



MARIJUANA POLICY PROJECT  
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# How should Rhode Island legalize marijuana?

Asking the right questions

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## Introduction

### Setting aside the “if” question

For several years, Rhode Island has debated whether marijuana should become legal for adults. Often overlooked in these discussions is the fact that legalization can be implemented in different ways, and some better serve the public interest than others. In order to have an informed discussion about whether Rhode Island should end marijuana prohibition and make marijuana legal, it is helpful to think about how a system of legalization should actually work in the Ocean State.

This report outlines a set of options and considerations about the various ways Rhode Island could legalize, regulate, and tax marijuana. Informed by interviews with experts, community advocates, and other stakeholders who live in Rhode Island, this report seeks to expand our understanding of the various issues and concerns that should be addressed if marijuana ever becomes legal. Input was sought from those whose views differed significantly on the question of whether legalization is a good idea. Some were supportive and others opposed. We also looked at how various jurisdictions have chosen to implement marijuana legalization.

Although the Marijuana Policy Project and Regulate Rhode Island advocate for ending marijuana prohibition, what follows is not an argument that marijuana should be legal in Rhode Island. Ultimately, only the General Assembly can decide that question. Instead, this report focuses on the various models and specific policy choices the legislature will face if lawmakers decide to follow Massachusetts and other states in making marijuana legal for adults.

Our hope is that this report will serve as a useful resource to legislators and others as Rhode Island continues to have a broader and more nuanced discussion about this important topic facing the state.

### What is “legalization”?

It is worth making a point about the term “legalization” at the outset. Many substances are *legal* in our society: tomatoes, coffee, aspirin, alcohol, prescription drugs, and so on. Obviously, not everything that is legal is regulated

**“Advocates and opponents need to come together for an open-minded discussion about the regulation of marijuana in the United States.”**

- Dr. David Nathan, founder and board president of Doctors for Cannabis Regulation

the same way. Some products are legal only for adults; some are legal only if authorized by a doctor; some are legal to possess but not to sell. Without elaborating on what “legalization” would mean in the context of marijuana, asking whether marijuana should be legal is a vague question. The key question of this report is not *if* marijuana should be legal, but *how*.

### Stakeholders: Who is impacted?

Marijuana policy affects different people in different ways, and it is important to always keep in mind how various policy choices may have unique impacts on these various stakeholders.

- **Young people** – Opponents and supporters of legalization agree that marijuana use is not appropriate for adolescents (apart from those whose doctors recommend it for a serious medical condition and have parental oversight). Both sides should attempt to find common ground in policies that help reduce the harms of marijuana use for adolescents.
- **Law enforcement officials** – Police officers and other members of our criminal justice system are tasked with enforcing marijuana laws. It is important to consider how different policies may impact their ability to protect public safety.
- **Health professionals** – Criminalization, substance use, public awareness campaigns, and social services can all have health implications. Doctors, nurses, and others responsible for helping us maintain a healthy society can help provide guidance to create protections for public health.
- **Marijuana consumers, including medical marijuana patients** – Roughly one in five Rhode Islanders use marijuana each year. Those who consume marijuana are directly affected by policies that influence the cost of marijuana, product quality, the accessibility of retail marijuana businesses, and many other factors.
- **Individuals with prior marijuana convictions** – If marijuana becomes legal, it has the possibility to change the lives of people with previous marijuana convictions if it includes re-sentencing or expungement, as some states have done. This issue is particularly important given the racially disproportionate rates of marijuana arrests between whites and people of color.

- **Taxpayers** – Enforcing marijuana prohibition requires revenue from a broad base of taxpayers. In states with legalization, on the other hand, only marijuana consumers pay taxes to regulate the system. Some states, like Colorado, have also used excess marijuana revenue to fund investments in education, health care, and other important social services. Marijuana taxes may also help offset municipal and state budget deficits, thereby preventing tax increases from other sources.
- **Local governments and residents** – Cities and towns care about what happens in their communities. It is important to consider what degree of control over legal marijuana establishments should be allocated at both the state and municipal levels. What kinds of authority should local residents and elected officials have when it comes to regulating marijuana business establishments?
- **Employers** – Virtually every business has a drug and alcohol policy in place for its workers. How should marijuana legalization be structured to respect employers and ensure safety at the workplace?
- **The environment** – Cultivating marijuana can be energy intensive and harmful to the environment if done irresponsibly. As our society works to address issues like climate change, we should consider how to regulate marijuana in a way that minimizes negative impacts on our environment.

## Acknowledgements

The Marijuana Policy Project is grateful to those who participated in interviews to provide their views on many of the topics covered in this report. On the question of legalization itself, interviewees ranged the full spectrum from opposition to support. The views expressed in this report are those of the Marijuana Policy Project and not necessarily those of the interviewees or coalition partners of Regulate Rhode Island, except where noted. We offer a special thanks to the following individuals for their participation:

- **Arlene Violet**, former attorney general of Rhode Island<sup>1</sup>
- **Bob Houghtaling**, director of the East Greenwich drug program and youth prevention advocate
- **Col. Hugh Clements**, police chief of Providence
- **Darren Delaney**, retired captain for the Rhode Island State Police
- **Dr. Bethany Lewis, Ph.D.**, addiction researcher and professor of psychology at Rhode Island College
- **Dr. David Lewis**, founder of the Brown University Center for Alcohol and Addiction Studies
- **Ian Knowles**, project director for RI Communities for Addiction Recovery Efforts and person in long-term addiction recovery
- **JoAnne Leppanen**, executive director of the RI Patient Advocacy Coalition
- **John Scuncio**, retired state trooper for Rhode Island State Police and former police chief of Hopkinton
- **Jordan Seaberry**, director of public policy and advocacy for the Institute for the Study and Practice of Nonviolence
- **Michelle McKenzie, MPH**, public health researcher at The Miriam Hospital and advocate for people in recovery from addiction
- **Pat Oglesby, JD, MBA**, cannabis tax policy expert at NewRevenue.org
- **Steven Brown**, executive director of the American Civil Liberties Union of Rhode Island

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<sup>1</sup> Former Attorney General Arlene Violet participated in an interview on the condition that it be noted she remains opposed to legalizing marijuana until further research on its effects for developing brains has been completed and a method to determine impairment while operating a vehicle has been developed.

## Background

Marijuana is a sensitive topic for some. Many participants in the marijuana policy debate have personal experiences and beliefs that form a complex narrative about how marijuana use impacts their lives and communities. Some believe marijuana has had negative effects on society, and others believe it has been a positive force. The fact that individuals may passionately disagree about the social impacts of marijuana is not necessarily an obstacle to enacting sensible marijuana policy. In fact, facilitating thoughtful discussion among those with different views can help us find common ground and identify solutions that benefit society the most.

### Comparing marijuana and alcohol

In public discussions about whether marijuana should be legal, both proponents and opponents often make a comparison to alcohol. In many respects, this makes sense. Alcohol and marijuana both cause psychoactive effects in consumers, and both of them are frequently used to relax and/or socialize.

However, two key differences between marijuana and alcohol should be kept in mind. The first is that many health experts and organizations consider marijuana to be an effective treatment for debilitating medical conditions, such as chronic pain,<sup>2</sup> while alcohol is not. In considering whether to make marijuana legal for adult use, we should keep in mind that roughly half of all marijuana consumers use it for therapeutic purposes.<sup>3</sup> The policy questions related to maintaining a medical marijuana market alongside an adult-use market will be considered later in this report.

