



Progressive Except for Nicotine: A Discussion of States’ Inconsistent Adoption of Harm Reduction Public Policy

By Stacey McKenna

In some states, tight restrictions on ENDS products directly contradict established harm reduction strategies for opioids and cannabis, creating a conflicting prohibitionist environment.

Executive Summary

Hundreds of thousands of Americans die each year from substance-related harms. While people can reduce these risks by avoiding cigarette smoking or opioid use, some individuals who consume substances may not want to quit, and even those who do have abstinence as a goal may not yet be ready or able to achieve it. Recognizing this, many lawmakers who want to save lives and improve well-being at the population level are now looking to evidence-based harm reduction policies as a solution.

Harm reduction is a pragmatic approach that gives people the knowledge and resources to stay safer—even when they continue engaging in risky behaviors. Everyday examples of harm reduction include wearing a seatbelt or a motorcycle helmet. When it comes to substance use, the approach is typically wielded to address two sources of risk: those inherent to the substance and those stemming from prohibition. Harm reduction policy may address one or both of these sources.

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For example, it could mean eliminating a prohibition on a certain substance, legalizing safer medical or recreational alternatives to a particular substance or product, or permitting the sale and distribution of life-saving tools such as the overdose reversal medication, naloxone. These types of approaches, which are most commonly implemented for illicit drugs, are supported by more than 30 years of evidence and are increasingly being applied to a wider range of behaviors, including cigarette smoking.

Unfortunately, the legislative application of harm reduction is not always consistent when it comes to substance use: Proponents of harm reduction policy for one substance may be against the approach for another. Such contradictions—often rooted in political allegiances or ideologies rather than science—at best fail to improve the lives of a state's residents and, at worst, can create new harms.

In this study, we examined the harm reduction policy landscape across three substances—tobacco, opioids, and cannabis—in all 50 states. To do this, we identified several important harm reduction-related policies that have varying levels of acceptance/implementation across different states or are currently in legislative flux (i.e., new bills are being introduced on a regular basis in a number of states):

- **Tobacco:** State and municipal restrictions on electronic nicotine delivery systems (ENDS), also known as e-cigarettes or vapes
- **Opioids:** States' authorization of syringe services programs, decriminalization of drug checking equipment, and presence of state-imposed restrictions on methadone that go beyond federal regulations
- **Cannabis:** The legal status of medical and recreational adult-use cannabis markets in each state

Using this information, we ranked states as “restrictive,” “moderate,” or “permissive” on harm reduction with regard to each substance. To identify consistencies or contradictions in the legislative landscape of each state across different areas of harm reduction, we quantitatively compared these rankings for all states and qualitatively examined those states deemed as “restrictive” on at least one substance. While we did not find a statistically significant relationship between different areas of harm reduction when we looked at all of the states, our qualitative examination revealed an important pattern: The five states that are most restrictive of reduced-risk nicotine products for tobacco harm reduction—California, Massachusetts, New Jersey, New York, and Rhode Island—are, for the most part, relatively “permissive” when it comes to opioid harm reduction and cannabis policy.

These states' policies on opioid harm reduction and regulated cannabis markets suggest that their lawmakers understand that even if substances are not 100 percent safe, harm reduction can save lives, and prohibition can create harms. However, their tight restrictions on ENDS products directly contradict this recognition by creating a conflicting prohibitionist environment around tobacco harm reduction that may contribute to a rise in illicit markets and a return to combustible cigarette use. We suggest that lawmakers reflect on these inconsistencies and put political motivations aside to support harm reduction across all substances.



Even if substances are not 100 percent safe, harm reduction can save lives, and prohibition can create harms.

Introduction

In 2023, approximately 450,000 Americans died from smoking or second-hand exposure to cigarettes, and more than 112,000 died from a drug overdose.¹ Some believe that the most logical way to prevent these deaths is for people to simply quit using substances. However, history tells us that abstinence is not a realistic goal for everyone—after all, people have consumed psychoactive substances for about as long as we have been human.² Furthermore, a robust and growing body of evidence indicates that harm reduction is an effective way to mitigate the risks associated with substance use, allowing people to live healthier, safer, and more productive lives even when they continue to use.³ As such, policies that support harm reduction improve public health, save taxpayer money, and benefit communities.

Yet developing comprehensive policy solutions that put human autonomy and well-being before political ideology often proves problematic. When it comes to substance use, this can result in jurisdictions adopting seemingly contradictory legislation. This policy study examines several key state-based policies aimed at reducing harms associated with the use of three categories of substances—tobacco, opioids, and cannabis—to identify consistencies and contradictions across areas and to highlight key implications for policymakers.

Assessing State Harm Reduction Policies

When harm reduction came to the United States in the 1980s, the movement was predominantly organized by and for people who inject drugs.⁴ Grassroots organizers distributed sterile injection equipment to reduce the spread of infectious diseases, handed out the overdose prevention medication naloxone without the then-required prescription, and provided an array of wraparound services.⁵ There was broad recognition among harm reductionists that the war on drugs had amplified existing risks associated with using illicit substances—and created some of its own. But the primary aim of the work was the same as it is today: to empower people to stay safer and healthier, even if they continue engaging in risky behavior.⁶ Thus, while harm reduction emerged as a response to political circumstances, the movement itself operated outside of mainstream politics, often in legal gray areas.

Today, the term “harm reduction” is known to a much wider swathe of the population. Standard public health interventions, from seatbelt and helmet laws to vaccination recommendations, are often recognized as harm reduction. Advocates for improving access to electronic nicotine delivery systems (ENDS, also known as e-cigarettes or vapes), heat-not-burn, and some oral tobacco products cite evidence that these alternatives are much safer than combustible cigarettes and thus constitute



