



E-CIGARETTES IN STATE PRISONS & JAILS

Frequently Asked Questions



People who become incarcerated have higher commercial tobacco¹ use than the general public. Fifty eight percent of people entering prison use tobacco products, and 90 percent of them continue to use tobacco after their release.²

Prisons and jails can contribute to public health efforts to reduce tobacco use by providing smoking cessation services and maintaining and enforcing comprehensive tobacco-free policies.³ This factsheet focuses on the current phenomenon of e-cigarette sales to people incarcerated⁴ in state prisons and jails.⁵ It describes how correctional institutions regulate and sell e-cigarettes, the types of e-cigarettes that prisons and jails market for sale to incarcerated people, and health concerns related to e-cigarette use.



Q: How many people are held in state prisons and jails?

A: The United States incarcerates more people than any other country in the world. On any given day, an estimated 1,042,000 people are incarcerated in state prisons and 547,000 in local jails.⁶ State prisons hold people convicted of crimes and local jails generally hold people awaiting trial or serving sentences less than one year long. The nature of local jails as sites for pre-trial detention means that each year a staggering 10 million people in the U.S. are admitted to jails.⁷ Black, Latino and Native people are overrepresented in prisons as compared with White people, and incarceration most heavily impacts the Black community. Black people constitute 38 percent of the prison population, but just 13 percent of the total U.S. population.⁸

Q: How do prisons and jails regulate e-cigarettes?

A: Prison tobacco policies are set at the state level and by individual prisons. Depending on the state, jail tobacco policies can be set at the state, municipal, or county-level, and by individual jails. Strong tobacco policies for these settings can be worded to prohibit sales and/or possession and use of all tobacco products, including e-cigarettes. For example, in Rhode Island state prisons, “[n]o tobacco products and their accessories, or any ENDS [(electronic nicotine delivery systems)] shall be stocked or sold by the inmate commissary.”⁹ And in South Dakota state prisons, “...the use or possession of unauthorized tobacco products and all electronic cigarettes by offenders is prohibited on all DOC [Department of Corrections] property.”¹⁰ Both policies achieve essentially the same result of prohibiting the sale, possession, and use of e-cigarettes by those who are incarcerated.

Q: How do prisons and jails sell e-cigarettes to incarcerated people in jails and prisons?

A: The only way those incarcerated can lawfully obtain e-cigarettes is to buy them from a correctional institution.¹¹ E-cigarettes can be purchased from the prison commissary or canteen using money deposited into an incarcerated person’s commissary account by a family member or friend or with wages from an incarcerated person’s prison job.¹² For example, the Pennsylvania Department of Corrections sells e-cigarettes (\$5.37 plus tax each) through its commissary to men housed in the general prison population.¹³ Another system is for family and friends to directly purchase e-cigarettes for an incarcerated person. For example, a Tennessee county jail sells e-cigarettes (\$10 each) separate from its general commissary through an e-cigarette “vending machine” in its main lobby, where visitors can pay with cash or pay online at Inmatesales.com.¹⁴ The jail then provides the e-cigarettes to the incarcerated person.

Q: How prevalent are e-cigarette sales within prisons and jails?

A: For decades, the general trend in tobacco control policies for prisons and jails has been towards prohibiting sales of tobacco products to incarcerated people,¹⁵ but e-cigarettes may be altering this trend. Prison and jail tobacco policies first focused on reducing exposure to secondhand smoke from cigarettes.¹⁶ Locally run jails adopted smoke-free policies before state prisons, with more than half of jails (55 percent) prohibiting cigarette sales to inmates by the late 1990s.¹⁷ Unfortunately, jails have been at the forefront of selling e-cigarettes to incarcerated people.¹⁸ One company that sells an e-cigarette product primarily to jails claims to have customers in thirty-three states.¹⁹ A 2019 survey of Kansas jails found that 26 percent of respondents sold e-cigarettes to inmates.²⁰ In 2020, investigative journalists submitted information requests to all of Kentucky's eighty jails, and fifty-three (86 percent) of the sixty-one respondents sold e-cigarettes to inmates.²¹

