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Modernizing West Virginia's Marijuana Laws

Potential Benefits of Decriminalization, Medical Marijuana and Legalization

Tara Holmes

Over the last two decades, states across the country have modernized their marijuana laws to reflect the growing evidence that doing so will help reduce criminal justice costs, help treat some medical conditions, and boost tax revenues and their state's economy. As of 2016, four states and the District of Columbia have legalized the recreational use of marijuana for adults, 25 states (and DC) allow for marijuana to be used for medical purposes, and 21 states have decriminalized possession of small amounts of marijuana. With several states considering ballot measures this November and public support for legalization rapidly growing (53% of Americans support legalization) among all age groups, the number of states taking action to undo restrictions on marijuana is likely to grow.

While most states have taken at least one step toward modernizing their marijuana laws, West Virginia has not. However, bi-partisan legislation has been introduced in West Virginia over the last several years to legalize medical marijuana and tax marijuana for retail sales to adults. A 2013 poll found that a majority of West Virginians supports decriminalizing marijuana and legalizing it for medical use, while 46 percent supported regulating it like alcohol.

As West Virginia continues to be plagued by large budget deficits (a projected \$300 million for FY 2018), an undiversified economy with a fading coal industry, and poor health outcomes, modernizing the state's marijuana laws could be a step in addressing these problems and could help save the state money in the long run.

This report provides an overview of the states that have modernized their marijuana laws in recent years— including decriminalization, medical marijuana, and recreational use – and the implications for West Virginia if it decided to pursue a similar path. It provides an overview of federal and state marijuana laws (Section 1), an estimation of the potential tax revenue from legalizing recreational marijuana in West Virginia (Section 2), an evaluation of some potential benefits from modernizing West Virginia's marijuana laws (Section 3), and recommendations on reforming West Virginia's marijuana laws (Section 4).

KEY FINDINGS

- If marijuana was legalized and taxed in West Virginia at a rate of 25 percent of its wholesale price the state could collect an estimated \$45 million annually upon full implementation. If 10 percent of marijuana users who live within a 200-mile radius of West Virginia came to the state to purchase marijuana, the state could collect an estimated \$194 million.

- In 2010, it is estimated that West Virginia spent more than \$17 million enforcing the state’s marijuana laws. Legalizing or decriminalizing marijuana in West Virginia could reduce the number of marijuana-related arrests, especially among African Americans, which in turn, could reduce criminal-justice-related costs.
- The marijuana industry has the potential to add jobs both directly and indirectly. As of September 2015, Colorado had 25,311 people licensed to work in its marijuana industry and over 1,000 retail marijuana businesses. If marijuana were legal in West Virginia it could also have the effect of increasing tourism to the state, particularly in regions with outdoor recreational activities.
- Marijuana may potentially have a positive impact on West Virginia’s opioid-based painkiller and heroin epidemic by offering another, less-addictive alternative to individuals who are suffering from debilitating medical conditions.

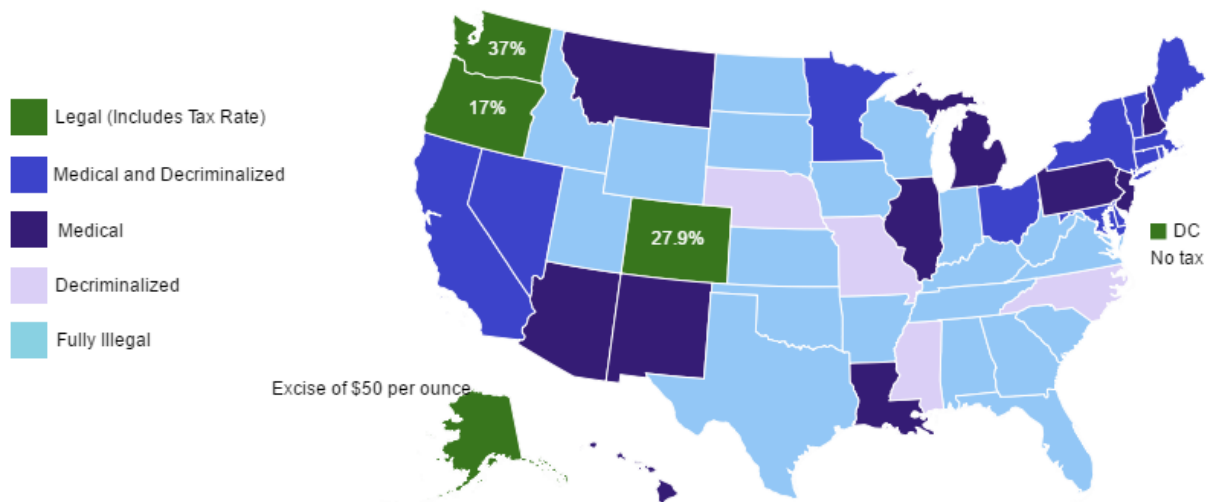
SECTION 1: THE STATE OF MARIJUANA LAWS; DECRIMINALIZATION, MEDICAL USE AND LEGALIZATION

While marijuana has been illegal under federal law since 1972 and is listed as a Schedule 1 drug (along with heroin and LSD) on the Controlled Substances Act (CSA) as a substance with “no accepted medical use,” the federal government has not pursued any direct action to stop states from legalizing it for medical or recreational purposes. Altogether, there are four broad categories of marijuana laws, including states where it is legal, decriminalized, used for medical purposes (aka “medical marijuana”), and fully illegal. A total of four states have legalized and taxed marijuana use for retail sales to adults, while the District of Columbia has legalized it but cannot tax it. Twenty-one states have decriminalized marijuana, 25 have adopted medical marijuana laws, and 20 states have done neither (**Figure 1**). This section will explore these differences. It is important to first explore how the U.S. Department of Justice (DOJ) is handling state action on relaxing their marijuana laws.

While the DOJ has released several agency memoranda since 2009 attempting to define the contours of how the federal government would enforce its existing marijuana laws, the most recent was on August 29, 2013 when former DOJ Attorney General James Cole released an enforcement policy memorandum (Cole Memo) to all U.S. attorneys detailing DOJ priorities when it came to enforcing federal marijuana laws in states with legalized and decriminalized marijuana. The Cole Memo listed eight enforcement priorities in states with modernized marijuana laws, from preventing distribution of marijuana to minors to preventing growing of marijuana on public lands. The Cole Memo stated: “Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws.” The Cole Memo further emphasized that its guidance rested on the expectation that “state and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests.”

While the Cole Memo is a set of agency guidelines to be interpreted by individual U.S. attorneys rather than official statements of law, there is nothing preventing a new administration from reversing course and nullifying these provisions. However, given the massive scale of legalized medical and recreational marijuana across the states, and the significant leeway federal prosecutors have granted states, the trend is toward allowing a stronger state regulatory enforcement of federal marijuana laws is apparent but tenuous.

Figure 1: Current Marijuana Laws in the U.S.



Source: VOX and the Tax Foundation.

21 states have decriminalized marijuana

As of August 2016, 21 states and the District of Columbia have decriminalized the possession of small amounts of marijuana to either a civil infraction or a low-level misdemeanor, with no possibility of jail for qualifying offenses. While this means no criminal record or arrest, there are still more severe penalties for the cultivation, sale, and possession of larger amounts. For example, in North Carolina, possession of less than half an ounce of marijuana carries a \$200 maximum fine and no jail time, while possession of more than one and a half ounces is a felony punishable by three to eight months in prison.¹

The decriminalization of marijuana began in the early 1970s. In March 1972, President Richard Nixon commissioned *The Report of the National Commission of Marijuana and Drug Abuse*, commonly known as the Shafer Commission. It recommended that Congress amend federal law so that the use and possession of marijuana would cease to be a criminal offense and that state legislatures do the same.² While Nixon commissioned the report, he did not agree with the findings and shelved it, saying that when it came to marijuana, an all-out war was needed on all fronts.³

The first state to follow the Shafer Commission recommendations was Oregon in 1973. From 1973 to 1978, 10 states decriminalized the possession of small amounts of marijuana. No decriminalization

policies were passed again until 2001 when Nevada decriminalized the possession of up to one ounce of marijuana and, since then, 10 states have followed suit. The first offense of marijuana possession carries the penalty of a fine ranging anywhere from \$100 in many states to \$300 in Nebraska, or in the case of states where it is now legal, no penalty whatsoever. The amount decriminalized and the fine levied varies from state to state, but the average amount is one ounce or less with a fine of \$100 for adults (See Appendix).

Medical marijuana is legal in 25 states

In 1996, voters passed Proposition 215, making California the first state to legalize marijuana for medical use. Alaska, Oregon, and Washington followed closely behind, legalizing medical marijuana in 1998, with Maine legalizing it in 1999. Currently 25 states and the District of Columbia allow medical marijuana.⁴ Almost all of the states that have adopted medical marijuana have decriminalized it as well. The number of states with medical marijuana laws may grow by the end of 2016. Arkansas and Florida have approved measures for the November 2016 ballot, while North Dakota has submitted signatures for approval on the November 2016 ballot.

Each state sets limits on the amount of medical marijuana people can possess. While some states limit possession based on prescribed supply (e.g. 30 days), other states limit possession based on weight (e.g. ounces). Most of the states that have legalized medical marijuana apply a sales tax to the product, and levy fees on permits and applications on dispensaries and producers. Twelve states apply a state and/or local sales tax, while some states apply an excise tax, gross receipts tax, or a surcharge on medical marijuana.

