Commentary: Criminalizing e-cigarettes perpetuates spiral of poverty

Marewa Glover

June 21, 2019

Forty-three million Americans live in poverty, and the numbers are not diminishing. Certainly poverty is complicated, and there are economic, social and cultural issues at play. But is there more government can do — or not do — to ease the burden on the working poor?

Sara Greene, associate professor of law at Duke University, thinks there is. She argues that too often state and local governments impose laws and regulations that cumulatively, and too often "invisibly," hurt the very people we ought to be trying to help. From driver license suspension to eviction laws, these revenue generating punishments disproportionately criminalize working Americans and perpetuate the spiral of poverty.

One such new example is the trend toward criminalizing the ownership and use of e-cigarettes and other vaping products. With an uptick in teen vaping, lawmakers across the country have been proposing everything from excise taxes to flavor bans as a means of curbing teen access. Some municipalities are taking even more drastic steps and have introduced legislation to ban the sale — or even the possession — of e-cigarettes. The town of Brookline, Massachusetts, passed a provision last week to ban e-cigarettes yet left traditional cigarettes on the shelves, creating yet another way otherwise law-abiding citizens may find themselves in trouble.

Certainly the problem of teen vaping is something to take seriously; but vaping is intended to be a safer alternative for adult smokers. By making it harder to access a product like e-cigarettes, government doesn't eliminate the need for vaping — it simply forces customers to turn either to an easier product to purchase (ironically, cigarettes) or forces them into a black market. When individuals start operating outside of a regulated marketplace, however, it almost certainly leads to overactive policing, as well as the increase of civil penalties in the form of fines, or even criminal penalties.

Applying Greene's theory, bans on e-cigarettes and vaping products will especially affect the poor, contributing to a snowballing strain on those who can afford it least. In addition to the penalties some might face, vaping bans will have a detrimental effect on public health, especially among these poorer communities.

Out of the nearly 500,000 deaths caused each year in America by smoking cigarettes, low-income people are disproportionately affected. According to the U.S. Centers for Disease Control, "people living below the poverty level and people having lower levels of educational attainment have higher rates of cigarette smoking than the general population."

The Cato Institute echoed this sentiment in a recent policy paper. The author comes down hard on "regressive regulation" like e-cigarette excise taxes and notes that, "smokers earning less than $30,000 per year spent 14.2% of their household income on cigarettes."

What's more, the poor are the most likely to use e-cigarettes. A study published by the International Journal of Environmental Research and Public Health found that more than 10% of houses with a family income of less than $19,000 have used e-cigarettes, whereas only 5% of families with an income of $75,000 or more are likely to use e-cigarettes.

All of this is significant because e-cigarettes are a leading form of harm reduction for adult smokers. In 2015, Public Health England determined that e-cigarettes are 95% less harmful than tobacco products and the New England Journal of Medicine found that e-cigarettes were almost twice as effective as other nicotine replacement products. Switching from traditional cigarettes to e-cigarettes can dramatically improve public health — especially among the poor.

State and local taxes contribute to what Greene describes as a "mechanism through which poverty is perpetuated and upward socioeconomic mobility is stunted." Banning vaping products outright will put more individuals who are choosing to use a healthier alternative to cigarettes at risk of committing a potential violation of the law.

In the case of e-cigarettes, when the poorest in society are those most affected by the harmful effects of cigarette smoking, we ought to be seeking ways to help people quit, not ways to increase financial strain — a key driver of smoking.