



TB and the Law Project

TB Control and the Law Frequently Asked Questions on Criminal Commitment

<p><i>Is failure to comply with a health order a crime?</i></p>	<p>§120275:* After notice or upon demand, the failure to comply with a health order of the California Department of Health Services is a misdemeanor which is a crime. See below for the definition of a misdemeanor.</p> <p>§120280: Failure to comply with a health order issued by a local health officer pursuant to §121365 is a misdemeanor.</p> <p><i>Comment:</i> §121365 states that a local health officer may issue any orders he or she deems necessary to protect the public health, and may make an application to a court to enforce those orders.</p>
<p><i>Is any other behavior by a person with TB a crime?</i></p>	<p>§120290: A person who has TB and who willfully exposes him or herself to another person is guilty of a misdemeanor.</p> <p><i>Comment:</i> A “willful” act is an action that proceeds from a conscious motion of the will. It is voluntary, conscious, and purposeful, not accidental.</p>
<p><i>What is a misdemeanor and what punishment can be imposed?</i></p>	<p>California Penal Code §§ 17 and 19 state that a misdemeanor is a non-felony crime. Penalties for a misdemeanor are a fine and/or imprisonment for up to 6 months, unless otherwise specified by a particular statute.</p> <p><i>Comment:</i> The TB control statute specifies that violations of TB-related health orders may result in imprisonment for up to one year.</p>
<p><i>Where can confinement occur?</i></p>	<p>§120280: Confinement may occur in any appropriate facility, penal institution, or dwelling approved by the local health officer.</p>
<p><i>For how long can a person be confined?</i></p>	<p>§120280: Confinement can last as long as indicated in the order of the health officer or until terminated by the local health officer. Under no circumstance may confinement last more than 1 year.</p>

* All references are to the California Health and Safety Code unless otherwise specified.

<p><i>Can a person go on probation instead of being confined in jail?</i></p>	<p>§120280: Rather than confining a person in a penal institution, a court has discretion to place the person on probation for up to 2 years if the court has assurance that person will comply with the order of the health officer. If the offender does not comply with the terms of probation, the probation shall be terminated and confinement may be ordered.</p>
<p><i>Does a local health department have to use civil commitment procedures prior to using criminal commitment procedures?</i></p>	<p><i>Comment:</i> Nothing in the Health and Safety Code requires civil detention to precede criminal detention. In other words, if an individual violates a valid TB-related health order, that individual may be charged with a misdemeanor violation and sentenced to confinement for up to 1 year without ever having gone through the civil detention process.</p>
<p><i>Does a person <u>have</u> to be prosecuted for violating a health order?</i></p>	<p>§ 121365: A health officer is required to notify the district attorney in writing of any violation of a health order of which the health officer becomes aware.</p> <p>§120300: A district attorney is obligated to prosecute all violations of §§121365 and 120280. A district attorney has discretion about whether to prosecute under the civil or criminal sections of the code, however the district attorney is supposed to prosecute under the criminal sections of the code if requested by the health officer.</p> <p><i>Comment:</i> District attorneys have prosecutorial discretion, which means they have freedom to determine whether or not to prosecute a particular case. Although §120300 seemingly removes this discretion from the district attorney, the district attorney actually retains discretion to prosecute when he or she believes there is sufficient evidence and need for prosecution.</p>