



Module 2- Legal Infrastructure

Part 1- The Importance of Law in the Public Health Infrastructure

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- I'm Scott Burress. I'm a Professor of Law and Public Health at Temple University and I'm the Director of the Public Health Law Research Program of the Robert Wood Johnson Foundation. And I'm here to talk to you today about what we call the legal infrastructure of public health. This module has three parts. First, we discuss the general importance of law in public health. Second, we talk about how law and health research in public health can be integrated with practice in public health. And finally, we talk about some examples of legal infrastructure at work. Let's get started. This is Part 1: The importance of law in the public health infrastructure. Law really matters to public health and that's being recognized more and more, by more and more people in public health. Three times since 1988, the Institute of Medicine of the National Academy of Sciences has written reports about the state of public health. And in each of those reports it's emphasized the need for more attention to the basic statutory authority of health agencies. It's talked about how the laws that established and give the power to health agencies fused to those agencies has become outdated, is inconsistent with current judicial standards, is inconsistent with current public health practice. And of course, most importantly, that without an effective legal infrastructure we can't count on our health departments to do the job they're supposed to do.

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Centers for Disease Control and Prevention has long been an important user, supporter, researcher, on law and public health. Thirteen years ago, in the year 2000, the CDC established a full scale public health law program that funded research and then provided technical assistance and legal analysis both for CDC and health departments around the country. If you go to their website, they will tell you without any kind of qualification at all, that law is a critical part of the foundation for effective public health work. ASTHO. This is the national Association of State and Territorial Health Officers, puts the importance of law into practice every day in their organization. One of their important missions is to help state health officers cope with the landslide of legislation that gets launched by legislators every year in the area of public health. They're tracking these laws, they're trying to analyze which ones are evidence-based and which ones aren't, which ones are going somewhere, which ones are useful, and get that word out to health officers across the country



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who need to be up on the law and how to use it. NACCHO, which is the city and county level equivalent of ASTHO, has exactly the same position. They recognize that law is crucial to effective public health practice and that it's very important for public health professionals to be able to work with law, work with lawyers, and work with organizations around the law, to be effective in their day-to-day work.

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Now, there's another reason why law has been so heavily used and that is because it works. Again and again. Many of public health's greatest successes have relied heavily on law. That's the CDC talking, not me. And if you look at this list of 10 great public health achievements in the last century, law is in every one of them. So for example, vaccination. Well, vaccination has been tremendously important for us in preventing vaccine-preventable diseases. Laws in every state require vaccination for children. Motor vehicle safety, we've already talked about. Safer workplaces, OSHA, we've talked about that. Control of infectious diseases in the AIDS epidemic, it's been said to be really important, not so much to regulate the behavior of people who might spread HIV, but to make sure that people who have HIV and get tested have confidentiality and are protected from discrimination. The decline in deaths from coronary heart disease and stroke has had a lot to do, for example, with clean indoor air laws and the reduction of exposure to smoking. Safer and healthier foods, we have a regulatory system starting at the federal government and working down to local restaurants and store inspections, that make sure we have hygienic and safe food. Healthier mothers and babies, well think about rules that require employers to allow mothers to breastfeed, which is better for their babies, or that require public places to afford space for breastfeeding mothers. Family planning, the right of people to access to contraception and contraceptive information. Fluoridation of drinking water, in public health, it's one of our favorite cases of constant ongoing local, political warfare over an evidence-based and well-supported intervention. But all around the country, ordinances are passing or being repealed to authorize or require fluoridation of drinking water. And of course, the tobacco issue I've already referred to.

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So, you know, we use law heavily because law works really well. So, where did I leave off? Back to who says law matters. Well, we have ASTHO and NACCHO and now we have NALBOH, which is the National Association of Boards of Health and we'll be going back to boards of health later in this class. So again here, the NALBOH sees the ability to use law, the ability to develop legal solutions, the ability to evaluate policies, to make sure they're working. All these they see as crucial characteristics of an efficient board of health, because law is central to what those boards of health are doing. Who says law matters? Well, my program, which is a part of a large investment by the Robert Wood Johnson Foundation in public health law, is an example how the foundation's center in public health appreciates the role of law. The Robert Wood Johnson Foundation is our



country's leading health philanthropy and they have launched a major initiative, including our program, to increase the use of law in ways that work to promote public health. In addition to the Public Health Law Research Program, which focuses on building the evidence base for the effectiveness of law, they've also supported The Network for Public Health Law, which provides technical assistance and training to health agencies and to community in public health law, as well as supporting the ongoing biennial Public Health Law Conference that brings together hundreds of public health lawyers, researchers, and officials from around the country.

