

Equitable Enforcement to Achieve Health Equity

An Introductory Guide for Policymakers and Practitioners



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Introduction

There is a significant gap between the promise of our laws and people's lived experiences. This gap exists in part because laws designed to keep people safe and healthy often are not enforced – and when they are, are not enforced equitably in a way that promotes health and well-being for the most underserved communities.^{1,2,3,4} Enforcement actions taken in the name of public health can sometimes harm, discriminate against, or otherwise undermine the health of the very people whom the laws are meant to protect. In fact, enforcement that is carried out inequitably can often create, maintain, or exacerbate existing health inequities. Equitable enforcement, on the other hand, can hold wrongdoers accountable while protecting the health and well-being of individuals and the community.

Health equity means that everyone has a just and fair opportunity to enjoy a healthy life. In contrast, health inequities are avoidable and unjust disparities in people's health outcomes. Policy agendas and policy design play an important role in shaping equitable health outcomes, and it is critical to set priorities and draft policies with equity front and center. But policy implementation and enforcement mechanisms are often given less attention, and they can be as impactful as the policies themselves. Accordingly, they merit the same level of thought, analysis, and design.

The purpose of this guide is to elevate equitable enforcement as a means to achieving health equity. To achieve health equity, policymakers will need to thoughtfully consider the equity implications of enforcement provisions commonly used in public health policies.

By posing a series of questions that policymakers, advocates, and enforcement officials should ask when drafting, implementing, and enforcing a policy, this guide aims to help such actors explore (1) the equity implications of traditional public health enforcement tools, and (2) strategies to avoid unintended negative consequences when enforcing violations of the law. The guide also explores best practices in design and development of enforcement provisions that avoid inequitable impacts and promote community health.

What types of laws and policies does this guide address?

This guide focuses on public health policies – that is, policies intended to keep people safe and healthy, as well as policies that address the fundamental resources people need to thrive (often referred to as the *social determinants of health*), including affordable, quality housing; stable employment; nutritious food; and safe, supportive schools. This guide also addresses policies that impose enforceable obligations on individuals or entities like landlords or businesses, such as housing codes or retail licensing requirements, and have impacts on health.

“The prime objective of public health law is to pursue the highest possible level of physical and mental health in the population, consistent with the values of social justice.”⁵

– Lawrence Gostin, faculty director and Linda D. and Timothy J. O’Neill Professor of Global Health Law, Georgetown Law

Over the years, public health policies have catalyzed major health improvements for communities across the country. On any given day, it’s common for people to live in homes that meet safety codes, drink or brush their teeth with fluoridated tap water, buckle their seat belts after getting in a car, eat food labeled with nutritional facts and expiration dates, and enter smokefree buildings. Many of these policies are now a familiar part of our lives. However, without enforcement – or, framed a little differently, a means of incentivizing compliance – these policies are much less likely to have their intended effect. And without equitable enforcement, those who need public health policies the most may not benefit from them.

Glossary

COMMUNITY: a group of people who are located in a particular geographic area or political jurisdiction, or a group of people who share a common identity or characteristic but may not be located in a single geographic area.

ENFORCEMENT: a process of ensuring compliance with law and policy.

EQUITABLE ENFORCEMENT: a process of ensuring compliance with law and policy that considers and minimizes harms to underserved communities.

HEALTH EQUITY: a “state in which everyone has the opportunity to attain full health potential and no one is disadvantaged in achieving this potential because of social [or economic] position or any other socially defined circumstance.”⁶

LAW: codification and institutionalization of a policy by a government in the form of an ordinance, statute, or regulation.

POLICY: a written statement of a public agency's or organization's position, decision, or course of action.

SOCIAL DETERMINANTS OF HEALTH: the fundamental resources people need to thrive.

UNDERSERVED COMMUNITY: a community that has historically received scarce investment and services from the public and private sector relative to their needs, due to structural racism or other factors linked to power and influence. This term is intended to indicate that although these communities have their own internal resources and resilience to draw on, systems and institutions have failed to adequately meet their needs.

Why is it important to consider enforcement in public health law and policy?

Public health policies frequently impose obligations on individuals and public or private entities to prevent or mitigate unhealthy or unsafe behaviors (eg, driving in a bike lane, failure to maintain safe and habitable rental properties, or selling a harmful product). Enforcement provisions specify the consequences that are triggered when these obligations are not met – a crucial component in implementing policies necessary for collective health and success. When a policy isn't enforced, it generally leads to reduced compliance and eroded legitimacy of the policy.⁷

At the same time, enforcement must be equitable to avoid creating new health inequities or exacerbating existing disparities. For example, data show that people of color and residents who have low income are disproportionately impacted by fees and fines for low-level offenses, like traffic violations.^{8,9} These fines and fees can affect credit scores, plunge families into debt, result in loss of a driver's license, or lead to incarceration.¹⁰ All of these outcomes can have a negative impact on health.^{11,12,13}

“What some people think of as a ticket that will make it hurt a little bit and teach folks a lesson might [for others] be the difference between being able to pay rent or feed their family [or not].”

– Tamika Butler, executive director, Los Angeles Neighborhood Land Trust

How are public health laws typically enforced?

Public health policies are enforced in many ways. For simplicity, we will introduce and contrast two common public enforcement models: the agency model and the impact model.

The agency model

In the agency model, a government entity, usually an agency, has enforcement authority in a particular issue area, and the agency uses either a robust complaint system or a proactive inspection system to identify violations. The agency evaluates every complaint or inspection report and decides whether to investigate or take an enforcement action.

One example of the agency model is public health departments that enforce food safety violations at restaurants and rely on inspectors to discover violations. Another example is state and local fair employment practices agencies (FEPAs) that enforce employment discrimination laws. In the employment discrimination context, complainants must file a charge with either a FEPA or the federal agency (the US Equal Employment Opportunity Commission) before they are entitled to file a private civil action.

The impact model

In the impact model, a government entity – typically, the office of an attorney general or a city attorney – has enforcement authority that is not limited to a specific issue area and does not rely primarily on a complaint or proactive inspection system to identify violations. Instead, the government entity must set priority issue areas and identify violations in those areas in other ways (eg, through building relationships with community-based organizations).

Enforcement mechanisms

Enforcement mechanisms vary across the following characteristics:

1. Who can enforce the law (eg, public entities like prosecutors and agencies, private litigants)
2. How enforcement targets and actions are identified (eg, proactive inspection by a government agency, complaints, police reports)
3. The role of victims and community members (eg, witnesses, plaintiffs, complainants) in the enforcement process
4. How investigative and adjudicatory processes function
5. The range of sanctions that may be imposed

Each of these characteristics of enforcement mechanisms has significant implications for equity. For example, enforcement mechanisms that rely on civil actions by private litigants are likely to pose barriers for individuals with low income and less access to the legal system. A proactive code inspection program, on the other hand, ensures that landlords and building managers are complying with housing code requirements without putting the onus on tenants to file complaints. Proactive inspection is particularly beneficial for tenants who belong to underserved groups and are less likely to complain about substandard housing conditions due to fear of retaliation.¹⁴

Common enforcement tools for public health laws

Traditionally, public health policies include options for administrative, civil, and/or criminal enforcement. Some enforcement regimes may also include a private right of action, which requires harmed individuals or entities to seek legal remedies themselves by bringing a lawsuit to enforce their rights. Including a private right of action provides individuals with an enforcement option outside of those administered by government agencies.

Enforcement approaches in public health policies can encompass a wide range of consequences. At one end of the continuum, some policies have no sanctions. At the other end, policies that are enforced criminally can include incarceration as a consequence. In the middle, policies with administrative and civil enforcement mechanisms can delineate fines, damages,* injunctions,** license suspensions and revocations, or evictions as possible sanctions.

Administrative enforcement occurs internally within a local government, rather than through a lawsuit in court.^{15,16} The agency or department can

* Money claimed by, or ordered to be paid to, a person as compensation for loss or injury (*Damages*, Black's Law Dictionary (11th ed. 2019), available at Westlaw).

** A court order commanding or preventing an action (*Injunction*, Black's Law Dictionary (11th ed. 2019), available at Westlaw).

issue a citation or notice of the violation, hold an administrative hearing to consider evidence, and then determine whether a violation occurred and what the penalty should be. The penalty is usually an administrative fine or revocation or suspension of a license or permit.

In a civil enforcement action, a city or county can file a civil lawsuit to enforce a law, remedy a wrong, or protect a right. If someone is violating an ordinance, the city or county can sue for an injunction, impose civil penalties (including fines, fees, and consequences triggered by civil infractions, such as insurance surcharges or points against a driver's license), or both.

Finally, in some states, cities and counties are authorized by law to make violations of an ordinance a crime.¹⁷ The county's district attorney or a city attorney can bring an action in criminal court to prosecute the violation. A criminal violation of a local ordinance is usually either a misdemeanor (less serious than a felony and usually punishable by a fine or brief confinement in a city or county jail) or an infraction (punishable by a fine but not incarceration).¹⁸

Standard enforcement provisions can lead to inequitable impacts on underserved populations and sometimes even unintentionally harm the very populations the policy is seeking to protect.

