



Testimony Lynn Silver, MD, MPH, FAAP
April 25, 2024
Pennsylvania House of Representatives
Health Committee

Key recommendation:

Our most important recommendation, if you decide to legalize sale, is to pursue a middle road neither prohibitionist nor profiteering. To reap the criminal justice equity benefits without driving up the harms. The best evidence supports something that resembles your existing Fine Wine & Good Spirits system which has long served your residents. This can be accomplished through a public store system, or if you are concerned about public employees selling a federally illegal product, through an exclusive contracted nonprofit arrangement, or other type of quasi-public entity. Its central goal should be to make cannabis legally available without driving up consumption or maximizing sales.

- Thank you, Chairman Frankel and members, it's an honor to be here with you this morning.
- My name is Dr. Lynn Silver. I'm a pediatrician, senior advisor at the Public Health Institute and full clinical professor at the University of California San Francisco, with 4 decades of experience in public health policy and administration.
- In 2017 with passage of legalization in California I founded the Getting it Right from the Start initiative. Our focus has been to work where cannabis has been or is being legalized to identify and test potential best practices to protect kids, public health, and social equity. We carry out extensive research

supported by NIH and other funders to assess policy impact on health and equity. We develop tools and model laws and provide technical assistance to government and community partners.

- I come at this problem as a pediatrician, a public health professional who has spent her life finding ways to prevent illness before it happens. But also as a mother and stepmom of 5, soon to be grandmother, and lastly as someone who loved someone who developed psychosis and schizophrenia and is no longer alive today. Preventing every case of serious mental illness that is preventable is personal to me.
- **A critical window:** For the 26 states that have not yet legalized, we believe there is a critical window to learn from our errors and do better.
- **The “how” of legalization matters as much as the “whether:”** I am not here to tell you whether to legalize or not. There are very good arguments to be made for and against. I’m here to share with you ways, that if you decide to move forward, you can greatly reduce harms from legalization, improve impact on health and social equity, and better protect kids. The “how” of legalization has received far too little attention. Yet it is as or more important than the “whether.”
- **The middle road:** You can do this by following a **more prudent middle road, neither prohibitionist nor profiteering**, as other countries legalizing cannabis have done.
- **Decriminalize and expunge no matter what:** You can and should start by further reducing the unjust burden of criminalization and by automatically expunging nonviolent past criminal records. You don’t even need to legalize sale to do that. You certainly don’t need to create a new for-profit industry of addiction to do that.
- **Why should you not follow the path taken by my state, California?**

- The product Pennsylvania is deciding how to treat is not the botanical plant from my college days. That joint your mother may have rolled had about 3-5% THC. It got you high. But only rarely did it make people seriously ill. Over the last 20 years the US cannabis market has become something completely different. **Changes in agricultural practices have led flower to be roughly 8 times stronger, clocking in at 20-30% THC. A vast array of manufactured, aggressively marketed, and flashily packaged inhalable concentrates and edible cannabis products, as well as intoxicating so-called hemp products has emerged. Many are 80, 90 or almost 100% THC.** Some imitate McDonald's, baby foods, Cocoa Pebbles, Nachos or Skittles. **Many bear as much relationship to the cannabis plant as fentanyl does to poppies, or a strawberry PopTart to a strawberry.**
- In the just desire to right the wrongs of the War on Drugs, acquire new tax revenue and create legal jobs, much of America has, essentially, been snookered. Notwithstanding requiring testing for contaminants, many states, have allowed the cannabis industry to define its scope as almost any product the industry can invent, no matter how potent, harmful or attractive to youth. Even where rules exist, they often go unenforced. In contrast, **other countries like Germany, Uruguay, or Canada, have been far more prudent.**
- We are paying the price of imprudence.** The result is not good. One in ten young American adults now walks around high nearly every day, tripling past rates. Use during pregnancy, which has significant negative impacts for the baby, has almost doubled in my state. Cannabis-induced psychosis and schizophrenia, generally in teens and youth, have grown markedly, and are now responsible for a significant - and preventable - subset of new psychosis. Daily use of cannabis above 10% THC – now almost everything now being sold, has been associated in studies with a five-fold increases in risk of psychosis– a problem we all know we are failing as a society to manage, and one that is helping to fill our streets with people with poorly controlled serious mental illness.

