

Issuing an Emergency Detention Order (§ 32.1-48.02)

Scope

If the local health director determines that a person with active TB disease is engaging in at-risk behavior and poses an imminent threat to the health of others, the Commissioner may issue an emergency order to have that person taken into temporary custody—in the least restrictive, willing facility providing protection of the health of others and appropriate treatment—for a period not to exceed forty-eight hours.



The emergency detention order is the most extreme enforcement of the TB Control Laws to protect the public health. When prior measures have been exhausted, the person with active TB disease is considered a threat to the health of others and his/her situation must be handled as an emergency.



Timeframe for custody

If the specified forty-eight-hour period terminates on a Saturday, Sunday or legal holiday, such person may be detained until the next day which is not a Saturday, Sunday, or legal holiday.
(§ 32.1-48.02.D)

Criteria

Prior to issuing an emergency order, the local health director must be able to document that:

- The person has active TB disease, as defined by the VA TB Control Laws.
- The person has been counseled about the need to complete treatment and about the medical and legal consequences for failing to adhere to treatment.
- Despite counseling, the person is engaging in conduct that unreasonably places uninfected persons at risk of contracting TB.
- Medical data demonstrate that the person poses an imminent threat to the health of others.

The local health director must also ensure that one of the following conditions has been met:

- The person has refused or failed to report to the local health department after having been ordered to do so for appropriate outpatient treatment and education (counseling order, outpatient treatment order).
- The person has a documented history of failure to adhere to a prescribed course of treatment.
- The person has indicated that he/she will not comply with the prescribed treatment.

Elements of an Emergency Detention Order

The emergency detention order must contain the following information:

- The name of the person being issued the emergency detention order.
- The basis on which the local health director believes that the person has active TB disease – include the name of the examining physician and the date of the examination.
- The basis on which the local health director believes the person is unwilling or unable to adhere to a prescribed course of treatment.
- Documented efforts to counsel the person about the need to complete treatment and about the medical and legal consequences for failing to adhere to treatment.

- The basis on which the local health director believes that, despite counseling, the person is engaging in conduct that unreasonably places uninfected persons at risk of contracting TB.
- Medical data demonstrating that the person poses an imminent threat to the health of others.

Process Summary

An emergency detention order may be issued by the Commissioner. The Division of TB Control will work closely with the Commissioner to activate an emergency detention order. The local health director also plays an important role in this process.

- 1) The local health director will consult with the Department of TB Control to determine that the criteria for the emergency detention order have been met.
- 2) The Division of TB Control must be contacted immediately.
- 3) The Division of TB Control will work with the Commissioner and the Attorney General to set the process for the emergency detention order into motion.
- 4) The local health director will send to the Division of TB Control all relevant documentation (*e.g.*, clinical information, documented counseling efforts, etc.) to assist the Attorney General in preparing the case.
- 5) In consultation with the local health director and the Attorney General, the Division of TB Control will write the emergency detention order, including necessary information elements. This order will be presented to the Commissioner for his/her signature. An emergency detention order form letter is available from the internal DTC website at: <http://vdhweb/epi/tb/>
- 6) The local health director will secure a place of confinement for the person who is the subject of the emergency detention order.
- 7) The local health director will alert local law enforcement to be prepared for delivering this forthcoming order. See note below regarding custody.
- 8) Any questions or concerns regarding the legal basis for the commissioner's order or its enforcement should be directed promptly to the Office of the Attorney General.
- 9) While the emergency detention order is in effect, the Commissioner will proceed to prepare for the isolation hearing. This process is explained in the next sub-section, **Court-Ordered Isolation.**



State and local law-enforcement officers are authorized to take custody of the subject of such emergency order immediately upon issuance of the emergency order by the Commissioner.
(§ 32.1-48.02.E)



The Commissioner may also issue an emergency detention order for a person with active TB disease upon release from an inpatient treatment facility or a state or local correctional or detention facility. This emergency detention order will be issued if the person with active TB disease indicates an unwillingness to comply with the prescribed treatment plan or exhibits noncompliant behavior.
(§32.1-50.1.D)