

Core Attributes of Adult Access Regulations

Adults ought to have the legal option to cultivate personal use quantities of marijuana in private residences

NORML supports the right of individuals to grow their own cannabis as an alternative to purchasing it from licensed retail producers, and maintains that provisions permitting this behavior should be codified in adult use access laws. NORML maintains that the inclusion of legislative provisions protecting the non-commercial home cultivation of cannabis serves as leverage to assure the product available at retail outlets is high quality, safe and affordable. Additionally, permitting home cultivation provides adult consumers with an immediate source of cannabis — providing an alternative to the illicit market. Such a source is necessary because it typically takes state regulators several months, or even years, following the law's enactment to establish licensed retail operators. At present, most adult use [laws](#) permit this behavior and there exists no compelling state interest to infringe upon it. State regulations governing the alcohol market permit adults the option to legally brew non-commercial quantities of their own alcohol, and it is consistent with this policy to similarly permit home cultivation.

Taxes imposed on either the commercial production or retail sales of cannabis must not be excessive

The commercial production and retail sale of recreational cannabis in legal jurisdictions is presently subject to both excise taxes and sales taxes, similar to many other commercial goods. The taxation of these goods remains popular with elected officials as well with the general public — particularly among those who do not personally use cannabis, but view the plant's legalization positively as an alternative source of state revenue. The imposition of fair and reasonable taxes on these commercial activities generates support from members of the public who may otherwise show little interest in cannabis law reform. Revenue from retail marijuana taxes is currently being used to [fund](#) school construction and other popular programs in various states, as well as to offset administrative and regulatory costs associated with adult use regulatory programs.

Such taxation ought not to apply to non-commercial activities involving cannabis, such as home cultivation or cannabis gifting. Most importantly, taxation on commercial activities should not be so excessive that it incentivizes consumers to obtain cannabis from the illicit or grey market. Studies [show](#) that most consumers are comfortable paying a premium price for cannabis available legally at retail stores (up to approximately \$14 per gram), but warn that excessive pricing due to heavy taxation induces consumers to return to the illegal market.

Regulators should not inadvertently create undue barriers of entry for those seeking to participate in the legal adult use marketplace

African Americans and other minorities have historically been [disproportionately](#) targeted and adversely impacted by cannabis criminalization. This lack of equity must not persist in an environment where adult use cannabis production and sales are legally regulated. In order to provide for inclusiveness within the legal industry, regulators should strive to impose nominal to low application fees in order to encourage participation from formerly disenfranchised populations. Further, regulations must not prohibit those with prior criminal records for past violations from seeking to actively participate in the legal marketplace.

Regulators should not impose arbitrary, restrictive limits on the total number of retail or commercial licenses available

Suppressing the total number of available licenses available to commercial producers and retailers artificially raises prices, limits economic opportunities, and results in a lack of adequate access for consumers — all of which allow the unregulated market to proliferate. Further, it increases the likelihood that those applicants who ultimately are not selected for licensure will engage in litigation to appeal the selection process. Such litigation can further slow down the process of providing consumer access because licensed applicants typically cannot move forward with their operations while litigation remains ongoing.

Furthermore, limiting the total number of licensed operators who may participate in legal markets is an impediment to the creation of an inclusive industry. It also limits the ability to have a variety of licensed, competing business models —

including a diverse mix of smaller and larger businesses — operating in a single state. Licensing caps increase the likelihood of the creation of oligopolies. This outcome is neither good for consumers, who may experience limited choices and high prices, nor is it beneficial for those wishing to enter the industry — especially people of color and others who have been disproportionately impacted by prohibition and who have limited access to capital. Such a scenario also increases the possibility of corruption and collusion among the limited number of currently licensed operators or well-funded applicants, and provides them with excessive political leverage to lobby for regulations that favor their existing business models or that inhibits the ability of other competitors to either enter or gain a foothold in the market.

Finally, following the passage of legalization, lawmakers and regulators should open the license application process in a timely manner that ensures an expedited transition from the unregulated market to a regulated one. Regulators ought to provide for a process that allows for a sufficient number of applicants to meet existing demand, with an emphasis on prioritizing opportunities for licensure to under-represented individuals and groups, especially those from more heavily impacted communities. In state markets where a full and open licensure application process is not feasible within at least one year following the enactment of legalization, existing medical licensees could be permitted to dually service the adult non-medical market. However, this ability should be granted provisionally, preferably for no longer than one year, and licensees should not have any expectation that they will be permitted to exclusively service the adult-use market long-term. Any operations or expansions undertaken by existing medical licensees to service the adult non-medical market should be subject to the same rules, regulations, and restrictions that will govern other new licensees. In markets where the total number of licenses will be inadvisably capped, medical providers who have been servicing the adult non-medical market should not count toward the number of licensees allowed or they should be required to reapply when the licensing process is opened to all other applicants.

