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The Stigma of Criminal Legal Involvement and Health: a Conceptual Framework

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Abstract The USA incarcerates more people than any other nation in the world. Exposure to the criminal legal system has been associated with a myriad of health outcomes but less is understood about what drives these associations. We argue that stigma due to criminal legal involvement, what we call criminal legal stigma, likely has a larger role in the association between incarceration and negative health outcomes than has been previously appreciated. There is limited research on the impact on health of criminal legal stigma despite abundant research on its negative social consequences. In this paper, we describe a conceptual framework of the health effects of criminal legal stigma drawing on previous research of criminal legal stigma and advances in other areas of stigma research. We outline key concepts related to stigma mechanisms, how they function at structural and individual levels, and how they might cause health outcomes. Finally, we identify potential areas for future research and opportunities for clinical interventions to remediate negative effects of stigma.

Keywords Stigma · Criminal legal involvement · Incarceration · Prisons and jails · Health inequities

Background

The USA leads the world in incarceration. Starting in the 1970s, incarceration rates climbed in the USA, attributable to multiple factors including, but not limited to, the "war on drugs," sentencing changes, and deinstitutionalization of mental health facilities. Incarceration rates have only plateaued in the last

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several years [1–3]. As of 2018, there are over 2 million individuals incarcerated in jails and prisons in the USA as well as over 4 million individuals under community supervision on either probation or parole [4]. This means that about 1 in 40 adult US residents are under some form of correctional supervision at any given time, and many more will be incarcerated at some time in their life. The lifetime likelihood of being incarcerated is around 1 in 20 for all US adults based on 2001 incarceration rates, but lifetime risk varies by demographics due to gender differences and structural racism in our criminal legal system [5]. Whereas only 1 in 111 White women will experience incarceration in their lifetime, lifetime risk for White men is 1 in 17, 1 in 6 for Latino men, and 1 in 3 for Black men. Therefore, although incarceration is a common experience for people in the USA, it is much more common for men and racial/ethnic minorities.

Health outcomes and criminal legal involvement

The experience of incarceration has a profound impact on health both during and after release [6]. During episodes of incarceration, exposure to infectious diseases and the structural violence of the correctional system affect individuals' health [6]. For example, exposure to solitary confinement can lead to severe psychological symptoms such as psychosis and suicidality [7]. After individuals are released from correctional settings back into the community, a history of criminal legal involvement persistently impacts their lives. An incarceration history directly affects employment opportunities, housing access, social relations, and health [8–10]. People with (versus those without) a history of incarceration have worse outcomes for mental health disorders, substance use disorders, infectious diseases, and cardiovascular disease [6]. Several studies have demonstrated that prison release is associated with a greatly elevated risk of dying in the post-release period [11–13]. This increased risk of dying extends to a range of conditions, including violence (suicide/homicide), drug overdose, cancer, and cardiovascular disease [11].

Although the association between incarceration and poor health outcomes is well established, how exposure to the criminal legal system and incarceration, and especially its lingering effects post-release, causes poor health is less well understood. Some potential mechanisms proposed include the downstream health effect of impaired access to resources such as housing, employment, and food, and also suboptimal access and quality of health care during incarceration or in the period following release [1, 6]. Incarceration's impact on acute and chronic stress may also drive long-term health consequences [14]. Criminal legal involvement can also affect one's social environment, severing social relationships and limiting social support, which can further impede health following release [15].

Many of these proposed harms can be understood as consequences of stigma related to criminal legal involvement. Framing them as consequences of stigma allows for a holistic understanding of how criminal legal involvement, as a socially devalued mark or status, can lead to differential health outcomes. The role that stigma due to criminal legal involvement (i.e., criminal legal stigma) plays in health warrants particular attention due to the great number of people in the USA who have been touched by the criminal legal system and how it interacts with other stigmatized statuses (e.g. drug use, mental health conditions, and racial minority status) [16].

