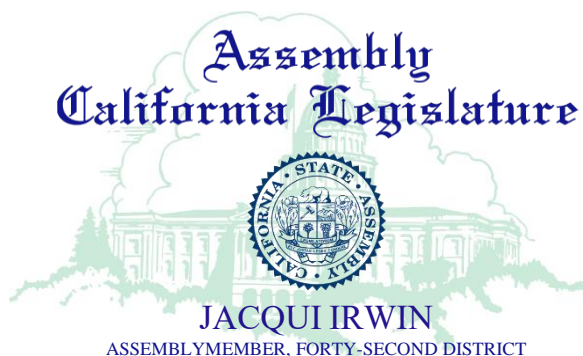


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February 26, 2024

REVISED 05-08-2024

The Honorable Gregg Hart, Chair  
Joint Legislative Audit Committee  
1020 N Street, Room 107  
Sacramento, CA 95814

Dear Chairman Hart,

I respectfully request the Joint Legislative Audit Committee authorize an audit of the Department of Cannabis Control's (DCC) enforcement actions against licensees on cannabis products which violate regulations on attractiveness to children. The people of California passed Proposition 64 with explicit direction that cannabis and cannabis products "cannot be advertised or marketed towards children".<sup>1</sup> In spite of this clear direction, though, the amount of child cannabis poisonings has increased exponentially in recent years.

In June 2022, the FDA issued an alert advising consumers about the risk of accidental ingestion of cannabis products designed to be attractive to children. The alert highlighted that, between January 2021 and May 2022, there were nearly 6,200 cases of pediatric patients being unintentionally exposed to edible products containing THC.

This data was corroborated by a study published by the American Academy of Pediatrics, which reported that "there has been a consistent increase in pediatric edible cannabis exposures over the past 5 years, with the potential for significant toxicity"<sup>2</sup>. There have also been a significant number of news stories in California detailing child cannabis exposures in school settings, further highlighting this problem. In each of these incidents, the children in question confuse cannabis products with traditional food items like candy, unintentionally exposing themselves and their classmates to cannabis and often leading to hospitalizations. While the illicit market

<sup>1</sup> Proposition 64, Page 1

<sup>2</sup> Pediatric Edible Cannabis Exposures and Acute Toxicity: 2017–2021, American Academy of Pediatrics  
<https://publications.aap.org/pediatrics/article/151/2/e2022057761/190427/Pediatric-Edible-Cannabis-Exposures-and-Acute?autologincheck=redirected>

may be responsible for some of these incidents, products from the licensed market certainly bear responsibility, and it is the state's duty to ensure that this licensed market complies with the law.

Studies have shown that the use of cannabis by those under 18 threatens severe health outcomes for those children and adolescents.<sup>3</sup> Our state has tasked the Department of Cannabis Control to enforce the clear direction of Proposition 64 to prevent cannabis products from being attractive to children. Existing DCC regulations dictate that cannabis products must not be advertised or marketed in a way that is attractive to children. However, certain cannabis products in legal dispensaries show that the legal market contains multiple examples of products which violate DCC regulations set out in CCR §15040.

The marketing and packaging of a cannabis product is one of the key factors that can lead to a child unintentionally consuming the product. Cannabis products that are marketed with vibrant, colorful packaging, which mimics everyday products can be consumed by a child who does not recognize the symbol for THC products. This marketing can be nearly identical to how traditional candies and snacks are marketed, yet the cannabis products can cause significant harm to young children.

The manufacturing design of these products also affects how children consume them. A cannabis gummy, for example, may be made in a near identical fashion to a traditional candy product, with the packaging of both products containing multiple gummies. But where the traditional product can be consumed all at once, the dosage of the cannabis product is one gummy. This has led to multiple instances of children at elementary and middle schools being treated for THC poisoning because they were unaware the gummies they were consuming contained THC.<sup>4 5 6 7</sup>

My personal interactions with DCC staff have also left me with concern regarding the efforts of the Department to meet the needs of California in regulating cannabis. During a 2022 oversight hearing, I asked DCC staff a number of questions which were not addressed at the hearing. It took significant follow up from members of my staff to receive any response from the Department on questions which they could have been prepared to answer at the hearing itself or follow up on after the hearing.

