

Law as a Path to Health and Safety



August 21, 2012



Public Health Law Program
Office for State, Tribal, Local, and Territorial Support

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Objectives

After completion of this webinar, participants should be able to:

1. Characterize CDC's Public Health Law Program and describe the services offered
2. Demonstrate an understanding of key definitions and concepts framing the relationship between U.S. law and public health practice
3. Describe the sources of law necessary for public health practice
4. Describe how law can be used as a tool to advance injury prevention goals on the state and local levels
5. Identify circumstances that require accessing the services of legal counsel

Introductions

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Objective 1

Characterize CDC's Public Health Law Program and describe the services offered

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CDC's Public Health Law Program

*Who We Are
and
What We Do*

CDC's Public Health Law Program

Vision

- Using Law to Improve Public Health Outcomes
 - Customers
 - Public Health Researchers and Practitioners
 - Legal Counsel to Public Health Practitioners
 - CDC Programs
 - CDC Partners
 - CDC Grantees

CDC's Public Health Law Program

Mission

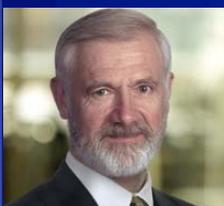
- To provide support to public health practitioners and their counsel using legal tools and strategies that when implemented improve public health outcomes.
 - Converging science, policy and law into specific strategies that are evidence-based, promising practices or best practices.

CDC's Public Health Law Program

PHLP Services

- We provide consultation and technical assistance that is coordinated with multidisciplinary subject matter experts, focused on jurisdiction specific public health issues, and encourages a team approach between public health practitioners and their legal counsel.

Why Public Health Law?



The “first tool of public health” is epidemiology.... “The second public health tool might well be the law.”

William H. Foege, MD, MPH (Director, CDC, 1977-1983),
“Redefining Public Health,” *Journal of Law, Medicine and Ethics*, Dec. 2004

**Law's Paramount Role:
10 Great Public Health Achievements,
United States, 1900-1999***

Do you know how law contributed to these achievements?

- Vaccination
- Motor-vehicle safety
- Safer workplaces
- Control of infectious diseases
- Decline in deaths from coronary heart disease and stroke
- Safer and healthier foods
- Healthier mothers and babies
- Family planning
- Fluoridation of drinking water
- Recognition of tobacco use as a health hazard

**Law's Paramount Role:
10 Great Public Health Achievements,
United States, 1900-1999***

Public Health Achievement	Selected Laws/Legal Tools
Vaccination	School vaccination laws; childhood vaccination programs
Motor Vehicle Safety	Speed limits; alcohol laws; helmet and seatbelt laws; child safety seat laws; graduated drivers licensing
Safer Workplaces	Authority to inspect for unsafe conditions; inspection of workplace safety/minimum standards, including toxic exposure
Control of infectious diseases	Sanitary codes; drinking water standards; quarantine/isolation laws; mosquito/rodent control; food inspection
Decline in heart disease/stroke	Education/info programs; food labeling; bike and walking paths

Law's Paramount Role: 10 Great Public Health Achievements, United States, 1900-1999*

Public Health Achievement	Selected Laws/Legal Tools
Safer/healthier foods	Inspection/minimum standards for retail food; mandated enrichment of flour; standards for chemicals; school lunch programs
Healthier mothers/babies	Milk pasteurization; drinking water code; education/information programs; Medicaid services and funding; WIC
Family Planning	Authorization for birth control services; authority to provide prenatal/postnatal care to indigent mothers
Fluoridation of drinking water	Laws/ordinances authorizing drinking water fluoridation
Recognition of tobacco as a health hazard	Excise taxes; restriction on sale to minors; smokefree laws; education/information programs; lawsuits leading to settlement agreements

Objective 2

Demonstrate an understanding of key definitions and concepts framing the relationship between U.S. law and public health practice

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Definitions:
Public Health

Public health: “Fulfilling society’s interest in assuring conditions in which people can be healthy.”

Definitions:
Law

What does law mean to you?

Definitions: *Law*

- Law has many definitions
 - Rules that are subject to the enforcement power of a government entity.
 - The structures, norms, and rules that a society uses to resolve disputes, govern itself, and order the relations between members of the society.
 - “The enterprise of subjecting human conduct to the governance of rules.”