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1. Thuy T.T. Le et al., “New Estimates of Smoking-Attributable Mortality in the U.S. From 2020 Through 2035,” *American Journal of Preventive Medicine* (Dec. 22, 2023). [https://www.ajpmonline.org/article/S0749-3797\(23\)00515-9/fulltext](https://www.ajpmonline.org/article/S0749-3797(23)00515-9/fulltext); Brian Mann et al., “In 2023 fentanyl overdoses ravaged the U.S. and fueled a new culture war fight,” NPR, Dec. 28, 2023. <https://www.npr.org/2023/12/28/1220881380/overdose-fentanyl-drugs-addiction>.
2. Heather Sophia Lee and Denalee O’Malley, “Abstinence-Only: Are You Not Working the Program or Is the Program Not Working for You?,” *Journal of Social Work Practice in the Addictions* 18:3 (Aug. 23, 2018), pp. 289-304. <https://www.tandfonline.com/doi/abs/10.1080/1533256X.2018.1489259>; R.J. Sullivan and E.H. Hagen, “Psychotropic substance-seeking: evolutionary pathology or adaptation?,” *Addiction* 97:4 (April 2002), pp. 389-400. <https://doi.org/10.1046/j.1360-0443.2002.00024.x>.
3. National Institute on Drug Abuse, “Harm Reduction,” National Institutes of Health, October 2022. <https://nida.nih.gov/research-topics/harm-reduction>; Alison Ritter and Jacqui Cameron, “A review of the efficacy and effectiveness of harm reduction strategies for alcohol, tobacco and illicit drugs,” *Drug and Alcohol Review* 25:6 (November 2006), pp. 611-624. <https://doi.org/10.1080/09595230600944529>.
4. Don C. Des Jarlais, “Harm reduction in the USA: the research perspective and an archive to David Purchase,” *Harm Reduction Journal* 14:51 (July 26, 2017). <https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-017-0178-6>.
5. Stacey McKenna, “Why the Harm Reduction Movement Needs Diversity,” *Safer From Harm*, Feb. 28, 2023. <https://www.saferfromharm.org/blog/harm-reduction-needs-diversity>.
6. “Principles of Harm Reduction,” National Harm Reduction Coalition, last accessed Feb. 2, 2024. <https://harmreduction.org/about-us/principles-of-harm-reduction>.

tobacco harm reduction.⁷ Even the once-underground interventions that have served as the movement's backbone are gaining mainstream support—intranasal naloxone is available over-the-counter, 32 states plus Washington, D.C. explicitly authorize syringe services programs (SSPs), and all but eight states have decriminalized drug checking equipment to some degree.⁸

In the wake of this broader appeal and application, harm reduction has become deeply politicized and internally divided. Those who are critical of the mainstream adoption of harm reduction as a public health strategy worry that the approach has lost its social-justice roots.⁹ Meanwhile, those who are more medically oriented may push back against recent challenges to prohibitionist policies.¹⁰ This study describes and compares states' harm reduction policy landscapes across three substances that have been subject to changing legislation in recent years: tobacco, cannabis, and opioids.

An in-depth examination of every harm reduction policy in place in all 50 states was beyond the scope of the study. Thus, to help select the most relevant policies, we identified two key substance use-related factors that drive associated risks and that harm reduction policies should seek to address:

- **Substance use comes with innate risks to health and well-being.** People use substances for many reasons, from health promotion to meeting social expectations to experiencing pleasure.¹¹ In addition to the desired effects and perceived benefits, many substances also come with the potential for negative, undesired consequences. For example, smoking combustible cigarettes or being exposed via second-hand smoke causes a range of health problems, including heart disease, chronic obstructive pulmonary disease, and cancer.¹² Opioids, when taken in high doses, may cause life-threatening respiratory depression, which is commonly known as an overdose.¹³ And the frequent consumption of high-potency cannabis may increase the risk of short- or long-term psychosis, especially among individuals who are predisposed.¹⁴ People who use either opioids or cigarettes regularly are likely to develop a physical dependence on them and may experience unpleasant (and in the case of opioids, sometimes dangerous) withdrawal symptoms if they quit suddenly.¹⁵ This dependence and the experience of withdrawal can make it difficult to exercise control over one's use and may lead people to engage in other types of risky behaviors in an effort to "get well."¹⁶



Smoking combustible cigarettes or being exposed via second-hand smoke causes a range of health problems, including heart disease, chronic obstructive pulmonary disease, and cancer.

7. Dorothy K. Hatsukami and Dana M. Carroll, "Tobacco Harm Reduction: Past History, Current Controversies and a Proposed Approach for the Future," *Prevention Medicine* 140 (November 2020). <https://europepmc.org/backend/ptpmcrender.fcgi?accid=PMC7581601&blobtype=pdf>.
8. "Legality of Drug Checking Equipment in the United States," The Network for Public Health Law, August 2023. <https://www.networkforphl.org/wp-content/uploads/2023/11/50-State-DCE-Fact-Sheet-2023-2.pdf>; "Syringe Services Programs: Summary of State Laws," Legislative Analysis and Public Policy Association, August 2023. <https://legislativeanalysis.org/wp-content/uploads/2023/08/Syringe-Services-Programs-Summary-of-State-Laws.pdf>; "FDA Approves First Over-the-Counter Naloxone Nasal Spray," U.S. Food & Drug Administration, March 29, 2023. <https://www.fda.gov/news-events/press-announcements/fda-approves-first-over-counter-naloxone-nasal-spray>.
9. Shira Hassan, "Our Right to Heal: Liberatory Harm Reduction," *YES! Magazine*, Jan. 19, 2023. <https://www.yesmagazine.org/health-happiness/2023/01/19/harm-reduction>.
10. Susan R. Bailey, "Questions still surround cannabis use and public health," American Medical Association, April 9, 2021. <https://www.ama-assn.org/about/leadership/questions-still-surround-cannabis-use-and-public-health>.
11. Chelsea Boyd and Stacey McKenna, "Beyond Addiction: The Myriad Reasons People Use Drugs," R Street Institute, June 2023. <https://www.rstreet.org/wp-content/uploads/2023/06/beyond-addiction-06-23-R2.pdf>.
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13. Merel Boom et al., "Non-analgesic effects of opioids: opioid-induced respiratory depression," *Current Pharmaceutical Design* 18:37 (2012), pp. 5994-6004. <https://pubmed.ncbi.nlm.nih.gov/22747535>.
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15. Mansi Shah and Martin R. Huecker, "Opioid Withdrawal," *StatPearls* (July 21, 2023). <https://www.ncbi.nlm.nih.gov/books/NBK526012>.
16. David Frank et al., "As safe as possible': a qualitative study of opioid withdrawal and risk behavior among people who use illegal opioids," *Harm Reduction Journal* 20:158 (Oct. 27, 2023). <https://harmreductionjournal.biomedcentral.com/counter/pdf/10.1186/s12954-023-00893-9.pdf>.

