

Cannabis Quarterly

March 2022

A Review of Cannabis Law and Policy from 2021

Welcome to the inaugural issue of the Network for Public Health Law's *Cannabis Quarterly*. This public health newsletter focuses on the complex and constantly evolving field of cannabis law and policy. Each issue will spotlight legislative and regulatory developments, pivotal case law, developments in cannabis science and social science, the real-world insights of professionals working in the cannabis space, and resources developed by the Network and other organizations. This quarterly newsletter is meant to be accessible to individuals of varying cannabis law and policy experience. At the end of each year, we will provide an annual review of key cannabis law and policy developments. The goal of this newsletter is to educate and inspire dialog in this dynamic field of law. Thank you for joining in this exploration of law and policy.



Sincerely,

Mat Swinburne
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Section I: Federal Law and Policy Developments

- 1. Federal Legalization:** The largest legal issue discussed at the federal level in 2021 was the legalization of cannabis under federal law. Currently, Cannabis is a Schedule I substance under the Federal Controlled Substances Act. This means that [the federal government has deemed that cannabis](#) (1) has a high potential for abuse, (2) lacks a currently accepted medical use in the United States, and (3) is unsafe for use even under medical supervision. From a practical standpoint, cannabis's Schedule I status makes it illegal under federal law to possess or distribute it (with exceptions for federally approved research). With the [public's growing support of cannabis](#) legalization, Congress considered several bills looking to legalize, regulate, and tax cannabis at the federal level. Summaries of three major legalization bills are provided below. Despite the considerable attention these bills have received and the public's support for cannabis legalization, it is unlikely that any of the bills will make it through the Senate given the opposition of [Senator Mitch McConnell](#) and [many Republicans](#).

[H.R. 3617-Marijuana Opportunity Reinvestment and Expungement Act of 2021 or the MORE Act of 2021:](#) On May 28, 2021, Rep. Jerrold Nadler reintroduced the MORE Act with 105 co-sponsors. This bill is unique because it [passed the House last congressional session](#) but failed to receive a vote in the Senate. This was the first time a comprehensive legalization bill had passed a chamber of Congress. The MORE Act addresses many critical issues and six of these issues are highlighted here. First, the MORE Act would legalize cannabis under federal law by removing it from the Controlled Substances Act, while recognizing state authority to determine the legality of cannabis in their own jurisdictions. Second, it proposes a federal tax on the retail sale of cannabis and cannabis products that would increase from 5% to 8% over a three-year period. The net revenue from this tax would be placed in a trust fund to support various programs and services for individuals and businesses in communities adversely impacted by the war on drugs. Third, it contains provisions to expunge convictions and conduct sentencing review hearings for certain federal cannabis crimes. Fourth, the bill would create a Cannabis Justice Office to oversee its social equity provisions. Fifth, it would make Small Business Administration loans and services available to legitimate cannabis businesses, Sixth, the bill would prohibit the denial of federal benefits and services based on certain cannabis conduct and offenses. Currently, the bill is in the House and has not received a full vote.

[Cannabis Administration and Opportunity Act \(Discussion Draft\):](#) On July 14, 2021, Senators Chuck Schumer, Cory Booker, and Ron Wyden released a discussion draft of the Cannabis Administration and Opportunity Act (CAOA). This bill was not introduced to the Senate but released for public review and input. The Senators requested public input by September 1, 2021. The CAO A has yet to be introduced to the Senate. However, the discussion draft, like the MORE Act, deals with a broad spectrum of issues. The CAO A would legalize cannabis at the federal level by removing it from the purview of the Controlled Substances Act. It also transfers regulatory authority over cannabis from the Drug Enforcement Agency (DEA) to the Food and Drug Administration (FDA), Alcohol and Tobacco Tax and Trade Bureau (TTB), and Alcohol, Tobacco, Firearms and Explosives (ATF). The FDA would regulate the manufacturing of cannabis products, the TTB would regulate taxation of cannabis products, and ATF would enforce measures pertaining to diversion control. The CAO A would also place a federal excise tax on cannabis that would escalate from 10% to 25% over a five-year period. After this five-year period, the tax would be calculated based on a per-ounce rate in the case of cannabis flower, or a per-milligram of THC rate in the case of any cannabis extract. The tax rate of CAO A is the highest of the three bills highlighted in this section. This generates some concern because CAO A lacks an exemption for medical cannabis. Failure to provide this exemption will drive up the price of a product that is recognized as medicine in most states.




