The Challenge Of Mandatory Evacuation: Providing For And Deciding For

Government has an obligation not only to help people in an emergency but also to take decisive, although strictly limited, steps to remove them from harm’s way.

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ABSTRACT: Insufficient attention has been given to the ethical and legal questions surrounding mandatory evacuation in disasters and emergencies. We argue that mandatory evacuation orders entail a governmental duty both to provide for people and to decide for people: Government must trigger the provision of critical resources as well as vigorous and persistent efforts to persuade reluctant citizens to leave. Public health professionals, with their experience in weighing costs and risks in the face of uncertainty and balancing individual liberties with the need to protect the common welfare, offer a unique perspective that should be brought to bear in emergencies and disasters. [Health Affairs 25, no. 4 (2006): 958–967; 10.1377/hlthaff.25.4.958]

Public health officials have a critical role to play in preparing for and responding to large-scale emergencies. In the wake of Hurricane Katrina, for example, the Centers for Disease Control and Prevention (CDC) was instrumental in documenting the need for and urging the evacuation of flooded areas in Louisiana and Mississippi.1 After a chemical spill in South Carolina in 2005, local health officials were part of a response team that included fire, law enforcement, and emergency medical services (EMS) personnel.2 Public health should be part of a broad-based governmental response because of the threat of injury and death from a disaster itself as well as the resulting circumstances where diseases could easily spread, as when water is contaminated.

Among the most challenging and complex decisions to be made in any disaster is whether to invoke an order of evacuation. Mandatory evacuation orders necessitate confronting a series of policy questions to which virtually no attention has been given: What are the legal and ethical foundations of mandatory evacuation orders, given the fact that those who fail to leave their homes endanger primarily...
themselves, not other people? What level of coercive authority ought to be applied to those who fail to comply? Should penalties be sought in such cases? What duties of rescue, if any, do public officials bear for those who resist orders of evacuation? When there are such orders, what obligations does the government have to provide effective means for residents to leave safely?

This paper examines mandatory evacuation orders and their implications for public health policymakers. We use the debates surrounding the response to Hurricane Katrina as a case study, and the recommendations with which we conclude this analysis are particularly pertinent to any disaster that might involve advance warning. They are also broadly applicable to any situation necessitating evacuation, including natural disasters and bioterrorist events.

Legal And Ethical Foundations Of Mandatory Evacuation

Governments have ample authority to order and enforce mandatory evacuation orders in a wide variety of disasters. The U.S. Court of Appeals for the First Circuit has noted: “Almost every state…has adopted statutes providing for the exercise of police powers in the event of an emergency or disaster (such as fire, flood, tornado, or hurricane).”1 But there is diversity among states in terms of who may declare an emergency and who may order an evacuation.

Most state statutory schemes grant such authority to the governor. At the same time, most states also allow the exercise of such authority by a local government.4 The language of Louisiana is typical; it grants the governor power to “direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if he deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery.”5 Yet in some instances, authority is granted to both governors and municipal officials. A lack of clear lines of command undoubtedly complicated the response to Katrina in Louisiana and, later, Hurricane Rita in Texas.6

- **Federal authority to assist states.** The Disaster Relief Act Amendments of 1974, commonly known as the Stafford Act, gave the federal government the authority to assist state and local governments with disaster preparedness and relief but specified that assistance be contingent on a request by the governor of a state, based upon “a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the state.” This provision also mandates that as a condition of receiving federal assistance, the governor must “direct execution of the State’s emergency plan”—which typically includes evacuation measures—thus reemphasizing the state as primary authority in the disaster at the same time that the federal government becomes involved.7

- **Case-law basis for evacuation orders.** Case law provides a second unequivocal basis for taking forceful actions in response to an emergency.8 U.S. courts have upheld the authority of the government to force evacuations in life-threatening emergencies.9
Lessons from quarantine orders. Mandatory evacuation involves some of the same considerations as quarantine. In sharp contrast to quarantine, however, which is designed to protect the community from contagion, those who defy an evacuation order place primarily themselves at risk. This is not to say that there is no potential risk to third parties. The safety of emergency responders who might be called on to rescue those who have refused to obey an evacuation order and the fair distribution of scarce personnel resources suggest that people who defy evacuation orders impose burdens on others. But the central and perhaps most vexing ethical question is whether such orders are unacceptably paternalistic, substituting the judgment of U.S. government officials for that of the affected parties. Some paternalistic public health measures, such as seat belt laws, are widely accepted, while others, such as motorcycle helmet laws, have been highly contested.

