

**TRANSFORM**  
Drug Policy Foundation

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

Executive Summary



Eleven US states have now legalised cannabis for adult, non-medical use, with more likely to follow. With cannabis still illegal at a federal level, a series of natural experiments are taking place, each presenting a different model for how cannabis can be regulated — and providing important lessons for policymakers going forward. In this report, we compare regulation across the different states, taking into account key goals including public health and social justice, and consider lessons that can be learned for future policy reform.

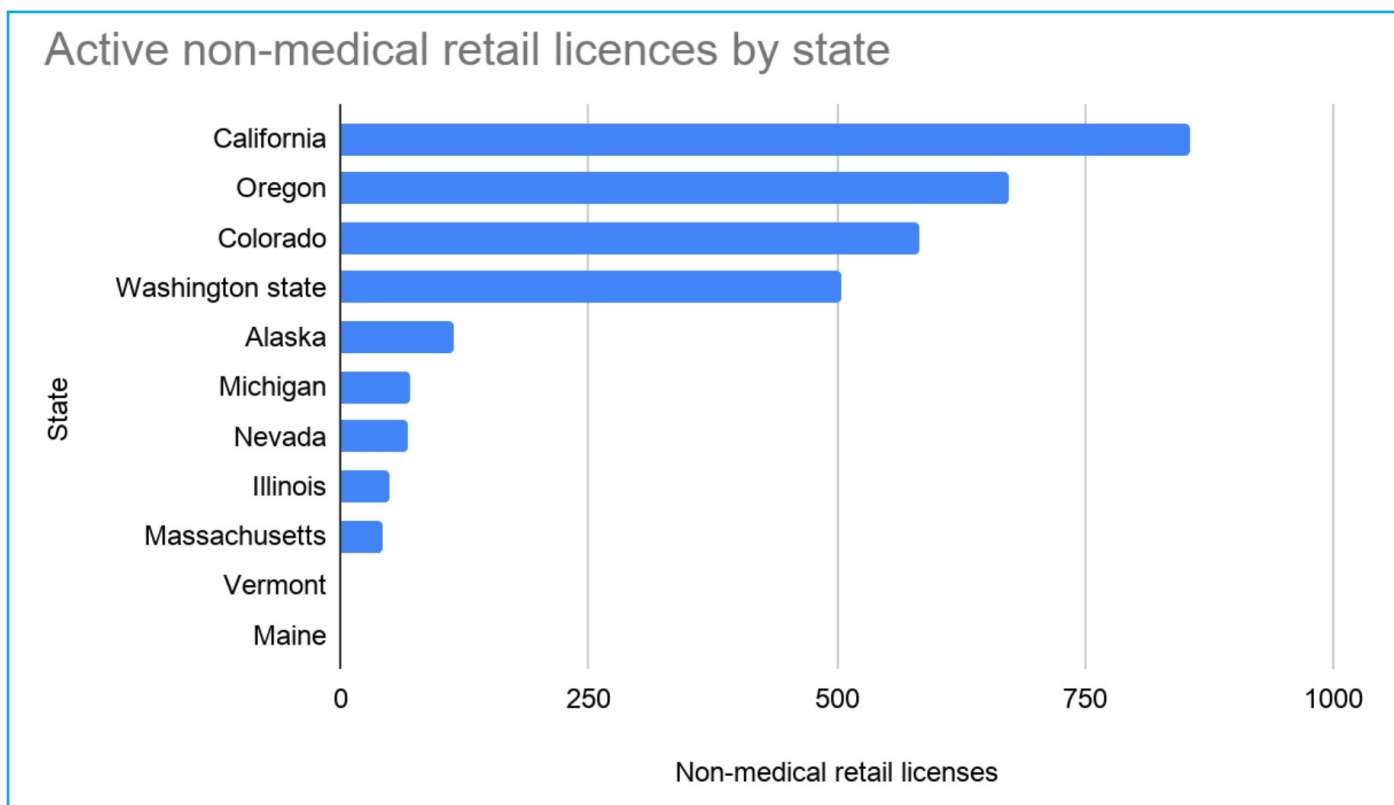
## Moving from a medical market

Cannabis is now legal in most of the US for medical purposes, so many states have built their non-medical supply infrastructure on existing systems. Illinois, for instance, implemented an ‘early application’ scheme for businesses already set up to retail medical cannabis in the area prior to its first sales in January 2020.<sup>1</sup> In Michigan, the Marijuana Regulatory Agency has made it a requirement for a number of its licences that primary applicants already possess a medical cannabis state operating licence.<sup>2</sup>

While such strategies simplify the administrative process of developing a new retail market, they also create significant barriers to entry, especially for small businesses and providers based in local communities. The existing medical cannabis infrastructure does not, therefore, provide the best platform for non-medical supply if the goal is to promote local engagement. The investment required to set up facilities geared towards medical production inevitably excludes small producers, even if prioritising medical businesses allows for a more streamlined regulatory transition.