[HR 5977-The States Reform Act](#): On November 15, 2021, Rep. Nancy Mace introduced HR 5977-The States Reform Act. This 133-page expansive bill is the first comprehensive cannabis legalization bill introduced by a Republican in Congress and it could signal a transition to additional bi-partisan collaboration on this issue. This bill addresses a myriad of policy issues, but this synopsis focuses on five key issues. First, the bill would decriminalize cannabis under federal law by removing it from the Controlled Substance Act but would allow states to determine its legal status within their jurisdictions. Second, it would provide the TTB, USDA, and FDA with regulatory responsibilities at the federal level. Third, it would place a 3% federal excise tax on cannabis. Fourth, it would create an automatic expungement process for individuals convicted of non-violent cannabis crimes. However, this process would not be available to drug cartel members or individuals convicted of driving under the influence of cannabis. Fifth, the bill protects veterans who use cannabis from being denied federal employment because of their cannabis use and allows veterans to receive medical cannabis as part of their Veterans Affairs medical treatment. Currently, this bill has been assigned to multiple house committees and is awaiting hearings. For more information on the States Reform Act, we have provided [Rep. Mace's summary](#) of her bill and a [summary on JDSUPRA.com](#).

2. Regulation of Hemp-Derived Cannabis Products and Federal Warnings Regarding

Delta-8 THC- Tetrahydrocannabinol (THC) is a psychoactive intoxicant found in cannabis. The THC isomer at the center of most cannabis legislation is delta-9 THC, the most prominent THC isomer in cannabis. Under federal law, the amount of delta-9 THC in a cannabis plant determines whether it is marijuana or hemp. Anything above 0.3% by dry weight is marijuana, a Schedule I substance, and anything at or below 0.3% is hemp, which was legalized by the 2018 Farm Bill. While the 2018 Farm Bill created a regulatory system for hemp production, it reiterated the FDA's authority to regulate products derived from hemp. At the time, the FDA did not have regulations specific to these products because prior to the 2018 Farm Bill hemp was a Schedule I substance. With the legalization of hemp as an agricultural product, there has been an explosion of hemp-derived cannabidiol (CBD) products on the market. CBD is a cannabinoid often associated with health benefits and claims.

Under the [current federal legal regime](#), many of these products are illegal because they contain CBD. CBD is the active ingredient in [Epidiolex](#), an FDA approved drug for the treatment of certain seizure disorders. Under the Food Drug and Cosmetics Act, it is illegal to introduce a drug ingredient into the food supply or to market it as a dietary supplement. While the FDA has issued [warning letters](#) to several hemp product companies regarding their illegal health claims, inaccurate assertions regarding CBD levels, and excessive delta-9 THC, it has not drafted specific regulations for these products. However, since the 2018 Farm Bill, the FDA has been [working with the public to gather data](#) on cannabis-derived products and recently released its [Cannabis-Derived Product Data Acceleration Plan \(DAP\)](#). The DAP's primary goal is to leverage data and advanced analytics to identify safety issues related to cannabis-derived products. As part of this process, the FDA will focus on forming data partnerships and championing research into cannabis product safety. This information is intended to support regulatory decision making, assist in enforcement actions, and guide further research.

With the explosion of CBD products, there has been a concurrent explosion in the marketing of hemp products with high levels of synthesized delta-8 THC. Delta-8 THC is a THC isomer naturally found in very low concentrations in the cannabis plant. However, it can be created from CBD using a solvent, acid, and heat. Delta-8 THC is of public health concern because it is believed to be 50-75% as psychoactive as delta-9 THC and can cause similar negative health effects. Delta-8 THC exists in a legal limbo of sorts because the federal definitions of hemp and



marijuana focus on the delta-9 isomer. While neither Congress nor the FDA have taken decisive action to clarify its legal status, the FDA released a [Consumer Update on 9/14/2021](#). This update provided five public warnings.


