

(1) a grant to the Minnesota licensed family child care association for statewide implementation of the family child care mentorship model developed by the association;

(2) a grant to the Minnesota child care apprentice/mentor program to modify the apprentice/mentor program for statewide implementation through the child care careers program of the community/technical college system;

(3) a grant to expand project impact, which prepares child care providers and staff who are members of a community of color, as that term is defined in Minnesota Statutes, section 257.076, subdivision 3, to meet or exceed the education and experience requirements of assistant teachers, teachers, and family day care providers in licensed child care programs;

(4) expansion of the Minnesota child care apprentice/mentor program, which prepares child care center staff to meet or exceed the education and experience requirements of teachers in licensed child care centers;

(5) grants to the regional child care resource and referral programs under Minnesota Statutes, section 119B.18, and education and training loans made by the regional child care resource and referral programs under the loan program established in section 119B.18. No more than 2.5 percent of this appropriation may be used for administration of the loan program; and

(6) a grant to a nonprofit corporation under Minnesota Statutes, section 119B.25. Up to five percent of the grant may be used by the department and the nonprofit corporation to administer the loan program including costs associated with setting up an information system to administer child care and early childhood education facility loans.

Presented to the governor May 15, 1997

Signed by the governor May 16, 1997, 2:20 p.m.

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#### CHAPTER 163—H.F.No. 892

VETOED

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#### CHAPTER 164—S.F.No. 97

*An act relating to health; providing for the isolation and detention of persons with active tuberculosis who pose an endangerment to the public health; establishing standards and procedures for isolation and detention; requiring reporting by licensed health professionals; modifying tuberculo-*

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*sis screening requirements; amending Minnesota Statutes 1996, section 144.445, subdivisions 1 and 3; proposing coding for new law in Minnesota Statutes, chapter 144.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1996, section 144.445, subdivision 1, is amended to read:

Subdivision 1. **SCREENING OF INMATES.** All persons detained or confined for ~~seven~~ 14 consecutive days or more in facilities operated, licensed, or inspected by the department of corrections shall be screened for tuberculosis with either a Mantoux test or a chest roentgenogram (X-ray) as consistent with screening and follow-up practices recommended by the United States Public Health Service or the department of health, as determined by the commissioner of health. Administration of the Mantoux test or chest roentgenogram (X-ray) must take place on or before the ~~seventh~~ 14th day of detention or confinement.

Sec. 2. Minnesota Statutes 1996, section 144.445, subdivision 3, is amended to read:

Subd. 3. **EXCEPTIONS.** Subdivisions 1 and 2 do not apply to:

(1) a person who is detained or confined in a juvenile temporary holdover facility, provided that the person has no symptoms suggestive of tuberculosis, evidence of a new exposure to active tuberculosis, or other health condition that may require a chest roentgenogram (X-ray) be performed to rule out active tuberculosis;

(2) a person who is detained or confined in a facility operated, licensed, or inspected by the department of corrections where the facility holds a written record of a negative Mantoux test performed on the person (i) within three months prior to intake into the facility; or (ii) within 12 months prior to intake into the facility if the person has remained under the continuing jurisdiction of a correctional facility since the negative Mantoux test, provided that the person has no symptoms suggestive of tuberculosis, evidence of a new exposure to active tuberculosis, or other health condition that may require a chest roentgenogram (X-ray) be performed to rule out active tuberculosis;

(3) a person who is detained or confined in a facility operated, licensed, or inspected by the department of corrections where the facility has a written record of (i) a history of adequately treated active tuberculosis; (ii) compliance with currently prescribed tuberculosis therapy or preventive therapy; or (iii) completion of a course of preventive therapy, provided the person has no symptoms suggestive of tuberculosis, evidence of a new exposure to active tuberculosis, or other health condition that may require a chest roentgenogram (X-ray) to rule out active tuberculosis;

(4) a person who is detained or confined in a facility operated, licensed, or inspected by the department of corrections where the facility holds a written record of a negative chest roentgenogram (X-ray) (i) within six months; or (ii) within 12 months prior to intake in the facility if the person has remained under the continuing jurisdiction of a correctional facility since the negative chest roentgenogram (X-ray), provided that the person has no symptoms suggestive of tuberculosis, evidence of a new exposure to active tuberculosis, or other health condition that may require a new chest roentgenogram (X-ray) to rule out active tuberculosis;

(5) an employee with a record of either a past positive Mantoux test reaction or active tuberculosis who is currently completing or has a documented history of completing

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a course of tuberculosis therapy or preventive therapy, provided the employee has no symptoms suggestive of tuberculosis, evidence of a new exposure to active tuberculosis, or other health condition that may require a chest roentgenogram (X-ray) be performed to rule out active tuberculosis;

