

## **Expect ban on menthol cigarettes to worsen inequities in criminal justice**

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The Food and Drug Administration announced plans to ban menthol and other flavored cigarettes within a year. Menthol cigarettes are especially popular among young adults and in Black and Brown communities. It doesn't take a vivid imagination for anyone slightly familiar with this country's disastrous alcohol prohibition experiment, or the catastrophic effect of the war on drugs, to see where this will lead. And, as usual, minority communities will be the hardest hit.

We can already get a glimpse of what to expect. To discourage tobacco use, New York City imposed exorbitant taxes on packaged cigarettes. This created a vibrant black market in the sale of untaxed cigarettes, many sold individually and unpackaged, called "loosies." New York City is now the "cigarette smuggling capital of America."

This also gave New York law enforcement another reason to interact with non-violent people engaging in victimless crimes. Like everyone else, police respond to incentives. They are rewarded by arrests and convictions. Low-level street dealers in illegal substances are "low-hanging fruit." They are much easier to find in dense inner cities, and less dangerous to confront than violent felons. It is, sadly, a more productive use of time volume-wise than solving homicides, and it often leads to escalating tensions and horrifying outcomes.

In 2014, police infamously encountered 43-year-old Eric Garner selling "loosies" on a street corner, and a policeman's chokehold led to his death as he repeated "I can't breathe."

Prohibition's unintended consequences are also seen globally. When Bhutan completely banned tobacco sales, it spurred a surge in tobacco smuggling. By 2017, Bhutan led Southeast Asia in per capita tobacco smokers, yet lawmakers never learn from the mistakes of the past.

Politicians usually follow a well-worn path. First, they choose a drug or substance popular with a racial or ethnic minority. This is easier to ban because most of the public is unaffected and less concerned about the right to use that substance.

Historically we saw this when the fear of "Negro cocaine fiends" whom the drug allegedly made better marksmen and "impervious to bullets" was used as an argument for cocaine prohibition. Former Bureau of Narcotics Chief Harry Anslinger claimed that, "Reefer makes darkies think they're as good as white men," and tied marijuana use to Black and Hispanic musicians playing "Satanic" jazz in his push to ban marijuana in 1937.

Next, politicians unleash law enforcement on that racial or ethnic minority because they are easy pickings. That's how we wind up with African Americans arrested for marijuana violations four times as often as whites, even though both ethnicities use marijuana roughly equally.

If public health officials wish to reduce smoking among minorities and young adults, they should continue their highly effective campaign of persuasion. This campaign has led to a decline in smoking among adults to just 14 percent in 2019, down from nearly 21 percent in 2005

It is important to remember that we each make our own risk-benefit assessments when choosing activities and behaviors. There will always be some people who consider the risk worth taking for the pleasure they receive from smoking tobacco. Public officials have no right to impose their risk-benefit judgments on others.

For those who choose to continue smoking, the best approach to take is harm reduction. Harm reduction came on the scene first to reduce sexually transmitted diseases through sex education and condom distribution. It is also used to reduce the spread of disease and overdose deaths from the use of illicit drugs through such measures as syringe services programs, safe injection sites, naloxone distribution, and anonymous drug testing.

Harm reduction is nothing new to health care practitioners. It's what we engage in almost every day in our practices. When doctors prescribe blood pressure medicine, statin drugs, or diabetes pills for people who would not need medication if they made healthier lifestyle choices, they are engaging in harm reduction. In effect, they respect their patients' right to make their own risk-benefit assessment and prescribe them medications aimed at reducing any harms that may result.

Nicotine e-cigarettes, especially the flavored ones, are a proven way to reduce tobacco's harms for those who like the feeling of smoking and the "kick" of nicotine.

With drug prohibition causing a record 90,000 overdose deaths last year, and racial disparities in criminal justice gaining long-overdue attention, it's the definition of insanity to prohibit menthol cigarettes that are popular among Black and Brown populations and not expect another black market with more violence and inequities in criminal justice.

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