1. Delta-8 products have not been approved as safe by the FDA and are likely marketed in ways that put the public's health at risk.
2. The FDA has received reports of adverse events associated with these products.
3. Delta-8 THC is psychoactive and intoxicating.
4. These products often involve use of potentially harmful chemicals to create the concentrations of delta-8 THC claimed in the marketplace.
5. These products should be kept away from children and pets.


On the same day as the FDA Consumer Update, the CDC released a [health advisory](#) regarding the increased availability of cannabis products containing delta-8 THC. In this advisory, the CDC noted that in 2021 the American Association of Poison Control Centers introduced a product code for delta-8 THC into its National Poison Data System. From January 1 to July 31, 2021, the system recorded 660 delta-8 THC exposures. Eighteen percent of these exposures required hospitalization and thirty-nine percent involved pediatric patients. The Network is currently working on a resource that will evaluate the public health challenges created by delta-8 products and the regulatory approaches adopted by the federal and state governments. **It is our goal to make this resource available in our next issue of *Cannabis Quarterly*.**

Section II: Critical Cannabis Caselaw

Each issue of *Cannabis Quarterly* will spotlight caselaw that addresses critical issues created by the legalization and regulation of cannabis. In this issue, we spotlight cases related to probation, workers' compensation, the Fourth Amendment, voter initiatives, the Dormant Commerce Clause, prisons, and state constitutional law. A link to the full opinion is included in the name of each case. The case summary's use of the term marijuana or cannabis is dependent on the terminology used in the opinion and the specific state's law.

1. [*State v. Heaston* \(Court of Appeals of Oregon, January 27, 2021\)](#): The Court of Appeals of Oregon held that marijuana is not a controlled substance for the purpose of probation laws that prohibit the use or possession of controlled substances. The defendant was sentenced to probation for several crimes and during the term of his probation he admitted to his probation officer that he had used marijuana. The defendant was charged with violating the terms of his probation, which included a general prohibition on the use and possession of controlled substances. The defendant argued that, with legalization, marijuana no longer qualified as a controlled substance under state law. The defendant cited a provision of the state's controlled substance act that specifically excluded marijuana from the definition. This definition applied directly to the controlled substance section of law while the probation law did not specifically define controlled substance. As a result, the court had to determine if the legislature intended to limit the exclusion of marijuana from the definition of controlled substance to one section of law or whether this exclusion meant to be applied broadly across the state's laws. After considering the text of the provision, its role in the larger regulatory context, and the legislative history, the court concluded that the probation restriction on controlled substances did not include marijuana.
2. [*Appeal of Panaggio* \(New Hampshire Supreme Court, March 2, 2021\)](#): The New Hampshire Supreme Court held that federal law did not preempt an order of the state's compensation appeals board requiring reimbursement for medical marijuana. The petitioner suffered a work-related injury which he treated through the state's medical marijuana program. His employer's workers compensation insurer refused reimbursement, claiming medical marijuana was not reasonable or medically necessary. He appealed to the New Hampshire Compensation Appeals Board, which found the treatment reasonable and medically necessary. However, it held that the insurer was federally preempted from reimbursing for the treatment since marijuana is still illegal under federal law. The insurer would commit a federal crime, reasoned the court, by aiding and abetting its purchase. The New Hampshire Supreme court disagreed and held that federal preemption did not exist for several reasons: (1) the Controlled Substance Act (CSA) does not directly prohibit reimbursement for medical marijuana; (2) reimbursement does not rise to the level of aiding and abetting because the insurer lacked the requisite intent; and (3) the tension between state and federal policy in this area does not present an obstacle to federal CSA enforcement.
3. [*In re DD* \(Maryland Court of Special Appeals, April 28, 2021\)](#): The second highest court in Maryland ruled that police officers cannot make stops based solely on the smell of marijuana. The Maryland Court of Appeals held that the trial court improperly denied the defendant's motion to suppress evidence based on an illegal stop. To stop someone, police must have "reasonable suspicion" that a crime has been, is being, or will be committed. "Reasonable suspicion" requires some minimal level of justification. It is a far lower standard than probable cause. In 2014, the Maryland General Assembly decriminalized the possession of less than 10 grams of marijuana. Since then, the courts have wrestled with the effect of decriminalization on searches and seizures. Because possessing under 10 grams of marijuana is no longer a criminal offense, an officer must suspect that a person possesses more than 10 grams to justify a stop. Since odor alone does not indicate quantity, it cannot provide reasonable suspicion to support a stop and such a stop is unreasonable under the Fourth Amendment protection against unreasonable searches and seizures.