The second important difference between marijuana and alcohol relates to the risks involved in using these substances. By virtually any objective measure, marijuana is safer and less harmful than alcohol. Alcohol contributes to tens of thousands of overdose deaths each year in the United States, while it is virtually

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<sup>2</sup> National Academies of Sciences, Engineering, and Medicine, "The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research." <http://nationalacademies.org/hmd/reports/2017/health-effects-of-cannabis-and-cannabinoids.aspx>

<sup>3</sup> <http://www.pewresearch.org/fact-tank/2013/06/03/more-than-a-third-of-adults-say-theyve-tried-pot-but-not-recently/>



impossible to die from consuming too much marijuana.<sup>4</sup> Scientific research has discovered clear causal links between long-term alcohol use and fatal diseases such as cancer, whereas this is not true for marijuana.<sup>5</sup> The risk of injury from accidents, the severity of dependence, and the propensity to cause violence are all also significantly greater for alcohol than for marijuana.<sup>6</sup>

Marijuana use is not without some risk, and in some cases it is reasonable to compare it to alcohol. However, we should bear in mind that the likelihood of harmful outcomes from alcohol consumption is much greater than for marijuana.

### Concerns about problematic use

The most salient objection voiced in opposition to marijuana legalization is that it will lead to increased problematic use. More specifically, many opponents of legalization worry that legalization will lead to a significant uptick in marijuana use among adolescents and/or increased use of other more harmful drugs such as heroin.

Based on data from multiple studies in states that have established legal marijuana markets, as well as data from national surveys, it does not appear that legalization for adults has precipitated a rise in marijuana use among teenagers.<sup>7</sup> These results are consistent with other studies that consider whether passage of medical marijuana laws is linked to increases in teen marijuana use.

**“[T]he majority of people who use marijuana do not go on to use other, ‘harder’ substances.”**

*- National Institute on Drug Abuse*

Opponents of legalization argue that the data we have so far are inconclusive and that more research is needed to understand the long-term impact of legalization on youth use. Nonetheless, there is no comprehensive evidence that legalizing marijuana for adults causes more teens to use.

<sup>4</sup> <https://drugabuse.com/marijuana-vs-alcohol/>

<sup>5</sup> <http://www.businessinsider.com/alcohol-marijuana-which-worse-health-2017-11/#marijuana-may-be-harder-on-your-heart-while-moderate-drinking-could-be-beneficial-3>

<sup>6</sup> <https://www.mpp.org/marijuana-is-safer/>

<sup>7</sup> For comprehensive overview of data from multiple studies, see pp. 8 - 14 of “From Prohibition to Progress: A Status Report on Marijuana Legalization” from Drug Policy Alliance (2018). <http://www.drugpolicy.org/legalization-status-report>

Another common objection to marijuana legalization is that it will exacerbate the “gateway effect,” suggesting marijuana consumers will escalate to using other more harmful substances. Settling this question requires specifying more precisely what is meant by the “gateway effect.” While opponents of legalization point to research which shows that marijuana use sometimes precedes use of more dangerous drugs, the National Institute on Drug Abuse notes that “the majority of people who use marijuana do not go on to use other, ‘harder’ substances.”<sup>8</sup> Further evidence against the “gateway theory,” specifically as it relates to marijuana legalization, includes a recent study based on opioid overdose data from Colorado. The researchers concluded that “[l]egalization of cannabis in Colorado was associated with short-term reductions in opioid-related deaths.”<sup>9</sup>

In her interview with MPP, Michelle McKenzie, a leading Rhode Island addiction researcher and advocate for people in substance abuse recovery, noted that marijuana use does not occur in a vacuum. Some contexts — for example, not having consistent housing, health care, or employment — may increase the risk that marijuana use will become problematic. If this is correct, it suggests that criminalizing marijuana and stigmatizing users likely does more harm than good when trying to address the root causes of problematic use.

### Marijuana laws and policies can reduce or increase harms

Even if an individual’s background and social context are the primary factors involved in problematic drug use, it is certainly still possible that our marijuana laws and policies can make things better or worse.

Most advocates for legalization believe that legalizing, regulating, and controlling marijuana offers a way to reduce the risks associated with marijuana use. Many also believe that marijuana prohibition — as part of the larger “war on drugs” — has contributed to some of the social stigma and trauma that may increase the risk of problematic drug use.

Regulating marijuana within a legal framework also allows for policies that can reduce the risk that marijuana is contaminated with harmful substances or other drugs. Nearly every state that has legalized marijuana so far mandates that products be tested for purity and labeled for potency before being sold to

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<sup>8</sup> <https://www.drugabuse.gov/publications/research-reports/marijuana/marijuana-gateway-drug>

<sup>9</sup> <http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2017.304059?journalCode=ajph&>

consumers. Regulators in some states have also imposed potency limits, such as those on edible marijuana products, to reduce the risk of overconsumption.

Many regulations like these (and others that will be discussed in other sections of this report) are not possible under a framework of prohibition. Discussing how marijuana should be legalized and regulated opens up a whole range of possible policies that can promote public health and safety.

A theme that emerged from conversations with several interviewees who have extensive experience in the field of substance use, including Mr. Bob Houghtaling, Dr. David Lewis, and Dr. Bethany Lewis, is that when it comes to marijuana, we would be wise to learn from and apply the lessons we have gained from regulating other legal products like tobacco and alcohol.

For example, teenage usage rates for tobacco and alcohol have declined significantly in recent years. Yet, some adults and young people still develop problematic relationships with these substances, and our policies and cultural attitudes do not always encourage responsible use. Thinking about how we can design better systems within the context of alcohol and tobacco use can be informative as we consider how to regulate marijuana.

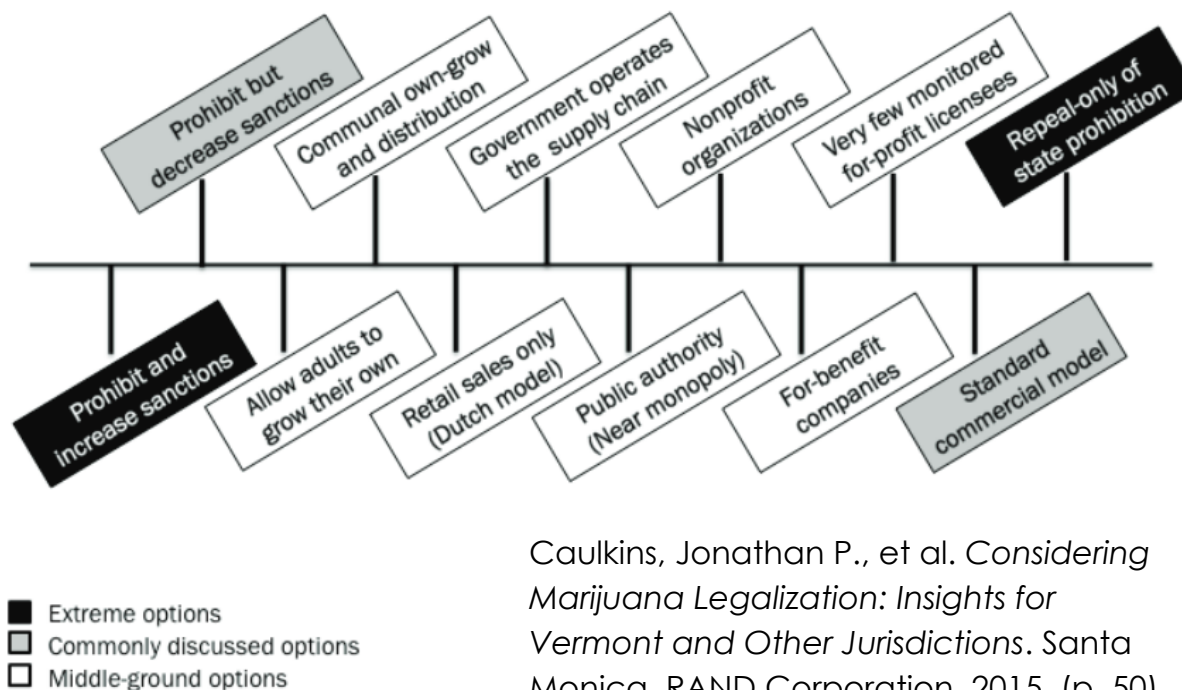
### Summary

In the following sections, various policy options for regulating marijuana will be considered and analyzed. As we navigate this terrain, it is helpful to keep in mind the points discussed so far:

- Differing opinions about the social impact of marijuana use are not necessarily an obstacle to finding common ground on sensible public policy.
- Marijuana is not only a substance used for relaxation and socializing but also for therapeutic and medicinal purposes.
- While not without some risks, marijuana use is generally less harmful than alcohol.
- Concerns about problematic marijuana use are important, but data collected from states with legalization provide no evidence that legalizing marijuana increases teen use or the “gateway effect.”
- By exacerbating social harm and preventing implementation of protective regulatory policies, criminalization may increase the risks of marijuana use.
- We should seek to learn from and apply lessons from our experiences with alcohol and tobacco to design better policies for marijuana.

## Supply structures

If marijuana is legalized, perhaps one of the most important policy questions is how marijuana will be produced and distributed to consumers. There is a wide spectrum of possible options, ranging from the extreme to the practical.



Caulkins, Jonathan P., et al. *Considering Marijuana Legalization: Insights for Vermont and Other Jurisdictions*. Santa Monica, RAND Corporation, 2015. (p. 50)

### Broad decriminalization

One possibility is to simply repeal marijuana prohibition by removing marijuana from the Uniform Controlled Substances Act.<sup>10</sup> This would effectively remove all penalties for possessing, growing, and selling marijuana, while neglecting to add any additional framework to establish a regulated market. This is considered a fairly extreme option that would leave the public largely unable to control the production and sale of marijuana. In effect, under this model marijuana would be treated more or less like tomatoes.

Short of this somewhat radical option, marijuana could be broadly decriminalized but with significant limitations. In Washington, D.C. and Vermont, for example, possession and cultivation (but not sales) are allowed for limited amounts of marijuana. Under what's sometimes labeled the "grow-and-give"

<sup>10</sup> Chapter 21-28 of Rhode Island General Laws

model, it is legal for an individual to grow, possess, and give away small quantities, but no one is authorized to sell marijuana.

Two significant consequences of this strategy have been discussed. First, if one goal of legalization is to raise revenue to bolster state and local budgets by taxing the sale of marijuana, this more hands off version of legalization makes that impossible. Second, because there is no aboveground market in which consumers can legally purchase marijuana and since not everyone will opt to grow their own, demand for illegal sales in the illicit market will continue. This means that the state cannot ensure consumers are informed or prevent exposure to contaminated products. In the regulated markets of states like Colorado and Washington, state officials prohibit certain pesticides, require product testing, and mandate potency labels.

Another model of broad decriminalization exists in Spain, which allows adults to form cooperatives that grow and share marijuana among their members. There are an estimated 700 such cooperatives throughout the country. The government imposes few regulations on these organizations, and commercial sales to the general public are prohibited. But if one pays to become a member, they may share in the harvest. Specific protocols related to the operation of these cooperatives are largely handled internally by the cooperative itself.

This form of legalization is analogous to California's previous long-standing policies for medical marijuana. Some consider California's experience a warning against adopting this model, since the lack of regulations, product testing, and official oversight created what some considered to be a "Wild West" kind of environment.

### Government control

Another option is to have some kind of government-operated system akin to what exists for lotteries and alcohol in states like New Hampshire. Control could exist at either the state or local level, with public agencies setting prices, controlling the supply, and collecting revenue from sales. The country of Uruguay, which approved marijuana legalization in 2012, has implemented a version of this model.

While some argue that government control may be a better alternative to private markets, practically speaking, this option is not feasible due to existing federal law. At the federal level, marijuana remains categorized as a Schedule I substance with the severest possible restrictions and penalties. While states are

not compelled to enforce federal laws against marijuana, they cannot order state workers to break federal law.

While some cite the small city of North Bonneville, Washington and Louisiana's medical marijuana program as examples of existing government-controlled (or at least government-involved) marijuana programs, these do not remove doubts that such a model is practical. Especially in light of the current hostility of federal law enforcement officials, any state that adopts a law requiring its employees to violate federal law risks an irresolvable conflict with the federal government.

### Private industry with government regulation

So far, every state that has legalized marijuana, with the recent exception of Vermont, has opted for some form of a privately controlled, government-regulated system, albeit with some important differences in the details. The basic idea of this approach is that the state establishes a regulatory framework in which private entities may apply for licenses to operate production facilities, retail outlets, testing facilities, and so on. State governments set qualifications; create security, health and safety, and other requirements; perform regular audits and inspections; and collect tax revenue, but they are not directly involved in the production and sale of marijuana, avoiding direct conflict with federal law.

Within this model, some broad variations have been proposed and implemented. A state may, for example, require that marijuana establishments be nonprofit organizations rather than for profit entities. Rhode Island's medical marijuana law, for example, requires that dispensaries be nonprofit organizations. However, given the general support for free markets and private industry within the United States, it would seem odd to single out marijuana as a nonprofit industry while virtually all other products, including alcohol and pharmaceuticals, are not.

If states opt to go the route of establishing a privately operated market, there is a question of how many marijuana business licenses should be granted by the state's regulatory body. Some states like Colorado do not set limits on the number of businesses allowed. State Senator Josh Miller, a primary sponsor and supporter of marijuana legalization legislation in recent years, advocates for a "phased in" approach whereby Rhode Island would gradually expand the number of licenses issued until a saturation point is reached within the market.

If there are a limited number of licenses available, the state must adopt a process for determining which applicants will receive licenses, since there may be more qualified applicants than there are licenses. This might involve, for example, a lottery system, which distributes licenses randomly among a pool of qualified applicants, or a competitive scoring system.

One compelling argument for free markets without predetermined limits on licenses is that other systems have often been accompanied by controversy. With a lottery system, the least qualified applicants in the pool may receive licenses while the best applicants do not. Those with deeper pockets might also be able to submit multiple applications to increase their odds of getting a license. The competitive scoring systems, which are supposed to be merit-based, have come under scrutiny as well, because it makes it harder for applicants with less money and thereby reduces diversity in the market. Organizations with deeper pockets tend to be favored by points systems, because they can afford to hire the best consultants and writers to draft their applications. There have been several lawsuits alleging unfairness in states with this system.

Given these concerns, some feel it is best to maintain an open market and distribute licenses to all qualified applicants, allowing competition within the market to determine the “winners” and “losers” rather than a state agency.

Within privately operated systems, lawmakers must also decide which state agencies and officials will oversee and regulate the market. Based on his experience working with various state administrations, Mr. Darren Delaney, a retired captain for the Rhode Island State Police, suggests that Rhode Island create a task force involving all relevant agencies to promulgate and oversee regulations for marijuana businesses. He believes it is important to divide the work and ensure that no single agency be dominant in controlling the program.

Others, however, believe there should be some kind of central authority or executive office that helps coordinate regulations and oversees the market. In Colorado, for example, the Office of Marijuana Coordination exists under the governor's administration. A central office would likely be able to accrue more institutional expertise and also prove more nimble in reacting to new information or changing dynamics within the market.

