Research Protocol for Public Health Authority Limits

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RESEARCH PROTOCOL
May 2022

Public Health Authority Limits

I. **Date of Protocol:** January 2023.

II. **Scope:** Collect, code, and analyze state legislation limiting the emergency public health authority of state governors, state health officials, and local health officials. The legislative efforts to limit public health authority include bills that restrict the issuance or scope of an emergency order, bills that limit the duration of an emergency order or state of emergency, and bills that allow legislatures to terminate an emergency order.

This dataset is longitudinal and details legislation limiting the emergency public health authority of state governors, state health officials, and/or local health officials introduced between January 1, 2021, and May 20, 2022.

III. **Primary Data Collection**

   a. **Project dates**: December 2021 – December 2022.

   b. **Dates covered in the dataset**: Longitudinal dataset containing bills introduced between January 1, 2021, and May 20, 2022.

   c. **Data Collection Methods:** The data are among the resources being developed by the Center for Public Health Law Research at Temple University's Beasley School of Law (CPHLR) as a part of the Act for Public Health initiative, which provides direct support to public health departments and others through consultation, training, legal technical assistance, research, and resources to address legislation and litigation that weakens their ability to protect the communities they serve. Act for Public Health is a partnership that includes CPHLR, ChangeLab Solutions, the Public Health Law Center, the Network for Public Health Law (Network), and Public Health Law Watch. Lawyers from CPHLR lead the legislative tracking team of Act for Public Health. Support for this research was provided by the Robert Wood Johnson Foundation.

   The legislative tracking team consisted of members from CPHLR, the Network, and partners from the Association of State and Territorial Health Officials (ASTHO) and the Local Solutions Support Center (LSSC). The legislative tracking team worked to establish a process to collect, organize, and code bills seeking to limit or strengthen public health powers across six different domains: public health authority limits, the reallocation of public health authority, strengthening public health, regulating public health measures, state limits on enforcement of federal law, and public health preemption. The legislative tracking team defined the topical scope of these six domains and developed a coding scheme aimed at collecting standard pertinent information about the individual bills.

The team from ASTHO worked with a commercial bill-tracking service to identify and tag bills covering January 1, 2021 to May 20, 2022, fitting within the respective domain scopes and shared with the legislative tracking team a spreadsheet documenting these tagged bills. CPHLR checked identified bills against a separate spreadsheet of bills compiled by regional attorneys from the Network, who reviewed state legislative websites and news media reports to identify potential bills in scope. Once the spreadsheets were merged, six lawyers from CPHLR assigned the tagged bills to the topical datasets in MonQcle.

Over the course of this project, ASTHO provided bill tracking reports on the following dates: January 12, 2022; February 4, 2022; March 3, 2022; April 18, 2022; and May 20, 2022.

d. **Databases Used**: ASTHO received regular reports from a commercial bill tracking service; these outputs were confirmed by reviewing open legislative tracking services provided by individual states as well as OpenStates.org. Full-text versions of the bills were gathered from open-source state legislative websites; PDF versions of the bills were attached to individual coding records when available. Individual bill information provided by the ASTHO reports was supplemented by OpenStates.org and state legislative websites. CPHLR relied on the following sources for legislative adjournment dates for bills that Failed Sine Die: NCSL 2021 State Legislative Session Calendar; Multistate 2022 Legislative Session Dates [note: Multistate has since been updated to display only 2023 Legislative Session dates currently].

e. **Inclusion and Exclusion Criteria for Public Health Authority Limits**:

   i. **The following bills were included**:

      A. A bill introducing a new statute, or amending an existing statute, that limits the authority of a governor, state health officer or agency, or local health officer or agency regarding public health emergency orders.

   ii. **The following bills were excluded:**

      A. Any bills that limited state executive authority or local health authority that were not included in the legislative update spreadsheets provided by ASTHO or identified by the regional Network lawyers.

      B. Pre-filed bills that were not formally introduced into their respective state legislatures or bills that failed before formal introduction (i.e., Wyoming House Bill 1003 and Wyoming Senate File 88).

      C. Bills that only applied to condo associations (i.e., Florida House Bill 867).

IV. Coding

a. **Development of Coding Scheme**: The legislative tracking team met regularly to conceptualize coding questions based on the background research and review of ASTHO reports, as well as the previous dataset developed by CPHLR, Sentinel Surveillance of Emerging Laws Limiting Public Health Emergency Orders. Coding

questions were also informed by the findings produced by the Network in their report developed in partnership with the National Association of County and City Health Officials (NACCHO), Proposed Limits on Public Health Authority: Dangerous for Public Health, published in June of 2021.The legislative tracking team worked to identify a standard set of variables aimed at identifying the particulars of the individual bills themselves, to be asked across each of the six topical dataset domains. Each bill was coded in a single coding record, labeled by its bill number in the series title.

For Public Health Authority Limits, the legislative tracking team decided to ask additional coding questions mirroring the questions in the Sentinel Surveillance dataset aimed at drilling down into first which parties (the governor, state health officials, or local health officials) were potentially limited by the language of the bill, and how they were limited. The Network relied on similar sub-topical questions for their published reports.

b. **Coding methods:** The CPHLR Research team consisted of six lawyers and two supervisors. Once the tagged spreadsheets from ASTHO were merged with the findings from the regional Network attorneys, the lawyers were responsible for coding the bills in the topical dataset tagged on the spreadsheet. CPHLR lawyers would simultaneously read the bills for coding and citing, and if they disagreed with the tagging on the spreadsheet, they would leave a note for the supervisors, who would make the final determination for coding, note the divergence, and raise it with the larger legislative tracking team for discussion if needed. Along the way, definitions and coding rules were logged in a shared document for the full team for cohesiveness.

