

TRANSFORM
Drug Policy Foundation

ALTERED STATES: **Cannabis regulation in** **the US**



Further reading

A Spanish companion report is available from our partners [México Unido Contra la Delinencia](#). 'Modelos de regulación legal del cannabis en Estados Unidos' which assesses regulatory systems for cannabis retail in the USA state-by-state.

Transform has also published a number of other publications on cannabis regulation which we would recommend reading. These include:

[How to Regulate Cannabis: A Practical Guide](#)

[Cannabis legalisation in Canada – One year on](#)

Capturing the Market: Cannabis regulation in Canada

[Cannabis legalisation in Uruguay: public health and safety over private profit](#)

[Cannabis policy in the Netherlands: moving forwards not backwards](#)

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Introduction

Since Colorado and Washington legally regulated cannabis for adult, non-medical use in 2012, nine more US states have followed suit, with more set to follow.¹ Many more have legalised medical cannabis only, though these are not the focus of our report. These rapid changes have put the US at the forefront of the global shift toward the legal regulation of cannabis.

Despite changes at state level, the cultivation, possession and sale of cannabis remains illegal under federal law. This means states are acting independently, which has resulted in regulation differing considerably across jurisdictions. In effect, a series of natural experiments are taking place, each presenting a different model for how cannabis can be regulated. It will take some time for full evaluation of outcomes, and we will not know the detailed consequences until longer term studies have been completed. However, looking across the states that have legally regulated cannabis so far allows us to begin comparing the principles behind different models and considering some of their initial impacts. In this report, we take a thematic look at key regulatory issues and outline some of the lessons that can be learned for future policy reform.

Key Terms

Decriminalisation: removing criminal penalties for personal drug possession, with production and supply remaining illegal (civil or administrative sanctions can remain)²

Legalisation: making an illegal drug legal to produce, supply and possess.

Legal regulation: implementing controls on the production, supply and use of the drug once it has been legalised.

Setting up a retail market

A fully regulated retail market for cannabis takes time to establish. It involves actors working across the supply chain, and each element requires specific regulation. Cultivators must ensure their products are safe; retailers must adhere to licensing requirements that ensure good sales practice; parameters must be set for advertising standards and so forth. As will be discussed below, regulations can take many different forms and there is considerable variation.

By comparison, legalising only the possession and home cultivation of cannabis can be done relatively quickly. Therefore, some states have opted to take a staged approach. In Michigan, for example, possession and home cultivation of cannabis were legalised at the end of 2018, allowing for individuals to possess up to 2.5 ounces, cultivate up to 12 plants and keep up to 10 ounces of cannabis in their property.³ The state only began accepting retail licence applications from 1 November 2019, with sales

¹ Angell, T. (2019). Marijuana On The 2020 Ballot: These States Could Vote. Forbes 26 December. <https://www.forbes.com/sites/to-mangell/2019/12/26/marijuana-on-the-2020-ballot-these-states-could-vote/#478270b679df>

² See: International Drug Policy Consortium (Undated). Decriminalisation Comparison Tool. <http://decrim.idpc.net/>

³ Michigan Legislature (2018). Initiated Law 1 of 2018: Michigan Regulation and Taxation of Marihuana Act (Excerpt). 333.27955 Lawful activities by person 21 years of age or older; terms, conditions, limitations, and restrictions; denial of custody or visitation prohibited. [https://www.legislature.mi.gov/\(S\(vzd0fbq4x2ymx0t53zmbym5d\)\)/mileg.aspx?page=getObject&objectName=mcl-333-27955](https://www.legislature.mi.gov/(S(vzd0fbq4x2ymx0t53zmbym5d))/mileg.aspx?page=getObject&objectName=mcl-333-27955).

beginning in a small number of stores on 1 December 2019.⁴ In Maine, the Marijuana Legalization Act took effect in 2016 to authorise personal cultivation of up to three mature plants and personal possession of up to 2.5 ounces of cannabis.⁵ However, licence applications for commercial cultivators, manufacturers and retailers did not open until December 2019 and retail products are not expected to hit the market until June 2020.⁶ The state had received 197 applications by February 2020. In contrast to all other legalising states, Vermont has only introduced a ‘give and grow’ system, in which the sale of cannabis remains prohibited but individuals are allowed to grow up to two mature (and four immature) plants per household, which they may also share.⁷ Inevitably, perhaps, there have been attempts to circumvent this limitation, leading the Vermont Attorney General to clarify that businesses charging a ‘delivery fee’ to deliver ‘free’ cannabis were still breaking the law.⁸

Vermont, however, remains the exception. In all other cases states that have moved to legalise adult, non-medical cannabis use have moved — either incrementally or directly towards establishing a retail market.

Moving from a medical market

Cannabis is now legal in most of the US for medical purposes, so many states have an established infrastructure for some types of supply. Since full legal regulation creates new administrative burdens, some states have chosen to only license existing businesses as opposed to new ones. This strategy simplifies the administrative process; however it also creates significant barriers to diverse participation in the market, and limits access for local small businesses, who may well represent the local communities more closely than the larger operators. The same is true for indirectly preferencing existing medical businesses, as was seen in Colorado’s initial regulatory model, which required that retail businesses produced at least 70% of cannabis that they sold. This was pushed for by existing medical businesses as the requirement was already in force to regulate medical cannabis sales, meaning these businesses were already in compliance. It had the effect of delaying market access for new businesses who had to develop capacity to overcome these regulatory hurdles, before the requirement was dropped in September 2014.⁹ As cannabis markets develop worldwide, many large cannabis companies are seeking to establish themselves in existing medical markets, speculating that future legal regulation may offer lucrative opportunities for those first through the door.¹⁰ Allowing established players to entrench and corner their markets, especially ahead of full legalisation, risks negating social equity measures

4 Michigan.gov (2019). Michigan’s Marijuana Regulatory Agency Releases Emergency Rules. 3 July. <https://www.michigan.gov/marijuana/0,9306,7-386-89871-501189--,00.html>; Mauger, C. (2019). Michigan issues first license to sell recreational marijuana. The Detroit News 19 November. <https://eu.detroitnews.com/story/news/local/michigan/2019/11/19/michigan-issues-1st-recreational-marijuana-license/4237643002/>; Winowiecki, E. (2019). Michiganders can buy recreational marijuana December 1. Here’s what you need to know. Michigan Radio 27 November. <https://www.michiganradio.org/post/michiganders-can-buy-recreational-marijuana-december-1-here-s-what-you-need-know>; Hauck, G. (2019). Recreational marijuana is legal in Michigan and will soon be legal in Illinois. Here’s what to know. USA Today 1 December. <https://eu.usatoday.com/story/news/nation/2019/12/01/legal-weed-michigan-illinois-know-recreational-marijuana/4339486002/>.

5 Maine Legislature (2016). Title 28-B, Chapter 1: MARIJUANA LEGALIZATION ACT. §1502. Home cultivation of marijuana for personal adult use; §1501. Personal adult use of marijuana and marijuana products. <http://legislature.maine.gov/statutes/28-B/title28-Bch1sec0.html>

6 Overton, P (2019). Maine finally ready to take applications for marijuana businesses. Press Herald 5 November. <https://www.pressherald.com/2019/11/04/state-sets-date-for-maine-recreational-marijuana-license-applications/>; Overton, P. (2020). State now expects retail marijuana stores won’t be open until June. Portland Press Herald 28 February. <https://www.pressherald.com/2020/02/28/state-expects-first-retail-marijuana-shops-to-open-in-june/>

7 General Assembly of the State of Vermont (2018). Act No. 86: An act relating to eliminating penalties for possession of limited amounts of marijuana by adults 21 years of age or older. s4230(a)(1)(a). <https://legislature.vermont.gov/Documents/2018/Docs/ACTS/ACT086/ACT086%20As%20Enacted.pdf>; Landen, X. (2020). Vermont House backs legal market for marijuana sales. VT Digger 26 February. <https://vtdigger.org/2020/02/26/vermont-house-backs-legal-market-for-marijuana-sales/>

8 McCullum, A. (2018). Marijuana ‘gifting’ businesses illegal, says Vermont Attorney General. Burlington Free Press 25 July. <https://eu.burlingtonfree-press.com/story/news/politics/government/2018/07/23/marijuana-delivery-fees-illegal-says-vermont-attorney-general/818276002/>

9 Rolles, S. and Murkin, G. (2016). How to Regulate Cannabis: Second Edition. Transform Drug Policy Foundation. p55-56. <https://transformdrugs.org/product/how-to-regulate-cannabis-a-practical-guide/>

10 Connexion Journalist (2020). French medical cannabis trial sparks market battle. The Connexion 7 February. <https://www.connexionfrance.com/French-news/French-medical-cannabis-trial-sparks-market-battle-between-Canadian-and-European-firms>; Pascual, A. (2019). Netherlands to expand cannabis production, potentially creating competition for Bedrocan. Marijuana Business Daily 24 April. <https://mjbizdaily.com/netherlands-to-expand-cannabis-production-potentially-jeopardizing-bedrocans-monopoly/>; Aurora Cannabis Inc (2018). First License to Import, Manufacture, Store, and Distribute Medical Cannabis Containing THC in Mexico. Cision PR Newswire 10 December. <https://www.prnewswire.com/news-releases/aurora-cannabis-to-acquire-mexicos-farmacias-magistrales-sa-300762402.html>.

organisation's annual sales revenue.¹² However, this did not stop its licensed retailers running out of cannabis just six days after sales began.¹³ In Michigan, the Marijuana Regulatory Agency has made it a requirement for a number of its licence types that primary applicants already possess a medical cannabis operating licence. This includes all licences retailing and processing cannabis, as well as the majority of cultivation licence types. It has also established equivalent licence types between medical and non-medical cannabis regulations, and allowed medical businesses to transfer 50% of their product for non-medical sales to streamline the transition.¹⁴

Deciding on a regulation model

State	Medical cannabis law passed	Non-medical cannabis law passed	Start of non-medical sales
Alaska	1999	4 November 2014	29 October 2016
California	1996	8 November 2016	1 January 2018
Colorado	2000	6 November 2012	1 January 2014
Illinois	2013	25 June 2019	1 January 2020
Maine	2002	8 November 2016	Expected June 2020
Massachusetts	2013	8 November 2016	20 November 2018
Michigan	2008	6 November 2018	2 December 2019
Nevada	2000	8 November 2016	1 July 2017
Oregon	1998	4 November 2014	1 October 2015
Vermont	2004	22 January 2018	Not applicable
Washington	1998	6 November 2012	8 July 2014

Accurate as of March 2020. Source: EMCDDA,¹⁵ National Conference of State Legislatures

Most states operate similar application models for licences to cultivate, transport, distribute or retail cannabis. In some cases (e.g. Colorado) there is a requirement that applicants demonstrate continued residency in the state.¹⁶ The production of cannabis 'edibles' and concentrates is overseen by a separate manufacturing or production licence in each state, and additionally subject to food safety regulations.¹⁷ Businesses may also be able to apply for testing or research licences.

The majority of states have set up specialised regulatory agencies, which typically fall under departments headed with financial or taxation responsibilities.¹⁸ There may also be different departments overseeing different types of licence: in Illinois, cultivation and infuser licences are due to be overseen by the Department for Agriculture, while licences for retail stores will be overseen by the Department of

¹² Illinois Department of Financial and Professional Regulation (undated). Instructions for Early Approval Adult Use Dispensing or Organization License - Same Site. <https://www.idfpr.com/Forms/AUC/F2365.pdf>

¹³ Shepherd, K. (2020). 'It's a lot happening all at once': Illinois shops run out of marijuana just six days after start of legalization. Washington Post 7 January. <https://www.washingtonpost.com/nation/2020/01/07/illinois-runs-out-recreational-marijuana-first-week-legalized/>

¹⁴ Michigan Department of Licensing and Regulatory Affairs (2019). Marijuana Regulatory Agency Releases Adult-Use Application. <https://www.michigan.gov/lara/0,4601,7-154-89505-509160--,00.html>; Mauger, C (2019). Michigan issues first license to sell recreational marijuana. The Detroit News 19 November. <https://eu.detroitnews.com/story/news/local/michigan/2019/11/19/michigan-issues-1st-recreational-marijuana-license/4237643002/>

¹⁵ EMCDDA (2020). Technical report: Monitoring and evaluating changes in cannabis policies: insights from the Americas. <http://www.emcdda.europa.eu/system/files/publications/12543/TD0220009ENN.pdf>

¹⁶ Government of Colorado (Undated). Retail marijuana licensees. <https://www.colorado.gov/pacific/marijuana/retail-marijuana-licensees>

¹⁷ For example, see: Alaska Department of Commerce, Community and Economic Development, Alcohol and Marijuana Control Office (2019). Supplemental application documents. <https://www.commerce.alaska.gov/web/amco/MarijuanaLicenseApplication.aspx>

¹⁸ In Nevada, this falls under the Department of Taxation; in Michigan this is the Department of Licensing and Regulatory Affairs; in Maine, this is the Department of Administrative and Financial Services; in Alaska this is the Department of Commerce; and in Colorado this is the Department of Revenue.

