



# **DECRIMINALIZING COMMERCIAL TOBACCO CONTROL AND CREATING EQUITY-BASED POLICY**

APPEAL POWER IN UNITY CONFERENCE



**PUBLIC HEALTH  
LAW CENTER**  
at Mitchell Hamline School of Law

9/26/2020

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# **EQUITY AND INCLUSION AT EVERY STAGE**

## **TODAY'S AGENDA**

- Getting on the same page: health equity
- Overview: effective public health law and policy is based in equity.
- How public health law/policy is impacted by a lack of:
  - Consideration of equity and health equity
  - Intention and commitment to reduce disparities
  - Representation, community engagement
  - Advancement & protection of interests of those most marginalized
  - Cultural competency
- Specific example: Penalties in commercial tobacco laws and policies; decriminalization



# THE PUBLIC HEALTH LAW CENTER



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# LEGAL TECHNICAL ASSISTANCE





## Equality



## Equity



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# WHAT ARE WE TALKING ABOUT?

## HEALTH EQUITY

Health inequity is the result of avoidable, inequitable social, economic, and environmental conditions that result in disparate health and life outcomes.

So we should pay attention to inequity generally if we care to address public health.

# WHAT ARE WE TALKING ABOUT?

## HEALTH EQUITY, DISPARITIES

Figure 1  
Social Determinants of Health

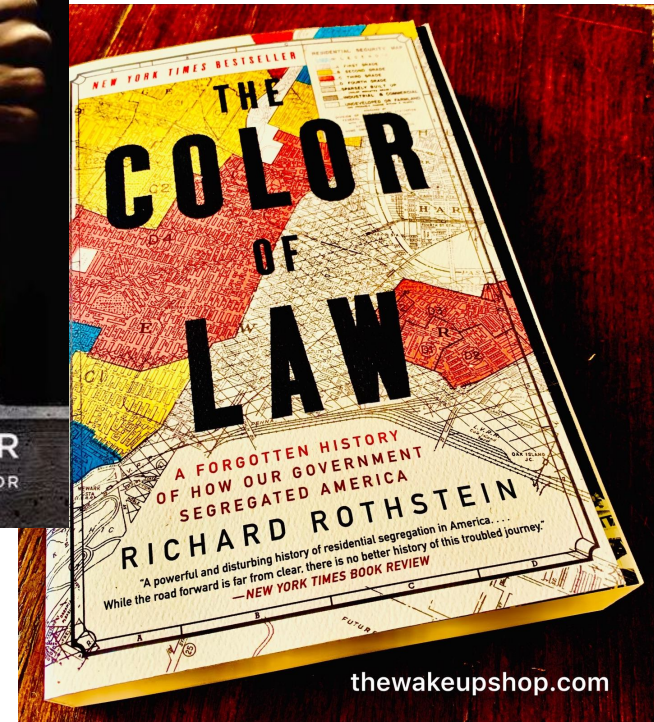
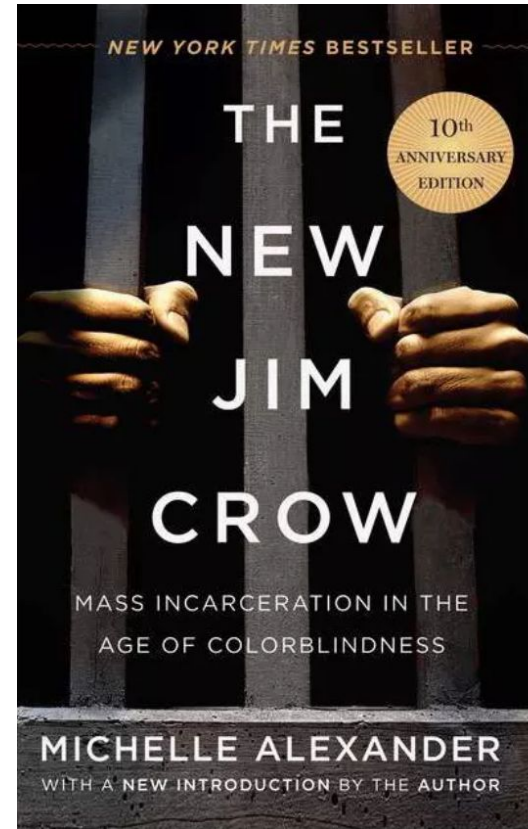
Economic Stability	Neighborhood and Physical Environment	Education	Food	Community and Social Context	Health Care System
Employment Income Expenses Debt Medical bills Support	Housing Transportation Safety Parks Playgrounds Walkability Zip code / geography	Literacy Language Early childhood education Vocational training Higher education	Hunger Access to healthy options	Social integration Support systems Community engagement Discrimination Stress	Health coverage Provider availability Provider linguistic and cultural competency Quality of care
<b>Health Outcomes</b> Mortality, Morbidity, Life Expectancy, Health Care Expenditures, Health Status, Functional Limitations					