- Frequent use by high school students is up and is likely contributing to the increases in absenteeism and other poor educational outcomes. Youth who engage in daily use are far less likely to graduate high school or college. They are more likely to be suicidal.
- ER visits related to cannabis have risen dramatically, especially in seniors.
- Quite simply we already have a national crisis in youth mental health. An unfettered for-profit cannabis industry throws flame on that fire. Cannabis is no ordinary commodity and cannot be treated as such without generational harms.
- **When you think about legalization, it is important to recognize that the greatest future danger to the health of Pennsylvania residents comes not from home grows or even pesticide residues. It comes from what is intentionally put in the box. It comes from what happens if you build a powerhouse of agricultural, industrial, and retail interests that profit from a harmful and addictive drug and develop increasing political influence. In short, from building a new tobacco industry.**
- **A middle road: Our most important recommendation, if you decide to legalize sale, is to pursue a middle road. To reap the criminal justice equity benefits without driving up the harms. The best evidence supports something that resembles your existing Fine Wine & Good Spirits system which has long served your residents. This can be accomplished through a public store system, or if you are concerned about public employees selling a federally illegal product, through an exclusive contracted nonprofit arrangement, or other type of quasi-public entity. Its central goal should be to make cannabis legally available without driving up consumption or maximizing sales.**

- **By using strong exclusive contractual and permitting relations you can:**
 - **Limit advertising** and marketing in a way that you could not otherwise do under current commercial speech jurisprudence.
 - **Right size production** rather than encourage the vast overproduction that feeds the illicit market in California or Oklahoma today.
 - Better **shape a safer cannabis supply** of less potent products, not designed to attract children and youth.
 - **Assure accurate information** for consumers.

- Like other alcohol state store states, **you currently have about one state store per 22,000 residents. You don't need more cannabis stores than that and should only go there gradually. Or you could pursue a delivery dominant model without stores or with far fewer stores.**

- **Location and moderation in numbers are key.** Our California research shows that negative outcomes like use during pregnancy, use by teens, and psychosis in teens are directly associated with the density of cannabis retailers near the home.

- **Tax revenues must be balanced against the cost of harms:** Tax revenue projections from consultants and cannabis lobbyists should be consumed with a grain of salt. If you do this wrong and create an industry that drives up consumption, and the more serious adverse effects, it will be robbing Peter to pay Paul. For every dollar in taxes gained Pennsylvania will spend one or two on psychiatric beds or in rehab units. Taxes should be sufficient (in the 20-40% range), proportional to milligrams of THC, and dedicated to prevention and health equity or community reinvestment. Alternatively in a public option revenue can be directly captured in a fund and redistributed.

- **The data from Quebec you heard earlier suggests that their model is less harmful, does not drive-up consumption as rapidly as the for-profit model, and still promotes the transition to the legal market as rapidly as for-profit stores.** Prices remain amongst the most affordable in Canada and consumers are satisfied.

- In the distributed material see a **one-page summary of Principles** we recommend where cannabis is being legalized. These include specific policy steps to protect children and youth, promote equity and mitigate harms from the War on Drugs, avert the emergence of a new tobacco-like industry, protect public health, and limit dangerous product diversification and marketing.
- I'm happy to answer questions and share additional materials and scientific evaluations and models.
- What you decide here will affect the health and well-being of Pennsylvania youth – and adults- for generations to come. Do it wrong and it can take as long to untangle as the harms of the tobacco industry. Do it right and you can help assure a healthier and more just future for your children and youth.
- Pennsylvania emerged from Prohibition's excesses cautiously. Similar prudence is required when emerging from the War on Drugs.
- Thank you.