Policymakers should pay special attention to the impact of criminal sanctions when drafting enforcement provisions. Over-reliance on criminal enforcement can exacerbate inequities and prompt unnecessary interactions with law enforcement in underserved communities,^{19,20} which may already mistrust police and other institutional actors^{21,22} due to historical mistreatment and persistent disparities in the criminal justice system.^{4,19,23} If policymakers wish to avoid criminal enforcement, policies can state that violations are enforceable only by non-law enforcement personnel.

Examples of traditional enforcement tools and their potential for positive and negative effects

The following examples show how various types of sanctions have been used in public health policy. Note that no sanction is inherently bad. Depending on how it is applied – and for what conduct – a sanction can have a positive or negative effect on public health.

Fines

QUALITY-OF-LIFE OFFENSES. Fixed fines gained national attention in 2015, when the US Department of Justice issued a report investigating the Ferguson Police Department in Missouri after a local police officer lethally shot Michael Brown, an unarmed African American man. The report highlighted, among other injustices, how fixed-amount fines imposed by the City of Ferguson created financially devastating burdens for people living in or near poverty.⁹ These fines included a \$302 fine for a “Manner of Walking” violation (ie, not using the sidewalk) and a \$531 fine for “High Grass and Weeds.” Local government used fines and fees to fund its criminal justice system, creating a perverse incentive for overpolicing, which severely damaged trust between the police and residents.

WAGE THEFT. While the Fair Labor Standards Act establishes nationwide labor standards and a federal minimum wage, it leaves large gaps in worker protections. State law works to fill these gaps, although there is wide variation in scope and enforcement across states. States that impose higher fines (up to treble damages* for employers) have shown a statistically significant reduction in wage violations – evidence that a more punitive approach targeting employers can lead to increased deterrence of wage theft.²⁴

Injunctions

HABITABLE HOUSING. In every state but Arkansas,²⁵ landlords are required to maintain habitable rental properties. Despite the responsibilities imposed by the implied warranty of habitability, landlords often fail to maintain healthy and safe housing, particularly for renters who have low income. Tenant advocates and attorneys can play a critical role in securing injunctions that compel landlords to make necessary repairs.^{26,27,28}

SOURCE-OF-INCOME DISCRIMINATION. Another example from the housing context involves laws that prohibit landlords from discriminating against prospective tenants based on their source of income, which may include government subsidies or assistance like federal housing choice

* Damages that, by statute, are three times the amount of actual damages that the fact-finder determines is owed. (*Damages*, Black’s Law Dictionary (11th ed. 2019), available at Westlaw).

vouchers or Supplemental Security Income. In 2018, New York City's Human Rights Commission formed a new unit to improve enforcement of the state's law against source-of-income discrimination. Among other strategies, the unit filed hundreds of lawsuits seeking to enjoin landlords and real estate brokers from denying or withholding housing because of a tenant's source of income.^{29,30,*}

SAFE DRINKING WATER. The federal Safe Drinking Water Act ensures everyone the right to clean and healthy drinking water.³¹ In many communities, however, that promise has not been consistently fulfilled, in part because of inadequate oversight of water quality and lax enforcement of standards by state and local officials. In Flint, Michigan, a coalition of local citizens and national advocacy organizations responded to a crisis of elevated blood lead levels in children by suing city and state officials to secure safe drinking water for Flint residents.^{32,33} The coalition successfully obtained injunctive relief in the form of an order commanding the city and state to deliver bottled water to Flint households until the city's drinking water infrastructure was adequately updated to prevent lead contamination.³⁴

Business license strategies

ACTIVE TRANSPORTATION. While parking garages are an essential feature of urban communities, they can support and promote active modes of transportation. New York City requires parking garages that accommodate more than 50 vehicles to provide bicycle parking as a condition of obtaining or renewing their business license. If bike parking requirements are not met, the business license can be suspended or revoked.³⁵

Eviction

NUISANCE LAWS. In many communities, landlords may evict tenants who are deemed a "chronic nuisance" – sometimes defined as residents who generate multiple police calls within a defined time period.³⁶ In Peoria, IL, HOPE Fair Housing Center (HOPE) conducted an investigation and concluded that the city's chronic nuisance ordinance was not enforced evenly; those in predominantly black neighborhoods were more than twice as likely to be cited as similarly situated tenants in predominantly white neighborhoods. The investigation also found that crime victims, including those who had experienced domestic violence, were routinely targeted for eviction under the ordinance.³⁷ HOPE sued the City of Peoria in 2017 for violations of the Fair Housing Act on the basis of race and sex, alleging that the city discriminates against African Americans and people who have experienced domestic violence. Litigation is ongoing.^{38,39}

* Although many of these cases have settled before reaching a final resolution in court, they nevertheless demonstrate how injunctions and impact litigation can have a significant positive impact on housing access and affordability. See, eg, Compl. for Decl. and Inj. Relief and Damages, City of New York v. St. Marks Hamilton LLC, No. 451147/2018 (N.Y. Sup. Ct. filed June 20, 2018).



What is equitable enforcement?

Equitable enforcement is a process of ensuring compliance with law and policy that considers and minimizes harms to underserved communities. An equitable enforcement approach means considering equity – both at the level of the public entity’s overall enforcement strategy and at the level of individual enforcement actions. It also means considering equity at all stages of enforcement, from determining when to undertake an enforcement action – and against whom – to deciding which enforcement tools to use.

“The equitable enforcement of the law signals society’s values.”

– Elizabeth Tobin-Tyler, assistant professor, Brown University School of Public Health

Another way of considering equitable enforcement is by examining its opposite – inequitable enforcement. The racial disparities at every stage of the criminal justice system⁴⁰ are caused in large part by inequitable overenforcement. As mentioned earlier, data show that people of color and residents who have low income are disproportionately impacted by fees and fines for low-level offenses, like traffic violations.^{8,9} An equitable approach to traffic enforcement would consider the impact of debt resulting from traffic fines on individuals who have low income, and consider alternative measures (eg, payment plans and low- or no-cost alternatives such as workforce development programs⁴¹). An equitable approach would also consider whether the distribution of law enforcement officers among neighborhoods is motivated by, for example, racial bias.

On the other hand, laws that protect underserved communities from threats to their health and economic security are frequently *underenforced*. Public Rights Project, a national nonprofit that seeks to empower state and local governments to proactively and equitably enforce their residents’ legal rights, conducted a national survey on corporate abuse and found that 54 percent of Americans had experienced one or more incidents of wage theft, predatory lending, predatory debt collection, health problems due to pollution created by a business, or unsafe housing conditions within the past 10 years.⁴² An equitable approach to enforcement of laws protecting workers would hold corporate actors accountable for their bad acts and remove barriers that make it difficult for individuals to pursue remedies.

How can policymakers achieve more equitable outcomes when creating or revising a policy?

Policymakers and public health practitioners who wish to reduce potential or actual inequitable impacts associated with policy development, implementation, and enforcement can consider the following questions when creating or revising a policy.

Does this policy exist (or is a new policy being considered) because of a larger failure in the system that needs to be addressed?

Many policies target individual behaviors that are the direct result of systemic failures or the social determinants of health. For example, policies criminalizing homelessness through prohibitions on loitering, sleeping in public spaces, or panhandling do nothing to address the causes of homelessness.⁴³ Instead, these policies treat people as problems and, further, create additional harm for marginalized populations.⁴⁴

Some policies penalize behaviors that are actually symptoms of environments and systems in which people live. Jaywalking may result from poor street design or a lack of appropriate crosswalks. Loitering is often connected to a lack of available public space in which to congregate.



Community-driven policy development

When affected communities are not involved in policy development, the resulting policy may be a poor fit for the community. Sometimes well-meaning advocacy nonprofits or other interest groups believe the policy is what's best for the community; in other cases, a third party may benefit from the policy if it is adopted.

Failure to incorporate community voice during the policy selection, design, and implementation processes may also allow other groups to slow or block adoption of evidence-based policies based on their negative attitudes toward affected populations. Failure to include affected parties can facilitate adoption of policies that reflect those negative attitudes, which may result in unintended consequences or even negative health outcomes. Human interaction and personal storytelling can help dismantle stigma and bias. Consequently, including community voice in policy selection and design can help change policymakers' preconceived notions about appropriate policy solutions and promote more equitable outcomes.

Is the policy a good fit for this community?

Community members are the experts on their own local conditions. While outside advocacy groups may have the best intentions, incomplete information or unfounded assumptions may result in a policy that doesn't properly address the community's concerns.

For example, a policy on using local tax money to improve sidewalks and thus encourage physical activity might be brought to decisionmakers by a nonprofit focused on increasing physical activity. Without consulting with members of the community, the nonprofit might not be aware that local environmental concerns (eg, weather patterns, crime rates, or lack of accessible pathways for individuals with disabilities) make it unlikely that people would utilize these improvements – and that community members would rather have the tax dollars used for other purposes (eg, an indoor recreation center, swimming pool or splash pad, streetlights, or accessible trails and parks).

Is policy development negatively impacted by stigma?

Failure to confront stigma and include affected individuals in policy development and implementation can also lead to negative unintended consequences. For example, policies intended to address substance use disorders may exacerbate harms when they fail to incorporate the perspectives of people who use drugs, relying instead on outdated approaches that are often rooted in stigma. When stigma influences policy development, unintended consequences that harm health may result.