The enactment of adult use access regulations ought not to amend or override existing medical use access laws

Laws and regulations governing medical cannabis access to qualified patients exist in a [majority](#) of US states. NORML acknowledges that the medical cannabis market and the recreational cannabis market are not necessarily one and the same, and that individual consumers of these markets may possess needs that differ from one another. For instance, patients may require access to a wider array of products, as well as to products of higher cannabinoid potency (e.g., concentrates), than do those consuming cannabis for recreational purposes. Further, many patients require a consistent supply of cannabis to mitigate chronic conditions, and therefore they should not necessarily be subject to the same sort of taxes, fees, or possession limits that are imposed upon those accessing the adult use market.

Cannabis products sold at retail must be subject to third-party testing in order to assure product quality

Cannabis flower sold at retail must be subject to third-party testing in order to assure that the product is free from unwanted contaminants, such as molds or pesticides. Testing of cannabis and/or cannabis infused products must further identify the precise presence of individual cannabinoids (such as THC and CBD) and terpene content, and such information must be prominently displayed on the products' label. Such testing and labeling ensures that adult consumers have consistent access to a standardized product and have the information necessary to make an informed decision prior to purchase.

Arbitrary limits criminalizing the production and/or sale of products with higher levels of THC should be discouraged

NORML opposes the imposition of arbitrary caps that seek to prohibit the production, sale, and/or possession of certain products containing higher THC potencies. Sensationalist claims alleging that today's marijuana is far more potent, and therefore inherently more dangerous to society, than the cannabis of the prior generations are nothing new. Such claims first emerged in the 1980s and continue to this day. That said, there exists little data substantiating fears that these products pose any sort of unique health threat. In fact, higher potent cannabis products, such as hashish, have always existed and essentially, marijuana is still the same plant it has always been — with most of the increase in strength akin to the difference between beer and wine, or between a cup of tea and an espresso.

Concerns that higher potency products, such as cannabis concentrates, might increase one's risk of psychosis or schizophrenia remain subject to ongoing debate. Thus far, studies have [failed to identify](#) any parallel relationship between rising rates of cannabis use among the general population and increasing incidences of mental illness — thereby undermining claims of an independent causal relationship. Further, the often-cited [2019 study](#) published in The Lancet

alleging a link between the consumption of higher THC cannabis and elevated incidences of psychotic disorder was based upon participants' self-reporting of the quality of cannabis purchased on the illicit market. No one in the study had any verification whether or not the cannabis consumed was either high, moderate, or low potency — leading any conclusions from the study to be **specious** at best.

Like alcohol, retailers provide cannabis products of varying potencies. Unlike alcohol, THC, regardless of potency or quantity, **cannot cause death by lethal overdose**. In fact, the FDA regulates the production and sale of **dronabinol**, a pill containing 100 percent THC. For these reasons, NORML maintains that prohibiting the production and sale of cannabis products above some arbitrary potency level is an inappropriate action for lawmakers to take. Rather, arming the public with better public safety information about the effects of more potent products, and further diligence on the part of regulators to ensure that legal products do not get diverted to the youth market, are more productive ways to address public health concerns.

Adult use laws ought to include provisions facilitating the automatic review of past criminal records and for the expungement of those records in instances where the past behavior is no longer classified as a criminal offense

Millions of Americans, a disproportionate percentage of whom are young people and **minorities**, have been subject to a marijuana-related arrests and criminal conviction. Branding these individuals, many of whom are at an age when they are just beginning their professional careers, as lifelong criminals results in a litany of lost opportunities including the potential loss of employment, housing, voting rights, professional licensing, and student aid and serves no legitimate societal purpose. The imposition of such lifelong penalties is even more punitive in instances where the criminal conviction is related to behavior or activities that have since been legalized and regulated.

In the interest of justice and fairness, NORML maintains that adult use legalization policies must include legislative provisions to facilitate an automatic review of prior criminal records and also include a mechanism to allow for the expungement of such records in instances where the activity is no longer defined as criminal under state law. Some states, like **California**, already provide for this type of relief, and national polling **finds** that a supermajority of registered voters support the imposition of policies of sealing and/or expunging the criminal records of those formerly convicted of marijuana-related offenses in now-legal states.

The public use of marijuana in non-designated areas ought to be a violation

The use of cannabis products in public, non-designated spaces (e.g., parks, city streets) ought to be discouraged and penalized via the imposition of civil fines. In addition, regulators should take steps to provide a framework for the allowance of designated social use spaces (e.g., licensed social clubs) whereby adults would have the option to legally consume cannabis outside of their home. Such private spaces would be ideal for visiting tourists and others (such as those tenants who rent in buildings where cannabis use is not permitted), and ideally would reduce the likelihood of adults consuming cannabis in non-designated public spaces.