The issue of paternalism takes on a different cast in considering the case of minor children whose parents might place them at risk by defying evacuation orders. It has long been accepted in law and policy that the state may overrule parental choice when the welfare of children is endangered. In the case of disaster response, Puerto Rico’s emergency management statute provides for evacuation of “minors...against the will of their parents, guardians, custodians or tutors.” Yet in practice, there is no evidence of children having been forcibly removed from their parents’ custody during an evacuation.

The Meanings Of Mandatory Evacuation: Providing For And Deciding For

In the political aftermath of Hurricane Katrina, as vituperative accusations of incompetence and misjudgment roiled all levels of government, debate focused on logistical issues related to implementing wide-scale evacuation. Central to the controversy was whether state and local officials in Louisiana had issued mandatory evacuation orders soon enough and provided citizens adequate information and assistance to escape from the path of the storm. In the fall of 2005, the U.S. House of Representatives created a Select Bipartisan Committee to investigate the failures of the response to Katrina. In the course of those hearings, there emerged two different understandings of what mandatory evacuation entails. Some participants emphasized that evacuation orders involve providing for people: They require government to furnish a variety of forms of assistance and relief. This view is premised on the belief that populations want to leave but might be unable to do so. Others, however, emphasized that such orders entail deciding for people: They preempt the poor judgment of people who would court disaster and stay behind.

Responsibility to provide. Rep. Christopher Shays (R-CT) stressed the obligations that a mandatory evacuation order places on governments when he criticized public officials for their tardiness in imposing such a measure: “The point of making it mandatory was that then there’s a whole host of assistance that your community gets. They don’t have to just get in their cars and drive off. They are given spe-
cial assistance.”

In the states and territories vulnerable to hurricanes, issuance of an evacuation order generally triggers the provision of a variety of services. The law in such states frames these measures as a means to “reduce the vulnerability of the people” or to provide for their “care and welfare.” In many states these obligations are contingent on the governor’s declaring a state of emergency. The Stafford Act also authorizes the U.S. president to provide “temporary housing” free of charge for twelve months. In some states and territories, language specifying the obligations of the states is exceedingly general. These obligations are imposed whether or not an order of mandatory evacuation has been issued. Florida’s governor, for example, has a general mandate to provide shelter and relief.

The duty to provide care is an especially critical one for sick and elderly populations, whose needs might include prescription medications and other life-sustaining interventions that must be assured after evacuation. In preparing for Hurricane Georges in 1999, for example, Louisiana officials were surprised by and unprepared for the number of people with special needs who required help evacuating. And, according to a 2005 survey, commissioned by the National Center for Disaster Preparedness, 25–30 percent of the U.S. population feel that they would be unable to evacuate without some assistance.

Responsibility to decide. Louisiana Gov. Kathleen Blanco and most officials familiar with the threat of hurricanes believe that there will always be some people who feel that they are “tougher than the storm.” Without shifting attention away from the 80 percent of the Louisiana population reliant on public transportation who were insufficiently provided for, the House committee found that those who had the capacity to leave yet chose to remain behind “must share some of the blame.” The view that the government bore an obligation not only to provide for the public but also to compel them to evacuate did not appear in the committee’s final report. During the hearings, however, Representative Shays and others made this argument quite explicitly. Said Shays, “If your argument to us is...we're brave, we're tough, so we're going to stay..., that's the whole point of making it mandatory. You don't have an option. You're going.” For such critics, it was unconscionable to have the power to force people to leave and not use it.

Governor Blanco gave voice to the opposing view when she argued that evacuation at “gunpoint” was unjustified, unnecessary, and impractical. “In the United States of America,” she said, “you don't go out and force people. You urge people.” This position is consonant with the recent history of responses to hurricanes, in which mandatory orders were issued with little intention of enforcing them. As a consequence, one Florida official has argued that “‘mandatory evacuation’ is a misnomer: Officials can’t force anyone to leave.” But it is a false dichotomy to suggest that because people cannot be forced to leave, they can only be asked. There exists a broad spectrum of options, which we lay out in our recommendations, between the two extremes.
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House’s final report. The House committee presented the results of its inquiry in February 2006. It was particularly critical of the political decision to carry out the mandatory evacuation order, once it was issued, by “asking” people to go rather than taking steps to enforce the order. Strikingly, although the committee’s report conceded that there was a lack of a “clear and consistent definition of mandatory evacuation,” it failed to give guidance as to what mandatory orders should entail. It noted only that the term “implies that individuals do not have a choice, that the government will not be able to protect them and provide relief if they remain, and it generally conveys a higher level of urgency.”

