

PUBLIC HEALTH LAW

Theory and Methods

RESEARCH



Alexander C. Wagenaar and Scott Burris • *Editors*

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Public Health Law Research



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Alexander C. Wagenaar
Scott Burris

EDITORS

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Foreword

This book represents a major milestone in the development of public health law research, both as a field of study and as a tool for using law and policy to improve health. A vibrant community of innovative scientists engaged in rigorous public health law research is essential for making informed decisions on the laws and policies that will lead to better health.

For the Robert Wood Johnson Foundation, this book represents a unique and lasting contribution to the field of public health law. The Foundation conceived and funded a national program for public health law research to make the case for laws that improve health. At this writing, the Public Health Law Research program has funded sixty studies in its first four years. Many of those studies have already had an impact at the local, state, and national levels. For example, a program study has shown how local laws in Rochester, New York, have made a difference in children's exposure to lead. Another program study on New Jersey's graduated driver licensing laws has shown how the law reduced teen car crashes and saved lives. And yet another program study on drug patent laws and their impact on public health has already been cited by the United States Solicitor General in documents filed before the U.S. Supreme Court.

Some of the studies funded by the Public Health Law Research program raised new questions. Others provided new insights. Collectively, they point to a need for a critical review of the basic concepts, theories, mechanisms, and measurement techniques of public health law research. That this need has been recognized and acted on is a tribute to the leadership of the Public Health Law Research program and the authors who have contributed to this book.

The intersection of law, policy, advocacy, and health is complex. Applied at the right time, in the right places, with the right partners, laws and policies have the potential to create lasting positive changes in the lives of people. I am confident that this book will enhance the quality of public health law research. It will strengthen the role of research in policy deliberations. And that will heighten the ability of policy makers, advocates, and leaders to craft and implement effective laws and policies to improve health for years to come.

X FOREWORD

I want to express my gratitude to the authors, editors, and all who have made this book possible. To the reader, I invite you to take full advantage of the insights and wisdom herein and apply them to your work to improve health.

Michelle A. Larkin, JD, MS, RN
Assistant Vice President, Health Group
Robert Wood Johnson Foundation
April 2013

Preface

“Each individual in society has a right to be protected in the enjoyment of his life. . . . And it is the duty of the State to extend over the people its guardian care, that those who cannot or will not protect themselves, may nevertheless be protected; and that those who can and desire to do it, may have the means of doing it more easily. This right and authority should be exercised by wise laws, wisely administered; and when this is neglected the State should be held answerable for the consequences of this neglect. If legislators and public officers knew the number of lives unnecessarily destroyed, and the suffering unnecessarily occasioned by a wrong movement or by no movement at all, this great matter would be more carefully studied, and errors would not be so frequently committed.”

—Lemuel Shattuck, *Report of a General Plan for the Promotion of Public and Personal Health*, 1850 (p. 304).

Modern public health practice began with counting. The idea that disease and injury could be prevented started with what became the science of epidemiology—people counting cases and documenting their distribution. The idea of preventable disease led directly to the idea that society has the opportunity and indeed the obligation to take a strong hand in doing the preventing. When we take collective action, we usually do it through government, acting on behalf of the community. Once government is in the picture, law is there, too.

Law matters to public health. It is a tool for intervention to promote healthier places and people. It sets the powers, duties, and limitations of health agencies. Sometimes laws and legal practices with no deliberate relation to health have positive or negative effects on our health. Yet if we go back to the roots of modern public health practice—to epidemiology—and we look at public health as it is practiced today, we can see why it is not enough to assert the important roles of law in public health. Science is the lifeblood of public health, the source of much of its effectiveness and legitimacy. Effective public health work begins with understanding the nature, effects, and distribution of the threats to our health and the facilitators of our well-being, and extends to carefully evaluating the interventions designed to support our thriving. So it must also be with law.

If law matters to public health, we have to be able to show how, under what circumstances, to what degree. We have to produce *evidence*. Public health law research (PHLR) is the field devoted to creating and disseminating that evidence.

