

Equitable Enforcement of Pandemic-Related Public Health Laws: Strategies for Achieving Racial and Health Justice

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As COVID-19 inflicts disproportionate harm on communities of color,¹ inequitable enforcement of pandemic response policies further widens health disparities. (Although “pandemic response policies” include many interventions, we use the term to reference public health policies adopted to limit viral spread.) These actions are extensions of persistent systemic failures in public health enforcement writ large that have deleterious health impacts (e.g., chronic failure to enforce health and safety regulations, such as housing safety codes,² and selective enforcement of certain public health laws, such as antismoking ordinances, that target and displace unhoused individuals).³ Furthermore, using police to enforce public health laws—during the pandemic and beyond—is especially problematic from a health justice perspective in communities of color, given police violence against marginalized groups.⁴

Equitable enforcement should be used to promote racial justice and ensure that public health laws have their intended effect.⁵ Inequitable enforcement harms public health through overenforcement, in which some communities are disproportionately affected by punitive enforcement approaches, and underenforcement, in which some communities experience inconsistent enforcement of public health laws. Equitable enforcement ensures compliance with the law while considering and minimizing harms to marginalized communities. An equitable enforcement approach considers racial and health justice at the levels of agency strategy and individual actions. It also considers equity at all enforcement stages—from determining when to enforce a law, and against whom, to deciding which enforcement tools to use.

We discuss the effects of inequitable enforcement of public health laws implemented during the COVID-19

pandemic and highlight alternative strategies to consider. Although policy selection and the underenforcement of public health laws are critical pieces of the puzzle, they are beyond the scope of this editorial. We offer considerations to improve the development and implementation of enforcement provisions and realize the health and racial justice benefits of public health laws during the pandemic and beyond.

EQUITABLE ENFORCEMENT AND RACIAL JUSTICE

Overreliance on the traditional criminal enforcement of pandemic response policies may prompt unnecessary interactions with law enforcement in underserved communities, which may already mistrust police⁶ because of historical mistreatment and persistent disparities in the criminal justice system. Community Resource Hub found that the enforcement of pandemic response policies between March and August, 2020, disproportionately affected Black people, with arrests being the most common enforcement action.⁷ The racial disparities in these early data highlight the need to address racially biased discretion in enforcement.

Overpolicing, particularly in communities where residents are disproportionately people of color, causes its own health problems. For example, New York’s stop and frisk program was associated with poorer physical and psychological health in men and boys in areas where more police stops occurred.⁸ Police killings of unarmed Black Americans also cause widespread harm, damaging the mental health of Black Americans who are not directly affected.⁴

In the wake of George Floyd’s death, there has been growing attention to

delineating the appropriate role of law enforcement. Some criminal justice advocates argue that police, who typically lack adequate training in mental health, substance use disorders, and other noncriminal social problems, should be replaced by professionals with relevant expertise to respond more effectively and reduce opportunities for racial injustice and violence.⁹ Similarly, enforcement of public health laws designed to protect the public from a highly transmittable and dangerous infectious disease is better addressed by those with expertise in public health. As communities develop enforcement strategies for pandemic response policies, it is important that they select enforcing officials and agencies that employ a racial and social justice lens that is informed by public health goals. This may include delegating the enforcement of public health laws to nonpolice agencies to reduce law enforcement involvement. Additional research and funding are required to facilitate this shift, given concerns about capacity, safety, and legal authority.

THE DISPARATE IMPACT OF PUNITIVE MEASURES

Physical-distancing and mask measures have been invaluable in slowing the spread of COVID-19. In many jurisdictions, however, violations of these public health orders are criminal offenses punishable by fines and, potentially, jail time.¹⁰ Consequences like these disproportionately affect individuals with low income and people of color, exacerbating health inequities.¹¹ For example, a law that imposes a \$250 fine for a violation can affect a person's ability to pay rent, feed family, or meet other essential needs—all consequences that harm health. Moreover, some populations may experience challenges to

compliance; for example, immigrants may lack access to information in their preferred language.

