



Key Considerations for Marijuana Legalization

Study mandate

- JLARC to review *how* Virginia should legalize and regulate the growth, sale, and possession of marijuana
 - Consider best practices that could be applied to Virginia
 - Create a well-regulated commercial market that protects minors, prosecutes illegal sellers, and maintains Virginia's existing medical marijuana program
 - Address equity and economic opportunity for communities disproportionately impacted by prohibition
- JLARC did not review *whether* Virginia should legalize marijuana

SJ67 and HJ130, 2020 General Assembly.

Primary research activities

Interviews

- Virginia stakeholders, interest groups, state agency & local government officials
- Other states that legalized marijuana

Document review

- Statutes in other states that legalized marijuana
- Processes used by regulatory agencies in other states
- Academic research on public health & social equity

Data analysis

- Prior arrests, prosecutions, and convictions for marijuana
- Projected legal marijuana demand, tax revenue, and economic impact

In brief

Black Virginians have been arrested and convicted for marijuana offenses at much higher rates than white Virginians.

Legalization would require changes to criminal laws and penalties and would generally reduce arrests and convictions.

Virginia could establish a well-regulated, fully private commercial market where licensed businesses cultivate, process, distribute, and sell marijuana.

In establishing a commercial market, Virginia would need to determine what authority to give local governments and how to incorporate medical marijuana.

In brief (continued)

Virginia could promote social equity in the market by providing opportunity and assistance to prospective business owners.

Virginia could use tax revenues from marijuana sales to fund existing community assistance programs or to create a new community reinvestment grant program.

Virginia could mitigate public health risks from legalization, especially youth use, through prevention programs and restrictions on products and advertising.

Marijuana sales taxes could ultimately generate up to \$300 million in revenue annually for state and local governments.

Establishing a commercial market could take more than two years and cost \$8 to \$20 million upfront

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Ensuring public health

Projected tax revenue & jobs

Agency to regulate a commercial market

Summary timeline & net costs

Marijuana is an intoxicating cannabis plant

- Marijuana is a commonly used term for the intoxicating flower, bud, or other products derived from cannabis
- Other marijuana products include edibles, vape oils, and concentrates
- Intoxicating effects from tetrahydrocannabinol (THC)
- Non-intoxicating neurological effects from cannabidiol (CBD)

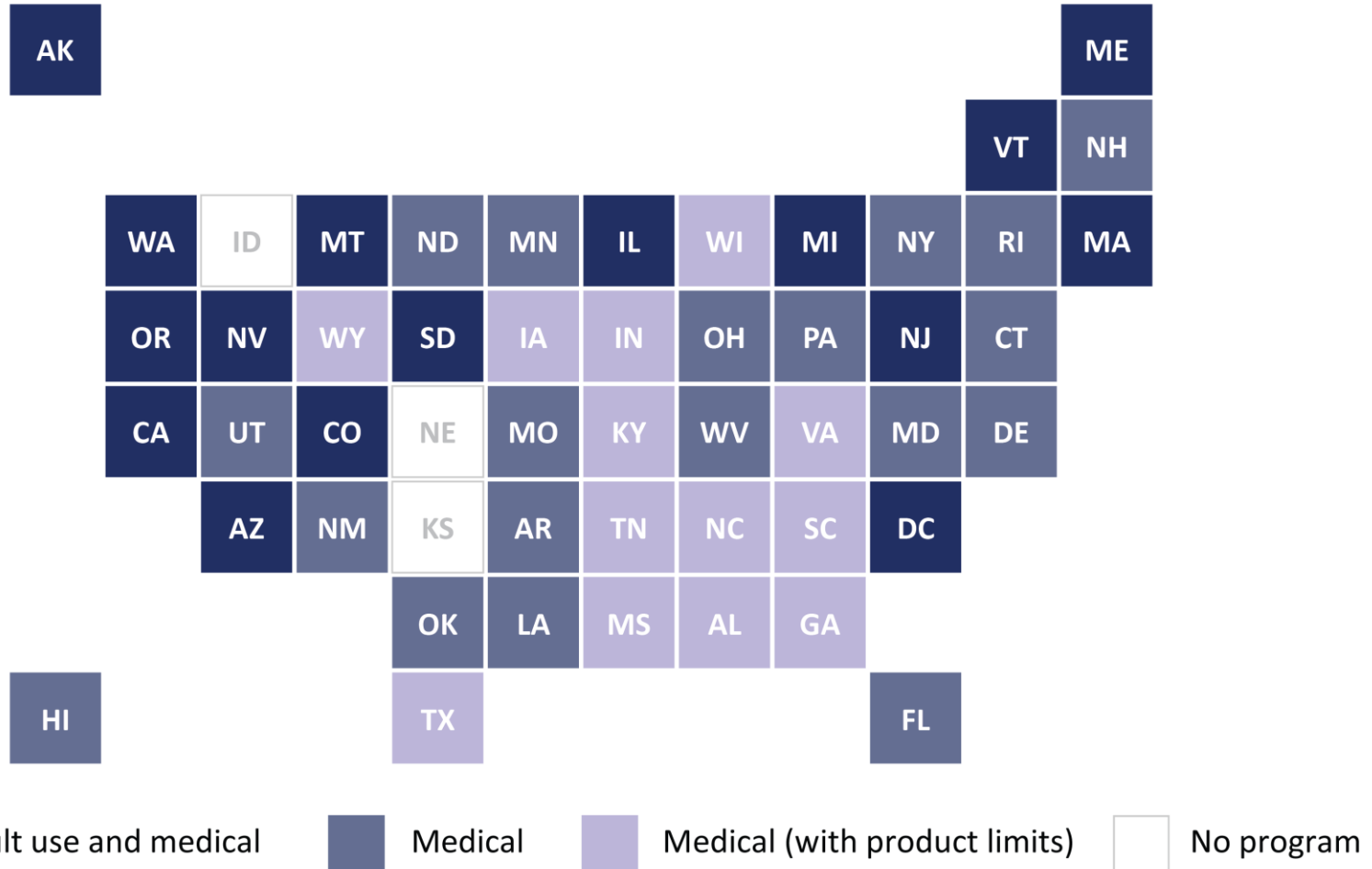
Marijuana is illegal federally but was recently decriminalized in Virginia

- Marijuana sale and possession have been effectively banned by the federal government since 1937
- Stronger, more punitive marijuana laws were enacted as part of the 1971 federal Controlled Substances Act
- Virginia decriminalized marijuana possession in 2020
 - Civil infraction, not subject to incarceration
 - \$25 penalty with no court costs

Virginia recently authorized a medical marijuana program

- Virginia permits five businesses to produce and sell marijuana-derived products (but not flower) for medical use
- First laws enacted in 2017 and dispensing to patients began in 2020 in some parts of state
- Patients require certification from a medical professional and must register with state

15 states and D.C. allow adult use of marijuana



Legalization has two main parts

- Deciding how to change criminal laws to allow adults to legally use and possess marijuana
- Establishing a commercial adult use market where marijuana can be legally produced and sold

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Marijuana use has been steadily increasing, and Black and white Virginians use at similar rates

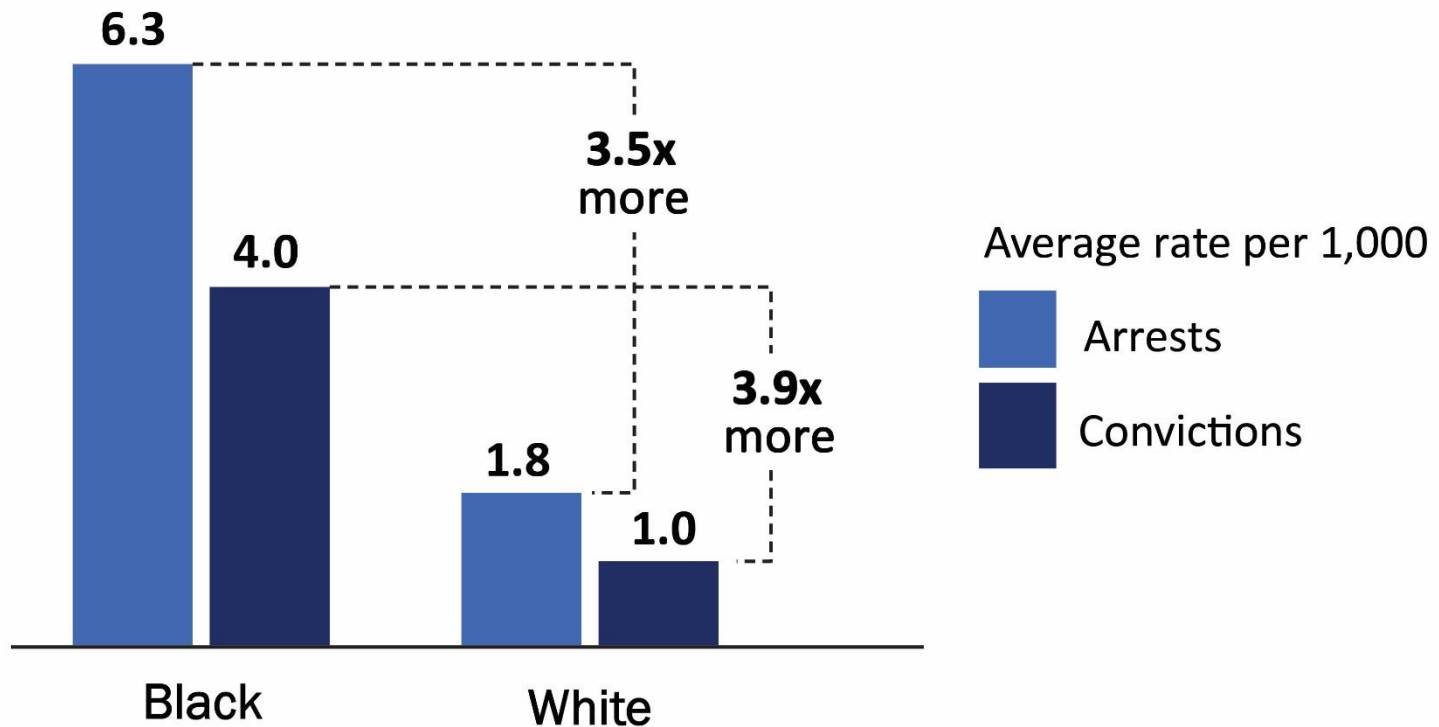
- In 2009, 4.7% of Virginians reported using marijuana in the past month
- In 2018, 7.3% reported using marijuana
- Black Virginians report similar rates of use (7%) as white Virginians (6%)

Source: National Survey of Drug Use and Health, 2008/09 to 2017/18.