On a final note, some participants in the marijuana legalization discussion — including both proponents and opponents — worry that the widely adopted model of state-regulated private industry may eventually evolve into a system of

“Big Marijuana” in which just a few players dominate the market. Marijuana policy experts John Hudak and Jonathan Rauch argue that this outcome is unlikely.<sup>11</sup> While they acknowledge that “Big Marijuana” could have some negative consequences (such as powerful and persuasive marketing campaigns, regulatory capture, and the establishment of barriers to entry for smaller firms), they predict that the marijuana market will ultimately resemble the alcohol market, with a fairly diverse spectrum of small and large producers regulated by the states.

Hudak and Rauch further warn that worrying too much about the boogeyman of “Big Marijuana” can have its own downsides. In their view, what’s more likely and more concerning is a proliferating regulatory system that’s too focused on the structure of the market rather than curtailing harmful practices. They write, “Rather than attempting to prejudge or shape the emerging marijuana market, government should seek to create a regulatory environment in which markets can be successful at doing what markets do well: capitalizing businesses, ensuring regular supply, finding and generating efficiencies.”

### Summary

The foundational question of marijuana policy involves what sort of market structure will exist. Of the three broad categories of legalization models, government-regulated, privately operated systems are the most common and the most practical. In this section, we discussed the following:

- Broad decriminalization or “grow-and-give” models (versions of which have been adopted in Washington, D.C. and Vermont) lack a regulatory infrastructure and do not produce tax revenue from sales.
- Lacking a system to facilitate legal commerce, broad decriminalization does not remove demands for illicit transactions, which keeps the criminal market intact and undermines consumer safety.
- Government-controlled markets have been discussed and endorsed by some, but federal law makes implementation a practical impossibility, especially given the current federal administration.
- Most states have established a framework of government-regulated private industry.

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<sup>11</sup> <https://www.brookings.edu/wp-content/uploads/2016/07/big-marijuana-1.pdf>



- In these systems, states must address whether to impose a limit on the number of licenses distributed or allow a free market. Free markets avoid problems associated with distributing licenses via a lottery or points system.
- States must also determine which agency or agencies will oversee the market and implement regulations. Central agencies are likely to be more efficient and effective.
- Some marijuana policy experts advise states to be less concerned about the size and structure of the private market and more focused on preventing harmful practices.

## Taxation

One of the attractions of legalizing marijuana for state governments is the potential for tax revenue. Colorado and Washington have each raised well over half a billion dollars in tax revenue from marijuana since legal sales began in 2014. Various states with legal marijuana have approached taxation in different ways.

### Choosing the right rate

#### Adult use marijuana tax rates in other states

<b>Alaska</b>	\$50/ounce
<b>California</b>	15% sales tax + \$9.25/ounce + local taxes
<b>Colorado</b>	15% excise tax (on "average market rate") + 15% sales tax + local taxes
<b>Maine</b>	10% sales tax (this will likely be raised by the state legislature to 20%)
<b>Massachusetts</b>	17% sales tax + local tax up to 3%
<b>Nevada</b>	15% excise tax (on "fair market value") + 10% sales tax
<b>Oregon</b>	17% sales tax + local tax up to 3%
<b>Washington</b>	37% sales tax

Taxing marijuana can serve two purposes. The first is to raise revenue for the state and cover the administrative costs of regulating the legal marijuana market. The second is to stabilize the price of marijuana, since some worry that low costs may lead to more use among young people and other populations whose consumption rates are more influenced by price. However, on the other hand, it is important not to raise taxes too high. Otherwise, there is the risk that consumers will continue to seek marijuana in the illicit market to avoid exorbitant prices.

Another important consideration is the taxation rates for marijuana in neighboring states. In the summer of 2017, the Massachusetts Legislature amended the voter-approved marijuana initiative to raise the tax rate to 17% along with an optional 3% local tax. Legal retail sales are scheduled to begin in July 2018. If Rhode Island were to impose a significantly higher tax rate, it is likely that some Rhode Islanders would cross the border to purchase marijuana in Massachusetts.

Mr. Pat Oglesby, an expert on marijuana tax policy, recommends that states start with low tax rates and increase them over time, either by continually amending the law or through an automatic, gradual increase. His reasoning is that it is important to set the rate low initially to give the legal market a chance to attract consumers away from the illicit system. Then, as the industry matures and production costs decline, the tax rate should increase to prevent prices from falling. However, based on the experiences of other states, more often the problem is not attracting consumers into the legal market when sales begin, but maintaining enough supply to meet the overwhelming initial demand. In other words, it seems that whenever legal markets for marijuana open, consumers are eager to buy from these legitimate businesses even if the tax rate may be considered high at the outset.

### What and when to tax

Policy analysts and state regulators have identified three options for what a marijuana tax might apply to: price (at the wholesale, retail level, or both), weight, and potency. Most states with legal marijuana have opted to impose taxes on the price of marijuana. Alaska, however, taxes marijuana by weight at \$50 per ounce; California and Nevada use a combination of both a price-based and weight-based tax; and Colorado taxes vertically integrated companies (i.e. entities that operate both cultivation and retail facilities) with a weight-based tax.

Mr. Oglesby believes that price-based taxes suffer from two problems. First, the price of legal marijuana will likely continue to fall as the market becomes more efficient and production costs decline. Revenue from a price-based tax will thus fluctuate with price, meaning that it will likely decline over time. If states are looking to marijuana taxes for a consistent revenue stream to fund other programs, taxing the price of marijuana is not necessarily a dependable way to do that. The second problem Oglesby identifies is “phony pricing,” such as product bundling. Product bundling could, for example, involve a retailer selling a marijuana pipe for much more than it’s worth and including marijuana as a free “gift” alongside, effectively avoiding the marijuana tax. He warns that states with price-based taxes should be sure to include language in their legalization law that prohibits this kind of tax evasion. Price-based taxes are also vulnerable to other tactics (some of them legitimate) such as employee discounts and quantity discounts.

From a pragmatic perspective, Mr. Oglesby recommends a weight-based tax to avoid the problems associated with taxes on price. Taxing weight will provide

more consistent revenue streams to the state and prevent the problem of product bundling. However, taxing by product weight comes with other consequences, primarily in the form of additional administrative resources necessary to collect revenue, since the weight must be accurately tracked and measured before sales. A weight-based tax also tends to incentive producers to make higher potency products. This can be partially addressed by taxing different kinds of marijuana products with varying levels of potency (e.g. flower, trim, concentrates, etc.) at different rates, similarly to how alcohol products are categorized based on potency (e.g. beer, wine, and liquor). If and when interstate commerce for marijuana is allowed, states with weight-based taxes will need to reconsider this approach, since, for example, no distributor would buy marijuana from Rhode Island producers if it were subject to a \$50 per ounce tax while marijuana from another state is not taxed.

A third proposal that has some support but has not yet been implemented is taxing marijuana by its potency, i.e. its THC content.<sup>12</sup> Some believe a potency tax could decrease the incentive to sell more potent products. The problem with this option is that the process and technology involved in testing the potency of marijuana products are subject to significant variance, depending on what parts of the plants are tested and so on. Assigning a tax to potency may tempt some producers to err on the side of testing that shows lower potency.

In addition to taxes, states with legal marijuana also collect license fees from marijuana businesses, which can be used to cover regulatory costs and free up tax revenue for other purposes. These fees often vary depending on the size and nature of the business. In addition to fees and taxes at the state level, several states, such as Massachusetts, also allow for local taxes on marijuana.

### Putting marijuana revenue to good use

Some of the revenue raised from marijuana taxes and fees should be invested in the state agencies that administer rules and oversee the legal market. It may make more sense to raise all, or at least the bulk, of those funds from fees rather than taxes, since fee revenues will be available to the state before sales begin, whereas taxes can only be collected after the market is up and running. Fees therefore give the state money to cover the startup process.