The goal of this paper is to describe a conceptual framework for understanding how criminal legal stigma can affect health outcomes. In doing so, we will situate published research on the impact of criminal legal stigma on health within more general theory and research on the impact of stigma on health. We postulate additional paths by which criminal legal stigma may affect health, some of which are yet to be researched. In this process, we will identify gaps in current knowledge and set an agenda for filling these gaps with further research. Finally, we will propose ways to address the adverse health impacts of criminal legal stigma in clinical care.

Stigma and health: definition of stigma

Stigma is conceptualized as a social process involving the co-occurrence of labeling, stereotyping, separation, status loss, and discrimination within in a context in which power is exercised [17]. This social process results in discrediting and devaluation of individuals living with stigmatized statuses [18, 19]. Stigma is theorized to serve key functions within society [20]. For example, stigma is used as a tool of exploitation and domination, creating an ideological

justification for maintaining power over groups such as racial and ethnic minorities. Stigma is also wielded to enforce social norms to "acceptable" behaviors and identities. In the context of criminal legal stigma, it marks those with a history of criminal legal involvement as devalued, normalizing domination, and is justified as functioning to dissuade unlawful behavior [21]. The stigma attached to criminal legal involvement, which we call criminal legal stigma, has the societal function of establishing norms around "law-abiding" behavior and deterring people who would otherwise commit crimes to not do so because of the social cost [22]. The criminal legal system has historically been used to enforce social norms; societies worldwide have used laws to outlaw and punish same-sex practices, diverse gender expressions, substance use, sex work, and other stigmatized statuses and behaviors [23]. Although previous theorists have identified these laws as manifestations of structural stigma and identified their role in health [24], this work has largely overlooked how criminal legal involvement also creates a new stigmatized status which has health consequences.

It is important to center that what constitutes crime is a social construct [25]. That is, which behavior becomes criminalized is a function of, and our society's explicit expression of, the social norms, practices, and meanings assigned to a given act in a given time and place [26]. Therefore, our discussion of the stigma associated with crime recognizes the inherently self-reinforcing nature of this particular form of stigma. A person transgresses a social norm, which has been codified into law, and they may instantly acquire a deviant and devalued status [27, 28]. In this way, criminal legal stigma stands apart from other forms of stigma.

With criminal legal stigma, it is the ostensibly freely made choices and actions of the stigmatized individual that invoke the status of social norm-violator. This stands in contrast to stigma related to individual and sometimes immutable characteristics like race, gender, and some disabilities/health statuses. However, rather than being orthogonal to these forms of stigma, and consistent with the analytical framework of intersectionality, we posit that criminal legal stigma can alter and amplify them. Intersectionality "views categories of race, class, gender, sexuality, class, nation, ability, ethnicity, and age — among others — as interrelated and mutually shaping one another" [29]. It proposes that "power relations … are not discrete and mutually exclusive entities, but rather build on each other and work together; and that, while often invisible, these intersecting power relations affect all aspects of the social world" [29]. We therefore suggest that clarity about the nature and mechanisms of criminal legal stigma will both broaden and deepen understanding of other forms of stigma.

In particular, the criminal legal system creates and exacerbates racial disparities, which magnifies the potential impact of criminal legal stigma [30–32]. The ways in which law and policing are racialized in the USA suggest that criminal legal stigma interacts acutely with the racial caste system in the USA [33]. Similarly, with its origins in slave patrols [34], through to its charge to maintain "social order" and its role in catalyzing worldwide protests over the killing of unarmed Black men [35], policing is relevant to the intersection of race and crime in this country.

The key takeaway from the entwined domains of race and crime is that the stigma of one necessarily raises the specter of the other. Historically, certain acts are criminalized *because* Black people do them, resulting in certain laws being enforced disproportionately with Black people [36]. At the same time, criminal legal involvement is at least in part stigmatized precisely *because* it is a social institution occupied disproportionately by Black people. Along the same lines, criminal legal stigma interacts with, and likely contributes to, other forms of stigma such as that related to mental health, substance use, or HIV/AIDS.

The presence of criminal legal stigma, and its interplay with other forms of stigma draws attention to the accumulating nature of stigma; some stigmatized statuses are criminalized and put individuals at risk of interacting with the criminal legal system and incarceration, which in turn imposes criminal legal stigma. As a result, criminal legal stigma leads to social isolation and disruption of social ties, as well as discrimination in employment, housing, financial aid, voting, and other aspects of community involvement [8–10, 37].