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<sup>3</sup> The teen brain is especially susceptible to the harms of THC  
<https://www.sciencenews.org/article/cannabis-high-thc-teen-mental-health>

<sup>4</sup> 8 children at Sun Valley school are treated after possibly eating marijuana gummies  
<https://www.latimes.com/california/story/2023-03-15/7-children-treated-sun-valley-marijuana-gummies>

<sup>5</sup> California Third-Graders Sickened After Eating Cannabis Gummies at School  
<https://www.nbcbayarea.com/news/california/california-school-kids-sickened-after-eating-cannabis-candy/2904843/>

<sup>6</sup> Middle school students sickened by marijuana gummies in Rancho Cucamonga  
<https://ktla.com/news/local-news/students-sickened-by-marijuana-gummies-in-rancho-cucamonga/>

<sup>7</sup> Four 3rd graders hospitalized after eating edibles: Escondido Union School District  
<https://www.nbcsandiego.com/news/four-3rd-graders-hospitalized-after-eating-edibles-escondido-union-school-district/3326862/>

Additionally, last year my staff met with DCC staff to discuss DCC regulations regarding inhaled cannabis products. Prior to this meeting, DCC staff circulated a guidance document on the regulations in question; the document itself states that it is “a tool to assist licensees with understanding the new regulations” on inhaled cannabis products. However, when questions arose regarding details within this guidance, DCC staff were unable to provide answers, at one point asking my staff to ignore the guidance because it was not the language of the regulation itself.

DCC’s overall approach to enforcement also merits scrutiny. The Department has highlighted that as they enforce their regulations, they will “be prioritizing education over discipline”. While this may seem noble at first thought, I have concern with how this approach can be taken when child cannabis poisonings continue to increase each year. The Department has relied upon the threat of the illicit market as a reason for their decision to forgo enforcement against cannabis licensees in the state. However, this can immunize bad actors, and it can ultimately put California’s children at risk. Cannabis licensees who sell products which are attractive to children should not simply be educated without discipline; rather, the Department should take direct action against the licensees in question to ensure that the entire licensed market understands they cannot sell products which are attractive to children.

## **Scope**

California’s cannabis products cannot continue to use features which are attractive to children. Should these products continue to be sold at legal cannabis dispensaries, child cannabis poisonings will only continue to increase. As more stories continue to arise about children unintentionally mixing up regular candies and other foods with cannabis products, the need for an audit into the enforcement practices of DCC becomes increasingly pressing.

With this in mind, I am requesting an audit which should seek to answer the following questions:

1. Does DCC correctly identify which licensed cannabis products violate their own regulations regarding products being attractive to children?
2. Does DCC have processes in place to identify repeat offenders who continually violate regulations?
3. What steps has DCC taken to put in place preventive processes, organizational structure, or proactive communication with industry to prevent the marketing of products attractive to children, or packaging or advertising that meets those criteria, or that mimics non-cannabis foods or beverages?
4. Has DCC implemented any changes in response to the recent increase in unintentional child cannabis ingestions?
5. What enforcement actions, including type and the result of the action, has DCC taken since its inception in 2021 against cannabis licensees which manufacture and advertise products which are attractive to children?

6. Have there been any internal communications within DCC relating to changes in how enforcement actions are approached and taken?
7. Has DCC's current enforcement approach of prioritizing voluntary compliance and educating licensees before taking enforcement actions yielded positive results?
8. When taking enforcement actions, has DCC been proactive in identifying violations from licensees, or does DCC typically wait for the public to report violations before taking action?
9. What is DCC doing to enforce their regulations on flavored inhaled cannabis products?
10. How does DCC determine whether an inhaled cannabis product meets its regulations, specifically relating to the terpenes which make up the inhaled cannabis product?
11. What has DCC done to address the gradual rise of THC content in products which are associated with greater risk of dependency and psychosis for youth?

Thank you for your consideration of this audit request. If you have any questions, please do not hesitate to contact me.

Sincerely,

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Jacqui Irwin  
Assemblymember, 42<sup>nd</sup> District