

## Regulating Marijuana: A Year and a Half In

By Karmen Hanson

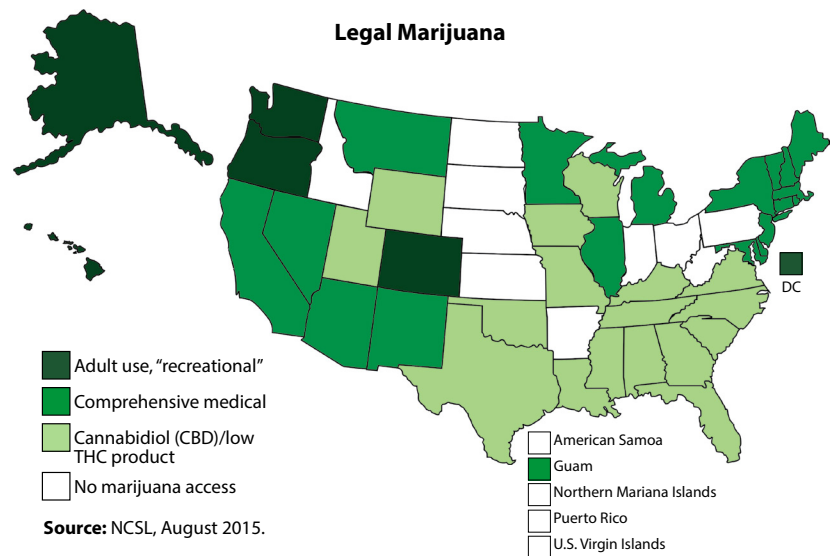
Since voters in Colorado and Washington passed referenda to legalize and regulate marijuana and cannabis products for adult “recreational” use in 2012, policymakers and others have been tracking their progress. Lawmakers have learned many lessons from at least 18 months of legal sales and regulations, and legislators from Colorado and Washington shared their thoughts and experiences during a session, “[Legalizing Marijuana: Potholes and Possibilities](#),” at NCSL’s 2015 Legislative Summit. This brief, the first of two, focuses on state regulation, public safety, education and prevention, and who drives the policy.

### Did You Know?

- No state legislature has legalized adult-use, “recreational” marijuana through legislation.
- A majority of states allow use of some marijuana products for medical or recreational purposes.
- At least five states anticipate ballot initiatives to legalize adult use in 2016.

### State Action

With at least 23 states, the District of Columbia and Guam having comprehensive medical marijuana programs and at least another 17 states allowing the use of low-THC products for medical purposes, most states have some experience with the medical side of marijuana legalization. After Colorado and Washington’s ground-breaking referenda in 2012, Alaska, Oregon and the District of Columbia followed suit in the 2014 elections, legalizing marijuana for adult recreational use. This issue remains hotly contested and no doubt will remain on legislative agendas. The following themes and lessons from Colorado’s and Washington’s experiences may help inform other states considering these complicated topics.



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**Regulatory Structure.** In Colorado, the legislature crafts marijuana regulations, while in Washington, the [Liquor and Cannabis Board](#) is tasked with regulating the industry. Among other things, regulation entails establishing licensing fees, growing and sales standards, and taxation. Both states had medical cannabis programs in place before voters approved recreational use. Colorado Representative Dan Pabon and Washington Senator Ann Rivers recommended that, if a state plans to legalize marijuana for both medical and recreational use, it should do so under one system. “With a recreational marijuana system, you don’t need a medical system,” Pabon said. “The only difference may be the taxation piece.” “Make them as equal as you can,” agreed Rivers.

**Public Safety.** Legislators discussed how they balance regulating a market for adults while preventing access by children. Colorado and Washington require identification checks at dispensaries, and no one under age 21 is allowed inside. Both states also require child-resistant packaging of cannabis products. In addition, while both states prohibit public use of marijuana, legislators described grappling with a reported increase in public-use complaints and the difficulties in defining public and private spaces, including situations where marijuana smoke crosses private property lines or is visible from a backyard or porch.

Determining intoxication or impairment while driving also remains difficult for legislators, law enforcement and legal experts. Senator Rivers emphasized that new cannabis products and strains often are unfamiliar to people and determining a level of impairment is difficult, at best. Currently, Colorado and Washington use a threshold of 5 nanograms or more of THC per milliliter of blood as a measurement for driving under the influence of cannabis. However, policymakers continue to study alternate solutions because people metabolize and retain THC differently over time compared to alcohol. Washington State University and private companies are working on a “roadside THC-breathalyzer” to test people who are suspected of impaired driving.

**Education and Prevention.** Legislators emphasized the need for education and research about the public and personal health effects of marijuana, as well as prevention programs for adolescents. The perception of creating an environment where marijuana is considered acceptable, legal or safe for children with developing brains is of utmost concern. Washington Senator Jeanne Kohl-Welles shared that, “we really had to work to keep funding directed toward youth prevention” because of the temptation to capture the funds for other uses. The Colorado legislature recently dedicated \$6 million for the most comprehensive drug use prevention program in the state’s history.

**Driving the Policy.** Colorado and Washington legislators had to react to voter-passed ballot measures to legalize marijuana for adults, which took many of the details out of their control. Panelists advised their legislative counterparts that having the legislature craft legislation is better than dealing with an inflexible ballot initiative. “This is a whole new world, and we need to get our arms around it,” said Colorado Representative Polly Lawrence. “Having it thrust upon us through a ballot initiative and put into our constitution has really left us back on our heels and in a reactionary mode.”

Legislative panelists said their state’s initiatives ignited conversations in their chambers around marijuana policies. Discussions about use, legalization, taxation and social impacts that were rare before are now commonplace. Legislators from both states mentioned the value of bipartisan interest and bill sponsorship, even if they didn’t agree on all of the complex issues.

## Federal Action

Marijuana is a Schedule I drug under federal law; it is defined as dangerous, with no currently accepted medical use and a high potential for abuse. This causes complications around taxation, banking and other federal laws, which will be covered in a November LegisBrief.

## NCSL Contact and Resources

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## Additional Resources

Colorado Marijuana Enforcement Division  
Washington State Liquor and Cannabis Board

[NCSL Marijuana Programs page](#)

[NCSL Marijuana Decriminalization State Laws](#)