(6) an employee with either a record of a past positive Mantoux test reaction or a positive or significant Mantoux test reaction in preemployment screening who does not complete a course of preventive therapy may be exempt from annual Mantoux testing or other screening. This determination shall be made by the commissioner of health based on currently accepted public health standards and the person's health status if the employee has a documented negative chest roentgenogram (X-ray) performed at any time since the initial positive Mantoux test, provided the employee has no symptoms suggestive of tuberculosis, evidence of a new exposure to active tuberculosis, or other health condition that may require a chest roentgenogram (X-ray) be performed to rule out active tuberculosis; and

(7) the commissioner may exempt additional employees or persons detained or confined in facilities operated, licensed, or inspected by the department of corrections based on currently accepted public health standards or the person's health status.

### Sec. 3. [144.4801] TITLE.

Sections 144.4801 to 144.4813 may be cited as the "Tuberculosis Health Threat Act."

### Sec. 4. [144.4802] AUTHORITY.

Subdivision 1. AUTHORITY TO COMMIT. Under the powers and duties assigned to the commissioner in this chapter and chapter 145, the commissioner may proceed under sections 144.4801 to 144.4813 whenever the commissioner has probable cause to believe that a person who has active tuberculosis or is clinically suspected of having active tuberculosis is an endangerment to the public health.

Subd. 2. PREEMPTION. Sections 144.4801 to 144.4813 preempt and supersede sections 144.4171 to 144.4186, 144.443, and 144.444 with regard to a tuberculosis health threat. Nothing in sections 144.4801 to 144.4813 restricts the commissioner's authority to seek injunctive relief pursuant to section 145.075, or any other relief under other statutes or at common law.

Subd. 3. RELIANCE ON SPIRITUAL MEANS IN LIEU OF MEDICAL TREATMENT. Nothing in sections 144.4801 to 144.4813 shall be construed to abridge the right of a carrier to refuse medical treatment for tuberculosis if the carrier opposes medical treatment on the basis of sincere religious beliefs and complies with a monitoring plan developed by the commissioner for the isolation of the carrier as defined in section 144.4803, subdivision 14. A carrier who meets the requirements of this subdivision is not considered an endangerment under section 144.4803, subdivision 10, clauses (2) to (6) and (8). Nothing in this subdivision shall be construed to limit the authority of the commissioner to take necessary actions to protect the public health according to sections 144.4801 to 144.4813.

### Sec. 5. [144.4803] DEFINITIONS.

Subdivision 1. ACTIVE TUBERCULOSIS. "Active tuberculosis" includes infectious and noninfectious tuberculosis and means:

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(1) a condition evidenced by a positive culture for mycobacterium tuberculosis taken from a pulmonary or laryngeal source;

(2) a condition evidenced by a positive culture for mycobacterium tuberculosis taken from an extrapulmonary source when there is clinical evidence such as a positive skin test for tuberculosis infection, coughing, sputum production, fever, or other symptoms compatible with pulmonary tuberculosis; or

(3) a condition in which clinical specimens are not available for culture, but there is radiographic evidence of tuberculosis such as an abnormal chest X-ray, and clinical evidence such as a positive skin test for tuberculosis infection, coughing, sputum production, fever, or other symptoms compatible with pulmonary tuberculosis, that lead a physician to reasonably diagnose active tuberculosis according to currently accepted standards of medical practice and to initiate treatment for tuberculosis.

Subd. 2. BOARD OF HEALTH. "Board of health" means an administrative authority established under section 145A.03.

Subd. 3. CARRIER. "Carrier" means a person who has active tuberculosis or is clinically suspected of having active tuberculosis.

Subd. 4. CLINICALLY SUSPECTED OF HAVING ACTIVE TUBERCULOSIS. "Clinically suspected of having active tuberculosis" means presenting a reasonable possibility of having active tuberculosis based upon epidemiologic, clinical, or radiographic evidence, laboratory test results, or other reliable evidence as determined by a physician using currently accepted standards of medical practice.

Subd. 5. COMMISSIONER. "Commissioner" means the commissioner of health.

Subd. 6. CONTAGION PRECAUTIONS FOR TUBERCULOSIS. "Contagion precautions for tuberculosis" means those measures under currently accepted standards of medical practice that prevent a carrier from exposing others to tuberculosis.

Subd. 7. DEPARTMENT. "Department" means the department of health.

Subd. 8. DIRECTLY OBSERVED THERAPY. "Directly observed therapy" means a method for ensuring compliance with medication directions in which a licensed health professional or designee observes a person ingesting prescribed medications or administers the prescribed medication to the person.

Subd. 9. DISEASE PREVENTION OFFICER. "Disease prevention officer" means a designated agent of the commissioner, or a designated agent of a board of health that has express delegated authority from the commissioner to proceed under sections 144.4801 to 144.4813.

