



# Recent State Legislation to Limit Public Health Authority

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Via Webinar

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## Challenges Confronting Local Health Officers

Threats to Public Health

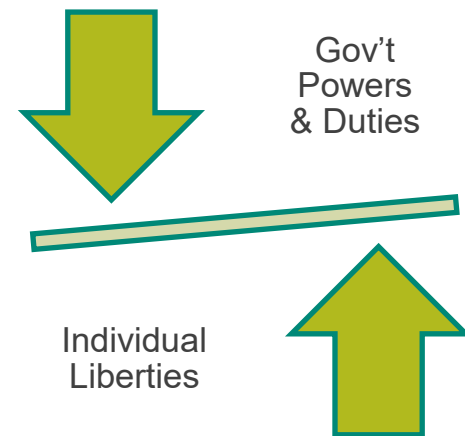
Threats to Public Health Officials

Threats to Public Health Authority



## What is Public Health Law?

The study of the **legal powers and duties** of the state to assure the conditions for people to be healthy (to identify, prevent, and ameliorate risks to health in the population) and the **limitations on the power of the state** to constrain the autonomy, privacy, liberty, proprietary or other legally protected interests of individuals for the common good.



Lawrence O. Gostin and Lindsay F. Wiley, *Public Health Law: Power, Duty, Restraint*. Berkeley: Univ. of California Press, 2016 (3<sup>rd</sup> ed.)



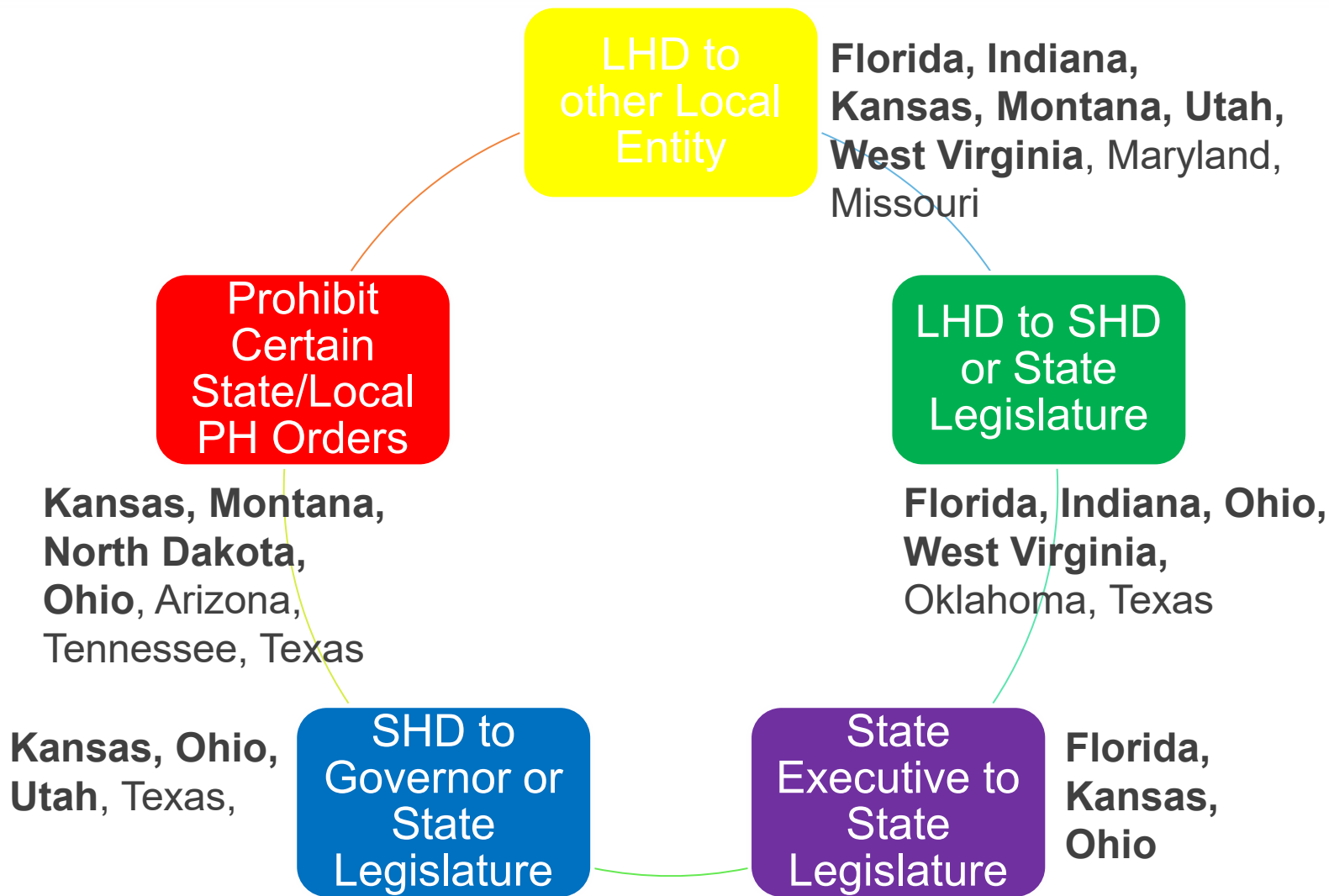
# **Which Government? What Powers and Duties?**