In the opioid context, stigma has endured despite shifts in the epidemiology of opioid use and opioid use disorder.⁴⁵ Illicit use of controlled substances without a valid prescription (or for which prescriptions are unavailable, such as heroin) has traditionally resulted in criminal enforcement against people who use drugs. Though evidence demonstrates that safe consumption sites can effectively reduce opioid overdose fatality and other harms, stigmatizing attitudes have been associated with lower support for these sites, hindering adoption of a policy that would reduce criminal enforcement and improve health outcomes.^{46,47} Further, stigma has fueled an increase in prosecution for drug-induced homicide* against people – disproportionately people of color – who share or sell small amounts of drugs, even though evidence indicates that “drug-induced homicide” laws do not reduce the use or distribution of illicit drugs.^{48,49}

Elevating the voices of directly affected individuals and people who work on their behalf to develop and implement evidence-based policies can help combat stigma, advance effective policy, and improve health outcomes.

* ‘Drug-induced homicide’ occurs when someone distributes a drug that results in a fatal overdose. The person who distributed the drug to the overdose victim will be charged, depending on the state, with manslaughter or homicide.” The tired narrative: “Dealers charged with homicide curb drug use and overdose deaths.” Changing the Narrative website: www.changingthenarrative.news/drug-induced-homicide. Accessed April 5, 2020.

Do enforcement provisions target actors in positions of power who may be at the root of systemic problems?

Inequities often arise when policies single out victims of industry targeting instead of the industries themselves. For example, disparities in smoking rates didn't happen by accident or overnight. Tobacco companies have long targeted marketing to underserved populations, especially those who earn low income and African Americans.⁵⁰ One tactic is to target small, inner-city stores with marketing that is designed to “incentivize those retailers to promote menthol cigarettes to young, black smokers and smokers of [low-income] communities.”⁵¹ The number of tobacco retailers is significantly higher in neighborhoods with a high proportion of African American residents.^{52,53} Tobacco companies have specifically promoted menthol cigarettes, which are more addictive than regular cigarettes, to African American audiences.⁵¹ Today, nearly 9 out of 10 African American smokers over age 12 prefer menthol cigarettes.^{54,55}

Many tobacco control policies seek to reduce tobacco use and initiation by punishing people who use tobacco instead of the tobacco industry and retailers. Laws that penalize minors for possession, use, and purchase of tobacco products – also known as *PUP laws* – are one example.⁵⁶ Enforcement provisions for PUP laws vary by jurisdiction, and penalties range from education and community service to fines and incarceration. Many jurisdictions suspend (or refuse to issue) driver's licenses for PUP law violations. Some jurisdictions require participation in smoking cessation or tobacco education classes, which are chronically underfunded and often insufficient to meet public health goals. Some jurisdictions even use school suspension as an enforcement tool.

For a policy to have a lasting deterrent effect, a potential offender must believe there is a high likelihood of detection and resulting punishment.⁵⁷ There is no systematic surveillance of PUP laws, but existing data show that PUP laws are inconsistently and selectively enforced, particularly against youth of color and youth from families with low income. Further, data show that PUP laws are 4 times more likely to be enforced than the laws prohibiting retailers from selling tobacco products to youth in the first place.⁵⁸ Finally, psychologists have found that punishment is not an optimal strategy for behavior change – a finding that is even more relevant when the behavior in question is addictive.⁵⁹

As communities and school districts continue to address increasing use of vapor and electronic smoking devices by youth, it is important to consider the equity implications of different approaches. Decisionmakers must ask whether policies address the inequities at the root of youth use of tobacco products – and whether enforcement will lead to equitable outcomes rather than worsening inequities.

While youth tobacco use remains a pressing public health problem, public health agencies should promote effective solutions that place the blame where it belongs: on the tobacco industry and retailers who sell to youth. Enforcement mechanisms that target these corporate actors – such as tobacco retailer licensing and restrictions on flavored tobacco products – are more effective and more just than those that regulate the behavior of people who use tobacco products, which are addictive and deadly by design.^{60,61}



Corporate malfeasance vs. individual actors: How does the public react?

In 2015, a listeria outbreak traced back to Blue Bell ice cream sickened several people and contributed to 3 deaths across 4 states. The contamination was preventable; an FDA investigation found that Blue Bell had been negligent in adhering to safety practices. Texas health officials levied a relatively small fine against the company, and the company pulled products from shelves while corrective measures were implemented. There were no criminal charges. A few months later, Blue Bell products returned to the market, and the public rejoiced.

In 2019, a viral video featured a young woman licking the surface of the ice cream in a Blue Bell tub, replacing the lid, and putting it back in the freezer – inspiring a handful of copycats. These videos prompted widespread outrage, with many calling for the individuals to be arrested and jailed. As Dan Solomon noted in a *Texas Monthly* article, “It is strange to think that the first person to face criminal charges related to contaminated Blue Bell ice cream would be a kid who posted a video of herself pulling a dumb prank, and not any of the people who were at the company when their product literally killed people.”⁶² Governor Greg Abbott called the teenager “a despicable criminal,” and law enforcement threatened to bring felony charges against the young woman for tampering with a consumer product – charges that were punishable by a prison term of 2–20 years and up to \$10,000 in fines. Ultimately, the Texas woman’s case proceeded through the juvenile justice system because she was 17 years old at the time of the offense. Subsequently, at least 2 copycats were arrested and jailed for similar pranks.^{63,64}

These cases draw a sharp contrast between an individual’s prank and a large corporation’s hazardous practices. Though both actions potentially placed others at risk, the public outrage and resulting penalties failed to match the comparative scope and severity of the conduct in each case.

How can policymakers evaluate the implementation and enforcement of this policy?

Evaluation and data collection are vitally important for measuring both the effectiveness of a policy and whether it has inequitable outcomes. Before a policy is adopted, data should be collected in order to show the need for a policy and to understand why one policy intervention might be more effective than others. After a policy is adopted and implemented, data should continue to be collected, and the elements of the policy should be evaluated in order to make sure that it is working as intended and that there are not inequitable impacts.

For example, in 2010, New York State enacted the Domestic Workers' Bill of Rights,⁶⁵ which included guarantees of overtime pay, paid time off, and protection from workplace sexual harassment for housecleaners, nannies, and home care workers. The bill, spearheaded by the National Domestic Workers Alliance (NDWA), was the result of years of organizing domestic workers and learning from them about the issues with low pay, lack of benefits, and poor working conditions that plagued their industry. Today, domestic workers are among the most marginalized workers in the country; they are mostly women, disproportionately women of color, and immigrants, both documented and undocumented. The new law was intended to remedy the historic exclusion of domestic work from labor protections – an omission that is a legacy of slavery.

Despite widespread violations of the law, the New York State Department of Labor did not receive the expected number of complaints after the bill of rights was passed. NDWA met with state labor department officials to discuss an enforcement strategy. They identified the need to educate more domestic workers about their rights under the law and to collect data from those workers about their decisions on whether to report violations. Through hundreds of conversations with domestic workers in parks, playgrounds, and legal clinics – which they carefully coded in a spreadsheet – NDWA worker leaders discovered that domestic workers typically did not feel comfortable reporting violations of their current employer for fear of retaliation. They also did not feel they could report a violation of the former employer they had most recently worked for, because of the high importance placed on employer recommendations when securing a new role. They were much more willing to report violations dating back to 2 or more employers in the past. Unfortunately, the statute of limitations for labor violations in New York was 3 years, which meant that by the time domestic workers felt they could report without jeopardizing their employment, their complaint would often be barred. NDWA worker leaders put the data they had collected to use, working with the state to extend the statute of limitations for domestic workers' complaints to 6 years. This change allows many more workers to vindicate their rights with the agency and promotes safe and stable employment – a fundamental social determinant of health.

Are evaluation, data collection, and monitoring built into the policy?

When creating a policy, it is important for policymakers to include mechanisms for collecting data and evaluating the policy as part of the policy itself, ensuring that data collection and evaluation are funded along with implementation of the policy and that someone is responsible for evaluation.

For example, in 2017, California enacted AB 617, which aims to reduce exposure to air pollution in communities most affected by poor air quality, which is linked to higher rates of asthma, respiratory disease, and other negative health outcomes. In order to obtain detailed data on environmental justice and equity issues at the local level, the law mandates deployment of community air monitoring systems in neighborhoods across the state that are selected as high priority based on demographics, income, health needs, and location of emissions sources. Based on the granular air quality data collected by the new systems, AB 617 requires air districts to create targeted plans to reduce emissions, including new, more stringent enforcement against polluters.⁶⁶

Policies can be drafted to allow for changes to be made in a policy's implementation if evaluation and data collection show that the policy is ineffective or is creating inequitable impacts. For example, a policy can include evaluation metrics and a provision that allows for modification or rescission of the policy if evaluation shows it is ineffective or inequitable.

Is this policy being enforced, and do enforcers have the direction and resources needed to enforce equitably?

Ideally, policies are adopted by governments in order to maintain public safety or to create systems and environments that promote health. Governments that fail to adequately fund enforcement or fail to enforce health-promoting policies are unfairly harming the health of community residents. Governments are also unfair when they fund their enforcement systems through fines and fees disproportionately levied against individuals with low income. Funding for policy enforcement must be included in budgeting when policies or government budgets are adopted. Funding for enforcement should not be limited to enforcement officials' salaries but should also include funding for training, technical assistance, and community education. Training for enforcement officials can teach how to limit bias and enforce equitably. Organizations that provide technical assistance can help policymakers and governments learn best practices for policy implementation and enforcement.

