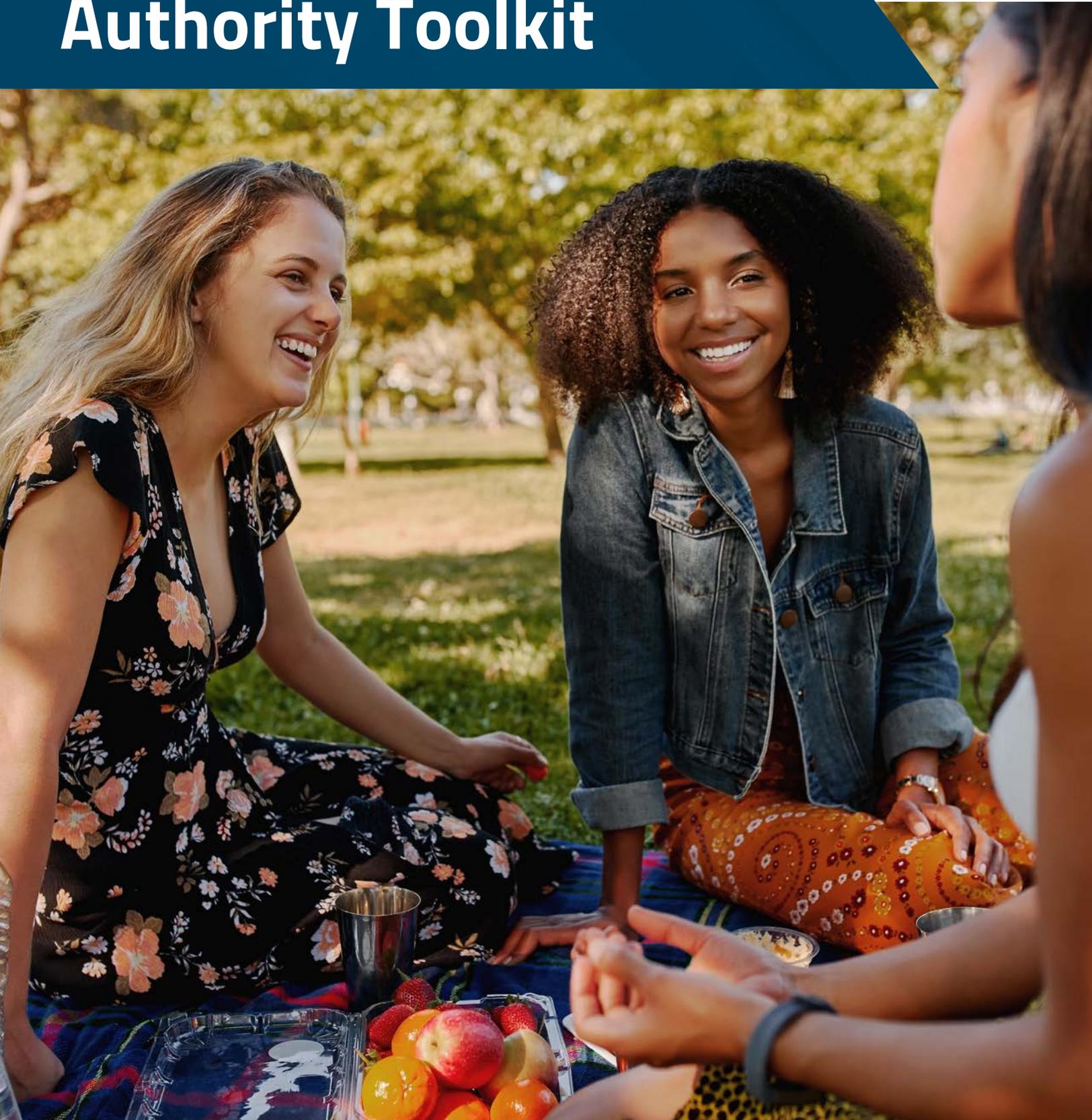


# ASTHO Public Health Authority Toolkit

February 2024



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## Introduction

The authority to manage public health threats was built into the U.S. legal system as far back as the first boards of health at the turn of the 19th century.<sup>1</sup> To date, state and territorial health officials have broad responsibilities to protect their communities from various health threats and, by virtue of the statutory authorities granted to their positions, can mitigate these threats through a variety of activities.<sup>2</sup> These legal authorities support routine public health activities such as investigating a disease outbreak or abating a nuisance. When the outbreak exceeds a traditional response, becoming a public health emergency, health officials often have additional powers under an executive emergency declaration.