## Types of Legislation We Reviewed

### **Shift of General or Emergency Public Health Authority**

- Local Public Health Agency to Another Local Entity**
- Local Public Health Agency to State Public Health Agency or State Legislature**
- State Public Health Agency to Governor or State Legislature**
- State Executive to State Legislature**
- Prohibition of Certain Types of State or Local Public Health Orders**



States in bold had enacted legislation by publication of the report.



## Montana House Bills 121 and 257: LHD to Other Local Entity

### » **Bill Purpose/ Effect**

\*Local governing body may rescind local BOH emergency orders;

\*Prohibits quarantine of individuals who are not yet ill, but reasonably believed to be infected or exposed.

\*Bars local ordinances from business closures except in limited circumstances

### » **Current Status**

Enacted.

### » **Implications**

Increases risk, creates confusion, scope includes environmental health and sanitation



## Indiana Senate Bill 5: LHD to SHD or State Legislature

### » **Bill Purpose/ Effect**

Prevents local health officers from imposing emergency disease prevention measures on individuals and businesses that are more stringent than those issued by the governor.

Requires that the local governing body approve any health order with provisions that go beyond state requirements during an emergency.

### » **Current Status**

Enacted over governor's veto

### » **Implications**

Delays action; limits flexibility and nimbleness; reduces ability to tailor orders to local needs and data;





# North Dakota House Bill 1323: Prohibition on Certain State or Local Public Health Orders

## » **Bill Purpose/ Effect**

Prohibits a statewide elected official or state health officer from requiring any individual in the state to wear a face mask, shield, or other type of face covering.

## » **Current Status**

Enacted over governor's veto

## » **Implications**

Impedes a coordinated response to pandemics and other airborne threats that require face coverings as a mitigation measure. This law severely undercuts statewide efforts to respond to pandemics or disasters by creating a piecemeal and uncoordinated system.



## Kansas House Bill 2016: [SHD to Governor or State Legislature](#)

### » **Bill Purpose/ Effect**

Removes the Governor's ability to close businesses during a public health emergency,

Requires legislative approval to extend a Governor's emergency order

### » **Current Status**

Enacted

### » **Implications**

Shifting responsibility from state and local health departments to elected officials marginalizes public health experience; limits preparedness and ability to effectively mitigate infectious disease outbreaks; and may adversely affect routine public health activities



## Florida Senate Bill 2006: State Executive to State Legislature

### » **Bill Purpose/ Effect**

\*Authorizes the Legislature to terminate orders or directives issued by the Governor under a state of emergency.

\*Prevents a business or government entity or educational institution from requiring proof of COVID-19 vaccination to access services.

### » **Status**

Enacted

### » **Implications**

Allows the Legislature to “veto” orders issued under a declared emergency. Additional provisions limit, delay, and impair ability of local governments to respond to public health emergencies.