In 2021, all fifty states and Puerto Rico had a tobacco policy for state prisons, and forty-nine states and Puerto Rico did not permit cigarette smoking indoors.²² While there are no e-cigarette-specific national surveys of state prison policies, twenty states prohibit all tobacco use indoors and outdoors on all state prison grounds by all inmates, staff, and visitors.²³ One state prison system that does permit e-cigarettes is Pennsylvania. In 2019, the Pennsylvania Department of Corrections announced that all its facilities would be "tobacco free," but that "[b]oth inmates and employees will be permitted to use DOC [Department of Corrections]-approved disposable/non-refillable e-cigarettes in designated areas."²⁴ Interestingly, some states that allow certain tobacco use within these settings may also prohibit e-cigarettes. For example, Maine allows cigarette smoking in designated outdoor areas for people housed in minimum or community security facilities, but expressly prohibits e-cigarettes.²⁵

Q: How have e-cigarette products been marketed to prisons and jails?

A: E-cigarette products sold to prisons and jails claim to be "designed specifically for correctional facilities."²⁶ The products are one-time use, disposable, and non-refillable. They do not contain any metal that could be used as a weapon. They also use low voltage batteries so they cannot be used to start fires or to charge other devices. Companies selling these products to correctional facilities often tout benefits such as improving "inmate morale," generating revenue for the facility, and reducing contraband.²⁷



Q: Are these e-cigarette marketing claims evidence-based?

A: Many e-cigarette manufacturer marketing claims are not evidence-based. For instance, despite the purported benefit of improving “inmate morale,” a wealth of research has established that tobacco use worsens behavioral health outcomes,²⁸ and various studies debunk the myth that tobacco use lessens stress.²⁹ Regarding the claim of reducing contraband, in a study examining the impact of e-cigarettes in the Scottish prison system, prison staff reported that the introduction of e-cigarettes “created some problems in prisons similar to those previously caused by tobacco,” such as use of products outside designated areas, “borrowing or trading e-cigarettes and potentially getting into debt,” and the misuse of e-cigarettes to consume other drugs.³⁰ A 2015 review of contraband in prisons by the federal Bureau of Justice also found that state correctional officials were concerned about e-cigarettes because incarcerated people could “infus[e] drugs into the apparatus’s liquid solution.”³¹

Also, note that e-cigarettes cannot be legally sold in the U.S. to anyone under the age of 21. Adult jails hold people 18 years of age and older. In 2020, 18 percent of people incarcerated in U.S. jails were under 24 years old.³² This means that substantial numbers of young incarcerated people cannot purchase e-cigarettes, and may be at heightened risk of predation when trying to obtain e-cigarettes as contraband.

Q: What health and safety risks are associated with e-cigarette use?

A: The health risks of e-cigarettes to users and bystanders are not yet fully known. No e-cigarette products sold in the U.S. are approved by the U.S. Food & Drug Administration as tobacco cessation aids or as safer alternatives to cigarettes.³³ Rather than exploit and profit from the nicotine addiction of people who are incarcerated, state prisons and jails could provide these individuals with counseling services and nicotine replacement products to support permanent cessation.³⁴ Moreover, the availability of e-cigarettes in jails and prisons could encourage those who have never used combustible cigarettes to use e-cigarettes, thus resulting in new users becoming addicted to nicotine. To protect bystanders from exposure to e-cigarette aerosols, the U.S. Office of the Surgeon General recommends prohibiting e-cigarette use in enclosed areas.³⁵ These aerosols contain potentially harmful compounds, including nicotine, volatile organic compounds, heavy metals, and ultrafine particulates.³⁶ In addition, the growing trend toward comprehensive smoke-free and tobacco-free grounds policies helps ensure that individuals inside a facility or anywhere else on its premises are not exposed to tobacco smoke or e-cigarette aerosols.³⁷

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Endnotes

- 1 The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries, *and the right to access tobacco for religious purposes while incarcerated has been upheld by the courts*. Comparatively, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit <http://www.keepitsacred.itcml.org>. When the word “tobacco” is used throughout this document, a commercial context is implied and intended.
- 2 Kari Ives et al., *Nine Years of Smoking Data from Incarcerated Men: A Call to Action for Tobacco Dependence Interventions*, 29 PREVENTIVE MED. REP. 1 (2022).