Administrative costs cover activities such as processing applications, promulgating and reviewing regulations, inspecting marijuana businesses, and

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<sup>12</sup> THC, or tetrahydrocannabinol, is the primary psychoactive ingredient of marijuana.

collecting tax revenue. In Colorado and Washington, regulatory costs account for roughly 10% of the total revenue raised from marijuana.

Beyond the obvious need to fund the regulatory aspects of legalization, many of those we interviewed for this report offered thoughtful comments on how Rhode Island should use the excess revenue from taxing legal marijuana. A consistent theme from many interviewees was a worry that even if the legalization law were to set aside marijuana revenue for socially beneficial purposes, a future General Assembly may seek to redirect the money into the general state budget. Some pointed to historical examples such as the lottery system and the tobacco settlement fund to show how revenue does not always get used the way it is initially promised. Creating a restricted receipt account — a special fund that is not part of the general state budget — may make it more difficult to divert revenue away from its original purpose.

Some of the suggestions for how to use marijuana revenue included:

- Bolster the financial stability of the state via the state budget;
- Investments in economic development and social services for low-income communities;
- Community health centers;
- Evidence-based youth prevention programs;
- Drug recognition experts to enforce impaired driving laws;
- Municipal budgets; and
- Addiction treatment and recovery services.

For some, raising revenue from marijuana may be a primary motivation for legalizing. Relying on data from marijuana industry research firms, we estimate that Rhode Island could generate between \$20 and \$50 million in annual tax revenue from marijuana once the market is fully ramped up. Many factors, such as the method and rate of taxation, as well as competition with Massachusetts, will affect the actual revenue collected.

### Summary

Tax revenue may be an enticing reason to consider legalizing marijuana. However, there are several consequential questions to consider about how marijuana should be taxed and how the revenue could be used. In summary, this section discussed a few important points:

- States with legal marijuana use a variety of methods and rates to tax marijuana and collect fees from licensed businesses and applicants.

- So far, these states have experimented with price-based and weight-based taxes or some combination of the two.
- Some advocate for a potency-based tax, but this is likely to be impractical.
- Tax rates should balance the goal of raising revenue while maintaining low enough prices to beat the illicit market and compete with neighboring states.
- Revenue, mostly from fees, should be used to cover regulatory and administrative costs.
- Additional revenue can be used to support the general budget and/or invested in various programs that promote the public good.

## Social and racial justice

Many who advocate legalizing marijuana do so because they believe our current approach of treating marijuana as a criminal issue has done more harm than good. Thousands of Rhode Islanders have suffered the consequences of a marijuana arrest, which can have long-term negative consequences for individuals and families, particularly those in low-income communities and people of color.

Involvement with the criminal justice system can have long-lasting consequences by making it more difficult for an individual to secure employment, access affordable housing, and receive loans. According to FBI crime statistics from 2001 through 2010, non-white Rhode Islanders were nearly three times as likely to be arrested for marijuana possession as whites, despite similar usage rates among the different groups.<sup>13</sup> While possession of small amounts of marijuana has since been decriminalized, replacing criminal sanctions with a civil fine, there is no reason to believe disparities in enforcement have abated.

Due to this pattern of unequal enforcement and the social harm that marijuana prohibition has caused, many believe that legalization laws should include provisions that address these past injustices.

### Expunging prior criminal records

Most states that have legalized marijuana allow individuals with prior marijuana offenses to expunge or seal their prior criminal records. The scope of these provisions may vary, however. For example, should an individual be allowed to expunge any nonviolent marijuana offense (including, for example, distribution) or only for possession? Many social justice advocates hold up California's legalization law as a good model, because it allows individuals to reduce most prior marijuana offenses (e.g. from a felony to a misdemeanor) or expunge them altogether.

Although there are relatively few people currently in Rhode Island's prisons and jails for marijuana offenses, social justice advocates believe that existing sentences for marijuana offenses should be "vacated" or cleared, and all ongoing criminal proceedings involving marijuana offenses should be dropped. They insist that no one should be held back for doing something that is now

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<sup>13</sup> *The War on Marijuana in Black and White*. New York, American Civil Liberties Union, 2013.

legal. On the other hand, others argue that selling marijuana illegally is distinct from selling in a regulated setting. As other states have found, there are many possible middle ground positions that allow for compromise on this issue.

### Preventing barriers to entry into the legal market

Advocates for social and racial justice have also criticized legalization laws in states like Colorado for creating barriers that prevent people with prior criminal records — particularly prior drug offenses — from entering the legal marijuana industry. These restrictions can vary. Some laws prevent anyone with a prior drug offense from being an employee of a marijuana business; some prevent ownership or control of a marijuana business; some allow people with prior offenses to enter the industry but only if enough time has lapsed since the conviction (e.g. 10 years); and some distinguish between minor offenses (misdemeanors) and more serious crimes (felonies).

Those who support these exclusions based on prior offenses generally offer two arguments for their position. First, they say that individuals who committed crimes — particularly drug crimes — cannot be trusted to work directly with marijuana. There is too great a risk, they argue, that these individuals will “go back to their old ways,” which could include diverting marijuana into other

**“Here are white men poised to run big marijuana businesses, dreaming of cashing in big—big money, big businesses selling weed—after 40 years of impoverished black kids getting prison time for selling weed, and their families and futures destroyed. Now, white men are planning to get rich doing precisely the same thing?”**

- Michelle Alexander, author of *The New Jim Crow*

states. Second, they point to a recently repealed federal policy memorandum (the Cole Memo), which warns states with legal marijuana not to allow elements of organized crime to become part of the industry.<sup>14</sup> They believe excluding people with criminal histories is a straightforward way to adhere to these federal guidelines and not invite interference from the federal government.

On the other hand, some who support criminal justice reform argue that excluding people with prior offenses — especially marijuana-related offenses — is hypocritical.

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<sup>14</sup> Attorney General Jeff Sessions rescinded the Cole Memo in January 2018.



According to Jordan Seaberry, Director of Public Policy and Advocacy for the Institute for the Study and Practice of Nonviolence, legalization laws should first “do no harm” by not creating barriers to entering the marijuana industry for people with prior convictions. He also thinks the state should not require prohibitively expensive fees to apply for and maintain a marijuana business license. In addition, he believes that Rhode Island should take proactive steps to create pathways into the legal marijuana industry for people from marginalized communities. This might involve, for example, distributing business licenses through a points system that favors applicants from communities most impacted by marijuana prohibition. It is likely that this could only be done if there is a widely endorsed disparity study conducted that finds evidence of unequal enforcement. Otherwise, a court may rule it unconstitutional. Other social justice advocates have expressed support for a free market licensing approach that does not place limits on the number of licenses available. This levels the playing field by removing the advantages deep-pocketed applicants may have in a points-based system.

### Summary

Arrest data strongly suggests that marijuana prohibition has been unequally enforced, harming people of color disproportionately. Given the social harms caused by punitive marijuana policies, many believe legalization creates an opportunity to address past injustices. This section covered the following:

- Arrest data from 2001 to 2010 shows that people of color were nearly three times more likely to be arrested for marijuana possession than whites in Rhode Island.
- Many states that have legalized marijuana allow individuals with prior marijuana arrests to clear or expunge those offenses from their criminal records.
- Although some believe that people with prior drug offenses should be barred from participating in the legal marijuana industry, many social justice advocates criticize these laws.
- Some argue that lawmakers should ensure there are low barriers to entry into the market for people from communities that have been disparately harmed by marijuana prohibition.

