

**Daniel G. Orenstein, JD, MPH**  
**A Public Health Approach to Cannabis Consumption**  
**Testimony re: Oregon HB 3112**  
**April 29, 2021**

## **Introduction**

This testimony is made in my personal capacity and not as a representative of Indiana University or any other entity. I am a Visiting Assistant Professor of Law at the Indiana University Robert H. McKinney School of Law. My training, research, and teaching are in health and public health law and policy, and my current research focuses on a public health approach to the regulation of cannabis, including application of lessons learned from the history of tobacco control. In my forthcoming article, “Nowhere to Now, Where? Reconciling Public Cannabis Use in a Public Health Legal Framework,” I argue for permitting limited outdoor public cannabis use from this public health perspective. This is distinct from the on-site outdoor consumption permitted by HB 3112, but the approaches share much in common. Most importantly, both address the fact that indoor consumption carries significant potential health risks while recognizing that existing inequities in housing and law enforcement render a restrictive private property consumption model inconsistent with goals of social justice and equity.

## **Indoor Consumption is Contrary to Public Health Goals**

Cannabis use is not riskless. There are both established and likely negative health impacts from use, particularly frequent use.<sup>i</sup> The effects of secondhand/environmental exposure to cannabis smoke and vapor are currently understudied, but cannabis smoke and tobacco smoke are highly similar, differing primarily in the presence or absence of cannabinoids and nicotine.<sup>ii</sup> Public health advocates have spent decades working to eliminate tobacco smoking from indoor public

spaces and public events,<sup>iii</sup> resulting in adoption of comprehensive smokefree air laws in 27 states and over 1,100 cities and counties covering over 60% of the U.S. population.<sup>iv</sup> Whether produced by tobacco or cannabis, there is no accepted safe level of exposure to secondhand smoke, and the reform of cannabis laws should not undo the public health victories that have removed smoking from many public spaces, particularly workplaces. Compounding concerns for workers' exposure, cannabis businesses may be more likely to hire employees from populations negatively impacted by the War on Drugs, a practice specifically incentivized by many cannabis social equity programs. Health risks for cannabis workers should therefore be evaluated with due consideration of potentially inequitable impacts on members of this workforce.

Of the 18 states that have legalized adult use cannabis, 9 currently allow or plan to allow on-site cannabis consumption at licensed locations, including indoor use.<sup>v</sup> These states typically mandate physical separation and incorporation of ventilation systems,<sup>vi</sup> but this is not sufficient to protect the health of either workers or patrons under prevailing air quality standards, most notably ASHRAE Standard 62.1.<sup>vii</sup> While outdoor secondhand smoke exposure still poses risks,<sup>viii</sup> higher air volume and greater air circulation should make such risks lower than for indoor exposure.<sup>ix</sup> HB 3112 would permit on-site consumption only in designated outdoor areas of licensed premises that are not visible to the public. Facilitating outdoor rather than indoor cannabis use is more consistent with a public health approach and better protects worker health and safety.

### **A Private Property Model is Inequitable**

Social justice is a key principle of public health. Unfortunately, a legalization model premised exclusively on consumption on private property fails to promote social justice and risks perpetuating inequities already exacerbated by the War on Drugs. Seven current adult use states,<sup>x</sup>

including Oregon, currently prohibit both on-site and public consumption of cannabis products, effectively limiting lawful use to private property. This allows homeowners (and renters with accommodating landlords) to avail themselves of the benefits of legal reform, but it provides no protections for most renters, for persons living in public housing, or for persons experiencing homelessness. For members of the latter groups, cannabis legalization is either an illusion or a trap.

Renters who use cannabis in their homes risk potential eviction or non-renewal of their lease. Those in federally subsidized housing face potential eviction through expedited procedures even for use or possession by a visitor or guest, policies rooted in the 1980s-1990s pinnacle of the War on Drugs.<sup>xi</sup> Homeownership rates in the U.S. have declined over the past 15 years, with the largest declines among Black households.<sup>xii</sup> As noted in the bill, home ownership is significantly higher among white Oregonians (65%) compared to Black (36.5%), Native American (48.4%), and Latinx (45.9%) Oregonians. Limiting lawful cannabis use to private property thus inequitably distributes the benefits of legalization, leaving large segments of the population facing substantial risks to their housing security if they consume cannabis in their homes.

If renters and other non-homeowners attempt to avoid such risks by consuming cannabis outside, they face another serious risk in the form of potential law enforcement encounters. The enforcement of cannabis prohibition has been pervasively inequitable, particularly along lines of race and ethnicity. Cannabis use rates are similar across most racial and ethnic groups.<sup>xiii</sup> Yet, among numerous other examples, a 2013 American Civil Liberties Union study found that a Black person was nearly four times more likely than a white person to be arrested for a cannabis-related crime.<sup>xiv</sup> While legalization and decriminalization reforms have reduced overall cannabis arrest rates, racial disparities persist because enforcement inequities are deeply entrenched and tied to other systemic factors.<sup>xv</sup> Enforcement in some cases shifts to remaining prohibitions, such as

public consumption. For example, following legalization of cannabis possession in Washington, D.C., public consumption arrests increased even while overall cannabis arrests declined, and cannabis arrests continued to disproportionately impact Black persons.<sup>xvi</sup> Even if punishments for such offenses are minor, their enforcement presents the troubling but inescapable potential for escalation, with examples sadly too numerous to list here and disturbingly likely to be outdated by the time this testimony is read. So long as these unjust risks persist, the failure to create any public space for lawful cannabis consumption will fail to provide true equity under the law and will fail to promote public health as a result.