The role of criminalization as an apparatus for operationalizing other stigmatized statuses, and the existence of criminal legal stigma as a stigmatized mark in-and-of-itself, have been noted by many scholars beginning with Erving Goffman's seminal text on stigma [19]. While scholars across disciplines

have engaged the question of how criminal legal system involvement impacts individuals [38], their families [39], how those involved see themselves [40], and how they are perceived by others [21], conceptualizing these phenomena as stigma and drawing out its connections to health make possible different kinds of questions and analyses. Furthermore, given the function of criminal law to reinforce societal norms and criminalization's role in reproducing stigma, conceptualizing the mutually reinforcing dynamic, between other stigmas and criminal legal stigma, and how it can impact health opens the door to analyses that more accurately people's lived experience.

Stigma mechanisms

People take on the stigmatized status of criminal legal involvement primarily via incarceration (either serving jail or prison sentences), but it can also be conferred by other criminal legal system involvement (e.g., arrest or probation) exclusive from incarceration. Like other stigma, criminal legal stigma is expressed and experienced at both the structural and individual levels. Structural-level stigma spans societal conditions, cultural norms, and policies that constrain the opportunities, resources, and wellbeing of people with stigmatized statuses [41]. Structural discrimination against people with a history of criminal legal involvement manifests itself in policies that limit access to employment, housing, loans, and other societal resources [2, 14, 42].

On the individual level, stigma is manifested in the behaviors, implicit or explicit thoughts, and feelings both of people who do not have the stigmatized mark and the individuals with the stigmatized mark. As such, at the individual level, criminal legal stigma functions both in those who perceive a history of criminal legal involvement in others and in those who are the target of stigma and have a history of criminal legal involvement themselves.

In perceivers, criminal legal stigma manifests in stereotypes, prejudice, and discrimination, representing cognitive, affective, and behavioral dimensions of stigma. Stereotypes are group-based beliefs that are applied to the individual [43], prejudice encompasses the negative emotions felt towards stigmatized individuals [44], and discrimination is the behavioral expression of prejudice and stereotypes towards stigmatized individuals [44, 45]. Negative stereotypes — beliefs that people with criminal legal involvement are "dangerous, dishonest, and otherwise disreputable" — are widely held and are often reinforced in mass media [46, 47]. Not surprisingly, these beliefs lead to discrimination that manifests in social-distancing, hiring decisions, and housing opportunities [42, 48–50].

In targeted individuals, criminal legal stigma manifests in psychological responses of knowing they have violated social mores and are subject to other's negative treatment. The range of psychological responses in targets of stigma can be categorized as experienced stigma, anticipated stigma, and internalized stigma [18, 51, 52]. Experienced stigma includes how people with criminal legal involvement have experienced stereotypes, prejudice, and discrimination in past or present. . Anticipated stigma represents how a person with criminal legal involvement expects to experience prejudice, stereotypes, and discrimination from others in future interactions. Finally, internalized stigma refers to the degree that an individual endorses the negative beliefs about themselves in relation to their criminal legal involvement history. As individuals experience and anticipate differential treatment due to their past criminal legal involvement, they may internalize stigmatized attitudes or negative beliefs about themselves due to their status as someone with a history of criminal legal involvement [53–55]. Although we conceptualize structural and individual-level stigma mechanisms as separate processes, they are highly inter-related; conditions, norms, and policies are both created and enforced by individuals and the line between structural and individual manifested stigma is porous [56].

Criminal legal involvement, like many other stigmatized identities, is concealable meaning that it can be hidden in many contexts thereby influencing how stigma is experienced [52, 57]. For example, fear of disclosure of one's history of criminal legal involvement can magnify psychological distress [58]. Health care providers do not typically ask about incarceration history and an individual with criminal legal involvement may anticipate stigma or experience discrimination if that identity were to be disclosed adversely affecting that clinical interaction.