# WHAT'S LAW AND POLICY GOT TO DO WITH IT?

## HEALTH EQUITY

- Generally, an essential tool
  - Statutes, ordinances, administrative or agency rules, case law, policies
  - Compliance, enforcement, guidance—power of government and other decision-makers
  - Reflect, reinforce, and change norms and community
- *Can and has led to inequity, poor SDOH outcomes*



# WHAT'S LAW AND POLICY GOT TO DO WITH IT?

## EFFECTIVE PUBLIC HEALTH LAW & POLICY

- Law and policy impact our health and our opportunities to lead healthy lives in multi-layered ways.
- Law and policy are essential tools for improving public health and addressing the social determinants of health.
- We can't look at public health laws and policies in a vacuum.
- Public health law and policy should be grounded in advancing health equity and incorporate equity and inclusion at all steps of the law and policymaking process.



# WHAT'S LAW AND POLICY GOT TO DO WITH IT?

## EQUITY IN GOVERNANCE, LAW & POLICYMAKING



*Keepcalms.com*

**Standard:** *Law and policy that intentionally advances health equity.*

**Minimum:** *Do no further harm.*



# STAGES OF PUBLIC HEALTH LAW & POLICY

## EFFECTIVE PUBLIC HEALTH LAW & POLICY

To address health disparities, law and policy should consider the social determinants of health and other equity issues at all stages:

- Research, evidence, and expertise: culturally-competent, representative
- Identifying solutions: assuring those most impacted have decision-making power for legal solutions
- **Drafting and scope: culturally competent, considers consequences on marginalized communities**
- Advocacy: compromises are not done at the expense of most-impacted
- Implementation and education: those most effected receive support
- **Enforcement** and evaluation: identifying effectiveness in all communities, troubleshooting and correcting unintended consequences

*Consider equity/inclusion at all levels for funding, programming, hiring, etc.*

# STAGES OF PUBLIC HEALTH LAW & POLICY

## SCOPE & DRAFTING

- The intention of the solution is clear and consistent throughout the language.
  - If intention is to advance public health, any policy that contributes to inequity will be ineffective/contrary to intention. (e.g., penalties)
- Scope of policy– what is included in the language?
  - Policies are effective if they advance equity.
  - Do no further harm.

Words matter.



# STAGES OF PUBLIC HEALTH LAW & POLICY

## PENALTIES

1. Repeal and resist purchase, use, and possession penalties against youth in state and local policy.
  - Criminalization of PUP contributes to school-to-prison pipeline.
  - If removing PUP absolutely impossible, consider including exclusive penalties: non-monetary, non-criminal alternative penalties. Consider also enforcement discretion.
  - Remember: no federal PUP penalties, focus is on sales



**Focus on the  
tobacco industry**



# STAGES OF PUBLIC HEALTH LAW & POLICY PENALTIES

- When faced with proponents of PUP, ask for proof of effectiveness
  - Available evidence shows that counseling, education, and reducing/eliminating youth access through policy are the most effective means of treating nicotine addiction and youth use.
- Evaluate the implementation and enforcement of policy with focus on the effect on communities most-impacted.

## PHS GUIDELINE RECOMMENDATIONS

### How to Help Adolescents Quit Smoking

The 2008 Update to the PHS Clinical Practice Guideline on Treating Tobacco Use and Dependence recommends for the first time that adolescent smokers be provided with counseling interventions to aid them in quitting smoking.<sup>1</sup>

Although the use of counseling approximately doubled quit rates in the seven studies on youth cessation reviewed by the Guideline Panel, the Panel noted that absolute abstinence rates of those who received counseling remained quite low (11.6% quit rate at 6 months) attesting to the continued need for research to identify the most effective counseling strategies for adolescents.