Financial and Professional Regulation.¹⁹ California has three different agencies overseeing its licensing: manufacturing licences for cannabis products are overseen by a branch within the Department of Public Health; cultivation licences are overseen by a branch of the Department of Food and Agriculture; and all other licences (including retail and distribution) are overseen by a branch of the Department of Consumer Affairs.²⁰

Granting licences

Controlling the number and location of retail stores is a primary policy lever for managing the scale and nature of the cannabis market. Stores need a licence to operate, so regulatory authorities have the power to increase or decrease availability as they see fit. This includes controlling both the price of licences and the number of licences available.²¹ This is an important balancing act. If there are too many stores, communities may justifiably object to oversupply; if there are too few (as we have seen in some provinces in Canada) consumers may not switch from established illegal suppliers in sufficient numbers.²² Low-threshold (i.e. less expensive) licence fees may play a role in helping ensure a wider array of market actors, including small businesses, can enter the market; however, without concurrent limits on the number licences such an approach could lead to high levels of availability, which is less beneficial from a public health perspective.

States can also regulate where stores open. This way, they can seek to avoid oversupply in small areas and prevent the location of stores near schools. For instance, Washington prohibits businesses within a thousand feet of specific areas where children are likely to congregate, such as schools.²³ Such measures tend to be symbolically important, to ease concerns of communities about potential exposure of children to retail.

In contrast to retail controls, licensing the production of cannabis addresses different concerns. For many communities, regulation of retailers is of greater importance than regulation of cultivators. New cultivation facilities tend to be less visible to residents. Production is also a fundamentally different activity to retail; whereas allowing a greater volume of retail stores in a community is likely to affect purchasing directly, allowing a greater scale of production will only indirectly affect sales. Indeed, it may not influence purchasing at all. In Canada, for instance, there is growing evidence that the level of cultivation far exceeds demand.²⁴ Similarly, medically licensed cultivation facilities may already exist, and diversification into non-medical cannabis makes little difference from a resident's perspective. New non-medical retailers, by contrast, are both more visible and more likely to impact on behaviours in and around their location.

¹⁹ See: State of Illinois, Department of Financial and Professional Regulation (2019). Adult Use Cannabis Program. <https://www.idfpr.com/profs/adult-use-can.asp>

²⁰ California Cannabis Portal (Undated). Licensing. <https://cannabis.ca.gov/apply-for-a-license/>

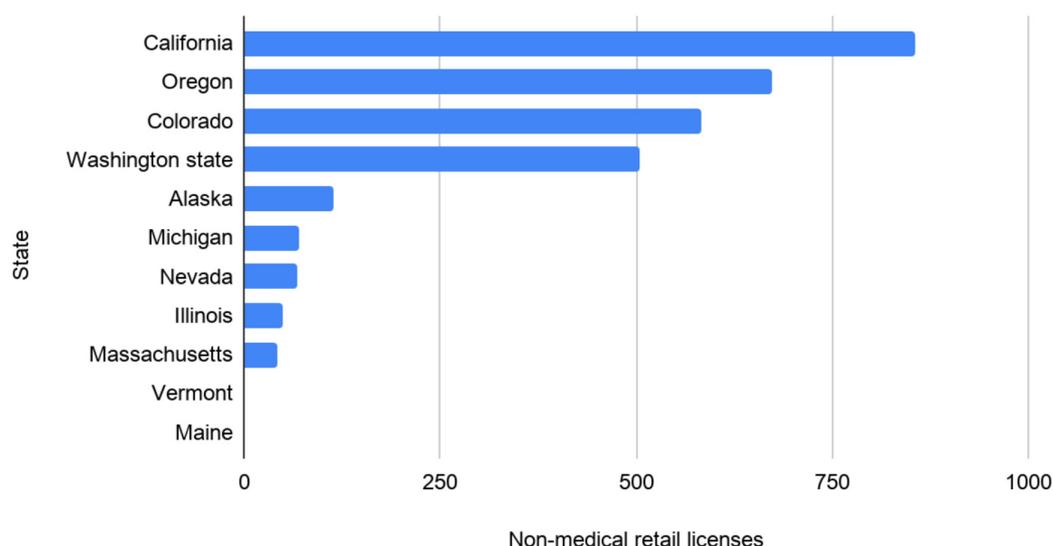
²¹ Washington State Liquor and Cannabis Board (Undated). Marijuana Licensing. <https://lcb.wa.gov/mjlicense/marijuana-licensing>. See also archived versions of this page since 2018, e.g. <https://web.archive.org/web/20170324010538/http://lcb.wa.gov/mjlicense/marijuana-licensing>; Washington State Liquor and Cannabis Board (Undated). Marijuana Licensing FAQ. https://lcb.wa.gov/mjlicense/mj_licensing_faq.

²² See: Transform Drug Policy (2019). Cannabis legalisation in Canada – One year on. <https://transformdrugs.org/cannabis-legalisation-in-canada-one-year-on/>.

²³ Washington State Liquor and Cannabis Board (Undated). Distance from Restricted Entities. https://lcb.wa.gov/mjlicense/distance_from_restricted_entities

²⁴ See: McBride, S. (2019). Aurora Cannabis Is Dumping Its Pot, Which May Be A Sign It's All Over. *Forbes* 21 October. <https://www.forbes.com/sites/stephenmcbride1/2019/10/21/aurora-cannabis-is-dumping-its-pot-which-may-be-a-sign-its-all-over/#7e8762095775>.

Active non-medical retail licences by state



Source: State governments' individual licence data,²⁵ as of March 2020. To note:

- The retail market in Maine is not due to open until June 2020
- There is no retail market in Vermont at present

In California, 3,499 non-medical cultivation licenses have been issued (roughly twice the number of licenses for medical cultivation); however, roughly half of these are held by the same commercial entities. Many of these entities hold different licences for distinct purposes (e.g. indoor and outdoor cultivation) but nonetheless this illustrates the tendency of larger businesses to dominate the market — and the need to proactively legislate to facilitate smaller businesses. 892 licences have been issued to manufacture cannabis products such as edibles, while there are 856 active non-medical retail licences — of which non-storefront licensees make up roughly a third.²⁶ In Colorado, there are 583 non-medical retail licensees and 681 cultivation licensees.²⁷

In comparison, in Alaska, there are 115 active licensed retailers, split almost entirely between Anchorage and Fairbanks, which make up almost half of its entire population.²⁸ The size and sparseness of Alaska inevitably present challenges for providing retail access to non-medical cannabis in comparison to far more densely populated states.

Colorado has one of the most established non-medical markets, having legalised cannabis in 2012

²⁵ All data was retrieved in March 2020 with the most up to date licence information made available by state governments.

Alaska: Data retrieved from: Department of Commerce, Community, and Economic Development: Alcohol & Marijuana Control Office (Undated). License Search. <https://www.commerce.alaska.gov/abc/marijuana/Home/licensesearch>;

Nevada: State of Nevada, Department of Taxation (Undated). Marijuana Establishments. https://tax.nv.gov/MME/Marijuana_Establishments_-_Home/;

California: Data retrieved manually from: California Cannabis Portal (Undated). Cannabis License Search (as of 11 March 2020). https://cannabis.ca.gov/check_a_license/;

Colorado: Colorado Department of Revenue Enforcement Division (2020). MED Resources and Statistics (as of 1 March 2020). <https://www.colorado.gov/pacific/enforcement/med-resources-and-statistics>;

Massachusetts: Commonwealth of Massachusetts, Cannabis Control Commission (Undated). Marijuana Establishments Authorized to Commence Operations. <https://mass-cannabis-control.com/licensing/>;

Illinois: Illinois Department of Financial and Professional Regulation (Undated). Licensed Adult Use Cannabis Dispensaries. <https://www.idfpr.com/LicenseLookup/AdultUseDispensaries.pdf>;

Oregon: Oregon Liquor Control Commission (2019). Active Marijuana Retail Licenses Approved as of 1/31/2020. https://www.oregon.gov/olcc/marijuana/Documents/Approved_Retail_Licenses.pdf;

Washington: Washington State Liquor and Cannabis Board (2019, updated each month). Marijuana Dashboard - Licensing. <https://data.lcb.wa.gov/stories/s/WSLCB-Marijuana-Dashboard/hbnp-ia6v/>.

Michigan: Government of Michigan, Department of Licensing and Regulatory Affairs. (Undated). Verify a License. https://www.michigan.gov/lara/0,4601,7-154-89334_79571_90837-511531--,00.html

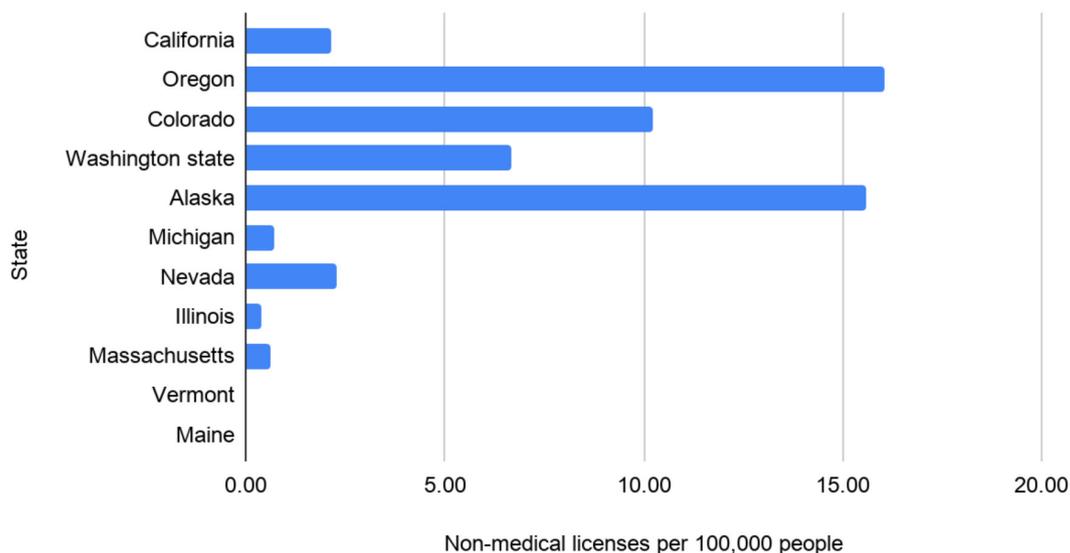
²⁶ Data retrieved manually from: California Cannabis Portal (2019). Cannabis License Search (as of 11 March 2020). https://cannabis.ca.gov/check_a_license/; See also CalCannabis Cultivation Licensing (2017). Medicinal and Adult-Use (Recreational) Cannabis Cultivation Licensing: Frequently Asked Questions. https://static.cdfa.ca.gov/MCCP/document/CalCannabis%20FAQ%20Medicinal-Adult-Use_web_8.24.17.pdf.

²⁷ Colorado Department of Revenue Enforcement Division (2019). MED Resources and Statistics (as of 2 March 2020). <https://www.colorado.gov/pacific/enforcement/med-resources-and-statistics>

²⁸ Data retrieved from: Department of Commerce, Community, and Economic Development: Alcohol & Marijuana Control Office (Undated). License Search. <https://www.commerce.alaska.gov/abc/marijuana/Home/licensesearch>; see also PotGuide (Undated). Alaska Marijuana Dispensaries. <https://potguide.com/alaska/marijuana-dispensaries/>.

(with commercial sales beginning in 2014), reflected in its high number of stores relative to its population size. A 2018 report estimated that the illegal market in Colorado had been almost entirely absorbed by the legal market, and retail sales now consistently top \$1.5 billion per year.²⁹ Oregon, with the highest number of licences per population size, has seen steadily falling wholesale prices, which may be linked to high levels of competition.³⁰ This highlights the correlation between the accessibility and growth of the legal market and the role that regulation can have in encouraging legal purchase.

Non-medical retail licences per 100,000 residents



Source: State governments' individual licence data³¹

Nevertheless, research has indicated that California still has over three times as many unlicensed retail stores as licensed ones.³² Reasons for this include large existing illegal and quasi-legal markets since the regulation of medical cannabis twenty years prior, and a reluctance of established market actors to move into a 'complicated licence system'.³³

While states may be keen to grow new non-medical markets as soon as possible to displace existing illegal markets, this should not be done at the expense of good regulation. Ultimately, it is important that states implement carefully phased licensing regimes that promote a gradual and controlled expansion of the market — while balancing potentially conflicting priorities.