This book describes scientific theory and methods for investigating the development, implementation, and effects of public health law. The empirical study of law can be conducted in many disciplines, or in collaboration between disciplines. Either way, it is an exercise applying normal scientific methods. There is no special science of public health law research. Epidemiology, economics, physiology, and sociology do not change when law is the topic of investigation. That said, there are unique challenges to studying law, and a set of theory, measurement, and research design tools that specifically help to meet those challenges. *Public Health Law Research* is not a general primer on scientific research methods. Its focus is on the problems that tend to arise in public health law research—and their solutions. And so it is intended for many kinds of readers: experienced social science researchers who are interested in adding public health law research to their repertoire; experienced health scientists who wish to expand their research from interventions at the individual or small-group levels to community or society-wide “treatments” operating through law; legal scholars interested in how scientists approach the study of law; policy analysts seeking improved ability to assess the methods behind empirical evaluations of laws and policies; students and novice scientists who can hone their general skills through the study of public health law; and non-scientists who are seeking a general orientation to PHLR.

The book is presented in four parts, each beginning with an introduction delineating the topics to be covered. Part One is an introduction to the basic concepts of the field of PHLR. Part Two presents a rich collection of theories that researchers have used to study *how* law influences behavior—the mechanisms or processes through which a rule manages to have measurable effects on what people do and how they fare. Part Three is devoted to special questions of measurement that arise when law is the independent variable. Finally, with this grounding in how law works and how it can be measured, Part Four considers the various study designs for public health law research.

Lemuel Shattuck’s words were true when he wrote them of Massachusetts in 1850, and they are true of every state today. We all lose when lives are unnecessarily lost or reduced by preventable ills. None of us can, alone, create the conditions in which we can be healthy. Through careful scientific study, researchers can help society use its resources for health effectively and efficiently, and avoid errors in the deployment of law.

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*This book is dedicated to everyone who uses science
to make the case for laws that improve health.*

The Editors

Alexander C. Wagenaar, Ph.D., is professor of health outcomes and policy and a professor in the Institute for Child Health Policy at the University of Florida, College of Medicine. He has published one previous book, numerous book chapters, and over 170 scientific articles on social epidemiology, public health policy, legal evaluations, community intervention trials, alcohol and tobacco studies, violence prevention, traffic safety, and injury control. He currently serves as associate director of the Robert Wood Johnson Foundation's Public Health Law Research Program, based at Temple University Beasley School of Law. He is a scientific reviewer for dozens of journals, and serves on the editorial boards of *Prevention Science* and the *Journal of Safety Research*. In 1999, Dr. Wagenaar received the Jellinek award for lifetime achievement in research on alcohol. In 2001 he received the Innovator's Award from the Robert Wood Johnson Foundation, and in 2004 was named by the Institute for Scientific Information as a Highly Cited Researcher, an honor limited to less than one-half of one percent of published scientists worldwide. In 2009 he received the Prevention Science Award from the Society for Prevention Research for contributions of his three decades of research in advancing the methods and outcomes of prevention research. In 2010 he received an honorary Research Professorship award from the University of Florida Foundation.

Scott Burris, J.D., is a professor of law at Temple Law School, where he directs the Center for Health Law, Policy and Practice and the Robert Wood Johnson Foundation's Public Health Law Research program. He is the author of over one hundred books, book chapters, articles, and reports on issues including discrimination against people with HIV and other disabilities; HIV policy; research ethics; and the health effects of criminal law and drug policy. His work has been supported by organizations including the Robert Wood Johnson Foundation, the Open Society Institute, the National Institutes of Health, and the Centers for Disease Control and Prevention. He has served as a consultant on public health law with organizations ranging from the United Nations Development Programme and the American Psychological Association to the Institute of Medicine and the producers of the Oscar-winning film *Philadelphia*. Burris is a graduate of Washington University in St. Louis and the Yale Law School.