PRINCIPLES FOR PROTECTING YOUTH, PUBLIC HEALTH & EQUITY IN CANNABIS REGULATION

The war on drugs has resulted in large scale unjust incarceration and other harmful social impacts. At the same time, legalizing cannabis without robust regulation and promoting the growth of an unfettered for-profit industry threatens our developing youth and public health, and risks further exacerbating social, economic, and health disparities. As a society, we have a collective responsibility to prevent or mitigate such harms. Where legalization is occurring, we can better accomplish this by putting in place strong guardrails and policies that protect youth, promote public health, and advance social equity. These should include:

PROTECT CHILDREN & YOUTH



- Eliminate the Cannabis Kids Menu. Prohibit any products, packaging or marketing that is attractive to children or youth, such as cannabis-infused beverages, flavored products intended for inhalation, flavored wrappers, and products that resemble candy.
- Limit the number of retail outlets to fewer than 1 per 15,000 people.
- Require buffer zones between retail outlets and schools (including colleges), public libraries, other youth serving facilities and residential areas.

PROMOTE EQUITY & MITIGATE HARMS FROM THE WAR ON DRUGS



- Decriminalize cannabis possession, reduce cannabis-related incarceration and automatically expunge past criminal convictions for non-violent cannabis-related crimes (e.g. CA, IL).
- Capture most or all tax revenue for substance abuse prevention and treatment, mitigating negative social impacts of the war on drugs, and public education campaigns.
- Prioritize equity in licensing applicants and hiring requirements (e.g. residents of communities impacted by high drug incarceration rates, people with past cannabis convictions).

AVERT THE EMERGENCE OF A NEW TOBACCO-LIKE INDUSTRY



- Favor public or nonprofit monopoly models to allow legal access without creating a profit-driven market (Quebec cannabis model or state alcohol monopoly models).
- Preserve local control so communities can innovate and learn.
- Prohibit conflicts of interest in regulatory bodies, advisory commissions, and for regulators and prescribers.

PROTECT PUBLIC HEALTH



- Assure that not driving increased consumption is a system goal.
- Place public health authorities in leadership roles.
- Require prominent health warnings in stores and provide safer use information to consumers.
- Inform vulnerable groups of the risks of use, such as low birth weight when used during pregnancy, psychosis and schizophrenia and other mental health effects, traffic incidents and immigration risks.
- Extend smoke-free air restrictions to consistently prohibit smoking and vaping cannabis indoors in workplaces, multi-unit housing and in public outdoors spaces.

LIMIT DANGEROUS PRODUCT DIVERSIFICATION & MARKETING



- Limit THC content, require stocking of lower THC products, and standardized 5 mg THC doses of concentrates.
- Prohibit the use of flavor additives and limit marketing of flavor names known to attract kids.
- Limit aggressive cannabis marketing, especially when visible to youth and children.
- Require warning labels on any advertising, prominent pictorial warnings on packages, and use of plain packaging of products.
- Prohibit therapeutic or health claims for cannabis products.
- Use a specialized business model for retailers (no food or other product sales).
- Prohibit sale of intoxicating hemp products.

Download complete model ordinances for retailing, marketing and taxation at www.gettingitrightfromthestart.org.

For more information, email gettingitright@phi.org.



Getting it Right from the Start
Advancing Public Health & Equity in Cannabis Policy

The Middle Road for Cannabis

Pennsylvania House of Representatives
April 25, 2024

Lynn Silver MD, MPH
Senior Advisor
The Public Health Institute

1

A key goal of decriminalization and then legalization was to reduce the unjust and excessive burden of arrests

How are we doing?

2

CA - Major Progress!

A 20% Decline in Marijuana Possession Arrests California 2009-2020

- 93% of over 200,000 eligible criminal records for minor marijuana offenses expunged by 2023
- But this can be achieved without creating a for-profit sales system

Source: PHI from FBI Crime Data Explorer

3

Emerging juggernaut

- Still Schedule 1 federally
- Still a policy of federal "forbearance"
- Cannabis industry is a growing juggernaut with increasing political power
- Companies like Altria and Constellation now leading coalitions to legalize, Altria and BAT bought in via Canada
- Strong pressure for state and Federal legalization of for-profit industry
- Growing global footprint

4

Where marijuana is - and isn't - legal in 2023

Legend: CBD/Low THC, Medical, No public program, Recreational & Medical

Map: Andy Bink & Aja Markelchuk, NIMH. Source: National Conference of State Legislatures. Get the data - Created with Datawrapper