Ways of qualifying for medical marijuana vary by state. In order to have access to medical marijuana, most states require that the patient have either a medical marijuana card or be listed in a registry.⁵ To become a medical marijuana patient in the majority of states, a physician must either prescribe or recommend medical marijuana; but in New Hampshire, Vermont, and Minnesota, all that is required is that a physician certify the individual has one of the qualifying illnesses for medical marijuana use.⁶

Because marijuana is illegal under federal law a physician cannot “prescribe” marijuana regardless of state law. The laws in Louisiana, Virginia, and Wisconsin use the word “prescribe” and for this reason they are not effective.⁷ In order to navigate around this issue, physicians offer their professional opinion as a “recommendation,” and because it is not a legal document, it is not technically illegal under federal law. This simultaneously allows patients with a physician’s recommendation to meet their state’s legal requirements for medical marijuana while also protecting the physician from federal sanctions.⁸

The Drug Enforcement Agency claims the reason marijuana is still illegal under federal law and is classified as a Schedule 1 substance is that the science does not definitively support its medicinal benefits.⁹ In August 2016, the DEA reaffirmed its decision to not reschedule marijuana because the Food and Drug Administration concluded that the medical and scientific research do not prove that marijuana is safe and effective as a medicine.¹⁰ However, the DEA announced its intent to expand the number of places allowed to grow marijuana for studies and research. As of now, the University of Mississippi is the only institution which is federally licensed to grow marijuana for research purposes.¹¹ Although the DEA

declined to reschedule marijuana, the expanded opportunities for research could prove valuable to the future of marijuana policy.

Marijuana is legalized and regulated in four states

In January 2014, Colorado became the first state to allow the sale of recreational marijuana, with Washington State following closely behind that July. In 2015, the District of Columbia and Oregon also legalized marijuana and Alaska passed a measure in 2016, although retail sales have not yet started. There are five states – Arizona, California, Maine, Massachusetts, and Nevada – set to vote on legalizing marijuana for recreational use this November.

In each case, sellers must be licensed through the state and meet particular health and safety requirements.¹² The state regulation of marijuana often resembles that of state control of alcohol. For instance, Washington directed its Liquor and Cannabis Board to regulate marijuana retailers much like they regulate the sale of liquor.¹³ The Oregon Liquor Control Commission will soon regulate the retail sale of marijuana, but, until then, the Oregon Department of Revenue will collect a temporary tax as it has since January 1, 2016. Prior to that marijuana was untaxed.¹⁴ The regulation of marijuana in Alaska also falls under the Alcohol & Marijuana Control Office.¹⁵

In all states where marijuana is legalized and regulated, sales are for adults age 21 or over and it remains illegal to use marijuana in public, drive under its influence, and transport it outside the state.¹⁶ Each state also has regulations on the quantity and type of marijuana each individual may possess. In Washington, adults can purchase up to one ounce of “bud” (the flowering part of the plant), 16 ounces of edible solids, 72 ounces of marijuana-infused liquids, or 7 grams of concentrates or lotions.¹⁷ In Colorado, residents can purchase up to one ounce of any kind of marijuana product and non-residents can purchase up to a quarter of an ounce.¹⁸

Each state has structured its tax differently but as a certain percentage of the retail or wholesale sales price (see Appendix).¹⁹ In Colorado, there is a 15-percent tax on the wholesale price of marijuana, a 10-percent special sales tax on retail marijuana, along with the state sales tax of 2.9 percent, bringing the total tax rate to 27.9 percent.²⁰ However, Colorado’s 10-percent special sales tax on retail marijuana is scheduled to be reduced to eight percent on July 1, 2017.²¹

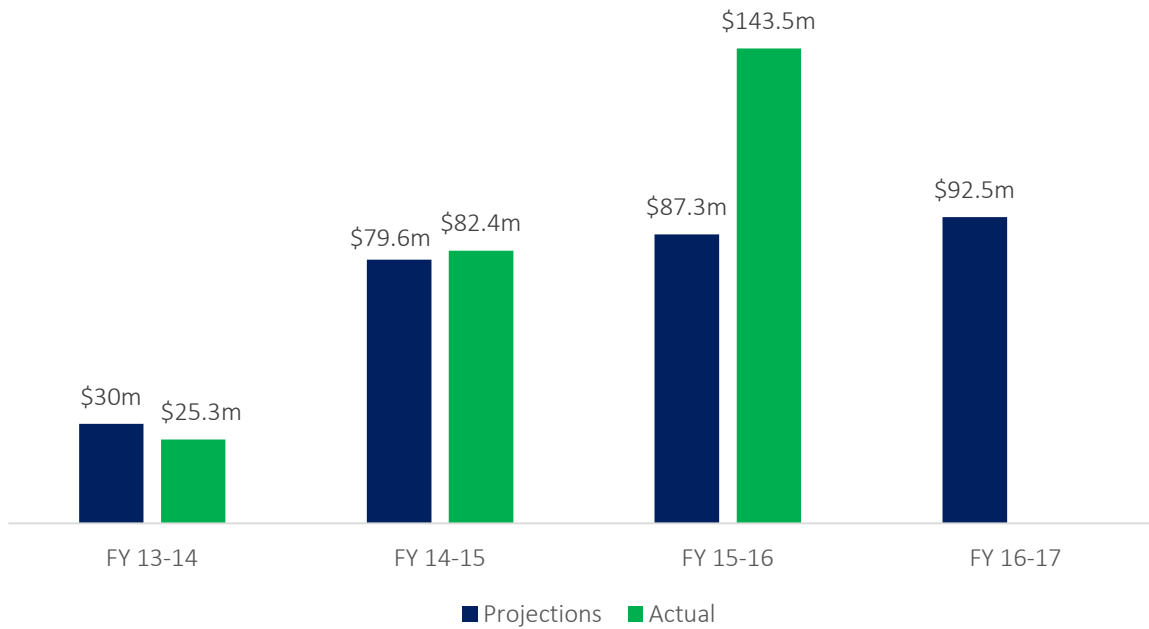
Washington has a 37-percent excise tax on retail marijuana sales, plus the state Business and Occupation gross receipt tax, on top of the state sales tax of 6.5 percent, and local taxes.²² Oregon’s proposed tax was a type-of-product tax rather than an excise tax: \$35 per ounce of marijuana flowers, \$10 per ounce of leaves, and \$5 per immature plant. After legislators became concerned over enforceability, they imposed a 17-percent sales tax instead that will take effect later in 2016.²³ Finally, Alaska has decided to impose a \$50 per ounce tax on marijuana paid by the cultivator when the product is transferred to a retail store or marketing facility.

While marijuana is technically legal in the District of Columbia, it is quite different than in the states mentioned above. In February 2015, it became legal for any person who is at least 21 years old to possess up to two ounces of marijuana and transfer up to one ounce of marijuana to another adult as long as there is no payment made.²⁴ Meaning, of course, that the possession of marijuana is legal, but

not the sale; a person can still be arrested for selling any amount of marijuana to another person.²⁵ In fact, the District is prohibited from establishing any sales structure or state regulation of marijuana.²⁶

In fiscal year 2015, Colorado collected \$135 million in marijuana-related revenues while Washington State collected \$77.8 million. Oregon is on track to collect an estimated \$42 million in 2016, while Alaska predicts it will collect between \$5.1 million and \$19.2 million. Each state differs in how it allocates its marijuana revenues. Colorado dedicates most of its revenue to K-12 public education and local governments, while Washington State allocates 40 percent to the general revenue fund and local governments and 60 percent for substance-abuse prevention, research, education, and health care. Oregon sends 40 percent to schools, 20 percent to mental health, alcoholism, and drug services, 15 percent to state police, 10 percent to cities, 10 percent to counties, and the remaining five percent to the Oregon Health Authority.²⁷ Alaska is expected to dedicate most of its revenues toward corrections, health and social services, and public safety.²⁸

Figure 2: Colorado’s Marijuana Tax Revenue Has Exceeded Projections



Source: Revenue projections are from the Colorado Legislative Council Staff, Economics Section 2015 Economic and Revenue Forecast.²⁹ The Fiscal Year 2013-2014 actual revenue is from the 2015 Colorado Department of Revenue Annual Report³⁰ and the actual revenue from Fiscal Years 2014-2016 is from the Colorado Department of Revenue Marijuana Tax Data section on the website.³¹

SECTION 2: ESTIMATING TAX REVENUES FROM LEGALIZED MARIJUANA IN WEST VIRGINIA

It is difficult to estimate the size of an illegal market and how many people will choose to switch a legal one. Estimating revenue from state marijuana taxes is a difficult task. Also, the possibility of nearby states choosing to legalize and regulate marijuana is an important factor.³² A Marijuana Policy Group study suggests that 41 percent of the marijuana consumed is procured from the black market.³³

According to the Institute of Taxation and Economic Policy (ITEP), there are several other factors that make predicting revenues from state marijuana taxes difficult. First, the illegal status of marijuana under federal law makes it difficult to accurately predict potential revenue because, at any point, a future administration could change enforcement priorities and decide to intervene in state-sanctioned marijuana sales.³⁴ Second, large-scale legalization of marijuana production could lead to a drop in marijuana prices by up to an estimated hundred-fold.³⁵ The severity of the drop in prices depends on the extent to which states limit the scale of marijuana sales, but prices could still drop by 90 percent through the use of legal small-scale indoor growing operations.³⁶ It is not clear how much of the market will be taken over by small home-grown marijuana operations, but, since they would go untaxed, it could have a negative impact on the amount of revenue collected.

Third, with any tax comes some level of tax evasion.³⁷ While there is no way to predict the degree to which tax evasion would occur, ITEP suggests the potential is fairly high based on the high level of cigarette tax evasion. Lastly, there is some evidence that marijuana consumption could become a substitute for alcohol consumption which means the revenue from liquor, beer, and wine excise taxes could decrease if recreational marijuana is legalized.³⁸

Another reason it is difficult to estimate revenues is that they are likely to decline as more states legalize marijuana. Also, revenue gain is likely to be very slow initially. In Colorado and Washington, revenue started out slowly, both as consumers became familiar with the new system and as state and local authorities set up the new regulatory infrastructure.³⁹ Keeping this in mind, this section provides estimates of the revenues the state could collect if it taxed marijuana similarly to other states.

