

Roadway Safety Subcommittee

Governor's Marijuana Advisory Commission

July 26, 2018

Executive Order 15-17

- November 2017 report on high-quality primary research and data
- January 2018 report with recommendations
- December 2018 report with recommendations “on implementing and operating a comprehensive regulatory and revenue system for an adult marijuana market, and accompanying legislation if deemed necessary.” EO 15-17.

January 2018 Report - Recommendations

1. Saliva-based or oral fluid testing is a scientifically reliable means of determining the presence of drugs in impaired drivers. It is effective and reliable both as a roadside screening test and as an evidentiary test.
2. At this time and under current law, the number of DREs is adequate for most of the State of Vermont.
3. Vermont Forensic Laboratory (VFL) is building capacity for in-state testing and analysis of toxicology samples for DUIs related to drugs such as marijuana, and may need to continue to build capacity depending on additional pressures.
4. A regional impairment threshold for the New England states requires further study.
5. State of Vermont should begin gathering specific baseline data to measure the impact of marijuana legalization in Vermont—regardless of whether legalization involves adult possession and/or retail sales.
6. Marijuana legalization, regardless of whether for possession or retail sales, will impact current search and seizure law in Vermont.
7. Certain changes to Vermont law should be considered to ensure roadway safety and protect youth under 21.

Next Steps

December 2018 Report

- “[O]n or before December 15, 2018, the Commission will provide recommendations to the Governor on implementing and operating a comprehensive regulatory and revenue system for an adult marijuana market, and accompanying legislation if deemed necessary.” EO 15-17.

December 2018 Report - EO 15-17:

- “Recommend a business plan for a comprehensive regulatory and revenue system which completely self-funds the regulatory infrastructure at both the State and local level, including . . . *Required equipment and/or staffing resources required to address impaired driving due to marijuana or marijuana and alcohol at both the State and local level . . .*”
- “Determine a set impairment threshold for operating a motor vehicle on State roads and highways, identify an appropriate impairment testing mechanism, and/or recommend increased DREs and training . . .”
- “Recommend a plan for continued monitoring and reporting on impacts to public health, with specific reference to the health endpoints listed in Section III(1) above” [*for Roadway Safety, the health/safety endpoints addressed in the November 2017 report were “injury and death” and “crime rates”*]
- “Other miscellaneous issues,” which could include additional search and seizure considerations, or other topics.

Research – Update

- Is marijuana **use**, alone or in combination with other substances, associated with an increased risk of (1) motor vehicle crashes and (2) motor vehicle fatalities?
- Is marijuana **legalization** associated with an increased risk of (1) motor vehicle crashes and (2) motor vehicle fatalities?
- Do crime rates (i.e., rates of violent crime, property crimes or other collateral crimes) increase or decrease when marijuana is (1) decriminalized or (2) legalized for recreational use?

- Next meeting
- Deadlines:
 - New research and data
 - Draft recommendations
- Stakeholders to invite

Update from Marijuana Taxation and Regulation Subcommittee

Governor's Marijuana Advisory Commission

July 26, 2018

Abby Shepard, Tax Policy Analyst
Policy, Outreach, and Legislative Affairs
Vermont Department of Taxes

Creating an Inventory of Issues

- Alternative Forms of Use
- Financial and Third-Party Liability
- Legal Structures
 - Control Model
- Diversion Prevention
- Hemp
- Licensing
- Local Control
- Consumer Protection
- Medical Marijuana
- Marijuana in the Workplace
- Revenue

Alternative Forms of Use

- Allow edibles and vaping to regulate them, eliminate black market.
- Serving size & potency limits
 - 10 mg of THC/serving & 100 mg THC/package
- Packaging
- Meals tax: explicitly exempt or tax edibles.
- Ban THC mixed with other products.
 - Cross addiction, especially with tobacco and alcohol.
 - Concern over youth use.
- Board Listing Committee

Financial and Third-Party Liability

- Banking & Insurance
 - Federal prohibition creates unjustifiable legal risk for banks and most insurers.
 - Currently only credit unions provide banking services.
 - Currently only surplus line companies are willing to insure marijuana businesses.
 - No State Bank.
- Security
 - Cash
 - No payments to State agencies in cash.
 - No required payment system.
 - Ensuring secure product storage and destruction.
 - Intoxicated customers

Business Legal Structures

- Vermont residency preference (not requirement)
 - Purpose: keep businesses small and local.
 - Allow flexibility and influx of necessary start-up capital.
 - Allow criteria and verification to be determined by rules, not set in statute.
- Control Model
 - To be determined: to what extent a legalized market should be privatized, state-run, or a hybrid private-public authority.
 - Create a state board for oversight.
 - State would receive all revenues, and retain control.
 - Concern over risk to State employees of federal prosecution.

