

# Growing Pains: Areas of Opportunity in Public Health Law Research

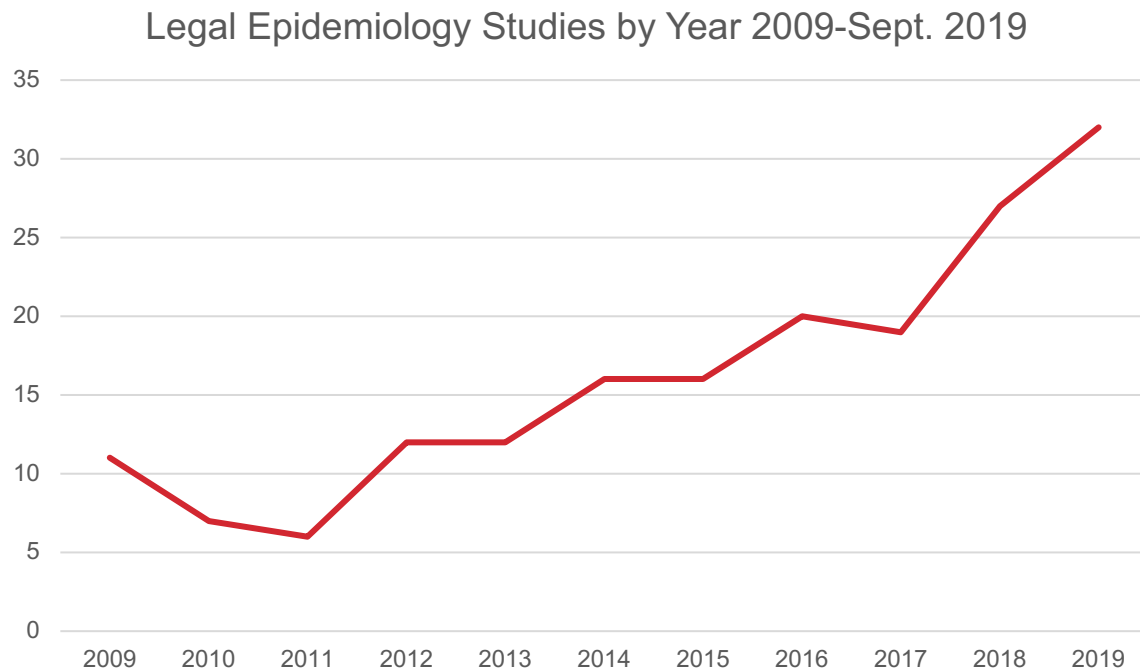
**Scott Burris, J.D.**

# Legal epidemiology

**« The scientific study of the health effects of laws and legal practices. »**

# There is more and more research

Data from Pepin, D. A., St. Clair Sims, R., Khushalani, J., Tonti, L., Kelly, M. A., Song, S., . . . Kaminski, J. W. (9900). A Narrative Review of Literature Examining Studies Researching the Impact of Law on Health and Economic Outcomes. *Journal of Public Health Management and Practice*, doi:10.1097/phh.0000000000001833



## But it seems a lot of it is *BAD*

- Pepin et al: “Although 92% of studies provided a source for the legal data, most did not discuss scientific legal mapping methods used ... or provide a discussion of the validity of the legal data relied on.”

No source of legal data identified	8%
Took data from another source	53%
Actual search string provided	6%
Had a legal domain expert on the team	19%
Had a lawyer in a study that created its own legal data	54%

# We are ALL empiricists:

*As even the most casual reader of the nation's law reviews must acknowledge, a large fraction of legal scholarship makes at least some claims about the world based on observation or experience. ... In fact, in terms of legal scholarship, it is only the purely normative or theoretical that is not empirical. But even many articles whose main purpose is normative often invoke empirical arguments to shore up their normative points—such as offering the positive empirical implications of adopting their preferred policy.*

*-- Epstein L, King G. The Rules of Inference. University of Chicago Law Review 2002;69(1):1.*

**So we gave an opportunity – obligation – to do something about this!**

# There's no law at all

**Problem 1**

# Remember this Story?



**Cochrane**  
**Library**

Cochrane Database of Systematic Reviews

## **Physical interventions to interrupt or reduce the spread of respiratory viruses (Review)**

Jefferson T, Dooley L, Ferroni E, Al-Ansary LA, van Driel ML, Bawazeer GA, Jones MA, Hoffmann TC, Clark J, Beller EM, Glasziou PP, Conly JM

The New York Times

OPINION  
ZEYNEP TUFEKCI

## Here's Why the Science Is Clear That Masks Work

March 10, 2023



The New York Times

OPINION  
BRET STEPHENS

## The Mask Mandates Did Nothing. Will Any Lessons Be Learned?

Feb. 21, 2023





# What was reviewed in the Cochrane review?

- Mostly **cluster RCTs**, but diverse in study size, location, and approaches
- Interventions studied were frequently multifaceted, including hand hygiene, masks, advice and social distancing.
- Included studies used a variety of mechanisms to promote mask use, including provision of free masks, instructions, reminders and more.