- 3 Kerry Cork, *Tobacco Behind Bars: Policy Options for the Adult Correctional Population*, Public Health Law Center (2012), <https://www.publichealthlawcenter.org/sites/default/files/resources/phlc-policybrief-tobaccobehindbars-adultcorrec-tions-2012.pdf>; American Lung Ass'n, *The United States Justice-Involved Population & Tobacco Use* (2021), <https://www.lung.org/getmedia/fd8e566e-31a3-43cf-a9dd-5a90790cb85c/tobacco-cessation-and-the-justice-involved-population.pdf>.
- 4 Policies applicable to e-cigarette possession or use by correctional officers, visitors, staff, volunteers, outside contrac-tors or vendors are not included in this FAQ.
- 5 Since 2015, the federal Bureau of Prisons (BOP) has prohibited “[p]ossession of smoking apparatus and tobacco in any form ... for inmates, unless as part of an authorized inmate religious activity.” 28 CFR § 551.163. Prior to this policy, an investigation into contraband in federal prisons by the Office of the Inspector General found that BOP policy did not address e-cigarettes and that some federal prisons had been permitting their use by inmates. Off. of the Inspector General, U.S. Dept. of Justice, *Review of the Federal Bureau of Prisons’ Contraband Interdiction Efforts* (2016), <https://oig.justice.gov/reports/2016/e1605.pdf>.
- 6 Wendy Sawyer & Peter Wagner, Prison Pol’y Initiative, *Mass Incarceration: The Whole Pie 2022* (2022), <https://www.prisonpolicy.org/reports/pie2022.html>.
- 7 *Id.*
- 8 *Id.*
- 9 R.I. DEP’T OF CORRECTIONS, POLICY & PROCEDURE NO. 8.08-3 DOC, SMOKING AND TOBACCO REGULATIONS (2022).
- 10 S.D. DEP’T OF CORRECTIONS, POLICY 1.3.C.7, TOBACCO PRODUCTS AND ELECTRONIC CIGARETTES — USE AND POSSESSION (2021), <https://doc.sd.gov/documents/Tobacco%20Products%20and%20Electronic%20Cigarettes%20-%20Use%20and%20Possession6112021.pdf>.
- 11 In 2018, Scottish prisons became “smoke-free” by prohibiting smoked tobacco and permitting e-cigarette use. In advance of the transition, incarcerated people who smoked were provided with “vape kits” at no cost. After the system fully transitioned to e-cigarettes, incarcerated people had to purchase the products. Kate Hunt et al., *Process and Impact of Implementing a Smoke-free Policy in Prisons in Scotland: TIPS Mixed-Methods Study*, 10 PUB. HEALTH RES. 1 (2022). We found no instances of free e-cigarette distribution in prisons and jails in the United States.
- 12 Stephen Raher, Prison Pol’y Initiative, *The Company Store: A Deeper Look at Prison Commissaries* (2018) <https://www.prisonpolicy.org/reports/commissary.html>.
- 13 PA. CORRECTIONAL INDUSTRIES, PA. DEPARTMENT OF CORRECTIONS, MALE GENERAL POPULATION <https://www.cor.pa.gov/Inmates/Commissary%20Catalogs/Male%20General%20Population.pdf#page=17> (commissary list). Note that the Pennsylvania Department of Corrections also sells nicotine pouches via its commissary.
- 14 Sequatchie County Sheriff’s Office, SEQUATCHIE TENN., *Inmate E-Cigarettes* (2022), <https://www.sequatchiesheriff.com/corrections/inmate-e-cigs>.
- 15 In the 1980s and early 1990s, virtually all state prisons permitted sales of cigarettes and smoking indoors, but by the mid-2000s more than half (60 percent) prohibited cigarette sales. Sara M. Kennedy et al., *Smoke-Free Policies in U.S. Prisons and Jails: A Review of the Literature*, 17 NICOTINE & TOBACCO RES. 1 (2015).
- 16 *Id.*
- 17 *Id.*
- 18 Laurel Curry et al., *E-cigarettes Made Especially for Inmates*, 23 TOBACCO CONTROL 1 (2014).
- 19 Nick Bromberg, *Meet the Kentucky Jailer Making His NASCAR Return Whose Company Sells E-cigarettes to Inmates*, YAHOO! NEWS, May 11, 2018, <https://www.yahoo.com/news/meet-kentucky-jailer-whose-company-sells-e-cigarettes-inmates-making-return-nascar-183143258.html>.

