

Issue Brief 3: MA Ballot Initiative: *The Regulation and Taxation of Marijuana Act*

Purpose:

The Barnstable County Department of Human Services is producing a series of issue briefs for the Regional Substance Abuse Council that present information on topics related to substance use. This issue brief explores the ballot initiative process in the Commonwealth of Massachusetts and will examine some of the specific issues presented by *The Regulation and Taxation of Marijuana Initiative*, a potential question on the 2016 ballot.

Initiative Process:

The Commonwealth of Massachusetts employs an indirect initiative process. Proponents of a ballot initiative must submit 64,750 certified signatures to the Secretary of State for initiative consideration. In December of 2015, 70,739 signatures were submitted and the proposal was put before the Legislature. The Legislature had until May 3, 2016 to reject the question, or take no action. The Legislature took no action and supporters must now collect an additional 10,792 signatures by July 6, 2016 to qualify for ballot inclusion.^{1,2}

The ballot initiative must receive a simple majority vote for or against by the general electorate. If successful, the proposal is presented to the Legislature for repeal or amendment. The Legislature may repeal the initiative with a simple majority vote, or amend the proposal with a three-fourths majority vote.³ If not repealed, the ballot initiative and any successful amendments will become law effective on December 15, 2016.

The Cannabis Advisory Board and Cannabis Control Commission:

If approved, the initiative lays out a set of guidelines around a variety of issues including licensure, revenue, penalties, and enforcement. However, the responsibility to address many areas of concern will fall to the Cannabis Control Commission and Cannabis Advisory Boards, both newly-formed bodies under the law. As currently written, the Commission will consist of 3 members appointed by the State Treasurer while the Board will consist of 15 members appointed by the Governor. Members include representatives from law enforcement, retail, consumers, medical patients, public health, social justice and others.

¹ Massachusetts Constitution, Article XLVIII, parts IV-V

² Massachusetts Constitution, Article LXXXI, Section 2

³ Massachusetts Constitution, Article LXXXI, Section 1

These governing bodies will develop, implement, and adopt regulations for the administration of the law. These regulations will include:⁴

- Licensure
- Communal equity
- Records and surveillance
- Labeling
- Marketing/Advertising
- Schedule of fees
- Establishment security
- Health and safety standards
- Testing
- Enforcement
- Employment standards
- Age restrictive requirements
- Packaging
- Disposal
- License transfer

Current state of laws regarding marijuana use in Massachusetts:

The personal possession of marijuana was decriminalized in 2008 after the passage of *The Massachusetts Sensible Marijuana Policy Initiative*. This made the possession of less than one ounce of marijuana a civil offense punishable by a \$100 fine. Possession by a minor included additional penalties such as parental notification, drug awareness education, and community services. The one ounce standard also applies to marijuana concentrate and derivatives (such as hemp or hashish).⁵

In November of 2012, the use of medicinal marijuana was approved, eliminating the criminal and civil penalties for possession of up to 10 ounces every two months for patients with a state-issued registration card.⁶ There are currently 24,196 patients registered to receive medical marijuana in Massachusetts.⁷ *The Massachusetts Medical Marijuana Initiative*, the law legalizing medical marijuana use, allows for 35 state-licensed non-profit dispensaries; there are currently 6 in operation.

Proponents:

Proponents of the ballot initiative have initiated a “Campaign to Regulate Marijuana like Alcohol”. They believe that regulating marijuana will replace an illegal black market with a system of licensed business that institute age restrictions, test for product safety, and enable law enforcement to better utilize resources. Supporters argue that the levied tax will raise millions in new revenue each year, while a new industry creates jobs and economic opportunity for the residents of the Commonwealth.⁸

Proponents assert that although alcohol is legal for those over the age of 21 it poses a more significant risk to the public health than marijuana. According to the CDC and the Institute for

⁴ *An Initiative Petition for a Law Relative to the Regulation and Taxation of Marijuana*

⁵ Massachusetts General Laws Chapter 94 C Section 34

⁶ 105 CMR 725.000

⁷ The Massachusetts department of Health and Human Services- Medical use of Marijuana program

⁸ The Campaign to Regulate Marijuana like Alcohol

Highway Safety, Massachusetts has the 12th highest rate of deaths by alcohol poisoning (11.9 per 1 mil) in the country and accounted for 152 alcohol-related motor vehicle deaths in 2014.