Managing municipalities

Despite being comparatively rich in licence-holders, California is facing its own accessibility issues. All states have allowed municipalities a degree of autonomy over regulations within their communities: including flexibility on zoning laws or the option to prohibit physical retail stores entirely. In California, this has resulted in 76% of cities rejecting cannabis stores, fuelling criticism that 'patchwork prohibition' is undermining state-wide regulation efforts in combating the illegal market.³⁴

²⁹ Marijuana Policy Group (2018). Market Size and Demand for Marijuana in Colorado 2017 Market Update. <https://www.colorado.gov/pacific/sites/default/files/MED%20Demand%20and%20Market%20Study%2020082018.pdf>; Colorado Department of Revenue (2019). Marijuana Sales Reports. <https://www.colorado.gov/pacific/revenue/colorado-marijuana-sales-reports>

³⁰ Oregon Liquor Control Commission (2019). Recreational Marijuana Supply and Demand Legislative Report. [https://www.oregon.gov/olcc/marijuana/Documents/Bulletins/2019%20Supply%20and%20Demand%20Legislative%20Report%20FINAL%20for%20Publication\(PDFA\).pdf](https://www.oregon.gov/olcc/marijuana/Documents/Bulletins/2019%20Supply%20and%20Demand%20Legislative%20Report%20FINAL%20for%20Publication(PDFA).pdf). Page 11.

³¹ See footnote 25; United States Census Bureau (2019). Population estimates. https://www.census.gov/glossary/#term_Populationestimates

³² United Cannabis Business Association (2019). Bring Weedmaps Into Compliance - Enforce AB 97. 11 September. <https://ucba.com/2019/09/enforce-ab-97/>.

³³ McGreevy, P (2019). California now has the biggest legal marijuana market in the world. Its black market is even bigger. LA Times 15 August. <https://www.latimes.com/california/story/2019-08-14/californias-biggest-legal-marijuana-market>

³⁴ Ibid

In the city of Compton, which has its own history of being disproportionately impacted by the war on drugs, 76% of voters rejected proposals to allow non-medical retail. Reasons given included trying to clean up the city's image, and a desire to build an economy without the lucrative potential of cannabis.³⁵ As a result, legal cannabis is less accessible, and consumers may default to buying from the unregulated illegal market.

California is not alone in this. Nearly three-quarters of municipalities in Colorado have opted out of non-medical cannabis sales — although some have medical dispensaries.³⁶ In Michigan, over 1,400 of 1,773 municipalities have opted out.³⁷ In comparison, only 80 out of 241 cities and 16 out of 36 counties have opted out in Oregon, which may also be reflected in its high number of retail licences as a proportion of its population.³⁸ In Maine, municipalities are required to opt in if they wish to allow cannabis establishments.³⁹ As of August 2019, only 21 cities and towns had chosen to do so.⁴⁰ An opt-in system is likely to result in fewer municipalities agreeing to allow retail businesses, making a patchwork of availability more likely.

As of June 2018, 80 communities had banned non-medical cannabis retailers in Massachusetts, but even more operated a temporary ban (moratorium), although nearly all of these expired by the end of 2018.⁴¹ Shortly thereafter, the Cannabis Control Commission issued guidance warning municipalities against using zoning laws to create de facto prohibition. States face a balancing act of ensuring access to retail markets while taking the concerns of municipalities into account, and have responded in different ways. Massachusetts, for instance, allows municipalities to pass bylaws or ordinances limiting the number of cannabis retailers to 20% of total liquor licences issued in the area (so, for instance, one store might be appropriate for a small rural town with only five liquor outlets, but much more would be needed for a big city like Boston). In order for a municipality to restrict store licences further than this (including an outright ban), they must put the question to a local referendum — unless a majority of voters in the municipality voted against legalisation in 2016.⁴² Such provisions offer municipalities an important degree of local control over the changing nature of business in their area. Importantly, they also protect against local officials banning access to the regulated retail market against the wishes of residents.

The level of regulatory autonomy that states leave to individual municipalities requires careful balancing. It is important that local residents are given a degree of control over how cannabis regulation manifests in their communities. Equally, some degree of consistency is needed if the goal of undermining illegal markets is to be achieved. Where legal regulation was led by a popular vote (as, in the US, it predominantly has been), some of these communities may have been areas which generally voted against the motion. In Oregon, for instance, cities and counties were given direct authority until December 2015 to implement local bans if they voted by 55 per cent or more against legalisation in the first place — although only 5

³⁵ Fuller, T (2018). Oakland Embraces Marijuana Sales. Compton Bans Them. How Is Justice Best Served?. New York Times 17 March 2018. <https://www.nytimes.com/2018/03/17/us/california-marijuana-oakland-compton.html>

³⁶ Murray, J (2018). Colorado communities pocket big bucks from legal marijuana, but threats loom for some. Denver Post 28 December. <https://www.denverpost.com/2018/12/28/colorado-marijuana-taxes-local-cities-towns/>

³⁷ Marijuana Regulatory Agency (2019). List of municipalities who have notified the MRA that they have opted out of the licensed establishments portion of MRTMA (Unofficial document, as of 6 March 2020). https://www.michigan.gov/documents/lara/MRTMA_Municipality_Opt-Out_Update_1-25-2019_644664_7.pdf; see also: Marijuana Regulatory Agency (2019). List of municipalities who have opted in (Unofficial document, as of 8 November 2019). https://www.michigan.gov/documents/lara/Municipality_Opt-In_Spreadsheet_2-16-18_614253_7.pdf; Lubbers, S (2019). More than 500 communities opt out of recreational marijuana sales in Michigan. The Detroit News 25 July 2019. <https://eu.detroitnews.com/story/news/local/michigan/2019/07/24/more-than-500-communities-opt-out-recreational-marijuana-sales-michigan/1755325001/>

³⁸ Oregon Liquor Control Commission (2019). Record of Cities/Counties Prohibiting Licensed Recreational Marijuana Facilities. (As of 4 March 2020). https://www.oregon.gov/olcc/marijuana/Documents/Cities_Counties_RMJOptOut.pdf

³⁹ Maine Municipal Association (Undated). New Maine Marijuana Statutes Cheat Sheet. <https://www.memun.org/DesktopModules/Bring2mind/DMX/Download.aspx?EntryId=12168>

⁴⁰ Hinckley, S (2019). Retail pot eyed. Mount Desert Islander 28 August. <https://www.mdislander.com/maine-news/retail-pot-eyed>; Andrews, C (2019). 4 Maine towns passed recreational marijuana rules on Tuesday. Others are still wary. Bangor Daily News 7 November. <https://bangordailynews.com/2019/11/07/politics/4-maine-towns-passed-recreational-marijuana-rules-on-tuesday-others-are-still-wary/>

⁴¹ Wbur (2018). Where Marijuana Stores Can — And Can't — Open In Mass. <https://www.wbur.org/news/2018/06/28/marijuana-moratorium-map>; Schoenberg, S (2019). As marijuana moratoriums expire, Massachusetts businesses still struggle with town rules. Mass Live 7 February. <https://www.masslive.com/news/2019/02/as-marijuana-moratoriums-expire-massachusetts-businesses-still-struggle-with-town-rules.html>

⁴² Commonwealth of Massachusetts, Cannabis Control Commission (2019). Guidance for Municipalities. Updated 25 February. http://mass-cannabis-control.com/wp-content/uploads/2019/03/Final-Draft-Municipal-Guidance-Update-02.25.19_1.pdf

cities did so. After this point, municipalities seeking to implement a ban were required to refer the issue back to voters.⁴³

Such ‘patchwork prohibition’ at municipal level is a microcosm of the US’s cannabis laws as a whole. While 11 states have legalised non-medical, adult use the majority have not, and while state governments have autonomy to change cannabis laws, at federal level the drug remains strictly outlawed. Effects of this include:

- Cannabis consumption remains prohibited in public housing. This means that those living in public housing may be unable to legally consume cannabis at all, given coinciding bans on public consumption in states themselves. In turn, this can have disproportionate racial impacts given the higher proportion of people from ethnic minorities living in public housing.⁴⁴
- It has been reported that consumption of cannabis by foreign nationals in states where it is legal to do so may be used against them in potential deportation proceedings.⁴⁵
- Cannabis businesses face barriers to access banking services, including access to traditional business loans.⁴⁶

Level of taxation

Legal regulation has, of course, allowed profits from cannabis markets to be taxed. Taxation can divert money into social projects (if so desired), but is also the tool through which states influence the price of cannabis for consumers (though another option could be minimum pricing by THC content).⁴⁷ Controlling the price of cannabis shapes both the extent to which legal supply penetrates the illegal market, and also the amount of cannabis that is consumed. Again, this is a balancing act, as these goals can come into conflict. If the price of cannabis drops too low, it may encourage increased use and undermine public health goals; if it is too high the illegal market may simply remain in place — which, again, may undermine public health aims, as well as broader aims of reducing criminality and the influence of organised crime.

In theory, tax revenue acquired by states can be spent on anything. However, a potential attraction of legal regulation is that, instead of spending huge amounts subsidising enforcement of the war on drugs, tax income can fund implementation of the regulatory framework, as well as potentially supporting improved drug education and service provision. Some states have therefore sought to specifically earmark (or ‘hypothecate’) revenue for these purposes. In Illinois, 20% of state taxes go to Community Services to ‘address substance abuse... prevention and mental health concerns’ and 2% go to the Drug Treatment Fund to assist in its public education campaign and analysis of public health impacts as a result of regulation.⁴⁸ In Oregon, 20% of taxes go directly to the Mental Health Alcoholism and Drug Services Account which assists with drug abuse prevention, intervention and treatment and a further 5% directly to the health authority for alcohol and drug abuse prevention.⁴⁹ While hypothecation

⁴³ Oregon Liquor Control Commission. (2019). Record of Cities/Counties Prohibiting Licensed Recreational Marijuana Facilities. (As of 1 November 2019). https://www.oregon.gov/olcc/marijuana/Documents/Cities_Counties_RMJOptOut.pdf.

⁴⁴ Romo, V. (2019). As Illinois Prepares To Legalize Pot, Public Housing Tenants Not Allowed To Partake. NPR 11 November. <https://www.npr.org/2019/11/11/778371751/as-illinois-prepares-to-legalize-pot-public-housing-tenants-not-allowed-to-partake?t=1576836810433>; Virani, H.N. and Haines-Saah, R.J. (2020). Drug Decriminalization: A Matter of Justice and Equity, Not Just Health. *American Journal of Preventive Medicine* 58.1. <https://www.sciencedirect.com/science/article/pii/S0749379719303514#!>.

⁴⁵ McDonald, H. (2019). Britons who legally smoke cannabis in the US ‘risk being deported’. *The Guardian* 15 November. <https://www.theguardian.com/society/2019/nov/15/britons-who-legally-smoke-cannabis-in-the-us-risk-being-deported>.

⁴⁶ Krane, K. (2018). Lack Of Cannabis Banking Hurts Average Small Business Owners, While Wealthy Entrepreneurs Flourish. *Forbes* 13 June. <https://www.forbes.com/sites/kriskrane/2018/06/13/marijuana-banking-constraints-disproportionately-harm-small-businesses/#675f41ce54ed>

⁴⁷ For further discussion, see: Transform Drug Policy Foundation (2016), *How to Regulate Cannabis: A Practical Guide* (Second edition), p75. <https://transformdrugs.org/wp-content/uploads/2018/10/Cannabook-2nd-Ed-Digital.pdf>

⁴⁸ Government of Illinois (2019). *Adult Use Cannabis Summary* (24 June). https://www2.illinois.gov/IISNews/20242-Summary_of_HB_1438__The_Cannabis_Regulation_and_Tax_Act.pdf

⁴⁹ Government of Oregon (Undated). *Recreational Marijuana — FAQs: Taxes*. <https://www.oregon.gov/olcc/marijuana/Pages/FAQs-Taxes.aspx>; 2017 Oregon Revised Statutes, Volume 10, Chapter 430. *Mental Health Alcoholism and Drug Services Account*. <https://www.oregonlaws.org/ors/430.380>

has the potential to both boost key funds and establish a ‘polluter pays’ principle in regard to drug-related harms, it also takes responsibility for service provision away from general taxation in ways that can expose it to severe cuts if tax income falls.

Some states tax different types of cannabis product, or strength of product, differently — as is commonplace in the taxation of alcohol. Research shows clearly that the price of a product, especially relative to its strength, is the single most significant driver of purchasing patterns. In theory, then, health harms can be curbed by ensuring that higher risk products cost more. Research from Washington state, which does not have taxation varying as to strength of product (but does have comparatively very high taxes across the board), indicates that the ‘proportion of strains with reported THC concentration greater than 15 % grew to 93 %’ just a few years after legal regulation.⁵⁰ This highlights the fact that higher strength products are being developed to attract customers. A more direct form of control would be to impose direct limits on strength (as is the case in, for example, Uruguay).⁵¹

Municipalities may also impose local taxes, in addition to a general state tax — allowing them to boost their own tax income and potential to reinvest in the community. Such benefits may help reduce the number of municipalities from ‘opting out’ of regulation.