**There was  
NO policy  
research in  
the review**

# Policy needs a definition for scientific uses

Coming to policy evaluation from a legal tradition, it is perhaps professionally natural to distinguish between the particular conduct or standard that is desired to be spread and the mechanism through which that spreading occurs:

- Wearing masks is a behavior
- Encouraging mask use is an intervention
- Requiring masks is a policy

Accepting the distinction means that for the technical work of policy research and evaluation, it is useful to give that common word policy a narrow technical definition:

**A governmental or organizational instrument for generalizing a desirable behavior or standard.**

Such an instrument will nearly always take the form of an observable law or law-like text.

# Supporting some basic distinctions

## Basic research on mechanisms of effect:

- In the lab, what devices stop what viral particles under what experimental conditions (temperature, humidity, concentration, eg)

## “Policy candidate research”:

- In intervention trials with real people, do masks reduce transmission? Under what circumstances?
- How can mask wearing be promoted and sustained? What barriers arise in practice?

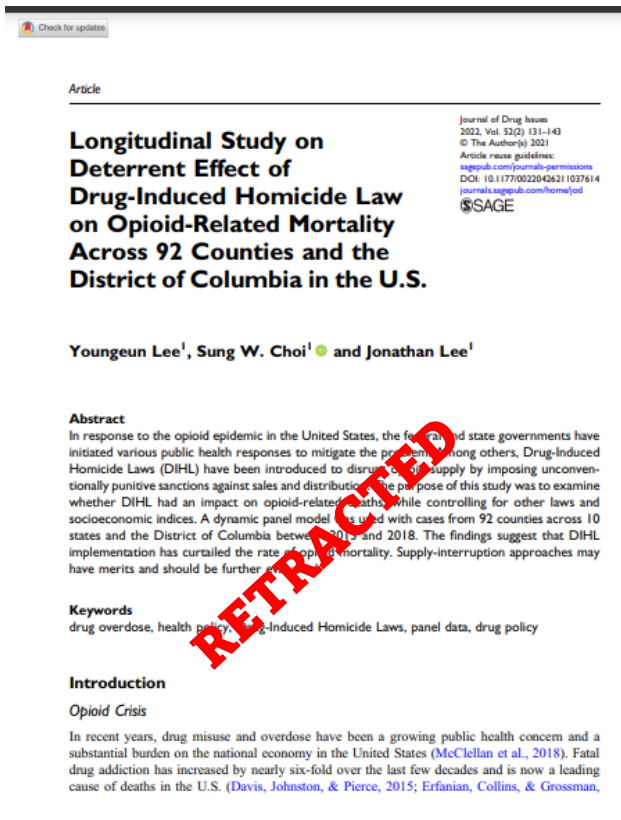
## Policy research (legal epi):

- Where are mask laws, regulations or institutional rules adopted? What form do they take (policy surveillance)
- How are they implemented?
- What effects do they have?

# The law is mismeasured

## Problem 2

# Bad research → poor policy choices



Article

## Longitudinal Study on Deterrent Effect of Drug-Induced Homicide Law on Opioid-Related Mortality Across 92 Counties and the District of Columbia in the U.S.

Journal of Drug Issues  
2022, Vol. 52(2) 131–143  
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SAGE

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### Abstract

In response to the opioid epidemic in the United States, the federal and state governments have initiated various public health responses to mitigate the problem. Among others, Drug-Induced Homicide Laws (DIHL) have been introduced to disrupt drug supply by imposing unconventionally punitive sanctions against sales and distribution. The purpose of this study was to examine whether DIHL had an impact on opioid-related deaths while controlling for other laws and socioeconomic indices. A dynamic panel model was used with cases from 92 counties across 10 states and the District of Columbia between 2001 and 2018. The findings suggest that DIHL implementation has curtailed the rate of opioid mortality. Supply-interruption approaches may have merits and should be further

### Keywords

drug overdose, health policy, Drug-Induced Homicide Laws, panel data, drug policy

### Introduction

#### Opioid Crisis

In recent years, drug misuse and overdose have been a growing public health concern and a substantial burden on the national economy in the United States (McClellan et al., 2018). Fatal drug addiction has increased by nearly six-fold over the last few decades and is now a leading cause of deaths in the U.S. (Davis, Johnston, & Pierce, 2015; Erfanian, Collins, & Grossman,