Given the political response towards the exercise of public health authority during COVID-19 pandemic (e.g., isolation and quarantine, social distancing orders, contact tracing, etc.), rapid and substantial changes to public health authority have occurred in several jurisdictions. The efforts to limit the ability of public health officials to protect their communities vary significantly by jurisdiction and are shaped by a variety of political landscapes. As the leading voices in governmental public health, current and former health officials are uniquely qualified to inform the public and policymakers about the need to retain the foundational legal responsibilities to protect public health.

ASTHO developed this toolkit to support governmental public health officials and ASTHO alumni, and to provide an understanding of state and territorial public health's legal responsibility and authority in an acute or declared public health emergency. This toolkit includes evidence-based resources, examples of legislative testimony, and other resources to assist state and territorial health officials and educate the public and policymakers.

<sup>1</sup>[The Law and the Public's Health: A Study of Infectious Disease Law in the United States on JSTOR](#)

<sup>2</sup>These authorities include but are not limited to the abatement of nuisances, investigation of the causes of disease, institution of quarantine measures, ordering individuals or groups to isolate, conducting contact tracing and case investigations, collecting data, temporarily limiting or canceling public events, temporarily restricting or closing venues, and requiring vaccination verification for certain conduct and activities (e.g., school attendance).

## Protecting Public Health

### What is public health authority?

Public health agencies are responsible for protecting and promoting the health of the public within a specific jurisdiction. State and territorial health officials are granted legal authorities to prevent and mitigate the spread of infectious disease and other health threats. These mechanisms are available in day-to-day operations to prevent, detect, and contain health threats in the community, and in the event of a declared disaster or public health emergency.

Public health authority is not a static concept and can vary by jurisdiction, change over time, and be utilized in both routine and emergency situations. Public health authority is typically governed by laws and regulations at different levels of government, including federal, state, tribal, local, and territorial. The specific powers and responsibilities granted to public health agencies can differ between jurisdictions and be shared. For example, [under Maryland law](#), a Governor's proclamation of a public health emergency can authorize the health official to require people to be tested or treated for disease whereas other states do not have a similar law specifying that power.

Public health legal responsibility is not fixed and can evolve over time to address emerging health challenges, advancements in scientific knowledge, and societal changes. Public health laws and regulations may be updated or revised periodically to adapt to new threats or to improve public health outcomes. For instance, the COVID-19 pandemic highlighted the need for rapid policy changes, such as implementing mask mandates, travel restrictions, or vaccine distribution plans, which were enacted under existing or newly established public health authority.

Public health officials exercise their legal authorities with great care, weighing the need to prevent or stop the spread of disease with individual rights and liberties. Additionally, state laws establish boundaries and safeguards to ensure that people's rights and liberties are respected. Public health laws often define the scope of authority, specify procedures for enforcement, establish accountability mechanisms, and outline avenues for judicial review or appeal.

It is important to note that these authorities can be exercised in both routine and emergency situations. In routine circumstances, public health agencies use their authority to enforce regulations related to disease control, food safety, sanitation, immunizations, environmental health, and more. They carry out disease tracking, monitoring, and prevention efforts to safeguard public health on an ongoing basis.

During emergencies, such as disease outbreaks, natural disasters, or bioterrorism events, public health authority can expand to address the unique challenges posed by the situation. This may involve activating emergency response plans, mobilizing additional resources, issuing emergency orders (e.g., citing orders to promote social distancing, gathering restrictions, closing a school to limit the spread of disease, etc.), coordinating with other agencies, and communicating critical information to the public. Emergency situations often provide public health agencies with additional powers and flexibility to protect the population rapidly.