- Prohibition amplifies existing risks and may create additional risks to well-being.** When specific substances or modes of use are made illegal, the prohibition itself becomes harmful. First, people may seek the product on the illicit/informal market, where substances are unregulated and potentially more dangerous.¹⁷ For example, the 2019 lung-injury outbreak (EVALI) was driven by counterfeit tetrahydrocannabinol (THC)-containing e-cigarettes.¹⁸ Similarly, illicit drugs have long been characterized by variable potency and may be adulterated with contaminants—both of which can contribute to negative consequences such as overdose.¹⁹ Prohibition has also been shown to incentivize the production of increasingly potent substances. For instance, the iron law of prohibition suggests that “[i]mposing substantial barriers and costs to the illicit drug supply chain creates direct pressure to minimise volume while maximising profit.”²⁰ In recent years, this phenomenon has led to the rise of fentanyl and other synthetic drugs. In addition, the criminalization of individuals who use these substances (or equipment associated with them) creates a range of harms as well. In fact, according to a recent R Street policy study, “the overcriminalization and overpolicing of cannabis unnecessarily ensnares people in the criminal justice system and wastes taxpayer dollars that would be better invested in the community.”²¹ Prohibition can also change behaviors related to the consumption of illicit substances. For example, paraphernalia laws make it difficult to obtain or risky to carry supplies, so people who inject illegal drugs may be more likely to share needles, increasing the risk of contracting and transmitting an infectious disease, or they may use too quickly, increasing the risk of overdose.²² Finally, the fear of arrest has been shown to reduce individuals’ willingness to call 911 in response to an overdose.²³

Harm reduction aims to give people the knowledge and resources they need to mitigate both types of risks.

Identifying Laws that Reduce Harm

In some instances, harm reduction takes the form of specific interventions that have been shown to mitigate potential harms associated with either or both of these drivers of risk (Table 1). In other cases, it challenges laws that perpetuate overcriminalization, including those directly pertaining to the prohibition of substances. Policy thus affects substance use-related risk by acting on substances themselves and/or harm reduction interventions. Therefore, in this study, we looked for policies that did one or both of the following:



- Authorize or restrict evidence-based harm reduction interventions
- Authorize or restrict the substance itself



The fear of arrest has been shown to reduce individuals’ willingness to call 911 in response to an overdose.

- Jonathan Haggerty, “Flavored Tobacco Product Bans and Black Markets,” *R Street Shorts* No. 86, March 2020. <https://www.rstreet.org/research/flavored-tobacco-product-bans-and-black-markets>; Mazen Saleh, “How Menthol Prohibition Fuels Demand,” *DC Journal*, June 5, 2023. <https://dcjournal.com/how-menthol-prohibition-fuels-demand>.
- Thivanka Muthumalage et al., “Chemical Constituents Involved in E-Cigarette, or Vaping Product Use-Associated Lung Injury (EVALI),” *Toxics* 8:2 (April 3, 2020). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7355865>.
- Renata Solimini et al., “Adulteration Practices of Psychoactive Illicit Drugs: An Updated Review,” *Current Pharmaceutical Biotechnology* 18:7 (2017), pp. 524-530. <https://www.ingentaconnect.com/content/ben/cpb/2017/00000018/00000007/art00003>.
- Leo Beletsky and Corey S. Davis, “Today’s fentanyl crisis: Prohibition’s Iron Law, revisited,” *International Journal of Drug Policy* 46 (August 2017), p. 157. <https://doi.org/10.1016/j.drugpo.2017.05.050>.
- Christi M. Smith and Jillian Snider, “How Federal Cannabis Legalization Can Restore Police Legitimacy and Enhance Public Safety,” *R Street Policy Study* No. 261, July 2022, p. 7. <https://www.rstreet.org/research/how-federal-cannabis-legalization-can-restore-police-legitimacy-and-enhance-public-safety>.
- Corey S. Davis et al., “Paraphernalia Laws, Criminalizing Possession and Distribution of Items Used to Consume Illicit Drugs, and Injection-Related Harm,” *American Journal of Public Health* 109:11 (November 2019), pp. 1564-1567. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6775926>; Jeffrey A. Singer and Sophia Heimowitz, “Drug Paraphernalia Laws Undermine Harm Reduction,” CATO Institute, June 7, 2022. <https://www.cato.org/policy-analysis/drug-paraphernalia-laws-undermine-harm-reduction-reduce-overdoses-disease-states>.
- Amanda D. Latimore and Rachel S. Bergstein, “‘Caught with a body’ yet protected by law? Calling 911 for opioid overdose in the context of the Good Samaritan Law,” *International Journal of Drug Policy* 50 (December 2017), pp. 82-89. <https://doi.org/10.1016/j.drugpo.2017.09.010>.

Table 1: Effectiveness of Harm Reduction Interventions

Substance	Intervention	Research Findings
Tobacco 	Reduced-risk nicotine products (i.e., ENDS, heat-not-burn)	<ul style="list-style-type: none"> • ENDS are considered to be much less harmful than combustible cigarettes.²⁴ • Trials suggest that ENDS products are more effective than placebo or traditional nicotine replacement therapy at helping people stop smoking combustible cigarettes.²⁵ • For many adults who smoke, ENDS products' flavor options encourage them to make the switch from smoking to vaping.²⁶
Opioids 	Syringe services programs (SSPs)	<ul style="list-style-type: none"> • SSPs cut the incidence of HIV and hepatitis C in half and reduce injection-site infections and complications.²⁷ • SSPs reduce syringe litter and save taxpayers \$6 to \$7 per dollar spent on HIV prevention alone.²⁸ • SSPs are effective distributors of overdose-prevention tools, including naloxone and fentanyl test strips.²⁹
	Drug checking equipment	<ul style="list-style-type: none"> • Fentanyl test strips are easy to use and effectively identify fentanyl and related substances in one's drug supply.³⁰ • People who use fentanyl test strips often change their behavior to reduce risk.³¹ • As the illicit drug market becomes increasingly complex and opaque, community-based, point-of-care drug checking tools can provide lifesaving information.³²
	Methadone	<ul style="list-style-type: none"> • Methadone treatment is associated with a substantial—as much as 59 percent—reduction in overdose one year after initiation.³³ • Methadone treatment reduces illicit opioid use, infectious disease risk, and criminal activity.³⁴

Once we identified state policies that met the above criteria, we narrowed our focus to include only those that showed variation—not just in quality, but in their presence—across states. For example, although naloxone-access laws help get the lifesaving overdose reversal medication into the hands of laypeople, every state has its own version of such laws. A detailed quality assessment of these laws was beyond the scope of the present study. **Table 2** lists the policies that met our final criteria.

24. "Is vaping harmful?," Cancer Research U.K., March 27, 2023. <https://www.cancerresearchuk.org/about-cancer/causes-of-cancer/smoking-and-cancer/is-vaping-harmful>; "About Electronic Cigarettes (E-Cigarettes)," Smoking & Tobacco Use, Centers for Disease Control and Prevention, Nov. 2, 2023.

25. Gary C.K. Chan et al., "A systematic review of randomized controlled trials and network meta-analysis of e-cigarettes for smoking cessation," *Addictive Behaviors* 119 (August 2021). <https://doi.org/10.1016/j.addbeh.2021.106912>; Nicola Lindson et al., "Electronic cigarettes for smoking cessation," *Cochrane Database of Systematic Reviews* (Jan. 8, 2024). <https://doi.org/10.1002/14651858.CD010216.pub8>.