Estimating potential tax revenue in West Virginia

In order to estimate what West Virginia could collect in marijuana revenues, it is crucial to estimate how much marijuana is consumed in West Virginia, how much money is spent on marijuana, how many people will remain in the illegal market, and what tax rate to levy.

To determine how many West Virginians consume marijuana on a monthly basis, this analysis uses the most recent data from the National Survey on Drug Use and Health (NSDUH), published by the U.S. Department of Health and Human Services.⁴⁰

The amount of money spent on marijuana in West Virginia's illegal marijuana market every year was determined by multiplying the mid-level estimate of 532,044 ounces by the average price per ounce of marijuana in West Virginia (\$358 per ounce)⁴¹ resulting in an estimated \$190.5 million.

It is difficult to estimate the amount of marijuana people would consume after regulation and legalization. Removing criminal penalties could result in a small increase in consumption. These estimates take into account that a percentage of the marketplace will continue to remain untaxed including medical marijuana, individuals who grow marijuana in their own homes for personal use, and others who will continue to procure their product from the illegal marketplace. Following an analysis by New Jersey Policy Perspective, this study estimates that once the marijuana regulatory structure is fully in place, six percent of consumers would remain outside of the taxable marketplace.⁴²

Table 1: Amount of Marijuana West Virginians Consume Each Year

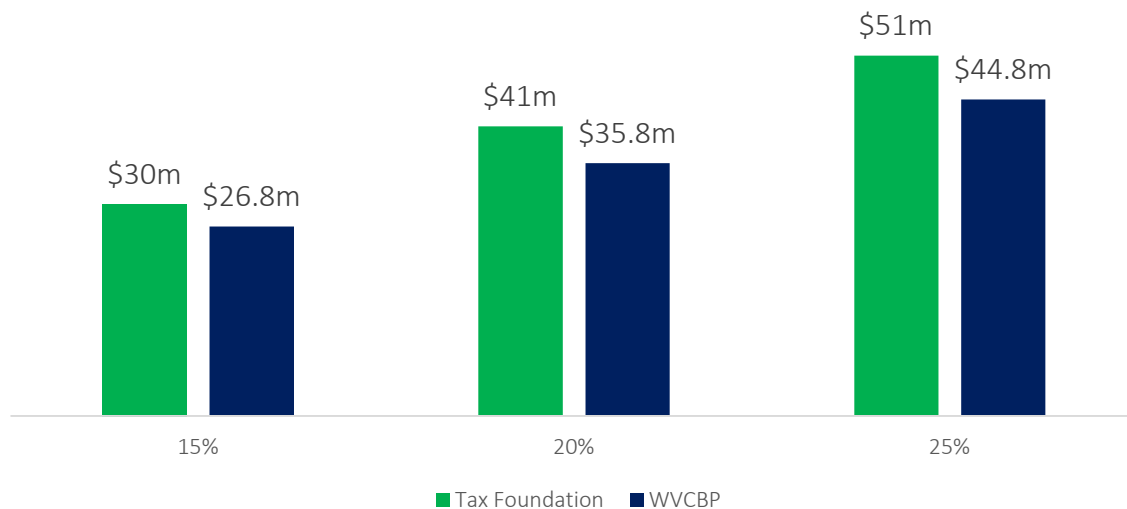
User Frequency in Days per Month	Average Grams per Month	Total Number of Users	Total Ounces Consumed per Year
<1	.30	33,727	4,284
1-5	1.2	29,230	14,844
6-10	5.6	10,118	23,988
11-15	11.7	7,870	38,976
16-20	18	5,621	42,828
21-25	29.9	6,133	77,616
26-31	44.8	17,376	329,508
Total:			532,044

Source: WVCBP analysis of NSDUH 2014 data Note: There is an adjustment made to the population of people who consume marijuana to account for underreporting on the NSDUH survey. The reason for underreporting is attributed to an unwillingness to admit using an illegal substance, presence of users outside the sample frame, and misrepresentation of marijuana use.⁴³ The suggested adjustment is 22.2 percent to all but the top two use frequency cohorts and an 11.1 percent adjustment is applied to the heavy-use cohorts.⁴⁴ This data was combined with estimates on frequency of use in a recent RAND Corporation analysis⁴⁵ and then multiplied by the number of estimated consumers in each category to reach the estimated amount of marijuana consumed in West Virginia per year: 532,044 ounces.⁴⁶

Tax revenue estimates from West Virginia residents alone are \$44.8 million

It is impossible to know the exact amount of marijuana consumed in West Virginia’s illegal market. The following graph shows the estimate of potential tax revenue if West Virginia legalized the recreational use of marijuana. The following estimates do not include any anticipated revenue from out-of-state visitors coming into West Virginia to buy marijuana. According to these calculations, tax revenues would range from \$26 million at a 15-percent tax rate to \$44.7 million at a 25-percent tax rate.⁴⁷ The graph includes estimates by the Tax Foundation for comparison.

Figure 3: How Much Would West Virginia Gain in Tax Revenue By Legalizing Marijuana?



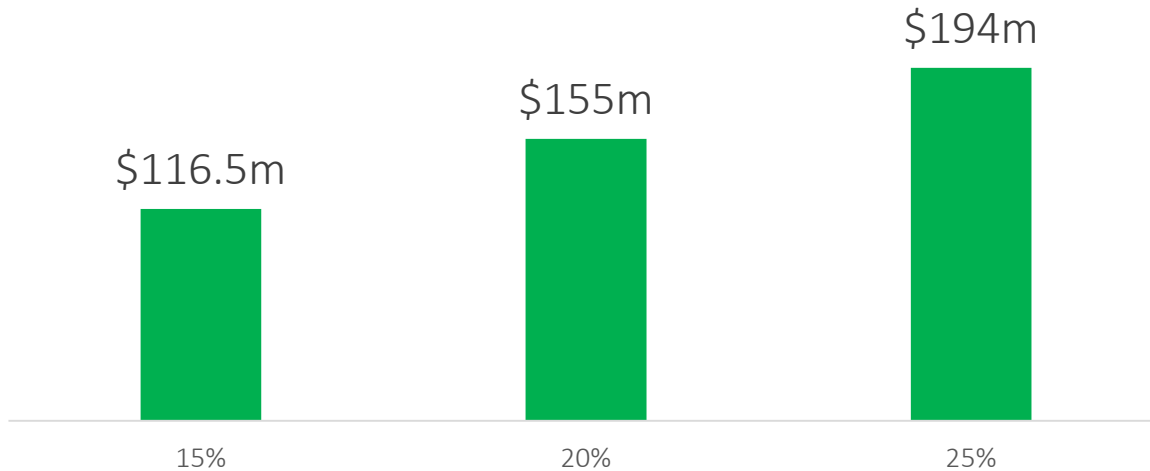
Source: Tax Foundation and the West Virginia Center on Budget and Policy.

Including out-of-state demand, tax revenues could reach \$194 million

Based on a Research and Development Corporation (RAND) analysis for the state of Vermont, if West Virginia were to legalize marijuana, it would be feasible for users to come from a 200-mile radius in order to procure marijuana. (To be clear, this study does not advocate any out-of-state residents breaking the laws of their home state.) The estimate for spending on marijuana in West Virginia by state residents is about \$190 million a year, and about 25 times as many marijuana users live within a 200-mile radius of West Virginia than there are in the state itself.⁴⁸ Total marijuana spending on marijuana including state residents and out-of-state users living within a 200-mile radius of West Virginia has the potential to reach \$5.8 billion a year.⁴⁹

While it is not feasible that West Virginia would capture all of its neighbors' spending, it certainly may pick up a fraction of it – especially if West Virginia is the only state on the east coast in which the sale and cultivation of recreational marijuana would be legal. While it is unlikely that all out-of-state marijuana users in a 200-mile radius would come to West Virginia to legally buy their supply, the following revenue estimates will begin with the assumption that 10 percent of people would do so.⁵⁰ This population would spend an estimated \$586.3 million, resulting in \$194 million in revenues based on a 25-percent tax rate.

Figure 4: Out-of-State Demand for Legalized Marijuana Demand Could Greatly Increase Tax Revenues



Source: West Virginia Center on Budget and Policy analysis of National Survey of Drug Use and Health.

Marijuana regulatory system will require start-up costs

The implementation of a new regulatory system for marijuana will take time and money before it is fully operational, including the development of new rules, hiring and training regulators and administrators, and tracking inventory. For instance, from mid-2012 to fall 2014, the Washington State Liquor and Cannabis Board spent almost \$9 million to develop regulations, process and distribute licenses, conduct training, and obtain marijuana-tracking systems.⁵¹ Many of these costs were incurred before the retail stores opened in July 2014.⁵² Even after the regulatory systems are fully operational, there are annual

expenditures. For example, the Colorado Marijuana State Licensing Authority spent \$8.6 million in Fiscal Year 2015, including enforcement, administration, and taxation services, which comes out to be about nine percent of the total revenue collected from marijuana fees and taxes.⁵³

Designing a tax structure for recreational marijuana can also be time consuming and complicated. Applying state and local sales tax to marijuana is fairly simple: the general rate can be applied to the cost of the marijuana product being sold. Calculating an excise tax on marijuana has proven to be more difficult because it is necessary to balance taxing the product heavily enough to offset negative externalities, like second-hand smoke and driving under the influence, but not so heavily as to result in proliferation of black-market sales.