To have any meaning, orders of mandatory evacuation must do more than imply danger. They must require the government to take clear and decisive steps to enforce them. We next recommend specific steps that should be taken in light of the ethical and legal issues we have laid out. One of the primary challenges related to the use of precautionary measures such as mandatory evacuation is that actions taken preemptively to reduce harm can themselves cause harm. Therefore, we also describe the costs and potential burdens that mandatory evacuation orders can impose on governments and individuals.

Policy Implications And Recommendations

Coercive mandatory evacuation measures are necessary and justifiable because many of those at risk during disasters lack access to the media, sufficient knowledge, or adequate experience to make sound decisions about whether to evacuate on their own. States should therefore review emergency management statutes with an eye to clearly and explicitly defining what steps they must take in a mandatory evacuation. Specifically, there must be some mechanism for ensuring that residents are aware that a mandatory order of evacuation has been issued. The means for compliance must be available, such as information about evacuation routes, public transportation, and shelter. Mechanisms to enforce evacuation should begin with the least restrictive, least resource-intensive alternatives and proceed to the more forceful, more costly methods as urgency demands.

Enforcement of evacuation. For moral and pragmatic reasons, mandatory evacuation should not entail physical force, but officials should be required to use a variety of nonphysical means of enforcing the order. The least intrusive strategy has been to make contact with people through “reverse 911” calls (warning about the urgent need to leave). Such calls should also be made to residents who are requested not to evacuate, to minimize the problem of shadow evacuation, in which people who are not in danger nonetheless hit the roadways. Shadow evacuation can lead to traffic jams that leave people who are truly at risk trapped on highways. About half
of the two million people who evacuated Florida in anticipation of Hurricane Floyd in 1999, for example, were shadow evacuees.  

In more urgent situations, sending fire or law enforcement personnel door to door or, at the very least, neighborhood to neighborhood with loudspeakers is warranted. For example, the president of one of Louisiana’s low-lying parishes called for a mandatory evacuation on the Saturday morning before Katrina made landfall. On Sunday, sheriff’s deputies went house to house to warn any remaining residents of the need to evacuate and to identify those who required further assistance. In this way they were able to evacuate up to 98 percent of the parish’s population and avert all but three deaths. Although these enforcement strategies have often proved to be effective, they have also been criticized by some as representing an inappropriate use of scarce resources in an emergency.

■ Penalties for refusal. Although not necessarily less resource-intensive, various types of pressures or burdens have also been placed on those who refuse to leave. Local police have often asked those who refuse to evacuate for contact information for next of kin to impress on them the gravity of the risk they were assuming. Some legal scholars have recommended this as a more practicable and effective use of police authority. Other tactics involve levying financial penalties on people who refuse to obey a mandatory order. North Carolina, for example, holds people who ignore a disaster warning and then must be rescued civilly liable for the costs. Most states also specify that violations of the emergency statute are misdemeanors. But there are practical and ethical questions as to whether people should be arrested for failure to evacuate. Even when the law allows citizens to be held liable for the costs of rescue efforts, it is not ethically permissible to consider enforcing this measure unless citizens have been fully informed of the consequences of their actions.

■ Preparation for special-needs people. People in need of special assistance in an emergency can be tracked through a registry or database maintained by the state. In Florida, for example, a registry of those with physical, mental, and sensory disabilities contains data from a number of social welfare agencies and is updated annually. Registration allows citizens the option of preauthorizing emergency response personnel to enter their homes during search-and-rescue operations. New York maintains a voluntary registry. Few states maintain such registries. Statutes and emergency management plans should also be amended to include specific provisions for establishing and updating registries of disabled and elderly populations and for coordinating these registries with state and local agencies serving these populations. The privacy-limiting features of such registration require the government to restrict the use of sensitive data to emergency evacuation purposes only.

■ Costs of evacuation. Mandatory evacuation orders entail enormous economic costs to governments and individuals. Because not all citizens have the financial resources necessary to evacuate, states should provide certain key resources—namely, means of egress to anyone who wants or needs transportation, and shelter equipped with sufficient food, water, and security personnel. Mandatory evacua-
“State emergency management statutes should provide job and wage protection for workers who comply with an order of evacuation.”

Mandatory evacuation also imposes costs on individuals and businesses if the impending disaster fails to materialize. (If the disaster does strike, the costs associated with lost business are not attributable to the evacuation.) These include loss of time at work and extra expenditures for gasoline and lodging for evacuees as well as danger to temporarily abandoned property. Some employers threaten to dock the pay of workers who evacuate, thrusting them into an untenable position of weighing their lives against their jobs. State emergency management statutes should therefore provide job and wage protection for workers who comply with an order of evacuation.

