

Recommendations and Policy Options: Key Considerations for Marijuana Legalization

JLARC staff typically make recommendations to address findings during reviews. Staff also sometimes propose policy options rather than recommendations. The three most common reasons staff propose policy options rather than recommendations are: (1) the action proposed is a policy judgment best made by the General Assembly or other elected officials, (2) the evidence indicates that addressing a report finding is not necessarily required, but doing so could be beneficial, or (3) there are multiple ways in which a report finding could be addressed and there is insufficient evidence of a single best way to address the finding.

Recommendations

RECOMMENDATION 1

If marijuana is legalized in Virginia, the Virginia State Police and Department of Motor Vehicles should work together to train more officers to detect and enforce drug-impaired driving through the Drug Recognition Expert (DRE) and Advanced Roadside Impaired Driving Enforcement (ARIDE) training programs. (Chapter 3)

RECOMMENDATION 2

If marijuana is legalized in Virginia, the General Assembly may wish to consider allowing (i) marijuana possession and use by adults aged 21 and older, (ii) of-age adults to possess up to one ounce of marijuana flower, up to five grams of marijuana concentrate, and marijuana-infused products containing up to 500 milligrams of THC, (iii) of-age adults to possess marijuana paraphernalia, and (iv) of-age adults to share marijuana in amounts that are less than or equal to the possession limits. (Chapter 4)

RECOMMENDATION 3

If marijuana is legalized in Virginia, the General Assembly may wish to consider prohibiting marijuana use in public places, including any place, building, or conveyance to which the public has access and establish a small fine for violations of the prohibition. (Chapter 4)

RECOMMENDATION 4

If marijuana is legalized in Virginia, the General Assembly may wish to consider establishing clear, graduated civil or criminal penalties for possessing quantities of marijuana, concentrates, and infused products over a legal limit. (Chapter 4)

RECOMMENDATION 5

If marijuana is legalized in Virginia, the General Assembly may wish to consider prohibiting marijuana from being given as a gift in conjunction with the sale of another good, service, or membership agreement. (Chapter 4)

RECOMMENDATION 6

If marijuana is legalized in Virginia, the General Assembly may wish to consider prohibiting unlicensed individuals from using dangerous methods such as high heat, pressure, and flammable gases to manufacture marijuana concentrates. (Chapter 4)

RECOMMENDATION 7

If marijuana is legalized in Virginia, the General Assembly may wish to consider prohibiting on public roads and highways the (i) consumption of marijuana products by drivers or passengers in motor vehicles and (ii) the presence of open marijuana containers and partly consumed marijuana in the passenger area of motor vehicles. (Chapter 4)

RECOMMENDATION 8

The General Assembly may wish to consider amending § 18.2-250.1 of the Code of Virginia to clarify that juvenile marijuana possession offenses are delinquent acts that are *not* subject to (i) the requirement that marijuana possession offenses be charged by summons or (ii) the \$25 civil penalty associated with adult marijuana possession. (Chapter 4)

RECOMMENDATION 9

The General Assembly may wish to consider including in any legislation authorizing commercial marijuana sales that the marijuana regulatory body issue licenses for marijuana (i) cultivation, (ii) processing, (iii) distribution, (iv) retail sales, and (v) testing. (Chapter 5)

RECOMMENDATION 10

The General Assembly may wish to consider including a requirement in any legislation authorizing commercial marijuana sales that only state licensed businesses are legally allowed to cultivate, process, distribute, sell, test, or otherwise transport or handle marijuana in amounts greater than the individual legal possession and cultivation limits set in state criminal laws. (Chapter 5)

RECOMMENDATION 11

If marijuana is legalized in Virginia, the General Assembly may wish to consider establishing a commercial licensing structure that either (i) allows vertical integration by authorizing marijuana cultivation and processing license holders to also hold a retail license, or (ii) prohibits vertical integration by forbidding any party that holds a marijuana retail sales license from also holding cultivation or processing licenses. (Chapter 5)