Typically excise taxes are applied on a per-unit basis rather than a percentage of the final sale price. This is difficult in the case of marijuana because the substance takes so many different forms. Since marijuana can be purchased as a cigarette, bud, live plant, edible, liquid, wax, or a lotion, all with a wide variety of concentrations, a specific excise tax would be difficult to implement. Another disadvantage of a per-unit excise tax is that it does not take into account the amount of THC that the marijuana contains. A flat, per-ounce excise tax could potentially incentivize the cultivation of stronger marijuana because it would have a higher sale price, but be subject to the same tax rate as marijuana with lower THC levels.⁵⁴ Some suggest that the per-unit excise tax would function more effectively if it were applied to the level of THC contained rather than the marijuana's weight, mirroring the taxation of alcohol.⁵⁵

Another option is implementing a value-based excise tax. One advantage this has over a per-unit tax is that it would capture the same percentage of overall spending on marijuana even if the price of the substance increases or decreases.⁵⁶ Value-based excise taxes also have the benefit of being more closely linked to the potency of the marijuana being sold: high THC strains are generally more expensive than weaker strains so they would inherently be taxed more heavily. Colorado, Washington, and Oregon have all taken a value-based approach in designing their tax structures.

SECTION 3: POTENTIAL BENEFITS OF MODERNIZING WEST VIRGINIA'S MARIJUANA LAWS

While regulation and taxation of recreational marijuana could potentially boost West Virginia's revenues, the state could also benefit from decriminalizing marijuana and allowing it to be used for medicinal purposes. This section will explore those potential benefits and how some of the drawbacks from legalizing marijuana could be addressed.

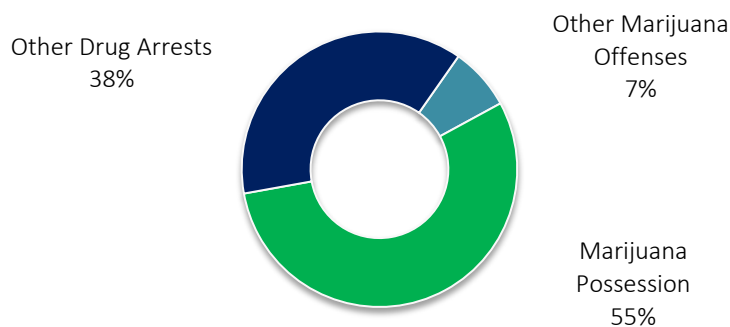
Decriminalization or legalization of marijuana could reduce criminal justice costs

Under current West Virginia law, possession of any amount of marijuana is a misdemeanor punishable by not less than 90 days nor more than 6 months in jail and a fine of not more than \$1,000.⁵⁷ But for first-time offenders of possession of less than 15 grams of marijuana, the court can give the offender probation including drug testing.⁵⁸ Possession with the intent to distribute can result in a felony punishable by no less than one year and no more than five years imprisonment and a fine of up to \$15,000.⁵⁹ The penalty for cultivation of marijuana depends on the aggregate weight of the plants found and whether or not there was intent to distribute.⁶⁰ While the possession, cultivation, and distribution

of marijuana is punishable by law in West Virginia, Senate Bill 447 was passed in 2002 that allows farmers to “plant, grow, harvest, possess, process, and sell hemp” commercially that has no more than one percent THC.^{61,62}

According to data from the Federal Bureau of Investigation (FBI) Uniform Crime Reporting Program, there were 7,986 drug arrests in West Virginia in 2010, with the majority (63 percent) being for marijuana.⁶³ Approximately 88 percent of marijuana arrests in 2010 were for simple possession.⁶⁴ According to a recent report from the American Civil Liberties Union (ACLU), the direct annual fiscal cost of marijuana possession enforcement in 2010 (not including any downstream factors) in West Virginia was \$17.4 million.⁶⁵

Figure 5: Marijuana Accounts for More than Half of All West Virginia Drug Arrests

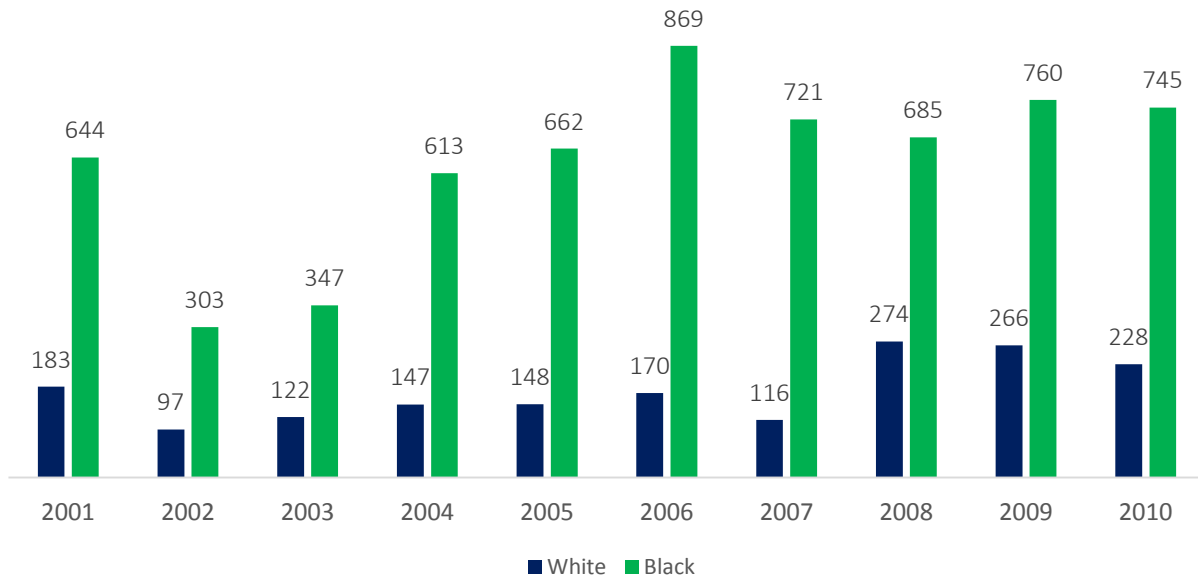


Source: American Civil Liberties Union, June 2013

While it is too early to draw any definitive conclusions about the potential effects of marijuana legalization on public health and safety due to a lack of historical data, a report by the Colorado Department of Public Safety finds marijuana arrests dropped in Colorado by 46 percent from 2012 to 2014.⁶⁶ Also, in 2012, marijuana was responsible for six percent of all arrests, while in 2014 that number fell to three percent.⁶⁷ Colorado’s property crime rate decreased three percent from 2009-2014 while the violent crime rate decreased by six percent.⁶⁸

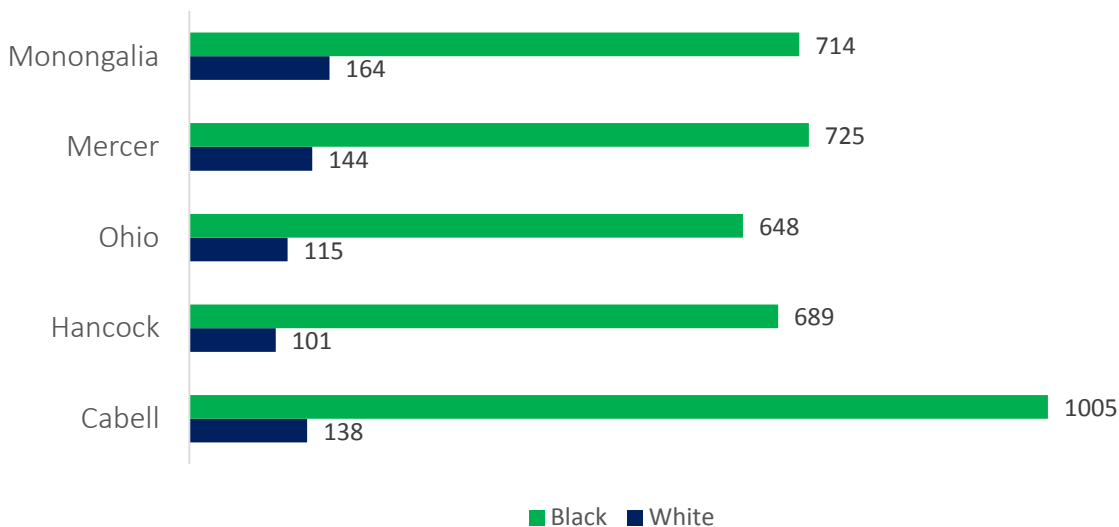
Decreasing marijuana-related arrests is also a racial-justice issue. Although whites and blacks use marijuana at roughly the same rates, according to the ACLU, blacks in West Virginia are about 3.3 times more likely than whites to get arrested on a marijuana possession charge.⁶⁹ This rate varies significantly by county. In Cabell County, African-Americans are 7.3 times more likely to get arrested for marijuana possession; in Wood County, 8.8 times more likely; and in Kanawha County, 3.2 times more likely.⁷⁰ There are 15 counties in West Virginia with racial disparity in arrest rates on marijuana-related charges higher than the national average.⁷¹

Figure 6: Statewide, Blacks More Likely to Be Arrested for Marijuana-Possession Crimes



Source: American Civil Liberties Union and the Federal Bureau of Investigation.

Figure 7: Some West Virginia Counties Have Large Racial Disparities in Arrest Rates



Source: American Civil Liberties Union.

Note: All arrest rates are per 100,000 people and are based on 2010 data.

The repercussions of an arrest for marijuana possession can have a longer-lasting impact than just spending some time in jail. In many states, the possession of marijuana can result in a felony conviction, often times preventing the person from voting, owning a firearm, or enlisting in the military.⁷² A conviction on drug charges can also have consequences for education: in 2014, around 200,000 college students lost their federal financial aid eligibility because of a drug conviction.⁷³ Of course, not all drug charges result in a felony conviction: only about six percent of marijuana cases lead to felony

convictions, with the rest treated as misdemeanors.⁷⁴ And although these arrests may not result in a felony conviction, they end up on a person's record. A misdemeanor conviction can also result in negative consequences including suspension of a driver's license, the inability to get insurance, and loss of access to public housing.⁷⁵ Because there is a huge racial disparity in marijuana-related arrests, these consequences disproportionately affect people and communities of color.