Upon receiving an updated bill report from ASTHO, the supervisors would once again merge the results with the latest findings from the Network, and send along any new or updated bills to the CPHLR lawyers for coding. A new coding record was created any time a bill changed status in Question 1.3 ("What is the bill's status?"). In the event there were multiple status changes on the same day, the latest status would be coded and CPHLR lawyers would add a caution note (i.e., if a bill passed the first and second chamber on the same day, there would be one coding record for that day coded as "Passed second chamber" with a caution note explaining both activities occurred that day).

   i. **General coding rules:** The following general coding rules applied to multiple coding questions:

      A. The bill introduction date served as the effective date for the coding record.

      B. Bill status updates in new reports from ASTHO were treated like a longitudinal update and coded as a new record for that new bill status.

      C. This dataset covers the time period from January 1, 2021 through May 20, 2022. The valid through date for the most recent record for each jurisdiction is May 20, 2022. Bills that have been enacted, vetoed, or failed as a final status prior to that date were extended to that final valid through date of May 20, 2022. Some legislative sessions extended

beyond this date, so some bills may have had status changes beyond this date. Be sure to check openstates.org or the state legislature website for the status of bills after May 20, 2022, for the most up to date information on their progress.

    D. When a state has only one record in the dataset for the bill because there is no change in bill status between January 1, 2021, and May 20, 2022, but the bill text was amended within that time frame by action not amounting to a change in bill status, the most current version of the bill text was used instead of the version originally introduced.

    ii. Specific coding rules: Below are specific rules used when coding specific questions and answer choices for this dataset. These coding rules emerged either during the scoping phase, the coding phase, or the quality control phase. Only responses that require an explanation of coding decisions are listed here. Other responses not requiring an explanation are not included here.

Q. 1.3 What is the bill's status?
- Coded "Failed" if the status of the bill is Failed or Failed Sine Die. For bills that Failed Sine Die, the effective date of the "Failed" status record is the date of legislative adjournment.

Q. 2. Is there a bill that limits the governor's authority regarding public health emergency orders?
- Coded "Yes" if there was a provision in the bill explicitly limiting the governor's authority regarding emergency orders, or if there was a provision limiting the state's authority to mandate a public health emergency measure (i.e., require vaccinations).

Q. 2.1. How is the governor's authority limited?
- Coded "Issuance of emergency order is restricted" when the bill placed a restriction on the process for issuing or renewing an emergency order (i.e., an executive order or proclamation must be submitted to a Legislative Council for review).
- Coded "Duration of emergency order is limited" when the bill limited the duration of an initial executive order or the governor's declaration of a state of emergency, or a renewed executive order or state of emergency, to a specified time frame (i.e., 60 days).
- Coded "Scope of emergency order is restricted" where the bill placed a restriction on the substance of a governor's emergency order or proclamation (i.e., a statewide elected official may not mandate the use of a face mask). This response was also coded when a bill imposed a restriction on the geographic applicability of executive orders (i.e., orders limited to areas affected by the communicable disease), or when the bill prohibited the governor from altering or creating a statutory provisions during a state of emergency. This response was coded when a bill placed a requirement on a Governor in order to issue an executive order or proclamation closing or restricting a school or business due to an emergency. This response was also coded if a bill stated that an individual may not be required to receive a vaccine. This response was also coded when the bill limited the enforcement of emergency orders.
- Coded "Termination by legislature" when the bill explicitly stated that the legislature may terminate a state of emergency, an emergency order, or any emergency proclamation issued by the governor.

- Coded "Termination by another entity" when the bill explicitly stated that an entity other than the legislature may now terminate a state of emergency, emergency order, or an emergency proclamation issued by the governor.
- Coded "Local override of state orders" when the bill allowed a locality to issue an order related to public health that includes provisions that are less stringent than the provisions of an executive order issued by the governor.
- The coding rules above were similarly followed for Question 3.1 ("How is the state health official's authority limited?") and Question 4.1 ("How is the local health official's authority limited?").

Q. 3. Is there a bill that limits state health official authority regarding public health emergency orders?
- Coded "Yes" if there was a provision in the bill explicitly limiting a state health official or state health agency's authority regarding emergency orders, or if there was a provision limiting the state's authority to mandate a public health emergency measure (i.e., require vaccinations).

Q. 4. Is there a bill that limits local health official authority regarding public health emergency orders?
- Coded "Yes" if there was a provision in the bill explicitly limiting a local health official or local health agency's authority regarding emergency orders, or if there was a provision limiting a municipality's authority to mandate a public health emergency measure (i.e., require vaccinations).

V. Quality Control

a. For this dataset, CPHLR lawyers did not do any independent research to verify the completeness of the information provided by ASTHO beyond comparing the findings to that of the regional Network attorneys.

b. Minimal quality control measures were used to verify the accuracy of the data collection and coding process. After data collection and coding was complete following the final report on May 20, 2022, the supervisors spot-checked records in each state as a limited quality control measure. Supervisors also checked the coding against the Network report, 50-State Survey: Summary of Enacted Laws and Pending Bills Limiting Health Authority: The Second Wave, published in June 2022. Any changes or divergences were noted on the master spreadsheet listing each bill, and any repeated discrepancies were brought to the larger legislative tracking team for discussion and resolution.