RECOMMENDATION 12

The General Assembly may wish to consider including a requirement in any legislation authorizing commercial marijuana sales that the marijuana regulatory body develop different tiers of cultivation licenses and set maximum size limits for each tier based on cultivation square footage or number of plants under cultivation. (Chapter 5)

RECOMMENDATION 13

The General Assembly may wish to consider including a requirement in any legislation authorizing commercial marijuana sales that (i) marijuana production by licensed cultivators be capped based on estimates of consumer demand, (ii) the marijuana regulatory body establish a regulatory process to annually adjust cultivation limits based on consumer demand, and (iii) the marijuana regulatory body establish the number of medium and large tier cultivator licenses that will be issued each year. (Chapter 5)

RECOMMENDATION 14

The General Assembly may wish to consider including a requirement in any legislation authorizing commercial marijuana sales that the marijuana regulatory body (i) award medium and large cultivator licenses through a lottery, (ii) set stringent qualification standards for applicants for medium and large cultivation licenses, and (iii) require license awardees to meet facility and operations compliance standards before cultivation can begin. (Chapter 5)

RECOMMENDATION 15

The General Assembly may wish to consider including a requirement in any legislation authorizing commercial marijuana sales that the marijuana regulatory body develop tiers or other categories of processor and distributor licenses that allow specialization and minimize the need for applicants or licensees to meet regulatory standards that do not apply to the specific products they are processing or distributing. (Chapter 5)

RECOMMENDATION 16

If the General Assembly authorizes commercial marijuana sales, it may wish to consider directing the marijuana regulatory body to develop estimates of the number of stores each locality could support based on demand and share this information with localities. (Chapter 5)

RECOMMENDATION 17

If the General Assembly authorizes commercial marijuana sales, it may wish to consider authorizing localities to pass ordinances setting caps on the number of marijuana retailers that can be licensed to operate in their jurisdictions and require localities to pass ordinances and report caps to the regulatory body within a reasonable amount of time before the retail applications process begins. (Chapter 5)

RECOMMENDATION 18

If the General Assembly authorizes commercial marijuana sales, it may wish to consider prohibiting home delivery of commercially available marijuana and businesses that allow on-site consumption of marijuana until at least three to five years from when commercial sales begin at retail stores. (Chapter 5)

RECOMMENDATION 19

If the General Assembly authorizes commercial marijuana sales, it may wish to consider (i) requiring commercial marijuana products to be tested for safety and quality by licensed laboratories, and (ii) prohibiting businesses that hold a testing license from holding licenses to perform any other commercial marijuana operations. (Chapter 5)

RECOMMENDATION 20

If the General Assembly authorizes commercial marijuana sales, it may wish to consider directing the marijuana regulatory body to develop regulatory standards governing product safety and quality sampling and testing. The standards could be specific to Virginia or could be national or other state standards. (Chapter 5)

RECOMMENDATION 21

If the General Assembly authorizes commercial marijuana sales, and the state adopts its own regulatory standards for product safety and quality, the Division of Consolidated Laboratory Services should develop and administer (i) a marijuana testing certification program that certifies that private laboratories meet Virginia standards, and (ii) its own secondary marijuana product safety testing program for products sold to consumers that the regulatory body suspects are contaminated. (Chapter 5)

RECOMMENDATION 22

If the General Assembly authorizes commercial marijuana sales, it may wish to consider expressly defining local authority in a commercial marijuana market by either (i) authorizing cities, counties, and towns to pass ordinances prohibiting all commercial marijuana operations within their jurisdictions, and thereby forgo any associated tax revenues or (ii) preventing any city, county, or town from using any existing or newly created local authority to prohibit commercial marijuana operations. (Chapter 6)

RECOMMENDATION 23

The General Assembly may wish to consider including in any legislation authorizing commercial marijuana sales affirmation that local governments maintain their full powers to (i) require that commercial marijuana operations meet local zoning requirements, including local requirements for setbacks, signage, and hours of operations, (ii) inspect operation premises for building and fire code compliance, (iii) issue occupancy permits, and (iv) require operations to obtain general business licenses. (Chapter 6)