5

Bad News: California Examples

- Tripling of daily or near daily use in adults 26+ 2008-9 to 2018-2019
- Major increases in use during pregnancy, vary with retailer density
- 75% increase in cannabis related ER visits in CA 2016-2020, including increasing psychosis
- 1800% increase in cannabis ER visits for seniors

Sources: UCLA, 2022; Young-Wolff 2021; PHI 2022

6

Cannabis Industry 2023 -Ramping up the lobbying game

Disseminating misinformation	Demanding tax cuts	Demanding Legalization & Deregulation
Demanding end to local control	Compromising smoke free air in parks, "cannabis" restaurants and bars	Expanding intoxicating "hemp"

7

Still large illicit markets driven largely by overproduction

8

Three Dangerous Areas Where the Cannabis Industry is Borrowing from Big Tobacco's Playbook

- Manipulating Potency thereby Increasing the Risk of Addiction and Psychosis
- Creating flavored and other diverse products aimed at attracting youth
- Misleading marketing & Marketing appealing to youth

9

Cannabis v. Tobacco Industries Similarities and Differences

Cannabis	Tobacco
<ul style="list-style-type: none"> Federally & historically illegal Growing and transitioning markets to legal Rapidly changing product Elevated health harms Some medical uses Declining perception of harm Major criminal justice changes Addictive and harmful for many Source of pleasure to users Early & growing corporatization 	<ul style="list-style-type: none"> Historically legal Stable but declining legal market Well known product with some novelty (e-cigs) Elevated health harms No medical use High perception of harm Limited criminal justice issues Addictive and harmful to many Source of pleasure to users Longstanding corporatization

10

Rising Potency -Does this sound familiar? Judge Kessler in *US v Philip Morris*

"Defendants have long known that nicotine creates and sustains an addiction to smoking and that cigarette sales, and ultimately tobacco company profits, depend on creating and sustaining that addiction.....Defendants have designed their cigarettes to precisely control nicotine delivery levels and provide doses of nicotine sufficient to create and sustain addiction."

Source: Kessler, G. in US. V Philip Morris USA Inc. (D.D.C. 2006)

11

To what extent are our cannabis policies addressing these challenges?

12

Many States: State Regulatory Frameworks – A Recipe for Addiction

- Allow extensive marketing
- Few restrictions on potency or flavors
- Health and therapeutic claims allowed and marketing inadequately monitored
- No or insufficient limits on number of licenses unless banned or restricted by local government
- Invisible and weak health warnings
- Weak state equity provisions in licensing

Positives include local control, taxation, expungement of records, specialized business in many states, emerging potency limits and plain packaging

13

And the result is.....

14

THE TOBACCO INDUSTRY HAS A KIDS MENU

80% OF KIDS WHO EVER USED TOBACCO STARTED WITH A FLAVORED PRODUCT

Lifelong addiction often starts out sweet.

The cannabis industry has a kids' menu too – because we have let them

15

30% THC Flower Imitating Kids Cereal

16

Grape Flavored "Blunts" with added concentrates

17

Plus Pride Rainbow Sherbet 100mg

Pickup at ECO Cannabis

\$21.73 each

View retailer

Exclusively for in-store customers.

Favorite Share

Pride Rainbow Sherbet

18



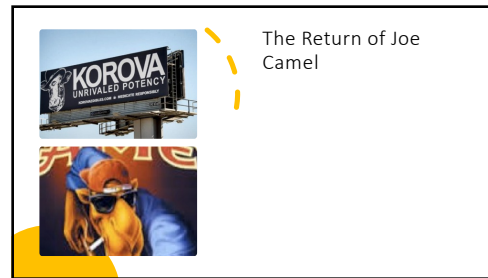
19



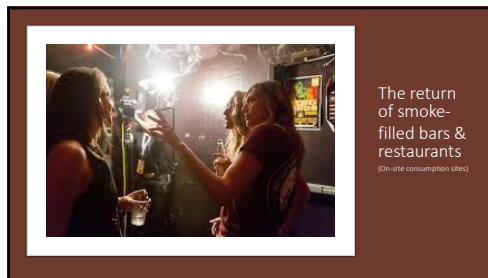
20



21



22



23



24

Formula for Trouble

High and Growing Levels of Exposure +

Mass Commercialization of More and Riskier Products +


Significant Associated Harms =

Formula for Significant Population Health Harm



25

What should we be doing?