### How are public health authorities different than executive emergency powers?

Executive emergency powers are generally exercised through a Governor or through an Emergency or Executive Order. During COVID-19 pandemic many states used emergency powers to:

- Promote social distancing through gathering limits, closures of non-essential businesses.
- Require face coverings in certain situations.
- Expand staff capacity to conduct contact tracing, case investigations, and mass vaccination campaign.



## When can governmental public health entities exercise their legal powers to protect public health?

Governmental public health entities have a range of legal responsibilities that are generally established in statute by the state or territorial legislature and ratified by the governor. The list below is not all encompassing but highlights the foundational capabilities that guide the actions public health officials may take to address a health threat.

- **Communicable Disease Prevention and Control.** Although specific mechanisms vary between jurisdictions, common powers include the ability to order isolation or quarantine, to conduct contact tracing and disease investigations, to require vaccinations among certain groups and in specific situations, and to order other measures to mitigate and prevent the community spread of disease (e.g., cancelling events, venue closures, and face mask protocols).
- **Isolation and Quarantine.** Some of the oldest tools available to governmental public health to limit disease spread are isolation and quarantine. All 50 states, Washington, D.C., and most territories provide the state and territorial health official (S/THO) with the legal authority to require an individual or group of people to remain in isolation or quarantine. In all cases, anyone subject to an isolation or quarantine order has rights to due process under the law and can petition a court to review the order and determine whether the isolation or quarantine should continue, be modified, or ended.
- **Contact Tracing and Case Investigation.** Another core function of state and local public health is determining the spread of communicable diseases. To do so, public health personnel interview individuals infected with and exposed to a communicable disease to determine their close contacts and notify those contacts of recommended next steps to limit the spread of the communicable disease. Few states have codified this common public health practice in statute, although a few states have enacted statutes related to COVID-19 contact tracing over the past year.
- **Vaccination.** Expanding vaccination efforts is a cornerstone function of public health. All 50 states, Washington, D.C., and most territories require vaccinations in some form. In some jurisdictions, the S/THO also has the power to limit the attendance of unvaccinated students during disease outbreaks. In many jurisdictions, state health agency expertise determines which vaccines are required for school enrollment.
- **Community Mitigation Measures.** In some jurisdictions, the scope of the health official's power extends to measures that can mitigate the community spread of a disease. This may include orders cancelling or altering the size of events or other gatherings, requiring the use of face coverings, gloves, or other personal protective equipment, altering the operation of businesses and other venues, or requiring health screenings or proof of vaccination. Studies of the community mitigation measures taken during the COVID-19 pandemic have shown that stay-at-home orders helped reduce activities associated with the coronavirus' spread and that face mask protocols and venue closures helped to limit community transmission of the disease.
- **Environmental Health.** Governmental public health entities routinely address environmental factors that contribute to disease transmission and poor health outcomes. Health officials establish regulations and guidelines for food safety, water quality, sanitation, and housing conditions to prevent the spread of infectious diseases and reduce environmental health risks. In the event of environmental emergencies such as chemical spills, natural disasters, or radiological contamination, public health agencies play a crucial role in coordinating emergency response efforts. They can establish protocols for evacuations, provide guidance on safe practices, and facilitate the dissemination of information to the public.
  - Example: [NCDHHS Urges Caution After Reportable Lead Found in WanaBana Brand Apple Cinnamon Puree | NCDHHS](#)

- **Mandatory Reporting of Certain Diseases.**

Notifiable conditions refer to diseases, conditions, or events that are required by law to be reported to public health authorities. These conditions are considered of public health importance due to their potential for rapid spread, severity, or impact on the community. Public health entities are bound by legal and ethical obligations to protect the privacy and confidentiality of health data. Laws and regulations, such as the Health Insurance Portability and Accountability Act (HIPAA) in the United States, establish guidelines for the collection, use, and disclosure of health information. Public health agencies must comply with these regulations to safeguard individuals' privacy rights and ensure the confidentiality of sensitive health data.

## Legislative actions reshaping public health authority:

Following the exercise of public health authorities to address the COVID-19 pandemic, legislatures across the nation considered and passed laws to limit legal powers available to public health leaders. These limitations came in two forms: 1) imposing substantive requirements or limitations to public health orders, and 2) changing procedural requirements for public health orders.