#### MORE INFORMATION ON THE 2008 UPDATE TO THE PHS GUIDELINE

Although there are limited studies on how to help adolescents quit smoking, the existing evidence supports the following recommendations.

#### **Recommendation: Counseling Adolescent Smokers**

Counseling interventions should be provided to adolescent smokers to aid them in quitting smoking.

- Counseling for adolescent smokers has been shown to be effective, approximately doubling long-term abstinence rates when compared to usual care (e.g., brief advice, self-help pamphlets, referral) or no treatment.
- The counseling studies reviewed for the Guideline varied in content and included strategies designed to:
  - enhance adolescent's motivation to quit,
  - establish rapport with the adolescents,
  - set goals for quitting,
  - promote problem solving and skill training, and
  - prevent relapse.
- A meta-analysis of smoking cessation for teens found significant effects for studies that included the following treatment approaches:<sup>2</sup>

- cognitive-behavioral strategies (self-monitoring and coping skills),
- social influence strategies (addressing social influences that serve to promote or maintain smoking)
- motivational strategies (techniques to clarify desire for change and reduce ambivalence toward change).
- Special considerations for adolescents: Interventions should be developmentally appropriate across the adolescent age span (e.g., appropriate for a 12-year-old vs. an 18-year-old).

#### **Recommendation: Intervening During the Adolescent's Health Care Provider Visit**

Health care providers should ask pediatric and adolescent patients about their tobacco use and clearly communicate the importance of abstaining from using tobacco.

- Asking adolescents about tobacco use and advising them to quit are the first steps toward the use of effective treatments to quit.
  - In a sample of 11th graders, more than 79 percent reported they would acknowledge their smoking if asked.<sup>3</sup>
- Clinicians need to routinely assess adolescent tobacco use, offer counseling, and follow up with these patients.
- For patients not ready to make a quit attempt, clinicians may adapt the motivational interventions provided in the Guideline for use with adolescents.
- Special considerations for adolescents: It is important for clinicians to intervene with adolescents in a manner that respects confidentiality and privacy (e.g., interviewing adolescents without parents present).

# STAGES OF PUBLIC HEALTH LAW & POLICY

## PENALTIES

2. Eliminate harsh penalties against private individuals aged 21+ for unlawful sales.
  - Criminalization □ mass incarceration
  - High fines □ health inequity & incarceration
3. Hold retailers accountable. Penalties against store clerk may stack up
  - Hourly wage gas station employee makes illegal sale:
    - Administrative fine +
    - Wage garnishing +
    - Suspension / Termination
  - = Greater penalties than retailer