Virginia made 20K to 30K arrests each year for marijuana-related offenses (2010–19)

- \approx 90 percent of marijuana-related arrests have been for possession of small amounts of marijuana
- \approx 7 percent of charges resulted in jail sentence, and most were more serious charges or involved another offense (2018)
- Few individuals incarcerated *solely* for possession (2019)

Black Virginians arrested and convicted for marijuana possession at much higher rate than white Virginians



Note: Arrests and convictions by race from 2010–2019. Hispanic arrest rates were higher than white rates, but data on convictions were unclear. American Indian and Asian arrest and conviction rates were lower than white rates. All rates are shown in written report. No information collected or analyzed about reason for differences in arrests and convictions by race.

Black Virginians were disproportionately arrested for marijuana possession in nearly all localities

Black to white arrest rate ratio

6.0 +

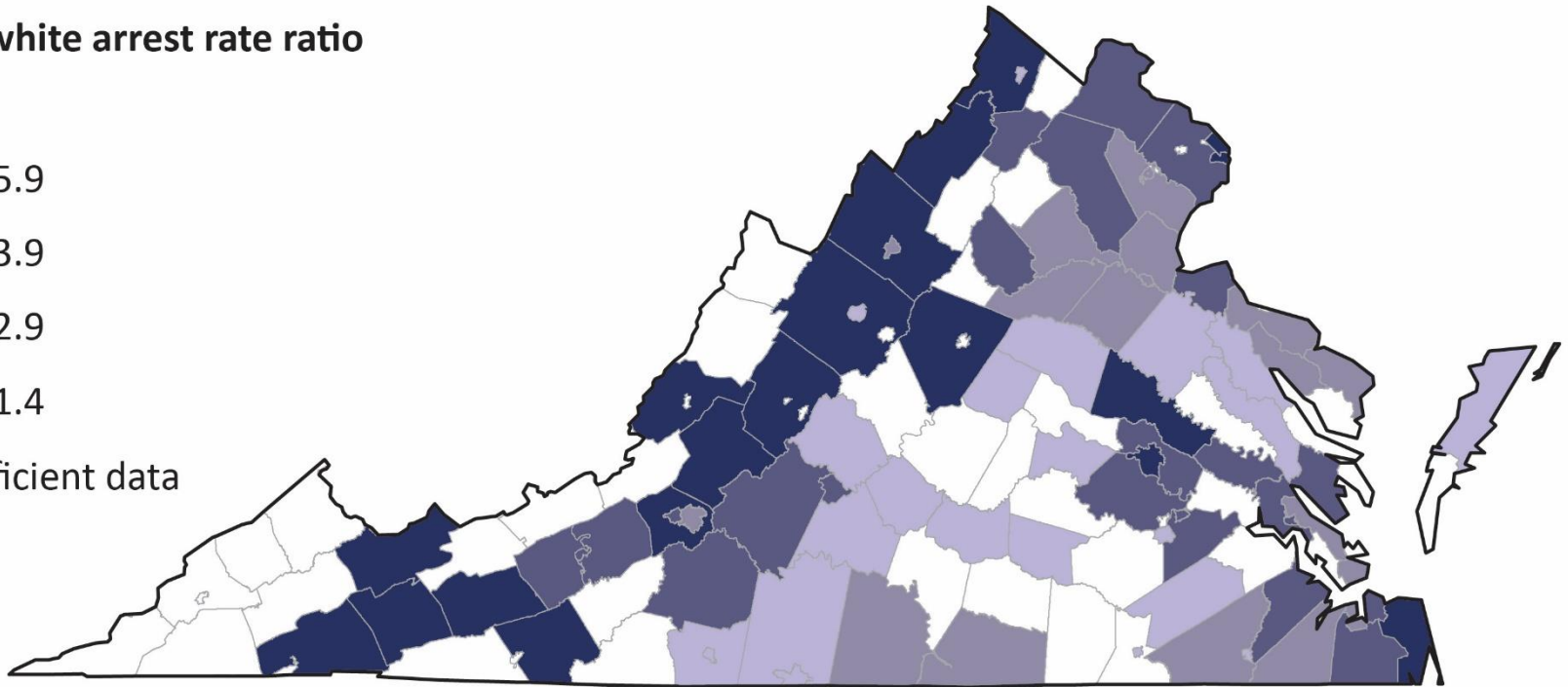
4.0 - 5.9

3.0 - 3.9

1.5 - 2.9

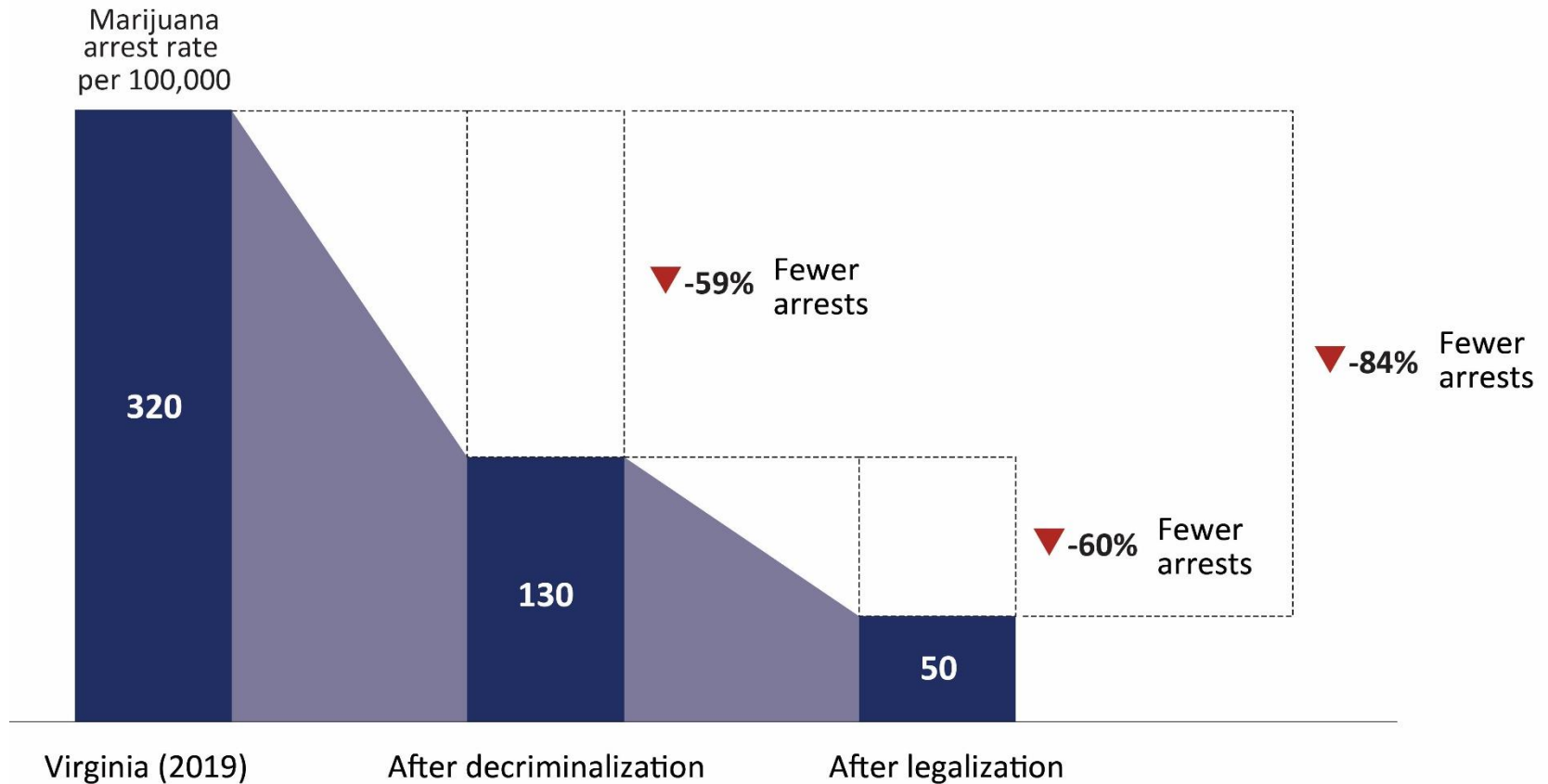
1.0 - 1.4

Insufficient data



Arrests in each locality by race, 2015–2019. Disproportionality in arrests for counties along the I-81 corridor may be overstated due to arrests of non-residents.