The decrease in marijuana-related arrests would not only benefit individuals, but the state budget as well. According to the ACLU the low-level estimated cost of a marijuana possession arrest is \$750 plus \$95 a day in jail costs. With an average time spent in a local jail or county correctional facility of 5.5 days, just one marijuana possession arrest can cost the state over \$1,200.⁷⁶

If marijuana were legal or decriminalized, it would reduce the number of people in jail and who have criminal records for non-violent, marijuana possession related crimes, while saving the state money in corrections costs.

Medical marijuana can help treat debilitating conditions and help with opioid epidemic

Since West Virginia has the third-highest cancer-related death rate in the nation, its residents may benefit from access to medicinal marijuana.⁷⁷ There is evidence that medicinal marijuana helps with nausea and vomiting due to chemotherapy, as well as reducing pain.⁷⁸ There are numerous international and U.S.-based health organizations supporting legal access to medical marijuana.⁷⁹ In a poll conducted by Public Policy Polling in July 2014, 56 percent of West Virginians supported allowing "seriously terminally ill patients to use medical marijuana if their doctors recommend it."⁸⁰⁸¹ Some of the debilitating conditions that usually qualify for a medical marijuana license include cancer, cachexia, chronic pain, Crohn's, glaucoma, HIV/AIDS, severe nausea, ALS, epilepsy, multiple sclerosis, muscular dystrophy, Parkinson's disease, severe fibromyalgia, and Tourette's syndrome.⁸²

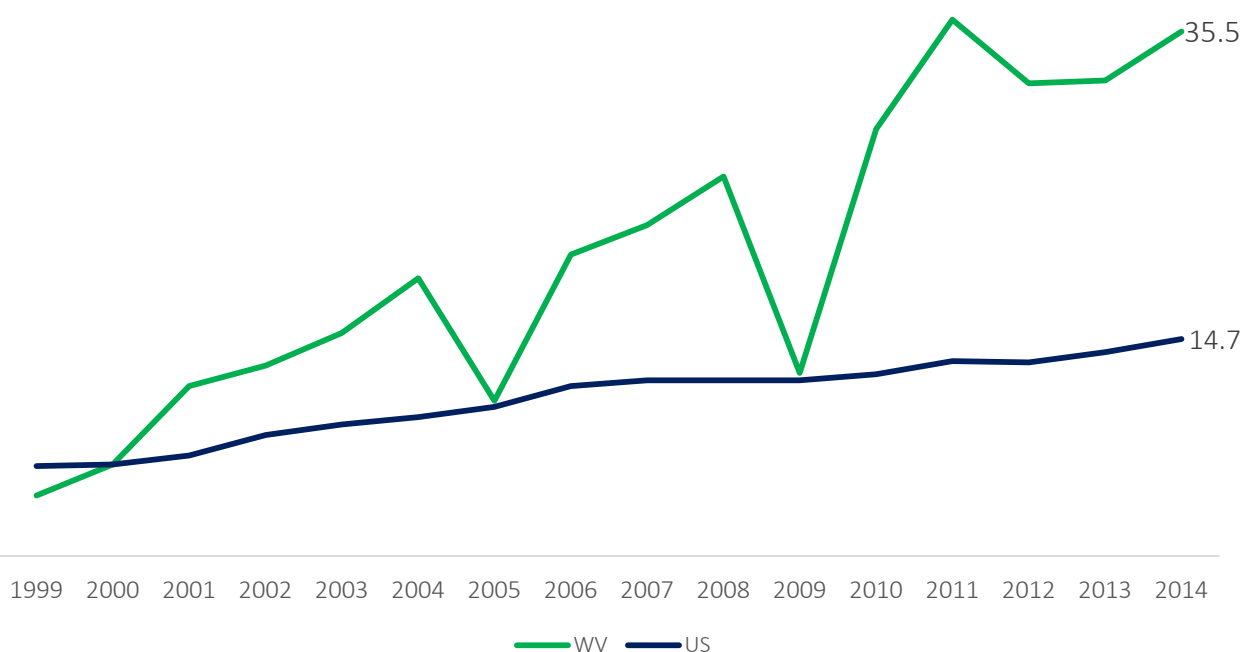
Because marijuana is listed as a Schedule 1 drug on the CSA, it is difficult for researchers to conduct extensive research on the therapeutic capabilities of marijuana. Between 2010 and 2015, the federal government provided marijuana for research purposes to an average of nine researchers a year.⁸³ One ongoing study on the use of marijuana to treat veterans with PTSD has been struggling for more than five years to get off the ground.⁸⁴ That said, a recent study found that medical marijuana reduced the frequency of migraine headaches in patients from 10.4 to 4.6 per month.⁸⁵ A 2016 study found that medical marijuana laws are associated with significant drops in violent crime, while a 2013 study found that medical marijuana legalization is associated with an eight to 11 percent reduction in traffic fatalities.⁸⁶

While the research on the medicinal effects of marijuana is limited, there is evidence that suggests that it could serve as a substitute to opioid-based prescription painkillers for treating chronic pain. According to the findings of a 2015 study published by the National Bureau of Economic Research, access to state-sanctioned medical marijuana dispensaries is linked to a decrease in both prescription painkiller abuse and painkiller overdose.⁸⁷⁸⁸⁸⁹ The same study shows that states with medical marijuana saw 24.8 percent fewer deaths from painkiller overdoses than those that do not allow medical marijuana.⁹⁰

West Virginia is in the midst of an opioid epidemic, particularly with recent revelations about prescription painkiller distributors fueling pill mills in southern counties.⁹¹ The opioid epidemic began with the over-prescription of legal painkillers. In the 1990s, doctors began to see that America had a serious pain problem. They used opioid-based painkillers like OxyContin, Percocet, and Vicodin as a solution.^{92,93} A recent report shows that West Virginia has the third-highest opioid prescription rate in the nation, with 137.6 prescriptions per 100 residents,⁹⁴ which has led to widespread abuse and overdose deaths. The subsequent crack down caused people to switch to cheaper, more potent opioids like heroin and fentanyl.⁹⁵

Since 2000, the U.S. has experienced a 137 percent increase in drug-overdose deaths, with a 200 percent increase in the rate of overdoses involving opioid painkillers and heroin.⁹⁶ In 2014, 47,055 drug overdose deaths occurred in the United States.⁹⁷ In West Virginia from 2013 to 2014, there was a 10.2 percent increase of the rate of opioid-related overdose deaths from 32.2 to 35.5 per 100,000 residents. West Virginia led the nation with the highest rate of opioid-related overdose deaths in both years.⁹⁸ In 2014, the rate of opioid-related overdose deaths in West Virginia (35.5) was more than double the national rate (14.7).⁹⁹ Overdoses from prescription painkillers are a driving factor in the increase in opioid overdose deaths: at least half of all opioid overdose deaths involve a prescription opioid.¹⁰⁰

Figure 8: West Virginia Lead the Nation in Opioid-Related Overdoses, 2013
 State Had 35.5 Opioid-Related Deaths Per 100,000 Residents



Source: Deaths are classified using the International Classification of Diseases, Tenth Revision (ICD-10). Drug-poisoning deaths are identified using underlying cause-of-death codes X40–X44, X60–X64, X85, and Y10–Y14. Age-adjusted death rates were calculated using the direct method and the 2000 standard population.^{101,102}

While opioid-related abuse and overdose deaths are on the rise, many Americans are still suffering from chronic pain that needs to be treated. According to one study, 30.7 percent of people in the United States suffer from chronic pain.¹⁰³ Socioeconomic status is also a factor, with an increased likelihood of chronic pain suffered by those at the lowest income level.¹⁰⁴ Rather than prescribing opioid-based painkillers, it is important to explore other options such as medical marijuana.¹⁰⁵¹⁰⁶¹⁰⁷ A 2015 study conducted by the Journal of the American Medical Association (JAMA) found that chronic-pain sufferers experienced a 30 percent or greater reduction in pain when consuming marijuana compared to a placebo.¹⁰⁸ This study found evidence to support the use of cannabis for the treatment of chronic pain and spasticity.¹⁰⁹ A 2013 poll shows that 57 percent of West Virginians believe that the use of medical marijuana is a safer treatment than OxyContin for debilitating pain.¹¹⁰

A study published in July 2016 in *Health Affairs* found that there was a decrease in prescription medication use in Medicare Part D in states where a medical marijuana law was in effect.¹¹¹ The study suggests that when a medical marijuana law is implemented, there is a reduction of between 265 daily doses and 1,826 daily doses filled per physician per year with the largest decrease being for chronic pain (1,826).¹¹² Not only did the study show a decrease in prescriptions, it also found that this decrease led to savings in prescription drug spending in Medicare Part D. In fact, states with medical marijuana laws saved a combined \$165.2 million between 2010 and 2013.¹¹³ Although this study only focused on a very small percentage of people who use medical marijuana and who are Medicare Part D enrollees, it could have broader implications. With the third-highest opioid-prescription rate in the nation, West Virginia could likely benefit from any reduction in prescription medication.

Over the last several years, legislators in West Virginia have introduced bills to approve medical marijuana. In 2014, Delegate Mike Manypenny introduced House Bill 4264, or “The Compassionate Use Act for Medical Cannabis.” Two years later, Senator Jeff Kessler introduced a similar bill (Senate Bill 640) with bi-partisan support and Delegate Bill Flanigan also introduced bi-partisan legislation (House Bill 4680) to create a medical exemption to the state’s current criminal laws regarding marijuana use. In June of 2016, Delegate Mike Pushkin introduced bipartisan legislation (House Bill 114) to decriminalize, legalize and allow for medical marijuana.