Centrality, or the extent to which an individual believes that a stigmatized identity is central to their self-image as a person, and salience, the frequency that an individual thinks about that identity, can both

affect the experience of stigma. For individuals with a history of criminal legal involvement, how central and salient that status is to their identity will vary across individuals and potentially, for any given individual, evolve over time as other identities are developed or the incarceration experience becomes more remote.

Health outcomes and stigma

There is growing research on how stigma drives health outcomes and plays an important role in producing health disparities [18, 24, 59]. Stigma's impact on health may be mediated through several key pathways including access to resources, social isolation, and psychological/behavioral responses to sigma [18, 24]. Stigmatized identities impact both socioeconomic status and various health outcomes; stigma has been characterized as a fundamental cause of health disparities [24]. Robust research documents the health implications of many stigmatized statuses including sexual orientation [60, 61], HIV [51, 62, 63], mental health [64, 65], substance use [56], and race [24]. Similar to other stigmatized statuses, criminal legal stigma likely has profound effects on health given how it changes social connections and access to resources.

Criminal legal stigma and health framework

There is a small but growing literature on the health impact of criminal legal stigma [16]. As our understanding of these phenomena grows, we believe it is important to conceptualize broadly how criminal legal stigma affects health, map out pathways between criminal legal stigma and health that are supported by current evidence, and hypothesize pathways that draw from research on other stigmas. We have created a conceptual model, which we call the *Criminal legal Stigma Framework* (Fig. 1), to describe these pathways. In the model, we lay out how criminal legal stigma, through stigma mechanisms and mediating pathways, can lead to health outcomes.

The model maps the criminal legal stigma mechanisms described above, which are common to other scholarship on stigma and health. This allows for comparisons between how criminal legal stigma and other stigmatized statuses function. Our model highlights how contextual and moderating factors (e.g., historical and social context, HIV status, sexual orientation) may influence criminal legal stigma's impact on health outcomes.

In describing the model, we characterize the pathways based on the strength of evidence supporting the connection, identifying gaps in our current

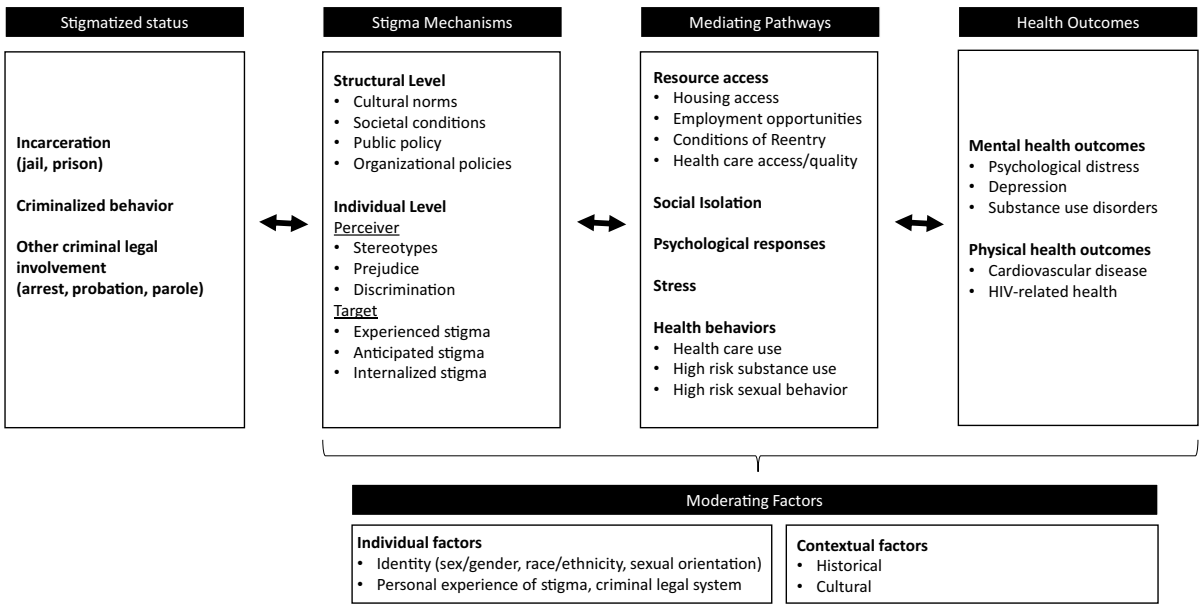

Fig. 1 Criminal legal stigma framework

understanding. Our model generally concords with Major et al.'s [18] conceptual model of stigma and health and builds on previously described conceptual frameworks for understanding how substance use disorder stigma and HIV stigma affect health [56, 66].

