

Partnering for Preparedness: Law Enforcement & Public Health



The Center for Public Health Law Partnerships

What is Public Health?

“What we, as a society, do collectively to assure the conditions in which people can be healthy.”

INST. OF MEDICINE, THE FUTURE OF PUBLIC HEALTH 1 (National Academies Press 1988).



Authority for Public Health Actions

- Public health is generally the province of the *states*, not the federal government.
 - Thus, each state is responsible for enacting and enforcing public health laws within its boundaries.
 - Consequently, public health laws vary from state to state.
- The state's public health authority derives from its police power.
 - “Police power” = the power of a state to protect the public's health, safety, and welfare
 - “Police power” ≠ all activities undertaken by law enforcement



Public Health & Individual Freedom

- Often, public health actions necessitate intrusions upon individual freedoms.

The state may restrain and compel individual action as needed to safeguard the public. *Provided*, the state action is not arbitrary, oppressive, or unreasonable.



Jacobson v. Massachusetts, 197 U.S. 11 (1905) (upholding Massachusetts' compulsory vaccination law amidst smallpox epidemic).



Public Health Law & the Law Enforcement Paradigm

- The civil nature of public health law raises particular challenges for law enforcement personnel trained to prevent criminal activity but asked to assist in public health emergencies.
- No “bad guys,” but persons involved may nonetheless pose threats to officer safety. How do officers respond?
- Applicability of due process protections and search and seizure law to police assistance during public health emergencies?
- Information sharing between public health and law enforcement?



Violations of Public Health Laws

- Public health laws are *civil not criminal* laws, despite the fact that they exist to protect society as a whole.
- Accordingly, violations of the majority of public health laws result in only monetary penalties for the offender.
- But note: Some acts are violations of both civil and criminal law (*e.g.*, intentional transmission of HIV).



Public Health & Law Enforcement Interactions

- Three types of interactions between public health and law enforcement:
 1. Law enforcement assistance is requested to enforce orders of public health officials and entities.
 2. Law enforcement conducts a parallel or joint criminal investigation of a public health event.
 3. Law enforcement requests public health assistance in an emergency.



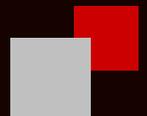
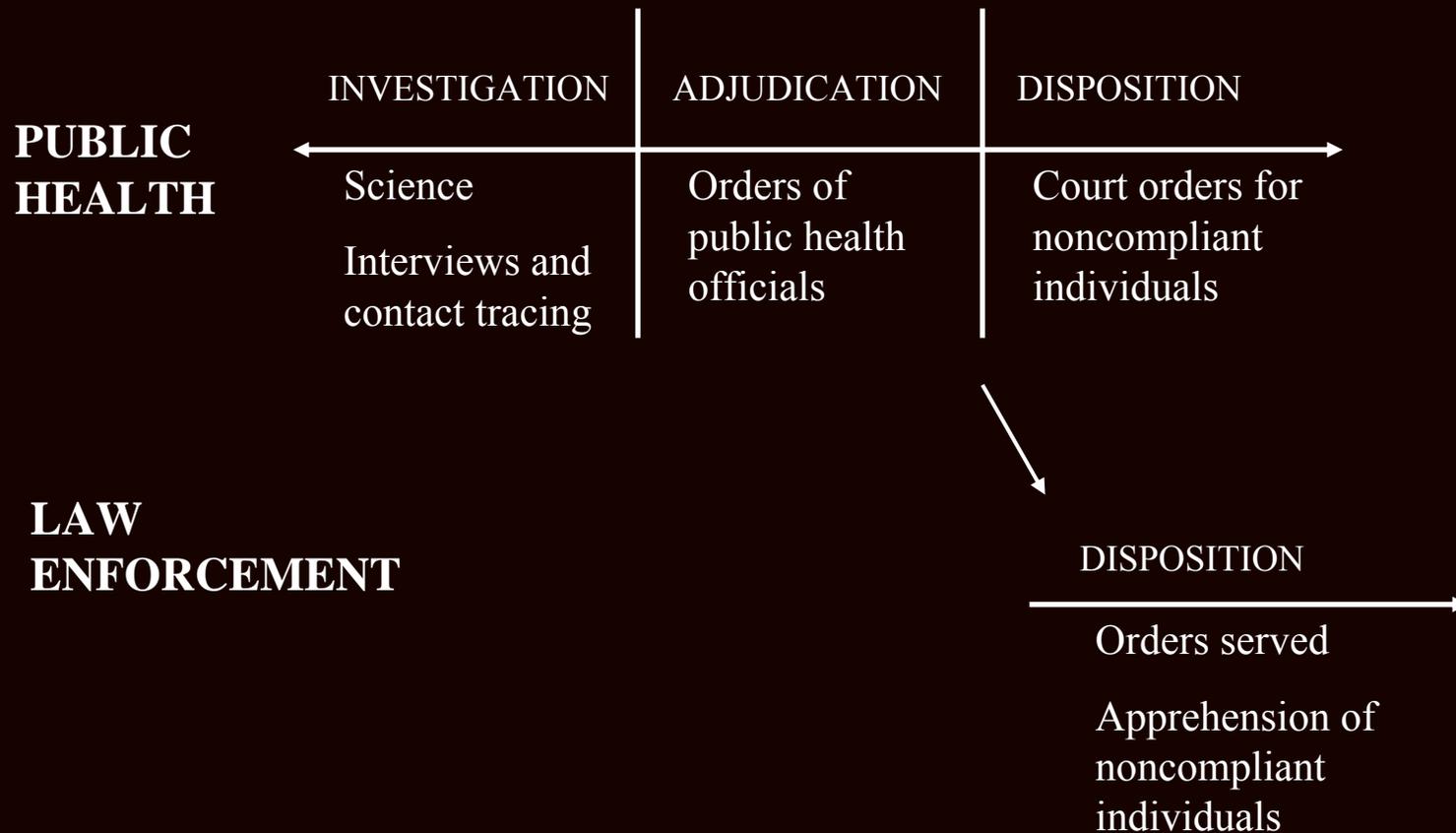
Law Enforcement Assists in Enforcing Public Health Orders