Diversion Prevention

Diversion raises several overarching issues that the entire regulatory structure must be built to prevent – or at least mitigate – through strong seed-to-sale and financial tracking, as well as enforcement mechanisms.

- Diversion to non-legal states, minors, black market
- Prohibition on gifting (for a fee) and residential delivery

Hemp

- Exempt hemp from any new marijuana tax?

Licensing

- Vertical integration permitted; neither required nor prohibited.
- Background checks required for owners, directors, and employees.
- No unlimited licenses in any category.
- Align fees and application process with medical marijuana.
- Regulatory authority over licensing and oversight
 - Create a new Board to oversee licensing, especially number of licenses.
 - Agency of Agriculture: cultivation and manufacturing
 - Department of Liquor and Lottery: retail stores, enforcement
 - VT Marijuana Registry: continued administration of medical marijuana, but still under Department of Public Safety?
 - Department of Taxes: administering tax

Local Control

- Municipalities need express legislative authority (Dillon's Rule)
 - 24 V.S.A. § 2291: authority to regulate or prohibit marijuana use in public spaces.
 - Need statute to foresee enough time at town level for giving notice, holding meetings and votes, and respecting appeal periods.
- Minimum standards for siting businesses
 - Follow medical marijuana buffer zone of 1000 feet from school or daycare.
- Signage
- Nuisance ordinances: odor, noise, waste, etc.
 - Municipalities need statutory authority to regulate or prohibit nuisances caused by marijuana use, cultivation, and production.
- “Dry town” option
 - Follow liquor control opt-out at local level model under 7 V.S.A. § 161.

Consumer Protection

- Restrictions on Advertisements
 - Prohibit ads targeting children
 - No cartoon characters or other images enticing to children
 - Limiting/prohibiting TV, internet, or print advertising where underage audience
 - Consider prohibiting claims about therapeutic or curative properties.
 - Consider prohibiting depictions of marijuana usage.
 - Consider prohibiting signage outdoors; authorizing towns to do so via zoning.
- Packaging and labelling
 - Child-resistant packaging.
 - Universal warning symbol that product contains THC.
- Potency and dosage
 - Impose serving limits of 10 mg of active THC/serving; max 10 servings per package or sale.

Medical Marijuana

- Taxation
 - Make explicit tax treatment of medical marijuana sales
 - Continue to be treated as exempt from sales tax.
 - Exempt from new excise tax.
 - Note currently that tangible personal property sold by dispensaries (such as paraphernalia) is subject to sales tax.
- Fees
 - Align medical licensing fees with retail licensing fees
 - Keep low to incentivize patients to buy from dispensaries for medical purposes.
 - Concern about sales drying up with easier access at retail than thru dispensaries.
- Vermont Marijuana Registry
 - Amend dispensing limit for registered patients.
 - Amend cultivation requirements for registered patients (housekeeping from Act 86 (H.511))
 - A complete review of Title 18 Chapter 86 will be needed.

Marijuana in the Workplace

- Workplace Safety (OSHA)
- Worker's Compensation
- Drug testing under Federal Drug-Free Workplace policies
- Disability accommodation (ADA)
- Employment practices (hiring, firing, disciplinary action)

Revenue

- **Tax Structure**

- Consider 10-25% excise tax at the point of retail sale
 - Exempt products with THC from other taxes (sales and/or meals)
 - Exempt medical marijuana from excise tax
- Consider authorizing towns to vote local option tax to generate revenues.
- Consider offsetting federal income tax law by authorizing a Vermont deduction of business-related expenses (26 U.S.C. § 280E).

- **Revenue Distribution**

- Funding needs of regulatory agencies (AAFV, DLCL, DPS, Tax, VDH)
- Funding needs of municipalities
- Structure of allocations: percentage of revenues or yearly \$-amount appropriations?
- Fund administration: tax and fee revenues deposited into regulatory agencies' special or enterprise funds, or the General Fund?