Decriminalization and legalization would be expected to reduce marijuana arrests and convictions



Estimated reductions are based on other states' experience.

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Finding

If the General Assembly legalizes marijuana, it would need to address (i) individual possession and age limits, (ii) public use and impaired driving, (iii) home cultivation, and (iv) illegal cultivation & distribution.

State laws would need to address possession and use

■ Individual possession



- Set minimum legal age to 21
- Limit possession to 1 oz of marijuana flower
- Allow 21 and over to possess paraphernalia and share small amounts

■ Public and vehicle use



- Prohibit use in public spaces (sidewalks, parks, restaurants)
- Prohibit use in vehicles & establish marijuana “open container” law
- Keep penalties for marijuana-impaired driving

State could choose to address cultivation and distribution

- Home cultivation



- Decide whether to allow or prohibit home cultivation by of-age adults
- Most other states allow and set limit at 4–6 plants per person

- Illegal cultivation & distribution



- Keep / ease cultivation & distribution penalties
- Prohibit “gifting” to minimize illegal distribution
- Prohibit hazardous THC extraction methods

Finding

If the General Assembly legalizes marijuana, prior records of marijuana offenses that are no longer illegal could be expunged.

One-time expungement could benefit 120,000 Virginians, including 63,000 Black Virginians

- “Automatic” expungement would likely benefit more people and be more equitable than petition process
- Automatic expungement would primarily be carried out by state agencies and local court clerks
- Eligibility criteria would need to be kept simple if automatic process is used
 - e.g., expunge all misdemeanor possession charges

Note: Expungement numbers are based on arrests, which approximates but does not precisely indicate the number of individuals who have been arrested.

One-time, automatic expungement of marijuana offenses would be labor intensive

- State agencies would have to query systems to identify charges, segment records, and share information with locals
- Local court clerks would have to seal and move physical files as well as remove own electronic records
- Proposed process is limited to marijuana offenses and would be retrospective, one-time effort, unlike bills proposed in special session (HB 5146, SB 5043)

Recommendations & options

Written report includes 13 changes to the Code of Virginia that would likely be necessary (8 recommendations) or could be considered (5 options) if Virginia chooses to legalize marijuana.

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Summary timeline & net costs

State commercial marijuana markets must be well regulated

- Commercial market provides place for marijuana to be legally sold to consumers
- Federal government has indicated it will not interfere if states prevent criminal activity and protect public health
- States must have tightly regulated commercial markets
- Private businesses must be specially licensed and closely monitored

Commercial market has five major operations

Cultivation



Processing



Distribution



Retail



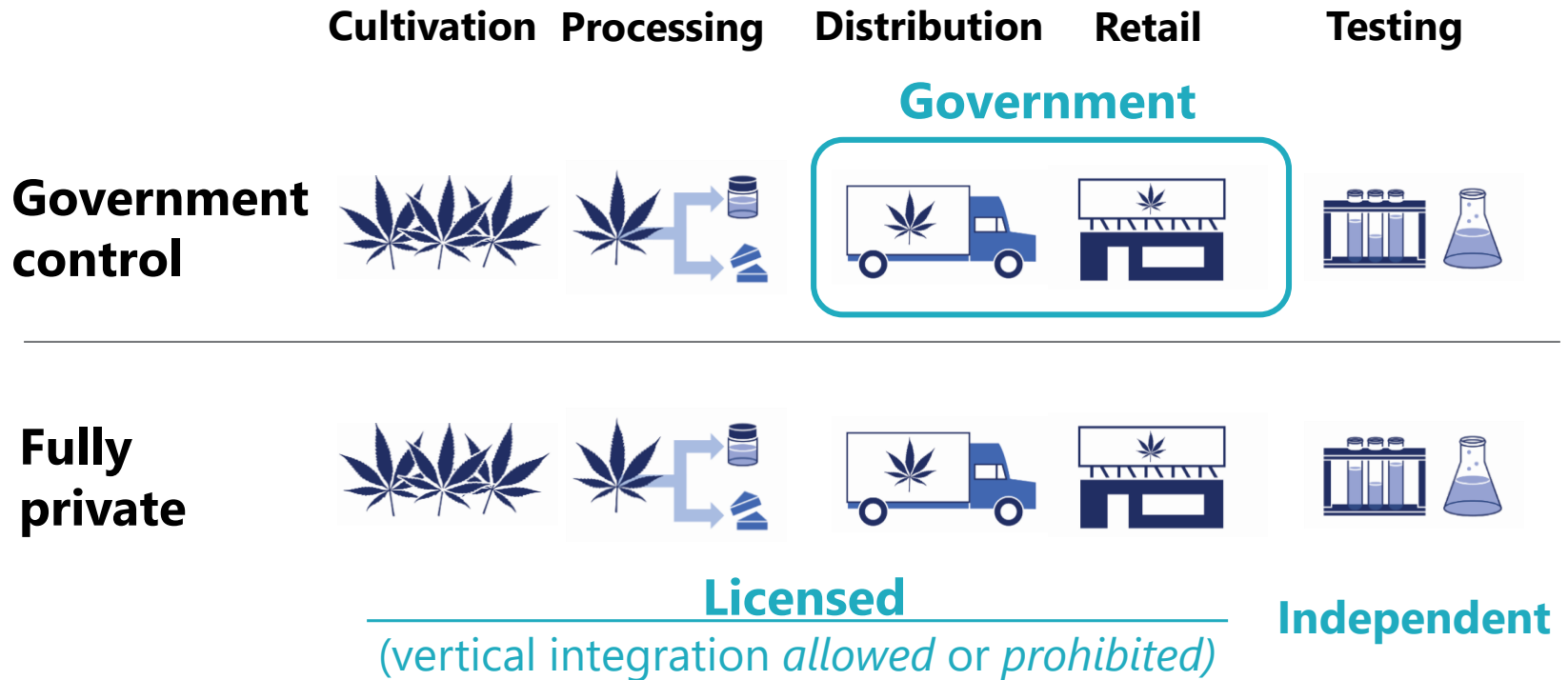
Testing



Finding

Virginia could choose a partly government-controlled market model or one of two fully private commercial models.

Commercial operations could be partly government controlled or fully private



Private models more practical than government control and would achieve different priorities

	Implementation risk, time, & cost	Priorities
Government control	High	Public health Minimize illegal diversion
Private – vertical integration <i>allowed</i>	Moderate	Robust market Reduce illegal market Generate tax revenue
Private – vertical integration <i>prohibited</i>	Moderate	Small business Social equity Public health

Recommendations

If the General Assembly legalizes marijuana, it may wish to consider authorizing the marijuana regulator to issue licenses that allow private businesses to legally perform the five major commercial marijuana operations.

Depending on the General Assembly's priorities, it should either allow or prohibit vertical integration.

Findings

Virginia should adopt license tiers and caps to manage the marijuana industry and reduce criminal and public health risks.

License structure could be designed to provide opportunities for small business and promote social equity.

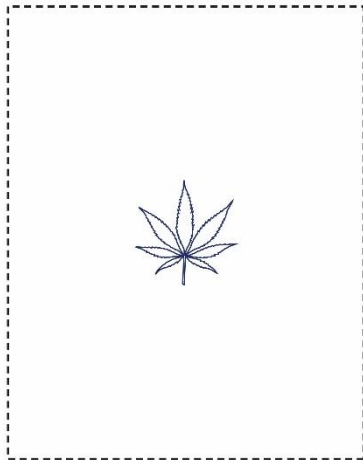
Each license type can be designed to address specific concerns and help achieve goals

	Tiers	Caps	Options to promote small business & social equity
Cultivation	✓	✓	✓ special allowances for small cultivators
Processing	✓		
Distribution	✓		
Retail		✓	✓ special license award approach
Testing			

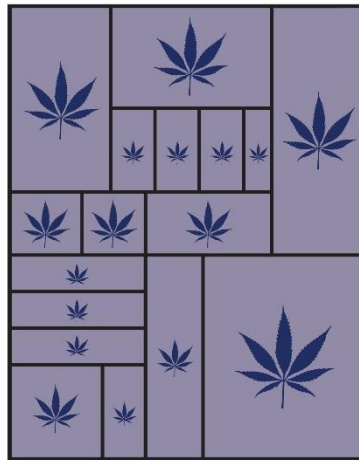
Cultivator (a) size should be limited and (b) licenses should be capped based on marijuana demand

Process for estimating demand and issuing licenses

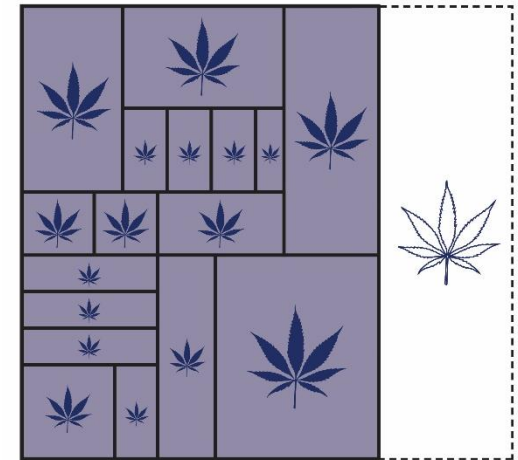
1. Regulator estimates initial consumer demand



2. Regulator licenses cultivators of different sizes to meet demand



3. Regulator annually re-evaluates demand



Retail licenses should be capped to prevent over-proliferation

- Retail is likely to over proliferate if there are no caps because stores are generally easier to operate
- OR has no caps and has the most stores per person in the country (1 per 6,000, equal to 1,300 stores in VA)
- Research indicates stores could become concentrated in economically disadvantaged communities and increase use in those communities
- Local governments could be allowed to set caps based on market data provided by the state

Retail license award process could be designed to promote small businesses and social equity

- State could set less stringent initial license requirements to broaden the applicant pool
- Awards could be made via lottery instead of merit scoring (which favors larger, experienced applicants)
- Awards could be made gradually over three to five years
 - Allows small businesses time to prepare
 - Allows state social equity programs time to perform community outreach and assist applicants

Retail should initially be limited to stores that sell for off-site consumption



Home delivery



On-site consumption

Public health risks	Increase	Increase
Impact on social equity	Uncertain	Uncertain
Number of states that allow	6	4

Recommendations & options

Written report includes 14 changes to the Code of Virginia that would likely be necessary (10 recommendations) or could be considered (4 options) if Virginia chooses to create a commercial marijuana market.