Definitions: Public Health Laws

One suggested definition:

“The legal powers and duties of the state to assure the conditions for people to be healthy, and the limitations on the power of the state to constrain the autonomy, privacy, liberty, proprietary, or other legally protected interests of individuals for the protection or promotion of community health.”*

Definitions: Public Health Laws



- Any laws or regulations that have important consequences for the health of defined populations
- Not limited to laws related to “the official health department”

Key Concept: *Police Powers*

- Defined: Powers exercised by the states to enact legislation and promulgate regulations to protect the public health, welfare, and morals, and to promote the common good.
- Examples:
 - Investigations of infectious disease outbreaks
 - Childhood vaccinations as condition for school entry
 - Ban on distribution of free cigarette samples in areas around schools and other places frequented by minors
 - Involuntary detention of persons with certain communicable diseases
 - Property seizure and destruction to control toxic substance threats

Key Concept: *Preemption*

- Defined: “the simultaneous expansion in power of a higher level of government and reduction in power of a lower level of government.” *
- While usually discussed in the context of federal preemption of state law, states themselves have broad preemption powers over local laws.
- Preemption increasingly used as a strategy by industry lobbyists to prevent local governments from enacting more robust public health laws.

Key Concept: *Federalism in the U.S. Constitutional System*

- Defined: Relationship and distribution of power between the individual states and national government
- Impact under U.S. Constitution: Each of 50 states possess substantial independent legal authority, but is also subject of federal government’s legal authorities which overlap those of states
- Concept shapes the system in which laws apply to public health practice

Objective 3

Describe sources of law
necessary for public
health practice

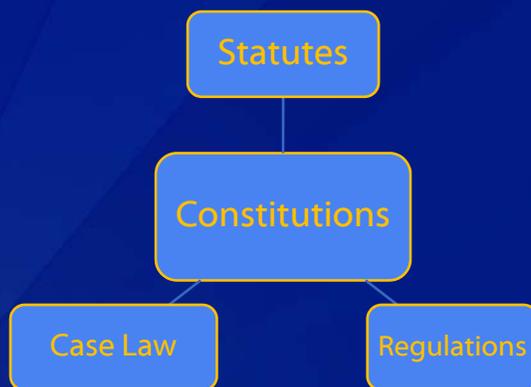
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Basic Sources of Law

- Constitutions
- Statutes
- Regulations
- Common law

Basic Sources of Law



Constitutions – What do they do?

- Constitutions establish:
 - The basic structure of government, and
 - Rules on how the gov't will work

<ul style="list-style-type: none"> • Legislative • Executive • Judicial 	<ul style="list-style-type: none"> • Voting • Candidate qualifications • How states are added to Union
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- They also prescribe the functions of each branch and create the relationships amongst them

The U.S. Constitution

- “Supreme law of the land” (drafted 1787)
- Establishes 3 branches of federal government and separation of powers
 - Legislative
 - Executive
 - Judicial
- Confers limited set of enumerated federal powers



The U.S. Constitution

- Term *public health* not mentioned
- Enables some federal public-health related activities (Art. I, Sec. 8)
 - Interstate commerce
 - Taxation and spending
- Primary responsibility for public health left to states (10th Amendment)



U.S. Constitutional Design: Implications for Public Health

- Most public health activities carried out by state and local governments
- Federal government functions in public health carried out through regulatory (e.g., FDA) and non-regulatory (e.g., CDC) agencies
- Federal government shapes state / local public health through funding and defunding

Statutes – What do they do?

- Statutes (and ordinances!) have several functions:
 - They express the intent of the legislative branch;
 - They create and empower executive agencies;
 - They regulate various activities;
 - They provide agencies authority to promulgate regulations and oversee regulated activities;
 - They appropriate money; and
 - They make certain activities crimes!

Example of State Statute: Official Code of Georgia 31-2-1

- Establishing agencies:
 - The Department of Human Resources is created and established to safeguard and promote the health of the people of this state
- Empowering agencies:
 - [The Department of Human Resources] is empowered to: (1) Provide epidemiological investigations and laboratory facilities and services in the detection and control of disease

Example of State Statute: S.C. Code Ann. 44-1-140

- Authorizing agencies to promulgate regulations:
 - The Department of Health and Environmental Control may make, adopt, promulgate and enforce reasonable rules and regulations from time to time requiring and providing: ...
 - (2) For the sanitation of ... restaurants ... and all other places or establishments providing eating or drinking facilities; ...
 - (12) For the thorough investigation and study of the causes of all diseases, epidemic and otherwise, in this State, the means for the prevention of contagious disease ...