26. Abigail S. Friedman and SiQing Xu, "Associations of Flavored e-Cigarette Uptake With Subsequent Smoking Initiation and Cessation," *Substance Use and Addiction* 3:6 (June 5, 2020). <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2766787>.

27. "Syringe Services Programs," Centers for Disease Control and Prevention, Aug. 7, 2023. <https://www.cdc.gov/hiv/effective-interventions/prevent/syringe-services-programs/index.html>.

28. Harry Levine et al., "Syringe disposal among people who inject drugs before and after the implementation of a syringe services program," *Drug and Alcohol Dependence* 202 (Sept. 1, 2019), pp. 13-17. <https://doi.org/10.1016/j.drugalcdep.2019.04.025>; Trang Quynh Nguyen et al., "Syringe Exchange in the United States: A National Level Economic Evaluation of Hypothetical Increases in Investment," *AIDS and Behavior* 1811 (November 2014), pp. 2144-2155. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4211599>.

29. "Syringe Services Programs," National Association of Counties, last accessed Feb. 2, 2024. https://www.naco.org/sites/default/files/documents/OSC_SSP_Final_Web.pdf.

30. Marianne Skov-Skov Bergh et al., "Selectivity and sensitivity of urine fentanyl test strips to detect fentanyl analogues in illicit drugs," *International Journal of Drug Policy* 90 (April 2021). <https://doi.org/10.1016/j.drugpo.2020.103065>.




31. Nicholas C. Peiper et al., "Fentanyl test strips as an opioid overdose prevention strategy: Findings from a syringe services program in the Southeastern United States," *International Journal of Drug Policy* 63 (January 2019), pp. 122-128. <https://doi.org/10.1016/j.drugpo.2018.08.007>; Hayoung Oh et al., "Fentanyl self-testing in a community-based sample of people who inject drugs, San Francisco," *International Journal of Drug Policy* 82 (August 2020).

32. Lea Gozdziński et al., "Point-of-care community drug checking technologies: an insider look at the scientific principles and practical considerations," *Harm Reduction Journal* 20:39 (March 25, 2023). <https://link.springer.com/article/10.1186/s12954-023-00764-3>.

33. Sarah E. Wakeman et al., "Comparative Effectiveness of Different Treatment Pathways for Opioid Use Disorder," *Substance Use and Addiction* 3:2 (Feb. 5, 2020). <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2760032>.

34. National Institute on Drug Abuse, "How effective are medications to treat opioid use disorder?," U.S. Department of Health and Human Services, December 2021. <https://nida.nih.gov/publications/research-reports/medications-to-treat-opioid-addiction/efficacy-medications-opioid-use-disorder>.

Table 2: Harm Reduction-Related Policies Examined in the 50 States

Tobacco 	Opioids 	Cannabis 
<ul style="list-style-type: none"> • State bans on flavored ENDS products • States with local bans on flavored ENDS products • States with local bans on all ENDS products 	<ul style="list-style-type: none"> • State authorization of SSPs • State decriminalization of drug checking equipment • State methadone regulations that exceed federal guidelines 	<ul style="list-style-type: none"> • State legalization of medical cannabis (including low THC/CBD products) • State legalization of regulated adult-use cannabis markets

Comparing How States Reduce Harm Across Three Substances

Although the above list by no means represents a comprehensive assessment of policies related to substance use harm reduction in the United States, the policies examined in this study are those that are most in flux across the country. As such, they presented an opportunity to explore similarities and differences in how states treat tobacco, opioids, and cannabis.

We pulled data from existing legislative analyses published in 2023 to assess each state's current landscape relative to each of the above policy areas.³⁵ We then coded each cell from 0 to 2, with 0 representing laws deemed most restrictive of harm reduction, 1 representing laws moderately restrictive of harm reduction, and 2 representing laws most permissive of harm reduction. For example, states that ban the retail sale of flavored e-cigarettes received a 0, those that restrict the sale of certain flavors or types of e-cigarettes received a 1, and those that permit their sale with roughly the same or fewer restrictions compared to combustible cigarettes received a 2. Similarly, states that have decriminalized all drug checking equipment received a 2, states that have decriminalized only certain drug checking equipment (such as fentanyl test strips) received a 1, and states in which all drug checking equipment remains illegal received a 0.

We then summed each state's score across each substance's relevant policies and ranked them as "restrictive," "moderate," or "permissive." It is noteworthy that these assessments were applied on a relative basis and within the particular context of the U.S. policy environment. So while we rated California's opioid harm reduction policies as "permissive" for the purposes of this study, that assessment may not be qualitatively accurate if those policies were compared to those of Canada or Australia.

Once coding and numerical assessments were complete for each policy area in each state, we compared states to one another in two ways. First, we converted the "restrictive"/"moderate"/"permissive" categories back to numbers and ran Chi-square tests to look for associations. Second, we conducted a qualitative assessment of states deemed "restrictive" on any of the substance categories to identify patterns.



The policies examined in this study are those that are most in flux across the country. As such, they presented an opportunity to explore similarities and differences in how states treat tobacco, opioids, and cannabis.

35. "Legality of Drug Checking Equipment in the United States." <https://www.networkforphl.org/wp-content/uploads/2023/11/50-State-DCE-Fact-Sheet-2023-2.pdf>; Addy Bink, "Map: Where marijuana will be legal in 2024," *The Hill*, Dec. 29, 2023. https://thehill.com/homenews/nexstar_media_wire/4371873-map-where-marijuana-will-be-legal-in-2024; "State Policy," Marijuana Policy Project, 2024. <https://www.mpp.org/states>; Laura Bach, "States & Localities that Have Restricted the Sale of Flavored Tobacco Products," Campaign for Tobacco-Free Kids, Dec. 29, 2023. <https://assets.tobaccofreekids.org/factsheets/0398.pdf>; Jim McDonald, "Vape Bans: E-Cigarette Restrictions in the U.S. and Worldwide," Vaping360, Jan. 1, 2024. <https://vaping360.com/learn/countries-where-vaping-is-banned-illegal/>; Kellen Russoniello et al., "State-Specific Barriers to Methadone for Opioid Use Disorder Treatment," *Journal of Law, Medicine & Ethics* 51:2 (Sept. 1, 2023), pp. 403-412. <https://pubmed.ncbi.nlm.nih.gov/37655577/>; "Syringe Services Programs: Summary of State Laws." <https://legislativeanalysis.org/wp-content/uploads/2023/08/Syringe-Services-Programs-Summary-of-State-Laws.pdf>.