Legalization could grow jobs and boost tourism

In September 2015, there were 25,311 people in Colorado with occupational licenses related to the marijuana industry¹¹⁴ and as of August 1, 2016 there were 440 licensed retail marijuana stores, 583 cultivations, and 198 product manufacturers. A cultivation facility employs an average of around 15 employees, a manufacturing facility employs about 18, and an average retail dispensary employs around 10 employees per \$1 million in annual sales and 20 employees per \$2 million.¹¹⁵ Assuming these employment estimations are accurate, there are potentially 16,000 to 20,000 jobs in Colorado directly related to the retail marijuana industry.

The presence of a cultivation facility, a manufacturing facility, and a retail dispensary in one town has the potential to create up to 53 full-time jobs. According to a report by the Marijuana Policy Group, the average annual earnings for low-skill positions in cultivation, manufacturing, and dispensary operations

is \$25,000 and for high skill positions/management is \$50,000, resulting in an estimated \$1.25 million in total labor income related to marijuana cultivation, production, and sales.

It is difficult to know exactly how many people are currently working in the marijuana industry because the Bureau of Labor Statistics does not keep track of these occupations because marijuana is illegal under federal law. While there is not much reliable information on the subject of job creation, if these estimates are accurate, it could prove very beneficial to the state of West Virginia. As of June 2016, West Virginia was tied for the fourth-highest rate of unemployment with 6.2 percent.¹¹⁶

Because the recreational use of marijuana is legal in so few states, legalizing it in West Virginia could bring in out-of-state visitors. The Colorado Department of Revenue found that around 44 percent of its metro area and 90 percent of its mountain community sales of recreational marijuana were to out-of-state visitors.¹¹⁷ Tourist-driven marijuana revenues, however, could be short-lived if more states, particularly surrounding states, legalize retail marijuana sales.¹¹⁸

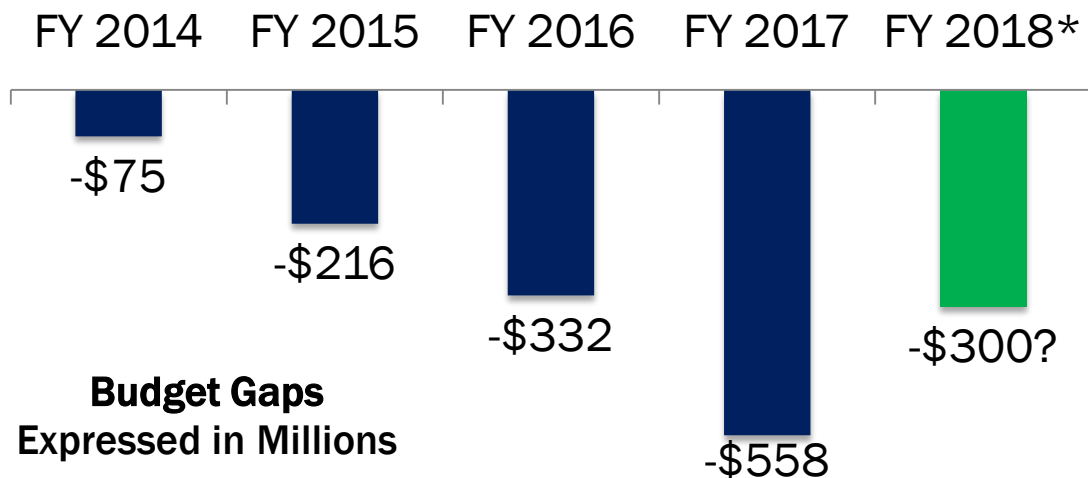
Marijuana legalization could boost tax base and address chronic budget gaps

West Virginia has experienced large budget shortfalls over the last several years. The estimated budget gap for 2018 is expected to top \$300 million. While the coal-industry downturn and low natural gas prices have played a part, phased in tax cuts over the last decade have reduced the state’s tax base by at least \$425 million annually. While taxing and regulating marijuana retail sales will not solve the state’s budget woes, it could, over time, provide additional revenue to help meet the state’s budget priorities.

Revenues from marijuana could also help address the state’s opioid crisis by investing in additional substance-abuse-treatment programs. According to the National Institute of Drug Abuse, every dollar invested in addiction-treatment programs generates a return of between \$4 and \$7 in reduced drug-related crime and criminal-justice costs.¹¹⁹ When adding in savings related to health care, total savings can exceed costs by a ratio of 12 to 1.¹²⁰

Figure 9: No Clear End for West Virginia’s Budget Deficit

Base budget gap for FY 2018 is projected to be over \$300 million*



Source: West Virginia State Budget Office.

Marijuana is not harmless, but states are finding solutions for its drawbacks

While marijuana has been shown to have some medicinal benefits, it may also have some negative side effects. A recent study found that secondhand smoke from marijuana may impair vascular function.¹²¹ Another recent study published by JAMA has shown that between 2009 and 2015 there was an increase in the number of hospital visits for marijuana exposure in young children,¹²² the vast majority of which came from ingesting THC-infused edibles. Edibles pose a unique problem because they are marijuana-infused products designed to take an appetizing form. As of 2014, Colorado has implemented several preventative regulations in order to minimize potential harm to children, including warning labels, child-resistant packaging, dose limitations, public health education, as well as marketing and advertising limitations.¹²³ Another preventative measure will begin October 1, 2017 that prohibits production and sale of edibles in the shape of humans, animals, or fruits in order to make the products less appealing to children.¹²⁴

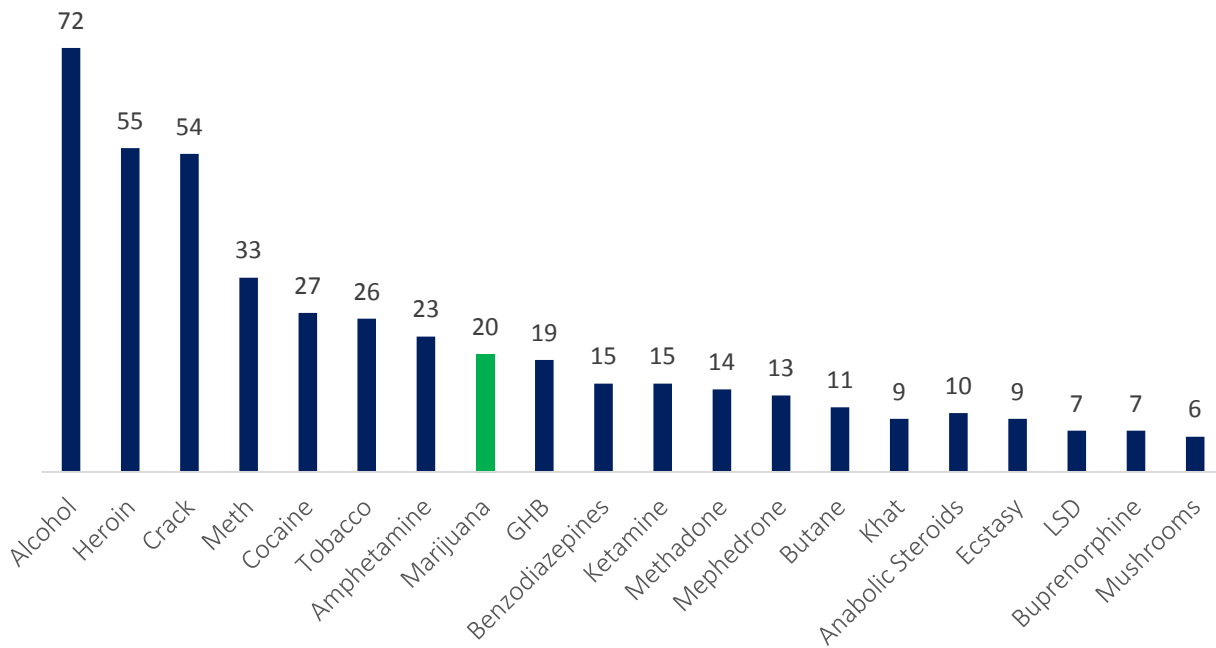
A common claim by opponents of marijuana legalization is that marijuana functions as a gateway drug. Research has shown that the risk of hard-drug use is based more on an individual's propensity to use drugs and the opportunities to use them, than on marijuana use alone.¹²⁵ The marijuana gateway effect may exist if people who are purchasing marijuana in the black market experience an increase in exposure and access to hard drugs.¹²⁶ If marijuana were legalized, users would have the option of buying marijuana legally rather than taking part in the black market, thus potentially decreasing their exposure to hard drugs.

Many believe that marijuana is a very addictive drug when, in fact, it has a much lower risk of dependence than many other drugs. For instance, 32 percent of tobacco smokers, 23 percent of heroin users, and 15.4 percent of alcohol drinkers developed a dependency whereas only nine percent of marijuana users did.¹²⁷ Marijuana users are at far less risk of becoming dependent than tobacco smokers and those who drink alcohol, yet both of these substances are legal and regulated.