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4. [**Hawkins v. Watson** \(Mississippi Supreme Court, May 14, 2021\)](#): In a 6-3 decision, the Mississippi Supreme Court overturned a voter initiative legalizing medical marijuana. The initiative, which amended the state constitution, passed with 68% of the vote in November 2020, but was challenged by the Mayor of Madison, Mississippi. The court overturned the measure on state constitutional grounds. Section 273 of the Mississippi Constitution requires that each congressional district provide no more than 20% of the signatures of support for a constitutional amendment. However, the state lost a congressional district in 2002 and currently has only 4 congressional districts. Consequently, the initiative was invalid because the constitutional restriction, in combination with the loss of a district, invalidated the required apportionment of signatures. Only the legislature could address this flaw in the voter initiative process. The dissent argued that this decision ignores the will of over 800,000 voters and may invalidate 2 decades of constitutional amendments.
 5. [**Northeast Patients Group v. Maine Department of Administrative and Financial Services** \(US District Court, D. Maine, August 11, 2021\)](#): The US District Court for the District of Maine held that Maine’s medical marijuana program violated the Dormant Commerce Clause because it restricted dispensary licenses to state residents. This residency requirement was challenged by a local entity that owned three of Maine’s dispensary licenses and wished to sell these interests to an out-of-state company. The plaintiffs wanted injunctive relief that would prevent the State from enforcing this residency provision because it violated the Dormant Commerce Clause. The Dormant Commerce Clause is a constitutional restriction that prohibits “protectionist state regulation designed to benefit in-state economic interests by burdening out-of-state competitors.” The court explained that this type of protectionist policy is only permitted in two scenarios: (1) the state has narrowly tailored the restriction to a legitimate local interest and (2) when Congress has “unmistakably” exempted the state from the restrictions of the Dormant Commerce Clause. The court held that the State had failed to meet the first requirement because it did not provide a legitimate justification for the protectionist policy. With regards to the second scenario, the court held that Congress had not exempted the State from the requirements of the Dormant Commerce Clause. Specifically, the court denied the defendant’s argument that the federal Controlled Substances Act’s criminalization of marijuana was evidence of the intent to exempt states from the dormant commerce clause. The court granted the injunction. However, [the injunction has been stayed](#) pending an appeal to the US Court of Appeal, 1st Circuit.
 6. [**People v. Raybon** \(Supreme Court of California, August 12, 2021\)](#): The Supreme Court of California held that Proposition 64, which legalized adult-use cannabis in California, did not invalidate convictions for the possession of cannabis while in prison. The defendants were each found in possession of cannabis in state prison and were convicted of violating a section of the state penal code that criminalized the possession of cannabis while in a state correctional facility. For many of the defendants, this conviction added years to their existing sentences. Proposition 64 allowed individuals serving a sentence for a cannabis offense that was no longer a crime to petition for a dismissal of the sentence. The defendants petitioned the court for the dismissal of their prison cannabis offenses. The district attorney opposed these petitions citing a provision of code that stated that Proposition 64 had no effect on laws “pertaining to smoking or ingesting cannabis or cannabis products” in state correctional facilities. The defendants argued that this provision did not apply because they were convicted of the possession not the smoking or ingestion of cannabis. There was a circuit split on the interpretation of this reading. However, the Supreme Court of California reasoned that the prison carveout intended to maintain the status quo and that banning possession of cannabis in state prisons most accurately reflected voter intent with Proposition 64.
 7. [**Thom v. Barnett** \(Supreme Court of South Dakota, November 24, 2021\)](#): The Supreme Court of South Dakota held that a successful ballot initiative that legalized both medical and adult-use marijuana, as well as mandated that the legislature regulate industrial hemp, was invalid because it violated the state constitution. The ballot initiative was originally passed in November of 2020, after which it was challenged by a county sheriff and the superintendent of South




Dakota's Highway patrol. The plaintiffs alleged that the initiative violated the state constitution's single subject requirement that mandates that a constitutional amendment can embrace only one subject. The court agreed with this argument. The court found that the amendment embraced at least three separate subjects: the legalization of medical marijuana, the legalization of adult-use marijuana, and the regulation of industrial hemp. If multiple proposals within a single constitutional amendment can logically be viewed as parts of a single plan then they do not violate the single subject requirement. However, to be considered a single plan the proposals must serve a single purpose or objective. The court found that the multiple proposals in the amendment did not serve a single objective and did not qualify as a single plan.