Subd. 10. ENDANGERMENT TO THE PUBLIC HEALTH. "Endangerment to the public health" means a carrier who may transmit tuberculosis to another person or persons because the carrier has engaged or is engaging in any of the following conduct:

(1) refuses or fails to submit to a diagnostic tuberculosis examination that is ordered by a physician and is reasonable according to currently accepted standards of medical practice;

(2) refuses or fails to initiate or complete treatment for tuberculosis that is prescribed by a physician and is reasonable according to currently accepted standards of medical practice;

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(3) refuses or fails to keep appointments for treatment of tuberculosis;

(4) refuses or fails to provide the commissioner, upon request, with evidence showing the completion of a course of treatment for tuberculosis that is prescribed by a physician and is reasonable according to currently accepted standards of medical practice;

(5) refuses or fails to initiate or complete a course of directly observed therapy that is prescribed by a physician and is reasonable according to currently accepted standards of medical practice;

(6) misses at least 20 percent of scheduled appointments for directly observed therapy, or misses at least two consecutive appointments for directly observed therapy;

(7) refuses or fails to follow contagion precautions for tuberculosis after being instructed on the precautions by a licensed health professional or by the commissioner;

(8) based on evidence of the carrier's past or present behavior, may not complete a course of treatment for tuberculosis that is reasonable according to currently accepted standards of medical practice; or

(9) may expose other persons to tuberculosis based on epidemiological, medical, or other reliable evidence.

**Subd. 11. EPIDEMIOLOGICAL DATA OR EPIDEMIOLOGICAL EVIDENCE.** "Epidemiological data" or "epidemiological evidence" means data or evidence relating to the occurrence, distribution, clinical characteristics, and control of disease within a group of people or within a specified population.

**Subd. 12. HEALTH ORDER.** "Health order" means an order issued by the commissioner or a board of health with express delegated authority from the commissioner.

**Subd. 13. INFECTIOUS TUBERCULOSIS.** "Infectious tuberculosis" means the stage of tuberculosis where mycobacterial organisms are capable of being expelled into the air by a person, as determined by laboratory, epidemiological, or clinical findings.

**Subd. 14. ISOLATION.** "Isolation" means placing a carrier who has infectious tuberculosis in:

(1) a hospital or other treatment facility;

(2) the carrier's residence or current location; or

(3) any other place approved by the commissioner, provided that the place of isolation prevents or limits the transmission of the infectious tuberculosis agent to others during the period of infectiousness.

**Subd. 15. LICENSED HEALTH PROFESSIONAL.** "Licensed health professional" means a person licensed by one of the health-related licensing boards listed in section 214.01, subdivision 2.

**Subd. 16. PEACE OFFICER.** "Peace officer" means an employee or an elected or appointed official of a political subdivision or law enforcement agency who is licensed by the board of peace officer standards and training, is charged with the prevention and detection of crime and the enforcement of the general criminal laws of the state, and has the full power of arrest. "Peace officer" includes an officer of the Minnesota state patrol.

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Subd. 17. **PHYSICIAN.** "Physician" means a person who is licensed by the board of medical practice under chapter 147 to practice medicine.

Subd. 18. **RESPONDENT.** "Respondent" means a person or group of persons to whom the commissioner has issued a health order, excluding the carrier.

Subd. 19. **TREATMENT FACILITY.** "Treatment facility" means a hospital or other treatment provider that is qualified to provide care, treatment, and appropriate contagion precautions for tuberculosis.

**Sec. 6. [144.4804] REPORTING RELATING TO TUBERCULOSIS.**

Subdivision 1. **MANDATORY REPORTING.** A licensed health professional must report to the commissioner or a disease prevention officer within 24 hours of obtaining knowledge of a reportable person as specified in subdivision 3, unless the licensed health professional is aware that the facts causing the person to be a reportable person have previously been reported. Within 72 hours of making a report, excluding Saturdays, Sundays, and legal holidays, the licensed health professional shall submit to the commissioner or to the disease prevention officer a certified copy of the reportable person's medical records relating to the carrier's tuberculosis and status as an endangerment to the public health if the person is reportable under subdivision 3, clause (3), (4), or (5). A reporting facility may designate an infection control practitioner to make reports and to send certified medical records relating to the carrier's tuberculosis and status as an endangerment to the public health under this subdivision.

Subd. 2. **VOLUNTARY REPORTING.** A person other than a licensed health professional may report to the commissioner or a disease prevention officer if the person has knowledge of a reportable person as specified in subdivision 3, or has probable cause to believe that a person should be reported under subdivision 3.