Not only does marijuana have a lower risk of dependence, it is also not as harmful overall as many other drugs. A study conducted by the Independent Scientific Committee on Drugs ranked drugs on a scale of 1-100 based on the harmfulness of the drug to the user and its harm to others. The study found that alcohol was the most harmful drug overall.¹²⁸ In the United States, there are more than 480,000 tobacco-use-related deaths annually and excessive drinking of alcohol caused approximately 88,000 deaths from 2006-10.¹²⁹

As discussed above, West Virginia is experiencing a very serious drug epidemic. Offering access to marijuana could prove beneficial in helping curb overdose deaths because it is virtually impossible to overdose on marijuana, making it far safer than a majority of legal and illegal drugs. For instance, the median lethal dose for alcohol is .40 percent blood alcohol content (BAC) and the lethal dose of tobacco ranges from 40-60mg.¹³⁰¹³¹ It would take about 10 times the "normal" amount of alcohol (two-12 ounce beers) within 5 or 10 minutes to potentially result in death.¹³² However, in order to induce death by smoking marijuana, that person would have to consume 20,000 to 40,000 times as much marijuana as is generally contained in one marijuana cigarette.¹³³ To put this in perspective, aspirin could potentially induce a lethal response in some people at 20 times the recommended dose, or 40 aspirin for an adult.¹³⁴

Figure 10: Marijuana is Less Harmful than Alcohol and Tobacco
 Harm level on a scale of 1-100



Source: Independent Scientific Committee on Drugs¹³⁵

A concern of those who oppose marijuana legalization is that crime would increase. While it is still too early to have data that proves or disproves this argument, one study has shown that the legalization of medical marijuana is not predictive of higher crime rates and may, in fact, be linked to reductions in homicides and assaults.¹³⁶ Legalization would also reduce criminal-justice costs and improve overall social welfare by eliminating criminal charges for minor marijuana offenses.¹³⁷

CONCLUSION AND RECOMMENDATIONS

There are a variety of ways policymakers could modernize West Virginia’s marijuana laws, from taking steps to decriminalize small amounts of marijuana to full legalization and regulation. Decriminalization, medical use, and legalization of marijuana all have benefits, depending on the goals of lawmakers. Policymakers should also be cognizant of the interplay with federal law and how this could impact marijuana legalization for recreational and medical uses.

The decriminalization of marijuana possession has the potential to decrease marijuana-related arrests and, in turn, decrease the amount spent on marijuana-law enforcement. While this could result in a more cost-effective criminal justice system, the more important impact would be in addressing the racial inequality of marijuana-possession arrests. The legalization of medical marijuana could have a positive impact on the current heroin and opioid painkiller epidemic the state is facing while also helping West Virginians with painful and debilitating conditions.

If the goal of policymakers is to modernize the state’s marijuana laws in order to generate revenue, there are certain considerations to keep in mind. Lawmakers should think carefully about the approach to taxing and regulating marijuana while paying attention to short-term as well as long-term effects of setting up a regulated system. One of the most important details is creating a regulated and taxed marijuana market that will end the black market. This means not taxing so heavily as to give marijuana consumers an incentive to stay in the black market. One approach that the state could take to help shut down the black market is to phase-in the implementation of marijuana taxes gradually as the legal market becomes fully operational.¹³⁸

Lawmakers could also earmark the revenue to pay for particular public services like education. For instance, Colorado budgeted the first \$40 million each year for public school construction and Washington dedicates 15 percent of marijuana tax revenue for a substance-abuse program. The earmarked funds could be directed toward programs that offset the negatives externalities of marijuana consumption, like drug abuse prevention and treatment programs, or other health care-related programs. The argument can be made that marijuana should not be legalized because it is not necessarily a harmless substance. Yet, alcohol and tobacco could be seen as more harmful yet are legal. Their potential dangers are offset through the appropriate level of taxation. It makes little sense not to do the same with marijuana.

APPENDIX

States with Medical Marijuana Laws

State	Year Passed	Statutory Language	Date First Effective	Possession Limit	Taxes
Alaska	1998	Statute Title 17, Ch. 37	March 4, 1999	1 oz usable; 6 plants (3 mature, 3 immature)	
Arizona	2010	Prop. 203	May 7, 2013	2.5 oz usable; 12 plants	5.6% sales tax; local taxes vary
California	1996	SB 420	November 6, 1999	8 oz usable; 6 mature or 12 immature plants	7.5% sales tax; local taxes vary
Colorado	2000	Amendment 20	June 1, 2001	2 oz usable; 6 plants (3 mature, 3 immature)	2.9% sales tax; local taxes vary
Connecticut	2012	HB 5387	October 1, 2012	2.5 oz usable	6.35% state sales tax
DC	2010	SB 17	July 27, 2010	2 oz dried	6% sales tax
Delaware	2011	L18-0210	July 1, 2011	6 oz usable	Gross receipts tax if above \$1.2 million in revenue
Hawaii	2000	SB 862	December 28, 2000	4 oz usable; 7 plants	
Illinois	2013	HB 1	January 1, 2014	2.5 oz usable	7% excise tax at wholesale level; 1% sales tax
Louisiana	2016	SB 271	August 1, 2016	30 day supply of non-smokable	

Maine	1999	LD 1296	December 22, 1999	2.5 oz usable; 6 plants	5% sales tax; 7% meals/rooms taxes for edibles
Maryland	2014	SB 923	June 1, 2014	30 day supply	
Massachusetts	2012	Question 3	January 1, 2013	60 day supply	
Michigan	2008	Prop. 1	December 4, 2008	2.5 oz usable; 12 plants	
Minnesota	2014	SF 2471	May 30, 2014	30 day supply of non-smokable	
Montana	2004	SB 423	November 2, 2004	1 oz usable; 4 plants	
Nevada	2000	NRS 453A NAC 453A	October 1, 2001	2.5 oz usable; 12 plants	2% excise tax at wholesale retail level
New Hampshire	2013	HB 573	Signed into law July 23, 2013; not yet effective	2 oz usable	
New Jersey	2010	SB 119	Signed into law January 18, 2013; 5 dispensaries operational as of March 1, 2016	2 oz usable	7% sales tax
New Mexico	2007	SB 523	July 1, 2007	6 oz usable; 16 plants (4 mature, 12 immature)	Receipts tax of 5% to 9%
New York	2014	A6357	January 7, 2016	30 day supply non-smokable	7% excise tax; 7% sales tax
Ohio	2016	HB 523	Signed into law June 8, 2016		5.75% state sales tax; local taxes vary
Oregon	1998	SB 161	December 3, 1998	24 oz usable; 24 plants (6 mature, 18 immature)	
Pennsylvania	2016	SB 3	Signed into law April 17 2016; effective 30 days after passage	30 day supply	Growers/ processors pay 5% tax
Rhode Island	2006	SB 185	January 3, 2006	2.5 usable; 12 plants	Compassion center surcharge of 4%; 7% sales tax
Vermont	2004	SB 17	May 30, 2007	2 oz usable; 9 plants (2 mature, 7 immature)	
Washington	1998	SB 5073	November 3, 1998	24 oz usable; 15 plants	Treated same as retail

Source: National Conference of State Legislatures and Procon.org.

Recreational Marijuana Tax Rates by State

State	Statutory Language	Marijuana Retail Sales Began	Marijuana Tax	Other Taxes
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Colorado	1 CCR 212-2	January 1, 2014	15% tax on wholesale marijuana price	10% special sales tax; 2.9% sales tax; business license fees; local marijuana sales tax
Washington	RCW 69.50.535; WAC 314-55-089	July 8, 2014	37% excise tax on sales price.	State Business and Occupation (B&O) taxes; state and local sales tax
Oregon	ORS Chapter 475B	October 1, 2015	25% excise tax on sales price. Drops to 17% in late 2016	Localities can add another 2% tax
Alaska (not yet in effect)		Late 2016	\$50 per oz on marijuana cultivator, or approximately 20% effective tax rate.	
Washington, D.C.	B21-0023	February 26, 2015	Federal law prohibits DC from taxing marijuana	

Source: Tax Foundation.

Decriminalization Laws

State	Year Law Passed	Amount of Marijuana Policy Applies to	First Offense Penalty	Subsequent Offense Penalties	Classification for First Offense	Citations
Alaska	2014	1 ounce, six plants	No penalty for those 21 and older	No penalty for those 21 and older	N/A	Alaska Stat. 17.38.020
California	1976; expanded in 2010	28.5 grams or less	\$100 fine	Same as first offense	Infraction	Cal. Health & Safety Code 11357
Colorado	2012 (legal); 1975 and 2010 (fining possession)	Adults 21 and older: no penalty for up to 1 ounce, six plants. Under 21: fine applies to 2 ounces and under	No penalty for those 21 and older; \$100 fine for those under 21	No penalty for those 21 and older	N/A for 21 and up: Criminal class 2 petty offense for others	Colorado Constitution on Article XVIII, Section 16: C.R.S. 18-18-406 (1)-(3)
Connecticut	2011	Less than half an ounce	\$150 fine	\$200-\$500 fine and drug awareness counseling for 3rd offense	Civil violation	C.G.S.A. 21a-279a

Delaware	2015	1 ounce or less	\$100 civil fine if 18 or older	Same as first offense if 21 and older; \$100 criminal fine for people 18-20	Civil violation	Del. Code Ann. Title 16 4764
DC	2014	Adults 21 and older: up to 2 ounces outside the home, 6 plants. Under 21: fine applies to up to 1 ounce	No penalty for adults 21 and older; \$25 fine for those under 21	Same as first offense	N/A for adults 21 and older; civil violation for others	D.C. Official Code 48-904.01 and 48-1203
Illinois	2016	Up to 10 grams	A fine between \$100-\$200	Same as first offense	Civil ordinance violation	Not yet codified
Maine	1976; expanded in 2009	2.5 ounces or less	\$350-\$600 for 1.25 ounces or less; \$700-\$1,000 fine for between 1.25 and 2.5 ounces	Same as first offense	Civil violation	22 M.R.S.A. 2383
Maryland	2014	Less than 10 grams	\$100 fine	2nd offense: \$250 fine; 3rd and subsequent offenses: \$500 fine, mandatory drug education, and assessment for substance abuse treatment	Civil Offense	Md. Code Ann., Crim. Law 5-601.1
Massachusetts	2008	1 ounce or less	\$100 fine	Same as first offense	Civil Offense	M.G.L.A. 94C 32L-32N
Minnesota	1976	42.5 grams or less	\$300 fine	Same as first offense	Criminal petty misdemeanor	M.S.A. 152.027 (4)
Mississippi	1977	30 grams or less	\$100-\$250 fine	2nd conviction within 2 years, \$250 fine and 5-60 days in jail; 3rd conviction in 2 years is a misdemeanor	Civil summons	Miss. Code Ann. 41-29-139
Missouri	2014	Up to 10 grams	\$250-\$1,000	Up to 1 year in jail and a fine of up to \$2,000	Infraction	Mo. Rev. St. 579.015

