

Recreational Legalization Moves Forward

Americans spend an estimated \$40 billion getting high each year, about 20% of what they spend on cigarettes and alcohol. The legal market, estimated at \$2.5 billion in 2014, is just a fraction of that but will grow.

10 November 2012

<http://www.guardian.co.uk/world/2012/nov/11/colorado-marijuana-law>

<http://www.economist.com/blogs/democracyinamerica/2013/03/high-times?zid=319&ah=17af09b0281b01505c226b1e574f5cc1>

(video)

In November 2012, voters in Washington and Colorado legalized recreational use of marijuana, the first places in the entire world to take such a bold step. The impact reverberated not just throughout the US and Washington, DC, but also throughout the world.

Leaders across Latin America, once obedient to White House drug policy, were already pushing for reform, led by Guatemala's president, Otto Pérez Molina. A senior aide to Mexico's president-elect, Enrique Peña Nieto, said Colorado and Washington had "changed the rules of the game" and this would be discussed with Obama and congressional leaders.

A study by the Mexican Competitiveness Institute said legalizing cannabis in Colorado, Washington and Oregon could cut cartel profits by up to 30%.

"I really think this is the beginning of the end for marijuana prohibition, not only in the US, but across the world," said Sean McAllister, a former assistant attorney general in Colorado and member of Law Enforcement Against Prohibition. "We didn't just legalize it – we created a regulatory system."

Just as Colorado and other states pre-empted the federal government's abandonment of alcohol prohibition in 1933, the same may happen with pot.

Colorado's successful experiment with marijuana dispensaries – pot shops for people with medical certificates – emboldened voters to back amendment 64, which allows anyone aged over 21 to buy small amounts. It was the same dynamic in Washington.

"I hope we continue to show the US and the rest of the world what we can do as a regulated economic model," said Elliott Klug, 35, owner of the Pink House chain, which has six dispensaries in Colorado. "We are not here to promote a gangster model, we want to be good corporate citizens."

Klug's talk of branding, quality, market share and cost effectiveness was a world apart from movie stoners Cheech and Chong.

"The medicinal marijuana industry in Colorado was a model for how legalization can work – it works pretty darn well," said Betty Aldworth, of the Campaign to Regulate Marijuana Like Alcohol.

Comparisons are being made to the Dot.Com era of the 1990s, to the 19th century gold rush and even to the end of prohibition in the 1930s, which saw massive growth in the alcohol industry. Analysts say there is a potential market for cannabis that could reach \$110 billion, four times the revenues generated each year by the cigarette industry.

"In one year, cannabis has gone from alleys and illicit sales to become the fastest-growing industry in the nation," Steve DeAngelo, a California businessman whose Harborside Health Centers in California have influenced "cannabusiness" worldwide, said in November 2013.

Marijuana is the most widely used illicit drug in the US. Legalization advocates say the recent votes mark the beginning of the end of the drug's prohibition.

"It's a tipping point for sure," says Sanho Tree, director of the drug policy project at the Institute for Policy Studies.

"If these two states go ahead and legalize recreational use and the sky hasn't fallen, that opens up more political space."

But authorities are weary.

"The Colorado chiefs of police are incredibly concerned with regard to public safety as a whole," says Chief John Jackson of the Greenwood Village police department, and legislative chair of the Colorado Association of Chief of Police.

Colorado

In November 2012, Colorado and Washington state became the first jurisdictions in the world to legalize marijuana for recreational use in the modern era.

Colorado passed Amendment 64, which regulates cannabis like alcohol while removing criminal and civil penalties for marijuana possession for adult possession of up to an ounce of marijuana.

Amendment 64 allows adults 21 and older to purchase up to one ounce of marijuana from specialty marijuana dispensaries and grow up to six marijuana plants in their homes. Possession is limited to up to an ounce for personal use, but selling marijuana without a license, purchasing marijuana from a party who is not licensed as well as public use of marijuana will remain illegal.

Under Amendment 64, marijuana is taxed and regulated similar to alcohol and tobacco. It gives state and local governments the ability to control and tax the sale of small amounts of marijuana to adults age 21 and older.

