

# A dozen ways to legalize the marijuana supply chain, in Vermont or any state

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Former U.S. Marine Sgt. Ryan Begin rolls a medical marijuana joint at his home in Belfast, Maine. (AP Photo/Robert F. Bukaty)

By [Niraj Chokshi](#)

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Legalizing marijuana is not a binary choice.

After months of research, the RAND corporation on Friday released a report for the state of Vermont exploring marijuana legalization and regulation there. The [218-page report, commissioned as a result of a May law](#), explores every aspect, option and pathway to legalization.

The report breaks out 12 ways a state can regulate the supply of marijuana, grouped into three categories. The first category covers the two familiar models: maintaining prohibition but reducing penalties, a policy being increasingly adopted, and the commercialization Colorado and Washington are testing out right now. Another category explores two extremes: maintaining prohibition and increasing penalties, and repealing prohibition without passing any kind of regulation of the marijuana industry. A third category explores eight options that fall somewhere in the middle.

Each of the 12 paths offers different benefits and risks to public health, government control of the industry, the ability to generate revenue and the level of conflict with federal law. What follows is a look at the pros and cons of each approach.

## The two we know

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### Reducing penalties

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One of the most familiar options is maintaining prohibition but decreasing sanctions. That can include reducing or eliminating fines, reducing sentences, or eliminating incarceration for drug possession or use altogether. Just because an activity is banned, doesn't mean that ban has to be enforced aggressively.

“Many jurisdictions traditionally put little energy into enforcing prohibitions against prostitution and gambling,” the authors write. “Indeed, a number of U.S. cities have adopted local policies making marijuana enforcement the lowest law enforcement priority (e.g., Berkeley, San Francisco, and Seattle).”

## The standard commercial model

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Another option is one many may think of when they talk about legalization: the alcohol-style commercial model in place in Washington and Colorado. Under this kind of system, production, distribution, and sale are in the hands of the private market, subject to sometimes-strict laws and regulations.



### Follow Politics

Indeed, this has been one of the preferred methods for activists so far, who often draw comparisons to alcohol both in how harmful the substance is (alcohol is worse, they argue) and how it should be regulated. In Washington, the Liquor Control Board is regulating marijuana. It was the Campaign to Regulate Marijuana in Alaska that shepherded the successful legalization ballot measure that voters approved last November and peer groups exist in a number of other states with active legalization efforts.

“The guiding spirit of this approach is to let the market evolve to maximize the efficiency of production, the appeal of products to consumers, and the size, scale, and scope of the market—subject only to remaining within the regulatory parameters,” the RAND authors write.

It isn’t clear how such a market would evolve, but the authors hazard a few educated guesses: firms will grow; production will shift to greenhouses or even outdoors to save money; and the industry will push a shift away from buying loose leaves and toward extract-based products or pre-rolled joints. Competition will make branding more important (Privateer Holdings recently licensed the name of perhaps the world’s most famous smoker, Bob Marley), boutiques will proliferate among wealthier customers and cafes will sprout up where allowed.

Where innovation leads isn’t clear. Will firms produce products with increasingly high potency? Will they further develop concentrates and edibles? And then there’s “the biggest wild card of all:” the creation of products based on the extraction and blending of the hundreds of potentially psychoactive and not well-understood chemicals in the plant.

What is more certain is that products will likely proliferate under this approach to legalizing supply.

“A regulated-like-alcohol industry can present consumers with a tantalizing array of high-quality products at prices well below what they are today; that is a service at which free markets excel,” the authors write.

## **The 8 middle-ground options**

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### **1. Let adults grow their own**

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Allowing home cultivation isn't a new idea. Alaska's Supreme Court ruled in 1975 that privacy rights protected home growth, later defined as up to four ounces or 25 plants. Several states allow home growing for medical marijuana and voters in the District of Columbia in November approved a measure that allows up to six plants to be grown at home.

Research suggests this is exercised by relatively few users and likely does little to increase marijuana use. One drawback is that may not do much to substantially affect the black market and is difficult, though not impossible, to regulate and tax. That difficulty to collect revenue on legalization may lead even states that commercialize marijuana, such as Washington, to maintain a prohibition on home growing. Colorado, however, allows it.

### **2. Let only small co-ops or buyers' clubs grow and distribute the drug**

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One problem with home-growing, too, is that it is very easy even for regular users to grow more than is needed. Non-profit cannabis clubs, allowed in some parts of Spain, address that problem without allowing a full-fledged market to prosper. Uruguay is also implementing a collectives-based system.

Not only do these clubs compete with the black market, but they keep production limited and price from falling so low that the drug flourishes, the report's authors argue:

[U]nlike a strict version of own-growing, the cannabis-club model appears to have the potential to undercut a meaningful segment of the illegal market while nonetheless confining the industry to traditional craft or artisanal production methods that avert the sort of price collapse that could accompany legalization of large-scale commercial production.

Of course, such clubs can be abused by black-market producers.

### **3. Allow locally controlled sales**

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Contrary to popular belief, marijuana is not fully legal in the Netherlands. In fact, producing and distributing it remains illegal, but since the 1970s, the country has practiced formal non-enforcement against sales of small amounts when shops meet clear criteria. It has generally

been considered a success.

“The Dutch system is widely praised in the academic literature and by marijuana advocates (MacCoun and Reuter, 2001),” the RAND authors write. “In particular, it is credited with substantially achieving its original policy objective, which was to separate the soft-drug (cannabis) and hard-drug (e.g., heroin) markets by allowing people to obtain cannabis without coming into contact with people selling hard drugs.”

But the nation has had to deal with the benefits and drawbacks of high levels of drug tourism, something Vermont will no doubt face as well. There are nearly 40 times the number of regular marijuana users within 200 miles of Vermont’s border as there are within its borders, RAND estimates.