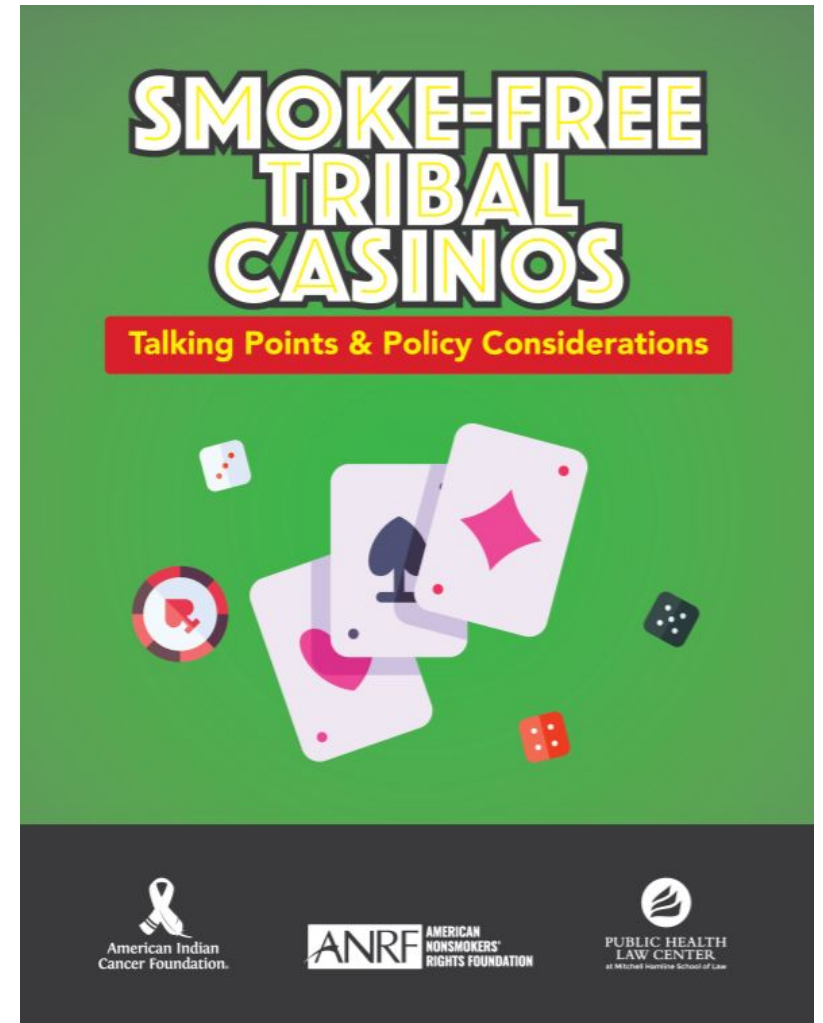


Focus on the  
tobacco industry

# STAGES OF PUBLIC HEALTH LAW & POLICY PENALTIES

## 4. Commercial tobacco-free worksite policy

- Focus on protection of employees, patrons, and visitors.
- Provide sufficient education and support to employees (including cessation support)
- Equal Protection and equity concerns when penalizing “smokers” when considering tobacco-related health disparities. Focus instead on use in certain work settings





# STAGES OF PUBLIC HEALTH LAW & POLICY

## PENALTIES

### 5. Smoke-free housing policy

- Eviction a concern, especially during COVID-19 pandemic.
- Enforcement can reflect community values & not contribute to systemic oppression:
  - Graduated enforcement
  - Restorative justice
  - Culture as prevention
  - Continued community partnerships and enforcement
  - Language consideration– signage



# STAGES OF PUBLIC HEALTH LAW & POLICY

## PENALTIES

6. Enforcement authority: public health, non-police officials (including in schools)
  - Fund a shift the enforcement of commercial tobacco control laws to entities other than local police officers.
    - Current trend across U.S.
    - Funding from tobacco revenue (local licensing fees, state/local taxes)
  - Develop guidance for local jurisdictions with limited capacity/resources to enforce without police.
  - Work with other groups to reform police conduct protocols in general, restrict in tobacco laws.
  - If any involvement of police: enforcement limited to only most serious offenses

CITYLAB

## Where Calling the Police Isn't the Only Option

There's a growing movement in the U.S. to hand some police duties over to social workers and alternative emergency responders. Oakland, Sacramento and Eugene, Oregon, are already doing it.

By [Sarah Holder](#) and [Kara Harris](#)

September 3, 2020, 6:00 AM CDT *Corrected September 3, 2020, 6:38 PM CDT*



# STAGES OF PUBLIC HEALTH LAW & POLICY

## PENALTIES

### 7. Penalties in K-12 settings:

- Reject suspension, expulsion, or police involve as response to student PUP in schools
- Consider holistic, whole-child responses:
  - Education on health harms, social and environmental justice components
  - Counseling and cessation support
  - Restorative justice practices
  - Education from school nurse, local public health department or organizations (ALA INDEPTH program and others)
  - Parent/guardian and community support

### **Richardson ISD confiscated 200 e-cigs, expelled 23 students in vaping cases last school year**

WFAA reached out to 20 school districts in North Texas about vaping data. Seven are keeping numbers readily on hand.

In the Arrowhead district in Wisconsin, for example, even the threat of being suspended from school sports did not prevent athletes from vaping on campus.



# STAGES OF PUBLIC HEALTH LAW & POLICY ENFORCEMENT AND EVALUATION

- What's working? What's not working?
  - Without creating more burden for impacted community members, evaluate and monitor how the policy is affecting health equity and other equity goals.
  - Relevant factors for understanding impact on the causes of inequity



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