

Trust in Public Health Law Is Earned by Doing

Scott Burris, JD

National Academies of Sciences, Engineering and Medicine: “Navigating Infodemics and Maintaining Trust during Public Health Emergencies: A Workshop”

The Wrong Model





ACT for Public Health



**Health law partners addressing challenges to
public health authority and infrastructure.**



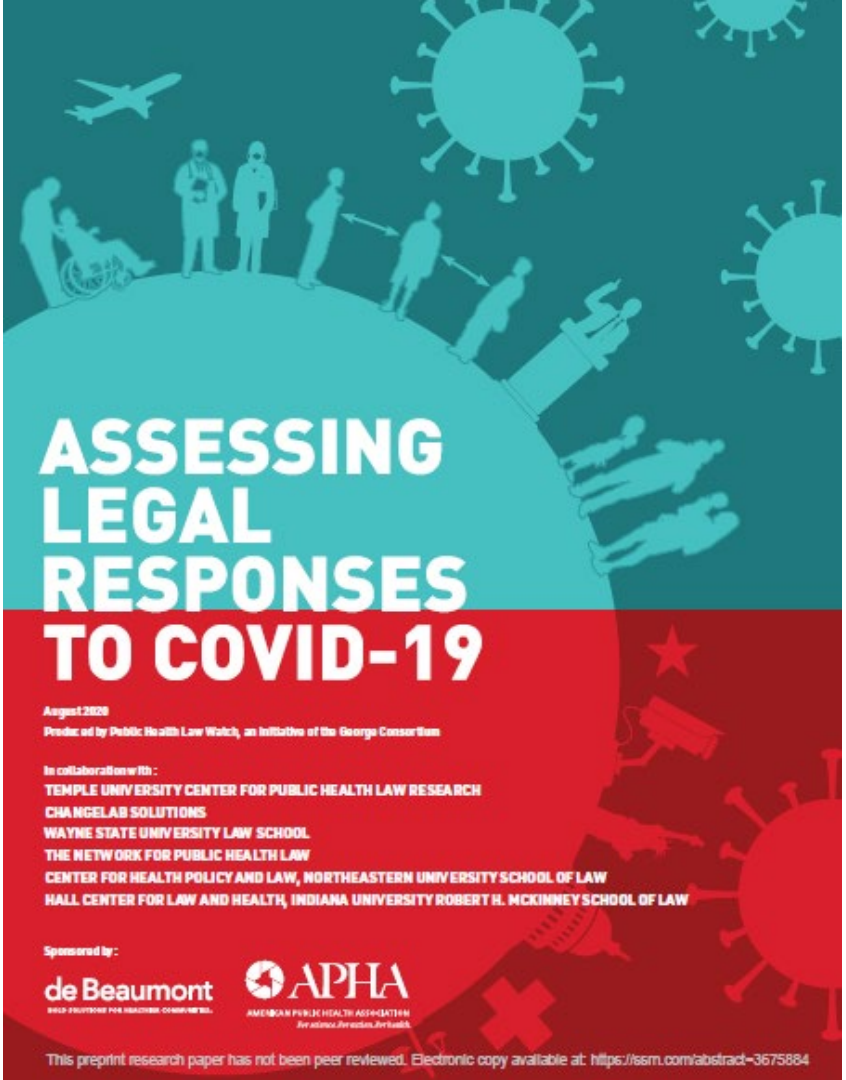
Perhaps more than at any other time in its history, public health is being directly and significantly impacted by how laws and policies are being implemented—or weakened.

Law is a treatment – but not treated like one

Law is not developed, implemented and evaluated strategically or systematically. Typically, we don't know:

- **Whether and how it is working**
- **Whether it has side effects**
- **Where it has been adopted**





ASSESSING LEGAL RESPONSES TO COVID-19

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In collaboration with:

TEMPLE UNIVERSITY CENTER FOR PUBLIC HEALTH LAW RESEARCH

CHANGELAB SOLUTIONS

WAYNE STATE UNIVERSITY LAW SCHOOL

THE NETWORK FOR PUBLIC HEALTH LAW

CENTER FOR HEALTH POLICY AND LAW, NORTHEASTERN UNIVERSITY SCHOOL OF LAW

HALL CENTER FOR LAW AND HEALTH, INDIANA UNIVERSITY ROBERT H. MCKINNEY SCHOOL OF LAW

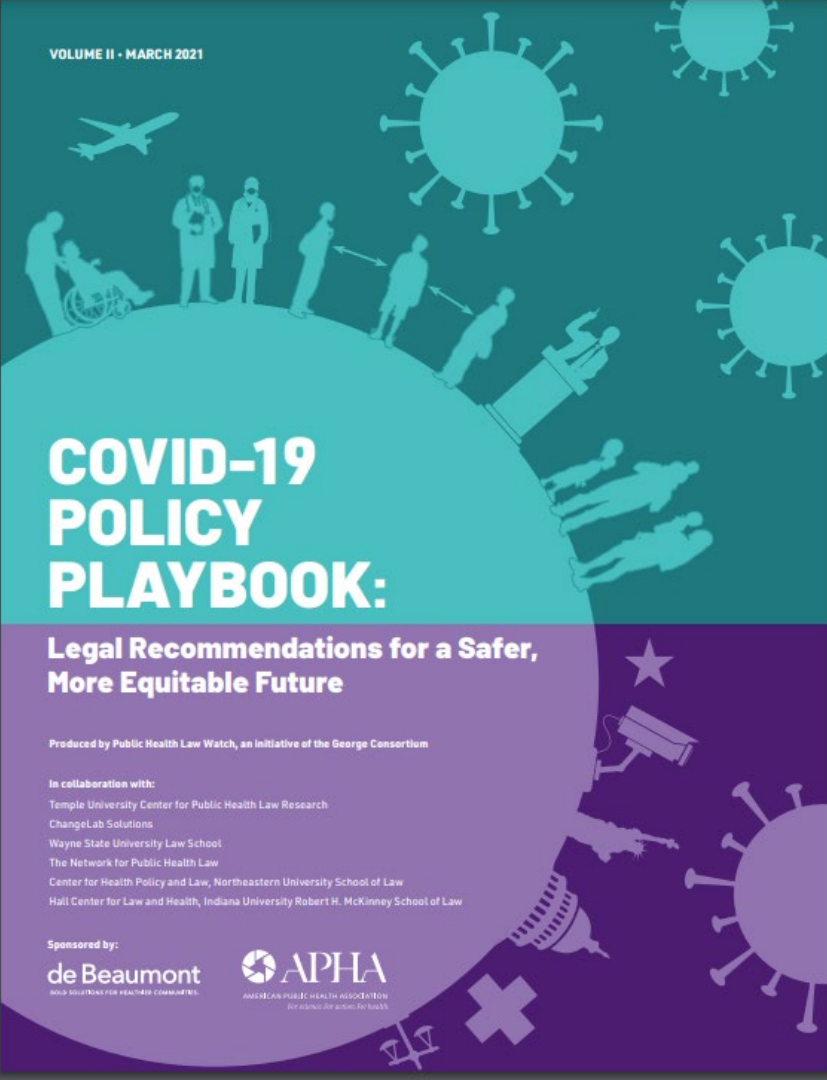
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BOLD SOLUTIONS FOR CHANGING COMMUNITIES



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COVID-19 POLICY PLAYBOOK:

Legal Recommendations for a Safer, More Equitable Future

Produced by Public Health Law Watch, an initiative of the George Consortium

In collaboration with:

Temple University Center for Public Health Law Research

ChangeLab Solutions

Wayne State University Law School

The Network for Public Health Law

Center for Health Policy and Law, Northeastern University School of Law

Hall Center for Law and Health, Indiana University Robert H. McKinney School of Law

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BOLD SOLUTIONS FOR CHANGING COMMUNITIES





Perspective

MAY 27, 2021

The “Legal Epidemiology” of Pandemic Control

Scott Burris, J.D., Evan D. Anderson, J.D., Ph.D., and Alexander C. Wagenaar, M.S.W., Ph.D.

The centrality of law as a public health intervention has been undeniable during the Covid-19 pandemic. In just the first half of 2020, more than 1000 laws and orders were issued

by federal, state, and local authorities in the United States in an effort to reduce disease transmission. Legal interventions include stay-at-home orders, mask mandates, and travel restrictions, as well as more particular rules for business operations, alcohol sales, curfews, and health care. Given their heavy use, importance, and obvious socioeconomic side effects, and the social and behavioral complexities of their implementation, one might have expected the National Institutes of Health (NIH), other research funders, and the research community to jump to the work of determining the right mix, intensity, and enforcement approaches of legal restrictions to control transmission with the least and

most equitably distributed harms.