Common substantive restrictions added to public health orders in recent years include restrictions, limiting or prohibiting the use of public health orders to close houses of worship. For example, in 2021 Montana enacted [HB 230](#) prohibiting state, local, or jurisdictional agencies or public officials from limiting a person's ability to attend religious in-person services. This limitation can impact the ability of public health officials to prevent the spread of disease in a congregant setting.

In 2022, Kentucky enacted [HB 43](#), which limited the Governor's emergency powers to close facilities by excluding houses of worship, unless the houses of worship "have become unsafe to a degree that would justify condemnation in the absence of a state of emergency." Some other substantive restrictions considered by legislatures have been to require

justification for the order's actions (e.g., setting out the accepted scientific means for the public health intervention). These measures could hinder public health response to emerging disease outbreaks or novel diseases because health officials may not have a lengthy record to demonstrate the impact of a specific public health intervention. Additionally, proposals that require orders be narrowly tailored and limited to the least restrictive means for accomplishing the public health need can hinder public health by restricting health officials to the intervention that least impacts individuals rather than focusing on evidence-based interventions best suited to curb the spread of disease.

Common procedural requirements placed on public health orders include changing the length of time an order can remain in place without legislative approval. For example, in 2022 Arizona enacted [SB 1009](#), which limits the duration of a public health emergency declared by the Governor to 30 days and requires legislative approval to extend the declaration. Some other procedural restrictions considered for public health orders have included pre-approval, review, and/or ratification by the governor, attorney general, legislature, legislative committee or council, emergency manager, or local governmental entity. These new restrictions can burden the public health response to a disease outbreak by arbitrarily shortening the time needed to adequately respond.

The Act for Public Health Initiative is tracking the most recent legislative shifts to public health authority. [Visit their website](#) for up-to-date information on legislative trends.



## Evidence Base and Rationale

The following resources provide an evidentiary basis for public health interventions states and territories may exercise to protect public health.

### Communicable Disease Prevention and Control

ASTHO: [Public Health Legal Authority to Prevent and Mitigate the Spread of Communicable and Infectious Diseases and other Public Health Threats.](#)

CDC Morbidity and Mortality Weekly Report: [Effect of Predeparture Testing on Postarrival SARS-CoV-2–Positive Test Results Among International Travelers — CDC Traveler-Based Genomic Surveillance Program, Four U.S. Airports, March–September 2022.](#)

Cochrane Library: [“Physical interventions to interrupt or reduce the spread of respiratory viruses.”](#)

Proceedings of the National Academy of Sciences of the United States of America: [“An evidence review of face masks against COVID-19.”](#)

### Contact Tracing and Case Investigation

JMIR Public Health & Surveillance: [“Effectiveness of Contact Tracing for Viral Disease Mitigation and Suppression: Evidence-Based Review.”](#)

Journal of Public Health Management and Practice: [“Estimates of Cases and Hospitalizations Averted by COVID-19 Case Investigation and Contact Tracing in 14 Health Jurisdictions in the United States.”](#)

### Vaccination

ASTHO: [Immunization Guiding Principles.](#)

AMA Journal of Ethics: [School Vaccination Laws.](#)

CDC Morbidity and Mortality Weekly Report: [Vaccination Coverage with Selected Vaccines and Exemption Rates Among Children in Kindergarten — United States, 2021–22 School Year.](#)

Journal of Health Economics: [“Effectiveness of state-](#)

[level vaccination mandates: Evidence from the varicella vaccine.”](#)

### Community Mitigation Measures (including isolation and quarantine)

Journal of Public Health Policy: [“Application of state law in the public health emergency response to COVID-19: an example from Delaware in the United States.”](#)

Journal of Public Health Management and Practice: [“Crisis Decision-Making at the Speed of COVID-19: Field Report on Issuing the First Regional Shelter-in-Place Orders in the United States.”](#)

Journal of Population Economics: [“Stay-at-home orders, social distancing, and trust.”](#)