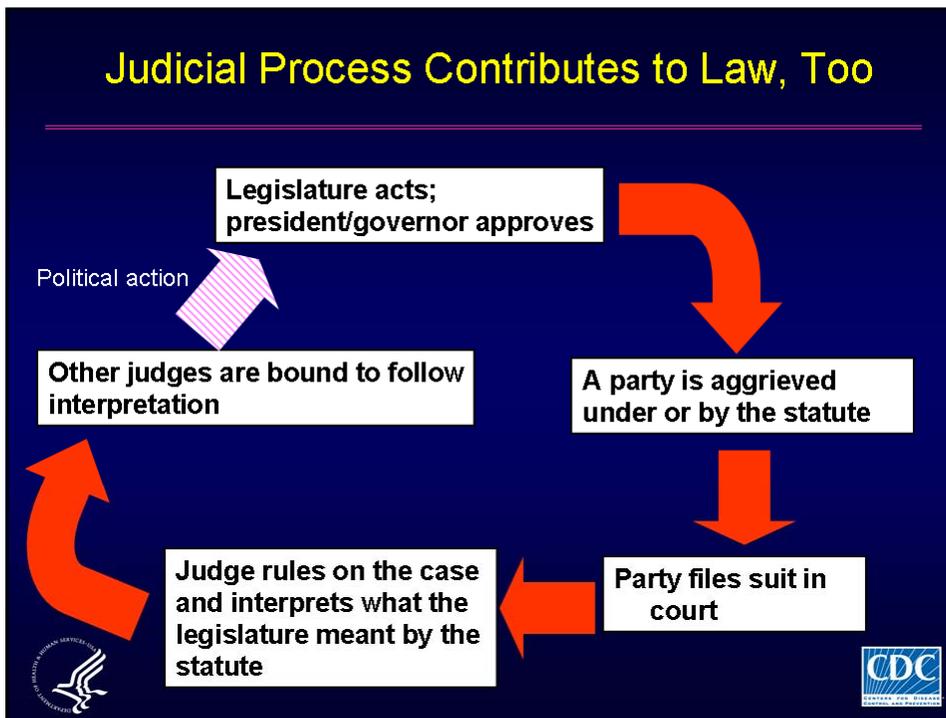
Regulations – What do they do?

- Regulations are agency made rules that implement the letter and intent of statutes.
 - Regulations prescribe the standards that people and companies must follow in order to be lawful while engaging in a certain activity.
 - Regulatory standards can be procedural (e.g., what form must disease reports be in?).
 - Regulatory standards can be substantive (e.g., what diseases must health care facilities report?).
 - Regulations tend to be more detailed than statutes.
 - Regulations tend to be more technical than statutes.

Case Law – What does it do?

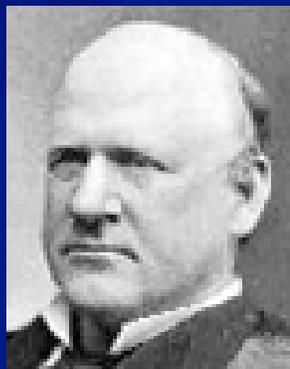
- Courts make “case law” by interpreting statutes and regulations while ruling on disputes between parties.
- Case law rulings “attach” to statutes and regulations that are interpreted and ruled upon.
- If a future dispute involves that same laws, the lawyers and judges will look at previous case law rulings to see how courts have interpreted the statutes and regs.
- If case law comes from the same jurisdiction and is from a higher court, the rulings are binding on the lower court.

Judicial Process Contributes to Law, Too



Jacobson v. Massachusetts

- Landmark Court Case
 - Setting: 1902 smallpox outbreak
 - Law: State statute compelling vaccination
 - Violation: Defendant refused vaccination and fined \$5; challenged the constitutionality of the law
 - Ruling: U.S. Supreme Court upheld the law in 1905



Objective 4

Describe how law can be used as a tool to advance injury prevention goals on the state and local levels

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(Former Director, Bureau of Injury Prevention, NYS Department of Health)

Injury as a Public Health Domain

- Laws directed at preventing unintentional and violent injuries have long been part of legal canon:
 - Speed limits date to the first automobiles
 - Laws on keeping domestic animals out of the way of horses and carts are even older
 - Laws prohibiting murder date to early recorded history
- Only within recent decades have injury and violence prevention been considered part of public health and become a health department concern
- Injury and violence prevention relies on a complex mix of behavioral and environmental change strategies.

Injury Prevention and Law: Surveillance

- Reporting laws provide basic data:
 - Healthcare providers report injuries
 - Law enforcement officials can report on circumstances of incidents and violent deaths
- Epidemiologic analysis detects:
 - Patterns of injuries
 - New types and sources of injuries
- Surveillance data can be used to develop new injury prevention regulations.