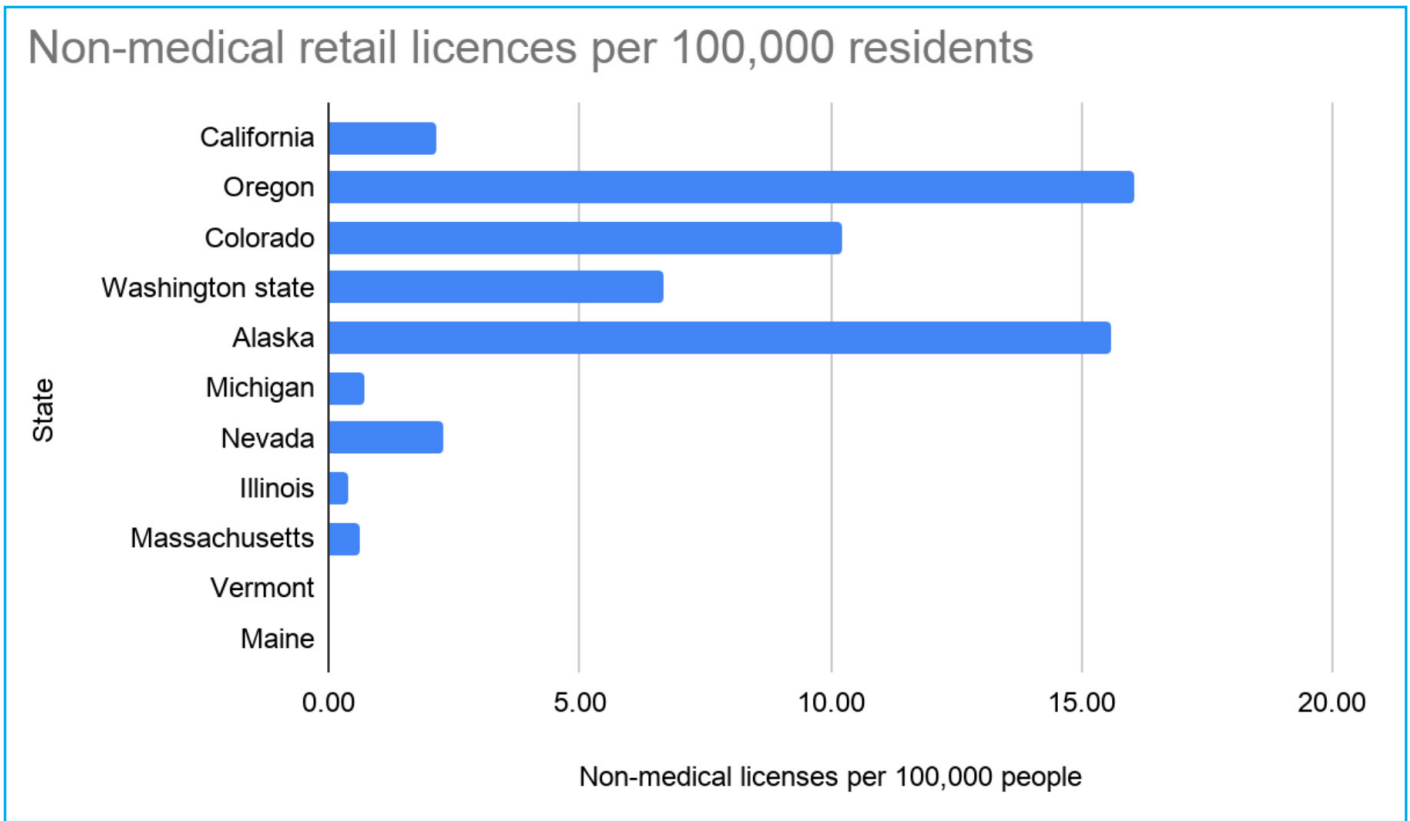
## Granting licences

Licence provision is the key mechanism for regulating sales and controlling availability. States have adopted a range of different licensing systems, leading to different outcomes.



