

How do I appeal a quarantine order?

1. Under K.S.A. 65129, a local health officer or secretary “may issue an order requiring an individual who the local health officer or the secretary has reason to believe has been exposed to an infectious or contagious disease.”
2. An order issued must be written and contain the following:
 - a. The identity of the individual or group of individuals subject to isolation or quarantine;
 - b. the premises subject to isolation or quarantine;
 - c. the date and time at which isolation or quarantine commences;
 - d. the suspected infectious or contagious disease causing the outbreak or disease, if known;
 - e. the basis upon which isolation or quarantine is justified; and
 - f. the availability of a hearing to contest the order.
3. Once a request for an appeal is made (call county court clerk for a hearing), the court shall conduct a hearing within 72 hours after receipt of the request.
 - a. In Butler County, the district court clerk: 316-322-4370.
 - b. Courthouse: 201 W Pine Ave #101, El Dorado, KS 67042
4. Prepare your statement or reason for appeal
 - a. Were masks worn?
 - b. How close were the students?
 - c. What was the duration?
 - d. Health of student? Symptoms?
 - e. Other factors?
5. IF the judge rules no quarantine is appropriate, contact your school for a meeting. Take written ruling. Ask for reinstatement.
6. FAQ
 - a. Do I need an attorney? NO.
 - b. Will I pay fees? In most cases, fees have been waived.
 - c. Under what ‘rights’ should I present my case? The *Writ of Habeas Corpus* has been successfully argued – which relates to the unlawful detainment of a prisoner yet has application to unlawful quarantine. Definition: **writ of habeas corpus** is used to bring a prisoner or other detainee (e.g. institutionalized mental patient) before the court to determine if the person's imprisonment or detention is lawful. A **habeas** petition proceeds as a civil action against the State agent (usually a warden) who holds the defendant in custody.
 - d. Will a coronavirus test be required? Judge may determine testing is appropriate – rulings have occurred with and without testing. Will depend on circumstances.
 - e. Can the school require quarantine? A school cannot legally quarantine; however, they can expel or remove a student from school for a stated period of time. A letter from a school may serve as a recommendation, not an order, and thus no legal force of law may be applied.

Chapter 65.--PUBLIC HEALTH

Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-129. Penalties for unlawful acts. Any person violating, refusing or neglecting to obey any of the rules and regulations adopted by the secretary of health and environment for the prevention, suppression and control of infectious or contagious diseases, or who leaves any isolation area of a hospital or other quarantined area without the consent of the local health officer having jurisdiction, or who evades or breaks quarantine or knowingly conceals a case of infectious or contagious disease shall be guilty of a class C misdemeanor.

History: L. 1917, ch. 205, § 2; R.S. 1923, 65-129; L. 1974, ch. 352, § 12; L. 1976, ch. 262, § 8; July 1.

Chapter 65.--PUBLIC HEALTH

Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-129a. Definitions. As used in K.S.A. 2005 Supp. 65-129b to 65-129d, inclusive, and amendments thereto:

(a) "Infectious or contagious disease" has the meaning ascribed thereto by subsection (b) of K.S.A. 65-128, and amendments thereto, but the infectious or contagious disease acquired immune deficiency syndrome or any causative agent thereof shall not constitute an infectious or contagious disease for the purposes of K.S.A. 2005 Supp. 65-129b and 65-129c, and amendments thereto.

(b) "Secretary" means the secretary of health and environment.

History: L. 2005, ch. 122, § 1; Apr. 21.

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65-129b. Infections or contagious diseases; authority of local health officer or secretary; evaluation or treatment orders, isolation or quarantine orders; enforcement.

(a) Notwithstanding the provisions of K.S.A. 65-119, 65-122, 65-123,

65-126 and 65-128, and amendments thereto, and any rules or regulations adopted thereunder, in investigating actual or potential exposures to an infectious or contagious disease that is potentially life-threatening, the local health officer or the secretary:

(1) (A) May issue an order requiring an individual who the local health officer or the secretary has reason to believe has been exposed to an infectious or contagious disease to seek appropriate and necessary evaluation and treatment;

(B) when the local health officer or the secretary determines that it is medically necessary and reasonable to prevent or reduce the spread of the disease or outbreak believed to have been caused by the exposure to an infectious or contagious disease, may order an individual or group of individuals to go to and remain in places of isolation or quarantine until the local health officer or the secretary determines that the individual no longer poses a substantial risk of transmitting the disease or condition to the public;

(C) if a competent individual of 18 years of age or older or an emancipated minor refuses vaccination, medical examination, treatment or testing under this section, may require the individual to go to and remain in a place of isolation or quarantine until the local health officer or the secretary determines that the individual no longer poses a substantial risk of transmitting the disease or condition to the public; and

(D) if, on behalf of a minor child or ward, a parent or guardian refuses vaccination, medical examination, treatment or testing under this section, may require the minor child or ward to go to and remain in a place of isolation or quarantine and must allow the parent or guardian to accompany the minor child or ward until the local health officer or the secretary determines that the minor child or ward no longer poses a substantial risk of transmitting the disease or condition to the public; and

(2) may order any sheriff, deputy sheriff or other law enforcement officer of the state or any subdivision to assist in the execution or enforcement of any order issued under this section.

