



TB and the Law Project

CIVIL ORDER OF DETENTION FOR TUBERCULOSIS: MODEL FORMS FOR CALIFORNIA HEALTH OFFICERS

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The purpose of these documents is to provide general guidance on executing tuberculosis-related civil detention orders. The guidance is based on the opinions of the attorneys at the Public Health Law Program of the Public Health Institute and is not intended or offered as legal advice. Health officials should consult with their legal counsel before using these documents..

INTRODUCTION AND OVERVIEW

This packet is designed to assist California Health Officers, Tuberculosis Controllers, and their staff in executing tuberculosis-related civil detention orders. It was developed by attorneys at the Public Health Law Program of the Public Health Institute in consultation with representatives the California Tuberculosis Controllers Association and the California Department of Health Services, Tuberculosis Control Branch. This packet is not intended or offered as legal advice, so health officials should consult with their legal counsel before using the enclosed forms.

The following overview describes each of the forms included in this packet, highlighting which components are required by the California tuberculosis control statute (California Health and Safety Code §§ 121350 et seq.), and which components are recommended but optional from a statutory perspective. It is important to read this overview before adapting any of the forms for a health official's use. Otherwise, legally essential material could end up being cut.

Civil Order of Detention for Tuberculosis

The model Civil Order of Detention for Tuberculosis form tracks the requirements set forth in the tuberculosis control statute. These requirements codify procedures for civil detention that reflect constitutional standards. Since the model order form incorporates the statutory and constitutional obligations of health departments with respect to the patient being detained, it is essential to complete the form as thoroughly and precisely as possible.

The *heading* (i.e., “This order issued to:,” “This order issued by:,” etc.) contains important information regarding the parties involved, much of which must be included in the order pursuant to the tuberculosis control statute.

Part 1 of the order states that the recipient must comply with detention in a specified facility. *Part 1* also meets the statutory mandate that the recipient be informed of the purpose of the order.

Part 2 enumerates certain due process rights to which the recipient is entitled under the tuberculosis control statute. These rights are repeated in the Notice and Restatement of Rights that must be given to the recipient along with the order itself.

Note that the TB control statute requires that the detainee be notified of certain rights in two places: the order itself and a separate notice. In the order, the detainee must be notified at least of his/her (1) right to request release, (2) right to counsel, and (3) right to 60 day court review. In the separate notice, the detainee must be notified at least of his/her (1) right to request release, (2) right to counsel, and (3) right to supply the contact information of two people to be notified of the detention. The right to request release and the right to counsel must be included both places, but the right to 60 day court review need only be included in the order itself, while the right to supply the contact information of two people need only be included in the separate notice. The model order form includes the same comprehensive list of rights in the order and the separate notice. The list includes all of the rights that must be listed in the order and/or the separate notice as well as the right to an interpreter.

Part 3 specifies the legal basis for the detention. It is essential that the Health Officer identify whether the recipient is being detained for isolation or completion of treatment, since the legal basis for detention bears upon the individualized assessment that the Health Officer must provide (see *part 4*) and the maximum duration of detention (see *part 6*).

With respect to *parts 4 and 5* of the order, it is particularly important to provide comprehensive lists documenting the behaviors of the individual requiring detention and the less restrictive alternatives that were attempted and failed and that were considered and rejected. The level of detail contained in these lists is not only legally mandated, but also reflects good medical care practice.

In asking for a list of the specific patient behaviors that support the need for detention, *part 4* captures the statutory requirement that the health officer provide an “individualized assessment of the person’s circumstances or behavior constituting the basis for the issuance of the order.” (§ 121367(a)(2).) This individualized assessment should give a chronological description of every incident leading up to the issuance of the detention order. While completing the individualized assessment, it is advisable to refer to the *Guidelines for the Civil Detention of Persistently Nonadherent Tuberculosis Patients in California*. Specifically, sections II(A) and II(B) of the *Plan for the Civil Detention of Persistently NonAdherent Tuberculosis Patients (Civil Detention Plan)* enumerate the types of patient behaviors which support a civil detention order for the purposes of isolation pursuant to section 121365(d) or for the purposes of completing treatment pursuant to section 121365(e).

Part 5 asks for two lists: the less restrictive alternatives that were attempted and failed, and the less restrictive alternatives that were considered and rejected. Again, it is important to provide detailed information because it is the health officer’s statutory and constitutional responsibility to consider and/or attempt less restrictive alternatives to detention before engaging in this serious deprivation of the patient’s liberty. Less restrictive alternatives that might be included on the lists are set forth in sections II(A) and II(B) of the *Civil Detention Plan*.

Part 6 fulfills the statutory requirement that the recipient be informed of the duration of detention. It is important to remember that if a patient is being detained solely to isolate the patient from other people, then the patient must be released once he or she ceases to be infectious or once the Health Officer has determined that circumstances have changed, permitting the patient to be adequately separated from others upon release. (§ 121368(b).) If the patient is being detained solely to make sure he or she completes a course of treatment, then the patient must be released upon completing the prescribed course of medication. (§ 121368(c).)