<sup>1</sup> Illinois Department of Financial and Professional Regulation (undated). Adult Use Cannabis Program - FAQs. <https://www.idfpr.com/profs/adultusecan.asp>

<sup>2</sup> 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/>



Source: State governments' individual licence data as of March 2020. (Citations in full report)

All states have sought to allow municipalities and local authorities a degree of autonomy over the regulation of non-medical cannabis within their communities: including flexibility on zoning laws or the option to prohibit retailers entirely. In California, this has resulted in 76% of cities rejecting cannabis stores, leading to criticisms that patchwork prohibition is undermining state-wide regulation efforts in combating the illegal market.<sup>3</sup> 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. 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 five cities did so.<sup>4</sup>

## Taxation

Legal regulation allows profits from cannabis markets to be taxed. Tax income can be spent in a range of ways in addition to funding implementation of the regulatory framework, including social projects (if so desired). However, it is also a key lever for influencing retail price.

Some states have sought to earmark (or 'hypothecate') revenue for social purposes. In Illinois, 20% of state cannabis 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.<sup>5</sup> 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.<sup>6</sup>

<sup>3</sup> 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>

<sup>4</sup> 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](https://www.oregon.gov/olcc/marijuana/Documents/Cities_Counties_RMJOptOut.pdf)

<sup>5</sup> Government of Illinois (2019). Adult Use Cannabis Summary (24 June). [https://www2.illinois.gov/ISNews/20242-Summary\\_of\\_HB\\_1438\\_The\\_Cannabis\\_Regulation\\_and\\_Tax\\_Act.pdf](https://www2.illinois.gov/ISNews/20242-Summary_of_HB_1438_The_Cannabis_Regulation_and_Tax_Act.pdf)

<sup>6</sup> 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>

State	State Excise Tax	Further Taxes
Washington	37%	7-10% further state and local sales tax
Colorado	15%	Further 15% state retail 'special marijuana sales tax' and further 2.9% state sales tax
Illinois	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	15% on the wholesale price (paid by the cultivator) 10% on the retail sale	Retail sales tax at the local rate.
Oregon	17%	Up to 3% further local taxes.
Massachusetts	10.75%	Further 6.25% state general sales tax and up to 3% local option tax
Maine*	10%	Further sales tax of 10% on sales by a cultivation facility to a retail store or product manufacturer.
California	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%	Further 6% state sales tax.
Alaska	Mature bud/flower: \$50 per ounce. Trim: \$15 per ounce. Abnormal/immature bud/flower: \$25 per ounce. Clones: \$1 per clone.	
Vermont	N/A	N/A

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

Sources: state government data, outlined in full report. \*In Maine, retail sales are not due to begin until June 2020.

## Packaging, advertising and marketing

All states place controls on packaging, including varied 'universal symbol' requirements to ensure it is clear when a product contains cannabis, as well as warnings of potential driving hazards, or a need to keep away from children.<sup>7</sup> In some states, child-specific restrictions include forbidding the use of characters that appeal to children, such as cartoons.<sup>8</sup>

All states require packaging to specify THC content.<sup>9</sup> All states also require cannabis to be contained in resealable, child-resistant packaging which, in all states bar Oregon, must be opaque.<sup>10</sup> 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.

<sup>7</sup> 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](https://www.oregon.gov/olcc/marijuana/Documents/Packaging_Labeling/ChecklistandGeneric.pdf).

<sup>8</sup> 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>

<sup>9</sup> 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>.

<sup>10</sup> For full references, see full report.

# Removal of criminal records (expungement)

Moves to regulate represent a sea-change in social views on cannabis use; however, previous criminal records remain a lasting stigma that individuals 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. Expungement is technically different from ‘record sealing’, a process whereby the criminal record isn’t deleted, but hidden from the public record.