Community education helps ensure that community members are aware of the policy and how it will be enforced. This makes the policy more effective and supports equitable enforcement because all communities will understand what is required or prohibited by the policy. Community members who wish to play a more active role in enforcement can participate in city, county, or state boards and commissions that provide oversight and shape policy.

Governments can also fund community-based organizations to conduct public education programs and receive complaints. In Greensboro, North Carolina, for example, the city has partnered with the Greensboro Housing Coalition (GHC), a nonprofit advocacy organization, to develop a public education campaign focused on housing code enforcement. GHC provides multilingual educational materials on code requirements, meets with residents and property owners to explain the enforcement process, and refers potential code violations to the city. Additionally, the city's code enforcement officers work directly with GHC counselors to minimize tenant displacement and to identify solutions for complicated cases.⁶⁷

Stabilizing housing and reducing eviction rates can mitigate immediate and long-term negative health impacts, including some that can reach across generations.⁶⁸ Eviction often leads to homelessness, especially for individuals with low income, and unhoused children begin to exhibit signs of developmental delays and emotional issues as soon as 18 months after birth.⁶⁹

Who will be harmed by a failure to enforce this policy? Is this policy more likely to be underenforced in certain places due to systemic or structural issues?

When policies created to provide safe, healthy communities are not enforced or are underenforced, residents in those communities do not reap the benefits of those policies. Everyone deserves to live in communities with clean, breathable air and safe drinking water. Failure to enforce regulations evenly and consistently means that some communities lack access to these (and other) fundamental building blocks of good health. For example, research shows that people of color are much more likely to live near polluters and breathe polluted air, and people in poverty are exposed to more fine particulate matter than people living above the poverty line. Exposure to these pollutants is linked to adverse health outcomes, including low birth weight, high blood pressure, and higher rates and increased severity of asthma.⁷⁰ These inequities can be traced in part to underenforcement of environmental laws.⁷¹

Does this policy target behaviors that are more likely to be found in certain populations due to systemic or structural issues?

Present-day gaps in health and prosperity are rooted in historical injustice and systemic inequity going back to colonization and slavery.⁷² For centuries, laws and policies have enabled, sustained, and exacerbated inequitable treatment for millions of people, especially people of color. As a result, inequities have persisted – and, in some cases, increased – causing dramatic disparities in wealth and health.^{73,74} Because of these structural issues, some policies are more likely to be violated by certain groups, either inadvertently or intentionally.

For example, traditional public health laws include policies to limit overcrowding – for good reason. Such policies can help limit the spread of infectious disease, ensure that building services such as plumbing and electricity meet demand, and allow for safe egress in case of emergencies. However, these policies are more likely to be violated by people with low incomes or people belonging to groups in which living with multiple generations or extended family is common.⁷⁵ Similarly, while nuisance, vagrancy, and loitering laws undoubtedly serve a public health benefit, they are more likely to be violated by people with certain disabilities⁷⁶ and unhoused people.⁷⁷ When enforcement of public health laws disproportionately impacts marginalized communities, it's important to reassess and consider alternative, more equitable approaches.



What are the consequences of enforcing the policy?

After policymakers select, design, and enact a policy, they should consider the following questions to assess potential unintended consequences of the designated enforcement mechanism. Ongoing evaluation is critical to ensure that enforcement promotes health and avoids inequitable outcomes.

Does a facially neutral policy inequitably affect certain population groups?

A facially neutral policy does not appear to be discriminatory on its face; it does not single out any member of a specific group or class, and violations of the policy generally incur the same penalty. A facially neutral policy may, however, be discriminatory in application or effect if it has an unjustified disproportionate impact on certain groups. For example, a monetary or licensing-based penalty that does not consider ability to pay will have more negative consequences for people and communities with lower incomes. (See the earlier section [“Why is it important to consider enforcement in public health law and policy?”](#) for more on fines and fees and their negative impacts on health.)

Is selective enforcement occurring?

Selective enforcement occurs when facially neutral policies are not enforced fairly among different groups of people. Take, for example, a \$250 fine for driving in a bicycle lane. If that \$250 fine is selectively enforced in one neighborhood and not another – or selectively enforced against one racial group more than another – then that enforcement tool has an inequitable impact. This issue is especially prevalent in communities where enforcement rates are disproportionately high, often in areas where residents are predominantly people of color.²³

Selective enforcement might also mean that those who are more comfortable interacting with the government are more likely to have their needs addressed. For example, research shows that those with higher socioeconomic status are more likely to make 311 non-emergency calls to the New York City government pertaining to government-provided goods and services like streets, sidewalks, trees, and waste collection as well as complaints about graffiti and noise.⁷⁸ In response to the higher volume of calls, the city is more likely to enforce laws that benefit city residents who have higher socioeconomic status.

Resource allocation is also a critical piece of the puzzle. For example, in Chicago, an investigation found that twice as many cyclists were cited for violations in African American communities compared with white or Latino areas. The report noted that a lack of bike infrastructure, such as protected bike lanes, in predominantly African American neighborhoods might be a contributing factor to selective enforcement.⁷⁹

Is the policy having a disproportionate impact despite uniformity in enforcement?

Even when laws are enforced uniformly across different groups, they can still have disproportionate impacts. The \$250 fine in the earlier example may appear fair at first glance, if it is applied evenhandedly to everyone who violates the policy. Yet that seemingly neutral enforcement provision has very different impacts on the poor and on the wealthy. Uniformity in enforcement does not ensure equitable outcomes.

“It’s time to right-size fines and fees and develop efficient and equitable ways to proportion them to people’s incomes. Our goal is not to advocate for a lack of consequences. Our goal is to make the consequence fit the offense.”

– San Francisco Fines and Fees Task Force: Initial Findings and Recommendations

One approach to avoiding the inequities of fixed fines is to shift to sliding-scale or proportional fines that are adjusted to reflect the financial circumstances of the violator. Approaches can vary from a general requirement that the financial burden on the violator be considered to detailed formulas. A sliding-scale approach can be explored for fines contained in public health policies that affect not only individuals but also businesses or corporations. Similar to how individuals vary greatly in their financial circumstances, a large, profitable corporation will be affected by a fixed fine differently than a small business with narrow profit margins.

Does the policy create compounding consequences, such as unpaid fines leading to incarceration?

Policies may include escalating penalties, or the failure to comply may constitute an additional, separate violation that carries additional penalties. For example, driving over the speed limit could be punished with a fine, but failure to pay that fine or to appear for a court date could be punished with license suspension, additional fines, or even jail time. Since ability to pay fines varies, enforcement of the exact same policy often results in wealthier people paying a fine while those with fewer resources rack up additional penalties and may even serve time in jail.

Similarly, people who work unpredictable hours or lack access to paid leave – often at low-wage jobs – may find it more difficult to make a court date.

Tiered enforcement schemes that apply less punitive measures for initial violations are preferable to traditional enforcement mechanisms that impose harsh punishments across the board. However, it's important to be aware of the full range of consequences and potential inequities that may result.

How can policymakers improve systems to facilitate equitable outcomes (before reaching the enforcement phase)?

Designing and implementing equitable enforcement mechanisms is a critical tool that policymakers can use to address and correct systemic issues. However, policymakers should also consider the following suggestions in order to improve systems or, ideally, create new structures and processes that facilitate equitable outcomes and reduce the need for traditional enforcement.

Community engagement

Identifying issues to be addressed through policy and directing resources should both start with the community. Qualitative data can be gathered from focus groups, interviews, and reviews of news stories featuring members of the community and different stakeholders. These data are important for showing the need for a policy, choosing the best policy to use to address that need, and evaluating whether the policy is working. Additionally, engaging community members helps build awareness as well as a base of support for public health policy. Ongoing engagement allows community members to provide feedback that helps policymakers assess whether the policy is working as intended.