Section III: Developments in Cannabis Research

Research is critical to our understanding of the medical benefits, health risks, and usage patterns of cannabis. This knowledge can guide the development of reasoned cannabis law and policy. As a result, *Cannabis Quarterly* will highlight important research developments. This issue examines four interesting scientific studies from 2021.

- 1. The impact of legalization on marijuana use in high school students:** Researchers concluded that state marijuana legalization did not increase marijuana use amongst American high schoolers. The researchers used data from the Youth Risk Behavior Survey (YRBS) for the period of 1993-2019 to make this determination. The [YRBS](#) is a government survey administered biennially to US high school students and is used to track trends in behaviors such as unhealthy eating, physical activity, sexual activity, and substance use. The researchers studied current marijuana use and frequent marijuana use. Current marijuana use is use within the past 30 days and frequent marijuana use is when an individual uses marijuana at least ten times in the last 30 days. The data revealed that medical marijuana legalization was associated with a 6 % decrease in current use and a 7% decrease in frequent use, while the impact of recreational marijuana legalization on adolescent marijuana use was statistically indistinguishable from zero. [Association of Marijuana Legalization with Marijuana Use Among US High School Students, 1993-2019. DM Anderson, JAMA Network Open. September 7, 2021.](#)
- 2. The effect of maternal marijuana use during pregnancy and breastfeeding:** Tetrahydrocannabinol (THC) is a cannabinoid found in cannabis that has psychoactive and intoxicating effects. In breastfeeding mothers that use cannabis, THC passes through their breast milk to their child. Concerns about the effects of the THC on the child conflict with the positive effects that breastfeeding has on a child, such as fewer infections, improved growth, and better overall development. This study examined the short-term health effects of breast milk from THC positive mothers on early preterm infants. The study was composed of 763 early preterm neonates. The researcher found no differences in short-term health impacts such as breathing difficulties, lung development, and feeding issues, when comparing preterm infants fed breast milk from THC-positive mothers to those who were fed formula or breastmilk from THC-negative mothers. Since the long-term health impacts of THC exposure through breastmilk is unknown, the study advised that mothers refrain from using cannabis while pregnant or breastfeeding. [Maternal Marijuana Use During Pregnancy and Breastfeeding: Assessing In-Hospital Outcomes of Early Preterm Infants, Natalie Davies, American Academy of Pediatrics, News Release October 7, 2021.](#)
- 3. The impact of the COVID pandemic on adolescent cannabis use:** Despite the perceived availability of marijuana declining to record lows during the COVID pandemic there was not a significant decrease in adolescent marijuana use. This study surveyed 582 adolescents regarding the perceived availability of marijuana and their marijuana use one month before social distancing policies began and then in the summer of 2020 after social distancing policies were implemented. This study wanted insight into the hypothesis that availability of marijuana affected the use patterns of adolescents. This study found that the social distancing measures used in the pandemic decreased the adolescents' perception of marijuana availability. Students who reported they could "fairly easily" or "very easily" obtain marijuana decreased from 76 % to 59 % in response to the pandemic's social distancing policies. This 17 % decrease is the largest decrease in the 46 years that this data has been tracked. However, the study revealed that the percentage of students who had used marijuana in the past 30 days was 23 % before the pandemic and 20 % during. This data supported the hypothesis that despite decreased perceived availability of marijuana, students would redouble their efforts to maintain their baseline drug use. [Adolescent Drug Use Before and During U.S. National COVID-19 Social Distancing Policies, Richard Miech, et al., Drug and Alcohol Dependence 226 \(2021\).](#)



4. **Cannabis use and psychotic experiences:** Researchers found that a genetic predisposition to schizophrenia makes cannabis users especially liable to psychotic experiences. This study looked at the genetic, health, and cannabis-use information of 109,308 individuals from [UK Biobank](#), a biomedical database and research resource with information from half a million individuals. The study focused on three research questions.