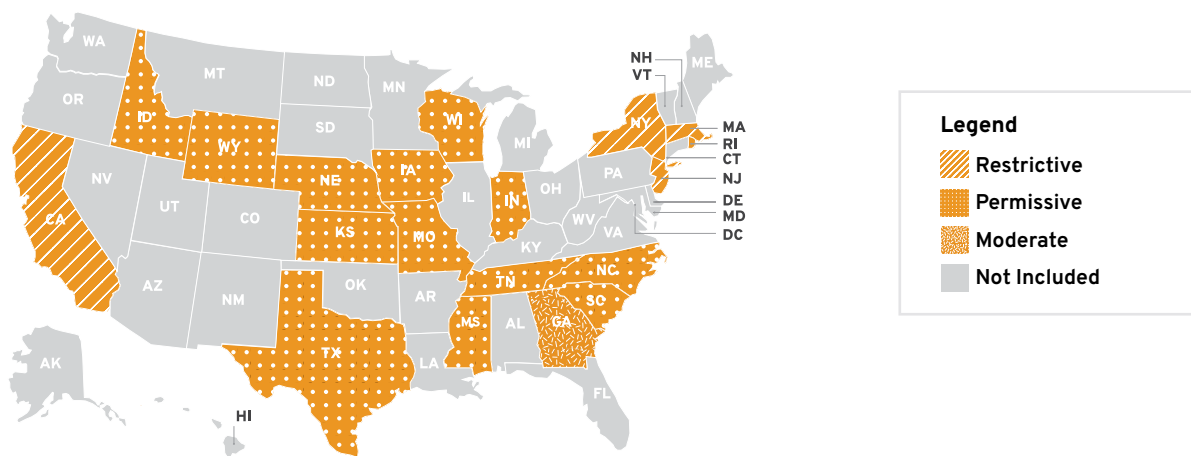
Exploring Inconsistent Harm Reduction Policies

One would expect that states supportive of one type of harm reduction would be supportive of all types. However, the Chi-square analysis revealed no statistically significant relationships between states' legal landscapes around reduced-risk nicotine products, opioid harm reduction, and regulated cannabis markets. That is, states as a whole were neither more or less likely to have policies permissive of one area of harm reduction if they had policies friendly toward another.

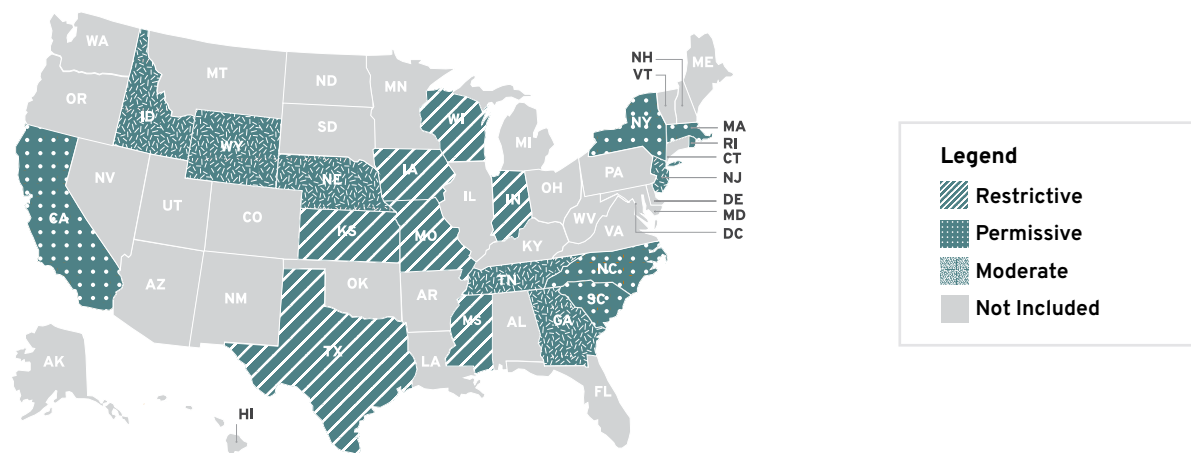
However, when we narrowed our focus to look qualitatively at states that were most "restrictive" in at least one category, the examination proved enlightening. **Figure 1** shows a visual comparison of the 19 states that were deemed "restrictive" in at least one category.

Figure 1: Comparison of Harm Reduction Across Three Policy Areas in 19 States Deemed "Restrictive" in at Least One Harm Reduction Category

Tobacco Harm Reduction



Opioid Harm Reduction



substances can use drugs purchased elsewhere under the supervision of staff and volunteers trained to recognize and respond to overdoses—in select cities, although Gov. Gavin Newsom eventually vetoed the move.⁴⁰

Despite supporting opioid harm reduction and dismantling the overcriminalization of cannabis, California has been actively engaged in suppressing access to reduced-risk nicotine products. In 2022, the same year the legislature voted in favor of OPCs, a statewide ban on the sale of flavored ENDS products went into effect.⁴¹ In addition, California is home to the largest number of localities that have prohibited or restricted adult access to flavored ENDS, as well as a handful of jurisdictions that have completely banned the sale of all vapes.⁴²

Massachusetts

In 2019, Massachusetts became the first state in the country to restrict flavored ENDS products.⁴³ The law, which went into effect in June 2020, limited the sale of flavored tobacco products—including flavored ENDS products—to “licensed smoking bars where they may be sold only for on-site consumption.”⁴⁴ More than 150 jurisdictions in Massachusetts have passed similar legislation.⁴⁵ Furthermore, while unflavored combustible cigarettes may be sold in gas stations, convenience stores, and similar retail establishments, unflavored ENDS—a term that generally refers to tobacco-flavored products—with a nicotine content above 35 mg/mL are available only in 21-and-over shops and smoking bars.⁴⁶

However, Massachusetts is a state that is friendly to both opioid harm reduction and legal, regulated cannabis markets. The state decriminalized cannabis in 2008, and then, four years later, legalized it for medical use.⁴⁷ Cultivation of the plant (by adults) for personal recreational use has been legal since 2016, the state’s first adult-use stores opened in 2018—the first on the east coast—and, as of 2023, the market had topped \$4 billion.⁴⁸

In addition to cannabis policies that push against prohibition, the state allows both mobile and brick-and-mortar SSPs, and its paraphernalia law explicitly excludes injection equipment.⁴⁹ Furthermore, the state paraphernalia law criminalizes possession “with intent to sell” but not possession with intent to use.⁵⁰ As such, possession and free distribution of drug checking equipment are technically legal in Massachusetts. In addition, a bill is currently moving through the state legislature that would remove fentanyl test strips from its paraphernalia law, providing increased clarity around



Massachusetts’ one major restriction in the realm of opioid harm reduction is that the state restricts methadone treatment above and beyond federal regulations (but notably less than most other states).