Some of the costs to both governments and individuals are not calculable in strictly monetary terms. For individuals, such costs might include hours spent on roadways, stays at uncomfortable shelters with little or no privacy, and burdens on family members and friends with whom they stay. For governments, an order of evacuation could damage the credibility of public officials if the forecasted disaster fails to strike. A Marist public opinion poll focused on terrorism found that one-third to nearly half of people surveyed at three different intervals in 2004 and 2005 cited lack of confidence in officials issuing orders as representing a reason not to evacuate immediately. New Orleans Mayor Ray Nagin underscored this point when he argued that a rash mandatory evacuation order issued by one of the city’s parish presidents the prior year “had the effect of lowering public confidence on exactly when they would listen to a public official as far as ordering a mandatory evacuation.”

Evacuations also pose special risks to the ill and disabled. In the case of hospital populations, the question raised during Katrina was “whether they were harming them more by moving them or not.” Mississippi officials did not order mandatory evacuation for areas on higher ground that had a “large number of medical facilities” and where evacuation would have posed a “potential risk to patients.” In prior hurricanes, sick and elderly people have been moved from hospitals and nursing homes to facilities as many as 100 miles away, only to suffer cardiac deaths presumably as a result of the shock of transit or the stress of the situation. An elderly person, even if physically and mentally healthy, will likely have one or more prescription medications to take and might feel disoriented if sent to a shelter without friends or family present.

■ Responsibilities for resource provision. Who, then, is responsible for pro-

Preparedness
viding vital resources? In anticipation of Katrina, the Jefferson Parish president said that he lacked the necessary resources to enforce mandatory evacuation orders. Yet, noted the House Select Bipartisan Committee report, “no one requested that the state or federal government provide resources to supplement those of the parish to implement more complete evacuation.” Federal Emergency Management Agency (FEMA) officials, however, strenuously distanced themselves from the position that if local resources were insufficient, then the federal “government needed to assist people to evacuate.” Nonetheless, if local and state officials are unable to extend the necessarily assistance, then this burden must be borne by the federal government.

The Stafford Act broadly authorizes the president to direct any federal agency to use its resources to support state and local disaster assistance efforts and to “prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions” of the act. It also specifically authorizes federal agencies to perform “any emergency work or services essential to save lives and to protect and preserve property, public health and safety, including search and rescue, emergency medical care, emergency mass care, emergency shelter, and provisions of food, water, medicine, and other essential needs, including movement of supplies or persons.” The federal government must be willing to use this discretionary power in cases of massive mandatory evacuation.

Role of public health. Public health offers a unique perspective and a history of legal, practical, and ethical experience that should be brought to bear in emergency and disaster situations. However, the potential conflicts over who has legal or statutory authority to act in an emergency have been at the heart of efforts since early 2001 to update the patchwork of state-level public health laws—efforts given increased urgency under the looming specter of bioterrorism. Public health professionals can increase the prospects for an efficient, effective, and humane disaster response by becoming familiar with the roles that they and other public-sector officials will play and by developing contingency plans in concert with their counterparts in law enforcement and emergency management.

Decision-making tools exist to help agencies such as FEMA, the Army Corps of Engineers, and local officials assess technical considerations about the timing and scope of an evacuation. But it is also necessary to make clear the obligations of government regarding the degree to which it is required to provide for people and the specific but limited measures that it must take when deciding for them.

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NOTES


4. Ibid.


6. Governor’s Task Force on Evacuation, Transportation, and Logistics, “Final Report to the Governor” (Austin, Tex.: Governor’s Task Force, 14 February 2006), 4, 8.


12. The issue has often been raised in the context of religious minorities: see, for example, Prince v. Massachusetts, 321 U.S. 158 (1944), the U.S. Supreme Court case overriding the right of a Jehovah’s Witness to have a minor child distribute religious tracts on the ground that it constituted child labor.


16. Ibid., remarks of Rep. Christopher Shays (R-CT).

17. Ibid.


27. M. Amon, J. Partlow, and R. McGaffrey, “Isabel’s Angry Rampage Proves to Be ‘As Bad as We Expected’; in
29. U.S. House, A Failure of Initiative, III.
30. Ibid., 108.
34. U.S. House, A Failure of Initiative, II.
35. Johnson and Railey, “Evacuation Procedures.”
40. Title XVII, Florida Statutes of 2005.
45. Gowen, “Belle View Evacuation Allegedly Delayed.”
46. Redlener et al., “Follow-up 2005.”
49. Ibid., remarks of Brent Warr, sec, Gulfport, Mississippi.
51. U.S. House, A Failure of Initiative, I.
52. Disaster Relief Act Amendments of 1974.