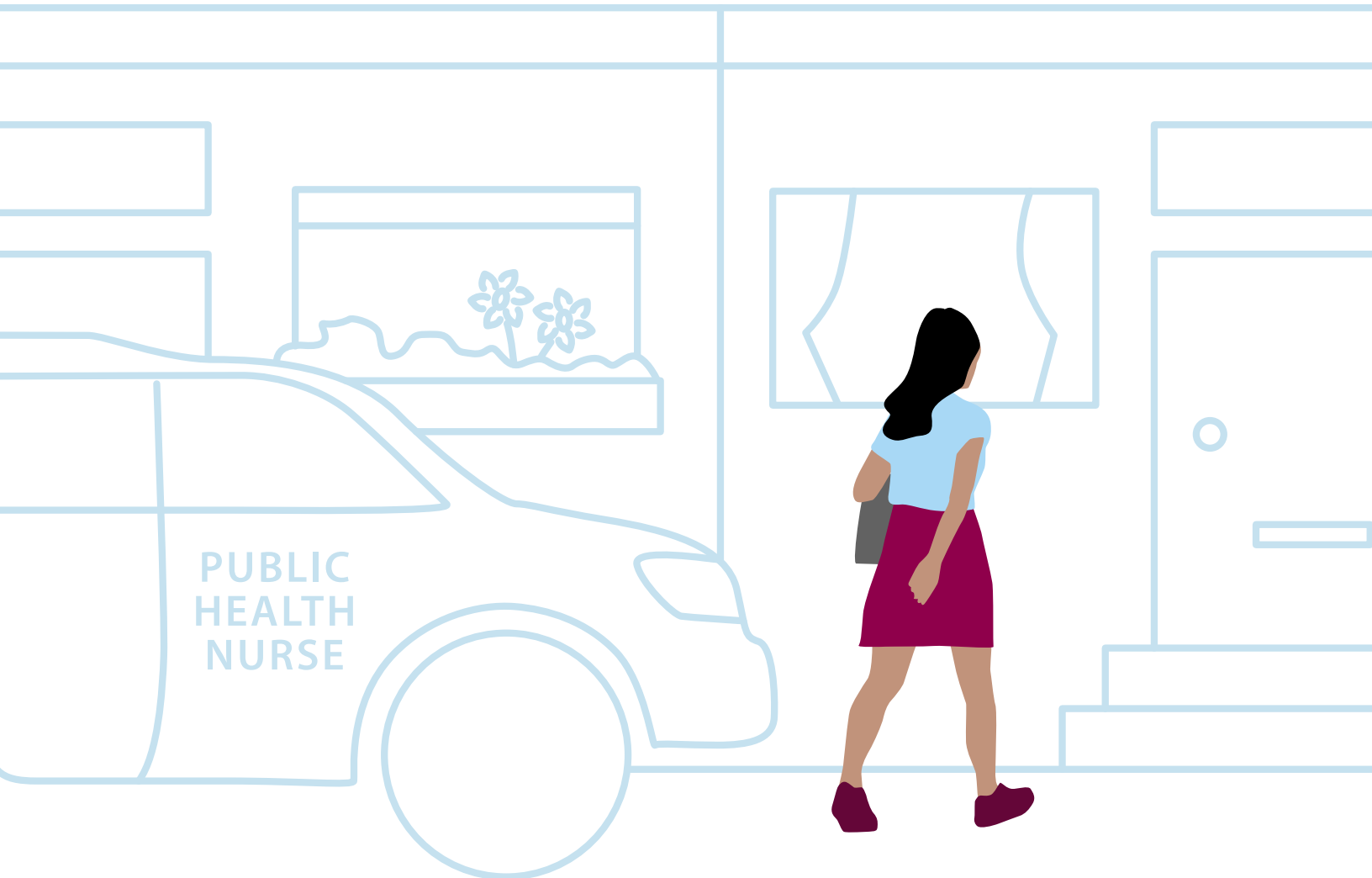
Policy development tools that prioritize equity

Specialized policy design tools can enable policymakers to build analysis of equity issues into the process of creating policy. These tools can also be used to evaluate existing policies that have outdated rationales or that promote entrenched, inequitable systems. Using these tools can help communities identify and address unintended consequences throughout the policymaking process, from conception to enactment. Such a process might result in policymakers' avoiding traditional enforcement measures that they have identified as likely to result in inequitable impacts (and/or building in measures to substantially reduce any such inequitable impacts). Several local jurisdictions around the country – including Seattle, WA; Portland, OR; and Madison, WI – now use some kind of tool for racial equity analysis to inform their

policymaking process.^{80,81,82,83} Tools to assess the impact of a policy on people with disabilities, people of different incomes, or people without stable housing could also be developed and used.

Education and outreach

In some cases, violations occur – and penalties are imposed – not because of intentional conduct but because of a lack of understanding on the part of an individual, property owner, or business. A public health policy may have complex requirements or may not be well publicized. Policies can include provisions designed to make sure that the policy's obligations are understood by those who are required to comply. Education and outreach are labor- and resource-intensive, and communities will vary in their ability to implement such efforts. An effective education and outreach program, however, can have benefits beyond mitigating inequities. Education and outreach can simultaneously improve compliance, benefit community relations, and promote buy-in for public health policies.



Training and technical assistance

Some public health policies may require that individuals or entities do business differently. For example, a law promoting healthy food retail may require a retailer to obtain healthy food from new sources or rearrange the layout of their store. Policies can provide for periodic trainings and tailored technical assistance delivered by various groups, including government agencies, community partners, or advocacy organizations. Such technical assistance can be affirmatively offered and encouraged as a matter of course or only on request. While the latter option may be less costly for jurisdictions, those most in need of the assistance may end up without it. Less business-savvy retailers and those for whom English is a second language may be less likely to make a request based on something included in written materials because they do not fully understand what is being offered or they don't recognize its importance and value. Fees or enforcement fines associated with the policy can be directed to subsidize the costs of trainings and technical assistance.

Alternatives to traditional enforcement mechanisms

Historically, enforcement in the United States has had a punitive focus. The rise of mass incarceration in the United States and its outsized impact on people of color generally and the African American community specifically have generated increased attention to this punitive emphasis and its destructive impacts. Using alternative enforcement approaches for public health policies has the potential not only to address inequities that can arise from traditional punitive enforcement tools like fines and incarceration but also to improve compliance among individuals and businesses. Education or community service diversion programs in lieu of traditional punishments can increase understanding of the reasons for the policy, which promotes acceptance and legitimizes the policy. Increased compliance with public health policies, in turn, can promote the health of the individual affected and the larger community as well. When exploring alternatives to traditional enforcement strategies, it is critical to ensure that those alternatives are equitable, evidence-based, and properly funded.

Less punitive alternatives to traditional enforcement sanctions

CANNABIS POLICY. In 2016, California voters approved Proposition 64,⁸⁴ an initiative that provides only non-punitive enforcement measures for minors charged with possession of cannabis or hashish. Specifically, persons under 18 years old are sentenced to 4 hours of drug education/counseling and up to 10 hours of community service for the first offense (and 6 hours of drug education/counseling and up to 20 hours of community service for the second offense).⁸⁵ While these penalties are certainly an improvement over criminalizing youth possession, it is worth noting that mandatory education and community service can be problematic for marginalized individuals, particularly when coupled with escalating penalties for failure to complete the programs.

QUALITY-OF-LIFE OFFENSES. In 2016, New York City shifted its approach to minor quality-of-life criminal offenses such as breaking park rules, public drinking, and littering.⁸⁶ The city made such offenses eligible for treatment as a civil infraction instead. These civil laws can now be enforced not just through fines but also through alternative non-punitive approaches, including community service beautification projects, education, use of e-learning modules (available in 7 languages), and facilitated groups.

HEALTHY SCHOOLS. Schools are also exploring non-punitive enforcement strategies that can be applied when students violate school rules. Exclusionary school discipline (ESD) practices like suspensions, expulsions, and referrals to law enforcement are linked to a myriad of negative health outcomes.^{87,88,89,90,91} To avoid these negative impacts, a growing number of schools are shifting away from ESD practices and are adopting positive disciplinary alternatives, frequently in response to state legislation mandating such changes.⁹² For example, school districts in Oakland, CA; Pottstown, PA; and Denver, CO, have implemented restorative justice practices for addressing student behavior that foster “belonging over exclusion, social engagement over control, and meaningful accountability over punishment.”⁹³ These initiatives have already resulted in decreased disparities in suspension rates between black and white students, reductions in school violence, and improved relationships between students and staff.^{94,95,96}

After the policy is passed, how can implementation strategies promote equitable outcomes?

The passage of a policy can feel like the culmination of the policymaking process, but implementation requires continuing work to ensure that the policy achieves its stated objectives. Policymakers should ask the following questions to assess the equity impacts of various aspects of implementation and make informed choices that promote equitable outcomes.

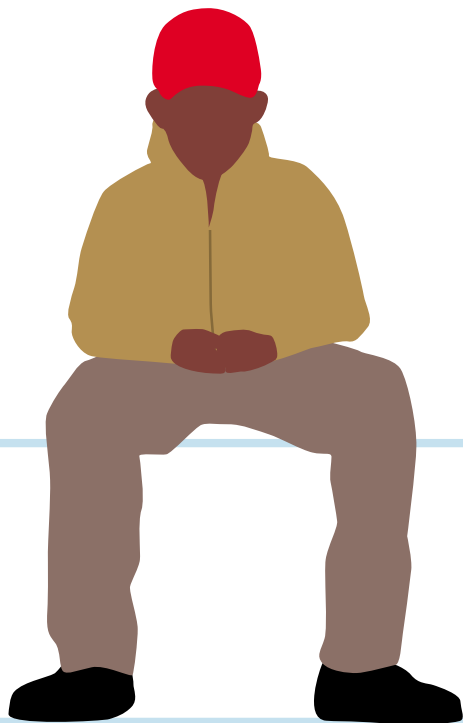
What is the role of discretion, and how might it promote or undermine equitable outcomes?

Discretion refers to the extent to which those who are tasked with enforcing the law have leeway to decide what should be done in a particular situation. Local prosecutors typically exercise a fair amount of discretion in decisions of whether to prosecute, what charges to bring initially, bail recommendations, and terms and conditions of plea bargains (including charge levels and sentencing). All these decisions are vulnerable to conscious and unconscious racial bias.

Discretion is an important and necessary part of all enforcement of our laws and requires careful consideration when designing policy. On the one hand, discretion that is ad hoc, hidden, and unaccountable to the public may result in inconsistent and biased decisions. A study of the New York County District Attorney's office conducted by the Vera Institute indicates that race plays a significant role in prosecutorial decisionmaking, even when controlling for prior arrest record.⁹⁷ Examining prosecutorial discretion at every level – case screening, bail recommendations, charging, and sentences in pleas – found more severe outcomes for defendants of color compared with similarly situated white defendants. Prosecutors recommended denial of bail more often for black defendants than similarly situated white defendants, which contributed to worse case outcomes and lengthier terms of incarceration in plea deals.

