

# Tuberculosis Control and the Law

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# Three Primary Constitutional Challenges to Restraints by the Government

- Substantive Due Process
- Procedural Due Process
- Equal Protection

# Substantive Due Process

- The 5<sup>th</sup> and 14<sup>th</sup> Amendments protect individuals from governmental deprivation of life, liberty or property without due process
- The government may not be arbitrary, capricious, or vague
- Minimal intrusions are generally not a problem because courts tend to recognize the necessity for governmental intrusions, specifically with regards to public health regulations
- Significant restrictions on one's life, liberty and property requires the courts look to see whether:
  - (1) the governmental action furthers a compelling state interest, which is narrowly tailored
  - (2) there are no other less restrictive measures that could be taken.
- Individuals typically have a right to refuse medical treatment, except in limited circumstances.

# Procedural Due Process

- Individuals must be given proper notice, and an opportunity to be heard and object if the government is seeking to deprive their liberty.
- Proper notice allows for the individual to gather evidence to counter the governments intrusion and deprivations.

# Equal Protection

- The 14<sup>th</sup> Amendment requires that similarly situated individuals be treated similarly.
  - Meaning all individuals should be given equal treatment options.
- All actions need to be narrowly tailored to address the public health issue.

# Medical Exams and Treatments

- Health-Gen. § 18-324(a) The Secretary or a **health officer** may have an individual examined, if the Secretary or the health officer knows or is notified in writing by a physician that the individual is suspected of having tuberculosis.
- Health-Gen. § 18-324(c) The Secretary or a **health officer** may not require an individual to have a physical examination, other than a chest X ray and to render sputum samples.

# Medical Quarantine

Health-Gen. § 18-324(b)(1) If, after the examination, the Secretary or the **health officer** finds that the individual has tuberculosis and that the condition of the individual endangers, or may endanger, the public health of the community, the Secretary or the health officer may order the individual to receive appropriate medical care.

Health-Gen. § 18-324 (b)(2) If the individual fails to comply with the order, the Secretary or the **health officer** may order the individual to be placed in any of the following types of medical quarantine in order to protect the public health:

- (i) Medical isolation at home;
- (ii) Domiciliary care, nursing home care, or hospital care; or
- (iii) Other medically appropriate living arrangement (is there a less restrictive means to get the individual to take medications?)

# Additional Authorizations

Health-Gen. § 18-324(b)(3) The order of the Secretary or the health officer may also contain such other conditions as the Secretary or the **health officer** believes are necessary to protect either the health of the infected individual or the public health.



# Right to Refuse Treatment

Health-Gen. § 18-324(c) The Secretary or a health officer may not restrict the right of the individual to select a treatment method, if the individual:

(1) In good faith relies on spiritual means through prayer for healing; **and**

(2) Complies with the laws, rules, and regulations that relate to sanitation for and quarantine of infectious, contagious, and communicable diseases.

# Detention

## Health-Gen. § 18-325

(a) An individual may not refuse to comply with treatment that has been ordered under § 18-324.

(b) While an individual is in any placement for tuberculosis treatment, the individual may not:

- (1) Behave in a disorderly manner; or
- (2) Leave the placement before being discharged properly.

# Enforcement

Health-Gen. § 18-325(c) An individual who violates any provision of this section is guilty of a misdemeanor and on conviction shall be imprisoned in a penal institution with facilities for tuberculosis treatment until the Secretary or the Health Department of Baltimore City finds that the condition of the individual no longer endangers the health of the community, or the Secretary obtains a court order that states that the individual:

- (1) Is to be moved to a specified less restrictive setting for continuation of treatment;
- (2) Must comply with the treatment until the Secretary determines the treatment has been completed;
- (3) May not behave in a disorderly manner or leave the placement until the Secretary determines that the individual has completed the treatment; and
- (4) Following a hearing, will be reimprisoned until the Secretary determines that the individual has completed the treatment, if the individual does not comply with the terms of the order.