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Well, who says law matters? That really matter? You do. And politicians do. In spite of the, I suppose, the myth that public health laws are somehow unpopular exercises of nanny state authority. In fact, time and time again, legal interventions to protect our health are passed rapidly by all 50 states in bipartisan majorities, with majorities that can override a veto. And here are just a few examples. What you see before you here are the dates of adoption of various public health laws over the last 20 years or so. So for example, laws requiring child restraints in cars. You can see, between the late 70's and the mid-80's, every state adopted one. If you look at seatbelt use, all but one state have done it. If you look at laws requiring GDLs, graduated driver's licenses, for younger drivers. Again, every state. And this happens again and again and again. And the reason is, both legislators and voters can see that these laws will be effective in solving or removing some significant risk. So it's true that in areas where we have a lot of debate and uncertainty about what our problem is and we're not quite sure what the solution is, law can be a lot more controversial. But broadly speaking, where we have been able to show through epidemiology that there's a real problem and lawmakers have come up with plausible solutions that stand the test of research, we see rapid and complete adoption and I think we'll continue to. It's not changing. You'd see these same curves now if you looked at laws about distracted driving, using cell phones and stuff while driving, or laws related to youth concussion in sports. They're spreading rapidly. And they spread rapidly for all the reasons I said before. Because we want to be protected, because we believe the law can do it, and because the law, in fact, does do it pretty effectively when properly used.

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Now, to get to the nub of things for our course, what about Healthy People 2020? Well here too, laws are running throughout the plan, right? Sometimes they're mentioned specifically or explicitly. So for example, when it comes to environmental health, trying to have all schools have official policies that promote healthy and safe physical school environment. Tobacco control, establish laws that prohibit smoking in workplaces and



worksites. Increase the number of statutes with Graduated Driver's Licensing laws, with good ones. So we're learning over time through public health law research, what features, what particular requirements for a novice driver, are most effective in reducing crashes. We want those to diffuse throughout the 50 states. Increase the number of states with licensing regulations for physical activity in daycare programs. So that we get healthier kids going into our kindergartens and grade schools. But of course, law is also plainly the right tool or one of the right tools in achieving many of the other Healthy People 2020 goals.

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So for example, in oral health, water fluoridation. You know, we know it works, we still have many more communities that need to adopt the rules that will require their water to be fluoridated. Mental health and mental disability, increasing the proportion of adults with mental health disorders who receive treatment. Well, we've always known that for people in acute psychiatric circumstances, sometimes legal intervention is needed to get people into treatment. And we also know, from a lot of research that there are many legal devices including psychiatric advance directives, that can facilitate access to treatment. We want to have better nutrition standards. Well, those don't come out of the air, sometimes private sector adopts them, but very often our standards are set through collective action by the government. But even something like reducing emergency department visits for asthma. Well, to some degree, primary care may take of that. Oh, did I mention primary care? Well, there's the Affordable Care Act. You know, a major law that's going to make a difference there. But of course, also a lot of asthma is triggered environmentally, so those environmental laws that we may forget and may take for granted, they are working behind the scenes to make sure that students, kids, people with asthma are not exposed to triggers that are going to send them to the ED. And of course, reducing firearm related deaths. You know, the fact that we now have-- Well, let's put it this way, we have a policy challenge around firearms that is set by law. The Second Amendment of the Constitution has now been interpreted by the Supreme Court to guarantee an individual right to bear arms. But like all constitutional rights, that's going to be limited and defined by courts over the years. And the fact that you have the right to a firearm, for policy purposes, is now no different than the fact that no one would ever have thought of preventing cars to prevent crashes.

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Dr. Hadden at NHTSA, had to figure out how you could take this legal product and make its use as safe as possible, by looking at all the factors that produce risk. And that's what's going to happen with firearms. And



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you can be sure, that there are going to be legal interventions among the interventions we can use to reduce the risk. Now a lot of what I'm going to talk about for the rest of today, has to do with the vision of law in Healthy People 2020 as this infrastructural characteristic, or infrastructural element of public health. In other words, we use law every day in public health, we depend upon law, law defines our powers, jurisdiction, limits. And the capacity to manage all that law in daily life of public health is crucial to the success of Healthy People 2020 as the document itself attests. So let me say before we finish, a few more words about the basic concepts of law that we'll be looking at today. First of all, we generally distinguish between three different flavors of law. Interventional public health law, which is like a seatbelt law, a law intended to influence health outcomes or health mediators, like the no smoking law that you see in the picture. Another type of public health law is what we call incidental public health law. And by this we mean that there are a lot of laws that have some other purpose, that were not necessarily thought of by their framers as health laws. They're nonetheless having an impact on public health. So for example, in the obesity realm, we're very conscious of the way that land use and zoning laws can shape the environment in ways that will influence whether or not people will walk or engage in recreation or not. So that's not a health law per se, but it has health effects, so we are interested in that kind of law in many instances.