Mediating pathways

Despite strong evidence of the health effect of other forms of stigma, there are relatively few studies examining how criminal legal stigma impacts health [16]. Despite this absence of evidence, it is likely that criminal legal stigma has an effect on health in so far as it functions in limiting access to resources that are needed to achieve optimal health. For example, the effect of criminal legal stigma on limiting housing and employment opportunities increases likelihood of experiencing homelessness, which has a myriad of health effects [67, 68]. More directly, differential access and treatment in health care settings due to criminal legal involvement, such as how people in custody receive differential treatment in emergency departments [69], likely affects health outcomes.

Finally, we highlight that criminal legal stigma can affect effect health behaviors, such as sexual behavior, substance use, and health care use, which are not changes in health status in-and-of-themselves but can mediate health outcomes. Some studies with mixed results suggest that experienced and internalized criminal legal stigma increase risky drug use and risky sexual behavior [15, 70–72]. Similarly, there is some limited, but conflicting evidence, on discrimination in health care settings, and attendant anticipated stigma, leading to negative experiences, differential outcomes, and lower health care utilization [69, 73–77]. Exploration of mediating pathways that explain how individual-level stigma may affect these health behaviors requires additional research. The experience of stigma may lead to affective and cognitive manifestations, such as stress, and maladaptive behavioral accommodations, including social isolation, which in turn affect health outcomes. Although documented with other stigmatized statuses, these affective and behavioral responses have not been adequately researched with respect to criminal legal stigma.

Health outcomes

In our framework, we propose that criminal legal stigma can directly manifest in both physical and mental health outcomes (e.g., depression, suboptimal HIV control, cardiovascular disease). Examples of mental health outcomes include depression, substance use disorder severity, and psychological distress. Examples of physical health outcomes include incident cardiovascular disease and HIV-related health. In the peer-reviewed literature, there is evidence to support the impact of all three mechanisms of stigma (experienced, anticipated, and internalized) on psychological distress and depressive symptoms [16, 55, 78–82]. This impact is sometimes mediated by social isolation due to the combination of social distancing, among stigma perceivers, and social withdrawal, in stigma targets [15, 70, 75, 83]. There is a notable absence of studies on the role criminal legal stigma on physical health outcomes [15, 84]. We postulate that stigma affects physical health given its impact on other non-health domains and the impact of other types of stigma on physical health [18].

Moderating factors

Our conceptual framework also highlights how moderating factors may alter the experience of criminal legal stigma and exacerbate or attenuate the relationships between stigma and health outcomes. These moderating factors can include individual characteristics and other identities, which may also be stigmatized, as well as contextual factors that moderate how stigma manifests at different times and in different situations. Individual characteristics may also affect the way criminal legal stigma functions. As mentioned above, an intersectionality framework suggests that multiple stigmatized marks can co-exist in one individual and influence associations between stigma and health outcomes. The experience of criminal legal stigma can co-occur in individuals with other stigmatized identities such as mental health disorders, substance use disorders, or HIV infection. In this way, criminal legal stigma can help reinforce and reproduce many other types of stigma.

An individual with multiple stigmatized statuses may experience stigma for each status individually, but also unique stigma specific to the intersecting statuses. Also, given the centrality of structural racism

in the US criminal legal system, the stigma associated with incarceration likely manifests itself differently across racial/ethnic identities [53, 54, 83]. These co-occurring identities can modify criminal legal stigma, potentially increasing or decreasing the harm associated with stigma. For example, people living with HIV may be stigmatized during incarceration, which could lead them to anticipate stigma in seeking care in the future, which may negatively affect their health care utilization [76, 77, 84]. Contextual factors place stigma in its cultural, historical, and geographical context, as the meanings, practices, and outcomes of stigma vary across cultures and time [85]. Given the current historical context of mass incarceration and subsequent criminal legal reform, it is likely that criminal legal stigma processes will evolve in time along with this context.