## Protecting youth

Nearly everyone engaged in the discussion about legalizing marijuana agrees that protecting young people and preventing youth marijuana use are important policy goals. Although there is still debate about the extent to which marijuana can be harmful to adolescents' social and cognitive development, there is little doubt that adolescent marijuana use — like underage alcohol and tobacco use — is generally inappropriate unless recommended by a doctor and supervised by a parent for a serious medical reason. Although there is some debate about the appropriate age at which marijuana use should become legal, every state that has passed a legalization law so far has set the age limit at 21, which mirrors the age restrictions for alcohol in the United States. Beyond age limits, youth advocates, public health researchers, and regulators have identified other policies that can discourage and prevent youth marijuana use.

### Advertising restrictions

Several states with legal marijuana have rules designed to minimize minors' exposure to marijuana-related advertising. Colorado, for example, prohibits marijuana advertisements unless the business “has reliable evidence that no more than 30 percent of the audience ... is reasonably expected to be under the age of 21.” Most states also include language in their laws against advertisements that feature images of marijuana or people consuming marijuana. Some organizations, such as National Families in Action (which opposes legalizing marijuana), recommend that advertising be banned altogether.

However, there is debate about whether advertising bans and restrictions violate businesses' freedom of speech.<sup>15</sup> A few interviewees, including addiction recovery advocate Ian Knowles, pointed out that advertising restrictions on tobacco seem to have contributed to the success in significantly reducing teen cigarette use in recent years. He suggests adopting advertising rules for marijuana that are as strict as those in place for tobacco. Mr. Oglesby recommends that states not allow cannabis advertising be a tax-deductible business expense. Advocates for medical marijuana and some proponents of legalization, however, point out that marijuana is not uniformly harmful like tobacco.

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<sup>15</sup> Jacobs, Leslie Gielow, “Regulating Marijuana Advertising and Marketing to Promote Public Health: Navigating the Constitutional Minefield” (July 27, 2017). *Lewis & Clark Law Review*, Vol. 21, No. 4, Forthcoming; Pacific McGeorge School of Law Research Paper.

### Product regulations

Warning labels stating that marijuana products are illegal for people under 21 are required in most legalization states. Childproof packaging, especially for edible marijuana products, is another common requirement. There is also a significant push to restrict the packaging designs in a way that is not appealing to children. This typically involves making the package opaque, sometimes colorless, and not designed in a way that resembles candy. In Washington, a regulatory board must approve all edible product packaging before the product can be made available for sale. States are also limiting the amount of THC in each product.

States can also opt to ban certain kinds of products entirely. Some edible marijuana products, for example, have come under some scrutiny because of their similarity to normal food products. Dr. David Lewis worries about edible marijuana because it may take over an hour for the psychoactive effects to occur, making it more difficult to regulate one's dosage. This, he believes, increases the risk of accidentally consuming more than one intends. Dr. Lewis recommends looking more closely at Washington's system, which requires that producers of edibles receive approval from a product review board before allowing the items for sale. States have also set guidelines for potency limits on marijuana products.

### Prevention programs and public education campaigns

Several interviewees stressed the importance of funding community-based youth drug prevention programs and public education campaigns to discourage youth marijuana use under legalization. Dr. Bethany Lewis thinks these initiatives must be evidence-based and tailored to particular communities. In other states with legalization, there are often separate public awareness campaigns, one aimed at young people and another at parents or adults generally. Dr. David Lewis emphasizes that these messages must be honest and credible in order to be effective. Otherwise, young people and adults will simply ignore them. Michelle McKenzie adds that messages to young people need not specifically focus on drug use. More important, she thinks, are messages that encourage youth to take responsibility for their bodies and learn to make healthy decisions in all aspects of their lives. Encouragingly, a recent report from Colorado suggests that their public education campaigns about marijuana

have been effective in raising awareness about the risks of marijuana use among youth and adults.<sup>16</sup>

It is informative to recognize that teen alcohol and tobacco usage rates are currently at historic lows.<sup>17</sup> The tools and strategies that have been used to discourage teens from using these legal substances are likely ones that can be effective in addressing teen marijuana, too. Fortunately, data collected so far from states like Colorado and Washington suggest there has not been a significant increase in adolescent marijuana use after legalization. Through an increasingly sophisticated and evidence-based combination of regulatory strategies and credible public education campaigns, it may be possible for states to develop effective strategies that lower teen marijuana use while maintaining a system of legal use for adults.

**“Research-based prevention programs focus on intervening early in a child’s development to strengthen protective factors before problem behaviors develop.”**

*- Preventing Drug Use Among Children and Adolescents, National Institute on Drug Abuse*

### Summary

Legalizing marijuana for adults is compatible with strategies to prevent and discourage marijuana use among youth. Several important topics were discussed in this section:

- Both opponents and proponents of legalization agree that marijuana use among adolescents is generally inappropriate.
- States are imposing regulations such as advertising restrictions, potency limits, and packaging guidelines for marijuana products to reduce exposure to minors.
- Additionally, states like Colorado are funding public awareness campaigns to educate youth and adults about marijuana and finding those initiatives to be successful.

<sup>16</sup> <https://www.colorado.gov/pacific/marijuana/news/coloradans-know-more-about-marijuana-now-when-it-was-legalized>

<sup>17</sup> Tavernise, Sabrina. “New Lows in Smoking and Drinking Rates for Teenagers.” *The New York Times*, 8 Sept. 2016, p. A12.

- Successes in lowering rates of teen tobacco and alcohol use suggest that it is possible to reduce teen marijuana rates, too; so far, data from other states suggest that legal marijuana for adults does not drive up usage rates for teens.

## Impaired driving

All sides of the legalization debate agree that public safety is a top priority. Most recent studies analyzing the relation between marijuana and traffic accidents have addressed correlation but not causation. Due to difficulties in studying this issue, researchers have reached differing conclusions about the impact of legalization on road safety. Nonetheless, preventing impaired driving is a shared goal among legalization advocates and opponents.

### Testing for impairment

When it comes to impaired driving laws for marijuana, a majority of states have effect-based laws, which take into account cumulative evidence for impairment, including field sobriety tests, officer testimony, video footage, and/or blood tests. Rhode Island, however, is one of 17 states with “zero tolerance” laws, which means that the presence of any THC or THC metabolites found in a person’s blood counts as evidence for impairment. However, THC is fat soluble, which means it can remain in a person’s system for several days after the initial use, and THC metabolites can stay in the body for weeks.

Some states with legalization enforce what are known as “*per se*” laws, which criminalize drivers who are found with THC levels in their blood that exceed a certain threshold. Civil rights advocates and others criticize these laws because they can punish people who were not impaired at the time they were driving. Especially for regular consumers, both THC itself and active marijuana metabolites can remain in the blood for many days after use.

There is currently no reliable method for detecting *recent* marijuana use. Several companies and research groups in Colorado and elsewhere are currently piloting the use of devices that are intended to detect recent use. Due to uncertainty about whether there even exist chemical indicators of marijuana intoxication, though, it is unclear if or when roadside technology will be developed that definitively determines whether someone is impaired.

In light of these challenges, it may be best for Rhode Island to revise its laws and follow the majority of other states that rely on effects-based laws to prosecute drivers for marijuana impairment.

### Enhanced training for police officers

States like Massachusetts are investing in training more officers to become drug recognition experts (DREs). Vermont is looking into a similar program known as Advanced Roadside Impaired Driving Enforcement (ARIDE). These trainings

teach police the various physiological and behavioral signs of impairment from different drugs. Their testimony in court can hold considerable weight with judges. Given the many challenges related to chemical tests for marijuana impairment, specialized training for officers may be the best option for enforcing impaired driving laws. Previous bills to legalize marijuana in Rhode Island would set aside revenue raised from marijuana taxes to increase the number of DREs in the state. However, some criminal defense attorneys criticize these programs and say they are not backed by credible scientific evidence.

