed action with the school district superintendent or the chief administrator of the day care center. A written decision and order directing the action to be taken needs to be provided to the board of directors and the school district superintendent or the chief administrator of the day care center. The terms and conditions for permitting the reopening of the schools or day care centers, the resumption of activities and functions, and the readmission of excluded students, staff or volunteers must be established. The local health officer must pursue, in consultation with the Secretary of the Department of Health and the school or day care officials, an investigation of the source of the disease or order the actions necessary for the ultimate control of the disease.

c. Isolation and Quarantine Authority and Procedures

In September 2003, the Board of Health also adopted rules to more specifically provide the procedures for isolating or quarantining individuals. WAC 246-100-040(1) recognizes the local health officer's discretion to issue an emergency detention order for isolation or quarantine or to seek a judicial order *ex parte* to isolate or quarantine a person or group of persons, if the local health officer has:

(a) made and documented reasonable efforts to "obtain voluntary compliance with requests for medical examination, testing, treatment, counseling, vaccination, decontamination of persons or animals, isolation, quarantine, and inspection and closure of facilities" *or*

(b) determined, in his or her professional opinion, that seeking voluntary compliance will create a risk of serious harm, *and*

(c) "reason to believe that the person or group of persons is, or is suspected to be, infected with, exposed to, or contaminated with a communicable disease or chemical, biological, or radiological agent that could spread to or contaminate others if remedial action is not taken" *and*

(d) "reason to believe that the person or group of persons pose a serious and imminent risk to the health and safety of others" if not isolated or quarantined.

WAC 246-100-040(2) authorizes the local health officer to "invoke the powers of police officers, sheriffs, constables, and all other officers and employees of any political subdivisions with the jurisdiction of the health department to enforce immediately orders given to effectuate the purposes in WAC 246-100-040 in accordance with RCW 43.20.050(4) and 70.05.120."

An emergency involuntary detention may be ordered by the local health officer, which must include documentation of measures taken to secure voluntary compliance and the basis for believing the individual or group of persons will not voluntarily comply, or must include the basis for the local health officer's determination that seeking voluntary compliance will create a risk of serious harm to the public. The local health officer must also state the medical basis justifying the isolation or quarantine. WAC 246-100-040(3). The emergency involuntary detention order must contain a notice advising the persons quarantined of their right to petition the superior court for a release from isolation or quarantine, their right to counsel, including counsel at government expense if they cannot afford legal counsel, and their right to immediately access legal counsel. The specific language for this notice is contained in WAC 246-100-040(3)(d). The emergency involuntary detention order is only valid for ten days. Extensions granted by a court are limited to thirty days; however, successive extensions may be granted upon a finding that the continued isolation or quarantine is necessary to prevent a serious and imminent threat to the public health and safety of others. WAC 246-100-040(5), (6).

In lieu of, or in conjunction with, the issuance of an emergency involuntary detention order, the local health officer may petition the superior court *ex parte* (without notice to the affected persons) for an order authorizing the involuntary detention of persons for isolation or quarantine. WAC 246-100-040 (4) specifies what must be contained in the petition to the court. A hearing on the petition should be conducted within seventy-two hours, exclusive of Saturdays, Sundays, and holidays. WAC 246-100-040 (4) (d); (5) (e). Extensions of the isolation or quarantine detention orders must be heard by the court, as provided in WAC 246-100-040 (5) and (6).

WAC 246-100-055 authorizes persons detained for isolation or quarantine to petition the superior court for relief from the detention order by a show cause process. The court will rule on the petition within forty-eight hours of filing the petition to show cause and set the hearing on the order to show cause as soon as practicable, no later than five days. WAC 246-100-055 (1); (5).

Persons isolated or quarantined are entitled to certain conditions during the period of detention, as specified in WAC 246-100-045:

- The isolation or quarantine must be the "least restrictive means necessary to prevent the spread of communicable disease," and may include confinement to the individual's own home.
- Isolated individuals (only those with symptoms of illness are isolated) are confined separately from quarantined individuals (those who have been contacts with ill individuals, but who do not manifest any symptoms of the disease are quarantined).
- The health status of isolated and quarantined individuals must be monitored regularly to determine if they need continued isolation or quarantine, or if their status changes from quarantine to isolation.

- Isolated or quarantined individuals must be released as soon as the local health officer determines that they have been successfully decontaminated or they no longer pose a substantial risk of transmitting a communicable disease, which constitutes a serious or imminent threat to the health and safety of others.
- The needs of the persons isolated or quarantined "must be addressed to the greatest extent possible in a systematic and competent fashion, including, but not limited to, providing adequate food, clothing, shelter, means of communication with others in isolation or quarantine and those outside those settings, medications, and competent medical care."
- The premises for isolation or quarantine "must be maintained in a safe and hygienic manner to minimize the likelihood of further transmission of infection or other harm" to isolated or quarantined persons.
- Cultural and religious beliefs should be considered to the extent possible for isolated or quarantined persons. The isolated or quarantined individual's right to rely exclusively on spiritual means alone through prayer shall not be abridged; however, the local health officer, in his or her sole discretion, "may isolate infected individuals declining treatment for the duration of their communicable infection."