Taxes by state

State	State Excise Tax	Further Taxes
Washington	37% ⁵²	7-10% further state and local sales tax ⁵³
Colorado ⁵⁴	15%	Further 15% state retail ‘special marijuana sales tax’ and further 2.9% state sales tax
Illinois ⁵⁵	10% for THC <35% 25% for THC >35% 20% on all cannabis infused products	Further cultivation tax of 7% of gross receipts. Municipalities and counties can add further taxes on stores up to 3% and 3.75% respectively.
Nevada ⁵⁶	15% on the wholesale price (paid by the cultivator) 10% on the retail sale	Retail sales tax at the local rate.
Oregon ⁵⁷	17%	Up to 3% further local taxes.
Massachusetts ⁵⁸	10.75%	Further 6.25% state general sales tax and up to 3% local option tax
Maine*	10% ⁵⁹	Further sales tax of 10% on sales by a cultivation facility to a retail store or product manufacturer. ⁶⁰

⁵⁰ EMCDDA (2020). Technical report: Monitoring and evaluating changes in cannabis policies: insights from the Americas. p25. <http://www.emcdda.europa.eu/system/files/publications/12543/TD0220009ENN.pdf>

⁵¹ Transform Drug Policy Foundation (2017). Cannabis legalisation in Uruguay: public health and safety over private profit. <https://transformdrugs.org/cannabis-legalisation-in-uruguay-public-health-and-safety-over-private-profit/>

⁵² MRSC (Undated). Marijuana Regulation in Washington State. <http://mrsc.org/getdoc/8cd49386-c1bb-46f9-a3c8-2f462dcb576b/Marijuana-Regulation-in-Washington-State.aspx>.

⁵³ PricewaterhouseCoopers (Undated). Which States Have the Highest Taxes on Marijuana?. <https://priceconomics.com/which-states-have-highest-taxes-on-marijuana/>.

⁵⁴ Colorado Department of Revenue (Undated). Marijuana Tax Data. <https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data>.

⁵⁵ Government of Illinois (Undated). Adult Use Cannabis Summary. https://www2.illinois.gov/IIISNews/20242-Summary_of_HB_1438_The_Cannabis_Regulation_and_Tax_Act.pdf.

⁵⁶ Marijuana in Nevada (Undated). Taxes. <http://marijuana.nv.gov/Businesses/Taxes/>.

⁵⁷ Government of Oregon (Undated). Recreational Marijuana — FAQs: Taxes. <https://www.oregon.gov/olcc/marijuana/Pages/FAQs-Taxes.aspx>.

⁵⁸ Government of Massachusetts (Undated). Learn about Massachusetts tax rates. <https://www.mass.gov/service-details/learn-about-massachusetts-tax-rates>.

⁵⁹ Maine Legislature (Undated). Title 36: Taxation, Chapter 213: Sales Tax. <http://legislature.maine.gov/statutes/36/title36ch213sec0.html>.

⁶⁰ Valigra, L. (2019). How the first year of Maine’s adult-use marijuana market will likely roll out. WGME 17 June. <https://wgme.com/news/marijuana-in-maine/how-the-first-year-of-maines-adult-use-marijuana-market-will-likely-roll-out>.

State	State Excise Tax	Further Taxes
California ⁶¹	15%	Cultivation taxes per dry weight ounce: \$9.25 for flowers; \$2.75 for leaves or \$1.29 for fresh cannabis plant. Local government can also levy additional taxes.
Michigan	10% ⁶²	Further 6% state sales tax. ⁶³
Alaska	Mature bud/flower: \$50 per ounce. Trim: \$15 per ounce. Abnormal/immature bud/flower: \$25 per ounce. Clones: \$1 per clone. ⁶⁴	
Vermont	N/A	N/A

**In Maine retail sales are not due to begin until June 2020.*

As regulated markets grow, so do tax revenues (though the reverse is also true). In the 2019 fiscal year, Oregon saw a 24.2% increase from the year previous and collected \$102 million in taxes.⁶⁵ Colorado, one of the first states to regulate cannabis, has now reported over \$1 billion in tax revenue since February 2014.⁶⁶ Despite concerns about the persisting criminal market in California, its legal retail market has nonetheless been reported as the largest in the world and estimated tax revenue was recorded at \$300 million for 2018, surpassed only by Washington's estimated \$319 million.⁶⁷

Limiting products available for purchase

As well as regulating the price and availability of cannabis, states can also use the law to regulate the forms of cannabis product available and the volume of sales per person. This aims to reduce the risk of overconsumption by individuals and help prevent secondary sales.

All states prohibit sales to individuals under 21. Most states also restrict the amount of herbal cannabis per purchaser to 1 ounce. In contrast, Maine, which is not expecting retail sales until June 2020, has drafted regulations which will require a store to not sell more than 2.5 ounces of cannabis to an individual at any one time, or within a day (matching personal possession limits).⁶⁸ Michigan has similarly opted for a limit 'in a single transaction' of 2.5 ounces.⁶⁹

States have varying purchase limits for cannabis concentrates, ranging from 3.5g in Nevada to 15g

⁶¹ California Department of Tax and Fee Administration (Undated). Tax Guide for Cannabis Businesses. <https://www.cdtfa.ca.gov/industry/cannabis.htm#Cultivators>.

⁶² Michigan Legislature (2018). Michigan Regulation and Taxation of Marihuana Act. 333.27963. Imposition of excise tax. [https://www.legislature.mi.gov/\(S\(bobk5ccm12k2hrilk33dxiyh\)\)/mileg.aspx?page=getObject&objectName=mcl-333-27963](https://www.legislature.mi.gov/(S(bobk5ccm12k2hrilk33dxiyh))/mileg.aspx?page=getObject&objectName=mcl-333-27963)

⁶³ State of Michigan: Department of Treasury (2018, updated 2019). Marihuana Provisioning Center Tax and Sales and Use Tax Treatment of Marihuana. https://www.michigan.gov/documents/treasury/RAB_2018-2_Marihuana_611377_7.pdf

⁶⁴ Alaska Department of Revenue - Tax Division (Undated). Marijuana Tax: Frequently Asked Questions. <http://tax.alaska.gov/programs/programs/help/faq/faq.aspx?60000#section0question0>.

⁶⁵ Danko, P. (2019). Oregon cannabis tax revenue gets higher and higher. Portland Business Journal 25 July. <https://www.bizjournals.com/portland/news/2019/07/25/oregon-cannabis-tax-revenue-gets-higher-and-higher.html>

⁶⁶ Colorado Department of Revenue (Undated). Marijuana Tax Data. <https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data>

⁶⁷ McGreevy, P (2019). California now has the biggest legal marijuana market in the world. Its black market is even bigger. LA Times 15 August. <https://www.latimes.com/california/story/2019-08-14/californias-biggest-legal-marijuana-market>; McCarthy, N. (2019). Which States Made The Most Tax Revenue From Marijuana In 2018? [Infographic]. Forbes 26 March. <https://www.forbes.com/sites/niallmccarthy/2019/03/26/which-states-made-the-most-tax-revenue-from-marijuana-in-2018-infographic/#570924c7085e>

⁶⁸ State of Maine, Office of Marijuana Policy: Department of Administrative and Financial Services. Adult Use Marijuana Program Rule 18-691 C.M.R., Chapter 1. s3.9.2. Sales Limits. <https://www.maine.gov/dafs/omp/adult-use/rules-statutes/18-691-C.M.R.-ch.-1>.

⁶⁹ Michigan Marijuana Regulatory Agency (2019). Advisory Bulletin 22 October. https://www.michigan.gov/documents/lara/Daily_Purchasing_Limits_Item_Categories_in_METRC_11.16.18_-_Amended_638772_7.pdf

Michigan.⁷⁰ States may also have specific limits on cannabis in liquid form — set at 72 ounces in Washington and Oregon; as well as cannabinoid products intended for inhalation through vaporizing — set at 5g in Oregon; and edibles — set at 16 ounces in Washington.⁷¹ In November 2019, Michigan temporarily halted the sale of cannabis products intended for vaping to allow them to be tested for a compound linked to lung illnesses, before recalling products that failed new requirements testing for high levels of vitamin E acetate.⁷²

Some rules are ambiguous in regard to whether purchase limits only apply for a single sales transaction.⁷³ In Colorado, the owner of one business faced criminal charges for facilitating ‘looping’, in which a customer purchases the maximum amount of cannabis allowed and then simply returns the same day on multiple occasions to purchase a further maximum amount in separate transactions.⁷⁴ Some states have been far clearer in their regulations: in Oregon the limit applies ‘at any one time or within one day’ while California’s regulations expressly state ‘in a single day’.⁷⁵

It is unclear how much of an issue this is in practice, though preventing bulk buying and re-sale is important for maintaining the integrity of the system. The fact that many states have opted for limits of one ounce for herbal cannabis demonstrates a broad consensus on certain regulatory details, and evidence of policy mirroring. In relation to other cannabis products, practice has varied to a greater degree, which may be in part due to greater varieties in product types. However, this will provide valuable comparisons going forward, which states can use to realign their own purchase limits in line with evidence.

Enforcing requirements for packaging, advertising and marketing

Marketing controls provide another key means to influence the patterns of purchasing and, by extension, use.⁷⁶ While marketing often serves to persuade customers to switch from one brand to another, in the case of new markets such as cannabis it will also serve to expand the total size of the market. The goal of regulation is not to encourage use, but to manage and minimise risks; at the same time, legal suppliers will argue that they need to advertise to draw customers from illegal providers. Again, striking a balance is difficult and states have approached this differently.

Advertising and packaging controls are often designed to prevent products being targeted at children, but can also serve to reduce the extent of any appeal to new consumers (specifically those who haven’t used cannabis previously). Some good practice is already emerging in this area — though this needs to be seen in the context of the fact that cannabis is still illegal under federal US law, meaning advertising is often severely restricted as it may reach beyond states where cannabis is legally regulated. Similarly,

⁷⁰ Nevada has 3.5g (1/8 oz): State of Nevada, Department of Taxation (Undated). FAQs for Marijuana Establishments. https://tax.nv.gov/FAQs/Retail_Marijuana/; Michigan intends to have 15g: Michigan Marijuana Regulatory Agency (2019). Advisory Bulletin 22 October. https://www.michigan.gov/documents/lara/Daily_Purchasing_Limits__Item_Categories_in_METRC_11.16.18_-_Amended_638772_7.pdf

⁷¹ Government of Oregon (Undated). Recreational Marijuana, FAQs: Consumers. <https://www.oregon.gov/olcc/marijuana/Pages/FAQs-Consumers.aspx>; Washington State Liquor and Cannabis Board (Undated). Know the Law. <https://lcb.wa.gov/mj-education/know-the-law>.

⁷² Medical Xpress (2019). Michigan halts sale of marijuana vape products, orders tests. 22 November. <https://medicalxpress.com/news/2019-11-michigan-halts-sale-marijuana-vape.html>; Strachan, J. (2020). Michigan Recalls Vape Cartridges Over Vitamin E Acetate. Patch 7 February. <https://patch.com/michigan/detroit/michigan-recalls-vape-cartridges-over-vitamin-e-acetate>

⁷³ See, e.g.: Washington State Liquor and Cannabis Board (Undated). Know the Law. <https://lcb.wa.gov/mj-education/know-the-law>. Which simply states: “Adults age 21 and over can purchase up to one ounce of useable marijuana (the harvested flowers, or “bud”), 16 ounces of marijuana-infused edibles in solid form, 72 ounces in liquid form, and 7 grams of marijuana concentrates.”

⁷⁴ Foody, K. (2019). Colorado Pot Owners Plead Guilty as a Result of ‘Looping’ Practice. Claims Journal 29 January. <https://www.claimsjournal.com/news/west/2019/01/29/288944.htm>

⁷⁵ Oregon Liquor Control Commission (Undated). OLCC Marijuana Program: Frequently Asked Questions (all). https://www.oregon.gov/olcc/marijuana/Documents/MJ_FAQS.pdf. Page 3.; Bureau of Cannabis Control California (2019). California Code of Regulations Title 16. § 5409 Daily Limits. https://bcc.ca.gov/law_regs/cannabis_order_of_adoption.pdf

⁷⁶ See, e.g. Babor, T. et al. eds. (2017). The regulation of alcohol marketing: research to public health policy. *Addiction* (Special Supplement), 112 issue S1.

Twitter, Instagram and Facebook prohibit cannabis advertising, although businesses have developed their own social media profiles which still serve as a space to promote their branding.⁷⁷

Existing practice provides useful lessons for states seeking to regulate in the future, and — as in other areas of cannabis policy, there is liable to be a degree of ‘policy transfer’. Most states have introduced similar regulations to prevent cannabis from being targeted at children. This includes imposing negative obligations (those that simply require a business to refrain from a certain action), such as prohibiting advertising within a certain distance of areas where children are likely to be (such as schools and playgrounds); and from depicting characters that are likely to appeal to children or advertising that is designed in a way that would be especially appealing to children.⁷⁸

However, states have also sought to impose positive obligations on businesses — i.e., requirements that they take steps to ensure that their advertising is compliant. One such example is that advertising shall only be displayed after a licensee ‘has obtained reliable up-to-date audience composition data’ demonstrating that a high percentage of the audience viewing the advertising or marketing ‘is reasonably expected to be 21 years of age or older’. This percentage is set at 71.6% in California, for instance, and 85% in Massachusetts.⁷⁹ Such positive obligations help ensure businesses are active in measuring the impact of their advertising; however, they also highlight that no advertising can ever be completely hidden from children — unless it is prohibited entirely.