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### RESEARCH ARTICLE



## A discussion of critical errors in a longitudinal study on the deterrent effect of drug-induced homicide laws on opioid-related mortality across 92 counties and the District of Columbia in the United States

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### Abstract

Drug overdose claimed more than 100,000 lives in the United States in 2021. Drug-induced homicide (DIH) laws create specific criminal liability for individuals who provide drugs that cause or contribute to the death of another person. DIH prosecutions in the United States have increased substantially over the past decade despite the absence of meaningful evidence of their individual- or community-level impacts. Recently, Lee et al. analyzed the impact of DIH laws on county-level opioid overdose mortality across 92 counties in 10 states and concluded that DIH laws are associated with significant reductions in rates of opioid overdose death. In this commentary, we present evidence demonstrating that the Lee et al. study is fundamentally flawed. Specifically, the legal data used by Lee et al. to define their treatment condition (the presence or absence of a state-level DIH law) is incorrect in almost every aspect. We also describe significant methodological weaknesses, including flawed sampling strategies that resulted in a biased sample of county overdose rates as well as flawed modeling strategies that cannot effectively evaluate the hypothesis that DIH laws negatively impact opioid overdose mortality. More

# The remedy

For people who need information about the law, the best decisions and the best research will come from legal data that adhere to tenants of **science and open science**

- Validity
- Reliability
- Transparency
- Reproducibility
- Accessibility

If these standards are not met, the study should not be published, and if published not relied on

**The measurement strategy is  
more or less far-fetched**

**Problem 3**

# The Infamous Binary Variable

[HEALTH AFFAIRS](#) > [VOL. 36, NO. 5](#): ACA COVERAGE, ACCESS, MEDICAID & MORE

## Medical Marijuana Laws May Be Associated With A Decline In The Number Of Prescriptions For Medicaid Enrollees

[Ashley C. Bradford](#) and [W. David Bradford](#)

[AFFILIATIONS](#) ✓

- Presence of absence of law is an all-too-common strategy
- We lawyers know that laws of the same type vary considerably.
- The Bradfords are among the best policy researchers, and took a calculated risk, but still...



# Poor Measures + Hidden Thinkos

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SEARCH THE ENCYCLOPEDIA OF AMERICAN POLITICS



The following table shows the states that require state employees to get a COVID-19 vaccine or submit to regular COVID-19 testing.

**States with state employee COVID-19 vaccine-or-test requirements**

State	Governor party affiliation	Effective date	Policy
Illinois	D	October 1, 2021	On August 4, Gov. <a href="#">J.B. Pritzker</a> (D) announced that state employees who work in congregate settings, such as correctional facilities and nursing homes, would be required to get a COVID-19 vaccine. <sup>[2]</sup>
Kentucky	D	October 1, 2021	On August 2, Gov. <a href="#">Andy Beshear</a> (D) announced that state employees working in state-run healthcare facilities would be required to get a COVID-19 test or undergo COVID-19 testing twice a week. <sup>[3]</sup>
Maryland	D <sup>[4]</sup>	September 1, 2021	On August 5, Gov. <a href="#">Larry Hogan</a> (R) announced that state employees in 48 facilities, including Department of Health and Department of Public Safety and Corrections facilities, would be required to get a COVID-19 vaccine or undergo weekly testing. Employees who forewent a vaccine would also be required to wear face masks while indoors. Hogan said the policy would begin September 1. <sup>[5]</sup>
Pennsylvania	D	September 7, 2021	On August 10, Gov. <a href="#">Tom Wolf</a> (D) announced that state employees in state hospitals and high-risk congregate facilities would be required to get a COVID-19 test or undergo weekly COVID-19 testing. <sup>[6]</sup>

## States where the vaccine requirement has ended

**States where the vaccine requirement has ended**

State	Governor party affiliation <sup>[7]</sup>	Date requirement went into effect	End date	Information

**Lawyers can and should catch  
these mistakes in peer review  
and call them out if papers are  
published**

**And if you want to make good  
legal data...**

**We can help**

# Measurement Methods and Tools

**POLICY  
SURVEILLANCE**  
The ongoing  
systematic  
collection and  
analysis of laws  
of public health  
significance



## Measuring Law for Evaluation Research

Charles Tremper<sup>1</sup>, Sue Thomas<sup>2</sup>, and  
Alexander C. Wagenaar<sup>3</sup>

Evaluation Review  
34(3) 242-266  
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DOI: 10.1177/0193841X10370018  
<http://er.sagepub.com>  
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