

The Marijuana Legalization Debate

Insights for Vermont

Marijuana legalization is a controversial and multi-faceted issue that is now the subject of serious debate. Since 2012, four U.S. states have passed ballot initiatives to remove prohibition and legalize a for-profit commercial marijuana industry. In May 2014, Vermont Governor Peter Shumlin signed Act 155, which required the Secretary of Administration to produce a report about the consequences of legalizing marijuana. This research brief summarizes the report that was produced for the Secretary of Administration in response to that legislation.

The report does not make a recommendation about whether Vermont should change its marijuana laws. The goal of the report is to inform, not sway, discussions about the future of marijuana policy in Vermont and other jurisdictions considering alternatives to traditional marijuana prohibition. Some of the new insights for Vermont presented in the report include the following:

- Vermonters likely consumed between 15 and 25 metric tons of marijuana and spent between \$125 million and \$225 million on marijuana in 2014.
- There are nearly 40 times as many regular marijuana users living within 200 miles of Vermont borders as there are living inside Vermont.
- Under a scenario in which Vermont legalized marijuana, taxed aggressively, and suppressed its black market and consumption increased by 25 to 100 percent, tax revenues from sales to Vermont residents could be in the range of \$20 million to \$75 million annually.
- Vermont also could end up supplying marijuana to large numbers of out-of-state users, directly via marijuana tourism or indirectly—unless and until other states in the Northeast also legalized marijuana. That flow could then reverse if those states were to impose lower taxes, undermining revenues from taxing Vermont’s own residents. The likelihood of cross-border commerce could engender a federal government response, making all revenue projections highly uncertain.
- State and local governments in Vermont likely spend less than \$1 million annually prohibiting marijuana for those ages 21 and older. Regulatory costs associated with legalizing production and retail sales would likely exceed that level.

Key finding:

- Marijuana policy should not be viewed as a binary choice between prohibition and the for-profit commercial model we see in Colorado and Washington. Legalization encompasses a wide range of possible regimes, distinguished along at least four dimensions: the kinds of organizations that are allowed to provide the drug, the regulations under which those organizations operate, the nature of the products that can be distributed, and price.

The report reviews evidence on the consequences of marijuana consumption and prohibition, including both the harms and the benefits. The scientific literature identifies some clear acute and chronic health effects, especially of persistent heavy marijuana use. Acute risks include accidents; impaired cognitive functioning while intoxicated; and anxiety, dysphoria, and panic. Longer-term risks of persistent heavy marijuana use include dependence and bronchitis. Some evidence suggests other serious risks for heavy marijuana users, particularly with psychotic symptoms, cardiovascular disease, and testicular cancers. However, the overall effect that legalization has on public health will also depend on how marijuana policy change influences the use of other substances, such as tobacco, alcohol, and prescription opiates.

The report considers other consequences associated with marijuana use. Although marijuana use is strongly correlated with many adverse outcomes, it is much harder to ascertain whether marijuana use causes those outcomes. For example, with respect to the ongoing debate about whether marijuana use has long-term effects on intelligence quotient, it is premature to argue that long-term cognitive impairment has been clearly established, but just as premature to argue that the risks are nonexistent.

The Decision Is Not Binary

The principal message of the report is that marijuana policy should not be viewed as a binary choice between prohibition

and the for-profit commercial model implemented in Colorado and Washington State.

Indeed, commercial legalization is a high-stakes choice clouded by enormous uncertainty because, until 2014, no modern jurisdiction had implemented it—not even the Netherlands, which allows only small retail sales. So the report’s authors hope that voters and policymakers will read about, contemplate, and weigh the conflicting advantages and disadvantages of all the options discussed in the report. Nevertheless, thumbnail sketches can be useful, and one should distinguish at least three categories of alternatives to conventional marijuana prohibition for nonmedical purposes: decriminalizing possession, legalizing small-scale production, and legalizing large-scale production.

Decriminalizing Possession

Vermont has already implemented the first alternative with its recent decriminalization of marijuana possession. In July 2013, Vermont reduced the penalty for possessing up to 1 oz. of marijuana or up to 5 g of hash from being a misdemeanor criminal offense to a civil offense punished only with a fine for those 21 and older. In the year following this policy change, the number of criminal cases pertaining to marijuana decreased by 80 percent, and very few people were incarcerated in the entire state solely for marijuana violations. So mere decriminalization can—if done wisely—eliminate some of the major complaints levied against a zealous prohibition. However, it fails to create three potential positives: (1) granting people the freedom to obtain and consume legally, (2) eliminating the black market, and (3) generating tax revenues for the state.