In May 2013, Colorado became the first U.S. state to regulate and tax sales of recreational marijuana, after lawmakers approved several bills that set business standards and rules.

Legislators enforced two taxes on marijuana — a 15% excise tax, and a 10% sales tax.

These two taxes went to the voters in a referendum in Colorado in November 2013. Voters had the option of imposing the heavy taxes on pot sales. Voters overwhelmingly approved a 15% excise tax on the wholesale price and an initial 10% sales tax on the retail price of marijuana, a total of 25% in taxes.

In Colorado, state and federal taxes on a six-pack of beer are only about 8%.

Colorado estimated that taxes and fees imposed by the state will generate up to \$134 million within a year. The state only earns around \$40 million on duties levied on alcohol sales.

Of the money earned through taxes, part of the money generated by the excise tax would go toward school construction. The rest of the money would go toward paying for the regulation of the pot shops, as well as any collateral impacts from marijuana legalization. Some cities, which will receive a share of the statewide sales tax on pot, are also looking at using the money for non-marijuana-related projects, such as road repairs.

Recreational marijuana sales would also be subject to standard state and local sales taxes.

All of those taxes combined are likely to amount to a hefty chunk of the retail price. For instance, if an eighth of an ounce of marijuana — a common purchase unit that is roughly equivalent to a 12-pack of beer — costs \$30 at the retail level and \$15 at the wholesale level, state taxes alone would be about \$6, or around 20 percent.

Local tax measures were also passed in the November 2013 elections, where some areas — such as Boulder, Carbondale and Manitou Springs — passed tax rates on marijuana that will exceed 30 percent. In Denver, the rate would be nearly 29 percent, or \$8.59 on that \$30 eighth of an ounce of pot.

Such heavy levies could keep the medical marijuana industry strong in both Colorado and Washington, since medical users won't have to pay additional taxes.

"The passage of Proposition AA [2013 the marijuana tax referendum] means Colorado will have a strong and well-funded regulatory system, along with funding for education, prevention, treatment and other safety issues that may arise," said Mike Elliott, the executive director of Medical Marijuana Industry Group, a trade organization that supported the tax.

Opponents of the tax have said that's too pricey and will lead people to continue buying marijuana from black-market dealers. Proponents said marijuana consumers would gladly pay extra for legitimacy.

"Colorado is demonstrating to the rest of the nation that it is possible to end marijuana prohibition and successfully regulate marijuana like alcohol," said Mason Tvert, one of the activists instrumental in passing marijuana legalization in Colorado a year ago.

Specific aspects of the original bill passed in 2012 included:

- Colorado residents will be able to buy up to an ounce of marijuana — the maximum that is legal for non-medical-marijuana patients to possess — at the stores. Out-of-staters can buy only a quarter-ounce at a time.
- Incorporated marijuana collectives will be banned. So, too, will marijuana coffee shops, marijuana smoking in bars and government-run marijuana stores.
- Marijuana-themed magazines, like pornography, will have to be kept behind the counter.
- Anyone testing above 5 nanograms-per-milliliter will be presumed to be too high to drive.

The Colorado legislation adopted also includes a requirement that "pot must be sold in child-resistant packages with labels that specify potency," *The Post* reports. "Edible marijuana products will have serving-size limits."

"Today, the people of Colorado have rejected the failed policy of marijuana prohibition," Brian Vicente, also a co-director of the Campaign to Regulate Marijuana, said in a statement. "Thanks to their votes, we will now reap the benefits of regulation. We will create new jobs, generate millions of dollars in tax revenue, and allow law enforcement to focus on serious crimes."

Legal marijuana began to be sold in about 30 shops in Colorado on January 1, 2014. Colorado has issued 348 recreational pot licenses, comprising 136 for retail stores, 178 for cultivation, 31 for infused edibles and other spin-off products, and three for testing.

"Today in Colorado, we shift marijuana from the underground market to the regulated market," said marijuana advocate Betty Aldworth.

"Prohibition has ended," said Michelle Wold, a Colorado resident and grandmother who said she wanted to be among the first in line at Evergreen Apothecary to celebrate history. "This is groundbreaking."