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But today, we'll be focusing primarily on what we call infrastructural public health law, which is to say the laws that establish the powers, duties, and structure of public health agencies. Now then, what do we mean by law? Well, when we talk about law in this presentation, we're going to be talking about a process, as much as a piece of paper. So law exists, of course, in the form of what we might call law on the books, a statute, a regulation, a written rule, a court decision. But we know from decades of study of how law actually gets put into practice, that it really is transformed through the process of law. So the law on the books is given to an enforcement agency and that enforcement agency has leadership, and that leadership has priorities and they set policies and they have standard operating procedures, and they train the workforce, so they're taking a view of the law and putting it into practice. But of course, enforcement agency managers are not out on the street. Out on the street, it's the front line officers. And they are not merely passive bearers of either the management's ideas or whatever was written down on the books, right? These are people who bring their own knowledge, values, experiences, and beliefs to the application of law and so they'll also bring some subtle changes. And finally, very often, what the law is for most of us, is what we think it is. We never actually encounter the law on the books, let alone any enforcement agents. We have some notion of what the law is. And of course, our behavior is going to be influenced by that, much more than by words on a page we've never looked at. So let's talk about how that works out, give some examples.



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So in Healthy People 2020, one of the HIV objectives is to reduce new AIDS cases among adolescents and adults who inject drugs. Now to keep this simple, we know that two major drivers of injection-related HIV are whether or not you can get a sterile syringe and once you have that, do use it in a proper way? Avoiding sharing syringes, and so on. Well, what really drives those behaviors that are so crucial to HIV? Well, very heavily, law, right? Because we have laws on the books, in many places, that make it a crime to sell a syringe to a drug user or for a drug user to possess a syringe. Those laws may make needle exchange programs, that provide health information and safe injection to drug users, illegal. Now even when you don't have one of those laws, the question is still well, what's the posture of police leadership or police officers toward needle use by drug users? So we've had instances across the country where the law has been changed to allow needles on the books, but police departments have continued to arrest people for possessing them or for replacement charges, basically making it impossible for people to possess syringes, taking them away, harassing needle exchange programs, etc. And even if none of that happens, even if the law is changed and the police are fully on board and fully understand what's going on, drug users aren't going to change their behavior unless they believe it's legal to buy a syringe and that it's safe to carry a syringe. So you have to have all those pieces of the law and be conscious of all those pieces of the law, all those parts of the legal process, when you think about how law influences behavior and how we're going to use it in public health.

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OK, last set of key concepts which we're going to run into in our next module. These ideas, look at them, think about them, look at the green box, look at the grey boxes, see if you can match which is which. These capture various strands of what it is to know about and use the law within a health organization. So when we talk about legal capacity here, this is a box on the chart you'll see in the next part, we're just trying to capture what health agencies and the people in them, need to be able to do about law, what are the important things that they need to understand about law. So, legal competency, that's the knowledge of the law and one's legal role and the skills needed to perform that role. More broadly, there's something in sociolegal research called legal consciousness, which in this case we're using to talk about the understanding of people of the law and legal practice. That's a little different. That has more to do with the qualitative judgments, the sense that this is a rigged game? Is it a majestic system for administering justice? Do you win by the facts? Do you win by the law? Is law sort of a good thing or a bad thing? How individual states think about what it means to have legal skills and to use them. And then finally, there's this idea of institutional legal culture. So any organization, as you're surely aware, has a kind of culture. We may not be able to write down exactly what it is, no one may claim it. But people will sort of understand. And in terms of the law, there's going to be health agencies that are very aggressive and feel, yes we like our legal powers, we want to use them and there are going to be



health agencies that take the view that we don't want to get involved in anything that involves lawyers, we do not want trouble, etc. It expands out from there. So the organizational understanding of law and the process of legal action is also really important to understanding how health agencies and their staff work, in relation to their legal issues.

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Finally, 10 essential health services and the law. The 10 essential health services were devised by researchers in health services, to try and capture the key things we want to measure, to determine whether health departments are doing their job or not. You can see that they cover a good range of important things a health department should do, but there is definitely some law in there, right? A good health department should be able to develop policies and plans. It should be able to think about how to use law and put that into practice. And of course, it has to be able to enforce the laws and regulations that exist. If it can't do that, it's not doing its job. But there are other things in here that touch upon law too. So, public health law research, the ability to study the law, definitely comes into play, in terms of monitoring health status and diagnosing and investigating health problems and health hazards. You gotta be able to see where the law is, where it's working, where it's not working. Or maybe, where it's causing a problem and where you maybe have an incidental health law problem. On the other hand, also to be able to evaluate the effectiveness of what you're doing, including your legal interventions. We also see that to mobilize community partnerships and get people to act, to identify and solve their problems, very often that's gonna mean coming up within a community, with some kind of policy or legal response. So you have to understand how community mobilization and partnership plays into the development of effective policies. You gotta be sure, if you're a health officer, that you have a competent workforce. Well, part of that competence is going to be the ability to do that law-related work. And of course, finally, if you're going to inform, educate, and empower other people about health issues, you gotta be able to talk to them about health issues and health solutions that have to do with law.

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So, that's the end of this module and take a minute and we'll move on to part two.