On the other hand, discretion mitigates absurd application of rules. For example, in a Delaware school district, the district's zero tolerance policy for weapons left no choice but a year's expulsion for a girl who had been sent to her class with a birthday cake and a knife with which to cut it.⁹⁸ Some discretion is necessary to capture subtlety and account for the fact that not all scenarios or people can be treated the same way.

Discretion should be guided by a clear set of guidelines that are made public so that the public can hold enforcers accountable. These guidelines should be evidence-based, prioritize equitable enforcement to vindicate the rights of underserved communities, and push against the forces of implicit bias.



PRINCIPAL

Discretion in enforcement: Overdose prevention

Safe consumption sites

Overdose prevention sites (OPS), sometimes referred to as *safe consumption sites* or *supervised injection facilities*, are locations where people consume illicit drugs (eg, heroin) obtained elsewhere while being observed by trained staff who can intervene in the event of an overdose.⁹⁹ OPS have operated in other countries for decades, but uncertainty about the applicability of a federal law prohibiting maintenance of property for the purpose of illegal drug use – commonly known as the *Crack House Statute* – has impeded the operation of such sites in the United States.¹⁰⁰ In response to recent efforts to establish OPS in communities devastated by the ongoing overdose crisis, the US Department of Justice (DOJ) has filed civil lawsuits and threatened criminal prosecution – actions that continue despite a recent federal court ruling that OPS *do not* violate the Crack House Statute.^{101,102} Such an outcome was not inevitable, however. Rather than actively impede a promising public health intervention, DOJ could have exercised its discretion to use its limited resources to pursue other enforcement priorities. Recent precedent exists for exercising enforcement discretion in this manner; for example, the federal government has opted not to enforce certain federal drug violations in states with legalized non-medical cannabis.¹⁰³ The intentional decision to prioritize enforcement of an ambiguous law to prevent the establishment and operation of OPS, an evidence-based harm reduction strategy, is a cogent example of how the failure to exercise enforcement discretion can negatively affect public health and equity.

Overdose Good Samaritan laws

Overdose Good Samaritan laws provide limited immunity for certain crimes (eg, minor drug possession) to encourage individuals to summon emergency medical assistance in the event of an overdose.¹⁰⁴ Although research suggests that overdose Good Samaritan laws reduce drug overdose deaths,¹⁰⁵ government officials' failure to adhere to limitations on their enforcement authority undermine the efficacy of such laws.¹⁰⁶ These failures are most often unintentional, resulting from lack of knowledge about the law; a review of Washington State's Good Samaritan law, for example, found that only 16% of police officers and 7% of paramedics were aware of the law.¹⁰⁷ In other instances, however, authorities continue to knowingly arrest individuals who are immune under the Good Samaritan law or purposefully evade the laws' protections by bringing more severe charges for which immunity is not available – such as drug-induced homicide.^{108,109,110,111,112} More robust enforcement of protections afforded by overdose Good Samaritan laws is critical to ensuring that they are effective in encouraging people to seek potentially life-saving emergency assistance for those experiencing an overdose.

How can community data rather than complaints or media coverage be used to identify targets for enforcement?

It's critical that enforcement offices establish strong community partnerships and an ongoing flow of actionable data from the community about enforcement needs and targets. Affirmative enforcement (proactively bringing an action to enforce a policy rather than reacting to a complaint) should be informed by what communities know and what data tell us are the most dire threats to community well-being. To ensure strong and supportive community partnerships, anti-retaliation provisions, including whistleblower protections, are crucial both to address violations of the law and to protect those who might be targeted in retaliation for their complaints.

Many offices tasked with enforcement typically pursue a legal case based on complaints from residents – individuals who have the skills, knowledge, and capacity to avail themselves of a government law office – or media attention that highlights an issue. These modes of case generation – commonly referred to as the *squeaky wheel problem* by government partners – are fundamentally reactive. To become more proactive and equitable in their enforcement decisions, offices must develop new approaches to community outreach, partnerships, and data-informed decisionmaking.

An example of a city that has developed an innovative and proactive approach to enforcement is San Francisco. In 2015, 24 tenants in a single apartment building in San Francisco received eviction notices. They were able to organize themselves and prosecute their landlord, drawing the attention of the mayor, who successfully pressured the landlord to withdraw most of the notices. After the incident, the city decided to digitize eviction notices filed with the rent board and develop a simple analytic tool that would flag landlords who issued frequent or mass eviction notices across their properties.¹³ The tool enabled the city to focus enforcement of their rental ordinance on landlords who were regularly evicting tenants as part of their business model. This tracking helped make effective use of finite enforcement resources to target the worst corporate bad actors in the city's housing market.

How can policymakers and enforcing authorities make informed decisions about potential equity trade-offs?

It's important to be explicit and make intentional decisions about the equity considerations and trade-offs that come with common enforcement mechanisms and strategies. In many cases, one approach or another will not necessarily be "correct" from an equity standpoint. Such decisions should be made in close consultation with community members. Here are some points to consider:

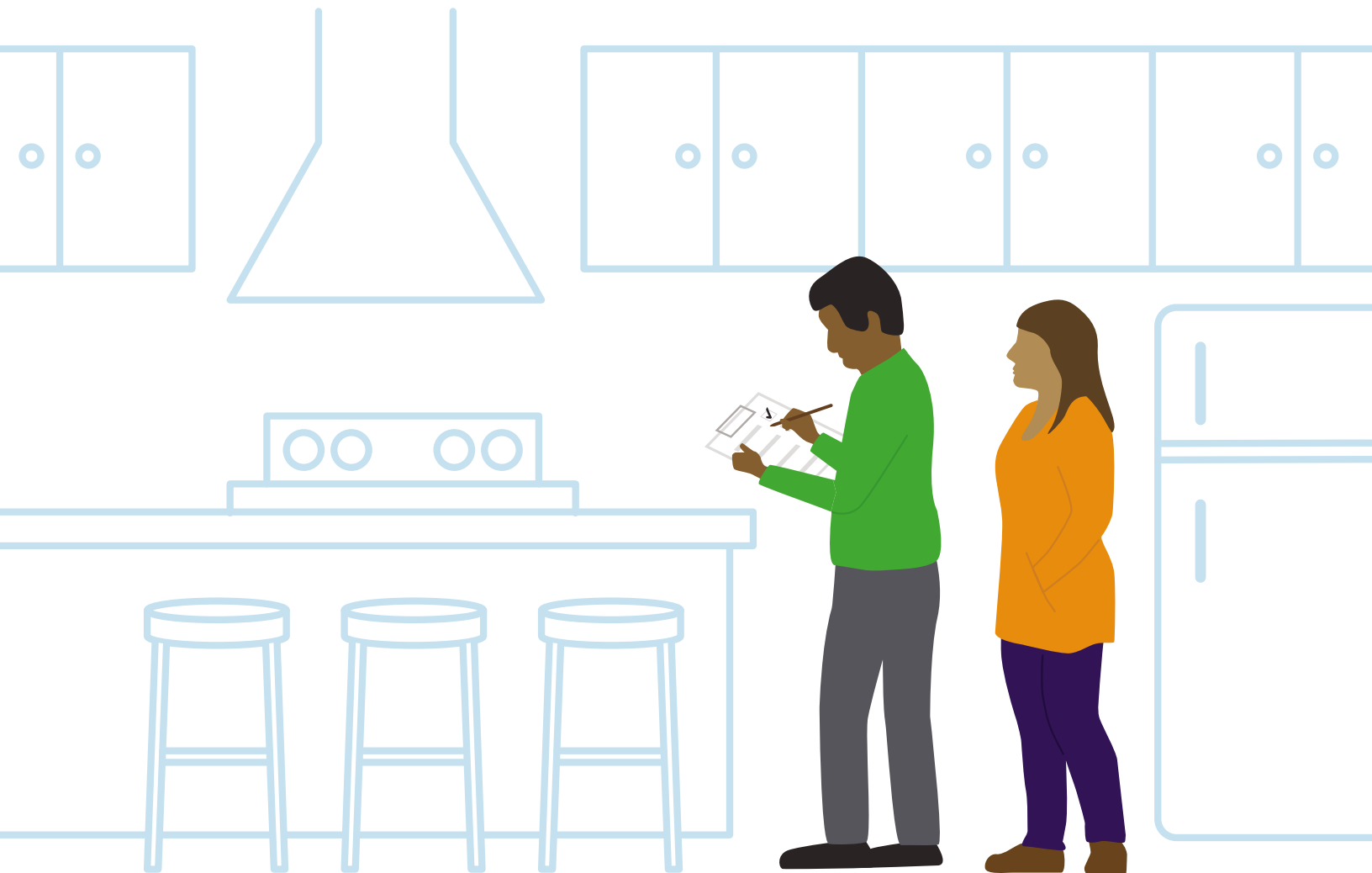
- Have community members who may benefit from or be harmed by this policy had an opportunity to weigh in on the enforcement strategy?
- How are community members selected? Is the process open, inclusive, and democratic, to ensure that decisionmakers are hearing from a truly representative cross section of the community?
- Are there systems in place to ensure that decisionmakers are informed about the priorities, needs, and historical treatment of different communities that will be affected?