- Severe Acute Respiratory Syndrome (SARS)
 - In spring 2003, more than 8,000 individuals worldwide infected (including 8 in the U.S.); 774 deaths
 - SARS caused by previously-unknown virus; little scientific information available at epidemic's onset
 - SARS transmitted primarily via close person-to-person contact
 - International responses included isolation and quarantine
 - *Law enforcement personnel served quarantine orders and located and confined individuals who violated quarantine*

Centers for Disease Control & Prevention (CDC), *SARS Fact Sheet*, Jan. 13, 2004, at www.cdc.gov; INST. FOR BIOETHICS, HEALTH POLICY & LAW, UNIV. OF LOUISVILLE, *Quarantine & Isolation: Lessons Learned from SARS – A Report to the CDC* (2003).



Law Enforcement Assists in Enforcing Public Health Orders

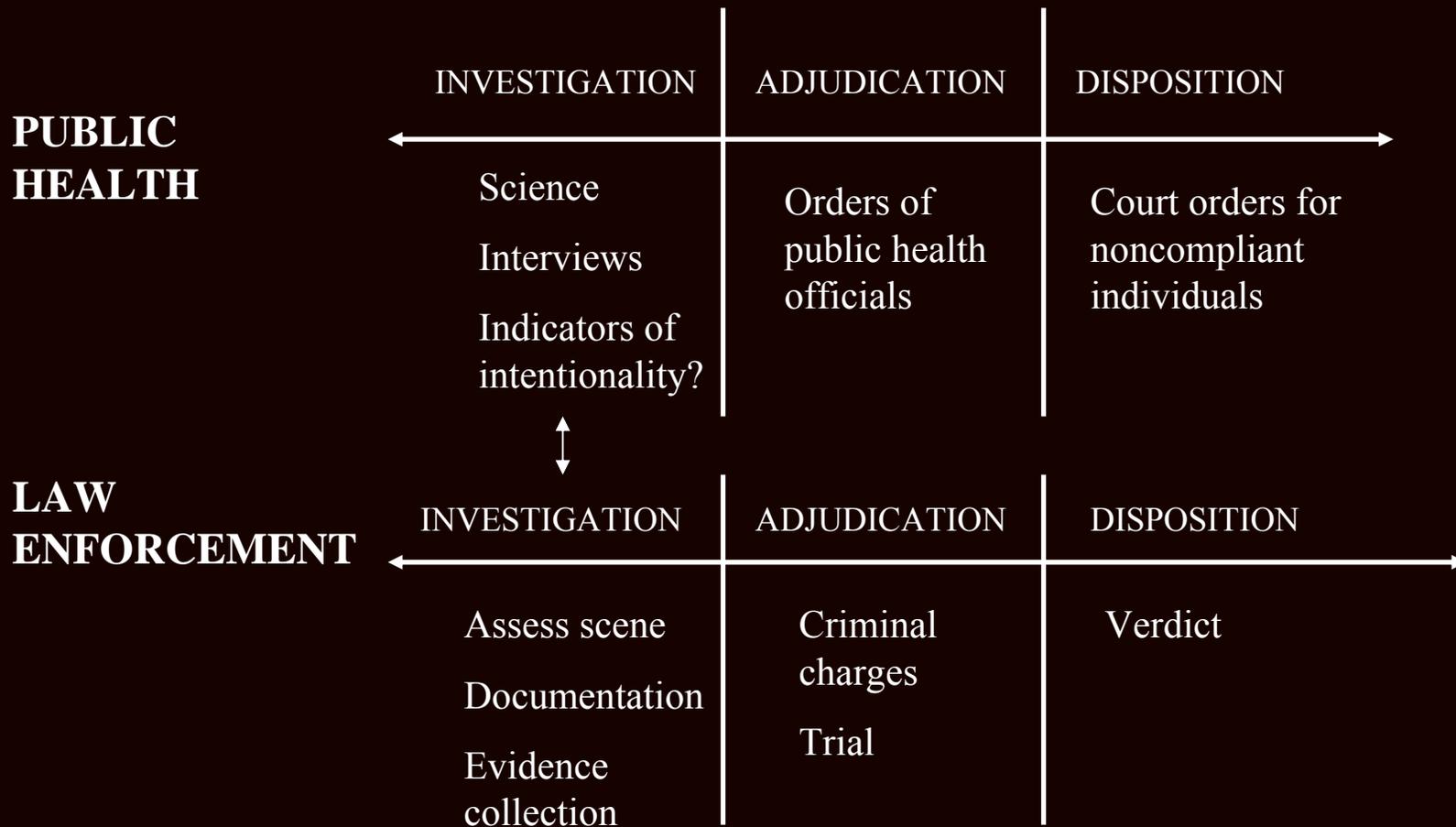


Law Enforcement Conducts Parallel or Joint Criminal Investigation

- 1984 outbreak of *Salmonella typhimurium* in Oregon
 - 751 persons infected in single county (population: 21,000)
 - Outbreak connected to two restaurant salad bars
 - Extensive investigation by local, state, and federal public health personnel, but no single food item could be identified as causing the outbreak
 - During the investigation, public health officers received calls expressing concern about the behavior of certain restaurant employees and local commune members
 - One year later, as part of a fraud investigation of the local commune, law enforcement learned that commune members had intentionally contaminated salad bars to influence the results of a local election



Law Enforcement Conducts Parallel or Joint Criminal Investigation



Law Enforcement Requests Public Health Assistance in Emergency

- 2003 TOPOFF II Exercises: Release of pneumonic plague in multiple locations within metropolitan area
 - Pneumonic plague is caused by a bacteria and characterized by both airborne and person-to-person transmission
 - More than 300 infected individuals presented at 64 area hospitals in one day
 - Intentional release by terrorist organization indicated
 - Simultaneous detonation of radiological dispersion device (“dirty bomb”) in second, out-of-state metropolitan area



Law Enforcement Requests Public Health Assistance in Emergency

**PUBLIC
HEALTH**

INVESTIGATION



Agent identification

Interviews and
contact tracing

Scientific expertise



**LAW
ENFORCEMENT**

INVESTIGATION

ADJUDICATION

DISPOSITION



Emergency
response

Evidence
collection

Suspect
identification

Criminal
charges

Trial

Verdict



Conclusions

