

Marijuana Legalization in Washington and Colorado



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Voters in Colorado and Washington State made history in 2012 by rejecting the decades-long failed policy of marijuana prohibition and deciding to legally regulate marijuana sales, cultivation and distribution for adults. These states recognize that prohibition wastes scarce law enforcement resources, harms the lives of otherwise law-abiding community members, perpetuates unjust racial disparities, contributes to crime, corruption and violence, and utterly fails to control access to marijuana by young people.

Election Results

Legalization won decisively in both states. In Colorado, Amendment 64 won with 54.8% of the vote, and in Washington State, Initiative 502 won with 55.7%.

States Can Choose a Different Course Without Violating Federal Law

Under our federalist system of government, there are independent state and federal laws regarding marijuana. Any state can freely choose to legalize marijuana under its own laws. However the federal government retains its ability to arrest and prosecute individuals for marijuana crimes under federal law.

For nearly a year, the Obama administration remained silent about how it was going to respond to Colorado's and Washington's innovative new policies. After years of trying futilely to stop states from adopting sensible medical marijuana regulations, the administration was at a crossroads: continue to undermine state regulations or work with the states to balance their rights with federal interests.

They wisely chose the latter. In August of 2013, the Department of Justice announced that it will allow states to implement state laws that legally regulate the production, distribution, and sale of marijuana. The

Department of Justice issued a directive to U.S. Attorneys across the country outlining federal priorities for enforcing marijuana laws in states where marijuana is legal. While reserving its right to challenge state laws in the future, and to enforce federal laws under certain circumstances, the directive states that the federal government will coordinate with states, rather than seek to interfere, unless states fail to meet certain core federal priorities, such as preventing access to marijuana by minors, diversion of marijuana to neighboring states, revenue going to criminal enterprises, increases in violence or drugged driving, and damage to public lands.¹

It would have been wildly unpopular for the federal government to interfere with these new state programs. A slew of recent polls have shown that significant majorities of both Republicans and Democrats strongly believe that the decision of whether and how to regulate marijuana should be left up to the states.²

Impact

Colorado and Washington have become the first political jurisdictions in the world to create a regulated system of legal marijuana production and distribution. Their ongoing experiments are a dramatic rebuke to the approach that has dictated U.S. and international drug policy since President Nixon launched the war on drugs in 1971. These two states are demonstrating to the rest of the U.S. and the world that there is a more reasonable and responsible path. In 2013, Uruguay became the first country to legalize marijuana.

Nearly half of the 1.5 million U.S. drug arrests each year are for marijuana law violations, usurping scarce law enforcement and criminal justice resources. Marijuana prohibition also causes incalculable violence by fostering an illicit market worth billions.

Comparison of Washington's and Colorado's Laws: What Do They Do?

There are significant distinctions between how Colorado and Washington will regulate the production, distribution and sale of marijuana.

Washington

Initiative 502 legalizes the possession of marijuana for people age 21 and older under state law and establishes a system for commercial marijuana production, processing and distribution through private businesses specially licensed and regulated by the Washington State Liquor Control Board, the agency that regulates alcohol in Washington State.

People age 21 and older can possess up to one ounce of usable marijuana, 16 ounces of marijuana-infused product in solid form, or 72 ounces of marijuana-infused product in liquid form. Home cultivation remains illegal (except for medical marijuana patients).

The new law establishes an excise tax of 25 percent on every wholesale purchase by a licensed producer or processor, and a 25 percent tax on every retail sale of marijuana or marijuana-infused products. Revenue goes to the state general fund and to substance abuse prevention, research, education and healthcare. The Washington State Office of Financial Management estimates that Initiative 502 could generate as much as \$1.9 billion within five years.

The law does not change Washington's medical marijuana law. Patients can still cultivate marijuana, but they will now also be able to buy it from regulated retailers. The law does, however, establish a new per se standard for driving under the influence of marijuana. A person age 21 or older with five nanograms of THC per milliliter of blood will be guilty of driving under the influence of drugs. Police officers still need proof of impairment to make an arrest and to take a driver to a medical professional for a blood draw. For those under 21, it will be illegal to drive with any amount of active THC in one's system.

Initiative 502 took effect on December 6, 2012. The Liquor Control Board issued rules for the regulated market in late 2013, and legal sales will commence in summer of 2014.

Colorado

Amendment 64 legalizes personal use, possession, and cultivation for adults 21 and older. It establishes a system for commercial marijuana production, processing and distribution through private businesses specially licensed and regulated by the Colorado Department of Revenue, the state agency that regulates alcohol, tobacco and medical marijuana.

Under the new law, adults over 21 years of age can possess up to one ounce of marijuana and grow up to six marijuana plants (only three of which may be mature) in an enclosed, locked space; they can possess the marijuana produced by the plants (even if in excess of one ounce). Adults over 21 are allowed to give away marijuana (including marijuana they grow) to others age 21 and older but cannot receive any compensation for home-grown marijuana.

The new law directs the legislature to enact an excise tax not greater than 15 percent prior to January 1, 2017 and at a rate determined by the legislature thereafter. The first \$40 million in revenue annually goes to school construction.

According to the Colorado Center on Law and Policy, the new law could save state and local law enforcement millions of dollars and generate up to \$24 million in tax revenue annually.

The law does not change Colorado's medical marijuana laws for patients, caregivers and businesses. Medical marijuana will be exempt from the excise tax placed on non-medical marijuana.

Possession and home cultivation became legal on December 10, 2012. The Department of Revenue promulgated rules for the new market in mid-2013, and the state began to sell marijuana legally on January 1, 2014 – making more than \$5 million in sales in the first week alone.

¹ Deputy Attorney General James Cole, "Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement," (Washington, DC: U.S. Department of Justice, Office of the Deputy Attorney General, 2013).

² Frank Newport, "Americans Want Federal Gov't Out of State Marijuana Laws," Gallup (December 10, 2012), <http://www.gallup.com/poll/159152/americans-federal-gov-state-marijuana-laws.aspx>; and Fred Backus & Stephanie Condon, "Poll: Nearly half support legalization of marijuana," CBS News (November 29, 2012), http://www.cbsnews.com/8301-250_162-57556286/poll-nearly-half-support-legalization-of-marijuana/.