Some unintended inequitable impacts on individuals may be unavoidable if a community prioritizes certain population-level policy goals. Making these decisions will require a nuanced understanding of the issue at hand, who will be affected, and which trade-offs are acceptable to the community. High-quality, comprehensive community engagement is critical to ensure that different voices in the community are heard – particularly where there are multiple communities within a geographic area (eg, gentrifying neighborhoods).

For example, a community that prioritizes achieving a 100% smokefree living environment for residents may find that this priority makes some evictions unavoidable, even with substantial mitigating strategies (eg, proactive education, graduated response, and meaningful smoking cessation support). As discussed earlier, evictions resulting from public health policies may have inequitable impacts. On the other hand, if a community deems evictions the larger harm, eviction protection can be prioritized in a smokefree policy. As a result, some residents may continue to be involuntarily exposed to secondhand smoke and suffer associated negative health impacts.

When trade-offs must be made, does the policy include provisions to mitigate inequities or guide discretion?

Policymakers and advocates can try to anticipate trade-offs by examining the equity implications of their policy choices during policy development and then including provisions designed to help affected individuals. In the smokefree housing example from the preceding section, a community could provide relocation assistance and financial support for individuals who are evicted because of a public health policy. Some cities, including Los Angeles, have tenant relocation assistance programs that provide financial support to tenants evicted because of a property owner's failure to comply with building health and safety codes. In some cases, a local jurisdiction is authorized to put a lien on the property to recover these costs from the property owner. Finally, a strong evaluation component is critical in order to identify and address unintended consequences once a policy is implemented. (See the earlier section **"How can policymakers evaluate the implementation and enforcement of this policy?"** for further discussion of policy evaluation.)



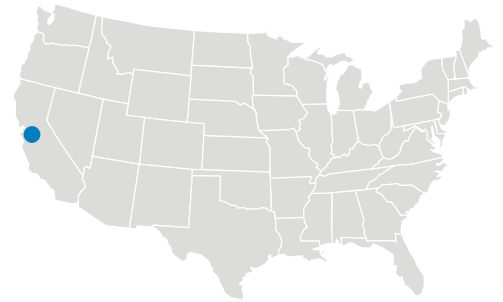
Case Studies

In numerous jurisdictions, public entities and private actors have taken innovative steps to enforce laws and policies equitably. In this section, we illustrate enforcement actions that incorporate equity by highlighting the work of the City of Oakland on environmental justice, the City of Memphis on habitable housing, and the State of New York on equitable use of predatory lending settlement funds.

Working within the community: City of Oakland

Founded in 2004,¹¹⁴ the Neighborhood Law Corps (NLC) is a unique program that houses lawyers in the Affirmative Litigation, Innovation and Enforcement Division of the City Attorney. Each attorney is assigned to a different geographic region of Oakland.¹¹⁵ This neighborhood model helps to address the *squeaky wheel problem*, which means that better-resourced communities may be more likely to complain and engage with public entities. In West Oakland, for example, residents suffer from a disproportionately higher lifetime risk of cancer than the rest of the Bay Area and a higher rate of hospitalization for childhood asthma than comparable communities in neighboring Contra Costa County.¹¹⁶ Placing an assigned attorney in West Oakland makes it more likely that West Oakland residents' needs will be adequately addressed.

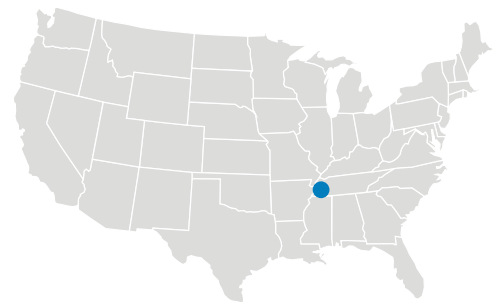
NLC's unique structure has enabled community members to report evidence of illegal dumping directly to city attorneys. After pursuing complaints about illegal dumping by Santos Engineering through several city departments for 3 months, a family with asthma and allergy issues reached NLC. Initially, the attorneys assigned to West Oakland thought that it was predominantly a zoning issue – a company improperly handling industrial waste in a residential neighborhood of Oakland. Further investigation revealed that Santos Engineering had been cited for several zoning and air pollution violations¹¹⁷ and fire safety issues.¹¹⁷ Eventually, the company's refusal to cooperate resulted in a court order in April 2018 to stop the dumping. But NLC discovered from the same neighborhood residents that Santos Engineering continued to pollute the neighborhood. Even after the court found Santos Engineering in contempt, the company continued to pay a \$1000 fine per day and to illegally pollute the neighborhood. Only after violations from the



company's operations in Contra Costa County came to light¹¹⁸ did Santos Engineering agree to pay \$360,000 in damages in June 2018 and to cease operating in Oakland for the next 10 years.¹¹⁹

The Santos Engineering case illustrates the importance of building relationships between enforcing agencies and underserved communities. Residents in West Oakland often lack the political power and access that better-resourced communities have. Affected residents initially struggled to navigate traditional government channels, but the NLC model provided a dedicated attorney who allowed them to voice their concerns and secure a resolution that met their needs.

Innovative partnerships: City of Memphis



The City of Memphis combines a unique code enforcement model with a citywide effort to incorporate community input in efforts to improve housing quality and address the racial legacy of housing segregation.¹²⁰ Nearly 40% of occupied housing in Memphis is of poor quality, with incomplete plumbing and kitchen facilities, more than one occupant per room, or rent exceeding 30% of household income.¹²¹ Asthma was the most common reason for hospitalization in Memphis in 2015.¹²² Low-income households in Memphis experience a greater prevalence of roaches, rats, and mold in their homes than higher-income households, contributing to the asthma rate.¹²³

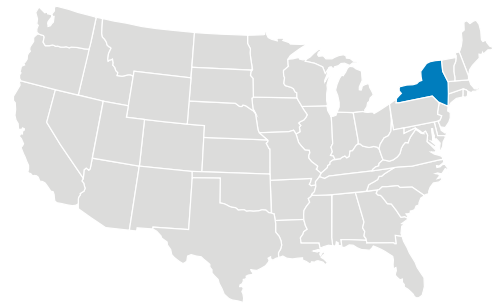
The city's efforts to use equitable enforcement to address low-quality housing have evolved. A local plaintiff's attorney brought the first test cases under the state's Neighborhood Preservation Act in the Shelby County Environmental Court, to take advantage of the court's broad jurisdiction to craft equitable remedies involving property owners. Eventually, the Mayor's Office and the City Attorney created a blight legal task force and passed an ordinance that established the Vacant Property Registry and required owners to register and pay a \$200 annual fee for vacant, abandoned, or tax-delinquent properties.¹²⁴ In 2015, law students at the University of Memphis Neighborhood Preservation Clinic began to investigate and represent the city in over 400 housing lawsuits and other community-mediated outcomes.¹²² Many of the students are from Memphis, and the curriculum includes a learning and teaching component on "the history and causes of blighted properties" and the public health impact of these properties on families and neighborhoods.¹²⁵

Housing quality reform has also explicitly involved community stakeholders and non-housing government agencies in addressing the inequitable impact of substandard housing. In 2016, leaders from the nonprofit, public, and private sectors developed the first blight elimination charter, to encourage more coordination on housing across sectors.¹²¹ The goal is to collaborate with the community to promote code enforcement,¹²⁶ in light of the disparate impacts that deteriorating

properties impose on communities of color.¹²⁷ In 2017, Le Bonheur Children’s Hospital and the University of Memphis’s Cecil C. Humphreys School of Law also brought together a large coalition of local health care providers and housing and community development organizations to launch the Memphis/Shelby County Healthy Homes Partnership. The effort builds on the hospital’s efforts to reduce asthma among children in low-income households by facilitating home visits to identify and mitigate asthma triggers, including mold, dust mites, cockroaches, and rodents. For children in the program, hospitalizations dropped by 70% over 5 years. The partnership also incorporates the city’s programs for abatement of lead paint; utility assistance; and aging in place.¹²⁷

These innovative approaches to code enforcement take a proactive approach to achieving the long-term goal of safe and healthy housing for all Memphis residents, particularly those with the lowest incomes. Identifying blighted properties and enforcing against property owners shifts the burden from residents living in or near these units. Medical-legal partnerships also work to identify asthma triggers within the home, promoting enforcement of housing codes without requiring tenants to initiate complaints. This type of proactive intervention is important in communities where residents may not feel comfortable voicing concerns for various reasons, including language barriers, power imbalances, and receipt of housing subsidies or other public benefits.

Equitable distribution of settlement funds: New York State



The New York State Attorney General has made a conscious effort to redirect settlement monies from corporate actors to underserved communities in order to address the public health impact of the financial crisis of 2007–2008. The national tobacco settlement was a landmark victory for public health – but 25 years into the national tobacco settlement, less than 3% of the funds have been used to reduce smoking rates or to prevent youth from smoking.¹²⁸ In contrast, the state of New York’s approach to building an equitable component into corporate settlements evolved quickly as the full fallout from predatory lending became clear.