Subd. 3. **REPORTABLE PERSONS.** A licensed health professional must report to the commissioner or a disease prevention officer if the licensed health professional has knowledge of:

- (1) a person who has been diagnosed with active tuberculosis;
- (2) a person who is clinically suspected of having active tuberculosis;
- (3) a person who refuses or fails to submit to a diagnostic tuberculosis examination when the person is clinically suspected of having tuberculosis;
- (4) a carrier who has refused or failed to initiate or complete treatment for tuberculosis, including refusal or failure to take medication for tuberculosis or keep appointments for directly observed therapy or other treatment of tuberculosis; or
- (5) a person who refuses or fails to follow contagion precautions for tuberculosis after being instructed on the precautions by a licensed health professional or by the commissioner.

Subd. 4. **REPORTING INFORMATION.** The report by a licensed health professional under subdivision 1 or by a person under subdivision 2 must contain the following information, to the extent known:

- (1) the reportable person's name, birth date, address or last known location, and telephone number;

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(2) the date and specific circumstances that cause the person to be a reportable person;

(3) the reporting person's name, title, address, and telephone number; and

(4) any other information relevant to the reportable person's case of tuberculosis.

**Subd. 5. IMMUNITY FOR REPORTING.** A licensed health professional who is required to report under subdivision 1 or a person who voluntarily reports in good faith under subdivision 2 is immune from liability in a civil, administrative, disciplinary, or criminal action for reporting under this section.

**Subd. 6. FALSIFIED REPORTS.** A person who knowingly or recklessly makes a false report under this section is liable in a civil suit for actual damages suffered by the person or persons reported and for punitive damages.

**Subd. 7. WAIVER OF PRIVILEGE.** A person who is the subject of a report under subdivision 1 is deemed to have waived any privilege created in section 595.02, subdivision 1, paragraphs (d), (e), (g), (i), (j), and (k), with respect to any information provided under this section.

**Sec. 7. [144.4805] ISSUANCE OF HEALTH ORDER; RIGHTS OF CARRIER AND RESPONDENT.**

**Subdivision 1. AUTHORITY.** Only the commissioner, or a board of health with express delegated authority from the commissioner, may issue a health order under this section.

**Subd. 2. GROUNDS FOR HEALTH ORDER.** Whenever the commissioner has probable cause to believe that a carrier is an endangerment to the public health, the commissioner may issue a health order that the commissioner deems necessary to protect the public health. The commissioner may petition the court for enforcement of the health order. In a court proceeding for enforcement of the health order, the commissioner shall demonstrate the particularized circumstances constituting the necessity for the health order. The health order may be issued to any person, including to a carrier, physician, licensed health professional, or treatment facility. The health order may be in the form of a subpoena by the commissioner for certified medical records relating to the carrier's tuberculosis and status as an endangerment to the public health.

**Subd. 3. CONTENTS OF HEALTH ORDER.** A health order must include:

- (1) a citation to this section as the legal authority under which the order is issued;
- (2) a summary of evidence upon which the person is alleged to be a carrier;
- (3) a description of the alleged conduct of the carrier that makes the carrier an endangerment to the public health;

(4) a description of less restrictive alternatives that the commissioner considered and rejected, together with the reasons for the rejection, or a description of less restrictive alternatives that the commissioner used and that were unsuccessful;

(5) the preventive measure ordered; and

(6) a notice advising the carrier or respondent that:

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(i) a hearing will be held if the carrier or respondent petitions the court for a hearing, or if the commissioner determines that the carrier has not complied with the health order;

(ii) the carrier or respondent has the right to appear at the hearing;

(iii) the carrier or respondent has the right to present and cross-examine witnesses at the hearing;

(iv) the carrier has the right to court-appointed counsel in a proceeding under sections 144.4801 to 144.4813; and

(v) the carrier or respondent has the right to the assistance of an interpreter in a proceeding under sections 144.4801 to 144.4813.

**Subd. 4. RIGHT TO COUNSEL.** (a) The carrier or respondent has the right to counsel in any proceeding under sections 144.4801 to 144.4813. The court shall promptly appoint counsel for a carrier if the carrier does not have counsel:

(1) at the time the court issues an order under section 144.4807, subdivision 7, authorizing the continued detention of the carrier;

(2) at the time the court issues an order under section 144.4808, subdivision 2, authorizing the carrier to be apprehended and held; or

(3) in all other cases, at the time either party files a notice for a preliminary hearing under section 144.4810, subdivision 2.

The court shall appoint counsel for the carrier. The cost of court-appointed counsel shall be paid by the court.

(b) Upon being notified of the name and address of counsel for the carrier, the commissioner shall promptly forward to the carrier and the carrier's counsel the following:

(1) a copy of the health order;

(2) a certified copy of relevant portions of the carrier's medical records; and

(3) the name and address of the licensed health professional, including the carrier's attending physician or nurse, or the public health physician or nurse whom the commissioner intends to have testify at the preliminary hearing, and a summary of the witness' testimony, including a copy of the witness' affidavit, if any.