Legalizing Small-Scale Production

Alaska has long granted people the legal right to grow small amounts of marijuana at home for their own use; gifting can be part of such schemes. In November 2014, voters in Washington, D.C., passed a similar initiative to allow growing and gifting. When done prudently, this policy option can create individual freedom at almost no regulatory cost—although, as a practical matter, own-growing can be inconvenient, so many users continue to source from the black market (which may in turn be supplied by those who grow more than they consume at home).

Spanish cannabis clubs go further by allowing sharing and even selling at cost among members. This permits sufficient economies of scale so as to compete more effectively with the black market. And again, as long as the rules are written by those cognizant of the problems of diversion and the clubs are limited in size (to, say, 50 or 100 members), this step need not create the problems of commercial legalization (e.g., industry lobbying, product proliferation, or marketing

to youth). But although the regulatory burden is low with small-scale production, so is the potential for the state to profit. If 60,000 Vermonters joined clubs and, through their clubs, paid the equivalent of \$50 per year in fees, they would produce \$3 million for state coffers.

Legalizing Large-Scale Production

Colorado and Washington State opted to allow for-profit businesses to undertake large-scale commercial production and distribution. Large-scale operations will, in the long run, radically reduce production costs, foster proliferation of a wide range of tetrahydrocannabinol (THC)-based products besides familiar joints and bongs (if allowed), and create powerful interest groups. However, Colorado and Washington’s approach conflates two ideas: scale and ownership. The decision to create an industry—as opposed to merely individual own-grow or clubs—should be distinguished from the decision about who gets to own and operate that industry.

Colorado and Washington have entrusted the industry to private companies, but there are at least four other options for large-scale production: (1) government monopoly, (2) public authorities, (3) nonprofit organizations, and (4) socially responsible businesses that do not focus exclusively on maximizing profits. These alternatives appeal to some because 80 percent of marijuana consumption is by daily and near-daily users. So roughly 80 percent of marijuana companies’ profits would come from marketing to such heavy users, about half of whom currently meet clinical criteria for substance-use disorders (either with marijuana itself or another substance, such as alcohol).

All of these large-scale options would create the potential for Vermont to raise tens of millions of dollars by taxing consumption or its residents in one way or another, more than offsetting regulatory burdens in the low to mid single-digit millions of dollars. (Although nonprofits do not pay income taxes, their customers would pay sales and excise taxes, just as would customers of for-profit businesses. And although government stores do not pay taxes per se, their profits accrue to the state treasury.)

With any of the large-scale options, the elephant in the room for Vermont would be demand from out-of-state users. Because nearly 40 times as many current marijuana consumers live within 200 miles of Vermont’s borders as live in Vermont, marijuana tourism and illicit exports could be substantial and could, in theory, put annual tax revenues in the hundreds of millions. However, a policy in which the federal government tries to decrease cross-border smuggling or in which another state in the Northeast decides to legalize marijuana and set lower tax rates could radically reduce these potential revenues. Indeed, because marijuana tourism can flow in either direction, Vermont’s prospects of deriving

considerable tax revenue even from its own residents would become much less promising if even one of its immediate neighbors were to legalize with low taxes.

The decision about whether to change marijuana laws involves multiple and possibly competing considerations, including the extent of illicit transactions and the costs of efforts to suppress them; the prevalence of substance-use disorders and the troubles they bring; personal liberty and the benefits of marijuana consumption for the majority of users who do not suffer from substance-use disorders; economic opportunity for lawful marijuana vendors; and tax revenue on the one hand versus administrative effort and expense on the other for the state government and local governments.

No one policy choice will be superior on all dimensions; there will be trade-offs, and differences of opinion about how much weight to place on the various outcomes will lead to disagreements about which policy to choose.

Moreover, those decisions must be made in a fog of uncertainties. There is no recipe for marijuana legalization, nor are there working models of established fully legal marijuana markets. It must be expected that any initial set of choices will need to be reconsidered in the light of experience, new knowledge, and changing conditions, including federal policy and the policies in neighboring states. That puts a premium on flexibility; the policy should not be frozen into its initial design.

This brief describes work done in the RAND Drug Policy Research Center documented in *Considering Marijuana Legalization: Insights for Vermont and Other Jurisdictions*, by Jonathan P. Caulkins, Beau Kilmer, Mark A. R. Kleiman, Robert J. MacCoun, Gregory Midgette, Pat Oglesby, Rosalie Liccardo Pacula, and Peter H. Reuter, RR-864 (available at www.rand.org/t/RR864), 2015. To view this brief online, visit www.rand.org/t/RB9825. The RAND Corporation is a research organization that develops solutions to public policy challenges to help make communities throughout the world safer and more secure, healthier and more prosperous. RAND is nonprofit, nonpartisan, and committed to the public interest. RAND's publications do not necessarily reflect the opinions of its research clients and sponsors. RAND® is a registered trademark.

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