Packaging design is also subject to a range of controls. States operate varied ‘universal symbol’ requirements to ensure it is clear when a product contains cannabis, as well as warning requirements including potential driving hazards, or a need to keep away from children.⁸⁰ Further, child-specific restrictions may include forbidding the use of characters that appeal to children on packaging, such as cartoons.⁸¹

Edible products present a particular challenge. They may be more attractive to children, and, due to slower onset of effects, dose titration is more difficult. As a result, consumers may inadvertently ingest more than desired. According to data from Washington, novel non-herbal products like edibles account for an increasing proportion of the non-medical cannabis market.⁸² States have generally sought to limit the amount of THC per edible serving and the amount of servings per package. Alaska and Oregon have a limit of 10 servings with a maximum of 5mg THC per serving, while California, Nevada, Maine

⁷⁷ EurekaAlert! (2019). Survey: Most teenagers in legalized states see marijuana marketing on social media. https://www.eurekaalert.org/pub_releases/2019-11/uoma-smt112119.php.

⁷⁸ See, for instance, Washington, where this is set at 1,000 feet: Washington State Liquor and Cannabis Board (Undated). Frequently Asked Questions About Marijuana Advertising. https://lcb.wa.gov/mj2015/faq_j502_advertising#advertisingrules; see also Maine, where this is due to be set at 500 feet: State of Maine, Office of Marijuana Policy: Department of Administrative and Financial Services. Adult Use Marijuana Program Rule 18-691 C.M.R., Chapter 1. s5.2 (c)(4) - Prohibitions. <https://www.maine.gov/dafs/omp/adult-use/rules-statutes/18-691-C.M.R.-ch.-1>. Page 54.

⁷⁹ See, e.g. California, where this is set at 71.6%: Bureau of Cannabis Control California (2019). California Code of Regulations Title 16. § 5040. Advertising Placement. https://bcc.ca.gov/law_regs/cannabis_order_of_adoption.pdf.; See also Massachusetts, where this is set at 85%: Commonwealth of Massachusetts, Cannabis Control Commission (2019). 935 CMR 500.000 Adult Use of Marijuana. 500.105(4)(b)(2). https://mass-cannabis-control.com/wp-content/uploads/2019/11/935_CM_500.000_Adult_Use_of_Marijuana_11.1.19.pdf.

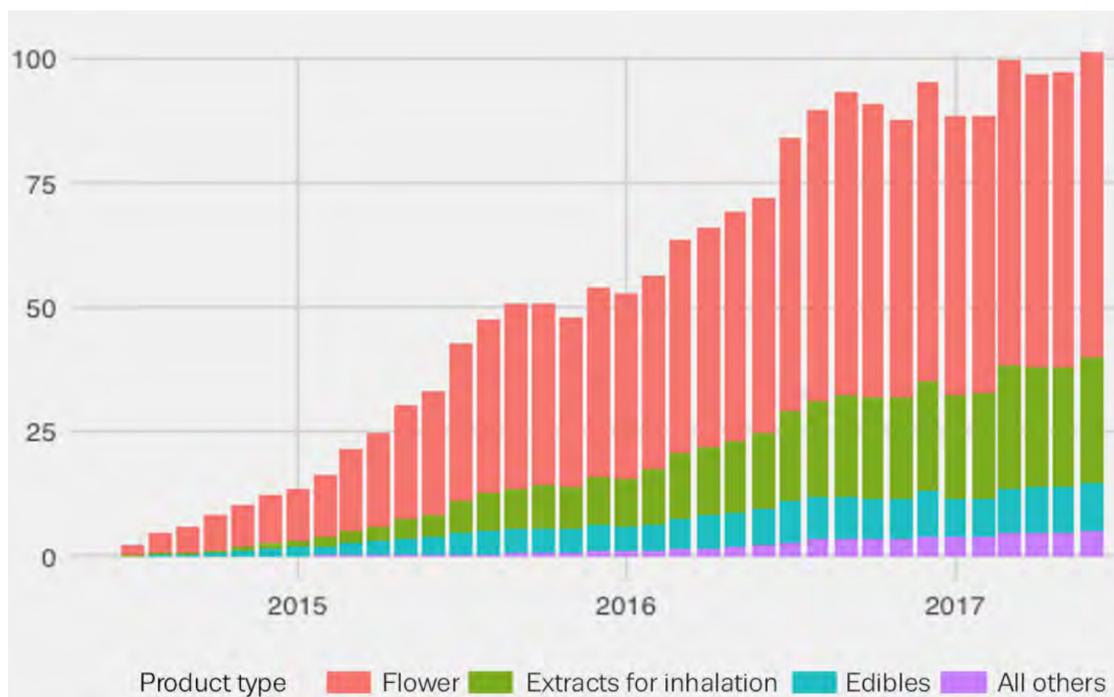
⁸⁰ See, e.g., Oregon Liquor Control Commission (Undated). Recreational Marijuana Program: Packaging and Labeling. https://www.oregon.gov/olcc/marijuana/Documents/Packaging_Labeling/ChecklistandGeneric.pdf.

⁸¹ See, e.g., Alcohol and Marijuana Control Office (Updated 2019). 3 AAC 306 Regulations for the Marijuana Control board. 565 Packaging of marijuana products. <https://www.commerce.alaska.gov/web/Portals/9/pub/MCB/StatutesAndRegulations/3AAC306%209.18.19.pdf>

⁸² EMCDDA (2020). Technical report: Monitoring and evaluating changes in cannabis policies: insights from the Americas. p25. <http://www.emcdda.europa.eu/system/files/publications/12543/TD0220009ENN.pdf>

and Colorado allow 10 servings of 10mg. In Massachusetts, it is 20 servings of 5mg.⁸³ These limits contrast with the strict 10mg limit per package (regardless of the amount of servings in the package) in Canada.⁸⁴ In Washington, regulators backtracked on plans to ban edibles entirely, but have sought to limit the available colours and shapes in order to prevent their appeal to children, now only allowing colours and shapes contained on its approved list.⁸⁵ In Colorado, shapes including the popular ‘gummy bear’ were banned in 2017.⁸⁶

Washington’s cannabis sales by product type after 37 % excise tax (million USD)



Source Graph: EMCDDA (2020). *Technical report: Monitoring and evaluating changes in cannabis policies: insights from the Americas.* <http://www.emcdda.europa.eu/system/files/publications/12543/TD0220009ENN.pdf>

All states require packaging to specify THC content.⁸⁷ All states also operate a requirement that cannabis

⁸³ Responsible Alaska Consumer (2018). What You Need to Know About Marijuana in Alaska. <http://dhss.alaska.gov/dph/Director/Documents/marijuana/ResponsibleConsumerFactBook.pdf>; Alcohol and Marijuana Control Office (Updated 2019). 3 AAC 306 Regulations for the Marijuana Control board. 560 Potency limits per serving and transaction for edible marijuana products. <https://www.commerce.alaska.gov/web/Portals/9/pub/MCB/StatutesAndRegulations/3AAC306%209.18.19.pdf>; Oregon Liquor Control Commission (2019). OLCC Marijuana Program: Frequently Asked Questions (all). https://www.oregon.gov/olcc/marijuana/Documents/MJ_FAQS.pdf. Page 3.; McDonough, E. (2018). California’s Cannabis Edibles Just Got Surprisingly Boring. VICE 8 January. https://www.vice.com/en_us/article/3k55qj/californias-cannabis-edibles-just-got-surprisingly-boring; Kane, J. (2017). Nevada makes ‘emergency’ changes to marijuana edibles law. Reno Gazette Journal 30 June. <https://eu.rgj.com/story/news/college/2017/06/28/nevada-makes-emergency-changes-marijuana-edibles-law/437360001/>; State of Maine, Office of Marijuana Policy: Department of Administrative and Financial Services. Adult Use Marijuana Program Rule 18-691 C.M.R., Chapter 1. s8.2(D) - Marijuana Products Manufacturing Facility Product Safety. <https://www.maine.gov/dafs/omp/adult-use/rules-statutes/18-691-C.M.R.-ch.-1>. Page 58.; Colorado Department of Revenue, Marijuana Enforcement Division (2019). Proposed Permanent Marijuana Rules, 1 CCR 212-3 (since adopted, effective 1 January 2020). https://www.colorado.gov/pacific/sites/default/files/191007%20Master%20Marijuana%20Rules_212-3_For%20Public%20Release.pdf.Page 19.; Commonwealth of Massachusetts, Cannabis Control Commission (2019). Adult Use of Marijuana 935 CMR. 500. 150: Edible Marijuana Products: (4) Dosing Limitations. https://mass-cannabis-control.com/wp-content/uploads/2019/11/935_CMR_500.000_Adult_Use_of_Marijuana_11.1.19.pdf. Page 82.

⁸⁴ Cannabis Regulations, s102.7.

⁸⁵ Groover, H. (2018). Washington cannabis regulator says candy can stay, but tone down the colors. The Seattle Times 16 December. <https://www.seattletimes.com/seattle-news/marijuana/washington-cannabis-regulators-approve-new-edibles-rules-avoid-candy-ban/>; See also: Washington State Liquor and Cannabis Board (2018). Interim Policy BIP-10-2018. WAC 314-55-105 Packaging and labeling requirements. https://lcb.wa.gov/sites/default/files/publications/rules/2018%20Proposed%20Rules/BIP_10_2018_MJ_Labeling_MIE_Colors_REVISIED_FINAL_Signed.pdf; Washington State Liquor and Cannabis Board (2019). Frequently Requested Lists: Marijuana; Approved Infused Products List. <https://lcb.wa.gov/records/frequently-requested-lists>.

⁸⁶ CBS News (2017). Colorado bans pot gummy bears, other edibles appealing to kids. <https://www.cbsnews.com/news/colorado-bans-pot-gummy-bears-other-edibles-shapes/>.

⁸⁷ See, e.g., Alcohol and Marijuana Control Office (Updated 2019). 3 AAC 306 Regulations for the Marijuana Control board. 345. Packaging and labeling. <https://www.commerce.alaska.gov/web/Portals/9/pub/MCB/StatutesAndRegulations/3AAC306%209.18.19.pdf>; Washington State Legislature (Updated 2019). Title 314 WAC, Chapter 314-55-105 Packaging and labeling requirements. <https://apps.leg.wa.gov/wac/default.aspx?cite=314-55-105>.

be contained in resealable, child-resistant packaging which, in all states bar Oregon, must be opaque.⁸⁸ The degree of uniformity on this issue reflects some consensus on the shared aims of regulation, especially in relation to public health and child protection. These mirror the aims explicitly set out by the Canadian government when it legalised cannabis at a federal level.⁸⁹

Removal of criminal records (expungement)

While, in some states, possession of small amounts of cannabis was decriminalised prior to legal regulation, the legacy of a century of prohibition remains. Between 2000 and 2010 alone, over half of all drug arrests in the country were made in relation to cannabis, with over 7 million arrests for cannabis possession.⁹⁰

Moves to regulate represent a sea-change in social views on cannabis use; however, previous criminal records remain a lasting stigma that individuals have to carry. 'Expungement', meaning the destruction or deletion of an individual's criminal record, allows states to remove this burden from individuals and, to a certain extent, acknowledge the errors of previous policy.