Journal of Infection: [“The role of community-wide wearing of face masks for control of coronavirus disease 2019 \(COVID-19\) epidemic due to SARS-CoV-2.”](#)

CDC Morbidity and Mortality Weekly Report: [“Association of State-Issued Mask Mandates and Allowing On-Premises Restaurant Dining with County-Level COVID-19 Case and Death Growth Rates — United States, March 1–December 31, 2020.”](#)

American Journal of Infection Control: [“The effect of state-level stay-at-home orders on COVID-19 infection rates.”](#)

CDC Morbidity and Mortality Weekly Report: [“Timing of State and Territorial COVID-19 Stay-at-Home Orders and Changes in Population Movement — United States, March 1–May 31, 2020.”](#)

Journal of the American Medical Association: [“Comparison of Estimated Rates of Coronavirus Disease 2019 \(COVID-19\) in Border Counties in Iowa Without Stay-at-Home Order and Border Counties in Illinois with a Stay-at-Home Order.”](#)

Annals of Epidemiology: [“Differences in rapid increases in county-level COVID-19 incidence by implementation of statewide closures and mask mandates — United States, June 1–September 30, 2020.”](#)

## Environmental Health

ASTHO: [Environmental Public Health Policy Statement](#).

ASTHO: [Climate and Health Policy Statement](#).

ASTHO: [Responding to Emerging Food Safety Threats Policy Statement](#).

ASTHO: [Analysis of Express Legal Authorities for Mosquito Control in the United States](#).

Council to Improve Foodborne Outbreak Response (CIFOR): [Menu of Legal Options for Foodborne Detection and Outbreak Response](#). This document provides a menu of legal options for state public health officials and policy makers to consider when reviewing their jurisdiction's legal authorities to conduct foodborne disease surveillance and outbreak response actions.

CIFOR: [Analysis of State Legal Authorities for Foodborne Detection and Outbreak Response](#). This document describes and analyzes the types of state legal authorities currently available to conduct foodborne disease surveillance and outbreak response activities.

Food and Drug Administration: [Model Food Code](#). The Food Code are model practices that are intended to ensure food safety to consumers in the U.S.

[Guidelines for Examining Unusual Patterns of Cancer and Environmental Concerns](#): This document provides updates to the 2013 MMWR article: "Investigating Suspected Cancer Clusters and Responding to Community Concerns: Guidelines from CDC and the Council of State and Territorial Epidemiologists. The purpose of the documents is to "investigate patterns of disease in communities."

Congressional Research Service: [Safe Drinking Water Act \(SDWA\): A Summary of the Act and Its Major Requirements](#): Provides an overview of the Safe Drinking Water Act. Page 13 talks about State Primacy, or enforcement responsibility, for drinking water regulations. Primacy agencies are sometimes state/territorial health departments (they are also often state departments of environment or ecology, each state is different).

National Center for Healthy Housing: [State Health Department Policies for Children with Elevated Blood Lead Levels](#) – Provides information about state screening recommendations and requirements, as well as information on environmental investigation (inspection) rules and requirements.

Centers for Disease Control and Prevention: [State Blood Lead Testing Laws Requiring 5 µg/dL & CDC Reference Rule](#) – this document outlines state laws and rules with blood lead level requirements of 5 µg/dL.

CDC Morbidity and Mortality Weekly Report: [Update of the Blood Lead Reference Value – United States, 2021](#) – provides the rationale for CDC lowering the blood lead reference value to 3.5 µg/dL.

CDC Morbidity and Mortality Weekly Report: [Violations Identified from Routine Swimming Pool Inspections – Selected State and Counties, United State, 2008](#) – Provides an overview of swimming pool inspections from 4 state health agencies and 11 counties or cities in 2008.

Centers for Disease Control and Prevention: [Model Aquatic Health Code](#) – Provides guidelines for entities that regulate public aquatic facilities to reduce the "risk of illness, injury, disability, and death in their communities."

CDC Morbidity and Mortality Weekly Report: [Outbreaks of Acute Gastrointestinal Illness Associated with a Splash Pad in a Wildlife Park – Kansas, June 2021](#).