RECOMMENDATION 24

The General Assembly may wish to consider including in any legislation authorizing commercial marijuana sales the authority for local governments to pass ordinances that restrict the number of licensed marijuana retailers that can operate in each of its zoning districts, in addition to ordinances that set caps on the overall number of marijuana retailers allowed in the locality. (Chapter 6)

RECOMMENDATION 25

If the General Assembly authorizes commercial marijuana sales, it may wish to consider authorizing the issuance of no more than five new medical marijuana licenses in the three to five years following commercial legalization. (Chapter 6)

RECOMMENDATION 26

If the General Assembly authorizes commercial marijuana sales, it may wish to consider merging the medical and commercial marijuana markets and regulations by (i) placing medical market authority under the regulatory body for the commercial market, (ii) generally conforming medical laws to commercial laws, while maintaining necessary medical laws, (iii) directing the regulatory body to generally conform medical regulations to commercial regulations, while maintaining necessary medical regulations, (iv) allowing licensed medical and commercial cultivators, processors, distributors, and testers to serve both the commercial and medical markets, and (v) requiring separate retail licenses for medical and commercial adult use, but allowing retailers to be dual-licensed to serve both markets from the same location. (Chapter 6)

RECOMMENDATION 27

If the General Assembly authorizes commercial marijuana sales, it may wish to consider waiting three to five years before merging the medical and commercial marijuana markets and regulatory structures. (Chapter 6)

RECOMMENDATION 28

If the General Assembly authorizes commercial marijuana sales, it may wish to consider directing the marijuana regulatory body to develop regulations governing (i) the license application process, (ii) license qualifications, (iii) facility and operations compliance, (iv) compliance enforcement, (v) disciplinary process and sanctions, (vi) testing and sampling for product safety and quality, (vii) the legitimacy of marijuana businesses and legality of entering into contracts or providing goods and services to these businesses, and (viii) registration of marijuana business employees. (Chapter 6)

RECOMMENDATION 29

If marijuana is legalized in Virginia, the General Assembly may wish to consider directing the Virginia Foundation for Healthy Youth to coordinate a statewide media campaign targeted at preventing youth marijuana use and appropriating the funds necessary to develop and run the campaign. (Chapter 9)

RECOMMENDATION 30

If marijuana is legalized in Virginia, the General Assembly may wish to consider providing community services boards with an additional \$1 to \$2 million annually in funding for prevention because of the increased need following commercial legalization of marijuana. (Chapter 9)

RECOMMENDATION 31

If marijuana is legalized in Virginia, the General Assembly may wish to consider directing the marijuana regulatory body to establish regulations for products, packaging, and labeling, including but not limited to (i) product shape and appearance restrictions, (ii) serving size and THC potency limits for edible products (iii) packaging restrictions, (iv) health risk warning labels, and (v) marijuana content and THC potency warning labels. (Chapter 9)

RECOMMENDATION 32

If marijuana is legalized in Virginia, the General Assembly may wish to consider directing the marijuana regulatory body to establish regulations restricting advertising and promotion by licensed marijuana businesses, including restrictions on (i) storefront signage and window displays, (ii) outdoor advertising, (iii) media advertising, and (iv) promotional activities, especially use of social media. (Chapter 9)

RECOMMENDATION 33

If the General Assembly authorizes commercial marijuana sales, it may wish to consider assessing a tax on retail sales of marijuana at a rate of 20 to 25 percent of the sales price, which would be applied in addition to the existing standard retail sales tax. (Chapter 10)

RECOMMENDATION 34

If the General Assembly authorizes commercial marijuana sales, it may wish to consider vesting responsibility for both *state* and *local* marijuana sales tax collection with either the Department of Taxation or the marijuana regulatory body and provide the designated agency with the staffing and resources needed to effectively collect taxes and audit taxpayers for compliance. (Chapter 10)