Officials from the Colorado Marijuana Enforcement Division were on the job on day one, already visiting shops to do compliance checks.

After one year, as of Jan. 1, 2015, the Drug Policy Alliance (DPA) examined state statistics and found Colorado saved millions of dollars because it was no longer locking up as many people for marijuana violations. Police arrested only 1,464 people for marijuana-related offenses in 2014, compared to 9,011 in 2010 before legalization, according to the study.

"Given that arrests such as these cost roughly \$300 to adjudicate, it is reasonable to infer that the state is saving millions in adjudicatory costs" for marijuana-related arrests and prosecutions, the study said.

Additionally, tax revenue from recreational marijuana sales brought in \$44 million into the state's coffers in 2014. Combining recreational and medical marijuana sales, Colorado took in over \$76 million from taxes on cannabis in 2014-- less than expected.

Crime rates have dipped since Colorado enacted the law, according to the report. It found a 9.5 percent drop in burglaries in Denver and an 8.9 percent decline in overall property crime in the city.

The report also noted that fears of a spike in traffic fatalities, voiced by the Colorado Dept. of Transportation, did not materialize. Deaths dipped a bit in the first 11 months of 2014, down to 436 from 449 the year before.

"The doomsday vision of those who support continued prohibition has not come to fruition," said Art Way, the DPA's Colorado director.

Washington

Washington passed Initiative 502, which will also remove criminal and civil penalties for pot possession in November 2012. Marijuana production in Washington State will be regulated by the liquor control board. Washington will tax marijuana differently than Colorado, though, with a 25% excise tax as well as standard sales taxes (as opposed to Colorado's 15% excise tax and a 10% sales tax).

That could bring in up to \$2 billion in the first five years, the state estimates. The measure voters passed in 2012 directs 40% of the new revenues to the state general fund and local budgets, with the rest dedicated to substance-abuse prevention, research, education and health care.

Starting on December 6, 2012, adults 21 and older legally were able to possess up to one ounce of pot. It doesn't matter where you got it, and officers cannot subject drivers to roadside marijuana tests.

"Possession" differs as to its interpretation and the amount. It is legal to have up to one ounce of bud, 16 ounces of solid-form marijuana in food products, and 72 ounces of cannabis in liquid form (such as lotions)—no matter where it came from. You can also have pot paraphernalia.

You can't smoke pot in public or have an open package of marijuana in public. Using pot in public will be a \$50 infraction, just like drinking alcohol on the sidewalk.

You also can't drive high. The amendment says that adults 21 and older who are driving with more than five nanograms of active THC per milliliter of blood are automatically guilty of DUI.

Possession: State criminal penalties for possession of 1 ounce of marijuana (or 1 pound in cannabis-infused food, or 72 ounces of cannabis-infused drink) are eliminated. Public consumption of marijuana, like alcohol, can mean a \$50 fine.

Employment: The new law does not change the right of employers to drug-test employees.

DUI: A level of 5 nanograms of THC, marijuana's active ingredient, in a driver's blood becomes equivalent to a 0.08 percent blood-alcohol level for driving under the influence.

Sheriff Ozzie Knezovich of Spokane County, Washington says officers who suspect a driver has smoked too much will have to summon a paramedic to draw blood for a test.

Police have plenty of other ways to detect drug driving, says Chief John Jackson: "I don't need a toxicology test on the side of the roadway."

If officers see motorists driving erratically, they can stop and interview them and ask them to perform field sobriety tests. If the officer believes a driver is impaired, the officer will make an arrest and later testify in court, Chief Jackson says.

"You don't need breathalyzer tests to convict drunk driving," he says. "People refuse to blow all the time but we still convict them."

But one concern about monitoring impaired driving is that marijuana doesn't metabolize predictably like alcohol, says John Lacey, a traffic safety expert based in Maryland.

"It makes setting an absolute level where everyone is impaired, like we have for alcohol, much more difficult for marijuana and for other drugs," Lacey says. "They just behave differently than alcohol does."

And drivers behave differently on marijuana than after drinking. They drive slower, but they also have trouble staying in their lane and lack a quick response time.