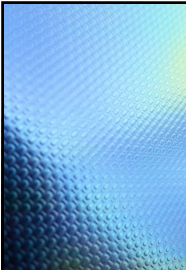
26

Uncertainty

Evidence base for cannabis policy practices is still nascent

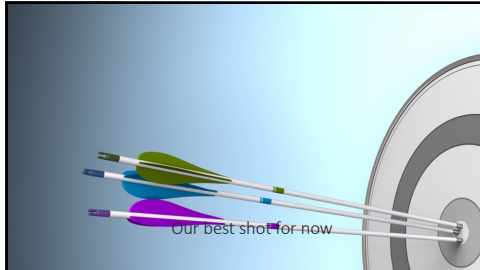
Lessons from tobacco control and other fields, especially for policy, system and environmental change provides strong guidance

But the real world won't wait – we are forced to regulate and legislate amongst uncertainty, to the best of our ability



27

Our best shot for now



28

Goals and Strategies


- Not Drive Up Consumption
- Protect Youth and Public Health
- Build Social Equity
- Public Health Primacy
- Strong Product Regulations
- Rightsize Commerce Infrastructure and Limit Profit Driven Commerce
- Taxes and Pricing
- Protect Smoke-Free Air
- Preserve Local Control
- Disallow Conflicts of Interest



29

Key Principles for Regulation IF legalizing commerce

- End unjust incarceration and automatically expunge criminal records
- Allow legal access but minimize or eliminate profit drive
- Consider public or not-for-profit state run system
- Structure to not drive-up consumption



30

Public Utility or Monopoly or Non-profit Model options

- Quebec (public monopoly stores & online)
- State alcohol monopolies (e.g., VA, UT)
- State operated system or via contracted nonprofit

31

Learning from Quebec, & Alcohol Monopolies

Allowing legal sales of a harmful product without promoting consumption

32

Quebec



- Created Soci t  Quebecois du Cannabis in 2018
- Retail sector is all state controlled public stores
- Express purpose is to allow legal access **without** increasing consumption
- 30% THC Limit on concentrates
- 5mg edible serving
- No sweets, confectionaries, desserts, chocolates or other products attractive to under 21
- No substance destined to modify odour, flavor or color

33

Quebec Exclusive State Controlled System Outcomes

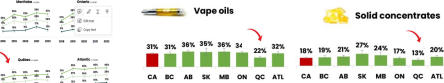


- Transition from illicit to legal market 75% by 2023 and similar to other provinces, higher than in many US legal states.
- Overall satisfaction 80% and with service is 88-90%
- The most profitable cannabis businesses in Canada are owned by government (MiBizDaily 9/20/22)
- Less growth in population consumption patterns

34

Quebec model had less consumption, did not shift people to getting high potency products from illegal market

0 Trends in cannabis prevalence



Year	CA	BC	AB	SK	MB	ON	QC	ATL
2018	31%	31%	31%	35%	36%	34%	22%	22%
2019	31%	31%	31%	35%	36%	34%	22%	22%
2020	31%	31%	31%	35%	36%	34%	22%	22%
2021	31%	31%	31%	35%	36%	34%	22%	22%
2022	31%	31%	31%	35%	36%	34%	22%	22%

35




Can we do this in US?

- Yes, but concerns over federal illegality for public employees
- Alternative is to use incubate/create a nonprofit to manage the system or to contract a nonprofit
- Like contracting an electric company to provide power
- Use contract in addition to law to create guardrails, including advertising restrictions that may be limited by law under first amendment
- Supernat captured for state and/ local government goals
- Less pressure on legislature?

Create the Pennsylvania Cannabis Society?