- Is marijuana associated with auditory hallucinations, visual hallucinations, persecutory delusions, and [delusions of reference](#)?
- How does cannabis use effect psychotic experiences with regards to the age of onset, severity, and help-seeking behavior?
- How does a genetic predisposition to schizophrenia impact the relationship between cannabis use and psychotic experiences?

The researchers found a strong and consistent relationship between cannabis use frequency and all four types of psychotic experiences. They found that cannabis users experience earlier onset and more distressing psychotic experiences. Finally, the study found that genetic predisposition to schizophrenia strengthened the association of cannabis use with psychotic experiences. [Cannabis, schizophrenia genetic risk, and psychotic experiences: a cross-sectional study of 109,308 participants from the UK Biobank, M. Wainberg, et al., Translational Psychiatry 11, 211 \(2021\).](#)

Section IV: Cannabis Conversations

Every issue of Cannabis Quarterly will spotlight a cannabis professional with insight into the public health and/or regulatory challenges in the cannabis space. For the inaugural interview, I was fortunate to speak with [William Tilburg](#), the Executive Director of the Maryland Medical Cannabis Commission, the agency that regulates Maryland's medical cannabis program. In this role, he directs the Commission's day-to-day activities, and leads all legislative and regulatory efforts. He previously served as Director of Policy and Government Affairs at the Commission. Prior to his work with the Commission, Mr. Tilburg served as the Managing Director for the Legal Resource Center for Public Health Policy at the University of Maryland Carey School of Law and Associate Director of the Network for Public Health Law, where he provided legal and policy support to state and local governments and health departments on a wide range of public health issues, including tobacco control, environmental health, food safety, and drug policy.



*William Tilburg, Executive Director,
Maryland Medical Cannabis Commission*


1. What drew you to the field of medical cannabis regulation?

I think there are two areas that drew my interest. First, the subject matter itself is incredibly interesting. Cannabis regulation sits at the intersection of a host of important issues. For example, cannabis regulation intersects with social justice in critical ways. Cannabis has been a criminalized product for over seven decades and during this time criminal enforcement has disproportionately impacted communities of color. The questions for policymakers become whether and how to we address the harms of criminalization during the legalization process? Cannabis regulation also exists in a system composed of federal, state, and local laws that interact in interesting and often conflicting ways. For example, cannabis is still illegal under federal law, yet most states have legalized it for medical purposes. This conflict in laws and policies also plays out in areas such as cannabis research which has long been restricted under federal law. With federal legal barriers, it's a challenge to facilitate research into the medical benefits and harms of cannabis that is critical for our law and policy at the state level. As an attorney and public health professional, the confluence of these legal and health issues makes cannabis regulation an exciting area in which to practice.

The second thing that interested me about cannabis regulation was the timing. This is a nascent field and regulatory systems are being built from the ground up. This is a unique opportunity to be at the start of something important. There is a real opportunity to help build a regulatory framework through a public health lens. Creating a safe and effective medical cannabis program requires systems for product quality, sanitary standards, public education, effective labeling, and many other traditional public health interventions.

2. What is the most challenging aspect of your work?

Cannabis regulation is a complex area of law, policy, and science. From a regulatory standpoint, the rapidly evolving industry and the constantly growing variety of products is the greatest challenge. If you look at NIH's 2017 report, *The Health Effects of Cannabis and Cannabinoids-The Current State of Evidence and Recommendations*, it is already outdated. That research focused on cannabis flower with low THC levels; it does not reflect the range and potency of products that are in today's market. Today we have tinctures, salves, tablets, edibles, beverages, and many other product types. The challenge is developing a regulatory



structure to deal with the diverse issues created by this range of products. This challenge is heightened by the need to address the increasingly diverse chemical composition of cannabis products. This goes beyond just increased THC potency but includes products that are incorporating a broad spectrum of cannabinoids and terpenes. It's this evolving diversity of product types and chemical compositions that present the biggest challenge when designing and enforcing a regulatory system focused on product safety and quality.

3. What are a few of larger public health challenges currently facing states that have legalized cannabis for medical or adult-use?