Future directions

Recognizing the health outcomes tied to criminal legal stigma and the current gaps in our knowledge of those connections, we propose the following considerations for research and clinical care.

Proposed research agenda

Within the existing literature on health and criminal legal stigma, there is no consensus instrument used to measure the various stigma mechanisms [16]. In the quantitative research produced so far, investigators have developed a variety of novel instruments, often modifying validated instruments from other areas of stigma research. However, the psychometric properties and validity of different instruments have not been well described or compared to each other. Development and validation of a standard instrument which can be used across research settings would vastly improve the generalizability and reproducibility of research findings. In addition, given the potential for variation in the experience of stigma in different contexts and by individuals with different intersecting identities, validation of proposed instruments in different social contexts and in populations with overlapping stigmatized identities will be vital.

Future research should also continue to flesh out the direct health outcomes associated with the experience of criminal legal stigma. Although psychological symptoms, in particular psychological distress, have been examined most frequently, more work could be done to confirm this connection. In addition, given findings of the health outcomes associated with other types of stigma, research should broaden how criminal legal stigma might affect other health outcomes. For example, criminal legal stigma has been found to increase social isolation, which in turn has been associated with mortality and poor outcomes across a range of conditions including cardiovascular disease and substance use disorders [86–88], yet the connection between criminal legal stigma and cardiovascular disease and substance use outcomes has not been previously researched.

Additionally, future research on criminal legal stigma should elucidate how it functions in different settings and in individuals with a range of identities. As noted above, some work has been done to describe how criminal legal stigma interacts with racism leading to differential effects for Black and White individuals with a history of criminal legal involvement. More work in this area and across other stigmatized identities, such as mental health disorders, substance use disorders, or HIV infection is needed.

Clinical agenda

Although there are clear gaps in understanding how criminal legal stigma affects health, there are already ample opportunities for clinicians to address and remediate its effect. First, health care providers must acknowledge their role in reinforcing stigma, both when providing care inside and outside correctional settings. This begins with addressing discriminatory treatment of people with criminal legal involvement in health care settings, including shackling women in childbirth or differential treatment of pain. These experiences, whether occurring while a person is incarcerated or after release, exacerbate anticipated and internalized stigma in individuals with a history of criminal legal involvement. As such, these individuals often-justified fear of being treated differently can prevent engagement with health care services and impede diagnosis and treatment. Health care providers should avoid using language that further creates stigma. For example, avoiding labels such as “inmate,” “felon,” or “convict” in favor of person first language when a patient’s incarceration history needs to be mentioned during clinical care. This can also

include avoiding documenting a criminal conviction history in medical records if not relevant or necessary for clinical care. Clinicians can also provide support around disclosure and how individuals process their own criminal legal history and how that history impacts their health.

Finally, currently, there is no evidence on interventions to address the health impact of criminal legal stigma. Recommendations on screening, discussing, and addressing criminal legal involvement and stigma in clinical care are nascent and based on expert opinion [89]. Investigation into tools and interventions, such as behavioral therapies or health system redesign, which can be implemented to ameliorate the health impact of criminal legal sigma should be pursued. In the meantime, tools for promoting resiliency and addressing other types of stigma can be transferred into the realm of criminal legal stigma.

Conclusion

Involvement in the criminal legal system and incarceration are unfortunately common experiences in the USA and have a profound impact on health. Stigma has an important role in mediating how criminal legal involvement affects health. Although there is some research in this area, with the strongest evidence for criminal legal stigma impacting psychological health, it is understudied compared to other areas of stigma research. Our *Criminal Legal Stigma Framework* provides a roadmap for future research on criminal legal stigma and health as well as areas for potential interventions, clinical or otherwise.

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