State	Type of criminal record removal	Automatic?
California	Record sealing	Yes
Oregon	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	Record sealing  Individuals may request a Court to seal records for activity which is now decriminalised.	No
Vermont	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	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.	No
Colorado	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	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
Illinois	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’.	N/A

State	Type of criminal record removal	Automatic?
Alaska	None available at present	N/A
Michigan	None available at present	No*

References and further details in full report. \*In Michigan, an expungement procedure has been proposed, but it would not be automatic.

The removal of criminal records can be complicated and administrative and financial barriers may prevent people from clearing their records, even where it is technically possible. A way to address this is to automate elements of the process. In California, Assembly Bill 1793 requires the Department of Justice to review past cannabis convictions to determine all cases which are eligible for recall or dismissal of a sentence, dismissal and sealing, or redesignation, by 1 July 2020.<sup>11</sup> In this case, record sealing is effectively automatic: the duty falls on the Department of Justice, rather than requiring individuals to submit their own applications.

## Social equity measures

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 and there is a need for proactive measures to ensure benefits are not only shared widely, but directed towards communities that have suffered most under prohibition. In some (but not all) states, social equity measures have become a key feature of cannabis regulation to ensure market access for disproportionately impacted groups.

Because businesses need a licence to produce, or sell, cannabis, social equity measures can be built into application procedures to promote access for disproportionately impacted individuals. In Nevada, business diversity is ranked and scored when licence applications are assessed, as part of the applicants' overall scores.<sup>12</sup> In Illinois, up to a fifth of points in the application-scoring system for dispensary licences are available for 'status as a social equity applicant'.<sup>13</sup> Further measures to facilitate market access 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%.<sup>14</sup> 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' the industry.<sup>15</sup> While loans and fee waivers are vital to promote initial access to the industry, training, technical assistance and mentoring — such as that offered by the Massachusetts social equity programme — are integral to ensuring success in the longer term.<sup>16</sup>

By contrast, some states have no social equity schemes at all. Washington, for example, has been

<sup>11</sup> California Legislative Information (2018). AB-1793 Cannabis Convictions: Resentencing. [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB1793](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1793)

<sup>12</sup> 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).

<sup>13</sup> 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](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>

<sup>14</sup> 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](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/>

<sup>15</sup> 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>

<sup>16</sup> 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/>

criticised for failing to support minority groups in the cannabis business.<sup>17</sup> 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.<sup>18</sup> The difficulty in retrospectively applying equity measures highlights the critical importance of putting diversity and equity at the heart of the regulatory structure from the very start.

## Lessons learned

The legal regulation of cannabis is still relatively new. We cannot know the full impact until policies have had time to bed in, and the longer-term market readjustments have taken place. In the US we are witnessing a range of approaches, with both large differences between states but also a high degree of ‘policy transfer’. How these approaches will shape the scale and pattern of markets in the long term remains unclear; however, we can already start to see how different regulatory models lead to, or facilitate, different outcomes. For example, transferring systems directly from medical to non-medical retail can exclude smaller operators; allowing local opt-out, while creating local democratic accountability, can also create regulatory patchworks; availability of expungement can be undermined if the process is excessively complicated; and failing to establish proactive social equity measures from the outset can entrench inequality in the new market and create an environment in which those hardest hit by the previous system are excluded from reaping the benefits of change.

The US is undergoing a revolution in its approach to cannabis. Like all revolutions, however, the outcomes are uncertain. Legal regulation presents a unique opportunity to address the terrible injustices that prohibition normalised, but it can also transfer financial benefits away from local communities and into the pockets of large corporations. Regulation should not replace one set of inequalities with another. Looking across the states that have legalised so far, we can see drift in both directions: corporate dominance and a lack of market access to disproportionately impacted groups in some cases, careful efforts to ensure economic inclusion and address historical injustice in others. Often achieving the best outcomes is a matter of detail: how are licensing systems set up in regard to entry costs? What are the systems for dealing with previous convictions? What are the precise regulations on marketing and promotion? As we move beyond the high-level arguments for change into a world where change is happening, these details matter. So, while we still await evidence on some longer-term consequences, this report suggests that there are essential considerations that need to be part of regulatory design from the outset if the best outcomes of reform — the improvement of public health, the protection of human rights and the promotion of social justice — are to be realised.

<sup>17</sup> 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/>

<sup>18</sup> 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/>



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## About Transform Drug Policy Foundation

Transform is a charity working to promote public health, social justice and human rights through drug policy reform. We believe the legal regulation of drugs is essential to achieving these goals.

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