## Mandatory Reporting of Certain Diseases

American Journal of Infection Control: "[Public health law for the collection and reporting of health care-associated infections](#)."

## Support from ASTHO Alumni and Partner Organizations

A variety of groups, from vaccine opponents to proponents of limited government, are supporting

efforts to curtail public health authority. Some of these groups are well-resourced advocates, underscoring the need for those who understand the benefits of public health to voice their support for maintaining and ensuring adequate and meaningful public health authority. ASTHO's alumni and national, state, and local partner organizations can provide this support.

## ASTHO Alumni

ASTHO alumni understand the complex needs and competing priorities of state or territorial health agencies. They are also subject matter experts and trusted leaders who can compellingly advocate for specific legislative action without the constraints placed on current S/THOs. From testifying directly in opposition to legislation that would curtail public health authority to engaging the media to raise awareness of the dangers of limiting public health authority, S/THO alumni can leverage their expertise and leadership to improve public health.

## Partner Organizations

Visible and vocal support from outside organizations will be critical to successfully countering efforts to erode S/THO and public health authority. Nonprofits focused on decreasing the prevalence of specific diseases, such as the American Heart Association and other health-focused organizations, can speak to how weakening S/THO and health agency powers will have harmful effects on community health. Outside organizations with volunteer networks are also able to educate their volunteers and call on them to speak to their legislators as concerned constituents.

## Healthcare Providers

Individual healthcare providers are often trusted members of their communities who can inform the public and policymakers about the role S/THOs and public health play in keeping their patients healthy and well during disease outbreaks. Beyond individual support, the various medical and healthcare professional societies and associations should also be encouraged to voice their concerns about proposed changes to state or territorial public health authority.

## Responding to Challenges of Public Health Authority

Below are examples of oral and written testimony and court briefs by state and territorial public health officials and supporting organizations.

[Ohio SB 22 Testimony](#): February 10, 2021

Bruce Vanderhoff, MD, Chief Medical Director, Ohio Department of Health

Establish legislative oversight over Governor's and health orders.

[Connecticut House Bill 6423](#), An Act Concerning Immunizations and [Senate Bill 568](#), An Act Eliminating the Nonmedical Exemption to the Immunization Requirement: February 16, 2021

[Acting Commissioner Deidre S. Gifford, MD, MPH](#)  
Connecticut Department of Public Health.

[Kansas SB 273 Testimony](#): February 25, 2021

Lee Norman, MD, Secretary, Kansas Department of Health and Environment

Creating a new statutory structure for declaring and responding to a public health disaster.

[Kansas Senate Bill 213](#) would create a new restriction on employers concerning an employee's vaccinations.

- Senate Commerce Committee [Lee Norman, MD](#), Secretary, Kansas Department of Health and Environment: February 25, 2021.
- Kansas Chamber of Commerce, [Eric Stafford](#), VP of Government Affairs: February 25, 2021.
- [Andy Marso](#), Citizen and Meningitis Survivor: March 22, 2021.
- Kansas Representative [John Eplee, MD](#): March 22, 2021.

[Kansas SB 212 Testimony](#): March 22, 2021

Lee Norman, MD, Secretary, Kansas Department of Health and Environment

Specify required vaccines both for children in licensed child care facilities and in schools.

[North Dakota HB 1323](#): April 1, 2021

Kirby Kruger, Section Chief, Disease Control and Forensic Pathology Section, North Dakota Department of Health

Eliminate any government or business entity from implementing any mask mandates of any kind.

[North Dakota HB 1323](#): April 1, 2021

Courtney Koebele, Executive Director, North Dakota Medical Association

Eliminate any government or business entity from implementing any mask mandates of any kind.

[Montana House Bill 702](#): April 12, 2021

Prohibit discrimination based on vaccination status or having an immunity passport.

[Duane Preshinger](#), Montana Hospital Association

[Ohio House Bill 248](#): August 24, 2021

Prohibit an employer from requiring employees to receive any vaccination or wear a mask.

Citizen testimony by [Eric Lichtenfeld](#)

[Ohio House Bill 218](#): December 7, 2021

Senate General Government Budget Committee.