There are two public health challenges that I want to highlight. The first is hemp derived products. These products present a huge public health issue. The 2018 Farm Bill legalized industrial hemp (defined as cannabis plants with low delta-9 THC content), but its sole focus on delta-9 THC created a regulatory gap. There are other THC isomers that are intoxicants, like delta-8 and delta-10. While these isomers occur in extremely low levels in the cannabis plant, they can be manufactured from CBD. Both the FDA and CDC have issued warnings about these intoxicating products, but these products remain unregulated at the federal level. There has been an explosion of THC isomer products because of a glut of industrial hemp, which led people to look for lucrative options beyond just CBD products. This led to conversion of CBD into delta-8 and delta-10 THC. The process for converting CBD to these isomers involves soaking and stirring the cannabis plant in often toxic solvents and various types of acids for 24-48 hours. There are significant unknowns regarding the by-products of this process and remember there is no testing, no age restriction, or product safety measure at the federal level. In addition, there is significant public health concern about how these products are labeled and promoted. This is all happening in a federal regulatory gap and really places the pressure on state and local officials to address the health and safety issues.

The second issue I want to highlight is the regulatory challenge of balancing health and safety measures and market forces. There is a misconception that cannabis legalization is starting something new. This isn't really true because there is a healthy illicit market. The illicit market involves products that are not subjected to safety standards and is often associated with criminal activity. When legalizing cannabis, part of a state's rationale is to increase product safety with measures like safety standards, testing, and labeling. However, a parallel goal is to decrease the market share of the illicit trade in cannabis. Now if the regulatory burden created by health and safety measures is too great, it creates an increase in operating costs that is passed on to the consumers. If this results in a product that is not competitively priced, people will remain or return to the illicit market. So, there is a real challenge to regulate in a way that balances the need for health and safety regulations, while being conscious of the need to be price competitive with the illicit market.

4. What is something you would like people to know about working in medical cannabis regulation?

This is my call to arms. The biggest thing I want people to know is that cannabis law and policy is being written as we speak. In every state that regulates cannabis, there is really robust engagement on critical issues. Half of regulatory bodies are boards or commissions and hold public meetings. Now is the time for public health professionals to share their expertise, experience, evidence, and concerns. Even if you are in state that legalized cannabis early, states are overhauling their systems to incorporate best practices and preparing for policy change at the federal level. Now is the time to be engaged.



Section V: Additional Resources

Below are resources developed by the Network and other organizations that focus on key issues of cannabis policy:

- [Adult-Use Cannabis Social Equity Tool Kit \(2022\)](#): The legal adult-use cannabis industry will have over \$44 billion in annual sales by 2025. However, people of color are not equitably represented in this lucrative industry, while being disparately impacted by the racist policing of America's drug policies. This Network resource explores the various state policies used to create a more inclusive adult-use cannabis industry.
- [State Efforts to Create an Inclusive Marijuana Industry in the Shadow of the Unjust War on Drugs \(2020\)](#): This article served as the inspiration for our Adult-Use Cannabis Social Equity Tool Kit. While its overview of equity policies is rudimentary in comparison to the tool kit, it provides a critical overview of key legal concepts in cannabis law: the history of federal regulation, the Controlled Substances Act, the conflict between Federal and State cannabis policies, and data pertaining to the racist enforcement of American drug laws.
- [A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform, American Civil Liberties Union \(2020\)](#): This report details the shocking racial disparities in marijuana arrests from 2010 to 2018. It provides national, state, and county level analysis, with informative state profiles that break down key data in an accessible format. In addition, the report examines the impact of state cannabis legalization on racial disparities in arrest rates and provides policy recommendations to address this challenge. With the [negative health impacts](#) of an arrest and the devastating collateral consequences a criminal record can have on employment, housing, voting rights, and other critical determinants, it is vital to understand the contours of the disparate enforcement of cannabis laws.

Questions?

For more information or to request a consultation or legal technical assistance, contact [Mathew R. Swinburne](#), J.D., Associate Director, Network for Public Health Law — Eastern Region Office.

Coming Next Issue

In the next issue of Cannabis Quarterly, we will examine developments in federal banking laws, the regulation of cannabis research, state legislative developments, and much more.

The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document do not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

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