Unlike Colorado, Washington has imposed a cap on the total amount of marijuana that can be produced per year in the state. On the advice of UCLA professor Mark Kleiman, regulators at the Liquor Control Board decided to cap the legal market at 80 metric tons — 40 for usable marijuana and 40 for other marijuana products. The chief rationale behind limiting annual production is to avoid "diversion" — when surplus legal pot is illegally smuggled to other states — says Brian Smith, a spokesman for the Washington State Liquor Board. Diversion is a major concern of federal authorities.

Representatives from the marijuana industry differ on the merits of a cap. Stephen DeAngelo, president of the Arc View investment group, which focuses on marijuana investments, says caps are necessary because if there is too much marijuana flooding the system, retailers fight to keep prices down, which incentivizes them to cut corners on quality and safety measures like lab testing. Aaron Smith, executive director of the National Cannabis Industry Administration disagrees. "By limiting the legal market, they are enriching the illegal market," Smith says.

Colorado and Washington will also license pot businesses differently. For the first few months of the new market, Colorado requires "vertical integration," which means that every marijuana business must be involved in all parts of the business—growing, processing, and selling — to get a license. Brohl, the state's regulator, says they did this because they thought it would initially limit the number of businesses, making it easier to control the new market.

By contrast, Washington prohibits "vertical integration" and instead only permits businesses to get licensed in one stage of production: growing, processing or selling. Washington's intent, says

Smith, the spokesman for Washington's Liquor Control Board, was to avoid allowing monopolists to keep prices artificially high.

Washington's Liquor Control Board is only allowing a total of 334 pot stores in the state, parceled out by county. To spread the stores out more evenly, some cities will have separate caps. Seattle, for instance, will be limited to 21 pot stores.

Colorado has a stringent two-year minimum residency requirement for any owner or investor, while Washington has only a three-month requirement. These rules essentially prohibit out-of-state investment in the growth and production of marijuana. One reason for this, regulators and experts say, is to reassure the federal government that illegal drug money from across the country and around the world is not entering their legal marijuana markets.

July 8, 2014 marked the beginning of legal marijuana sales in the state of Washington, officially making it the second state after Colorado to offer recreational pot-smokers a chance to buy weed legally at a local store.

As with alcohol, only those 21 and older can purchase recreational weed. Out of state residents are allowed to purchase pot, but it must be consumed in Washington. Consumers can only buy pot in retail shops licensed by the state. Internet sales and delivery services are not allowed under the current rules. And the law caps the amount you can purchase and possess at any one time at one ounce (28 grams).

What took Washington so long to get their stores open as compared to Colorado? Colorado already had a regulated medical marijuana system, making for a smoother transition when it allowed those dispensaries to start selling to recreational pot on January 1, 2014. Washington's medical system is unregulated, so officials there were starting from scratch as they immersed themselves in the pot world and tried to come up with regulations that made sense for the industry and the public. The regulations include protocols for testing marijuana, what types of edibles should be allowed, requirements for child-resistant packaging, how much criminal history is too much to get a license, and what types of security systems pot shops and growers should have.

In July 2015, one year after marijuana dispensaries were legally opened in Washington to sell marijuana, the state now has data that it can start to track about how much they are making from these sales. In the first year, \$70 million in tax revenue was generated statewide from marijuana sales. The Washington State Liquor Control Board, which oversees the state's cannabis industry, reports that dispensaries sold more than \$257 million worth of marijuana.

The state Liquor Control Board reports that the state's marijuana businesses are selling nearly \$1.5 million in marijuana per day from about 160 retailers statewide.

"While this amount of money isn't nearly enough to run a whole state with, these are real dollars that can now be spent on things like schools, healthcare and road repair instead of going straight into the pockets of the drug dealers who controlled the marijuana market prior to legalization," Tom Angell, chairman of the advocacy group Marijuana Majority, added.

In fact, Washington topped Colorado's first-year marijuana tax revenue of about \$44 million.

<http://america.aljazeera.com/watch/shows/america-tonight/america-tonight-blog/2013/9/3/meet-legalized-recreationalmarijuanascastofcharacters.html> (Legal Marijuana's Cast of Characters)

Federal Intervention?