36


Key Principles: Products

-  Create authority to regulate products not just issue licenses
-  Limit product diversification and increasing potency
-  Prohibit designs and flavors attractive to youth

37

Product Regulations


- Manufacturing**
 - Don't allow "kid's menu" products (e.g., copycat candies, snacks & pop)
 - Clearly define attractiveness to youth
 - Products should **NOT** resemble "cartoons, fictional characters, non-cannabis kids foods, people, animals, toys, or existing food brands"
 - Ban artificially derived cannabinoids (e.g., delta-8)
 - Standardized dosing for products (e.g., 5mg for edibles in easily defined, geometric shapes)
 - Limits on THC content



38

Product Regulations

- Manufacturing**
 - Regulating product design and content is as or more important than testing
 - Regulating hemp products and prohibiting intoxicating hemp is essential or it undermines legal cannabis system
 - Pre-marketing product approval is valuable



39

Key Principles: Price

Tax	Tax, tax based on THC content
Capture	Capture revenue for prevention, youth, community reinvestment
Prohibit	Prohibit discounting

40

Key Principles: Retailers

- Limit the number and footprint of retailers
- Approx 1:20,000 people
- Keep Retailers specialized business (no food, clothes, etc)
- Keep them away from schools & homes (Buffers)

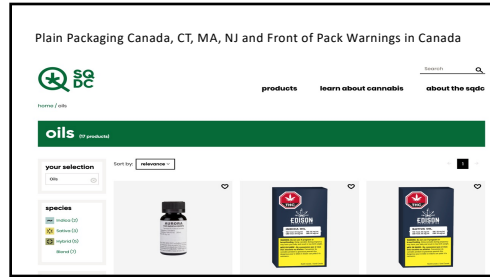
41

Key Principles: Information and Marketing

- Limit marketing & health claims to the maximum extent allowable
- Warn and inform consumers



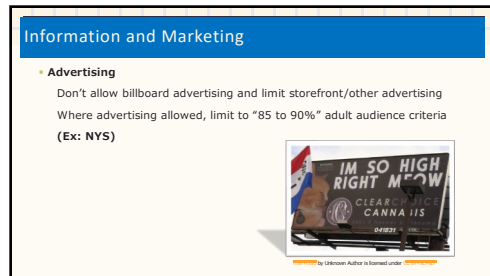
42



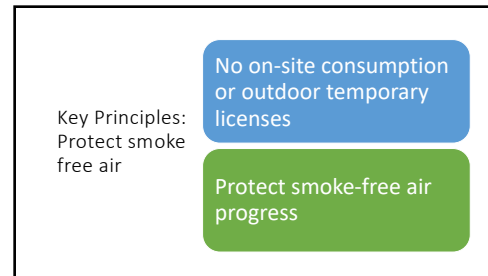
43



44



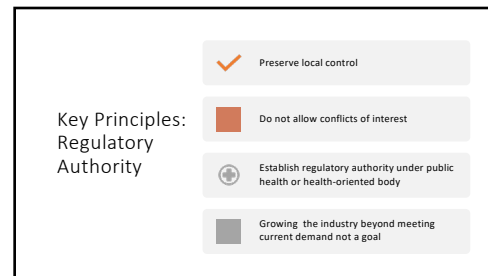
45



46



47

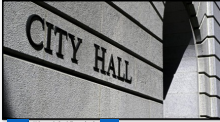


48

Local Control

Preserve local jurisdictions' ability to...

- Opt out
- Tax locally
- License
- Control number and types of outlets
- Regulate sale and marketing beyond state law
- It's ok if a little slower



49

In Summary, regulation should:

MINIMIZE health harms of legalization

- Fetal & child health
- Mental health
- Youth initiation and addiction
- Driving fatalities

BALANCE criminal justice advances with public health objectives...

- NOT** driving up consumption
- PREVENT** excessive growth of a for-profit industry
- BUILD** greater health and social equity
- PREVENT** substance abuse



50

Summary of these ideas




51

Thank You!

Lynn Silver, MD, MPH, FAAP
lsilver@phi.org
 917-974-7065

www.gettingitrightfromthestart.org

Join Our Listserv
 Contact Us



52