Injury Prevention and Law: State and Local Responsibilities

- Laws that affect individual behavior-examples:
 - Impaired driving laws
 - Child abuse and neglect laws
- Laws that affect local practices-examples:
 - Regulation of the sale of dangerous products
 - Building codes
- Federal government provides financial incentives to encourage states and localities to adopt uniform laws and best practices

Product Safety: Federalism and Injury Prevention

- The US Constitution grants authority to the federal government to regulate interstate commerce
- Federal preemption of state laws:
 - In some areas of product safety, federal government preempts all state regulation
 - States may regulate in areas that are not preempted by federal law
- Limits on state regulation:
 - States must not interfere with interstate commerce in the guise of safety regulation
 - States must not have requirements that conflict with federal laws

Federal Product Regulatory Agencies

- Federal government agencies promulgate extensive regulations to improve the safety of manufactured products
 - Department of Transportation (DOT)
 - Consumer Product Safety Commission (CPSC)
 - Food and Drug Administration (FDA)
- Federal regulations preempt state laws in some areas to assure uniform practice in the US
 - Medical devices
 - Pesticide labeling

Federal Regulation: Automobile Safety

- Regulations contributing to reduced crash rates and increased survival:
 - DOT Regulations and crashworthiness:
 - Improved structural integrity
 - Seatbelts and passive restraints
 - Crash reduction technology and design
 - Improved brakes
 - Better tires
 - Safer Windshields

Federal and State Regulation: Highway Safety

- DOT and state highway departments regulate highway design and construction
- Regulations to reduce injuries:
 - Shock-absorbing guardrails
 - Highway medians that prevent cross-over crashes
 - Improved road surface materials to enhance traction

Federal and State Regulation: Driving Laws

- Federal government uses its spending power to encourage states to pass uniform safety laws:
 - Seatbelt use and child restraint laws
 - Uniform speed limits
 - 70 mile-per-hour maximum speed limits
- States have passed strict DWI laws
 - Mandatory imprisonment for impaired driving
 - Lower thresholds for allowable blood alcohol levels

Federal, State, and Local Regulation: Fire Safety

- Fire safety involves state agencies, local fire departments, and CPSC
 - CPSC regulations on flammability of clothing
 - State and local laws set standards for fire safety in building construction
- Local fire departments conduct fire hazard inspections in businesses and private residences
- State and local laws regulate fireworks

Federal, State, and Local Regulation: Electrical Safety

- Requirements for state education campaigns addressing dangers of working around power lines
- CPSC regulations on grounding and electrical isolation of consumer products and power tools
- State regulations requiring utility companies to reduce hazards of electrical distribution systems
- State and local building code provisions on electrical safety

State Licensing and Permitting for Hazardous Activities

- Examinations as a condition for license
 - Driver's license exams
 - Re-examining older drivers to assure competency to drive
 - Exams for boat licenses, firearm permits, and other potentially hazardous activities
- Building permits requiring that construction meet safety standards
- Exception: Federal government regulates commercial transportation professionals (e.g. airline pilots and interstate truck drivers)

Dual Purpose Laws: Child Abuse and Neglect

- Child abuse and neglect laws are dual purpose laws
 - Identify at-risk households to allow interventions to prevent ongoing and future harm, and to provide epidemiologic data
 - Identify potential need for criminal prosecution
- Interventions to prevent harm are governed by public health law principles
- Criminal investigations and prosecutions must comport with Constitutional rights

Dual Purpose Laws: Violent Injury Reporting

- States may require reporting of violent injuries
 - Gunshot injuries, stab wounds, and other injuries caused by potential criminal activity
 - Domestic violence and elder abuse
- Like child abuse and neglect laws, these are dual purpose laws, intended to allow both interventions and criminal prosecution

Objective 5

**Identify circumstances that
require accessing the
services of legal counsel**

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Working With State and Local Public Health Legal Counsel

Top 10 Reasons to call your public health legal counsel:

- 1) You have a question about the scope of authority or the meaning of the language in the law.
- 2) You are presented with a challenge or question regarding the governing law, irrespective of the source.
- 3) You are threatened with litigation regardless of whether you believe there is legal merit to the threat, or have a question about potential liability.
- 4) You discover a gap in public health legal authority or are considering code or statutory revisions.
- 5) You are challenged or are having difficulty getting compliance with public health law or regulations.

Working With State and Local Public Health Legal Counsel

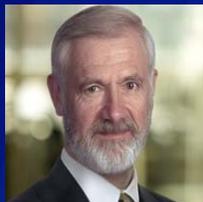
- 6) You are contacted by another attorney or presented with a legal document, regardless of the source.
- 7) You see a trend in disease that might require significant public health action.
- 8) You are applying for grant funding for a project with a focus on law as a public health tool.
- 9) You have any doubt, uncertainty, question, or moment's hesitation on the law.
- 10) You want to discuss ways that law might be a useful tool to advance public health goals.

Strategies for Working With State and Local Public Health Legal Counsel

Five Considerations:

- 1) Consider the proper protocol for contacting public health legal counsel.
- 2) Consider asking your legal counsel, "How can you (or the law) help me get this done?"
- 3) Consider the public health lawyer as a part of the 'team.'
- 4) Consider strategies to keep public health legal counsel informed.
- 5) Consider taking your public health lawyer to lunch!

Questions, Comments, Thoughts?



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For More Information

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