- Public health law is relevant to law enforcement personnel even though it does not fall within the typical scope of law enforcement's anti-crime activities.
- Law enforcement-public health interactions will vary in nature. The legal boundaries of permissible law enforcement action depends upon the particular circumstances surrounding each interaction.
- How can we best work together?



Public Health in Action

- Monitoring community health status
(collection of birth and death statistics; analysis of health trends, such as cancer rates)
- Diagnosing and investigating health problems
(foodborne outbreaks; West Nile Virus)
- Informing and educating people about health
(tobacco cessation; fetal alcohol syndrome; domestic violence)
- Developing and enforcing health and safety protections
(restaurant inspections; water quality and sewage monitoring)
- Linking people to needed health services
(immunizations; substance abuse and mental illness treatment programs)
- Fostering health-enhancing policies
(seat-belt laws; public smoking bans; needle exchange programs)



Public Health & Individual Freedom

State Action	Individual Freedoms Affected
Isolation and quarantine	Liberty (freedom of movement) Autonomy (free choice)
Compulsory vaccination	Bodily integrity Autonomy Freedom of religion
Property condemnation	Property rights Economic interests
Disease reporting	Privacy



Public Health & Individual Freedom

State Action	Individual Freedoms Affected	Compromises
Isolation and quarantine	Liberty Autonomy	Limited to scientifically-necessary duration
Compulsory vaccination	Bodily Integrity Autonomy Freedom of religion	Religious exemptions
Property condemnation	Property Rights Economic interests	Reasonable compensation
Disease reporting	Privacy	Confidentiality requirements



Public Health Law as Civil Law

- Why is public health law civil instead of criminal?
- Persons who act contrary to public health laws have rarely earned the community condemnation that traditionally accompanies criminal activity. Rather, society views most public health law violators as suffering from illness or as victims of natural agents.
 - Inmate sentenced to prison for murder v. patient quarantined with contagious disease
 - But: Intentional transmission of HIV v. violation of a quarantine order?



Public Health & Individual Freedom

- However, the state must adopt the *least invasive* measures sufficient to protect the public's health.
 - Accordingly, many public health laws contain specific provisions preserving individual freedoms to the extent consistent with effective public health action.
 - These individual protections are often referred to as “due process” provisions.