Jurisdictions can consider several strategies to more equitably enforce pandemic response policies. These include using criminal penalties only after repeated violations by implementing graduated penalty schemes and sliding-scale fines that consider ability to pay. With graduated penalty schemes, individuals who violate a law are subject to less serious consequences—such as a warning, education, or a modest fine—before more severe consequences are imposed.

In San Francisco, California, for example, the police department has stated that stay-at-home orders will be enforced through multilingual education and voluntary compliance, with criminal penalties as a last resort.¹⁰ Tying enforcement to public health education that acknowledges and addresses the challenges of physical distancing and the importance of mask wearing are less likely to exacerbate existing risk factors driven by poverty and lack of access to resources, such as overrepresentation in low-wage essential jobs and overcrowded housing.¹² To ensure that graduated enforcement schemes consider equity, jurisdictions should articulate options directly in emergency orders, where permissible, instead of relying on informal guidance from police departments or other enforcement officials. Although some level of discretion in enforcement is necessary and appropriate in an emergency, postcrisis evaluation of equity impacts can help jurisdictions craft a more equitable enforcement strategy in anticipation of future emergencies.

Jurisdictions should also adopt sliding-scale fines that reflect the violator's financial circumstances so that monetary

penalties do not pose an unfair barrier to accessing necessities like food, housing, and medical care. These approaches can minimize unintended negative consequences of enforcement actions and account for differential impact based on varied circumstances. There is strong evidence that fines that pose a heavy financial burden, if unpaid, can escalate into severe consequences for individuals and families.¹¹ For example, failure to pay an initial fine may lead to a suspended driver's license, additional fines, wage garnishments, or jail time, which may create more harmful outcomes than the underlying offense. Continuing evaluation and iteration can help ensure that public health laws avoid harmful unintended consequences and achieve their intended goals.

ENGAGING COMMUNITIES IN ENFORCEMENT POLICIES

Two fundamental ethical principles of public health are community engagement and transparency in government decision making. Working *with* community members, rather than *on* the community, to enforce public health laws, such as stay-at-home orders, is likely to promote better compliance.¹³ Communication and transparency about policy is even more critical in marginalized communities that are often left out of decision making.

In April 2020, Chicago, Illinois, created the Racial Equity Rapid Response Team¹⁴ specifically to address the disparate effects of the pandemic on Black and Hispanic residents and to lay the groundwork to address longstanding systemic inequities—including over-policing and high rates of incarceration, inadequate access to health care, and low-wage jobs that offer few workplace

protections. This task force created a public-private partnership with community groups already working to provide community organizing, health care supports, and mentoring services in neighborhoods hit hardest by COVID-19. Efforts included tailored education and outreach, prevention, testing and treatment, and supportive services such as food and housing assistance.

Educating and engaging communities in the purpose and rationale behind public health laws designed to reduce the spread of COVID-19 can support public trust. Furthermore, creating opportunities for community members to participate in the development and implementation of enforcement provisions is likely to increase compliance.¹⁵ Because the impact of COVID-19 restrictions is so far-reaching—affecting family life, businesses, and access to a range of services, including medical care—policymakers should include a transdisciplinary range of stakeholders (e.g., individuals who are more likely to experience the medical and economic effects of the pandemic, community-based organizations, local businesses, housing advocates, public health organizations, and criminal justice advocates). Although including a wide range of stakeholders reduces the likelihood of community-wide consensus, failing to include different perspectives in decision making may backfire if community members' voices are unheard.

CONCLUSIONS

Early data show that the pandemic is exacerbating inequities that existed long before the pandemic began. People of color face greater social, health, and economic risks associated with COVID-19.¹ State and local officials are working to address challenges and craft

innovative solutions in response to the evolving pandemic. Their actions include creative approaches to the enforcement of public health laws—for example, recommending nonpunitive consequences for violations of physical-distancing measures¹⁰ and partnering with residents and community groups to combat preexisting racial and health disparities.¹⁴ Strategies that jurisdictions pilot and implement now to respond to the emergency and reduce the negative consequences of inequitable enforcement should also inform long-term solutions to address preexisting inequities. Equitable enforcement can promote racial and health justice, increase community resilience, and improve outcomes during public health emergencies and beyond. *AJPH*

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The authors have no conflicts of interest to disclose.

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