Entry into isolation or quarantine premises is restricted as provided in WAC 246-100-050. The local health officer has discretion to authorize persons to enter, including health care workers and others necessary to meet the needs of the isolated or quarantined individuals. Persons entering the premises will receive infection control training and may be required to wear personal protective equipment or receive a vaccination. Any person entering, even with the health officer's authorization, may be isolated or quarantined if necessary to protect the public health and safety.

The isolated or quarantined individual's right to counsel is recognized in WAC 246-100-060. If a person cannot afford counsel, then the court shall appoint counsel consistent with chapter 10.101 RCW. The local health officer must provide adequate means of communication for the individuals isolated or quarantined and their legal counsel.

WAC 246-100-065 authorizes the court to consolidate the individual claims into group claims if:

- the number of individuals involved is so large as to render individual participation impracticable,
- the questions of law or fact are common, the groups' claims or rights to be determined are typical of the affected persons' claims or rights, and
- the entire group will be adequately represented in the consolidation.

These September 2003 rule amendments, detailing the process and procedures for isolating and quarantining individuals, arose from the SARS events in Toronto. Public health officials realized that these measures, rarely used in modern times, with the exception of recalcitrant tuberculosis patients, may be necessary to protect the public health and safety. The laws protecting the liberty rights and interests of individuals evolved considerably, since the time when these measures were more commonly used in the early twentieth century. These 2003 amendments strive to incorporate those protections, while maintaining the effectiveness of isolation and quarantine as tools to protect the public health and safety.

2. Local Emergency Operations Centers

Perhaps due, in part, to the frequency of natural disasters in this state,[7] Washington has implemented a comprehensive emergency management system. Chapter 38.52 RCW contains the authority of both the state and local jurisdictions operate a system for emergency management. To the extent possible, this section will address the authority of the local emergency operations centers[8], reserving the discussion of the authority of the state emergency management division located within the state Military Department for the section discussing state agencies' authorities.

a. Scope and Definitions

First, it may be useful to review the definition "emergency or disaster" to ascertain the scope of activities addressed by chapter 38.52 RCW. RCW 38.52.010(6) defines an "emergency or disaster" as "an event or set of circumstances which: (i) Demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences, or (ii) reaches such a dimension or degree of destructiveness as to warrant the governor declaring a state of emergency pursuant to RCW 43.06.010." This broad definition of "emergency or disaster" encompasses emergencies affecting the public health, sometimes referred to in abbreviated form as "public health emergency."[9]

> The policy and purpose of chapter 38.52 RCW as specified in RCW 38.52.020 are:
> (1) Because of the existing and increasing possibility of the occurrence of disasters of unprecedented size and destructiveness . . ., and in order to insure that preparations of this state will be adequate to deal with such disasters, to insure the administration of state and federal programs providing disaster relief to individuals, and further to insure adequate support for search and rescue operations, and generally to protect the public peace, health, and safety, and to preserve the lives and property of the people of the state, it is hereby found and declared to be necessary:
>
> > (a) To provide for emergency management by the state, and to authorize the creation of local organizations for emergency management in the political subdivisions of the state;

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[7] This reason was given by FEMA when Washington was selected as the first state to be surveyed as that agency began its survey of states' preparedness for responding to terrorism.

[8] Some local jurisdictions may have joint local emergency operations centers, serving two or more local jurisdictions. These centers may have a name other than emergency operations centers; however, their functions are as provided in chapter 38.52 RCW.

[9] "Public health emergency" is not specifically recognized in statute or regulations. Chapter 38.52 RCW addresses all hazards emergency preparedness, response and recovery. The reference to "public health emergency" has generally come to mean emergencies in which Emergency Support Function (ESF) 8 of the Comprehensive Emergency Management Plan (CEMP) has been triggered. See the section on the State Military Department, Emergency Management Division for a greater discussion of the CEMP.

> (b) To confer upon the governor and upon the executive heads of the political subdivisions of the state the emergency powers provided herein;
> (c) To provide for the rendering of mutual aid among the political subdivisions of the state and with other states and to cooperate with the federal government with respect to the carrying out of emergency management functions;
> . . .; and
> (e) To provide programs, with intergovernmental cooperation, to educate and train the public to be prepared for emergencies.
>
> (2) It is further declared to be the purpose of this chapter and the policy of the state that all emergency management functions of this state and its political subdivisions be coordinated to the maximum extent with the comparable functions of the federal government including its various departments and agencies of other states and localities, and of private agencies of every type, to the end that the most effective preparation and use may be made of the nation's manpower, resources, and facilities for dealing with any disaster that may occur.