Notice and Restatement of Rights

The tuberculosis control statute states that the civil detention order must be accompanied by a separate notice that includes specified information about the recipient’s rights. This form serves that purpose.

Acknowledgment of Receipt/Choice of Action

This form is an optional addendum to the civil detention order. The tuberculosis control statute does not require the information in this form to be communicated in this format. However, the form serves as powerful documentation of the Health Officer’s compliance with the statute. The written acknowledgment of receipt provides supplementary evidence that the order and Notice and Restatement of Rights actually made it into the hands of the recipient. The choice of action portion of the form reflects the health department’s efforts to facilitate the recipient’s ability to exercise his or her statutory rights to request release, free legal representation, and the notification of up to two designees about the detention.

Proof of Personal Service

Technically, a civil detention order may be served by registered or certified mail. (§ 120105). Practically, however, civil detention orders are served in person by health department personnel. This generic form can be used by anyone serving a tuberculosis patient with a civil detention order. Since the tuberculosis

control statute does not specify who may serve an order, it is fine for someone from a health department to serve the order, regardless of whether the server is a “party” to the action.

Termination of Civil Order of Detention for Tuberculosis

The tuberculosis control statute does not contain any guidance regarding the procedures for terminating a civil detention order. Nonetheless, it is worthwhile to verify in writing the termination date of a civil detention order. This form not only informs the interested parties of the termination, but also serves an important record-keeping function by documenting the end date of the civil detention.

Date: _____

CIVIL ORDER OF DETENTION FOR TUBERCULOSIS
ISSUED PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE
SECTIONS 120175 AND 121365(d) or (e)

This order issued to: Name: _____
Address: _____
Telephone number: _____ Date of birth: _____
Medical record number: _____ Payment source: _____

This order issued by: _____ (Signature of Health Officer or Designee)
_____ (Printed name and title)

If applicable, this order interpreted by: _____ (Signature)
_____ (Printed name)

Health department contact person: Name and title: _____
Telephone number: _____

* * * * *

1. Order and Purpose of Detention

This is a *legal order* issued by the Health Officer of _____ City/County. You must comply with this order. Failure to comply with this order is a criminal misdemeanor and may result in imprisonment for up to one year.

YOU ARE ORDERED TO COMPLY WITH YOUR DETENTION IN THE FOLLOWING FACILITY:
_____. The *purpose* of your detention is to protect the public health.

2. Detained Patient's Rights

- You have the right to request release from detention by indicating your request on the attached Acknowledgment of Receipt/Choice of Action form or by contacting the health department contact person listed above.
- If you request release from detention, your detention will not continue for more than five (5) business days after your request unless a court issues an order authorizing your continued detention.
- Whether or not you request release from detention, the Health Officer is required to obtain a court order authorizing your detention within 60 days of the beginning of your detention if your detention continues through that time. After obtaining the first court order authorizing your detention, the Health Officer is required to obtain another court review of your detention at least once every 90 days so long as your detention continues.

- You have the right to hire a lawyer to represent you or to have a lawyer provided to you free of charge. If you would like to have a lawyer provided to you free of charge, indicate your request on the attached Acknowledgment of Receipt/Choice of Action form or contact the health department contact person listed above. The health department will notify a lawyer that you have requested legal representation.
- You may give the health department contact person listed above the addresses or telephone numbers of two people who you want to be told of your detention. At your request, the Health Officer shall take reasonable steps to notify those people that you are being detained.
- If necessary, you shall be provided with a language interpreter or a person skilled in communicating with vision or hearing impaired individuals in accordance with applicable law.

3. Legal Basis for Detention

(Check applicable box(es))

- Detention for isolation: You *have infectious* tuberculosis and there is a substantial likelihood that you may transmit tuberculosis because of your inadequate separation from others. (Health and Safety Code section 121365(d).)
- Detention for isolation: There is *a substantial likelihood that you have infectious* tuberculosis and that you may transmit tuberculosis because of your inadequate separation from others. (Health and Safety Code section 121365(d).)
- Detention for completion of treatment: You *have active* tuberculosis and there is a substantial likelihood based on your past or present behavior that you cannot be relied upon to participate in or complete an appropriate course of medication or to follow required infection control precautions. (Health and Safety Code section 121365(e).)
- Detention for completion of treatment: You *have been reported to the health officer as having active* tuberculosis with no subsequent report to the health officer that you have completed an appropriate prescribed course of medication, and there is a substantial likelihood based on your past or present behavior that you cannot be relied upon to participate in or complete an appropriate course of medication or to follow required infection control precautions. (Health and Safety Code section 121365(e).)

4. Circumstances and Behavior of Patient Causing the Need for Detention

(In chronological order, list the specific patient behaviors that support the need for detention, including dates, times, and names of relevant health department personnel. Add additional pages if needed.)