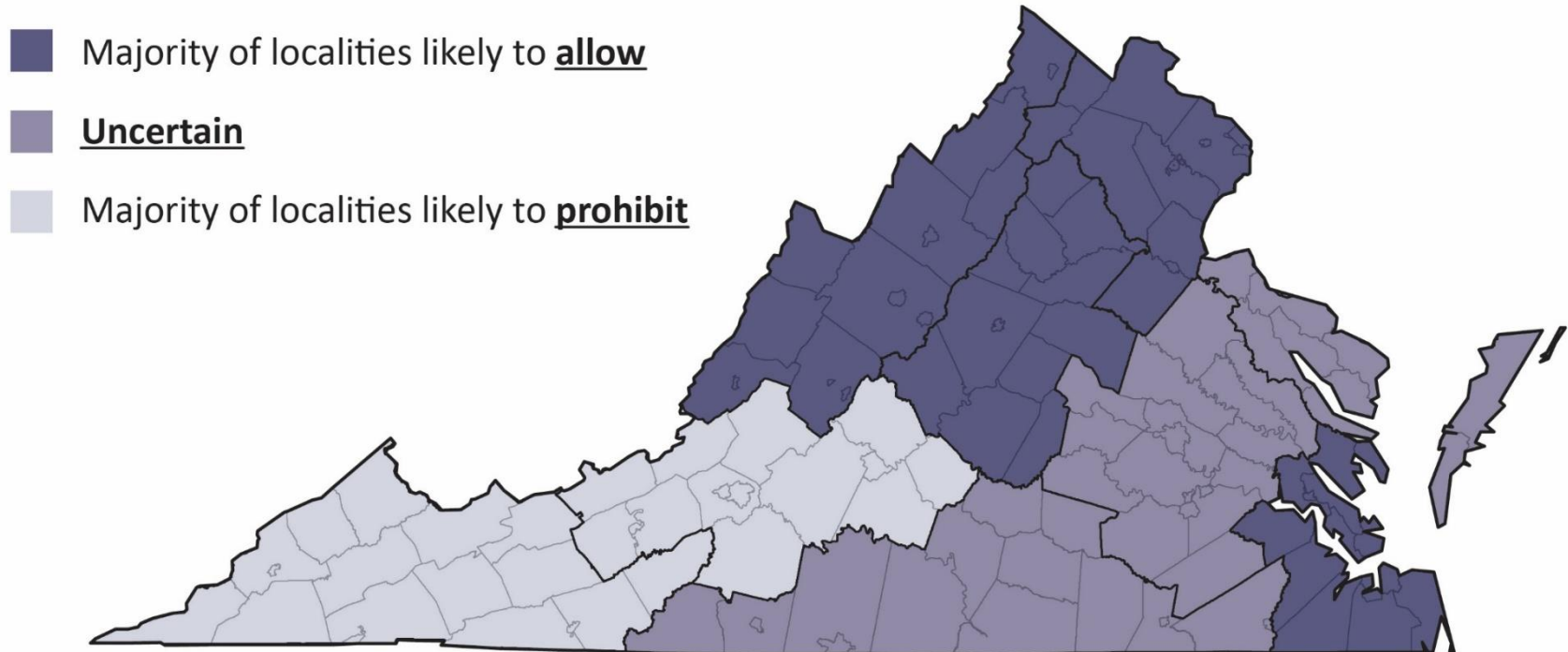
Findings

Virginia would need to determine what authority to give local governments and how to incorporate the current medical marijuana market.

State would need to decide whether or not to allow local prohibitions of commercial marijuana

- Local governments in other states can prohibit commercial marijuana operations
- Local prohibitions respect the views of different communities but are unlikely to reduce marijuana use

Southwestern localities appear more likely to prohibit commercial marijuana operations



State should ensure localities have authority over commercial marijuana operations

- Local governments in other states have substantial authority over commercial marijuana operations
- In Virginia, local governments should be authorized to
 - exercise all current powers, including zoning, general business licensing, and occupancy permitting
 - limit density of retail establishments
 - set caps on retail

Medical market license holders could be allowed to participate in commercial market

- Current medical marijuana operations could be allowed to participate in some or all aspects of commercial adult use market
- Medical operations should not be granted early entry to the commercial market before other businesses

Eventually medical and commercial markets should be merged

- Merger would be beneficial to regulators and license holders
- Could be done in way that preserves elements that benefit patients
- State should limit number of new medical licenses to prevent them from crowding-out commercial market

Recommendations & options

If the General Assembly legalizes marijuana, it may wish to consider either allowing or restricting local governments from prohibiting commercial marijuana operations.

If the General Assembly legalizes marijuana, it may wish to consider eventually merging the medical and commercial markets, and it could allow current medical operations to participate in commercial market alongside other licensees.

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Agency to regulate a commercial market

Summary timeline & net costs

Several states have started social equity programs as part of commercial legalization

- Proponents of social equity argue that communities most affected by marijuana law enforcement should have opportunity to benefit from commercial market
- Black Virginians have historically been arrested and convicted for marijuana offenses at higher rates
- Race-based criteria are subject to strict scrutiny by courts and likely cannot be used for social equity programs
- This briefing uses the terms “social equity business” or “social equity individuals”

State could implement several different social equity initiatives

	Number of beneficiaries	Magnitude of benefit	Costs
Marijuana business ownership			\$\$
Marijuana industry employment			\$
Increase funding to existing community assistance programs			\$\$\$
Community reinvestment grant fund			\$\$\$

Finding

Virginia could promote ownership of commercial marijuana businesses by social equity individuals.

Marijuana business ownership could greatly benefit a relatively small number of beneficiaries

	Number of beneficiaries	Magnitude of benefit	Costs
Marijuana business ownership	○	●	\$\$

- Three ways to promote business ownership
 - License structure and qualifications (equal opportunity)
 - Assistance programs (improved competitiveness)
 - Preferences (added opportunity)

License structure could be designed to maximize opportunities for social equity businesses

- Most social equity businesses are presumably small businesses and would benefit from prohibiting vertical integration and options favorable to small businesses
- Virginia could encourage larger, more diverse applicant pool by not using qualifications that are barriers to small businesses (e.g., minimal financial holdings)
- Virginia could limit how criminal histories, especially for marijuana offenses, are used in license decisions

Assistance program could help social equity businesses enter and compete in the market

Objective	Program element
Diversify applicant pool	1. Community outreach 2. Application assistance 3. Fee discounts or waivers
Improve ability to compete	4. Business start-up assistance 5. Financial assistance (loans) 6. Mentorship

Difficult to direct preferences toward individuals affected by marijuana enforcement

- The few states and localities that have tried preference programs have not yet been successful
- Race cannot legally be used as a criterion to define a social equity individual, so it is difficult to directly address disproportionate arrest rates
- Some states have used an individual's area of residence, but this criterion can be open to fraud and could direct benefits in unintended ways

Options

If the General Assembly legalizes marijuana, it could promote ownership of marijuana businesses by social equity individuals by setting less stringent initial license requirements and implementing assistance programs.

If the General Assembly legalizes marijuana, it could direct the marijuana regulatory agency to monitor other states' license preference programs and see if and how an effective preference program could be designed for Virginia.

Findings

Virginia could promote employment of social equity individuals in the commercial marijuana industry.

Virginia could use tax revenues from marijuana sales to fund existing community programs or a new community reinvestment grant program.

Virginia could promote industry employment through hiring plans and employee matching

	Number of beneficiaries	Magnitude of benefit	Costs
Marijuana industry employment	●	●	\$

- Some industry jobs would be higher-paying but majority would be lower-paying
- Encourage or require social equity hiring plans
- Use community outreach to identify social equity individuals interested in industry employment

Virginia could allocate marijuana tax revenues to existing community assistance programs

	Number of beneficiaries	Magnitude of benefit	Costs
Increase funding to existing community assistance programs	●	◐	\$\$\$

- Programs examples
 - K-12 education programs such as At-Risk Add-On
 - workforce training
 - higher education grant funds
 - rental housing assistance

Virginia could create a community reinvestment grant program with marijuana tax revenues

	Number of beneficiaries	Magnitude of benefit	Costs
Community reinvestment grant fund	●	◐	\$\$\$

- Grants could be go to projects in communities disproportionately affected by enforcement of drug laws
- Grant program should be administered in a manner that ensures effectiveness and transparency

Options

If the General Assembly legalizes marijuana, it could promote employment of social equity individuals by requiring or incentivizing hiring plans and helping match prospective employees and employers.