40. Chelsea Boyd, “The Policy Landscape of Overdose Prevention Centers in the United States,” *R Street Policy Study* No. 265, October 2022, p. 3. <https://www.rstreet.org/research/the-policy-landscape-of-overdose-prevention-centers-in-the-united-states>; Chelsea Boyd, “Partisan politics derails efforts to improve public health through harm reduction,” *Orange County Register*, Nov. 1, 2022. <https://www.ocregister.com/2022/11/01/partisan-politics-derails-efforts-to-improve-public-health-through-harm-reduction>.

41. IHPL, “California’s Ban on Flavored Tobacco,” Loma Linda University Health, Aug. 1, 2023. <https://ihpl.llu.edu/blog/california-s-ban-flavored-tobacco>.

42. Bach. <https://assets.tobaccofreekids.org/factsheets/0398.pdf>; McDonald. <https://vaping360.com/learn/countries-where-vaping-is-banned-illegal>.

43. Bach. <https://assets.tobaccofreekids.org/factsheets/0398.pdf>.

44. “2019 Tobacco Control Law,” Massachusetts Tobacco Cessation and Prevention Program (MTCP), last accessed Feb. 2, 2024. <https://www.mass.gov/guides/2019-tobacco-control-law>.

45. Bach. <https://assets.tobaccofreekids.org/factsheets/0398.pdf>.

46. “2019 Tobacco Control Law.” <https://www.mass.gov/guides/2019-tobacco-control-law>.

47. “Massachusetts,” Marijuana Policy Project, May 2, 2023. <https://www.mpp.org/states/massachusetts>.

48. Ibid.; Daniella Silva and Ezra Kaplan, “Massachusetts makes history as first legal marijuana shops on East Coast open Tuesday,” NBC News, Nov. 19, 2018. <https://www.nbcnews.com/news/us-news/massachusetts-make-history-first-legal-marijuana-shops-east-coast-set-n938136>.

49. Gabrielle de la Guéronnière and Monica Shaffer, “Issue Brief: Recent Federal and State Policy Developments Important to Syringe Service Programs and What May Be Next,” Legal Action Center, March 2023, p. 4. <https://www.lac.org/assets/files/final-SSP-issue-brief.pdf>; Singer and Heimowitz, p. 11. <https://www.cato.org/policy-analysis/drug-paraphernalia-laws-undermine-harm-reduction-reduce-overdoses-disease-states>.

50. “Legality of Drug Checking Equipment in the United States,” p. 25. <https://www.networkforphl.org/wp-content/uploads/2023/11/50-State-DCE-Fact-Sheet-2023-2.pdf>; Massachusetts Legislature General Laws, Part 1, Title XV, Chapter 94C, Section 32I.

possession and effectively legalizing their sale.⁵¹ Finally, the state Department of Health has called for OPCs, and the legislature has considered legalizing pilot programs, though no legislation has passed as of this writing.⁵² Massachusetts' one major restriction in the realm of opioid harm reduction is that the state restricts methadone treatment above and beyond federal regulations (but notably less than most other states).⁵³

New Jersey

In 2020, New Jersey enacted a bill restricting the sale of flavored ENDS products.⁵⁴ Because the law exclusively targets ENDS, flavored combustible products remain available.⁵⁵ In addition to the statewide ban, several local jurisdictions in New Jersey prohibit the sale of flavored ENDS.⁵⁶ As with state law, the local bans are limited to vapor products, leaving flavored combustible cigarettes on shelves.

In 2009, New Jersey legalized medical cannabis, and, 10 years later in 2019, significantly expanded on the program by increasing the number of retail and manufacturing licenses, permitting home delivery, and more.⁵⁷ Furthermore, in April 2022, almost two years after the state's ban on flavored ENDS products went into effect, the state's first legal, adult-use cannabis retail stores opened.⁵⁸

Unlike the other tobacco harm reduction "restrictive" states that we examined, when it comes to opioid harm reduction, New Jersey ranked "moderate" (versus "permissive"). The state has permitted the cornerstone of opioid harm reduction—SSPs—since 2006, and, in 2022, removed local municipalities' right to allow or prohibit their operation.⁵⁹ That said, there is still work to be done in other areas of opioid harm reduction. Although New Jersey regulates methadone less than most other states do, it still regulates it far beyond federal guidelines, requiring more in-person visits, restricting take-home doses, and limiting where opioid treatment programs that dispense the medication may operate.⁶⁰ Such restrictions not only make it more difficult for people to access an already overregulated treatment modality, but they are also not supported by research.⁶¹ In addition, while New Jersey has decriminalized fentanyl test strips, possession and distribution of other drug checking equipment remains illegal.⁶²



Although New Jersey has decriminalized fentanyl test strips, possession and distribution of other drug checking equipment remains illegal.

New York

In 2020, shortly after New Jersey's ban on flavored ENDS products went into effect, New York state enacted similar legislation.⁶³ The policy also focused on vapes only,

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51. Chris Serres, "Carrying fentanyl test strips could lead to arrest. Now, Mass. lawmakers could legalize them," *Boston Globe*, Jan. 4, 2024. <https://www.bostonglobe.com/2024/01/04/metro/fentanyl-test-strips-opioid-massachusetts/?event=event12>.
52. Martha Bebinger, "Mass. Health Dept. says state needs controversial overdose prevention centers," *WBUR*, Dec. 13, 2023. <https://www.wbur.org/news/2023/12/13/massachusetts-public-health-fatal-overdose-prevention-report>; "Bill S.1242, An Act Relative to Preventing Overdose Deaths and Increasing Access to Treatment," 193rd Congress. <https://malegislature.gov/Bills/193/S1242>.
53. Russoniello et al., p. 406. <https://pubmed.ncbi.nlm.nih.gov/37655577>.
54. Bach. <https://assets.tobaccofreekids.org/factsheets/0398.pdf>.
55. "The State of New Jersey," CASAA, last accessed Feb. 2, 2024. <https://casaa.org/get-involved/state-locator/new-jersey>.
56. Bach. <https://assets.tobaccofreekids.org/factsheets/0398.pdf>.
57. "Chapter 307," New Jersey Legislature, Jan. 18, 2010. https://pub.njleg.gov/bills/2008/PL09/307_.HTM; "Jake Honig Compassionate Use Medical Cannabis Act," Marijuana Policy Project, last accessed Jan. 29, 2024. <https://www.mpp.org/assets/pdf/states/new-jersey/jake-honig-compassionate-use-medical-cannabis-act.pdf>.
58. "New Jersey," Marijuana Policy Project, Sept. 20, 2023. <https://www.mpp.org/states/new-jersey>.
59. Brent Johnson and Susan K. Livio, "N.J. needle exchange programs, proven to reduce spread of HIV, will expand under new law," *NJ.com*, Aug. 31, 2023. <https://www.nj.com/politics/2022/01/nj-needle-exchange-programs-proven-to-reduce-spread-of-hiv-will-expand-under-new-law.html>.
60. Russoniello et al., p. 407. <https://pubmed.ncbi.nlm.nih.gov/37655577>.
61. Robert P. Schwartz et al., "A randomized controlled trial of interim methadone maintenance," *Archives of General Psychiatry* 63:1 (January 2006), pp. 102-109. <https://pubmed.ncbi.nlm.nih.gov/16389204>.
62. "Legality of Drug Checking Equipment in the United States," p. 5. <https://www.networkforphl.org/wp-content/uploads/2023/11/50-State-DCE-Fact-Sheet-2023-2.pdf>.
63. Bach. <https://assets.tobaccofreekids.org/factsheets/0398.pdf>.