[Joseph Gastaldo, MD](#), OhioHealth

Prohibit vaccination mandates of RNA or genetic technology and allow for conscientious objections requirements.

[New Hampshire House Bill 1606](#): February 15, 2022

[Rebecca Coyle](#), Executive Director, American Immunization Registry Association

Seeks to change the New Hampshire Immunization Information System (NHIS) from an opt-out to an opt-in system.

[New Hampshire SB 105](#): April 26, 2023

Patricia Tilley, Director, Division of Public Health Services, New Hampshire Department of Health and Human Services

Would remove contact information from the hospital birth worksheet (e.g., parent's name, date of birth and birthplace, and addresses).

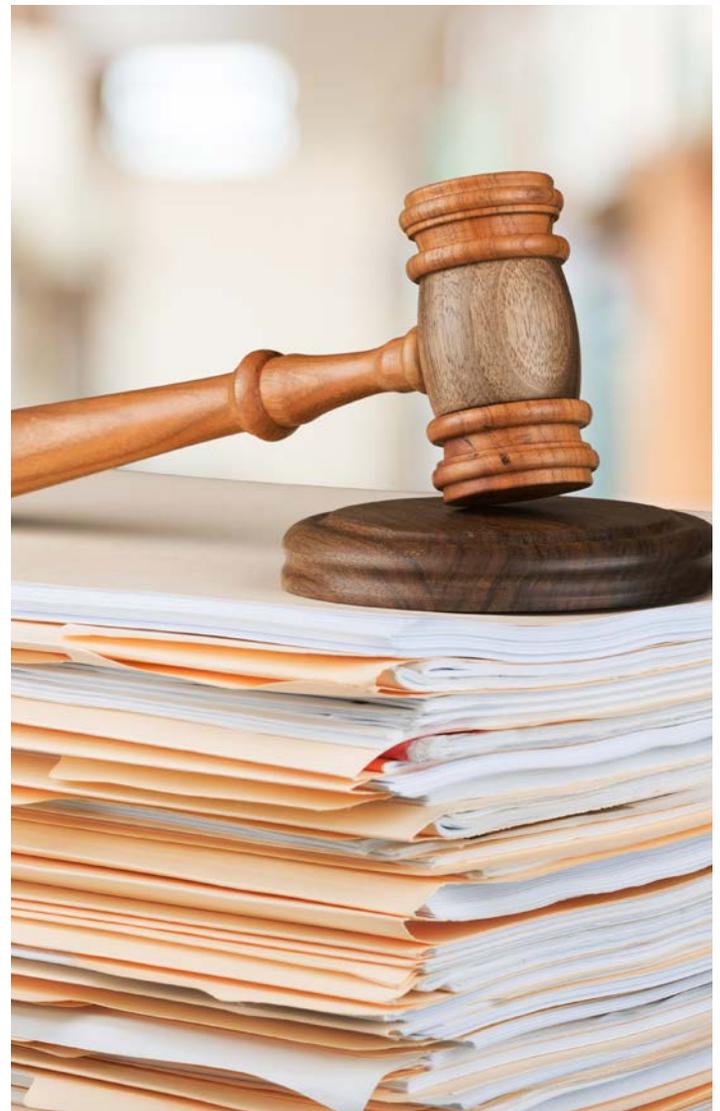
[North Carolina Amicus Brief](#): May 3, 2023

Amicus brief submitted to the Supreme Court of North Carolina by the Association of State and Territorial Health Officials (ASTHO) asserting that a public health official must be empowered to take quick action to protect the public health and safety of their residents and should not be liable for economic

damages experienced by businesses subject to a public health order.

## Additional Resources

- [Trends in US State Public Health Emergency Laws, 2021–2022 | Public Health Law Research](#)
- [Judicial Review of Public Health Powers Since the Start of the COVID-19 Pandemic: Trends and Implications | AJPH](#)
- [Summary of Enacted Laws and Pending Bills Limiting Public Health Authority | Network for Public Health Law](#)
- [Emergency powers and the pandemic: Reflecting on state legislative reforms and the future of public health response | Journal of Emergency Management](#)





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