Nebraska	1978	1 ounce or less	\$300 fine	2nd conviction: \$400 fine, up to 5 days in jail; 3rd conviction: \$500 fine, up to 7 days in jail	Civil infraction; criminal misdemeanor	Neb. Rev. Stat. 28-416
Nevada	2001	1 ounce or less	Up to \$600 fine	2nd conviction: up to \$1,000 fine	Criminal misdemeanor	N.R.S. 453.336
New York	1977	25 grams	Fine of up to \$100	2nd conviction in 3 years, up to \$200 fine; 3rd conviction in 3 years, \$250 fine and/or 15 days in jail	Civil violation	N.Y. Pen. Law 221.05: 221.10
North Carolina	1977	Half ounce or less	Up to a \$200 fine	2nd to 5th offenses: up to \$200 fine	Criminal misdemeanor	N.C.G.S.A. 90-95
Ohio	1975, expanded in 2012	Less than 100 grams	\$150 fine	Same as first offense	Minor misdemeanor	O.R.C. 2925.11
Oregon	2014 (legal); 1973 (fining possession)	21 and older: no penalty for up to 8 ounces, four plants; Under 21: fine applies to less than 1 ounce	\$650 fine for under 21	Same as first offense	Civil violation under 21	OR Rev. Stat. 475.864
Rhode Island	2012	1 ounce or less	\$150 for those 18 and older	3rd conviction within 18 months, misdemeanor, \$200-\$500 fine and/or 6 months in jail	Civil offense	R.I. Gen. Laws 21-28-4.01
Vermont	2013	1 ounce or less; up to 5 grams of hash	Up to \$200 fine	Up to \$300 or \$500 fine	Civil infraction	18 V.S.A. 4230a-d
Washington	2012	21 and older can possess 1 ounce	No penalty 21 and older	No penalty 21 and older	N/A	RCW 69.50.325

Source: Marijuana Policy Project.

Use Frequency by Yearly Users 21 in U.S. ¹³⁹

Times Per Month	Share of Population
<1	30%
1-5	26%
6-10	9%
11-15	7%
16-20	5%
21-25	6%
26-31	17

Source: Marijuana Policy Group.

Population of WV who smoke according to the NSDUH survey plus the 22.2% and 11.1% adjustment to account for underreporting suggested by the MPG study:

West Virginia Low Estimate (NSDUH estimate of how many people have smoked in the last month: 75,000)

Use Frequency	Share of Pop	2010/2011 NSDUH	Underreporting Adjustment	Adjusted Population
<1	30%	22,500	22.2%	27,495
1-5	26%	19,500	22.2%	23,829
6-10	9%	6,750	22.2%	8,248
11-15	7%	5,250	22.2%	6,415
16-20	5%	3,750	22.2%	4,583
21-25	6%	4,500	11.1%	5,000
26-31	17%	12,750	11.1%	14,165
			Total	89,735

West Virginia Medium Estimate (NSDUH estimate of people who have smoked in the last month: 92,000)

Use Frequency	Share of Pop	2010/2011 NSDUH	Underreporting Adjustment	Adjusted Population
<1	30%	27,600	22.2%	33,727
1-5	26%	23,920	22.2%	29,230
6-10	9%	8,280	22.2%	10,118
11-15	7%	6,440	22.2%	7,870
16-20	5%	4,600	22.2%	5,621
21-25	6%	5,520	11.1%	6,133
26-31	17%	15,640	11.1%	17,376
			Total	110,075

West Virginia High Estimate (NSDUH estimate of people who have smoked in the last month: 112,000)

Use Frequency	Share of Pop	2010/2011 NSDUH	Underreporting Adjustment	Adjusted Population
<1	30%	33,600	22.2%	41,059
1-5	26%	29,120	22.2%	35,585
6-10	9%	10,080	22.2%	12,318
11-15	7%	7,840	22.2%	9,581
16-20	5%	5,600	22.2%	6,843
21-25	6%	6,720	11.1%	7,466
26-31	17%	19,040	11.1%	21,153
			Total	134,005

Quantity used by marijuana users during each day of consumption, by user type

Use Days Per Month	Avg. Grams per Month
<1	.30
1-5	1.2
6-10	5.6
11-15	11.7
16-20	18

21-25	29.9
26-31	44.8

Source: NJ Report and Marijuana Policy Group

Total Estimated Monthly Market Demand for Marijuana in West Virginia

Freq. of Use	Usage Amount in Grams		
	Low	Mid	High
Per month			
<1	8,249	10,118	12,318
1-5	28,595	35,076	42,702
6-10	46,189	56,661	68,981
11-15	75,056	92,079	112,098
16-20	82,494	101,178	123,174
21-25	149,500	183,377	223,233
26-31	634,592	778,445	947,654
Total:	1,024,675	1,256,934	1,530,160

Market Size Estimate viewed using different units of measure (Monthly)

Unit of Measure	Low	Mid	High
Grams	1,024,675	1,256,934	1,530,160
Pounds	2,259	2,771	3,373
Metric Tons	1.02	1.26	1.53
Ounces	36,144	44,337	53,975

Estimated Ounces per Year Consumed in WV

	Low	Mid	High
Ounces	433,728	532,044	647,700

Average price per ounce of marijuana in West Virginia is \$358.¹⁴⁰

Estimated Amount Spent on Marijuana Per Year In West Virginia¹⁴¹

	Low	Mid	High
Ounces	433,728	532,044	647,700
Total Pretax Est. Amt.	\$155,274,624	\$190,471,752	\$231,876,600

Estimated Revenue Per Year in West Virginia According to Various Tax Models

Tax Model	Low	Mid	High
	(\$155,274,624)	(\$190,471,752)	(\$231,876,600)
10%	\$15,527,462	\$19,047,175	\$23,187,660
15%	\$23,291,194	\$28,570,763	\$34,781,490
17% (Oregon)	\$26,396,686	\$32,380,198	\$39,419,022
20%	\$31,054,925	\$38,094,350	\$46,375,320
25%	\$38,818,656	\$47,617,938	\$57,969,150
37% (Washington)	\$57,451,610	\$70,474,548	\$85,794,342

Mid-level estimates with New Jersey Policy Perspective suggestion of 6% of people participating in untaxable marketplace- \$179,043,447
Tax Rates: 15%- 26,856,517, 20%- \$35,808,689, 25%- \$44,760,862

Estimates for Pretax Spending on Marijuana¹⁴²

Location	Pretax Amt.
West Virginia	\$190,471,752
200 mi. Radius	\$5,863,050,846
Total:	\$6,053,522,598

Source: WVCBP analysis.

Revenue Estimates including Out-of-State Visitors¹⁴³

Tax Model	Projected Tax Revenue
	(\$776,776,837)
15%	\$116,516,525
17%	\$132,052,062
20%	\$155,355,367
25%	\$194,194,209
37%	\$287,497,429

States with Proposed Legislation for the Legalization of Recreational Marijuana

State	Proposed Tax Rate	Other Information
Nevada	15% excise tax on wholesale price plus state sales tax	Voters will consider Question 2 in November 2016
Arizona	Excise tax ranging from 10%-15%	Ballot initiatives circulating
Arkansas	Excise tax of 5%	Ballot initiatives circulating
California	Excise tax ranging from 5%-15%	Ballot initiatives are circulating. Previously rejected legalization in 2010 by a vote of 46% to 54%
Maine	Excise tax of 10%	Ballot initiatives circulating
Massachusetts	Excise tax of 3.75%, with cities and towns permitted an additional 2%	Study done by the Special Senate Committee on Marijuana chaired by Sen. Jason Lewis (D) estimated tax revenue of \$50-\$60 million
Michigan	One proposed initiative specifies it shall be subject to no tax, fines, or regulations. Another is an excise tax of 10%	Revenue from 10% excise tax: 40% dedicated to transportation, 40% to education, and 20% to localities
Missouri	Excise tax ranging from 25%-75%	Ballot initiatives circulating
Montana	Excise tax of 20%	Ballot initiatives circulating
North Dakota	Excise tax of no more than 20%	Ballot initiatives circulating

Source: Tax Foundation

END NOTES

¹ NORML, http://norml.org/laws/item/north-carolina-penalties-2?category_id=877

² NORML, <http://norml.org/component/zoo/category/celebrating-35-years-of-failed-pot-policies>

³ Ibid.

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¹⁴¹ Assuming that all transactions are through a legal outlet, we are multiplying the estimated amount of ounces per year consumed by the average price of an ounce of marijuana in order to get the pre-tax estimate.

¹⁴² The estimates in this table are based on the assumption that 100% of the people reported smoking marijuana in the last month would buy it through legal channels. The 200 mile radius estimations are based on the bold assumption that every person who reported smoking marijuana in the past month would come to West Virginia to legally buy their supply. This estimate is based on the mid-level range of West Virginia and the states/regions in a 200 mile radius.

¹⁴³ This includes the estimated pretax revenue from West Virginia as well as the estimated revenue from states in a 200 mile radius. Again, this estimate assumes that we would capture only 10 percent of out-of-state visitors.