**Subd. 5. DUTY TO COMMUNICATE.** The commissioner's counsel and the carrier's counsel shall make every effort to communicate prior to any hearing and to stipulate as to undisputed facts, witnesses, and exhibits.

**Subd. 6. RIGHT TO INTERPRETER.** The carrier or respondent has the right to the assistance of an interpreter in a proceeding under sections 144.4801 to 144.4813.

**Subd. 7. SERVICE OF ORDER.** A health order may be served by a disease prevention officer or peace officer.

**Sec. 8. [144.4806] PREVENTIVE MEASURES UNDER HEALTH ORDER.**

A health order may include, but need not be limited to, an order:

(1) requiring the carrier's attending physician or treatment facility to isolate and detain the carrier for treatment or for a diagnostic examination for tuberculosis, pursuant to

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section 144.4807, subdivision 1, if the carrier is an endangerment to the public health and is in a treatment facility;

(2) requiring a carrier who is an endangerment to the public health to submit to diagnostic examination for tuberculosis and to remain in the treatment facility until the commissioner receives the results of the examination;

(3) requiring a carrier who is an endangerment to the public health to remain in or present at a treatment facility until the carrier has completed a course of treatment for tuberculosis that is prescribed by a physician and is reasonable according to currently accepted standards of medical practice;

(4) requiring a carrier who is an endangerment to the public health to complete a course of treatment for tuberculosis that is prescribed by a physician and is reasonable according to currently accepted standards of medical practice and, if necessary, to follow contagion precautions for tuberculosis;

(5) requiring a carrier who is an endangerment to the public health to follow a course of directly observed therapy that is prescribed by a physician and is reasonable according to currently accepted standards of medical practice;

(6) excluding a carrier who is an endangerment to the public health from the carrier's place of work or school, or from other premises if the commissioner determines that exclusion is necessary because contagion precautions for tuberculosis cannot be maintained in a manner adequate to protect others from being exposed to tuberculosis;

(7) requiring a licensed health professional or treatment facility to provide to the commissioner certified copies of all medical and epidemiological data relevant to the carrier's tuberculosis and status as an endangerment to the public health;

(8) requiring the diagnostic examination for tuberculosis of other persons in the carrier's household, workplace, or school, or other persons in close contact with the carrier if the commissioner has probable cause to believe that the persons may have active tuberculosis or may have been exposed to tuberculosis based on epidemiological, medical, or other reliable evidence; or

(9) requiring a carrier or other persons to follow contagion precautions for tuberculosis.

#### **Sec. 9. [144.4807] NOTICE OF OBLIGATION TO ISOLATE OR EXAMINE.**

Subdivision 1. OBLIGATION TO ISOLATE. If the carrier is in a treatment facility, the commissioner or a carrier's attending physician, after obtaining approval from the commissioner, may issue a notice of obligation to isolate to a treatment facility if the commissioner or attending physician has probable cause to believe that a carrier is an endangerment to the public health.

Subd. 2. OBLIGATION TO EXAMINE. If the carrier is clinically suspected of having active tuberculosis, the commissioner may issue a notice of obligation to examine to the carrier's attending physician to conduct a diagnostic examination for tuberculosis on the carrier.

Subd. 3. PRECAUTIONS TO AVOID EXPOSURE. Upon receiving a notice of obligation to isolate or notice of obligation to examine, a treatment facility shall immedi-

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ately take all reasonable precautions to prevent the carrier from exposing other persons to tuberculosis, including the use of guards or locks, if appropriate.

**Subd. 4. SERVICE OF HEALTH ORDER ON CARRIER.** When issuing a notice of obligation to isolate or examine to the carrier's physician or a treatment facility, the commissioner shall simultaneously serve a health order on the carrier ordering the carrier to remain in the treatment facility for treatment or examination.

**Subd. 5. DURATION OF DETENTION.** No carrier may be detained under subdivision 1 or 2 longer than 72 hours, excluding Saturdays, Sundays, and legal holidays, unless the court issues an order authorizing continued detention of the carrier pursuant to subdivision 7. A carrier may not be released prior to the expiration of the 72-hour hold without the express consent of the commissioner.

**Subd. 6. APPLICATION FOR EXTENSION OF 72-HOUR HOLD.** The commissioner may seek an order extending the hold under subdivision 5 by filing an ex parte application with the probate division of the district court of the county in which the carrier resides. The application may be filed orally by telephone or by facsimile, provided that a written application is filed within 72 hours, excluding Saturdays, Sundays, and legal holidays.