And there is support for states to continue to be able to decide their own marijuana policies without federal government intervention. In June 2013, the U.S. Conference of Mayors cited organized crime, a national change in attitude, the efficacy of medical marijuana and exorbitant costs to local governments in its resolution supporting "states setting their own marijuana policies," a stance similar to the one endorsed by the National Lawyers Guild and the Red Cross.

On August 29, 2013, US Attorney General Eric Holder told the governors of Colorado and Washington that the department of justice would not seek to block their experiments—at least for now. His deputy, James Cole, issued a memo to the 93 US attorneys, who enforce federal law in the states, saying that in states that have legalized marijuana (including the medical sort, 20 states have done so) they should focus their prosecutorial energies on other priorities, including preventing the distribution of the drug to minors and its diversion to other states.

Deputy Attorney General James Cole, in his memo to U.S. attorneys across the country, said, "The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health and other law enforcement interests."

Under the new guidelines, federal prosecutors are required to focus on eight enforcement priorities to actively work to prevent:

- the distribution of marijuana to minors;
- revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels;
- the diversion of marijuana from states where it is legal under state law in some form to other states;
- state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- violence and the use of firearms in the cultivation and distribution of marijuana
- drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands;
- preventing marijuana possession or use on federal property.

This may not be acquiescence, but it looks like accommodation.

The new guidelines don't change federal money laundering rules, meaning that some large banks may still be leery of doing business with marijuana producers and sellers. However, Justice

Department officials said there is some leeway for banks to provide services to such businesses, so long as they don't violate the eight priorities being assigned to federal prosecutors.

"This reflects a balanced approach by the federal government that respects the states' interests in implementing these laws and recognizes the federal government's role in fighting illegal drugs and criminal activity," Washington Gov. Jay Inslee and Attorney General Bob Ferguson said.

Marijuana will remain illegal under the federal Controlled Substances Act.

President Obama

In January 2014, President Obama made his views on marijuana public.

"As has been well documented, I smoked pot as a kid, and I view it as a bad habit and a vice, not very different from the cigarettes that I smoked as a young person up through a big chunk of my adult life. I don't think it is more dangerous than alcohol."

Smoking marijuana is "not something I encourage, and I've told my daughters I think it's a bad idea, a waste of time, not very healthy," Obama said.

However, he said he is concerned that marijuana-related arrests fall far more heavily on minorities than on others. Legalization of pot should go forward in the states of Colorado and Washington because "it's important for society not to have a situation in which a large portion of people have at one time or another broken the law and only a select few get punished," he said.

"Middle-class kids don't get locked up for smoking pot, and poor kids do," he said. "And African-American kids and Latino kids are more likely to be poor and less likely to have the resources and the support to avoid unduly harsh penalties."

He said that users shouldn't be locked up for long stretches of time when people writing drug laws "have probably done the same thing."

The president also said he believes that those who argue that legalizing marijuana will solve a number of social problems "are probably overstating the case". Legalization in Colorado and Washington will probably be a challenge, he said.

Follow the Leaders

U.S. Rep. Jared Polis, D-Colo., introduced a bill in the House in 2013 to legalize marijuana. His bill, known as the Ending Federal Marijuana Prohibition Act, would eliminate marijuana from the Controlled Substances Act, require a federal permit for growing and distributing it, and have it regulated (just as alcohol is now) by the Food and Drug Administration and the Bureau of Alcohol, Tobacco, Firearms and Explosives.

Congress is not ready to pass the bill yet, but there are signs that sentiments are changing. A promising alliance is growing on the subject between liberal Democrats and libertarian

Republicans. In a surprise move in May 2014, the House voted 219 to 189 to prohibit the Drug Enforcement Administration from prosecuting people who use medical marijuana, if a state has made it legal. It was the first time the House had voted to liberalize a marijuana law; similar measures had repeatedly failed in previous years. The measure's fate, though, is uncertain in the Senate.

At the state level, other states are already looking to pass similar legislation as Colorado and Washington.