#### **4. Have the government manage the supply of pot**

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Another option familiar to the residents of 17 states is a system in which the government runs production, a common model adopted after alcohol was repealed in 1933. And such systems have largely been good for the public, the authors argue.

“Given the wealth of research suggesting that alcohol monopolies are better for public health than less regulated options (see reviews in Room, 1987, and Pacula, Kilmer, et al., 2014), we focus special attention on this particular supply alternative,” they write. “However, we want to stress at the outset that direct state participation in the supply chain could cause the state to violate federal law (Mikos, 2013).”

A state government monopoly is arguably the best approach to legalizing the supply of marijuana, they write, but it is also the model that most directly conflicts with federal law. They identify four benefits of government-run marijuana:

1. It would minimize diversion to the black market by giving the government close control over the product.
2. It’s easily reversed. A government monopoly on production is a good stepping stone. It wouldn’t be hard to make the switch to a Colorado-style model from a government monopoly. But doing the reverse — switching from a commercial system to government-run sales — would be much harder, as businesses would lobby against any such proposal.
3. A third benefit — and a drawback — is that government-run production could limit advertising and innovation. While advertising can have negative effects like promoting underage use — as the tobacco industry has been accused of — it can also provide consumers with information. And while innovation has its benefits, it can also lead the industry into uncharted territory as producers experiment with new untested combinations of marijuana.

4. Finally, a government monopoly on pot would prevent a price collapse, which the report's authors fear could allow proliferation of the drug:

For most consumer goods, lower prices are a cause for celebration, but, if consumers are vulnerable to overindulging, low prices might be problematic. For example, some view innovation that has led to very low prices for soda pop, junk food, and candy to be a curse, not a blessing, for the American public.

Government monopolies are often considered inefficient, but when it comes to producing a psychoactive substance that could be a good thing, the researchers argue.

## **5. Have a public authority do it**

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*CORRECTION: This section previously incorrectly described the idea of creating a public authority as one based on the creation of a private monopoly. It has been updated.*

One alternative to a government monopoly is granting a public authority control over which the government can exercise tight control.

The advantages include the fact that this would shift the burden of violating the federal prohibition onto the authority and off of the state. But that also means the state would give up some level of control over the system. Such a model would also see a big portion of profits federally taxed, which isn't the case with a government monopoly.

## **6. Allow only nonprofits operators to sell and distribute the drug**

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There is an argument, of course, that monopolies are by their very nature unfair and are not aligned with the public interest. Nonprofit operators, on the other hand, might better do the job.

States could set strict requirements on nonprofit marijuana suppliers that they could not on private businesses. They could require that nonprofit operators work under a mission of merely meeting existing demand, not encouraging more. Nonprofit operations could also be required to have child-welfare or public-health groups represented on their boards.

Nonprofit operators, however, may have trouble raising money. Banks are reluctant to give out loans to marijuana businesses, but those businesses can raise money from individual investors instead. Nonprofit operators don't have that option.

## **7. Allow for-profits to sell marijuana**

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Another option that stops short of traditional commercialization is to allow for-benefit private businesses to produce and sell marijuana.

In Vermont — one of 27 states that allow new companies to incorporate as benefit corporations — such businesses are required to positively impact society and the environment and are subject to regulations to enforce that.

“If a state is pondering whether to create a for-profit marijuana industry, it will be useful to step back and ask, ‘What kinds of organizations do we want selling these intoxicants? Those concerned only with profit, or those with a greater goal of producing social benefit or minimizing social harm,’ the authors write. “If the monopoly, public-authority, or nonprofit model is infeasible, a jurisdiction could — at a minimum — explore the for-benefit option.”

## **8. Allow for-profits to do it, but under a closely monitored licensing system**

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One final option that stops just short of commercialization of the marijuana supply is creating a structured oligopoly, in which the government allows and closely monitors a few private producers and sellers. Of course, that’s easier said than done.

“The challenge is to figure out how to insulate the regulatory agencies from industry influence, empower regulators with big sticks, structure incentives so that companies prefer complying with regulations voluntarily to breaking the rules and taking the chance of getting hit by that stick, and get regulators to see their task as promoting public health rather than simply keeping the industry lawful,” the report authors write.

Limiting the pool of licenses to run and operate a marijuana businesses—and making them temporary — could encourage better cooperation with regulation than an unlimited licensing system, since the relative scarcity of licenses makes them more valuable to have.

## **The extremes**

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The two extreme options facing Vermont, or any state, are intensifying prohibition or repeal without regulation.

### **Prohibition plus**

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The argument for an intensification of prohibition seems to have been lost, with even the anti-legalization groups like Smart Approaches to Marijuana arguing for decriminalization. Politicians of both parties have argued for weakening penalties for small amounts of possession and voters support the policy, too.

### **Repeal without regulation**

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On the other end of the spectrum, the state could repeal prohibition without regulating production, sale or possession at all. While the downsides may be apparent, one appeal of this option is that it is legally safe. Unlike regulating a substance banned by the federal government, simply repealing prohibition does not conflict with federal law.

“It might seem puzzling that a state allowing an anarchic free market could be consistent with federal prohibition, but states are under no obligation to prohibit drugs that the federal government bans,” the authors write. “Indeed, at any given time, the federal government has placed minor drugs on its list of controlled substances but one or more states have not yet gotten around to adding to their own lists of banned substances.”

No jurisdiction has pursued repeal-without-regulation for marijuana, but it has been tried with alcohol. New York tried it briefly in the 1920’s. But businesses operated under the constant threat of federal enforcement and the lack of regulation allowed a “crime-infested alcohol market” to flourish.

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