**Subd. 7. COURT ORDER EXTENDING 72-HOUR HOLD.** The court may extend the hold under subdivision 5 by up to six days, excluding Saturdays, Sundays, and legal holidays, if the court finds that there is probable cause to believe that the carrier is an endangerment to the public health. The court may find probable cause to detain, examine, and isolate the carrier based upon a written statement by facsimile or upon an oral statement by telephone from the carrier's attending physician or nurse, a public health physician or nurse, other licensed health professional, or disease prevention officer, stating the grounds and facts that demonstrate that the carrier is an endangerment to the public health, provided that an affidavit from such witness is filed with the court within 72 hours, excluding Saturdays, Sundays, and legal holidays. The order may be issued orally by telephone, or by facsimile, provided that a written order is issued within 72 hours, excluding Saturdays, Sundays, and legal holidays. The oral and written order shall contain a notice of the carrier's rights contained in section 144.4805, subdivision 3, clause (6). A carrier may not be released prior to the hold extended under this subdivision without the express consent of the commissioner.

**Subd. 8. APPOINTMENT OF COUNSEL.** If the carrier does not have counsel at the time the court issues an order to extend the hold under subdivision 7, the court shall promptly appoint counsel for the carrier.

**Subd. 9. IMMUNITY.** A disease prevention officer, peace officer, physician, licensed health professional, or treatment facility that acts in good faith under this section is immune from liability in any civil, administrative, disciplinary, or criminal action for acting under this section.

#### **Sec. 10. [144.4808] APPREHEND AND HOLD ORDER.**

**Subdivision 1. APPLICATION FOR APPREHEND AND HOLD ORDER.** The commissioner may make an ex parte application for an order to apprehend and hold a carrier who is not in a treatment facility if the commissioner has probable cause to believe that a carrier is:

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- (1) an endangerment to the public health; and
- (2) either in imminent danger of exposing another person or persons to tuberculosis, or may flee or become unlocatable.

The commissioner shall file the application in the probate division of the district court of the county in which the carrier resides. The application may be filed orally by telephone or by facsimile, provided that a written application is filed within 72 hours, excluding Saturdays, Sundays, and legal holidays.

**Subd. 2. COURT ORDER TO APPREHEND AND HOLD.** The court may find probable cause to apprehend and hold the carrier based upon a written statement by facsimile or oral statement by telephone from the carrier's attending physician or nurse, a public health physician or nurse, other licensed health professional, or disease prevention officer, stating the grounds and facts that demonstrate that the carrier is an endangerment to the public health, provided that an affidavit from such witness is filed with the court within 72 hours, excluding Saturdays, Sundays, and legal holidays. The court may issue an order to a peace officer or to a disease prevention officer, or both to:

- (1) apprehend and transport the carrier to a designated treatment facility, and detain the carrier until the carrier is admitted to the treatment facility; or
- (2) apprehend and isolate the carrier.

The order may be issued orally by telephone, or by facsimile, provided that a written order is issued within 72 hours, excluding Saturdays, Sundays, and legal holidays. The oral and written order shall contain a notice of the carrier's rights contained in section 144.4805, subdivision 3, clause (6).

**Subd. 3. DURATION OF DETENTION.** A carrier may be detained under this subdivision up to six days, excluding Saturdays, Sundays, and legal holidays. A carrier may not be released prior to the expiration of the hold authorized under this section without the express consent of the commissioner.

**Subd. 4. APPREHENSION OF CARRIER.** If the carrier flees or forcibly resists the peace officer or disease prevention officer, the officer may use all necessary and lawful means to apprehend, hold, transport, or isolate the carrier. This subdivision is authority for the officer to carry out the duties specified in this section. The commissioner shall provide any information and equipment necessary to protect the officer from becoming exposed to tuberculosis.

**Subd. 5. APPOINTMENT OF COUNSEL.** If the carrier does not have counsel at the time the court issues an apprehend and hold order under subdivision 2, the court shall promptly appoint counsel for the carrier.

**Subd. 6. IMMUNITY.** A disease prevention officer, peace officer, physician, licensed health professional, or treatment facility that acts in good faith under this section is immune from liability in any civil, administrative, disciplinary, or criminal action for acting under this section.

#### **Sec. 11. [144.4809] PRELIMINARY HEARING.**

**Subdivision 1. GROUNDS FOR HEARING.** A party may petition the court for an order for enforcement of or relief from a health order or judicial order.

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Subd. 2. PETITION FOR PRELIMINARY HEARING. The petitioning party shall serve on the commissioner and file in the probate division of the district court of the county in which the carrier or respondent resides a petition and notice of preliminary hearing. The court shall hold a preliminary hearing no later than 15 days from the date of the filing and service of the petition for a preliminary hearing. If a carrier detained under section 144.4807 or 144.4808 files a petition for a preliminary hearing, the hearing must be held no later than five days from the date of the filing and service of the petition, excluding Saturdays, Sundays, and legal holidays.