An individual whose record has been expunged may legitimately deny ever having been arrested or charged for such offence. Expungement is technically different from 'record sealing', a process whereby the criminal record isn't deleted, but hidden from the public record. Record sealing can offer some similar benefits as expungement: for example, Colorado legislation makes clear that an individual whose record has been sealed 'may say that he or she "has not been criminally convicted"'.⁹¹ Practically, however, sealed records remain in existence. Indeed, sealed records may create additional problems: where judicial officials or police see that an individual has a sealed record, they may assume the worst for their past behaviour. Further, while searches of individual records will not reveal charges or convictions in most cases, they may be revealed by other searches, such as for security clearances. Nonetheless, 'expungement' and 'record sealing' are regularly conflated. Media coverage of schemes

⁸⁸ In Colorado, the regulations define 'child resistant' as meaning, among other things, opaque, while Illinois opts for the term 'light-resistant'. State of Maine, Office of Marijuana Policy: Department of Administrative and Financial Services. Adult Use Marijuana Program Rule. 18-691 C.M.R., Chapter 1. s3.9.7(b) - Exit Packaging. Page 47. <https://www.maine.gov/dafs/omp/adult-use/rules-statutes/18-691-C.M.R.-ch.-1>; Alcohol and Marijuana Control Office (Updated 2019). 3 AAC 306 Regulations for the Marijuana Control board. 345. Packaging and labeling. <https://www.commerce.alaska.gov/web/Portals/9/pub/MCB/StatutesAndRegulations/3AAC306%209.18.19.pdf>; Washington State Legislature (Updated 2019). Title 314 WAC, Chapter 314-55-105 Packaging and labeling requirements. <https://apps.leg.wa.gov/wac/default.aspx?cite=314-55-105>; Oregon Secretary of State, Oregon Liquor Control Commission. Chapter 845, Division 25 - Recreational Marijuana. 845-025-7020: Packaging for Sale to Consume. https://secure.sos.state.or.us/oard/viewSingleRule.action;JSESSIONID_OARD=bCatclL3ka4gypaBgO2FOCZYI8qckX94phQWRtler-IOW-MjQ7TGG!1720786624?ruleVrsnRsn=246287; Colorado Department of Revenue, Enforcement Division (2019, Effective 2020). Permanent Rules, Retail Marijuana, 1 CCR 212-2. 3-1010 Packaging and Labeling: General Requirements Prior to Transfer to a Patient or Consumer: (D)(1)(a). <https://www.colorado.gov/pacific/enforcement/med-2019-rule-making>; California Department of Public Health (2019). Labeling Checklist for Cannabis. <https://cannabis.ca.gov/2019/03/07/new-resources-for-packaging-and-labeling-of-cannabis-and-cannabis-products/>; State of Illinois, Department of Financial and Professional Regulation (2019). Adult Use Cannabis Program. <https://www.idfpr.com/profs/adultusecan.asp>; Commonwealth of Massachusetts, Cannabis Control Commission (2019). 935 CMR 500.00 Adult Use of Marijuana. 500.105(6)(a) - Packaging of Marijuana and Marijuana Products: Tamper or Child-resistant Packaging. https://mass-cannabis-control.com/wp-content/uploads/2019/11/935_CM_500.000_Adult_Use_of_Marijuana_11.1.19.pdf; Michigan, Department of Licensing and Regulatory Affairs, Marijuana Regulatory Agency (2019). Adult-use Marihuana Establishments: Emergency Rules. Rule 49: Marihuana product sale or transfer; labeling and packaging requirements. https://www.michigan.gov/documents/lara/Adult_Use_Marihuana_Establishments_659804_7.pdf; Michigan Legislature (2018). Michigan Regulation and Taxation of Marihuana Act: Initiated Law 1 of 2018 (Excerpt). 333.27961 Marihuana establishments; requirements; limitations. s11(j). [https://www.legislature.mi.gov/\(S\(ficchc2tsle2w0hobhearnp1\)\)/mileg.aspx?page=getObject&objectName=mc-Initiated-Law-1-of-2018](https://www.legislature.mi.gov/(S(ficchc2tsle2w0hobhearnp1))/mileg.aspx?page=getObject&objectName=mc-Initiated-Law-1-of-2018); Nevada Government (2019). Chapter 435D - Regulation and Taxation of Marijuana. Packaging and Labeling of Marijuana Products. NAC 453D.800, NAC 453D.805. <https://www.leg.state.nv.us/Nac/NAC-453D.html>; Nevada Legislature (2019). Assembly Bill No. 533-Committee on Judiciary. s115(6)(b). https://www.leg.state.nv.us/Session/80th2019/Bills/AB/AB533_EN.pdf.

⁸⁹ See: Transform Drug Policy Foundation (2019). Cannabis legalisation in Canada – One year on. <https://transformdrugs.org/cannabis-legalisation-in-canada-one-year-on/>

⁹⁰ American Civil Liberties Union (Undated). Marijuana Arrests By The Numbers. <https://www.aclu.org/gallery/marijuana-arrests-numbers>.

⁹¹ Denver Government (2019). Turn Over a New Leaf Program. <https://www.denvergov.org/content/denvergov/en/denver-marijuana-information/DenverMarijuanaEquityandSocialJustice/TurnOverANewLeafProgram.html>.

in California, for example, often refer to ‘expungement’ although they involve the sealing of records rather than their deletion.⁹²

State	Type of criminal record removal	Automatic?
California ⁹³	Record sealing	Yes
Oregon ⁹⁴	Record sealing Individuals may file a motion for a Court order setting aside convictions for conduct now legal. A new bill in 2020 removed requirements for fees to be paid.	No
Nevada ⁹⁵	Record sealing Individuals may request a Court to seal records for activity which is now decriminalised.	No
Vermont ⁹⁶	Expungement/Record sealing An individual may file a petition with the court requesting expungement or sealing of the criminal history record if the underlying conduct is no longer prohibited by law or designated as a criminal offence.	No
Washington ⁹⁷	Record sealing Individuals may apply to the sentencing Court to vacate their conviction records for misdemeanour cannabis offences. Expedited pardons are also available from the Governor. Washington law does not allow court records to be expunged, however, so vacation will not amount to expungement. ⁹⁸	No
Colorado ⁹⁹	Record sealing Only record sealing is available at a state level, but in Denver and Boulder, low-level cannabis offences that are now legal (e.g. possession of less than an ounce of cannabis) can be additionally vacated.	No
Massachusetts ¹⁰⁰	Expungement Court may order the expungement of ‘an offense at the time of the creation of the record which at the time of expungement is no longer a crime’, but requires individual petition	No

⁹² California Legislative Information (2018). AB-1793 Cannabis Convictions: Resentencing. https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1793.

⁹³ California Legislative Information (2018). AB-1793 Cannabis Convictions: Resentencing. https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1793.

⁹⁴ 78th Oregon Legislative Assembly (2015). Senate Bill 364. <https://gov.oregonlive.com/bill/2015/SB364/>; 80th Oregon Legislative Assembly (2019). Senate Bill 420. <https://gov.oregonlive.com/bill/2019/SB420/>.

⁹⁵ Nevada Electronic Legislative Information System (2019). Assembly Bill No. 192. <https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6296/Text/>

⁹⁶ Vermont General Assembly (2019). H.460 (Act 32). An act relating to sealing and expungement of criminal history records. <https://legislature.vermont.gov/bill/status/2020/H.460>

⁹⁷ Washington Governor (2019). Marijuana Justice Initiative. <https://www.governor.wa.gov/marijuanajustice>

⁹⁸ Seattle Municipal Court (Undated). Vacating a Conviction. <https://www.seattle.gov/courts/programs-and-services/vacating-a-conviction>.

⁹⁹ Petrovic, N. (2019). Expungement Week Offers Record-Clearing and Work Opportunities in Cannabis. Westworld 19 September. <https://www.westworld.com/marijuana/national-expungement-week-offers-record-clearing-and-work-opportunities-in-colorado-marijuana-11485260>; Denver Government (2019). Turn Over a New Leaf Program. <https://www.denvergov.org/content/denvergov/en/denver-marijuana-information/DenverMarijuanaEquityandSocialJustice/TurnOverANewLeafProgram.html>

¹⁰⁰ Massachusetts Government (2018). c.276 § 100K Expungement of record resulting from false identification, an offense no longer a crime at time of expungement, error or fraud. <https://www.mass.gov/info-details/mass-general-laws-c276-ss-100k>

State	Type of criminal record removal	Automatic?
Illinois ¹⁰¹	Expungement Law enforcement are required to automatically expunge all eligible records that did not result in a conviction by specified dates. Governor will grant pardons authorising expungement for convictions for possession and manufacturer or possession with intent to deliver for up to 30g. For more than this, individuals and State's Attorneys may file motions to Court for vacation (up to 500g).	For certain offences
Maine	A bill was proposed which would have required 'the Department of Public Safety to expunge, by July 1, 2020, all records relating to criminal convictions for conduct now authorised by the adult use of marijuana provisions. However, the bill has subsequently been declared 'dead'. ¹⁰²	N/A
Alaska	None available at present ¹⁰³	N/A
Michigan	None available at present ¹⁰⁴	No*

*In Michigan, an expungement procedure has been proposed, but it would not be automatic.¹⁰⁵

Record-sealing and expungement are distinct from a 'pardon', a more limited measure which was introduced in Canada.¹⁰⁶ A pardon signifies forgiveness for a prior crime, but does not allow an individual to deny such a crime ever took place. To confuse things further, however, Illinois' regulations allow for 'a pardon by the Governor which specifically authorizes expungement'. Following such a pardon, an individual may petition the Court at which they were convicted to have their record of arrest expunged and 'the records of the court clerk and the Department...sealed until further order'. Their name shall be 'obliterated' from the official index 'kept by the circuit court clerk...in connection with the arrest and conviction'. The sealed records may then only be disseminated by the Department 'to the arresting authority, the State's Attorney, and the court upon a later arrest for the same or similar offense or for the purpose of sentencing for any subsequent felony'.¹⁰⁷ Clearly, then, this does allow for some dissemination of the record. The complexity of this procedure highlights why, in practice, 'record sealing' and expungement are often confused and highly dependent on states' existing legal frameworks.

All states bar Michigan, Maine and Alaska have (or intend to have) procedures to seal or expunge criminal records for certain offences: usually acts that are now legal, such as possession of an ounce or less of cannabis. Michigan's new retail market is still being developed, but no expungement procedure has yet been implemented. Sales in Maine are due from June 2020, but no expungement Bill has yet been passed. Alaska, in contrast, has had a retail market for a number of years, but with no expungement or record sealing procedure. Despite pressure on both states to implement procedures, it is unclear whether this will happen.¹⁰⁸

Expungement or record-sealing may be an automatic process. In California, Assembly Bill 1793 requires the Department of Justice to review past cannabis convictions to determine all cases which are eligible

¹⁰¹ Illinois Government (2019). Adult Use Cannabis Summary. https://www2.illinois.gov/ISNews/20242-Summary_of_HB_1438_The_Cannabis_Regulation_and_Tax_Act.pdf

¹⁰² Maine Legislature (2019). Legislative Document No. 991 Resolve, To Expunge Criminal and Civil Records Related to Marijuana Activities Legalized by the Voters of Maine. https://legislature.maine.gov/legis/bills/bills_129th/billtexts/SP028101.asp; Maine Legislature (2019). Summary of LD 991. <http://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280072057>

¹⁰³ Efforts are ongoing by civil society to encourage the state to pass an expungement bill: Marijuana Policy Project (2019). Alaska lawmakers considering expungement bill. <https://www.mpp.org/states/alaska/>

¹⁰⁴ Neavling, S. (2019). Gov. Whitmer promised to expunge marijuana-related criminal records in Michigan. Those convicted are still waiting. Detroit Metro Times 3 June. <https://www.metrotimes.com/detroit/gov-whitmer-promised-to-expunge-pot-related-criminal-records-after-legalization-those-convicted-are-still-waiting/Content?oid=21802521>

¹⁰⁵ Neavling, S (2019). Michigan closer to expunging low-level marijuana crimes, but it won't be automatic. Detroit Metro Times 10 September. <https://www.metrotimes.com/detroit/michigan-closer-to-expunging-low-level-marijuana-crimes-but-it-wont-be-automatic/Content?oid=22616848>

¹⁰⁶ Cannabis Amnesty (2019). Statement on Bill C-93. https://www.cannabisamnesty.ca/statement_on_bill_c_93; Government of Canada (2019). Bill C-93 – No-fee, Expedited Pardons for Simple Possession of Cannabis. <https://www.canada.ca/en/public-safety-canada/news/2019/06/bill-c-93--no-fee-expedited-pardons-for-simple-possession-of-cannabis.html>

¹⁰⁷ Illinois General Assembly (2019). House Bill 1438. 900-12s5.2(e) Expungement, sealing, and immediate sealing (Page 395). <http://www.ilga.gov/legislation/publicacts/101/PDF/101-0027.pdf>.

¹⁰⁸ See: Marijuana Policy Project (2019). Alaska lawmakers considering expungement bill. 8 March. <https://www.mpp.org/states/alaska/>.

for recall or dismissal of a sentence, dismissal and sealing, or redesignation, by 1 July 2020.¹⁰⁹ This has been celebrated as good practice in some quarters, as record sealing is effectively automatic: the duty to seal individual records falls on the Department of Justice, rather than on the individuals. However, it has also highlighted the difficulties of an automatic process, as the onus is on District Attorneys — who would have been prosecuting these individuals previously — to remove criminal records. There are also inevitably capacity issues with such large-scale record sealing processes, which may hold the process up.

In some areas of California, technological solutions have helped streamline the process of identifying eligible individuals. For instance, Yolo County was able to automatically seal 728 convictions with the assistance of a non-profit tech partner, Code for America. This programme has since been made available to ‘any district attorney in California’, but owing to inconsistencies in data collection across courts and prosecutors’ offices, there may be issues with state-wide implementation.¹¹⁰ People from some areas may, therefore, have to wait longer, or even miss being overlooked, by the record sealing process. In February 2020, Los Angeles worked with Code for America to dismiss 66,000 cannabis convictions, meaning the non-profit has helped seal 85,000 cannabis convictions across five counties in California.¹¹¹

Automatic expungement is always preferable. When the onus is on individuals to apply to have their records sealed, fewer eligible people are likely to benefit. Further, court filing fees may apply, alongside other administrative requirements, which create further barriers. Indeed, people may be ‘so traumatized from the system’ that they do not want to put themselves through court processes to clear their names.¹¹² The individuals most likely to be deterred are those from poorer backgrounds, meaning those from areas disproportionately impacted by cannabis prohibition are less likely to benefit from the expungement provisions. Record sealing in Colorado has been heavily criticised as, of 10,000 potentially eligible individuals, Denver received only 176 applications in the first three months of 2019 — only 38 of whom were actually eligible.¹¹³ After a campaign for reform, Oregon introduced legislation to reduce administrative burdens and filing fees at the start of 2020.¹¹⁴

Social equity measures

Our 2020 consultation report *Challenges for a World Where Drugs are Legally Regulated* noted the critical importance of building in social equity measures to drug law reform. It recommended that:

Reformed drug policies must establish means by which communities that have historically been most damaged by prohibition can engage in new markets.