History: L. 2005, ch. 122, § 2; Apr. 21.

Chapter 65.--PUBLIC HEALTH

Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-129c. Same; orders for isolation or quarantine; form and content; notice; hearing in district court; application and effect; procedure; orders for relief; emergency rules of procedure.

(a) If the local health officer or the secretary requires an individual or a group of individuals to go to and remain in places of isolation or quarantine under K.S.A. 2012 Supp. 65-129b, and amendments thereto, the local health officer or the secretary shall issue an order to the individual or group of individuals.

(b) The order shall specify:

- (1) The identity of the individual or group of individuals subject to isolation or quarantine;
- (2) the premises subject to isolation or quarantine;
- (3) the date and time at which isolation or quarantine commences;
- (4) the suspected infectious or contagious disease causing the outbreak or disease, if known;
- (5) the basis upon which isolation or quarantine is justified; and
- (6) the availability of a hearing to contest the order.

(c) (1) Except as provided in paragraph (2) of subsection (c), the order shall be in writing and given to the individual or group of individuals prior to the individual or group of individuals being required to go to and remain in places of isolation and quarantine.

(2) (A) If the local health officer or the secretary determines that the notice required under paragraph (1) of subsection (c) is impractical because of the number of individuals or geographical areas affected, the local health officer or the secretary shall ensure that the affected individuals are fully informed of the order using the best possible means available.

(B) If the order applies to a group of individuals and it is impractical to provide written individual copies under paragraph (1) of subsection (c), the written order may be posted in a conspicuous place in the isolation or quarantine premises.

(d) (1) An individual or group of individuals isolated or quarantined under this section may request a hearing in district court contesting the isolation or quarantine, as provided in article 15 of chapter 60 of the Kansas Statutes Annotated, but the provisions of this section shall apply to any order issued under K.S.A. 2012 Supp. 65-129a to 65-129d, inclusive, and amendments thereto, notwithstanding any conflicting provisions contained in that article.

(2) A request for a hearing may not stay or enjoin an isolation or quarantine order.

(3) Upon receipt of a request under this subsection (d), the court shall conduct a hearing within 72 hours after receipt of the request.

(4) (A) In any proceedings brought for relief under this subsection (d), the court may extend the time for a hearing upon a showing by the local health officer or the secretary or other designated official that extraordinary circumstances exist that justify the extension.

(B) In granting or denying an extension, the court shall consider the rights of the affected individual, the protection of the public health, the severity of the health emergency and the availability, if necessary, of witnesses and evidence.

(C) (i) The court shall grant the request for relief unless the court determines that the isolation or quarantine order is necessary and reasonable to prevent or reduce the spread of the disease or outbreak believed to have been caused by the exposure to an infectious or contagious disease.

(ii) If feasible, in making a determination under this paragraph (C), the court may consider the means of transmission, the degree of contagion, and, to the extent possible, the degree of public exposure to the disease.

(5) An order of the court authorizing the isolation or quarantine issued under this section shall:

(A) Identify the isolated or quarantined individual or group of individuals by name or shared characteristics;

(B) specify factual findings warranting isolation or quarantine; and

(C) except as provided in paragraph (2) of subsection (c), be in writing and given to the individual or group of individuals.

(6) If the court determines that the notice required in paragraph (C) of subsection (d)(5) is impractical because of the number of individuals or geographical areas affected, the court shall ensure that the affected individuals are fully informed of the order using the best possible means available.

(7) An order of the court authorizing isolation or quarantine shall be effective for a period not to exceed 30 days. The court shall base its decision on the standards provided under this section.

(8) In the event that an individual cannot personally appear before the court, proceedings may be conducted:

- (A) By an individual's authorized representative; and
 - (B) through any means that allows other individuals to fully participate.
- (9) In any proceedings brought under this section, the court may order the consolidation of individual claims into group claims where:
- (A) The number of individuals involved or affected is so large as to render individual participation impractical;
 - (B) there are questions of law or fact common to the individual claims or rights to be determined;
 - (C) the group claims or rights to be determined are typical of the affected individual's claims or rights; and
 - (D) the entire group will be adequately represented in the consolidation.
- (10) The court shall appoint counsel to represent individuals or a group of individuals who are not otherwise represented by counsel.
- (11) The supreme court of Kansas may develop emergency rules of procedure to facilitate the efficient adjudication of any proceedings brought under this section.

History: L. 2005, ch. 122, § 3; Apr. 21.