- 20 Elizabeth Ablah et al., *Institutional Tobacco Policy and Tobacco Use Among Kansas Sheriffs' Staff and Individuals Incarcerated in Jail*, 28 CORRECTIONAL HEALTH CARE 193 (2022). <https://www.liebertpub.com/doi/full/10.1089/jchc.20.05.0035>
- 21 R.G. Dunlop, *How These Jail Officials Profit from Selling E-Cigarettes to Inmates*, PROPUBLICA, Jan. 29, 2020, <https://www.propublica.org/article/how-these-jail-officials-profit-from-selling-e-cigarettes-to-inmates>.
- 22 AMER. NONSMOKERS' RIGHTS FOUND., 100% SMOKEFREE AND TOBACCO-FREE CORRECTIONAL FACILITIES (2021), <https://no-smoke.org/wp-content/uploads/pdf/100smokefreeprisons.pdf>
- 23 *Id.*
- 24 *Department of Corrections Facilities To Be Tobacco Free By July*, PA. PRESSROOM, Mar. 18, 2019, https://www.media.pa.gov/Pages/corrections_details.aspx?newsid=392.
- 25 ME. DEP'T OF CORRECTIONS, POLICY NO. 30.1, PRISONER SMOKING (2013), <https://www.maine.gov/corrections/sites/maine.gov/corrections/files/inline-files/30%2001%5B1%5D.pdf> (stating that "prisoner[s] may not possess or use tobacco other than in the form of cigarettes purchased by him or her through facility canteen services").
- 26 Crossbar Electronic Cigarettes, <https://smokecrossbar.com/> (last visited Aug. 15, 2022).
- 27 Curry et al., *supra* note 18.
- 28 AM. LUNG ASS'N, *Behavioral Health & Tobacco Use*, <https://www.lung.org/quit-smoking/smoking-facts/impact-of-tobacco-use/behavioral-health-tobacco-use> (citing a study that found that participation in smoking cessation during substance abuse treatment improved likelihood of long-term abstinence).
- 29 CTRS. FOR DISEASE CONTROL & PREVENTION, *Commercial Tobacco Product Use and Behavioral Health Conditions Can Affect Each Other* (2022), <https://www.cdc.gov/tobacco/health-equity/behavioral-health/interactions.html>.
- 30 Kate Hunt et al., *supra* note 11.
- 31 Off. of the Inspector General, *supra* note 2.
- 32 Todd D. Minton & Zhen Zeng, Bureau of Just. Stat., U.S. Dep't of Just., *Jail Inmates in 2020 — Statistical Tables*, (2021), <https://bjs.ojp.gov/content/pub/pdf/ji20st.pdf>.
- 33 U.S. FOOD & DRUG ADMIN., *E-Cigarettes, Vapes, and other Electronic Nicotine Delivery Systems (ENDS)* <https://www.fda.gov/tobacco-products/products-ingredients-components/e-cigarettes-vapes-and-other-electronic-nicotine-delivery-systems-ends> (last visited Aug. 15, 2022).
- 34 Kari Ives et al., *supra* note 4.
- 35 OFF. OF THE SURGEON GEN., U.S. DEP'T OF HEALTH AND HUMAN SERV., *E-CIGARETTE USE AMONG YOUTH AND YOUNG ADULTS. A REPORT OF THE SURGEON GENERAL* (2016), https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Full_Report_non-508.pdf.
- 36 Wouter Viser et al., *The Health Risks of Electronic Cigarette Use to Bystanders*, 16 INT'L J. OF ENVTL. RES. & PUB. HEALTH 1525 (2019).
- 37 See, e.g., Public Health Law Center & Vaping Prevention Resource, *Policy Playbook for E-Cigarettes, Version 2*, (2022), <https://www.publichealthlawcenter.org/sites/default/files/resources/Policy-Playbook-ECigarettes.pdf>.