RECOMMENDATION 35

If the General Assembly authorizes commercial marijuana sales, it may wish to consider establishing state regulatory authority by either (i) granting regulatory authority to the Virginia Alcoholic Beverage Control Authority and its board or (ii) creating a new standalone regulatory agency and board solely focused on marijuana regulation. (Chapter 11)

RECOMMENDATION 36

If marijuana is legalized in Virginia, and the General Assembly gives commercial marijuana regulatory authority to the Virginia Alcoholic Beverage Control Authority (VABC) and its board, then it may wish to consider prohibiting VABC board members from having a financial interest in any marijuana business. (Chapter 11)

RECOMMENDATION 37

If the General Assembly gives commercial marijuana regulatory authority to the Virginia Alcoholic Beverage Control Authority (VABC) and its board, then it may wish to consider appropriating sufficient funds to VABC to establish its new regulatory functions. (Chapter 11)

RECOMMENDATION 38

If the General Assembly gives commercial marijuana regulatory authority to the Virginia Alcoholic Beverage Control Authority (VABC) and its board, then it may wish to consider directing VABC to develop and submit a detailed staffing and cost proposal to the governor and General Assembly. (Chapter 11)

RECOMMENDATION 39

If the General Assembly creates a new board and agency to regulate commercial marijuana, it may wish to consider (i) establishing a board appointed by the governor and confirmed by the General Assembly, (ii) requiring board members to have general business, government, or legal expertise, and (iii) prohibiting board members from having a financial interest in any marijuana business. (Chapter 11)

RECOMMENDATION 40

If the General Assembly creates a new board and agency to regulate commercial marijuana, it may wish to consider creating an agency that is either (i) within the executive branch and is headed by a director who is appointed by the governor and confirmed by the General Assembly, or (ii) an independent authority and is headed by a director who is either appointed by the governor and confirmed by the General Assembly or appointed by the board. (Chapter 11)

RECOMMENDATION 41

If the General Assembly creates a new board and agency to regulate commercial marijuana, it may wish to consider appropriating sufficient funds to the new agency to establish its new regulatory functions. (Chapter 11)

RECOMMENDATION 42

If the General Assembly creates a new board and agency to regulate commercial marijuana, it may wish to consider directing the agency to develop and submit a detailed staffing and cost proposal after it is created to the governor and the General Assembly. (Chapter 11)

RECOMMENDATION 43

If the General Assembly authorizes commercial marijuana sales, it may wish to consider vesting the marijuana regulatory board with the powers and duties to (i) promulgate all regulations necessary to ensure a safe and secure commercial marijuana market, including but not limited to regulations regarding licensure and enforcement, (ii) approve or deny licenses, and (iii) suspend, revoke, or otherwise sanction license holders for violations of rules. (Chapter 11)

RECOMMENDATION 44

If the General Assembly authorizes commercial marijuana sales, it may wish to consider vesting the marijuana regulatory agency with the powers and duties to (i) assist the board in the execution of its duties and (ii) perform all licensing and enforcement related functions that are necessary to carry out state laws and regulations related to the operations of the commercial marijuana market. (Chapter 11)

RECOMMENDATION 45

If the General Assembly authorizes commercial marijuana sales, it may wish to consider vesting the marijuana regulatory board with the power to set all fees, including application fees, license fees, and renewal fees. (Chapter 11)

RECOMMENDATION 46

If the General Assembly authorizes commercial marijuana sales, it may wish to consider granting the marijuana regulatory board a limited exemption from the standard rulemaking process. (Chapter 11)

Policy Options to Consider

POLICY OPTION 1

If marijuana is legalized in Virginia, the General Assembly could direct the Department of Criminal Justice Services to convene a workgroup to develop a model marijuana law enforcement officer policy and training curriculum. The workgroup should include commonwealth's attorneys, public defenders, and state and local law enforcement officers. (Chapter 3)

