



Untapped Potential: Public Health Department Authority to Address the Fallout from the Pandemic, Structural Racism, and Other Public Health Crises¹

Local public health agencies and officials have long had a critical place in protecting communities. Traditionally, their role has largely encompassed several core functions, such as tracking vital statistics, ensuring food safety and sanitation, overseeing certain laboratory services, and engaging in public health education. Today, public health is commonly understood to encompass a wide and growing range of issues that address the fundamental resources people need to thrive, often referred to as the social determinants of health (SDOH). These SDOH include access to healthcare, quality education, strong community bonds, economic stability, and healthy neighborhoods.² As the definition of “public health” expands, so could the ability of public health agencies and officials to address the SDOH and combat a greater variety of public ills.

Some cities, counties, and local public health agencies and officials have already begun to embrace this approach and address the SDOH in their work:

- An increasing number of cities and counties—located in approximately half of all states and spanning demographic characteristics—have declared racism a public health emergency,³ potentially opening the door for public health agencies to enact policies to combat racism;
- During the 2006–2014 foreclosure crisis, recognizing that access to housing is a SDOH, close to a quarter of local health departments engaged in work related to foreclosures;⁴
- Health departments in New York City and San Francisco have declared that contact with the criminal justice system is a health risk;⁵
- King County, WA, where Seattle is located, has transferred its juvenile criminal detention operations to its health department;⁶ and

¹ The information provided in this document does not, and is not intended to, constitute legal advice. Individuals and organizations should contact an attorney licensed to practice in their state to obtain advice with respect to a particular legal matter.

² Centers for Disease Control, *About Social Determinants of Health (SDOH)*, <https://www.cdc.gov/socialdeterminants/about.html>.

³ American Public Health Association, *Declarations of Racism as a Public Health Issue*, <https://www.apha.org/topics-and-issues/health-equity/racism-and-health/racism-declarations>.

⁴ Katherine Schaff & Lori Dorfman, *Local Health Departments Addressing the Social Determinants of Health: A National Survey on the Foreclosure Crisis*, *Health Equity* (Feb. 21, 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6382054/>. The Centers for Disease Control have also used their public health authority to halt evictions, with the goal of reducing the spread of COVID-19. 85 F.R. 55292 (2020).

⁵ Data Brief, *Criminal Justice System Involvement and Measures of Health Among New York City Residents, 2017*, N.Y.C. Dep’t of Health and Mental Hygiene (Jun. 2019), <https://www.documentcloud.org/documents/6236491-databrief109-2.html>; Resolution No. 19-5, San Francisco Health Commission (Mar. 19, 2019), [https://www.sfdph.org/dph/hc/HCAgen/2019/March%205/Resolution%20HC%20Incarceration%20draft%20_edits_2.28.2019%20\(1\).pdf](https://www.sfdph.org/dph/hc/HCAgen/2019/March%205/Resolution%20HC%20Incarceration%20draft%20_edits_2.28.2019%20(1).pdf).

⁶ Executive Order JJS-8-2-EO, *Public Health Approach to Juvenile Justice*, King County Dep’t of Public Health (Nov. 16, 2017), <https://www.kingcounty.gov/about/policies/executive/jjsaeo/jjs82eo.aspx>.

- Local health agencies and officials in Colorado and Oregon are developing resources and new approaches to consider the SDOH in a wide variety of issue areas.⁷

With these examples in mind, local public health agencies and officials might consider how, pursuant to their legal authority, they can use the SDOH framework to expand their work in new and innovative ways. For example, they might be able to:

- Promote and/or increase access to paid sick leave or a living wage;
- Study, promote, and/or implement transit policies;
- Study and/or implement affordable housing policies;
- Establish support for tenants facing eviction or homeowners facing foreclosure;
- Promote and/or implement environmental justice policies;
- Promote and/or implement food and nutrition policies; and
- Consider other ways to incorporate the SDOH into policymaking decisions, such as with a Health in All Policies approach.⁸

Questions to Consider When Evaluating the Scope of Local Public Health Authority

The scope of local public health authority will vary from state to state and possibly within a given state. Advocates and policymakers interested in exploring whether a specific local public health agency or official has authority to implement measures related to the SDOH should consider at least the following:

- The statutory scope of authority for local public health agencies or officials under state law, in both emergency and non-emergency situations;
- The authority granted to the specific local public health agency or official in the local government’s charter (if the locality has one) or implementing statutes;
- How the authority of a local public health agency or official interacts with the authority of the jurisdiction’s governing body and the local government’s legal department or counsel;
- Whether the policies being considered are preempted by state and/or federal law, and how the authority of the local public health agency or official interacts with the authority of the state’s health department or other relevant state agency;
- The potential risk for litigation and/or problematic case law given the novel nature of potential interventions;⁹ and
- Enforcement capacity and/or authority within the local health department or available to a public health official, as well as related budgetary implications.

Further Questions & Resources

If you have questions about how public health authority might be used in a particular jurisdiction, the Local Solutions Support Center is available to help: ***Email us at LSSC@supportdemocracy.org.***

⁷ American Public Health Ass’n, *Health in All Policies*, <https://www.apha.org/topics-and-issues/health-in-all-policies>.

⁸ *Id.*

⁹ For example, the Michigan Supreme Court recently struck down an executive order enacted by the Governor on non-delegation grounds, a move that could signal a revival of the doctrine in Michigan and elsewhere. *In Re Certified Questions From the United States Dist. Ct., West. Dist. of Michigan, Southern Div. (Midwest Inst. of Health v. Governor)*, No. 161492 (Mich. 2020).