## Report Conclusions

- » **Legislation to block reasonable public health measures poses an immediate threat to life and health.**
- » **Legislation to stop expert public health agencies from leading the response to health emergencies creates unforeseen, serious risks to life and health.**
- » **Legislation that strips authority from public health agencies and the executive branch and transfers it to the Legislature violates the constitutional separation of powers and undermines effective government response.**
- » **If adopted, these bills would make it harder to advance health equity during a pandemic that has disproportionately sickened and killed Black, Hispanic and Latino, and Indigenous Americans.**

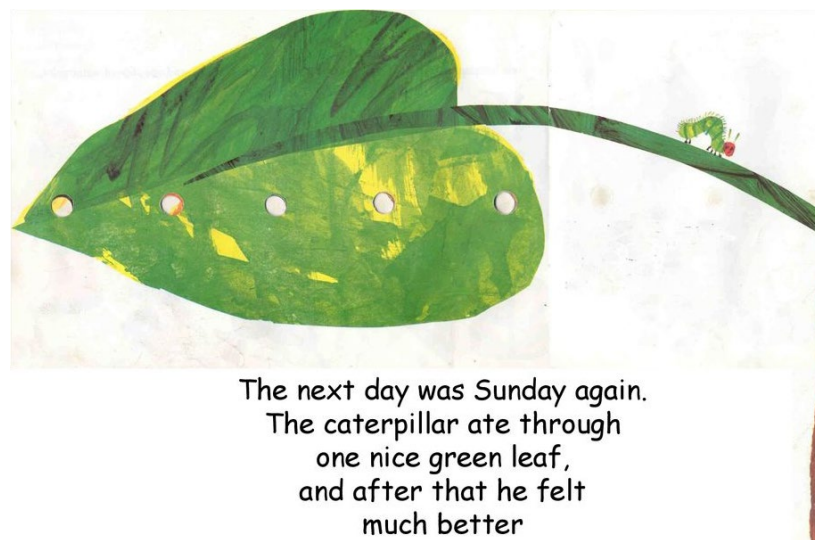


## Playing Defense. . . And Offense

On Saturday he ate through all this food.  
That night he had a stomach ache



- Continue COVID-19 response
- Consult legal counsel
- Legal TA from the Network
- Education and advocacy
- Lobbying, if permissible
- Organize with stakeholders



The next day was Sunday again.  
The caterpillar ate through  
one nice green leaf,  
and after that he felt  
much better

- After action reports
- Education, advocacy, and lobbying
- Support less politicized forums for principled legal reform
- Invest in public health infrastructure, workforce, and health equity



## Additional Resources

- » [Public Health Emergency Reform is Coming](#) (Lindsay Wiley, Health Affairs blog, Jan. 12, 2021)
- » [Ohio Legislative Service Commission Bill Analysis: SB 22](#)
- » [COVID's Counterpunch: State Legislative Assaults](#)
- » [Challenges and Opportunities for Strengthening the U.S. Public Health Infrastructure](#) (NNPHI)
- » [The Impact of Chronic Underfunding on America's Public Health System](#) (TFAH)
- » [Uniform Law Commission](#)
- » [Protecting Public Health Authority to Protect the Health of Our Communities](#) (Network blog, Feb. 24, 2021)
- » [COVID-19's Impact on Public Health Authority Requires Careful Deliberation, Not a Rush to Legislate](#) (Network blog, March 11, 2021).



## Contact Me:

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The screenshot shows the homepage of The Network for Public Health Law. At the top left is the logo with the tagline "Ideas. Experience. Practical answers." To the right is a navigation menu with links: Home, About the Network, Network Resources, Public Health Law Topics, Join the Network, Get Technical Assistance, and The Network Blog. Below the navigation is a large banner featuring a photo of a healthcare professional examining a young child. The banner text reads "THE NETWORK FOR PUBLIC HEALTH LAW IS THE SOURCE TO" followed by a bulleted list: "Ask legal questions", "Get and share information", "Find resources", and "Make connections". Below the list is a "Health Reform" section with "LEARN MORE" and "SHARE THIS" buttons. The footer contains two main sections: "Join the Network" (Connect, share and access public health law resources) and "Ask a Question" (Get practical, expert legal assistance—at no cost). Below these are three columns: "WHAT'S NEW" (Public Health News), "NETWORK BLOG" (Events), and "Public Health Law Resources" (Protecting Older Adults in Emergencies, with a photo of three women).