Adult use laws ought to include provisions prohibiting employers from discriminating against workers in the practices of either hiring or firing solely because their off-the-job cannabis use

Contrary to the fears of critics, changes in the legal status of cannabis have **not been associated** with any significant adverse effects on workplace safety and, overall, off-the-job marijuana use has not been statistically associated with increased occupational accidents or injuries – as per the findings of the National Academy of Sciences and others. While cannabis use either prior to or while at work ought not to be accommodated by employers, NORML advocates that policies which impose sanctions for those who are legally engaged in the use of cannabis off-the-job away from work are discriminatory and ought to be discouraged. As long as one's off-the-job cannabis use does not impede one's on-the-job performance, such behavior should be of no concern to employers.

Adult use laws should not contain any provisions amending existing traffic safety laws in a manner that impose arbitrary and non-scientific *per se* thresholds for the presence of either THC or its metabolite in a driver's blood or urine

Operating a motor vehicle under the influence of a controlled substance is **defined** as illegal behavior in all 50 states. Amending the illicit status of cannabis under state law does not change this fact. It remains just as illicit to drive under the influence of cannabis post-legalization as it is before legalization. Most states prosecute drugged driving using an 'effect based' standard. This means that in order to gain a drugged driving conviction, law enforcement officials and prosecutors must establish 1) that a motorist recently ingested a controlled substance and 2) that his or her driving behavior was impaired by this substance. NORML supports the enforcement of 'effect-based' standards, and has **opined** for additional tools and resources – such as the use of modified Field Sobriety Testing and the training of additional Drug Recognition Evaluators – to assure that such laws are sufficiently enforced.

By contrast, lawmakers ought to oppose the imposition of proposed *per se* thresholds, which make it a criminal violation to operate a vehicle with the trace presence of either THC or its inactive metabolite above an arbitrary level in one's blood or urine. These latter policies are **not evidence based** and are **opposed** by the majority of experts in the scientific and traffic safety community, including the US National Highway Traffic Safety Administration and the American Automobile Association. This is because, unlike the case with alcohol, maximal levels of either THC or carboxy-THC are not consistently associated with the impairment of psychomotor performance. In addition, residual levels of THC and its metabolite **may be detectable** for weeks or even months following past consumption – well beyond any reasonable expectation of driver impairment. Consequently, the enforcement of these strict liability standards risks inappropriately convicting unimpaired subjects of traffic safety violations, including those persons who are consuming cannabis legally in accordance with state statutes.

As additional states consider amending their marijuana possession laws, lawmakers would be advised to consider legislative and regulatory **approaches** to address concerns over DUI cannabis behavior that do not rely on solely on the presence of THC or its metabolites in blood or urine as determinants of guilt in a court of law. Otherwise, the imposition of traffic safety laws may inadvertently become a criminal mechanism for law enforcement and prosecutors to punish those who have engage in legally protected behavior and who have not posed any actionable traffic safety threat.

Those under the age of 21 who possess personal use amounts of cannabis ought to be subject to civil sanctions rather than a criminal arrest

Studies from legal states have determined that marijuana-related arrests fall significantly for adults post-legalization, but that many under 21 **continue** to face criminal arrest for marijuana-related activities despite no significant **increase** in marijuana use by teenagers. These arrests of young people can potentially result in a lifelong criminal record, as well as the stigmatization and loss opportunities that accompany it (such as the loss of student financial aid and issues finding gainful employment). NORML believes that youth marijuana use and access ought to be discouraged, but also believes that the harms of a criminal arrest carry significant adverse consequences. Therefore, NORML supports provisions decriminalizing low-level marijuana possession offenses by certain youth offenders. In such cases, violators would face civil fines or have the option of other non-criminal sanctions (e.g., participation in a drug education class at no cost to the offender), but would be spared from a criminal arrest and criminal record.

Billboards and other advertising in public places should be restricted

Some studies have **shown** that young people may be influenced when exposed to advertisements for adult-use cannabis products. As a result, NORML supports regulatory controls that seek to limit youth exposure to adult-use cannabis-related advertising and marketing as well as **efforts** to not incentivize advertising cannabis products through the tax code. Just as advertising restrictions already exist with respect to the marketing of alcohol in a manner that may be perceived to be appealing toward children and/or the advertising of tobacco products altogether, NORML is supportive of regulatory restrictions on the advertising of adult-use cannabis products in public spaces (e.g., advertising on billboards, bus stops, public transit, etc.), particularly in places where young people are likely to congregate. NORML further supports restrictions prohibiting the deliberate marketing of cannabis products in a manner that may be perceived as appealing to those under the age of 21 and, in addition, NORML also strongly discourages any marketing and advertising of cannabis products and/or retailers in a manner that objectifies women.