November 2014 Elections

In the November 2014 elections, Alaska, Oregon, and Washington, DC citizens all had statewide initiatives on marijuana legalization on the ballot, and in all three it passed.

This brings the number of states to have legalized recreational use of marijuana to four, along with Washington, DC.

Oregon was the first state to decriminalize marijuana when it did so back in 1973. And this was not its first attempt with a ballot measure to legalize recreational marijuana, the first one failing back in 1986. But in 2014, the voters of Oregon legalized it in a 55%-45% election result.

In Oregon, the law legalizes personal possession, manufacture and sale of marijuana for people 21 years of age and older. Mimicking similar plans in Washington and Colorado, the Oregon law creates a commercial regulatory system for the production, distribution and sale of marijuana.

A 1975 Alaska Supreme Court ruling found that the right to privacy in the state included the right to grow and possess a small amount of marijuana at home. This unclear quasi-legalization existed until legalization initiatives were put on the ballot in 2000 and 2004. Both failed, though each indicated a measure of support for legalization.

In the 2014 election, Alaskan voters approved Ballot Measure 2 by a vote of 52%-48%, which legalizes retail pot, giving the state the power to tax and regulate like in Colorado and Washington.

Adults age 21 and older may possess up to 1 ounce of marijuana and grow up to six plants for personal use. The measure also legalizes the manufacture, sale and possession of marijuana paraphernalia, such as devices used for smoking or storing the plant.

In Washington, DC, voters approved what was referred to as "soft legalization." Those are the words of Allen St. Pierre, executive director of the pro-marijuana reform group NORML, describing a measure that falls short of creating a full-on regulated, taxable pot market.

Initiative 71 allows people to possess up to 2 oz. of marijuana and cultivate up to six plants at home without fear of criminal or civil penalty. It does not allow for retail sales for marijuana.

"With marijuana legal in the federal government's backyard," said Tom Angell, chairman of Marijuana Majority, "it's going to be increasingly difficult for national politicians to continue ignoring the growing majority of voters who want to end prohibition."

However, the Constitution gives Congress the power to review and possibly reject all legislation approved by D.C.'s elected officials or its citizens. A massive, catch-all spending bill passed by Congress in December 2014 (just weeks after the election) contained a provision preventing the District from using federal money to implement any law or regulation that repeals or reduces marijuana-related penalties. The bill prohibits the city from spending tax dollars to enact the marijuana initiative.

But the battle that most are paying attention to is not until 2016 in the state of California. This statewide referendum may tilt legalization not only in the U.S. but other countries.

Vermont

In 2014, Gov. Shumlin authorized a RAND Corporation study to look into possible effects of legalizing recreational marijuana in Vermont. The report, released in January 2015, concluded that legalizing recreational marijuana production, distribution, and possession in Vermont could generate significant tax revenues, but also involves costs and many decisions about how best to regulate it.

The report estimated that during 2014, Vermont residents likely consumed between 15 metric tons and 25 metric tons of marijuana, and spent between \$125 million and \$225 million on marijuana. RAND researchers estimate that state and local governments in Vermont now spend less than \$1 million each year enforcing current marijuana laws on adults, while regulatory costs associated with legalizing production and retail sales of marijuana would likely exceed that level.

If Vermont legalized marijuana, taxed the product aggressively, suppressed its black market, and consumption increased, tax revenues from sales to Vermont residents could be in the range of up to \$75 million annually, according to the report.

In addition to impacts in the state, legalizing marijuana in Vermont also could have implications for neighboring states. There are nearly 40 times as many regular marijuana users living within 200 miles of Vermont's borders as there are living inside Vermont, according to the report.

Vermont could therefore end up supplying large numbers of out-of-state users, directly via tourism or indirectly. This would vastly increase the potential revenue to the state, unless other states in the Northeast also legalized marijuana, researchers say.

The Vermont legislature is likely to discuss legalization of marijuana at the Statehouse in 2015.

The driving force behind the new reforms seems to have come from a range of political impulses. Alaska is known for a libertarian mindset and general wariness of the federal government. In D.C., civil rights campaigners pointed to deep disparities in rates of marijuana arrests between white and black residents as an indicator of a need for reform.