Subd. 3. COMMISSIONER'S NOTICE OF HEARING. If the commissioner petitions the court to enforce the health order, the notice of the preliminary hearing must contain the following information:

- (1) the date, time, and place of the hearing;
- (2) the right of the carrier to be represented by court-appointed counsel during any proceeding under sections 144.4801 to 144.4813;
- (3) the right of the carrier or respondent to the assistance of an interpreter in any proceeding under sections 144.4801 to 144.4813;
- (4) the right of the carrier or respondent to appear at the hearing;
- (5) the right of the carrier or respondent to present and cross-examine witnesses;
- (6) a statement of any disputed facts, or a statement of the nature of any other disputed matter; and
- (7) the name and address of any witness that the petitioning party intends to call to testify at the hearing, and a brief summary of the witness' testimony.

Subd. 4. CARRIER'S OR RESPONDENT'S NOTICE OF HEARING. If the carrier or respondent petitions the court for relief from the health order or court order, the notice of preliminary hearing must contain the information in subdivision 3, clauses (1), (6), and (7).

Subd. 5. DUTY TO COMMUNICATE. (a) At least five days before the date of the preliminary hearing, excluding Saturdays, Sundays, and legal holidays, the nonpetitioning party shall respond to the petition for hearing by filing and serving on the petitioning party:

- (1) a statement of any disputed facts, or a statement of the nature of any other disputed matter; and
- (2) the name and address of any witness that the nonpetitioning party intends to call to testify at the hearing, and a brief summary of the witness' testimony.

If the carrier seeks release from an emergency hold ordered under section 144.4807, subdivision 7, or under section 144.4808, subdivision 2, the commissioner shall file and serve on the carrier's counsel the items in clauses (1) and (2) at least 48 hours prior to the preliminary hearing, excluding Saturdays, Sundays, and legal holidays.

(b) At the hearing, the parties shall identify the efforts they made to resolve the matter prior to the preliminary hearing.

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Subd. 6. HEARING ROOM IN TREATMENT FACILITY. If the carrier is infectious, the treatment facility in which the carrier is sought to be detained or to which the carrier is sought to be removed shall make reasonable accommodations to provide a room where the hearing may be held that minimizes the risk of exposing persons attending the hearing to tuberculosis. If a room is not available at the treatment facility, the court may designate another location for the hearing.

Subd. 7. STANDARD OF PROOF. The commissioner must prove by a preponderance of the evidence that the carrier is an endangerment to the public health.

Subd. 8. RULES OF EVIDENCE. The court shall admit all reliable relevant evidence. Medical and epidemiological data must be admitted if it conforms with section 145.31, chapter 600, Minnesota Rules of Evidence, rule 803(6), or other statutes or rules that permit reliable evidence to be admitted in civil cases. The court may rely on medical and epidemiological data, including hearsay, if it finds that physicians and other licensed health professionals rely on the data in the regular course of providing health care and treatment.

Subd. 9. SUFFICIENCY OF EVIDENCE. It is a sufficient basis for the court to order continued confinement of the carrier or other preventive measures requested by the commissioner if reliable testimony is provided solely by the carrier's attending physician or nurse, a public health physician or nurse, other licensed health professional, or disease prevention officer.

Subd. 10. FAILURE TO APPEAR AT HEARING. If the carrier or respondent fails to appear at the hearing without prior court approval, the hearing may proceed without the carrier or respondent and the court may make its determination on the basis of all reliable evidence submitted at the hearing.

#### **Sec. 12. [144.4810] FINAL HEARING.**

Subdivision 1. GROUNDS FOR HEARING. After the preliminary hearing, the commissioner, carrier, or respondent may petition the court for relief from or enforcement of the court order issued pursuant to the preliminary hearing. The commissioner may petition the court for additional preventive measures if the carrier or respondent has not complied with the court order issued pursuant to the preliminary hearing. The petitioning party shall serve and file a petition and notice of hearing with the probate division of the district court. The court shall hold the final hearing no later than 15 days from the date of the filing and service of the petition for a final hearing.

Subd. 2. NOTICE OF HEARING. The notice of the final hearing must contain the same information as for the preliminary hearing in section 144.4809, subdivision 3 or 4.

Subd. 3. DUTY TO COMMUNICATE. The parties have a duty to communicate and exchange information as provided in section 144.4809, subdivision 5.

Subd. 4. HEARING ROOM IN TREATMENT FACILITY. The hearing room for the final hearing is governed by section 144.4809, subdivision 6.

Subd. 5. STANDARD OF PROOF. The commissioner must prove by clear and convincing evidence that the carrier is an endangerment to the public health.