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65-129d. Same; unlawful discharge from employment. It shall be unlawful for any public or private employer to discharge an employee solely because the employee or an immediate family member of the employee is under an order of isolation or quarantine. The violation of this section is punishable as a violation of K.S.A. 65-129 and amendments thereto.

History: L. 2005, ch. 122, § 4; Apr. 21.

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65-129e. Tuberculosis evaluation requirements for certain students; rules and regulations; evaluation criteria; treatment and monitoring of infected persons.

(a) The secretary of health and environment is hereby authorized and directed to adopt rules and regulations establishing tuberculosis evaluation requirements for certain students entering classrooms of a postsecondary educational institution in Kansas who are considered as high risk for tuberculosis as defined by the department of health and environment. These rules and regulations shall establish evaluation criteria in compliance with best practice standards as recommended by the division of tuberculosis elimination of the centers for disease control and prevention.

(b) Each postsecondary educational institution shall develop and implement tuberculosis evaluation requirements with assistance of the department of health and environment. Each postsecondary educational institution shall designate a person who is responsible for the oversight and implementation of the requirements. Such person shall maintain the record for at least five years and the department of health and environment shall have the right to review and inspect the records upon request. Such person shall report immediately the positive findings of tuberculosis infection or disease to the department of health and environment.

(c) Each student entering classrooms of a postsecondary educational institution in Kansas shall comply with the tuberculosis evaluation requirements implemented by such institution where the student is enrolled by providing requested information in accordance with a screening and evaluation through an enrollment process. Any student who is not in compliance with the requirements shall not be attending classes or eligible to enroll for a subsequent semester or term or to obtain an official academic transcript or diploma until the student is compliant with the requirements.

(d) Nothing in this section and K.S.A. 2012 Supp. 65-129f, and amendments thereto, shall be construed as applying to individuals who are not attending the classes regularly but participating in the continuing education programs or any other seminar or function at the postsecondary educational institution.

(e) "Postsecondary educational institution" used in this section and K.S.A. 2012 Supp. 65-129f, and amendments thereto, means any public or private university, municipal university, community college or technical college.

(f) All costs associated with the evaluation requirements of the prevention and control plan shall be the responsibility of the student.

(g) Any person found to be infected with tuberculosis infection or tuberculosis disease will be provided treatment and ongoing monitoring in accordance with K.S.A. 65-116a to 65-116m, inclusive, and amendments thereto.

History: L. 2005, ch. 122, § 5; L. 2010, ch. 118, § 3; Apr. 29.

Chapter 65.--PUBLIC HEALTH

Article 1.--SECRETARY OF HEALTH AND ENVIRONMENT, ACTIVITIES

65-129f. Tuberculosis prevention and control for certain students; rules and regulations; prevention and control plan.

(a) The secretary of health and environment is hereby authorized and directed to adopt rules and regulations establishing guidelines for a tuberculosis prevention and control plan for any postsecondary educational institution. The tuberculosis prevention and control plan shall be designed to reduce the risk of tuberculosis transmission and shall be based on the recommendations by the American thoracic society, the centers for disease control and prevention and the infectious diseases society of America. These rules and regulations shall be in compliance with the best practice standards as recommended by the division of tuberculosis elimination of the centers for disease control and prevention.

(b) Each postsecondary educational institution shall develop and implement a tuberculosis prevention and control plan with assistance of the department of health and environment. Each postsecondary educational institution shall designate a person who is responsible for the oversight and implementation of the plan. Such person shall maintain the records created or collected in accordance with this section for at least five years and allow the department of health and environment to review and inspect the records upon request.

History: L. 2010, ch. 118, § 2; Apr. 29.

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ARTICLE 3.--CONTROL OF CONTAGIOUS DISEASES IN CITIES OF THE SECOND AND THIRD CLASS

65-301. Authority of officers; expenses. Whenever smallpox or other contagious or infectious diseases exist in a city of the second or third class the governing body of such city and the local health officer and the county commissioner in the district in which is located such cities shall take such action as in their judgment may be necessary to control, suppress and prevent the spreading of the same and to pay all the necessary expenses for such action and purposes.

History: L. 1919, ch. 145, § 1; R.S. 1923, 65-301; L. 1980, ch. 182, § 27; July 1.

CHAPTER 65.--PUBLIC HEALTH

ARTICLE 3.--CONTROL OF CONTAGIOUS DISEASES IN CITIES OF THE SECOND AND THIRD CLASS

65-302. Audit and payment of claims by county. A detailed, itemized and verified account of all moneys so expended by the city shall be presented to the board of county commissioners of the county in which such city is located, and said board of county commissioners shall monthly audit claims therefor, and when it shall determine that the items of expense were incurred under the provisions of K.S.A. 65-301, shall allow such claims and draw warrants on the county

treasurer in favor of said city therefor, and it shall be the duty of the county treasurer of said county to pay the same out of any funds in the treasury not otherwise appropriated.

History: L. 1919, ch. 145, § 2; March 15; R.S. 1923, 65-302.