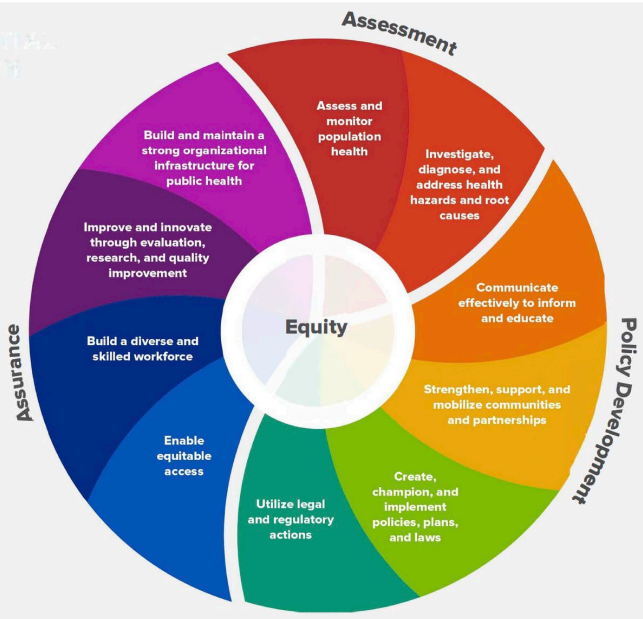
No organized research program emerged. The NIH pumped \$3.6 billion into biomedical research related to Covid-19. The Gates Foundation added \$350 million. Billions more went into the development of vaccines. All reasonable investments. But funding for scientific evaluation of legal effects and public health systems research was paltry, at a time when hundreds of thousands of lives, the socioemotional development of millions of children, and billions of dollars in economic activity directly depended on questions about control measures, enforcement methods, the organization of the health system, and the many ways in which law was immediately influ-

encing vulnerability, resilience, and social behavior. This negligence is a long-standing pattern: between 1985 and 2014, NIH funded just 510 extramural research grants on the health effects of laws or enforcement practices — less than 0.25% of all funded grants.¹

It is past time for a broad recognition in our health system that law is a ubiquitous treatment, one to which hundreds of millions of people are routinely exposed. If that simple but telling analogy is accepted, a more pressing point follows: we should devote much more health research money and talent to the scientific study of the health effects of laws and legal practices (“legal epidemiology”). To be sure, considering laws as treatments is a matter of analogy, not identity. Laws are not pills and cannot be developed, pretested, dosed, and delivered like pills. That said, the relative neglect of research on law

It is well established that the usefulness of any legal control measure will depend not on its potential effectiveness under optimal conditions, but rather on its functioning and effects in the typical conditions of real life.

Public health practice now emphasizes the role of law.



Create, champion, and implement policies, plans, and laws that impact health.

Domain 5 focuses on health departments' ability to influence policies, plans, and laws by working across sectors with partners and the community to consider the health implications, correct historical injustices, and provide fair and just opportunities for all to achieve optimal health. Health departments play an important role to serve as a primary and expert resource for reviewing and evaluating policies for their impact on health by considering the evidence and gathering input from among affected stakeholders.

A collaborative health improvement planning process is an opportunity for the community to determine which strategies can best leverage assets and address health needs. Health departments and their partners can consider a range of policy, systems, and environmental (PSE) changes aimed at creating conditions in which all residents have the opportunity to be healthy. Health improvement planning efforts can take a life course approach to support positive life trajectories.

The Five Essential Public Health Law Services



Policy
development

Choosing the
legal form

Enactment

Implementing/
enforcing/
defending

Evaluation
and diffusion

Burris, S., Ashe, M., Blanke, D., Ibrahim, J., Levin, D. E., Matthews, G., . . . Katz, M. (2016). Better Health Faster: The 5 Essential Public Health Law Services. *Public Health Reports*, 131(6), 747-753. doi:10.1177/0033354916667496

What Can Public Health Leaders do?

- Give more attention to the relationship among law, trust and misinformation.
- Help spread the word in the community that lack of legal competency played an important role in both resistance to COVID-19 emergency rules and their difficulties in court, and will cause problems again if no action is taken.
- Recognize that the design, enactment, implementation and evaluation of law are all core components of public health work – and point to the tools and resources of public health law and legal epidemiology that are now available for teaching and doing that work
- Speak forcefully to the need to significantly strengthen and improve legal training and professional capacity in the workforce.