Subd. 6. RULES OF EVIDENCE. The rules of evidence are governed by section 144.4809, subdivision 8.

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Subd. 7. SUFFICIENCY OF EVIDENCE. The sufficiency of evidence is governed by section 144.4809, subdivision 9.

Subd. 8. FAILURE TO APPEAR AT HEARING. The failure of the carrier or respondent to appear at the hearing is governed by section 144.4809, subdivision 10.

Subd. 9. RIGHT OF APPEAL. The commissioner, carrier, or respondent may appeal the decision of the district court. The court of appeals shall hear the appeal within 60 days after filing and service of the notice of appeal.

Subd. 10. RIGHT OF COMMISSIONER TO ISSUE SUBSEQUENT ORDER. Notwithstanding any ruling by the district court, the commissioner may issue a subsequent health order if the commissioner has probable cause to believe that a health order is necessary based on additional facts not known or present at the time of the district court hearing.

**Sec. 13. [144.4811] PERIODIC REVIEW AND RELEASE FROM DETENTION.**

Subdivision 1. PERIODIC REVIEW. If the carrier has been detained in a treatment facility or has been isolated pursuant to a court order, the commissioner shall submit a report to the court, the carrier, and the carrier's counsel within 90 days of the date of the court-ordered detention and every 90 days thereafter, until the carrier is released. The report must state the treatment the carrier receives, whether the carrier is cured or noninfectious, and whether the carrier will continue to be detained. If the carrier contests the commissioner's determination for continued detention, the carrier may request a hearing. The hearing on continued detention is governed by the provisions for a final hearing under section 144.4810, excluding subdivision 5 of that section. The court shall order continued detention of the carrier if it finds that such detention is reasonable. This subdivision does not apply to consent orders or other confinement that has been voluntarily agreed upon by the parties.

Subd. 2. CARRIER'S PETITION FOR RELEASE. If the carrier is detained in a treatment facility or isolated pursuant to a court order, the carrier may make a good faith request for release from confinement prior to the 90-day review under subdivision 1 by filing a petition and notice of hearing with the court that ordered the confinement and by serving the petition and notice on the commissioner. The hearing on continued confinement is governed by the provisions for a final hearing under section 144.4810, excluding subdivision 5 of that section. The court shall order continued detention of the carrier if it finds that such detention is reasonable.

Subd. 3. RELEASE FROM DETENTION BASED ON ORDER TO COMPEL EXAMINATION. A carrier who has been detained in a treatment facility under a court order to compel the carrier to submit to a diagnostic tuberculosis examination shall be released only after:

- (1) the commissioner determines that the carrier does not have active tuberculosis;  
or  
(2) the commissioner determines that the carrier is not an endangerment to the public health.

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**Subd. 4. RELEASE FROM DETENTION BASED ON ENDANGERMENT.** A carrier who is detained in a treatment facility or isolated under a court order because the carrier is an endangerment to the public health shall be released only after:

- (1) the commissioner determines that the carrier is cured; or
- (2) the commissioner determines that the carrier is no longer an endangerment to the public health.

**Sec. 14. [144.4812] COSTS OF CARE.**

The costs incurred by the treatment facility and other providers of services to diagnose or treat the carrier for tuberculosis must be borne by the carrier, the carrier's health plan, or public programs. During the period of insurance coverage, a health plan may direct the implementation of the care required by the health order or court order and shall pay at the contracted rate of payment, which shall be considered payment in full. Inpatient hospital services required by the health order or court order and covered by medical assistance or general assistance medical care are not billable to any other governmental entity. If the carrier cannot pay for treatment, and the carrier does not have public or private health insurance coverage, the carrier shall apply for financial assistance with the aid of the county. For persons not otherwise eligible for public assistance, the commissioner of human services shall determine what, if any, costs the carrier shall pay. The commissioner of human services shall make payments at the general assistance medical care rate, which will be considered payment in full.

**Sec. 15. [144.4813] DATA PRIVACY.**

**Subdivision 1. NONPUBLIC DATA.** Data on individuals contained in the health order are health data under section 13.38. Other data on individuals collected by the commissioner as part of an investigation of a carrier under sections 144.4801 to 144.4813 are investigative data under section 13.39.

**Subd. 2. PROTECTIVE ORDER.** After a judicial action is commenced, a party may seek a protective order to protect the disclosure of portions of the court record identifying individuals or entities.

**Subd. 3. RECORDS RETENTION.** A records retention schedule for records developed under sections 144.4801 to 144.4813 must be established pursuant to section 138.17, subdivision 7.

Presented to the governor May 16, 1997

Signed by the governor May 19, 1997, 1:02 p.m.

**New language is indicated by underline, deletions by ~~strikeout~~.**