### Summary

Impaired driving is a common concern among opponents and skeptics of legalization. Whether marijuana is legal or not, though, impaired driving is an issue Rhode Island lawmakers should give consideration. In this section, we discussed the following:

- Most studies on the effect of legalization on road safety are correlational, not causal, and various studies have reached different conclusions.
- Currently, Rhode Island maintains a “zero tolerance” law against marijuana impaired driving that relies on the presence of THC or its metabolites to prove impairment, despite the fact that these compounds can remain in the body long after using marijuana.
- Given the criticism of “zero tolerance” and related “*per se*” laws, it may be best for Rhode Island to adopt an effects-based law, which cumulatively weighs all evidence of impaired driving.
- There are several difficulties related to developing a method to determine recent use and intoxication levels for marijuana, but some researchers are working to develop technologies that address this issue.
- Other states are prioritizing the training of more police officers in special programs, such as DRE and ARIDE, to better recognize physiological and behavioral signs of impairment.

## Medical marijuana

Marijuana is often consumed for its pleasurable or recreational effects, but it is also used as a therapeutic medicine to treat pain and address debilitating health conditions. Some advocates of medical marijuana think that legalizing marijuana can only help to make marijuana more affordable and accessible. But others worry that legalizing marijuana for recreational use could cause problems for medical marijuana patients.

Almost every state that has legalized marijuana for adults maintains a parallel medical marijuana system alongside their adult-use market. The products in these separate systems are taxed at different rates, and in some states, medical marijuana patients have greater allowances for home cultivation. It would be wise for lawmakers to consider how creating an adult recreational market will interact with and affect the existing medical marijuana program and vice versa.

### Rhode Island's medical marijuana program

Originally approved by the General Assembly in 2006, Rhode Island's medical marijuana law created a framework for patients with debilitating medical conditions to safely access medical marijuana if approved by their doctor. The law has been amended several times, including in 2009 when medical marijuana "compassion centers" (or dispensaries) were added. However, these compassion centers did not actually open until 2013. There are currently only three medical marijuana dispensaries in Rhode Island, but Gov. Gina Raimondo recently proposed expanding the number to 15.<sup>18</sup>

Under the medical marijuana law, cardholding patients are permitted to cultivate their own marijuana or appoint a "caregiver" to grow for them. After recent passage of a new law designed to address law enforcement concerns about home cultivation, the state now requires that each plant grown by a patient or caregiver have a uniquely identified "tag" obtained from the Department of Business Regulation. Patients and caregivers may also buy medical marijuana and medical marijuana products from compassion centers.

The law allows for larger cultivation sites if the business is registered as either a cooperative cultivation or a licensed cultivator. Cooperative cultivations are collections of patients that pool their plants and grow together. Licensed

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<sup>18</sup> <http://www.providencejournal.com/news/20180118/raimondo-budget-seeks-dramatic-increase-of-medical-marijuana-dispensaries>



cultivators are tightly regulated producers, which are permitted to only sell medical marijuana to compassion centers.

### Protecting patient access

As the executive director of the Rhode Island Patient Advocacy Coalition, JoAnne Leppanen is a leading advocate for medical marijuana patients in Rhode Island. She points out that many patients are from low-income backgrounds and struggle to consistently find affordable medical marijuana that meets their needs. Under a system of full legalization, she is concerned that producers will not cater to the needs of patients and instead opt to only serve the recreational market. Certain strains of marijuana contain specific cannabinoids, such as cannabidiol (CBD), that are helpful for many debilitating medical problems but do not have the same psychoactive effect of THC. She worries that opening up a recreational market will tend to reduce the availability of CBD-rich strains, since there is little demand for these products among recreational users. However, in other states with full legalization like Colorado and Washington, the market generally continues to provide a wide variety of low-THC and high-CBD products.

On a more optimistic note, Ms. Leppanen thinks there are some individuals who might benefit from using marijuana but are currently unable to obtain a patient license. For example, under the current medical marijuana law, an individual may not qualify for a patient license if they struggle with severe insomnia, because insomnia is not one of the specific health conditions that qualify for medical marijuana under the state law. Opening up the marijuana market and making it legal for all adults could have some other upsides for people with serious health issues, such as bringing down current prices. But patient advocates like Ms. Leppanen insist that legalization must be implemented in a thoughtful way that prioritizes the medical needs of patients.

### Summary

If Rhode Island follows the path of other legalization states in maintaining a parallel system of medical marijuana alongside an adult-use market, lawmakers should give thought to how these systems will interact. Some important takeaways include:

- Rhode Island has maintained an expanding medical marijuana program since 2006, which allows patients with certain health conditions to cultivate marijuana and/or purchase it from a state-licensed dispensary.

- Patient advocates believe that full legalization may help patients in some ways (e.g. by lowering cost, increasing access, etc.), but insist that patient needs remain a top priority.
- Lawmakers should consider how the different systems would work in terms of taxation, home cultivation, and other regulations.

## Other issues

### Home cultivation

If marijuana is legalized, should adults be permitted to cultivate and harvest their own marijuana? Most legalization advocates believe that the ability to grow one's own marijuana at home is an essential part of legalization. They often liken home cultivation to home brewing with beer, which is allowed in every state. Most states that have legalized marijuana allow some form of home cultivation.

Others, though, have deep concerns about home growing. Some worry that allowing home growing will undermine the legal market. Although Colorado regulators say that the legal market meets 75% of the demand for marijuana in the state, some reports suggest that a “gray market” fueled by quasi-legal home cultivation causes problems. However, these issues were largely linked to large grow sites in the medical marijuana program, which are now illegal.

Local officials and law enforcement officials in Rhode Island have raised concerns about home growing by medical marijuana patients and caregivers, arguing that these policies have led to fires and home burglaries. In response, lawmakers passed law to establish a tagging system, which allows regulators to track and monitor home cultivations.

A 2017 poll of Rhode Island voters found that 56% support allowing limited home cultivation, while 40% oppose the idea.<sup>19</sup>

### Local control

Cities and towns have an important stake in the way marijuana is regulated. In states such as Colorado, municipalities may impose additional taxes, levy penalties against marijuana businesses, or ban the marijuana industry altogether. In Rhode Island, businesses that sell alcohol are largely licensed and regulated by local governments. To what degree should municipalities be able to regulate marijuana businesses?

Municipalities in states with legal marijuana have taken different approaches to the industry. Some have elected to impose a total ban. Others have adopted a temporary moratorium. And some — including all major cities — have allowed regulated marijuana businesses. Some states allow these decisions to be made

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<sup>19</sup> <https://www.regulateri.com/assets/files/pdf/polling/RI-StatewideToplines.pdf>

exclusively by town or city councils, but many advocates for legalization worry that more conservative town councils may ban marijuana businesses against the preferences of the residents. However, others, such as former director of the Rhode Island Department of Health Dr. Michael Fine, argue that this is the nature of a representative form of government. If residents are unhappy about a local ban, they are free to vote for different town councilors.

A possible compromise might involve allowing town councils to impose moratoriums in the short-term and then requiring any permanent ban to be approved through a local referendum. Massachusetts' law, for example, requires a local referendum to uphold any ban in a locality in which a majority of voters approved the 2016 ballot question.

If Rhode Island legalizes marijuana, it is likely that state agencies will bear the bulk of the responsibility in regulating the industry. However, many feel that local governments should have control over marijuana establishments, too.