RCW 38.52.020 refers to "emergency management." The term "emergency management" is defined in RCW 38.52.010(1) as "the preparation for and the carrying out of all emergency functions, other than functions for which the military forces are primarily responsible, to mitigate, prepare for, respond to, and recover from emergencies and disasters, and to aid victims suffering from injury or damage, resulting from *disasters caused by all hazards, whether natural, technological, or human caused,* and to provide support for search and rescue operations for persons and property in distress." RCW 38.52.010(1) excludes from the definition of "emergency management," the preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack.

b. Authorized Activities

The establishment and authority of the local emergency operations centers are addressed in RCW 38.52.070. Each local emergency operations center or department must coordinate with the state Emergency Management Division (EMD) to ensure that the emergency plans developed by the locals are consistent with the state Comprehensive Emergency Management Plan (CEMP) developed by the state EMD's director.[10] RCW 38.52.070(2) directs the local emergency operations centers to take the following actions:

> In carrying out the provisions of this chapter each political subdivision, in which any disaster . . . occurs, shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. Each political subdivision is authorized to exercise the powers vested

[10] The CEMP is also discussed in the section addressing the authorities of state agencies.

> under this section in the light of the exigencies of an extreme emergency situation *without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements)*, including, but not limited to, budget law limitations, requirements of competitive bidding and publication of notices, provisions pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes, and the appropriation and expenditures of public funds.

Under RCW 38.52.110(1), the governor and executive heads of the political subdivisions can utilize any of the services, equipment, supplies and facilities of the departments, offices and agencies of the state and political subdivisions, including municipal corporations and quasi-municipal corporations, in carrying out the disaster response. In addition, officers and personnel of these offices and agencies are directed to cooperate and extend the needed services and facilities to assist in the disaster response, notwithstanding any other provision of law.

If the governor issues an emergency proclamation[11] in response to the disaster, the chief executive of counties, cities and towns and the directors of the local emergency operations centers "have the power to command the service and equipment of as many citizens as considered necessary" to deal with the disaster. RCW 38.52.110(2). These citizens have the same privileges, benefits and immunities as provided by chapter 38.52 RCW and the federal and state emergency management regulations for registered emergency workers.

Every emergency management organization established in chapter 38.52 RCW must execute and enforce orders, rules, and regulations of the governor. Failure to do so is punishable as a misdemeanor.

c. Mutual Aid Agreements

RCW 38.52.070(1) authorizes the local emergency operations centers to provide assistance outside the boundaries of their political subdivisions when required. RCW 38.52.080 extends the powers, duties, rights, privileges and immunities of those employees to work outside their political subdivisions when they are rendering necessary aid in other jurisdictions. In addition, RCW 38.52.080(3) recognizes that these employees and equipment owned by political subdivisions may be used to render aid outside the state under a reciprocal mutual aid agreement or compact with other states or as required by the federal government.

Mutual aid agreements by political subdivisions are authorized in RCW 38.52.091. Local emergency operations centers are authorized to enter into mutual aid agreements with public and

[11] The governor's authority to issue emergency proclamations is described in the third section of this memo, addressing the governor's authorities.

private agencies within this state "for reciprocal emergency management aid and assistance in case of disasters too great to be dealt with unassisted." RCW 38.52.091(1). These agreements must be consistent with the state CEMP. The state EMD adjutant general maintains and distributes a mutual aid and interlocal agreement handbook.

If a local emergency operations center wants to enter into mutual aid agreements with emergency management agencies or organizations in other states, the governor must approve the agreements. RCW 38.52.091(2). RCW 38.52.091(3) contains required terms for the mutual aid agreements.

3. Local Public Safety Authority

Local public safety authority is generally as broad as the police power of government. Only specific authority relating to public health emergencies will be discussed in this memo.

RCW 43.20.050(4) requires "[a]ll local boards of health, health authorities and officials, officers of state institutions, *police officers, sheriffs, constables,* and all other officers and employees of the state, or any county, city, or township" to enforce all rules adopted by the state board of health. Failure to comply with the provision subjects the individual to a fine of at least fifty dollars and injunctive, mandamus, or other civil proceedings under RCW 43.70.190. A temporary order can be issued without notice (ex parte) if warranted under the circumstances. RCW 43.70.190.

Under WAC 246-100-036(1) and (6), local health officers are required to institute disease prevention and infection control measures, including isolation, detention, and quarantine when necessary to prevent the spread of communicable diseases. There have been discussions about the importance of assistance from local law enforcement in enforcing these actions by the local health officers. Case law from the early twentieth century, involving quarantine for small pox and syphilis,[12] indicate that law enforcement assisted the local health officer in enforcing quarantine and isolation. The cooperative relationship between local law enforcement and local health officers in the early 1900s may have evolved from the local health officers' roles in assisting with enforcement of the public moral criminal code, e.g. prostitution. The recent discussions about the relationship between law enforcement and local health officers suggest that law enforcement may not be as aware of the authorities of the local health officers as in the past.

Failure to comply with a local health officer's order is a misdemeanor under RCW 70.05.120. RCW 10.31.100, in its opening paragraph, allows law enforcement officers to arrest when a misdemeanor is committed in the presence of the law enforcement officer. Some representatives of law enforcement agencies have expressed concerns that RCW 70.05.120 is not included in the list in RCW 10.31.100(1) through (12), which specifies when law enforcement officers may arrest for a misdemeanor *not* committed in their presence. Some local health jurisdictions are

[12] The quarantine cases are listed on page 5 of this memo.