## **Conclusion**

Indoor smoking, whether of tobacco or cannabis, is a public health risk. However, failing to create access to any public cannabis consumption spaces disproportionately affects persons who do not own private property. This is likely to continue to inequitably impact persons of color, threatening their housing security and increasing the potential for law enforcement encounters initially triggered by cannabis consumption. The private property model attempts to minimize other some public health risks, but in doing so it exacerbates existing inequities in a manner that makes it incompatible with social justice. Cannabis reforms should respond to the troubled history of drug policy by ensuring that legalization avoids contributing to existing inequities or creating new ones. The creation of limited outdoor spaces for cannabis consumption promotes equity while balancing concern for workers' health and safety in a manner consistent with public health goals.

## References

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- <sup>ii</sup> David Moir et al., *A Comparison of Mainstream and Sidestream Marijuana and Tobacco Cigarette Smoke Produced under Two Machine Smoking Conditions*, 21 CHEMICAL RES. TOXICOLOGY 494 (2008); CAL. ENVT'L PROTECTION AGENCY, EVIDENCE ON THE CARCINOGENICITY OF MARIJUANA SMOKE 77–78 (2009).
- <sup>iii</sup> Andrew Hyland et al., *Smoke-free Air Policies: Past, Present and Future*, 21 TOBACCO CONTROL 139 (2012).
- <sup>iv</sup> American Nonsmokers' Rights Foundation, Overview List – Number of Smokefree and Other Tobacco-Related Laws (2020), <https://no-smoke.org/wp-content/uploads/pdf/mediaordlist.pdf>.
- <sup>v</sup> The 9 states are Alaska, California, Colorado, Illinois, Massachusetts, Michigan, New Jersey, New Mexico, and New York.
- <sup>vi</sup> E.g., ALASKA ADMIN. CODE tit. 3, § 306.370 (2020); COLO. REV. STAT. §§ 44-10-609, -610 (2020); 410 ILL. COMP. STAT. ANN. § 705/55-25(3) (2020).
- <sup>vii</sup> Am. Soc'y of Heating, Refrigerating and Air Condition Eng'rs, "ASHRAE Position Document on Environmental Tobacco Smoke" at 4 (2010), [https://no-smoke.org/wp-content/uploads/pdf/ASHRAE\\_PD\\_Environmental\\_Tobacco\\_Smoke\\_2019.pdf](https://no-smoke.org/wp-content/uploads/pdf/ASHRAE_PD_Environmental_Tobacco_Smoke_2019.pdf); Am. Soc'y of Heating, Refrigerating and Air Condition Eng'rs, "ANSI/ASHRAE Standard 62.1-2019: Ventilation for Acceptable Indoor Air Quality" (2019), <https://www.ashrae.org/technical-resources/standards-and-guidelines/read-only-versions-of-ashrae-standards>.
- <sup>viii</sup> Xisca Sureda et al., *Secondhand Tobacco Smoke Exposure in Open and Semi-Open Settings: A Systematic Review*, 121 ENVTL. HEALTH PERSP. 766 (2013).
- <sup>ix</sup> U.S. Env'tl. Protection Agency, "Indoor Air Quality (IAQ): Is Outdoor Exposure to Secondhand Smoke Comparable to Indoors?" <https://www.epa.gov/indoor-air-quality-iaq/outdoor-exposure-secondhand-smoke-comparable-indoors>.
- <sup>x</sup> The 7 states are Arizona, Maine, Nevada, Oregon, Vermont, Virginia, and Washington.
- <sup>xi</sup> Lahny R. Silva, *Collateral Damage: A Public Housing Consequences of the 'War on Drugs'* 5 U.C. IRVINE L. REV. 783 (2015).
- <sup>xii</sup> Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing* 19 (2017), [http://www.jchs.harvard.edu/sites/default/files/harvard\\_jchs\\_state\\_of\\_the\\_nations\\_housing\\_2017.pdf](http://www.jchs.harvard.edu/sites/default/files/harvard_jchs_state_of_the_nations_housing_2017.pdf).
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- <sup>xvi</sup> Paul Schwartzman & John D. Harden, "D.C. Legalized Marijuana, But One Thing Didn't Change: Almost Everyone Arrested on Pot Charges is Black," WASH. POST, Sept. 15, 2020, [https://www.washingtonpost.com/local/legal-issues/dc-marijuana-arrest-legal/2020/09/15/65c20348-d01b-11ea-9038-af089b63ac21\\_story.html](https://www.washingtonpost.com/local/legal-issues/dc-marijuana-arrest-legal/2020/09/15/65c20348-d01b-11ea-9038-af089b63ac21_story.html).