5. Lack of Alternatives that are Less Restrictive than Detention

The health department attempted the following alternatives to detention, but they were unsuccessful: *(List the unsuccessful less restrictive alternatives that were attempted. This list may cross-reference the above list of specific patient behaviors that support the need for detention. Add additional pages if needed.)*

The health department considered and rejected the following alternatives to detention for the following reasons: *(List the less restrictive alternatives that were considered and rejected, and explain the reason for the rejection of each alternative. Add additional pages if needed.)*

6. Duration of Detention

This order shall remain in effect until it is terminated by the Health Officer. You may only be detained for the amount of time necessary to fulfill the legal basis of your detention as set forth under number 3 above. To ensure the order remains effective, the Health Officer must obtain court authorization within 60 days of the beginning of your detention and at least once every 90 days thereafter.

* * * * *

This order distributed to:

Patient: _____ (Printed name)

Health Officer: _____ (Printed name)

Tuberculosis Controller: _____ (Printed name)

County Counsel: _____ (Printed name)

District Attorney: _____ (Printed name)

Detention Facility Contact: _____ (Printed name)

Other (e.g., Case Manager, Health Care Provider):

_____ (Printed name)

_____ (Printed name)

Date: _____

NOTICE AND RESTATEMENT OF RIGHTS

You, _____, have been detained pursuant to a Civil Order of Detention for Tuberculosis in accordance with Health and Safety Code sections 120175 and 121365(d) or (e). You are hereby advised of the following rights:

- You have the right to request release from detention by indicating your request on the attached Acknowledgment of Receipt/Choice of Action form or by contacting the health department contact person listed above.
- If you request release from detention, your detention will not continue for more than five (5) business days after your request unless a court issues an order authorizing your continued detention.
- Whether or not you request release from detention, the Health Officer is required to obtain a court order authorizing your detention within 60 days of the beginning of your detention if your detention continues through that time. After obtaining the first court order authorizing your detention, the Health Officer is required to obtain another court review of your detention at least once every 90 days so long as your detention continues.
- You have the right to hire a lawyer to represent you or to have a lawyer provided to you free of charge. If you would like to have a lawyer provided to you free of charge, indicate your request on the attached Acknowledgment of Receipt/Choice of Action form or contact the health department contact person listed above. The health department will notify a lawyer that you have requested legal representation.
- You may give the health department contact person listed above the addresses or telephone numbers of two people who you want to be told of your detention. At your request, the Health Officer shall take reasonable steps to notify those people that you are being detained.
- If necessary, you shall be provided with a language interpreter or a person skilled in communicating with vision or hearing impaired individuals in accordance with applicable law.

ACKNOWLEDGMENT OF RECEIPT/CHOICE OF ACTION

I, _____ (printed name of patient), acknowledge that I have received the Civil Order of Detention for Tuberculosis and the Notice and Restatement of Rights.

Patient Signature: _____ Date: _____

At this time, I choose to do the following (*place initials in the space(s) provided*):

Request for Release

- _____ I request release from detention.
- _____ I do not request release from detention. If I decide to request release at any time during the duration of my detention, I will contact the health department contact person listed on the first page of the Civil Order of Detention for Tuberculosis.

Request for a Free Lawyer

- _____ I request that I be provided a lawyer free of charge.
- _____ I do not request free legal representation. If I decide to request free legal representation at any time during the duration of my detention, I will contact the health department contact person listed on the first page of the Civil Order of Detention for Tuberculosis.

Request for Notification of Friends, Family or Others

_____ I request that the health department tell the following person or people about my detention:

Person # 1: Name: _____
 Address: _____
 Telephone number: _____

Person # 2: Name: _____
 Address: _____
 Telephone number: _____

_____ I do not request that the health department tell someone about my detention. If I decide I want one or two people told about my detention, I will contact the health department contact person listed on the first page of the Civil Order of Detention for Tuberculosis

* * * * *

For the person delivering the order if the patient refuses to sign or complete this form:

I, _____ (printed name), explained this form to the patient and asked the patient to sign and complete this form, but the patient refused to sign or complete the form.

Signature: _____ Date: _____

Date: _____

PROOF OF PERSONAL SERVICE

State of California, City/County of _____

_____, the undersigned, states:

I am an agent of the City/County of _____, in which the within-mentioned personal service occurred. My business address is:

I delivered the attached CIVIL ORDER OF DETENTION FOR TUBERCULOSIS and NOTICE AND RESTATEMENT OF RIGHTS by hand to the following person at the following address, date, and time:

Name of person served: _____

Address where service took place: _____

Date of service: _____

Time of service: _____

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at _____, California on _____, 20__.

Signature

Date: _____

TERMINATION OF CIVIL ORDER OF DETENTION FOR TUBERCULOSIS

This termination issued by: _____ (Signature of Health Officer or Designee)
_____ (Printed name and title)

This termination issued to: Name: _____
Address: _____
Telephone number: _____ Date of Birth: _____
Medical record number: _____

Termination

On _____, you were issued a Civil Order of Detention for Tuberculosis. That order is hereby terminated, and you are hereby released from detention.

This termination distributed to:

- Patient: _____ (Printed name)
- Health Officer: _____ (Printed name)
- Tuberculosis Controller: _____ (Printed name)
- County Counsel: _____ (Printed name)
- District Attorney: _____ (Printed name)
- Detention Facility Contact: _____ (Printed name)
- Other (e.g., Case Manager, Health Care Provider):
_____ (Printed name)
_____ (Printed name)