once again overlooking the harms associated with flavored combustible products. Although it does make an exception for products that have received U.S. Food and Drug Administration regulatory approval to be marketed and sold—known as premarket authorization—the process is expensive and extremely slow, meaning it may take years for reduced-risk products to make it onto retail shelves beside cigarettes.⁶⁴ A handful of jurisdictions within New York have also enacted local bans and restrictions on the availability of ENDS products.⁶⁵

New York's bans on tobacco harm reduction come at a time when the state is known nationwide for its acceptance of harm reduction. In late 2021, New York City became home to the first openly recognized OPCs in the nation.⁶⁶ And while the state of New York has considered but not passed legislation to permit the sites elsewhere, its track record on other forms of opioid harm reduction is strong.⁶⁷ The state first legalized SSPs in the 1990s under an emergency exemption to the paraphernalia laws and expanded protections in 2008 to allow for secondary distribution to peers.⁶⁸ In addition, possession with intent to use drug checking equipment is not criminalized under the state's paraphernalia law.⁶⁹ New York does, however, place additional restrictions on methadone treatment access beyond federal restrictions, although it does so to a lesser degree than most other states.⁷⁰

We have also ranked the state as “permissive” when it comes to cannabis. Although it has been relatively late to adopt such policies, and licensing and retail efforts have been slow to roll out, both medical and recreational, adult-use markets are legal in New York.⁷¹ Medical cannabis has been legally available since 2014, and recreational adult use was authorized in 2021.⁷² As of March 2023, however, only four legal adult-use stores were operating in the state, and while at least a dozen more received licenses in late 2023, legal retail availability continues to lag behind other states.⁷³

Rhode Island

In 2020, Rhode Island passed legislation banning flavored ENDS.⁷⁴ As in New York and New Jersey, the statewide prohibition focused exclusively on vapor products, leaving retailers free to continue selling combustible tobacco, even with assorted flavors. Rhode Island is also home to several localities that have adopted similar bans, although the smaller jurisdictions have carve-outs for specialized retailers.⁷⁵

As with the other states discussed above, while Rhode Island's policy is quite restrictive of reduced-risk nicotine products, it is relatively permissive in the areas



In late 2021, New York City became home to the first openly recognized OPCs in the nation.

64. Jeffrey Smith, “Summer 2023: Trends in Nicotine & Tobacco Harm Reduction Research,” R Street Institute, July 2023. <https://www.rstreet.org/wp-content/uploads/2023/07/FINAL-nicotine-trends-07-23.pdf>.

65. Bach. <https://assets.tobaccofreekids.org/factsheets/0398.pdf>.

66. Emerson Soto, “OnPoint NYC, Operator of the Nation's First Supervised Consumption Centers, Announces that It Has Intervened in Over 1,000 Overdoses,” OnPoint NYC, Aug. 9, 2023. <https://onpointnyc.org/intervened-in-over-1000-overdoses>.

67. “NY A338A: An act to amend the public health law, in relation to enacting the safer consumption services act,” New York State Assembly 2023-2024 Regular Sessions. https://assembly.state.ny.us/leg/?default_fid=&leg_video=&bn=A338&term=2023&Summary=Y&Actions=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y&Memo=Y&Text=Y.

68. “Syringe Service Programs in New York City,” NYC Health, June 2019. <https://www.nyc.gov/assets/doh/downloads/pdf/epi/databrief110.pdf>.

69. “Legality of Drug Checking Equipment in the United States,” p. 30. <https://www.networkforphl.org/wp-content/uploads/2023/11/50-State-DCE-Fact-Sheet-2023-2.pdf>.

70. Russoniello et al., p. 407. <https://pubmed.ncbi.nlm.nih.gov/37655577>.

71. Kyle Jaeger, “New York Governor Says She's ‘Very Fed Up’ With Slow Marijuana Retailer Licensing Rollout,” Marijuana Moment, Jan. 26, 2024. <https://www.marijuanamoment.net/new-york-governor-says-shes-very-fed-up-with-slow-marijuana-retailer-licensing-rollout>.

72. “Cannabis (Marijuana),” NYC Health, last accessed Feb. 2, 2024. <https://www.nyc.gov/site/doh/health/health-topics/marijuana.page>; “Marihuana Regulation and Taxation Act (MRTA),” New York State Office of Cannabis Management, last accessed Jan. 29, 2024. <https://cannabis.ny.gov/marihuana-regulation-and-taxation-act-mrt>.

73. “New York,” Marijuana Policy Project, May 2, 2023. <https://www.mpp.org/states/new-york>; Jaeger. <https://www.marijuanamoment.net/new-york-governor-says-shes-very-fed-up-with-slow-marijuana-retailer-licensing-rollout>.