POLICY OPTION 2

If marijuana is legalized in Virginia, the General Assembly could allow of-age adults to cultivate a small number of marijuana plants at their primary residence out of public view but establish caps to limit the amount cultivated. (Chapter 4)

POLICY OPTION 3

If marijuana is legalized in Virginia, the General Assembly could reduce the severity of penalties for illegal distribution by (i) increasing the amount of marijuana required for a felony distribution charge, and/or (ii) eliminating mandatory minimum prison sentences for marijuana distribution without aggravating factors. (Chapter 4)

POLICY OPTION 4

If marijuana is legalized in Virginia, the General Assembly could reduce the severity of penalties for illegal marijuana manufacturing (cultivation) by increasing the number of marijuana plants required for a felony manufacturing charge. (Chapter 4)

POLICY OPTION 5

If marijuana is legalized in Virginia, the General Assembly could expunge individuals' criminal records for marijuana offenses that are no longer illegal. (Chapter 4)

POLICY OPTION 6

If marijuana is legalized in Virginia, the General Assembly could direct the Virginia State Police to establish and coordinate an automatic expungement process for criminal records of past marijuana offenses that are no longer illegal. (Chapter 4)

POLICY OPTION 7

If the General Assembly authorizes commercial marijuana sales, it could allow the smallest tier of cultivators to sell their own products at or near their licensed cultivation site without having to obtain a retail license to maximize revenue opportunities for small businesses. (Chapter 5)

POLICY OPTION 8

If the General Assembly authorizes commercial marijuana sales, it could direct the marijuana regulatory body to exempt the smallest tier of cultivators from production caps to increase opportunities for small businesses and address social equity. The regulator could also have the authority to temporarily suspend new license awards if it appears that the market is becoming oversupplied. (Chapter 5)

POLICY OPTION 9

If the General Assembly authorizes commercial marijuana sales, it could direct the marijuana regulatory body to set less stringent qualification standards for small cultivation applicants than for large and medium cultivation applicants and make license awards to all small cultivators who are qualified candidates to increase opportunities for small businesses and address social equity. (Chapter 5)

POLICY OPTION 10

If the General Assembly authorizes commercial marijuana sales, it could increase opportunities for small businesses and address social equity by directing the marijuana regulatory body to (i) set comparatively less stringent qualification standards for retail licenses than are typically set in other states but still require licensees to comply with more stringent requirements before sales begin, (ii) make license awards using a lottery instead of merit-based scoring, and (iii) make license awards gradually over three to five years. (Chapter 5)

POLICY OPTION 11

If the General Assembly authorizes commercial marijuana sales, it could allow localities to require that all marijuana operations within their locality be approved through a special use permit process. (Chapter 6)

POLICY OPTION 12

If the General Assembly authorizes commercial marijuana sales, it could automatically award provisional commercial *cultivation* and *processing* licenses to current medical marijuana license holders, contingent upon their operations remaining in compliance with medical marijuana regulations, at the same time awards are made to other cultivators and processors. These provisional licenses could be renewed annually until three to five years after commercial legalization, at which time medical cultivators and processors could be required to comply with commercial market regulations. (Chapter 6)

POLICY OPTION 13

If the General Assembly authorizes commercial marijuana sales, it could allow current medical marijuana license holders to apply for *retail* licenses with other applicants and limit vertically integrated operations to three licenses. (Chapter 6)

POLICY OPTION 14

If the General Assembly authorizes commercial marijuana sales, it could address social equity by requiring the marijuana regulatory body to impose less stringent initial licensing standards than those that have been commonly used in other states related to (i) ownership or leasing of property prior to a license award, (ii) financial assets, (iii) experience in the marijuana industry, and (iv) security or operations plans. (Chapter 7)

POLICY OPTION 15

If the General Assembly authorizes commercial marijuana sales, it could address social equity by directing the marijuana regulatory body to consider criminal history in reviewing license applications but exclude from consideration any prior misdemeanor marijuana offenses and not automatically deny an application based on other prior criminal offenses. (Chapter 7)