The General Assembly could allocate marijuana tax revenues to existing community assistance programs.

The General Assembly could create a grant program, funded by marijuana taxes, for reinvesting in communities disproportionately affected by enforcement of drug laws.

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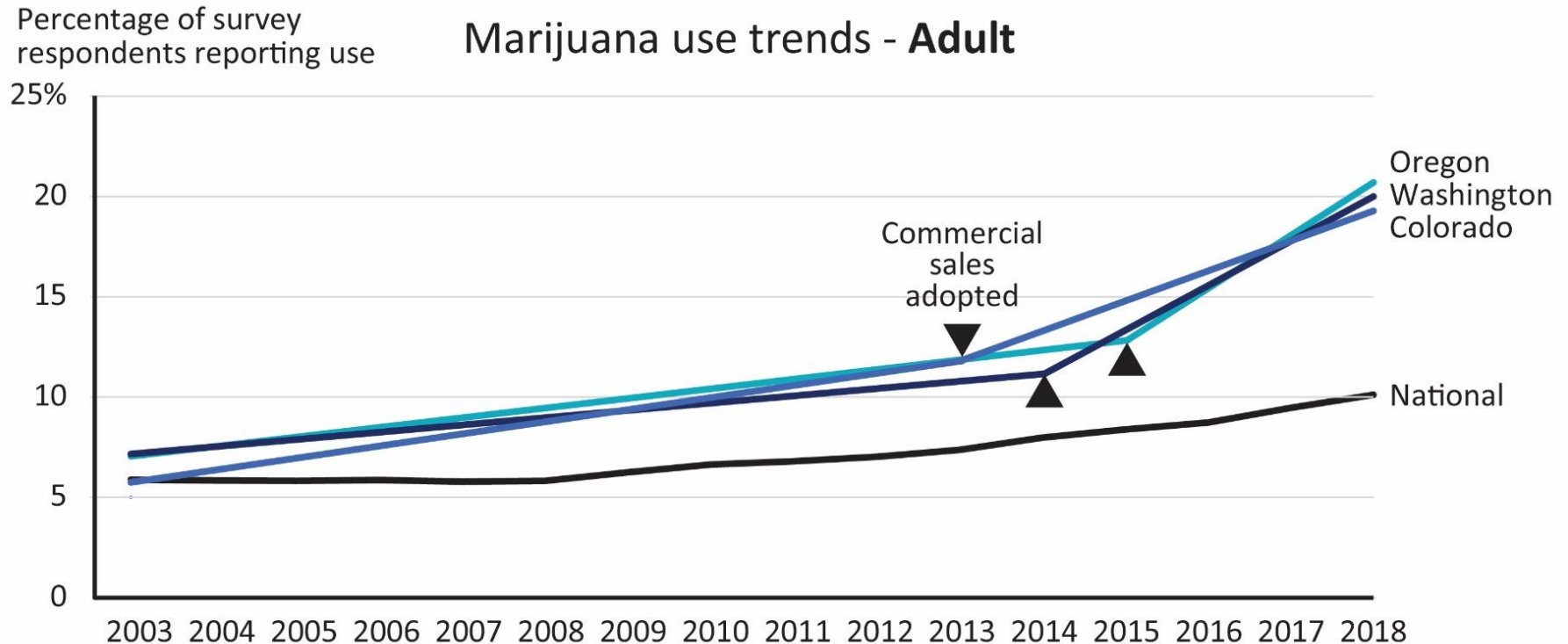
Findings

Establishment of a commercial marijuana market will increase adult use, which could negatively affect public health.

Research indicates habitual marijuana use and legalization are associated with health risks

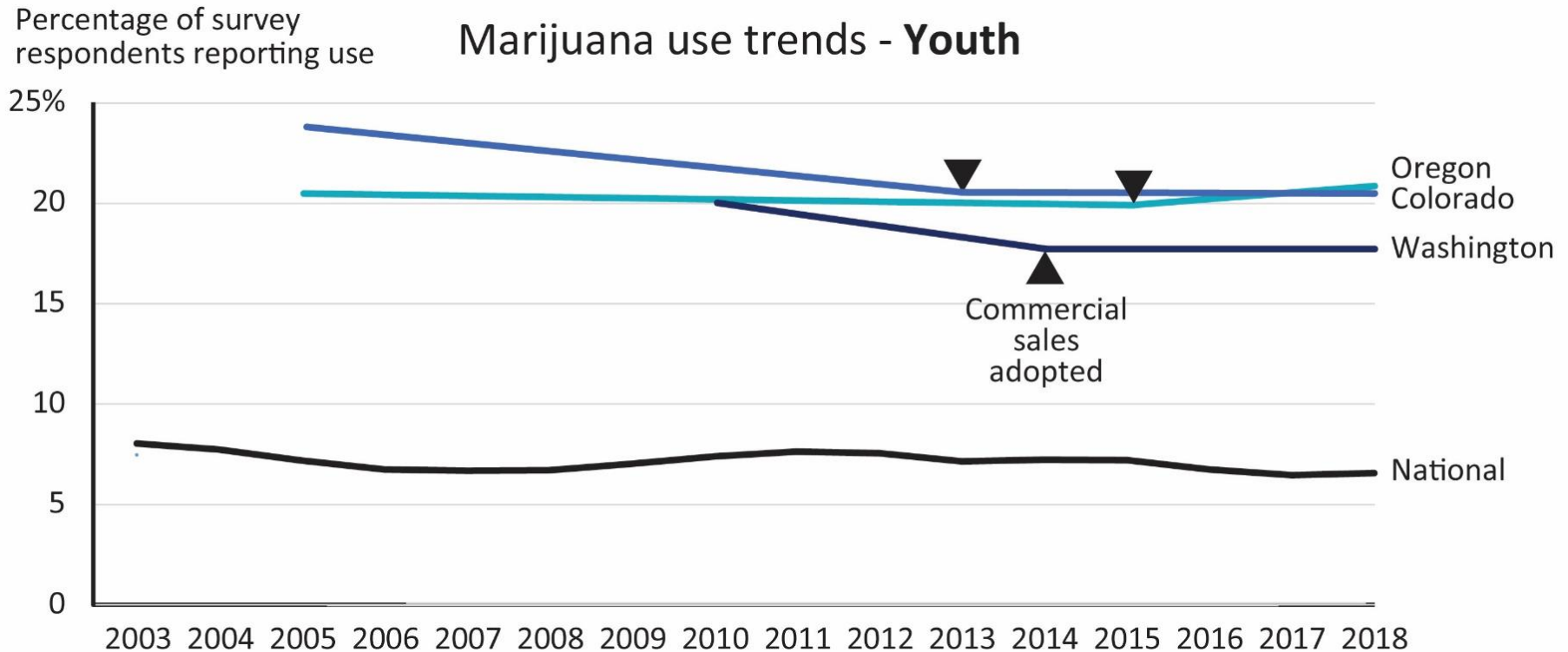
- JLARC staff reviewed national systematic review and over 100 recent research studies
- Habitual marijuana use poses several health risks, but risks generally milder than for alcohol and tobacco
- Legalization likely to increase incidents of accidental or overconsumption (generally not life threatening)
- Legalization impact on traffic accidents and use of other substances not clear (e.g., alcohol, opioids)

Marijuana use by adults likely to increase if commercial sales are allowed



Trend lines calculated from data reported in National Survey on Drug Use and Health

Youth use might not increase in near term but long-term effects are less certain



Trend lines calculated from data reported in state youth health surveys

Media campaigns & prevention efforts could help educate the public about risks

- Marijuana use is increasingly perceived as harmless, which could be a precursor to increased use
- Media campaigns could effectively deter some use if properly designed and targeted
- Other states have implemented media campaigns targeted at youth
- Community-based prevention programs could also be effective at deterring use, if properly designed

Restrictions on products, labeling, & advertising could reduce visibility and reduce appeal to youth



Recommendations

If the General Assembly legalizes marijuana, it may wish to consider

- (i) authorizing a statewide youth prevention campaign
- (ii) providing additional funding for community prevention programs
- (iii) directing the marijuana regulator to set restrictions on products and advertising