74. Bach. <https://assets.tobaccofreekids.org/factsheets/0398.pdf>.

75. Ibid.

of cannabis and opioid harm reduction. The state legalized SSPs in 1994 and syringes in 2000—a move that has been credited with drastically reducing disease transmission.⁷⁶ In addition, the state's paraphernalia law does not criminalize “possession with intent to use,” and, in 2018, the legislature explicitly authorized the provision and use of drug checking equipment.⁷⁷ Furthermore, in 2021, Rhode Island became the first state to authorize OPCs, launching a state-sanctioned pilot program slated to run through 2026.⁷⁸ However, although not as dramatically as most states, Rhode Island does place additional restrictions on methadone access.⁷⁹

Rhode Island legalized medical cannabis in 2006, although it took three years for the state to develop a plan that made the plant available to patients through licensed retailers via nonprofit compassion centers.⁸⁰ The state has been slower to adopt policies aimed at reducing the harms of cannabis prohibition. Nonetheless, in 2022, Rhode Island passed legislation to legalize recreational, adult-use cannabis, and several dispensaries are open across the state with more in the approval pipeline.⁸¹ In addition to creating a legal, regulated cannabis market, the state has adopted an equity program and expunged more than 20,000 cannabis convictions.⁸²

Contradicting Goals

As discussed, despite some internal disconnects between “public health” and “grassroots” harm reduction, the approach does and always has addressed two distinct but intersecting causes of risk when it comes to substance use: the substance itself (or how it is used) and prohibition.

This analysis reveals an important pattern of contradiction in the ways that harm reduction has been permitted (or restricted) in five “progressive” states. The policy landscapes in all five states highlighted herein are generally supportive of reducing opioid and cannabis-related harms associated with both prohibition and the substances themselves. This is evident in the states' willingness to adopt policies promoting regulated markets for cannabis, the lesser degree to which they overregulate methadone (compared to other states and relative to federal guidelines), and the explicit authorization of harm reduction interventions such as SSPs and drug checking equipment.

However, in the realm of tobacco harm reduction, the primary type of legislation enacted in each of these states at both state and municipal levels operates in the opposite direction. That is, although a robust body of literature indicates that ENDS are substantially less harmful than combustible cigarettes, state and municipal legislatures regularly introduce bills aimed at restricting access to them.⁸³



The state legalized SSPs in 1994 and syringes in 2000—a move that has been credited with drastically reducing disease transmission.

76. “Syringe Services Programs: Summary of State Laws,” p. 116-120. <https://legislativeanalysis.org/wp-content/uploads/2023/08/Syringe-Services-Programs-Summary-of-State-Laws.pdf>; Josiah D. Rich et al., “Lower syringe sharing and re-use after syringe legalization in Rhode Island,” *Drug and Alcohol Dependence* 89:2-3 (July 10, 2007), pp. 292-297. <https://pubmed.ncbi.nlm.nih.gov/17386980>.

77. “Legality of Drug Checking Equipment in the United States,” pp. 6 and 33. <https://www.networkforphl.org/wp-content/uploads/2023/11/50-State-DCE-Fact-Sheet-2023-2.pdf>.

78. Sarah Doiron, “RI’s 1st safe injection site expected to open in Providence,” WPRI, April 5, 2023. <https://www.wpri.com/news/local-news/providence/ris-1st-safe-injection-site-expected-to-open-in-providence>.

79. Russoniello et al., p. 407. <https://pubmed.ncbi.nlm.nih.gov/37655577>.

80. “History of Medical Cannabis in Rhode Island,” Americans for Safe Access, last accessed Jan. 29, 2024. https://www.safeaccessnow.org/history_of_medical_cannabis_in_rhode_island.

81. “Rhode Island,” Marijuana Policy Project, July 12, 2023. <https://www.mpp.org/states/rhode-island>.

82. Ibid.

83. Elizabeth A. Harris, “29 States Seek Tighter E-Cigarette Regulations,” *The New York Times*, Aug. 8, 2014. <https://www.nytimes.com/2014/08/09/business/29-states-seek-tighter-e-cigarette-regulations.html>; Jody L. Sindelar, “Regulating Vaping — Policies, Possibilities, and Perils,” *The New England Journal of Medicine* 382:20 (May 14, 2020). <https://www.nejm.org/doi/pdf/10.1056/NEJMp1917065?articleTools=true>.

Interestingly, this particular legislative move runs counter to the goals of harm reduction in two ways. First, it restricts people's access to a much safer product or way of consuming a substance (nicotine). Similar (though not exactly parallel) policies in the opioid harm reduction space are overregulating methadone access—which happens at both the state and federal levels but is not as severe in these five states as in other states—and banning the possession and distribution of sterile injection equipment. Second, the act of banning the legal sale of flavored ENDS products to adults—even if possession is not banned—constitutes a form of prohibition that deprives consumers of access to regulated products and a transparent market, thereby exposing them to the risks associated with counterfeit products and informal markets.

Thus, while these states have effectively reduced opioid- and cannabis-related harms through policy, their tobacco policy is likely to increase harms to people who use nicotine. Indeed, emerging research indicates that banning flavored ENDS drives illicit/informal markets for the products and, consequently, the potential for the same overcriminalization that the states have sought to rectify around cannabis and opioids. For example, in the wake of the state's restrictions on flavored tobacco, Massachusetts' Multi-Agency Illegal Tobacco Task Force identified "the cross-border smuggling of untaxed flavored ENDS products, cigars, and menthol cigarettes as the primary challenge for tobacco enforcement in the Commonwealth."⁸⁴

Furthermore, restrictions on ENDS products lead some people to turn or return to smoking.⁸⁵ In fact, an assessment of San Francisco's flavor ban found an increase in youth cigarette smoking relative to communities that lacked flavor bans.⁸⁶

Conclusion: Implications for Policymakers

Given the limitations of an abstinence-oriented approach to substance use, policymakers who want to improve public health and well-being related to substance use would do well to look to the field of harm reduction. For decades, communities have applied grassroots approaches to help people who use drugs or engage in other risky behaviors minimize the potential harms arising from substance use itself as well as from prohibition. However, as harm reduction has become more mainstream and been applied across an increasingly varied range of behaviors, ideological and sometimes partisan disconnects have emerged.

Our analysis revealed that the five states that have the most restrictive e-cigarette laws have embraced some of the nation's most progressive harm reduction policies for opioids and cannabis. This inconsistency reflects broader social divides and signals a need for lawmakers to reflect on harm reduction's core goals and follow the evidence in their efforts to meet those goals.

About the Author

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84. John H. Hayes et al., "Annual Report of the Multi-Agency Illegal Tobacco Task Force," Commonwealth of Massachusetts, Feb. 28, 2023, p. 8. <https://www.mass.gov/doc/task-force-fy23-annual-report/download>.
85. Jamie Tam et al., "Responses to Real-World and Hypothetical E-Cigarette Flavor Bans Among US Young Adults Who Use Flavored E-Cigarettes," *Nicotine & Tobacco Research* (Dec. 23, 2023). <https://doi.org/10.1093/ntr/ntad258>.
86. Abigail S. Friedman, "A Difference-in-Differences Analysis of Youth Smoking and a Ban on Sales of Flavored Tobacco Products in San Francisco, California," *JAMA Pediatrics* 175:8 (May 24, 2021), pp. 863-865. <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2780248>.