The rights of impacted communities should be protected. They should be given full scope to develop their economic agency, and have a meaningful role in policy development¹¹⁵

¹⁰⁹ California Legislative Information (2018). AB-1793 Cannabis Convictions: Resentencing. https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1793

¹¹⁰ Cowan, J (2019). Thousands of Californians Could Get Their Marijuana Convictions Cleared. But It’s Complicated. *California Today* 5 September 2019. <https://www.nytimes.com/2019/09/05/us/marijuana-proposition-64-code-for-america.html>.

¹¹¹ The Guardian, Staff and Agencies (2020). Los Angeles to dismiss 66,000 marijuana convictions. *The Guardian* 14 February. <https://www.theguardian.com/us-news/2020/feb/14/los-angeles-marijuana-convictions-dismissed>

¹¹² Manisha Krishnan (2019). A Notorious Ex-Cocaine Trafficker Is Helping Black People Sell Legal Weed. *VICE* 26 November. https://www.vice.com/en_uk/article/wjwmk5/a-notorious-cocaine-trafficker-freeway-rickross-is-helping-black-people-sell-legal-weed.

¹¹³ Pampuro, A. (2019). Colorado Makes Slow Move to Erase Old Pot Convictions. *Courthouse News Service* 12 March. <https://www.courthouse-news.com/colorado-makes-slow-move-to-erase-old-pot-convictions/>

¹¹⁴ ACLU Oregon (2019). Expunge and reduce Cannabis Criminal Records - SB 420 & SB 975. <https://www.aclu-or.org/en/legislation/expunge-and-reduce-cannabis-criminal-records-sb-420-sb-975-2019>

¹¹⁵ Transform Drug Policy Foundation, St. George’s House (2020). *Challenges for a world where drugs are legally regulated: a consultation report from St Georges House and Transform Drug Policy Foundation*. Transform Drug Policy Foundation. <https://transformdrugs.org/principles-of-drug-policy-reform/>

Under prohibition, socially and economically marginalised groups, particularly people of colour, have borne a disproportionate burden of law enforcement's negative impacts. Legal regulation of cannabis offers states an opportunity to begin making reparations to individuals and communities disproportionately impacted by the prohibition of cannabis. Legal cannabis is a potentially lucrative industry — in terms of both corporate profit and tax revenue — and there is a need for proactive measures to ensure benefits are shared more widely. In some (but not all) states, social equity measures have become a key feature of cannabis regulation. The issue is now a key element in the campaign for cannabis reform at a federal level — as highlighted in the MORE Act, which was put forward in 2019. The Act would legislate for the development of a 'cannabis opportunity program' and an 'equitable licensing grant program' to facilitate access of economically disadvantaged individuals and 'individuals most adversely impacted by the War on Drugs' to the cannabis industry, though the Act is unlikely to pass.¹¹⁶

Defining disproportionate impact

Once a state decides to implement social equity measures, it must then determine which individuals or communities the measures should benefit — i.e. who has been disproportionately impacted by previous repressive cannabis laws and enforcement. This is complicated by the fact that it may be unconstitutional to define this directly by reference to an individual's race, for instance through implementing quotas. Such an attempt was struck down by judges in Ohio in relation to medical cannabis in late 2019.¹¹⁷ Those designing social equity programmes have therefore tended towards complex definitions of disproportionate impact, with a variety of qualifying criteria.

One way to identify disproportionately impacted individuals is to pinpoint those who were arrested directly as a result of previous cannabis laws. In Illinois, for instance, social equity applicants include businesses with majority ownership by individuals who were previously arrested for offences now eligible for expungement, or have a close family member who is now eligible for expungement. Businesses where 51% of full-time employees have a prior arrest also qualify for social equity measures. Businesses are only required to meet these criteria on the day a social equity application is submitted, meaning that a business may be owned and run by individuals who experienced no disproportionate impact whatsoever but still qualify. Further, there is nothing to prevent such a subsequent reduction in the proportion of staff who were disproportionately impacted.¹¹⁸ This raises important questions about how effective implementation of equity programmes can be guaranteed.

Most states adopting social equity measures apply a relatively wide definition of disproportionate impact. Residence (generally for five of the past ten years) in a 'disproportionately impacted area' is the most common qualifying requirement for social equity measures.¹¹⁹ This is important as disproportionate impact may not necessarily mean arrest or conviction, but also, for instance, being subject to stop-and-search measures, which have a significant racial bias. It is also the case that, partly as a result of drug law implementation, relationships between law enforcement and many communities have broken down. Community-oriented approaches do not prevent recognition that individuals may be personally impacted, even if they are not from a designated community. San Francisco requires individuals to meet three of six equity conditions: area-level household income being below 80% of the average; a prior cannabis-related arrest; prior arrest of a family member in relation to cannabis; having lost housing since 1995 through eviction, foreclosure or subsidy cancellation; having attended school in the area for

¹¹⁶ Senate of the United States (2019). S. 2227: MORE Act of 2019. <https://www.govtrack.us/congress/bills/116/s2227/text>

¹¹⁷ Personal communication; Borhardt, J. (2019). Ohio medical marijuana: Minority quota for dispensary licenses struck down. Cincinnati.com 15 December. <https://eu.cincinnati.com/story/news/2019/11/07/ohio-medical-marijuana-minority-quota-dispensary-licenses-struck-down/2521347001/>

¹¹⁸ For a business to qualify on the basis of 51% of employees meeting qualifying criteria, there must be at least ten full-time employees (which may include the principal officer). The other classification to qualify as a social equity applicant is residency in a 'disproportionately impacted area' (either by the 51% of employees or the 51% of ownership). See: Illinois General Assembly (2019). House Bill 1438. Section 1-10. Definitions. Page 14. <http://www.ilga.gov/legislation/publicacts/101/PDF/101-0027.pdf>; Illinois Department of Agriculture (Undated). Adult Use Cannabis Social Equity Applicant FAQ. <https://www2.illinois.gov/sites/agr/Plants/Pages/Social-Equity-Applicant-FAQ.aspx>

¹¹⁹ E.g., see guidance from Massachusetts and Illinois: Illinois Department of Commerce & Economic Opportunity (Undated). Illinois Adult-Use Cannabis and Social Equity. <https://www2.illinois.gov/dceo/Pages/CannabisEquity.aspx>; Commonwealth of Massachusetts, Cannabis Control Commission (Undated). Guidance for Identifying Areas of Disproportionate Impact. <https://mass-cannabis-control.com/wp-content/uploads/2018/04/FI-NAL-DRAFT-Areas-of-Disproportionate-Impact-1.pdf>

five years; and having lived in an area for at least 5 years where at least 17% of the households ‘had incomes at or below the federal poverty level’.¹²⁰

In Massachusetts, disproportionately impacted areas are determined based on research (commissioned by the Massachusetts Cannabis Control Commission), which investigated the impact of drug arrests on local communities.¹²¹ Impacts were ranked, and communities scored, based on indicators including: cannabis-related arrest rates, poverty metrics and unemployment rates. These scores are used to select areas qualifying for the social equity scheme.¹²²

In Illinois, House Bill 1438 provides detailed parameters against which low income can be measured. A ‘disproportionately impacted area’ is defined as an area that has: a poverty rate of at least 20%; 75% or more children participating in the federal free lunch programme; at least 20% of households receiving assisted under the ‘Supplemental Nutrition Assistance Program’; or an average unemployment rate more than 120% of the national average. As well as meeting at least one of these criteria, however, the area must also have ‘high rates of arrest, conviction, and incarceration’ related to cannabis.¹²³ No further definition is given for what qualifies as ‘high rates’, meaning there is still some vagueness over precisely how a disproportionately impacted area is defined.

Some states do not directly rely on the historical effects of cannabis law enforcement when determining disproportionate impact. Colorado, for instance, simply requires individuals to have lived in ‘low-income areas’, as defined by the Office of Economic Development, for at least five of the past ten years.¹²⁴ Although low income areas are likely to also have been disproportionately impacted by cannabis law enforcement, the correlation is not inevitable, which is why Illinois requires both low income and previously high levels of arrests. The kind of research conducted by Massachusetts is a strong benchmark for understanding how communities have been impacted by prior cannabis laws. Going forward, it is to be hoped similarly systematic approaches are adopted more widely.

Facilitating access to the industry

States can help support disproportionately impacted groups by facilitating access to working in the cannabis industry: for instance, by helping people who wish to set up a business themselves — either to cultivate, manufacture or retail cannabis. They can also support entry to employment in cannabis businesses. Massachusetts includes among its access measures the ‘priority review’ of licence applications for qualifying applicants.¹²⁵ In Nevada, business diversity is ranked and scored when licence applications are assessed.¹²⁶ In Illinois, up to a fifth of points in the application-scoring system for retail licences are available for ‘status as a social equity applicant’.¹²⁷ Colorado, which presently does not have any specific social equity measures, is intending to introduce business licences aimed at lower income demographics in 2020. These licences would cover cultivation, extraction and manufacturing but not retail.¹²⁸

¹²⁰ San Francisco Office of Cannabis (Undated). Equity Applicant: Equity Conditions. <https://officeofcannabis.sfgov.org/equity/applicant>

¹²¹ Personal communication.

¹²² Gettman, J.B. (2017). The Impact of Drug and Marijuana Arrests on Local Communities in Massachusetts. <https://mass-cannabis-control.com/wp-content/uploads/2017/12/Impact-of-Drug-and-Marijuana-Arrests-on-Local-Communities-in-Massachusetts.pdf>. See also: Commonwealth of Massachusetts, Cannabis Control Commission (Undated). Guidance for Identifying Areas of Disproportionate Impact. <https://mass-cannabis-control.com/wp-content/uploads/2018/04/FINAL-DRAFT-Areas-of-Disproportionate-Impact-1.pdf>

¹²³ Illinois General Assembly (2019). House Bill 1438. Section 1-10. Definitions. Page 9-10. <http://www.ilga.gov/legislation/publicacts/101/PDF/101-0027.pdf>.

¹²⁴ Mitchell, T. (2019). Colorado Reviews New Social Equity Marijuana Business Licenses. Westworld 16 September. <https://www.westword.com/marijuana/colorado-setting-aside-marijuana-business-licenses-for-social-equity-11483633>

¹²⁵ Commonwealth of Massachusetts, Cannabis Control Commission (Undated). Guidance for Equity Provisions. <https://mass-cannabis-control.com/wp-content/uploads/2018/04/FINAL-Social-Provisions-Guidance-1PGR-1.pdf>

¹²⁶ Government of Nevada (Undated). License application form, example available: [https://tax.nv.gov/uploadedFiles/taxnvgov/Content/FAQs/Score%20Sheet%20-%20Organizational%20Structure%20\(Identified\).pdf](https://tax.nv.gov/uploadedFiles/taxnvgov/Content/FAQs/Score%20Sheet%20-%20Organizational%20Structure%20(Identified).pdf).

¹²⁷ Illinois Department of Financial and Professional Regulation (Undated). License application information. https://www.idfpr.com/FAQ/AUC/FAQ%20-%20Adult%20use%20license%20for%20new%20dispensing%20organizations_.pdf; Illinois Department of Commerce & Economic Opportunity (Undated). Illinois Adult-Use Cannabis and Social Equity. <https://www2.illinois.gov/dceo/Pages/CannabisEquity.aspx>

¹²⁸ Mitchell, T. (2019). Colorado Reviews New Social Equity Marijuana Business Licenses. Westworld 16 September. <https://www.westword.com/marijuana/colorado-setting-aside-marijuana-business-licenses-for-social-equity-11483633>

However, when ‘social equity’ is merely a single component of assessment in a scoring system it may be outweighed by other factors. In Nevada, for instance, regulators are also required to score an individual on whether they have previously run a business.¹²⁹ People from disproportionately impacted areas, or indeed those previously convicted of cannabis offences, may be less likely to have run a (legal) business previously.

Social equity schemes may instead place the onus on businesses. The Marijuana Regulatory Agency in Michigan requires all licence applicants to submit a social equity plan that details a ‘strategy to promote and encourage participation in the marijuana industry by people from communities that have been disproportionately impacted by marijuana prohibition and enforcement and to positively impact those communities’.¹³⁰ However, it is not yet clear how successful this requirement will be in practice. While it may improve participation in entry-level roles, it does little to facilitate wider licence application.