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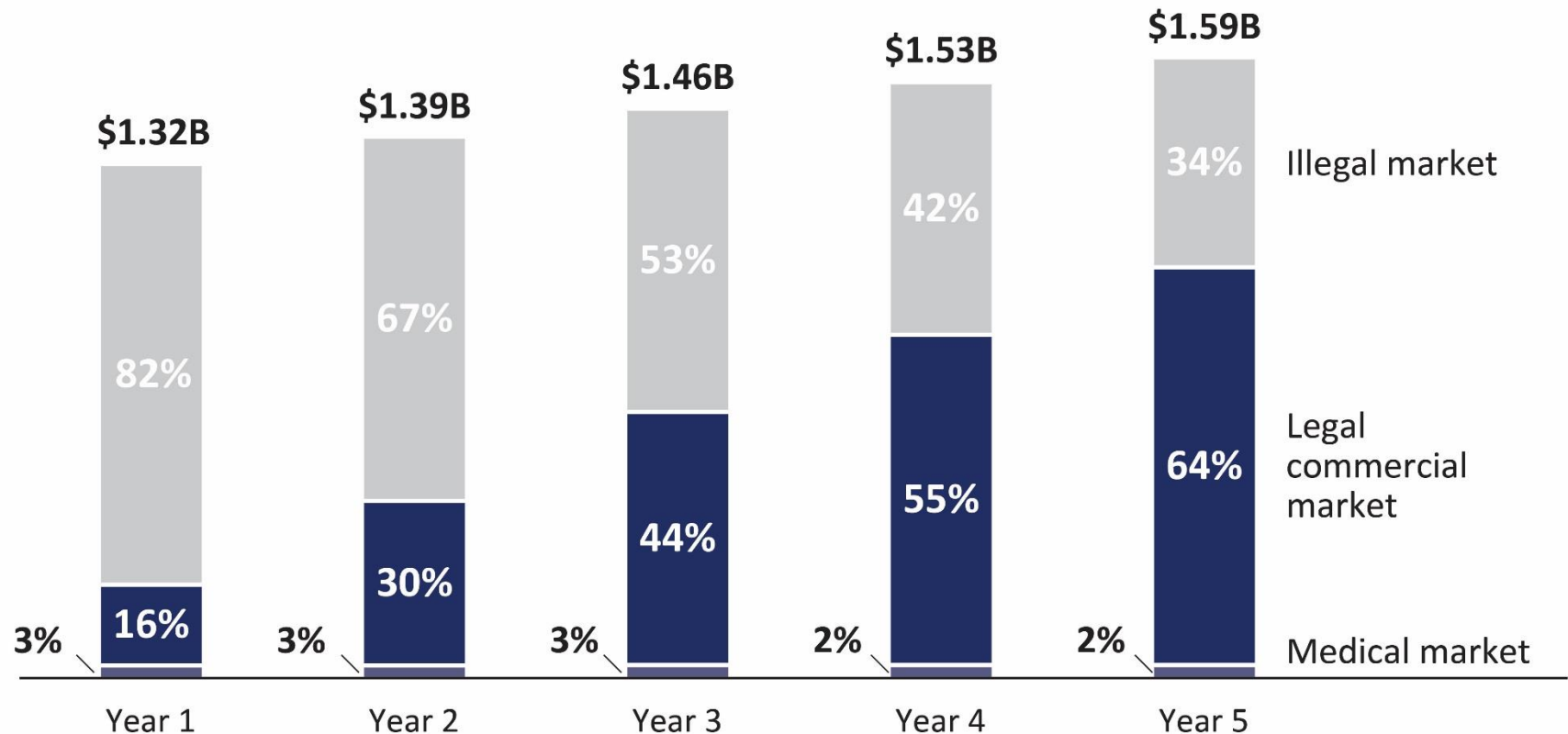
Tax revenue & economic impact depend on demand and competitiveness of legal market

- Legal market must compete for customers against existing illegal market
- The more demand there is for legal marijuana, the more tax revenues would be generated and the more new jobs would be created
- Existing state and local taxes would apply to new industry (e.g., income, property, BPOL)

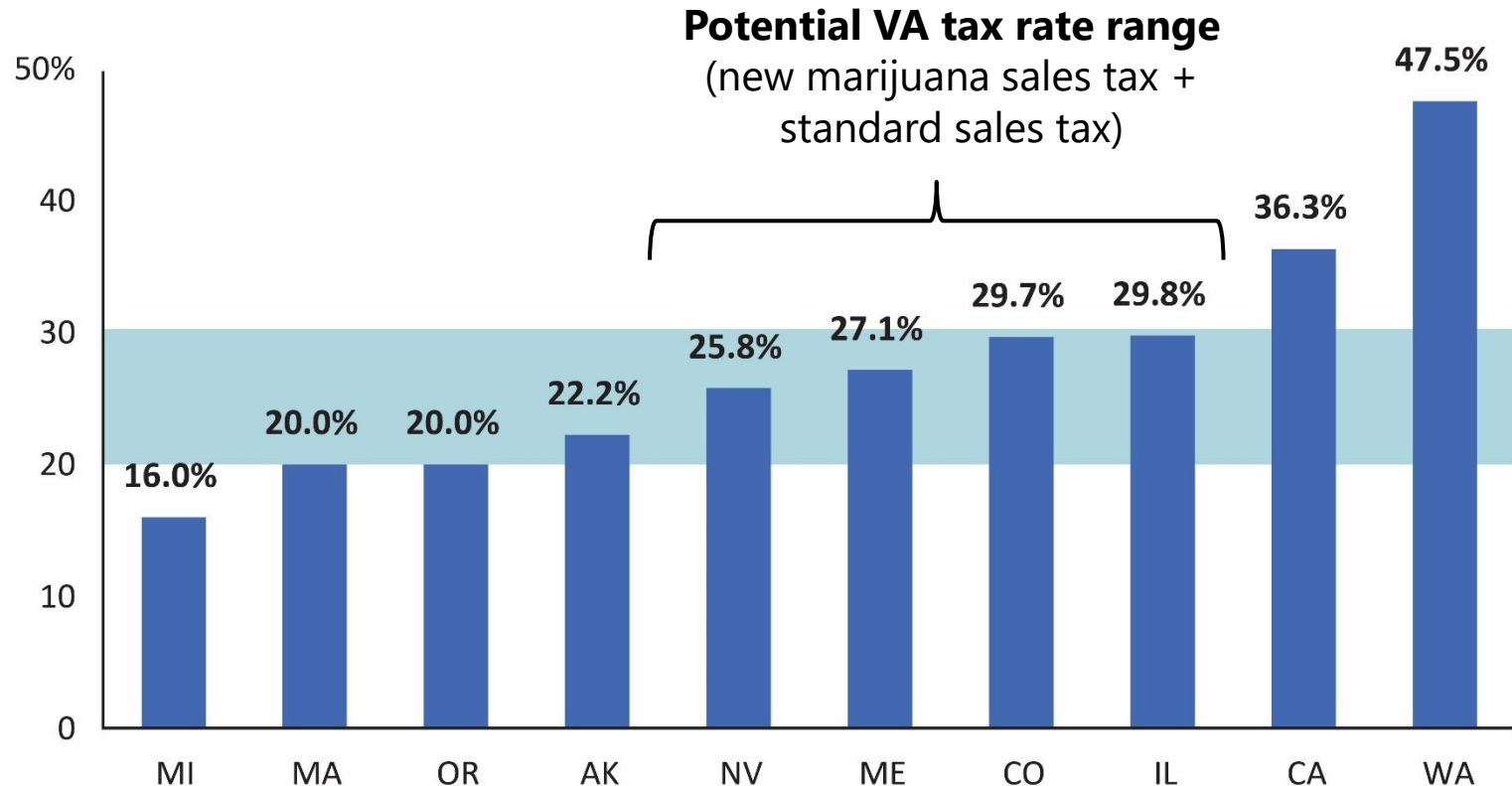
Finding

Virginia could tax marijuana sales to generate revenue for state and local governments.

Legal commercial market sales are expected to grow gradually over time



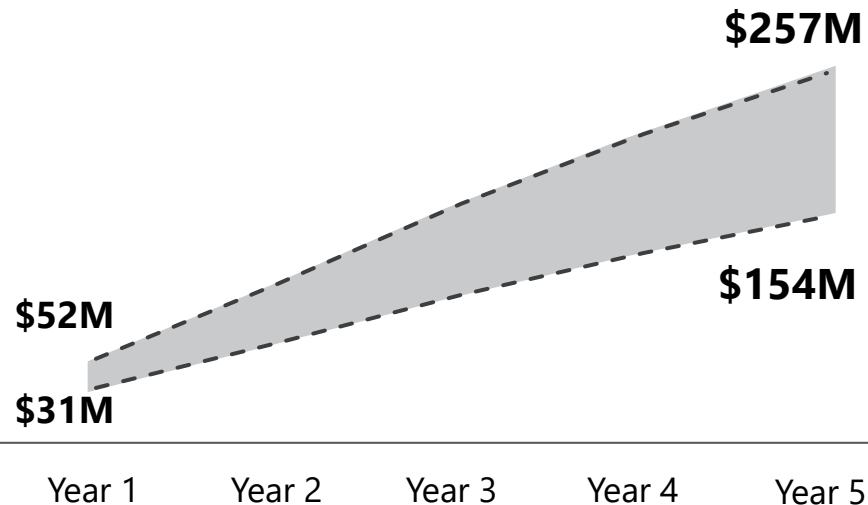
Total sales tax rate of 25%–30% would be in upper range of what other states charge



Taxes on marijuana sales could yield up to \$300 million annually (depending on tax rate and demand)

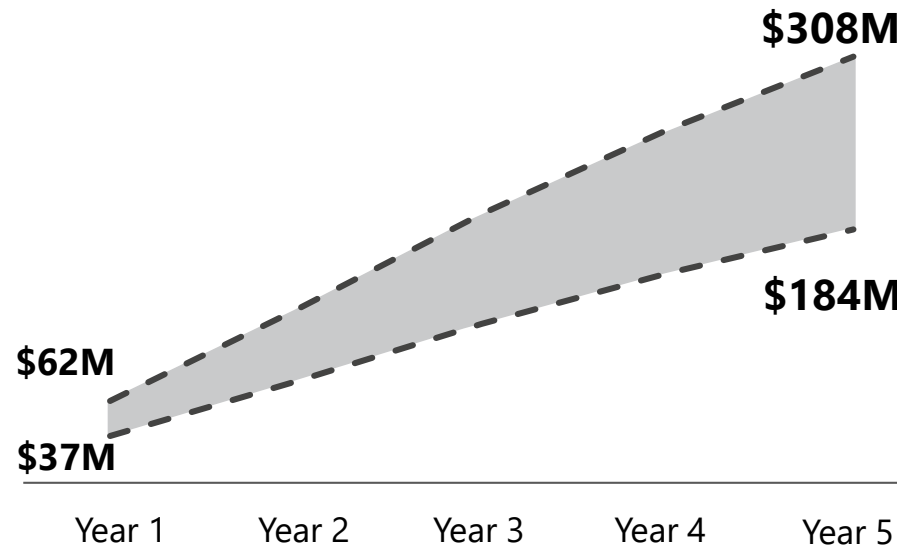
25% total tax rate

(20% marijuana tax + 5.3% sales tax)



