Research Protocol for Emergency Suspension Powers Laws

Prepared by Kelly Thompson, JD & Nick Anderson, JDi; iii

June 2017
Research Protocol

I. Date of Protocol: June 30, 2016

II. Scope: Compile state laws that grant emergency powers to governors to alter the legal infrastructure of the state (i.e., statutes and regulations) during an emergency.

III. Primary Data Collection


b. Dates covered in the dataset: The research identified laws in effect as of June 21, 2016, and the dataset is cross-sectional.

c. Data collection methods: Research was conducted by two legal researchers, each covering half of the states and the District of Columbia. Using WestlawNext, each researcher identified and compiled laws that indicate the types of emergency powers granted to governors and/or other public health authorities during a declared emergency.

d. Search terms: “emergency powers” & governor; suspend & emergency & governor

e. Information about initial returns: If statutes and regulations internally cited or cross-cited to other provisions, researchers browsed these provisions and determined whether they were relevant and also should be included. The researcher organized the results. The table of contents helped the researcher initially identify the relevant context of each statute or regulation. Any statutes or regulations that appeared relevant on this search of the table of contents also were collected.

f. Additional inclusion or exclusion criteria: To determine the results that would be included in or excluded from the project scope, researchers identified the results that provide emergency powers to alter the state’s law during a declared emergency.
i. Results that relate to the following were included:

1. Powers granted to governors to suspend, amend, and modify existing law during a declared emergency
2. Powers granted to governors and/or other authorities to create new law during a declared emergency

ii. Results that relate to the following were excluded:

1. Authority granted to governors or other authorities to amend, modify or rescind existing law related to emergency management but not concurrent with an active, declared emergency
2. Administrative Procedure Acts, guiding emergency (immediately effective) law-making activity that is unrelated to a response to a declared emergency
3. State emergency plans, detailing the preparation for an emergency response and/or the activities undertaken during a declared emergency unrelated to altering state law
4. Emergency powers granted to governors and/or other authorities that are unrelated to altering law, such as authority to determine the use of public utilities (e.g., HI ST § 127A-12), or funding determinations and requests.

IV. Coding

a. Development of a coding scheme: Upon completion of the legal research, the researchers discussed their findings in meetings and developed a coding scheme. As needed, the coding scheme was adjusted to accommodate discoveries within the law or during the coding process, and coded states were recoded accordingly. Please note, general emergency management powers to change law that are granted to the governor and/or other entities perpetually, and not exclusively during the duration of a declared emergency, are not included in the scope of this dataset.

i. Ex. NC ST 10-3-104(b)(2):

“(b) Powers of the Governor.--The Governor is authorized and empowered to do the following:

... 

(2) To make, amend, or rescind the necessary orders, rules, and regulations within the limits of the authority conferred upon the Governor herein, with due consideration of the policies of the federal government.”
b. Coding questions: The coding scheme included the questions below.

i. Does state law grant emergency powers to the governor to change law during a declared emergency?
ii. What emergency powers are granted to change law?
iii. What types of law may be changed?

c. Operational definitions: The following operational definitions were adopted for the purposes of coding this dataset:

i. Emergency powers: Powers granted to governor to alter the legal infrastructure (law) of the state during a declared emergency, including through suspension, modification/amendment, or affirmative creation of new law effective for the duration of the declared emergency.

ii. Law: Includes all types of legal authority in the state, such as statutes, regulations, rules, requirements, ordinances, procedures, and orders.
   1. Ex. OR ST § 401.192(1): “laws, ordinances, rules and orders”
   2. Ex. NY EXEC § 29-a(1): “specific provisions of any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency”
   3. Ex. MD PUBLIC SAFETY § 14-107(d)(1)(i): “any statute or rule or regulation of an agency of the State or a political subdivision”
   4. Ex. MN ST § 12.32: “rules and ordinances of any agency or political subdivision of the state”

iii. Regulations: Includes rules, requirements, procedures or other nonlegislative formal authority issued by state agencies, departments and/or other political subdivisions.
   1. Ex. NC ST § 166A-19.10(b)(2): “necessary orders, rules, and regulations”

iv. Statutes: Refers exclusively to statutes enacted by legislature. Note that the phrase “regulatory statutes” is coded as “Statutes” in this dataset. In this context, “regulatory” is deemed to describe the type of statute. It does not to refer separately to regulations.
1. Ex. MT ST § 10-3-504(2)(a): “any regulatory statute prescribing the procedures for conduct of state business”

v. Suspend: For the purposes of this dataset, suspension and waiver of laws were treated synonymously. For the coding question, What emergency powers are granted to change law?, “To suspend law” was coded if a state law permits a governor to waive law during an emergency.

d. Quality control: Each researcher independently duplicate coded a random selection of 20% of the states coded by the other researcher. The research team regularly met to discuss and resolve any divergences between the original and duplicate coded records. Any coding determinations made by the research team to resolve divergences also were applied to each researcher’s coded records in all remaining states, as appropriate.

V. Updating the Dataset

a. Update: June 2017

i. Data collection methods: A Researcher, overseen by a Supervisor, researched all relevant laws enacted or amended between June 2016 and June 2017. Searches were conducted for enacted bills amending emergency suspension powers laws and regulations coded in MonQcle, as well as any new legislation impacting the dataset. Research was conducted using WestLawNext and LexisNexis. The Researcher used the search terms: “emergency powers” & governor; suspend & emergency & governor; adding “CR(2016 2017)” to each search string to capture laws enacted or amended in 2016 or later.

ii. Coding updated findings: Two states had amended their relevant laws since June 30, 2016; however, the amendments to the laws were not relevant to the dataset scope and did not impact the coding responses in those states. The legal text of the amended laws was updated in each state’s record in MonQcle.

iii. Quality control: The Supervisor and an additional Researcher redundantly researched the two states with amended laws and confirmed that the amendments were not relevant to the dataset scope and did not impact the coding responses. No new entries were added to the dataset and no existing coding was revised; therefore, duplication of coding was not conducted.
Policy Analyst, Research & Evaluation Group at Public Health Management Corporation. ii Legal Analyst/ORISE Fellow, Public Health Law Program, Office for State, Tribal, Local and Territorial Support, Centers for Disease Control and Prevention. iii Initial research protocol, collection of laws, and data analysis was conducted in 2012–2013 by Akshara Menon, JD, MPH, Public Health Analyst, Carter Consulting, Inc., with the Public Health Law Program, Office for State, Tribal, Local and Territorial Support, Centers for Disease Control and Prevention. Research, data analysis, and editorial assistance were provided by Gregory Sunshine, JD, Public Health Analyst, Carter Consulting, Inc., and Matthew Penn, JD, MLIS, Director, both with the Public Health Law Program, Office for State, Tribal, Local and Territorial Support, Centers for Disease Control and Prevention.