Further measures to facilitate access can include fee waivers and loans. Illinois has proposed a low-interest loan scheme in disproportionately impacted areas, with \$30 million of funding, as well as licence fee reductions of up to 50%.¹³¹ The Marijuana Regulatory Agency in Michigan plans to reduce licence fees by up to 60% for those in disproportionately impacted areas. It also plans to visit these areas in order to raise awareness of its social equity programme.¹³² Full fee waivers are available in some municipalities.¹³³ Loan schemes also help mitigate the financial barriers to business start-up. This is particularly important as the absence of banking services available for cannabis businesses has been reported as ‘effectively blocking nearly everyone but the wealthy and well-connected from getting into and benefitting from what is the fastest-growing industry in the country’.¹³⁴

Training and assistance

Social equity measures can also include training and business support. In Massachusetts, the Cannabis Control Commission is ‘charged by state law...with ensuring the meaningful participation in the cannabis industry of communities disproportionately affected by the enforcement of previous cannabis laws’, as well as ‘small businesses, and companies led by people of color, women, veterans, and farmers’. It operates a broad social equity programme targeted at all levels of the industry — those seeking to run a business themselves; those looking for managerial work; as well as entry-level positions.¹³⁵

Eligibility for the Massachusetts programme requires a past drug conviction (of any kind), residence in a disproportionately impacted area for five of the past ten years or being the spouse or child of someone with a past conviction. The programme provides training, technical assistance and mentoring, aiming to reduce barriers to entry.¹³⁶ While loans and fee waivers are important steps in encouraging impacted individuals to engage in the first place, training helps ensure success in the longer-term.

¹²⁹ Government of Nevada (Undated). License application form, example available: [https://tax.nv.gov/uploadedFiles/taxnv.gov/Content/FAQs/Score%20Sheet%20-%20Organizational%20Structure%20\(Identified\).pdf](https://tax.nv.gov/uploadedFiles/taxnv.gov/Content/FAQs/Score%20Sheet%20-%20Organizational%20Structure%20(Identified).pdf)

¹³⁰ Government of Michigan (2019). Michigan’s Marijuana Regulatory Agency Releases Emergency Rules. <https://www.michigan.gov/marijuana/0,9306,7-386-89871-501189--,00.html>

¹³¹ Hansen, C (2019). Illinois Lawmakers Approve Marijuana Legalization. US News 31 May. <https://www.usnews.com/news/national-news/articles/2019-05-31/illinois-lawmakers-approve-marijuana-legalization>; Illinois Department of Commerce & Economic Opportunity (Undated). Illinois Adult-Use Cannabis and Social Equity. <https://www2.illinois.gov/dceo/Pages/CannabisEquity.aspx>; Illinois Government (2019). Adult Use Cannabis Summary. https://www2.illinois.gov/ISNews/20242-Summary_of_HB_1438_The_Cannabis_Regulation_and_Tax_Act.pdf; Government of Illinois (2019). House Bill 1438 Illinois Cannabis Regulation and Tax Act. Article 7: Social Equity in the Cannabis Industry. <http://illinoiscannabisinfo.com/hb1438-article7/>

¹³² Government of Michigan, Department of Licensing and Regulatory Affairs (2019). Michigan’s Marijuana Regulatory Agency Announces Social Equity Program Expansion. https://www.michigan.gov/lara/0,4601,7-154-89334_79571_79784-508912--,00.html

¹³³ See, e.g., Government of Long Beach (Undated). Open an Equity Business. <http://www.longbeach.gov/citymanager/cannabis-information/cannabis-social-equity-program/open-an-equity-business/>

¹³⁴ Krane, K. (2018). Lack Of Cannabis Banking Hurts Average Small Business Owners, While Wealthy Entrepreneurs Flourish. Forbes 13 June. <https://www.forbes.com/sites/kriskrane/2018/06/13/marijuana-banking-constraints-disproportionately-harm-small-businesses/#675f41ce54ed>

¹³⁵ Commonwealth of Massachusetts, Cannabis Control Commission (Undated). Guidance on Equitable Cannabis Policies for Municipalities. <https://mass-cannabis-control.com/wp-content/uploads/2018/11/Municipal-Equity-Guidance-August-22-1.pdf>; Commonwealth of Massachusetts, Cannabis Control Commission (Undated). Equity Programs. <https://mass-cannabis-control.com/equityprograms-2/>

¹³⁶ Commonwealth of Massachusetts, Cannabis Control Commission (Undated). Guidance on Equitable Cannabis Policies for Municipalities. <https://mass-cannabis-control.com/wp-content/uploads/2018/11/Municipal-Equity-Guidance-August-22-1.pdf>; Commonwealth of Massachusetts, Cannabis Control Commission (Undated). Equity Programs. <https://mass-cannabis-control.com/equityprograms-2/>

Municipal action

Social equity measures can be introduced at state or municipal level. In California, the Bureau for Cannabis Control has made \$10,000,000 available to provide direct assistance to local jurisdictions' social equity programmes.¹³⁷ Los Angeles City has developed a programme that offers priority application processing and business support to disproportionately impacted individuals.¹³⁸ However, it has been heavily criticised as leaving equity candidates on an 'indefinite waiting list', and 'fewer than 20 of the 100 businesses on track to receive a license through the program appear to be black-owned, according to estimates from advocates'.¹³⁹ San Francisco has implemented waivers of \$5,000 licensing fees as well as a scheme where 'Equity Incubators' provide equity applicants with rent-free space or technical assistance.¹⁴⁰ However, the programme has also been heavily criticised as equity clients have had to wait on average 18-24 months to be permitted, during which time they may have to pay expensive commercial rents.¹⁴¹

In contrast, while Oregon has not provided state funding, Portland has nonetheless implemented its own licence fee reduction scheme. This allows small businesses to receive fee reductions when either 25% of their owners or 20% of their staff have a prior cannabis conviction.¹⁴² It has also implemented a city-wide cannabis sales tax specifically to raise funds for economic and education programmes in disproportionately impacted communities.¹⁴³

In Massachusetts, the municipality of Cambridge took the decision to further bolster statewide social equity measures by introducing a two year initial period during which it would only allow licences for 'economic empowerment' applicants. The decision was legally challenged by a non-qualifying applicant hoping to expand to non-medical sales in the municipality, but effectively being told that they had to wait. A Superior Court judge initially found that the city's two year headstart for equity applicants was 'in direct conflict with the [state Cannabis Control Commission's] priority applicant scheme'. However, this decision was overturned in April 2020, with the Appeals court judge stating that 'nothing in the ordinance conflicts with this regulation in any manner'.¹⁴⁴

A warning against deterring access

Some states have no social equity schemes at all. Washington, for example, has been criticised for failures to boost representation of minority groups in the cannabis business.¹⁴⁵ In response, it has detailed new proposals to increase diversity, but it is not clear how practical these are — especially as it is not presently accepting new licence applications.¹⁴⁶ The difficulty in retrospectively applying equity measures highlights the importance of ensuring diversity at the initial application stage, including by hardwiring requirements into original regulations.

¹³⁷ Bureau of Cannabis Control California (Updated 2019). Local Equity Grant Program Notice of Funding Availability. https://www.bcc.ca.gov/about_us/equity_grant.html. (It is no longer taking applications).

¹³⁸ City of Los Angeles Department of Cannabis Regulation (2019). Social Equity Program. <https://cannabis.lacity.org/licensing/social-equity-program-2>

¹³⁹ Levin, S. (2020). 'This was supposed to be reparations' Why is LA's cannabis industry devastating black entrepreneurs? The Guardian. 3 February. <https://www.theguardian.com/us-news/2020/feb/03/this-was-supposed-to-be-reparations-why-is-las-cannabis-industry-devastating-black-entrepreneurs>

¹⁴⁰ Lekhtman, A. (2019). Finally: A Black-Owned, Equity-Program Cannabis Dispensary in San Francisco. Filter 12 December. <https://filtermag.org/san-francisco-black-equity-marijuana/>;

¹⁴¹ Ruskin, Z. (2020). SF Cannabis Report Spells Trouble for Retail Hopefuls. SF Weekly 22 January. <https://www.sfweekly.com/news/chemtales/sf-cannabis-report-spells-trouble-for-retail-hopefuls/>

¹⁴² The City of Portland, Oregon (2018). Social Equity Program. <https://www.portlandoregon.gov/civic/article/698417>

¹⁴³ McVey, E. (2019). Chart: Not all states' cannabis social equity programs are equal. Marijuana Business Daily 20 August. <https://mjbizdaily.com/chart-not-all-states-cannabis-social-equity-programs-are-equal/>

¹⁴⁴ Levy, M. (2020). Appeals court judge smacks down an injunction, good news for city's favoring of small pot sellers. Cambridge Day 24 April. <http://www.cambridgeday.com/2020/04/24/appeals-court-judge-smacks-down-an-injunction-good-news-for-citys-favoring-of-small-pot-sellers/>

¹⁴⁵ Jardine, J (2019). Don't Forget About Social Equity in Cannabis. The Stranger 12 June. <https://www.thestranger.com/slog/2019/06/12/40456572/dont-forget-about-social-equity-in-cannabis>; Marijuana Business Daily (2019). Washington state regulators consider revamping marijuana rules. Marijuana Business Daily 28 August. <https://mjbizdaily.com/washington-state-regulators-consider-revamping-marijuana-rules/>

¹⁴⁶ Weedmaps (2019). What Washington's 'Cannabis 2.0' Would Do for Social Equity, Deliveries. <https://news.weedmaps.com/2019/09/what-washingtons-cannabis-2-0-would-do-for-social-equity-deliveries/>

In Alaska, which also has no social equity scheme, recent felons are prohibited from being granted cannabis establishment licences.¹⁴⁷ Prior to legal regulation, possession of 1 to 4 ounces was considered a misdemeanour in Alaskan law; any more was considered a felony.¹⁴⁸ Therefore, while people charged previously with possession of less than 4 ounces are not specifically excluded from licensing, the law still excludes many of those who would have been hardest hit by previous cannabis policy. In Maine, a licence applicant is required to have ‘good conduct and character’, which includes having ‘no disqualifying drug offence’. Conduct which is now lawful under the Maine cannabis Act is specifically excluded, but the limit is still technically lower than Alaska’s (only possession of up to 2.5 ounces is legal under the new legislation).¹⁴⁹

Lessons learned

The legal regulation of cannabis is still a relatively new policy innovation. Already, however, we can see how different regulatory models lead to different outcomes. States seeking to legalise cannabis going forward now have real world examples of how their own regulations can be implemented to ensure that public health can be put first, retail markets can be developed with communities in mind, and taxation can be set to help achieve broader social benefits.

No two states have regulated cannabis in exactly the same way. However, it is clear that there has been a degree of ‘policy transfer’, with lawmakers drawing from the examples and experience of other states. Regulations in relation to marketing and packaging, for instance, are widely similar across the country. This trend also underscores the fact that there are often similar policy goals in regulating cannabis: not only to help protect public health, reduce crime and to protect children but, in some states, to actively promote social equity.

Increasingly, states are recognising the importance of cannabis regulation as an opportunity to repair relationships with, and ensure meaningful participation of, individuals and groups disproportionately impacted by previous law enforcement of cannabis prohibition. Again, a range of different measures are now being taken, which can provide case studies for newly regulating states to draw upon. We would hope to see this emerge as a key focus, and something built into legislation from the start, as legal regulation is rolled out more widely.

Regulation is not a single intervention, it is an ongoing process. It is, or should be, iterative: as lessons are learnt, so regulations can be improved. This is especially important in such a novel policy area. We have a relatively brief period in which we can learn what can (and, indeed, what should) work before regulatory systems become set in stone and subject to the kinds of inertia and ‘path dependency’ that characterises more mature policy areas. While we still await longer-term evaluations to assess the impacts of new cannabis policy on consumption, harm and culture over the longer period it is important that we look now at how different systems are emerging, what they are trying to achieve, and what implementation challenges they are facing.

With an increasing number of states now operating regulated markets, there is considerably more policy learning to draw upon than when Colorado and Washington first took the steps to legally regulate cannabis in 2012. We hope that the process of comparative analysis continues, and that regulatory bodies in the US and internationally remain open to the evidence, flexible in their approach and — above all — guided by the principle of using drug policy to improve public health, protect human rights and help ensure improvements in social justice across all our communities.

¹⁴⁷ Alaska Statutes (2015). Title 17 - Food and Drugs, 17.38 The Regulation of Marijuana. Sec. 17.38.200 Marijuana establishment registrations. <https://law.justia.com/codes/alaska/2015/title-17/chapter-17.38/section-17.38.200/>

¹⁴⁸ Volz, M. (2006). ACLU sues state on marijuana law. Juneau 6 June. Archived at: https://web.archive.org/web/20180209182344/https://www.juneauempire.com/stories/060606/sta_20060606019.shtml

¹⁴⁹ State of Maine, Office of Marijuana Policy: Department of Administrative and Financial Services. Adult Use Marijuana Program Rule 18-691 C.M.R., Chapter 1. s2.5.5. Department Review of Conditional Applications: Denial. <https://www.maine.gov/dafs/omp/adult-use/rules-statutes/18-691-C.M.R.-ch.-1>

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