One local government staff person in an urban community (who requested to be anonymous) suggests that cities and towns be allowed to establish their own local licensing programs such that any marijuana business that wishes to operate would need to obtain a license from both the state and local government. This would increase local accountability and allow for additional oversight and enforcement. Local governments are also likely to be interested in imposing local taxes to shore up their budgets. Some states, like Oregon, limit local taxes; others, like California, allow unlimited local taxes; and Washington allows none.

### Data collection and public oversight

Several interviewees, including Dr. Bethany Lewis and Bob Houghtaling, emphasized the need for Rhode Island to establish a robust plan to monitor outcomes and collect data if marijuana is legalized. They believe this oversight can help regulators understand the impacts of various policies and where changes should be made. Of particular interest for these two interviewees is the impact on youth marijuana use and changing perceptions of the norms around drug use.

Others like the idea of data collection and oversight for different reasons. Jordan Seaberry, for example, supports the idea of having an oversight commission that studies whether there are racially disparate impacts of the legal marijuana industry, including monitoring whether people of color are able to

effectively participate in it. JoAnne Leppanen feels it is important to oversee the consequences of full legalization for medical marijuana patients.

### Employment policies

Under current Rhode Island law,<sup>20</sup> employers may refuse to hire any individuals who test positive for marijuana in a pre-employment drug screen. In addition, current employees who test positive for marijuana can be required by the employer to pursue treatment and may be terminated if drug use continues.

Steven Brown, director of the Rhode Island ACLU, argues that if marijuana is legal, employers should not be able to discriminate against marijuana users, so long as they are not impaired while working. He asks, what is the point in legalizing marijuana if it does not protect against employment discrimination? Few (if any) employers in Rhode Island punish employees or applicants for consuming alcohol on weekends or days off. Why should we not treat marijuana the same way?

Some employers have put forth a counter argument based on legal concerns. They say that businesses may be held liable if one of their employees acts recklessly or endangers others while on the job. Screening for marijuana use is both a hedge against having employees who are impaired at work and also potential evidence that the employee, not the company, was at fault. Similar scenarios arise in worker's compensation cases and other matters. It is important to note that blood and urine tests can detect marijuana several weeks after an individual last used, so they are not good tests for determining impairment. Nonetheless, some business owners argue that this is their best and only option for legally protecting themselves in some situations.

Recently, a Rhode Island Superior Court ruled<sup>21</sup> in favor of a medical marijuana patient who sued a company that refused to hire her because of her marijuana use. The ruling was based on an interpretation that Rhode Island's medical marijuana law prohibited such actions and that the behavior amounted to disability discrimination and violated the Rhode Island Civil Rights Act. It is unlikely that a court would see recreational and medical use as similar in this regard.

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<sup>20</sup> *RI Gen. Laws Chap. 28-6.5*

<sup>21</sup> *Callaghan v. Darlington Fabrics Co.*

## Public and social use

Many of those we interviewed for this report suggested that laws for public marijuana use (indoors and outdoors) reflect those currently in place for alcohol and tobacco. Since drinking in public outdoor spaces and smoking in public indoor areas are generally prohibited, this would effectively ban all public marijuana use. This would essentially leave private residences as the only acceptable locations to use marijuana (unless exceptions are made for smokeless forms of consumption such as vaporizing).

In Denver, Colorado, residents approved an initiative to establish social use areas for marijuana, similar to bars for alcohol. The first application was recently submitted. Massachusetts regulators have also given preliminary approval to the idea of social use spaces for marijuana, and Las Vegas officials are moving to regulate these kinds of sites, too. Although this idea may strike some as “too

**“I believe that problematic and addictive alcohol and other drug use is, to a significant extent, learned in specific cultural and physical environments.”**

- Ian Knowles, advocate for people in recovery from addiction

much, too fast,” several interviewees — including a current and retired police officer — agreed that this might be a good idea. Denver sees these social use areas as a way to mitigate the problem encountered by tourists and others who do not have a private residence in which they can consume marijuana. From a law enforcement perspective, creating designated areas and issuing licenses to businesses where marijuana use can take place may make it easier to

manage and prevent open public consumption.

Ian Knowles, however, pushed back against the idea of allowing areas for social marijuana use. He believes that bars can be the very place that alcoholics learn to consume alcohol irresponsibly and warns that some could follow a similar path for marijuana if social use areas are widespread. However, it is worth noting that “cannabis cafes” have existed in the Netherlands for many years, and marijuana usage rates in their country are lower than rates in the United States.

Michelle McKenzie, while generally supportive of the idea of social use areas, also raises a concern about what people do when they are impaired and want to leave. Will they get in a car while impaired? She has the same worry about alcohol establishments now and feels that we do little to address how people get home after a night of drinking.

## Banking

One of the most difficult legal issues created by the federal and state conflict on marijuana laws is banking. Many banks refuse to do business with marijuana companies because they fear pushback from the federal government. However, from a public safety point of view, people like Col. Clements, police chief of Providence, feel that cash-only businesses are problematic. Cash-only operations are harder to track and can become targets for robbery. He says that if marijuana is legalized, the state should study any possible ways to make banking services available to marijuana businesses.

## Cultivation and pesticide regulations

One issue that has gained more attention recently is the environmental impact of indoor marijuana cultivation. The process is relatively energy intensive, due in large part to the powerful lights necessary to grow the plants. Marijuana cultivation also requires a significant amount of water. Outdoor cultivation — while difficult to do year round because of Rhode Island's climate — requires less artificial energy usage. If marijuana is legalized, lawmakers may want to consider policies that allow for or even encourage outdoor cultivation. Some jurisdictions, for example, impose special taxes on energy-intensive indoor marijuana operations.

Another environmental and health concern relates to pesticide use. Colorado and other states have done much work to identify which pesticides are appropriate for cultivating marijuana. Rhode Island may look to these existing regulations for guidance if lawmakers decide to legalize.

## Security regulations

Col. Clements says that there have not been any security or public safety issues with the medical marijuana compassion center in Providence. He appreciates that the dispensary has hired former law enforcement officers as part of their team, because this makes communication and security coordination more harmonious. He hopes that, if marijuana is legalized, businesses will be encouraged to work closely with state and local law enforcement agencies to maintain open lines of communication.

Regulations for securing the premises of marijuana establishments have already been developed for the medical marijuana program by the Department of Business Regulation. These regulations also include an inventory monitoring system that tracks products from "seed-to-sale." This framework could be expanded to include adult-use marijuana if lawmakers move forward with legalization.

## Conclusion

When someone says they support or oppose marijuana legalization, we should ask them what they mean by “legalization.” Legal how? Legal like tomatoes? Like tobacco? Like alcohol? From tax rates to zoning ordinances to rules for advertising, this report has shown the depth and importance of these questions.

While some of us advocate for legal marijuana and others oppose it with equal vigor, this does not mean we cannot have constructive conversations about how marijuana should be regulated. In fact, crafting sensible public policy requires that we consider the perspectives of all stakeholders — not just those who are most vocal on one side or the other. Although it is clear that there are some significant disagreements, there may be more common ground than one might expect.

The Marijuana Policy Project and Regulate Rhode Island are grateful to the many individuals who contributed to this report, not only for their insightful and helpful comments but also for their willingness to take time away from their lives to think deeply about an important set of questions that may impact Rhode Island for years to come.

It is also worth noting that, if Rhode Island lawmakers decide to move forward with legalization, they have the benefit of learning from the experience of other states. In total, nine states have legalized marijuana for adult use, and thanks to the experiences of these other states, Rhode Island has a better chance of streamlining its program from the outset.



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