Rates of substance use treatment admissions in 2014 are significantly higher for alcohol (31.9%) than for marijuana (4%) across the state and in the Town of Barnstable (39.5% and 2.9% respectively).⁹ Rates of misuse and dependence are also higher with 17.6 million¹⁰ people suffering from alcohol abuse or dependence, while less than a quarter of that (4.2 million) are thought to be dependent on marijuana.¹¹

Opposition:

Opponents have expressed several concerns over the possible implications of this ballot initiative. Their three main areas of concern are cost and revenue, youth access and use, and enforcement of impaired driving.

1. Cost, taxation, and revenue:

As currently written the ballot initiative would impose an excise tax on the sale of marijuana and marijuana products of 3.75% in addition to the states 6.25% sales tax. Localities may impose an additional local tax rate of up to 2% on marijuana transactions that occur within their municipality. This effective tax rate of 12% is significantly lower than the nearly 28% and 45% rates instituted in Colorado¹² and Washington State¹³ respectively which both voted to legalize the sale of recreational marijuana in 2012, and began sales in 2014.

Regulations in Colorado and Washington are explicit in how tax revenue from the sale of recreational marijuana can be used. In Colorado, 15% of the sales tax is allocated to local municipalities, and the remaining 85% is to be spent on enforcement and regulation. The revenue generated from the excise tax is diverted to the Public School Capital Construction Assistance Fund (up to \$40 million annually) which works to repair failing schools and fund grant projects aimed at improving education throughout the state. As of March 2016 Colorado has generated \$59,530,007 for this fund and \$194,806,762 in total tax revenue.¹⁴

In Washington State, \$6 million is immediately allocated to local municipalities, \$5 million is directed annually at the administration of the act and the remainder is allocated to a variety of educational and health care programs including research, youth health surveys, community health center funding, prevention programming, public education, and the State Health Care

⁹ Massachusetts Department of Health and Human Services: Admission Statistics for State and City & Town

¹⁰ National Council on Alcoholism and Drug Dependence

¹¹ National Institute on Drug Abuse

¹² Colorado Department of Revenue (15% excise tax, 10% retail marijuana sales tax, 2.9% state sales tax)

¹³ Washington State Department of Revenue (37% excise tax, 6.5% state sales tax)

¹⁴ [Colorado Department of Revenue Tax Data, as of March 2016](#)

Authority. As of March 2016 Washington State has generated \$148,755,175 for these health related activities, and \$193,310,588 in total tax revenue.¹⁵

Tax revenue from the marijuana industry in the Commonwealth will first be used to fund the administration, implementation, and enforcement of the law. Massachusetts' comparatively low tax rate may not provide for the receipt of surplus funds that could be used towards education, research, or prevention efforts. However, the Legislature has the opportunity to amend the proposed tax to a higher effective rate that could provide for oversight, research, education, treatment, and enforcement practices.

2. Youth access, and use

Opponents predict that legalization will lead to an increase in use and addiction, specifically among youth. Data from the National Survey on Drug use and Health shows that increasing "current" marijuana use (defined as past 30 day use) is a national trend among young people. Although not statistically significant, current marijuana use rates among people aged 12 -17 in Colorado, a state with legalized recreational use, increased from 11.2% in 2013 to 12.6% in 2014; while California, a state without legalized recreational use, saw an increase from 7.8% to 8.7%.¹⁶ Data from a full year of legalized recreational sales in Colorado and Washington are expected in the fall of 2016.

Under the current ballot initiative, advertising, production, packaging, marketing, and age restrictions will fall under the purview of the Cannabis Control Commission and the Cannabis Advisory Board, where steps can be taken to limit availability and appeal to those under the age of 21.

3. Driving and enforcement

There are concerns over the ballot initiative's failure to address driving under the influence of marijuana ("drugged-driving"). Currently there is no device able to determine marijuana impairment, which presents a major problem for law enforcement. Other states have developed training protocols and blood-testing systems that aid in the apprehension of impaired drivers.

In Colorado and Washington states, blood testing for marijuana impairment is now regulated in the same way as the use of a breathalyzer. They have determined a legal level of toxicity in the blood and applied penalties similar to those that exist for alcohol impaired driving.¹⁷

¹⁵ [Washington State Liquor and Cannabis Board, sales activity](#)

¹⁶ [SAMHSA comparison](#) of 2013 and 2014 NSDUH State Estimates for Substance Use

¹⁷ Colorado Department of Transportation; Washington State Department of Transportation



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Conclusion:

If the ballot initiative is successful, the Legislature will have the responsibility to craft a policy that addresses the concerns presented above and still reflect the will of the population. Strict marketing and sales regulation can act to protect the youth from early initiation or unintended exposure, while an effective tax rate could provide a new stream of revenue to support education, prevention, and research.

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