30% total tax rate

(25% marijuana tax + 5.3% sales tax)



Tiered tax rate could be more protective of public health and potentially generate more revenue

- Edibles and high potency products (vape oil, other concentrates) pose greater public health risks
- Tax could be progressively higher for different products
 - Flower – 25%
 - Edibles – 35%
 - High potency – 45%
- Could generate additional ≈\$50M tax revenue in year 5

Revenue from new marijuana sales tax could be shared between state and local governments

- Virginia localities receive tax revenue from a number of goods and services sold in their jurisdictions
 - Standard sales tax, local cigarette taxes, meals and occupancy taxes
- Local governments in other states receive tax revenues from marijuana sales in their jurisdictions
- An 80/20 split would reflect how standard sales tax revenues are divided

Recommendations & options

If the General Assembly legalizes marijuana, assess a total sales tax of 25 to 30 percent, including a new marijuana sales tax and the standard sales tax.

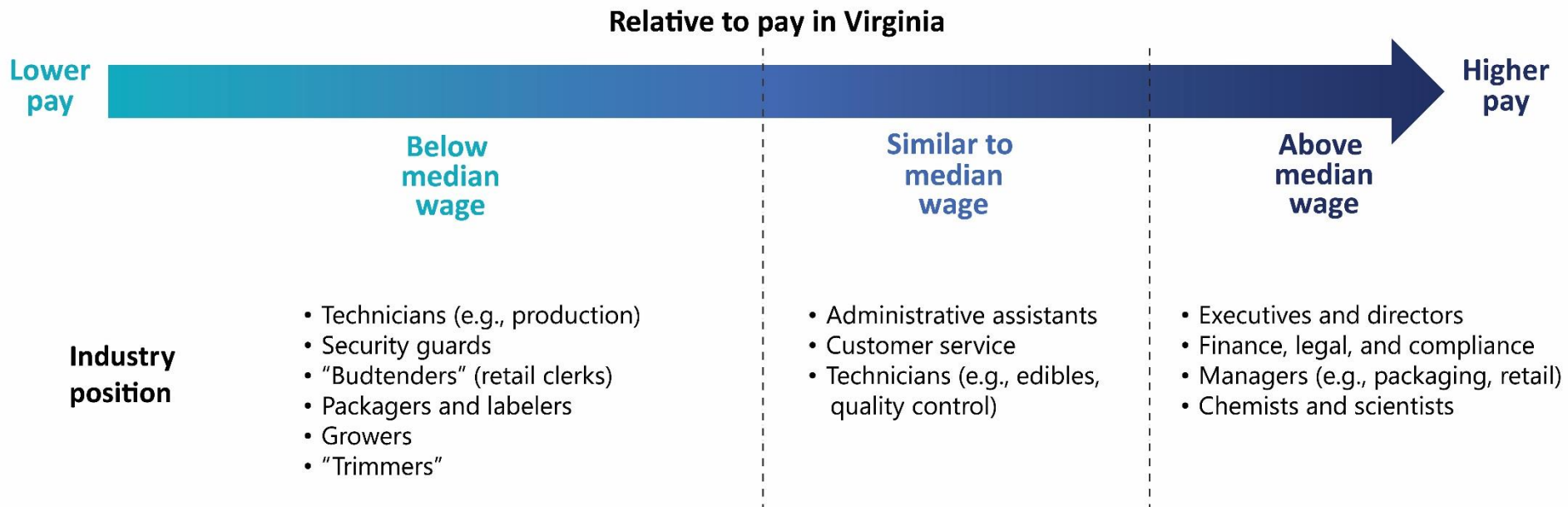
The General Assembly could choose to tax some products at progressively higher rates.

The General Assembly could choose to share marijuana sales tax revenues with local governments.

Finding

Establishing a commercial marijuana market could create thousands of new jobs, but majority are likely to be lower-wage.

Marijuana industry could create 11,000 or more jobs by year 5 but majority would be low-paying



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Finding

Virginia would need to vest authority for regulating the commercial marijuana market with a single agency.

Single agency could be vested with powers and duties to regulate commercial market

- Regulators in other states universally indicated preference to centralize authority in one agency
- Agency would need to be granted general and marijuana-specific regulatory powers and duties
- Regulator would be responsible for setting fees
- Regulator could be granted partial exemption from the state's standard regulatory process to expedite establishment of initial regulations

Virginia could vest regulatory authority with VABC or create a new board and agency

	VABC	New Agency
Lower operating cost	✓	
Less time to implement	✓	
Lower risk of unexpected delays	✓	
Marijuana regulation is primary mission		✓
Emphasis on special priorities, social equity		✓
Flexibility on structure and law enforcement		✓

Recommendations

If the General Assembly legalizes marijuana, it should vest authority for regulating commercial market with VABC or a new board and agency and grant it the powers and duties needed to effectively regulate the commercial market.