A 2017 settlement with Morgan Stanley doubled the amount credited toward the settlement in order to fund housing quality enforcement and affordable housing efforts by counties and cities.¹²⁹ Use of the funds cannot violate the Fair Housing Act or the Equal Credit Opportunity Act by discriminating against people based on race, religion, national origin, sex, marital status, disability, or receipt of public assistance.¹²⁹ The attorney general has also resisted pressure to turn over all of the settlement monies to general revenue.¹³⁰ Instead, the attorney general has used the state’s portion of the settlement to fund a new

program – Cities for Responsible Investment and Strategic Enforcement (Cities RISE) – an explicit effort to increase equity in housing quality and affordable housing.^{131,132,133}

The Cities RISE project involved cities in a competitive bidding process for funding to integrate data and technology into equitable and innovative strategies to revitalize housing. Proposals had to “*recognize and correct* existing housing and code enforcement policies that have historically had a negative and disparate impact on lower income communities.”¹³⁴ The state gave priority to applicants that demonstrated community support, had high concentrations of poverty, and had a history of addressing housing quality among vulnerable populations while minimizing displacement.¹³⁴ For example, Mount Vernon had already assigned social workers to cases with a high risk of tenant displacement,¹³⁵ and Rochester’s housing department recruited non-traditional code enforcement officers with the language skills to engage with communities.¹³⁵ All three phases of the Cities RISE project – data mapping,¹³⁵ community feedback,¹³⁶ and evaluation of implemented changes – have explicitly incorporated socioeconomic status, race, and language as outcome indicators.¹³⁷

Thoughtful approaches to allocation of settlement funds in order to promote equitable outcomes are taking hold in other contexts as well. For example, the potential settlement of the National Prescription Opiate Litigation has resulted in proposals for equitable allocation of settlement funds.¹³⁸

CIGARETTES • SODAS •



Conclusion

Scholars, policymakers, funders, and advocates have long discussed health inequities and the role that law and policy have played in creating them. But the unfortunate reality is that after years of legal and policy interventions, challenges remain when it comes to reducing health inequities in the United States. In some cases, health disparities are even widening.

The reasons for continuing disparities are varied and complex, but one often-overlooked culprit is how our laws and policies are enforced. As noted in this guide, policy design undoubtedly plays a critical role in helping to create equitable outcomes. How policies are enforced, however, can play an equally important role in achieving health equity.

Equitable enforcement requires consideration of several important and sometimes competing factors; chief among them is consideration of the impact of enforcement on underserved people and communities. As this guide demonstrates, local jurisdictions around the country – and even some states – have taken important steps to consider this impact and mitigate inequities that are likely to result when enforcing a law or policy.

We hope that this guide can support jurisdictions and entities at the forefront of the equitable enforcement movement as well as those interested in reconsidering their approach to enforcement actions. If communities are to be successful in advancing health equity across the country, then equitable enforcement must become a fundamental component of how communities create, implement and enforce laws and policies that support their ability to thrive.

Resources

These resources may be helpful as you consider equitable enforcement principles and their implementation.

- **ChangeLab Solutions, [A Blueprint for Changemakers: Achieving Health Equity Through Law & Policy](#)**
This resource presents legal strategies and best practices to help policymakers, practitioners, and communities improve health outcomes. It offers guidance on engaging diverse community members in the policy process and addressing the fundamental drivers of health inequities.
- **ChangeLab Solutions, [Long-Range Planning for Health, Equity & Prosperity: A Primer for Local Governments](#)**
This resource poses a series of questions in order to provoke thoughts on how planners can prioritize health and equity in their work and provides broad guidance on incorporating equity in long-range planning, community engagement, investment, and evaluation processes. It provides useful ideas for policymakers who are developing equitable enforcement strategies that incorporate community engagement and evaluation processes.
- **Public Rights Project, [Voices from the Corporate Enforcement Gap](#)**
This report presents national research and analysis on illegal business practices and how corporate enforcement (or the lack of it) interacts with strong laws preventing corporate abuses. This information may be helpful for those considering which enforcement strategies to use in addressing structural drivers of inequity and abuses of power.
- **Government Alliance on Race & Equity, [Racial Equity Toolkit](#)**
This document presents tools to help develop strategies and policies that explicitly consider racial equity in the development process – useful resources for those who are working through an enforcement policy development process.

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Public Rights Project is a national nonprofit based in Oakland, California, that builds state and local governments' capacity to enforce their residents' rights. Their mission is to close the gap between the promise of our laws and the lived reality of our most vulnerable communities. They work to achieve this mission by training attorney fellows to catalyze the proactive work of government law offices; providing strategic support in legal strategy, research, partnerships and data analytics to help offices develop high-impact legal cases; and designing and spreading community outreach and organizing approaches that empower community residents and advocates to be active partners in an enforcement agenda rooted in equity.



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Appendix A: Equitable Enforcement Tool for Enforcers

Equitable enforcement is an approach to enforcing and implementing the law that considers and minimizes the impact of harms on underserved communities. We have developed this tool to support government actors who are charged with enforcing the law (prosecutors, agencies, etc) in their efforts to enforce equitably. The tool provides a set of questions to guide decisionmaking in an enforcement context.

Preliminary equity audit

Consider the enforcement actions that your office has taken in the past 2 years, and answer the following questions:

1. What were the sources of the enforcement actions taken (for example, complaints, proactive investigations, community-based organizations [CBOs], another political body)?
2. In how many actions did you consult with community-based organizations and affected communities about the enforcement action?
3. Of the enforcement actions taken, how many addressed issues in underserved neighborhoods or geographic areas?
4. Of the enforcement actions taken, what percentage primarily benefited underserved communities (for example, BIPOC,* LGBTQI,** disabled, immigrant, formerly incarcerated, or elderly people)?
5. Of the enforcement actions taken, what percentage of monetary relief benefited underserved communities?
6. Were you aware of any unintended consequences of any enforcement actions taken? If not, do you have any processes in place to help you understand the continuing impacts and effectiveness of enforcement actions?

* Black, indigenous, and people of color

** Lesbian, gay, bisexual, transgender, questioning, or intersex

Considering equity when gathering information on potential enforcement actions

In many ways, the method of sourcing enforcement actions is the most important part of ensuring that enforcement is equitable. Especially if your office has discretion and is not required to process every complaint, ensuring that your enforcement actions are not biased toward the “squeaky wheels” in your jurisdiction is key. When you are evaluating your pipeline for enforcement actions, consider the following questions:

1. What underserved communities reside in your jurisdiction? Where do they live? Do your sources of enforcement actions reflect those underserved communities?
 - Are there immigrant communities that are particularly vulnerable but may be afraid to report harms?
 - Reviewing demographic data on income, health, and educational outcomes in your jurisdiction may help you identify underserved communities.
2. What proportion of your enforcement actions come from complaints?
 - Are certain neighborhoods over-represented in complaints? What are the demographics (race, income level, language, etc) of complainants?
 - How accessible is your complaint form and website? Is it available and usable on mobile phones? Are materials available in the languages that are most prevalent in your jurisdiction? Are complaint forms available in other formats for those who lack access to internet or mobile phones?
3. What proportion of your enforcement actions come from CBO referrals?
 - Have you worked to develop relationships with CBOs? Ways that you can develop relationships with CBOs include reaching out to explain the priorities and work of your office to CBOs, conducting “know your rights” trainings with CBOs, and attending CBO events, among others.

Considering equity when deciding which issues or enforcement actions to pursue

Your office probably has criteria for assessing potential enforcement actions to pursue. These criteria likely include considerations like the severity or pervasiveness of harm (or potential harm); whether harm occurs at a critical life juncture such that the harm will have long-term effects; whether other enforcement agencies are already bringing similar enforcement actions; and whether the targeted practice is new and may be deterred at its inception. In addition to these considerations, it is essential to consider equity when deciding which issues or enforcement actions to pursue.

1. Have you gathered information from CBOs and affected individuals about the issue or the people or entities who will be subject to the potential enforcement action?
2. Does the harm you are seeking to address disproportionately affect an underserved community?
3. Is the person or entity subject to the potential enforcement action responsible for the root cause of the harm? If not, how will bringing the enforcement action affect the root cause of the harm?
4. What are the potential consequences of the proposed enforcement action on underserved communities or individuals?
5. Are there alternative ways to solve the problem if the proposed enforcement action is not a good fit for affected individuals or the community as a whole?
6. What unintended consequences might result from the enforcement action and the remedy you are seeking? Have you considered federal immigration consequences, for example?

Considering equity when investigating, litigating, and resolving an enforcement action

Equity should be a consideration in all aspects of your work, including investigation, litigation, information sharing, and resolution of an enforcement action.

1. If you are working with members of underserved communities as witnesses, are you trained in cultural competence? Do you have enforcers who reflect the underserved communities in your jurisdiction? Do you have translators or enforcers with language abilities relevant to communities in your jurisdiction?
2. If you are working on a matter that has been referred by or in conjunction with a CBO, are you clearly communicating with community partners on a regular basis? Are you sharing information when possible, as well as indicating when you are unable to share information due to confidentiality or attorney-client privilege concerns?
3. Have you discussed with affected individuals and CBOs what success looks like to them? Do you have processes for bringing affected individuals into the settlement process?
4. What unintended consequences might result from the enforcement action and the remedy you are seeking? Have you considered federal immigration consequences, for example?
5. Have you reviewed the resolution with affected individuals and CBOs to ensure the outcome is satisfactory and identify opportunities for improvement in future work?

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