POLICY OPTION 16

If the General Assembly authorizes commercial marijuana sales, it could address social equity by directing the marijuana regulatory body to include a mandatory or optional requirement that applicants for a marijuana license submit a social equity plan along with their application. (Chapter 7)

POLICY OPTION 17

If the General Assembly authorizes commercial marijuana sales, it could address social equity by creating a social equity ownership assistance program consisting of (i) community outreach, (ii) application education and assistance, (iii) licensing fee discounts or waivers, (iv) business start-up assistance, (v) financial assistance through loans, and (vi) mentorship. The assistance program should have clearly defined eligibility criteria for participation. (Chapter 7)

POLICY OPTION 18

If the General Assembly authorizes commercial marijuana sales, it could address social equity by directing the marijuana regulatory body to examine whether a preferential licensing program for retail marijuana licenses could be implemented successfully in Virginia, and, if so, design and implement the program. (Chapter 7)

POLICY OPTION 19

If the General Assembly authorizes commercial marijuana sales, it could address social equity by directing the marijuana regulatory agency to (i) use community outreach efforts to connect marijuana businesses with prospective employees and (ii) request or require businesses applying for marijuana licenses to develop and submit social equity hiring plans. (Chapter 8)

POLICY OPTION 20

If the General Assembly authorizes commercial marijuana sales, it could address social equity by directing the marijuana regulatory agency to apply elements of social equity programs to businesses that sell goods or services to marijuana businesses. (Chapter 8)

POLICY OPTION 21

If the General Assembly authorizes commercial marijuana sales, it could address social equity by dedicating tax revenue from marijuana sales to existing programs that seek to address the needs of communities that have been most adversely affected by the enforcement of drug laws. (Chapter 8)

POLICY OPTION 22

If the General Assembly authorizes commercial marijuana sales, it could address social equity by creating a community reinvestment grant program funded by marijuana tax revenue. The program could make grants to public or nonprofit organizations in communities that have been most adversely affected by the enforcement of drug laws. (Chapter 8)

POLICY OPTION 23

If the General Assembly authorizes commercial marijuana sales and creates a community reinvestment program, the legislature could require the program to have (i) clear guidelines for the number of grants to be awarded annually and the dollar amount of each grant, (ii) clearly defined criteria for grant eligibility, (iii) a well-defined and transparent process for receiving grant proposals and reviewing, scoring, and making grant awards, and (iv) ongoing monitoring and public reporting on the status and outcomes of projects that have received grant awards. (Chapter 8)

POLICY OPTION 24

If the General Assembly authorizes commercial marijuana sales and creates a community reinvestment program, the legislature could require the marijuana regulatory board to create a social equity advisory committee to help implement the program. (Chapter 8)

POLICY OPTION 25

If the General Assembly authorizes commercial marijuana sales and creates social equity programs, it could assign responsibility for implementation of the programs to the marijuana regulatory body, and assign responsibility for monitoring programs to the social equity advisory committee. (Chapter 8)

POLICY OPTION 26

If marijuana is legalized in Virginia, the General Assembly could direct the appropriate agencies to conduct media campaigns to raise awareness of the importance of keeping marijuana away from children and the potential negative effects of marijuana use, such as impaired driving, general health risks, and risks for pregnant women and people with a history of mental illness. (Chapter 9)

POLICY OPTION 27

If the General Assembly authorizes commercial marijuana sales, it could assess a marijuana sales tax consisting of progressively higher rates for more potent and easier-to-consume products to discourage overconsumption. (Chapter 10)

POLICY OPTION 28

If the General Assembly authorizes commercial marijuana sales, it could apportion revenue collected through a marijuana sales tax between the state and the locality in which retail sale occur (in addition to the existing apportionment of the standard sales tax). (Chapter 10)

POLICY OPTION 29

If the General Assembly authorizes commercial marijuana sales, it could require sales to begin three years from the date that the authorizing legislation is passed. (Chapter 12)