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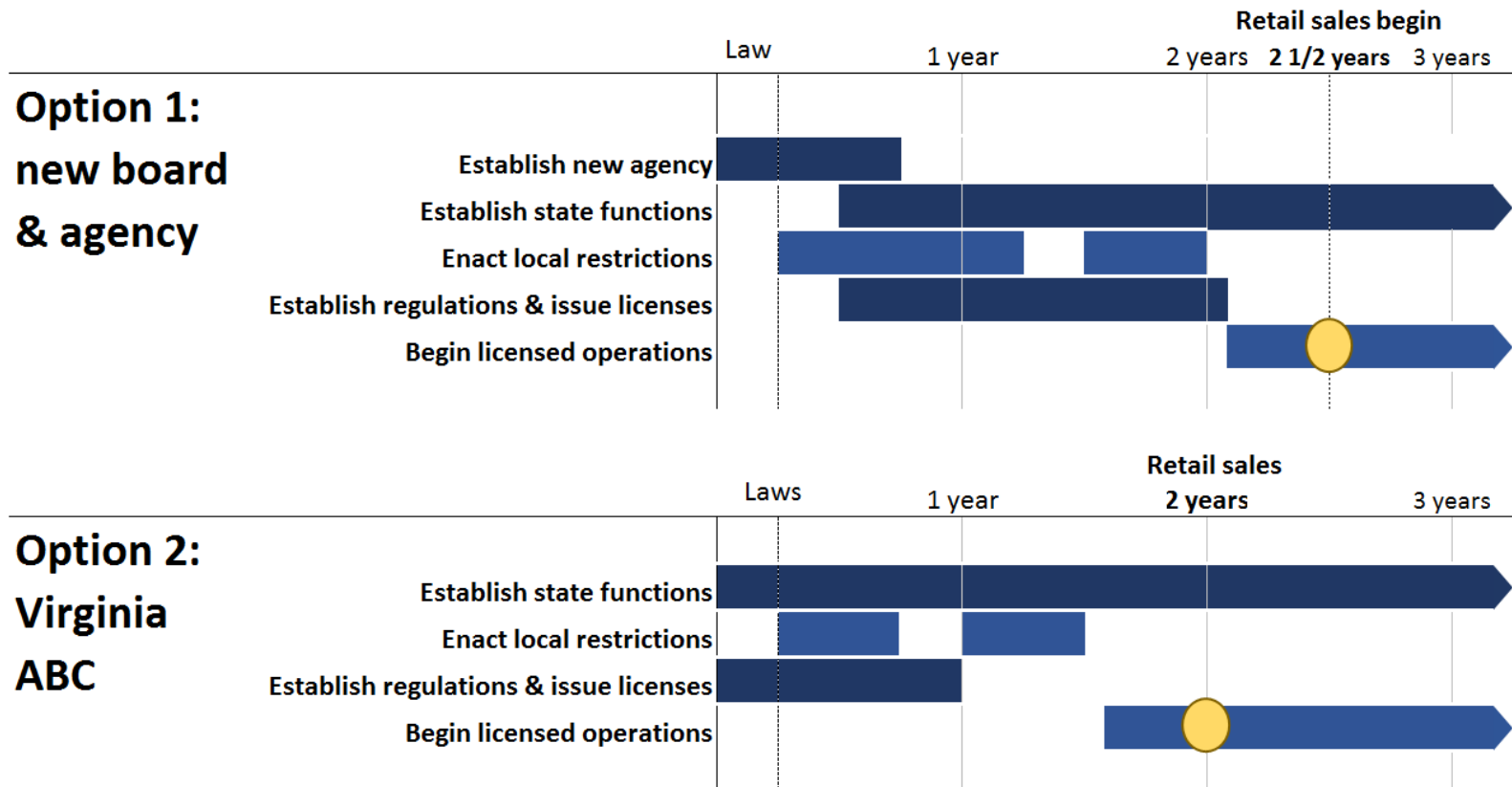
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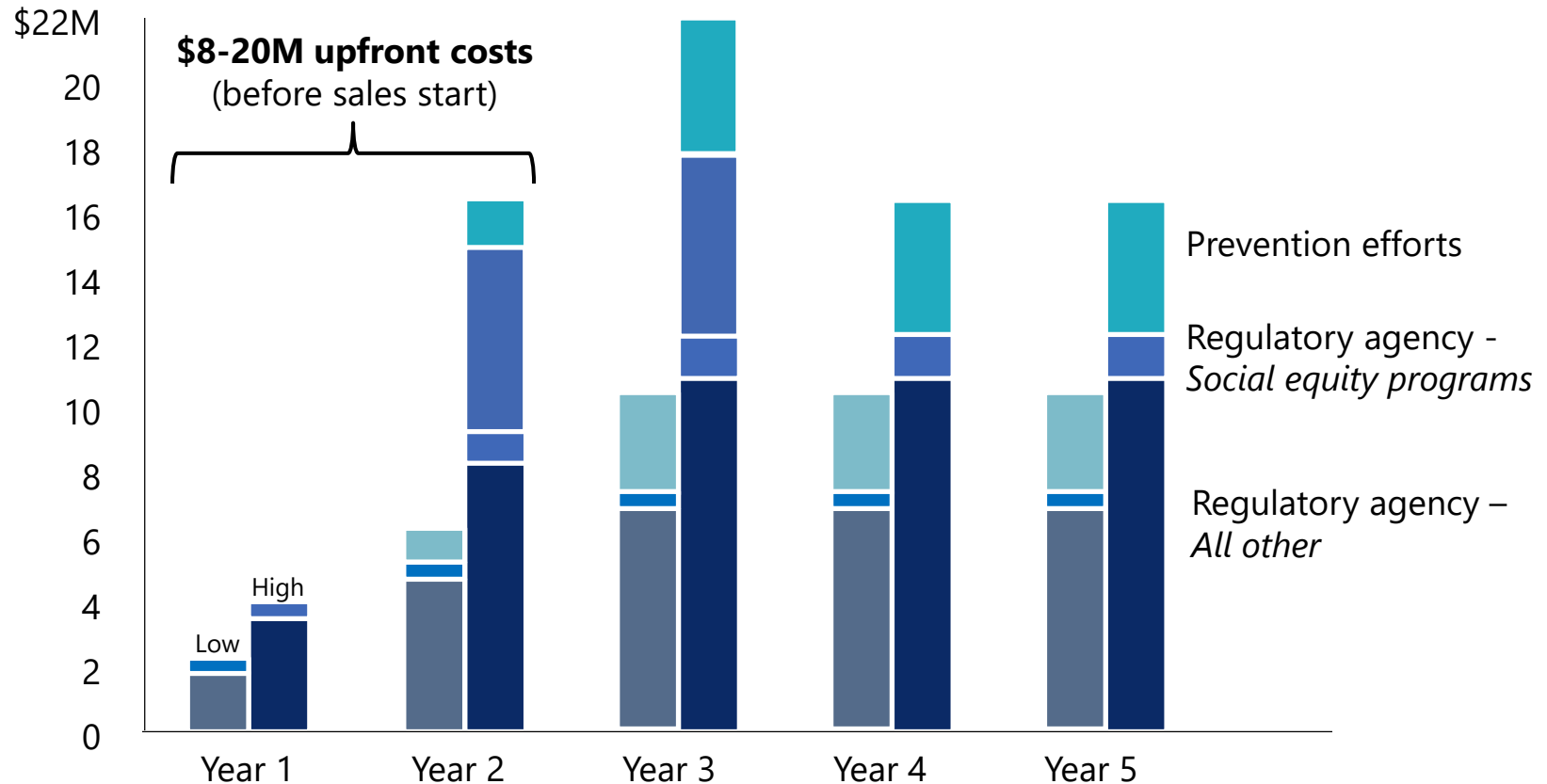
Finding

Virginia could relatively quickly enact laws to legalize marijuana possession and use, but establishing a well-regulated commercial market will take two or more years and have \$8–\$20 million in upfront costs.

Establishment of commercial market could take two or more years

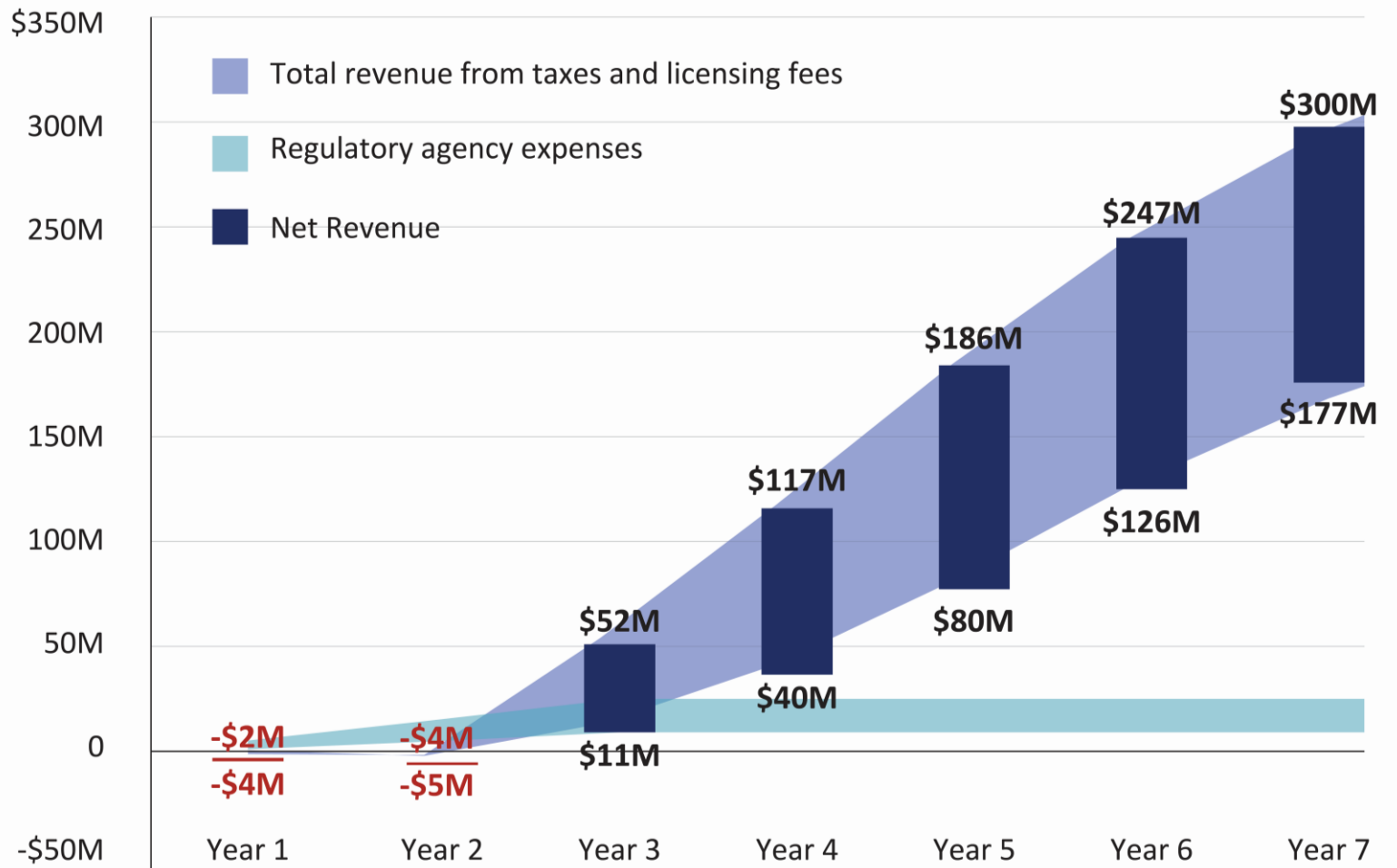


Establishment of commercial market could cost \$8–\$20 million upfront



Amounts shown for social equity in years 2 and 3 include one-time funding for loan program. Does not show funding for a community reinvestment grant program.

Revenue would cover expenses by year 3



For simplicity of illustration, assumes a 25 percent marijuana retail sales tax

Key findings

Black Virginians have been arrested and convicted for marijuana offenses at much higher rates than white Virginians.

Legalization would require changes to criminal laws and penalties and would generally reduce arrests and convictions.

Virginia could establish a well-regulated, fully private commercial market where licensed businesses cultivate, process, distribute, and sell marijuana.

In establishing a commercial market, Virginia would need to determine what authority to give local governments and how to incorporate medical marijuana.

Key findings (continued)

Virginia could promote social equity in the market by providing opportunity and assistance to prospective business owners.

Virginia could use tax revenues from marijuana sales to fund existing community assistance programs or to create a new community reinvestment grant program.

Virginia could mitigate public health risks from legalization, especially youth use, through prevention programs and restrictions on products and advertising.

Taxes on marijuana sales could ultimately generate up to \$300 million in revenue for state and local governments.

Establishing a commercial market could take more than two years and cost \$8 to \$20 million upfront.

JLARC staff for this report

Justin Brown, Associate Director

Mark Gribbin, Project Leader

Dan Hiller, Senior Associate Analyst

Brittany Utz, Senior Associate Analyst

Kapria Lee, Assistant Analyst