

Legal marijuana is proving to be a long, strange trip

Washington and Colorado are making marijuana legal by next year. But going to pot is proving to be harder than it looks.

By: [Mitch Potter](#) Washington Bureau, Published on Mon Aug 05 2013

SEATTLE, WASH.—Nobody said the road to legal marijuana in America would be easy. And for eight decades filled with terrifying twists, lawless turns and abrupt dead-ends, they were just so right.

Yet now that an end is finally in sight, nobody imagined how unutterably complicated the home stretch would be, riddled with unanticipated obstacles, caveats and unknowns that could yet send the entire effort up in smoke.

On paper, what happened last Nov. 6 was simple: a straight-up, yes/no question on full legalization of cannabis tacked onto the 2012 U.S. presidential election ballot in the states of Washington and Colorado. The people spoke; majorities said yes; the electorate demanded a sea change in drug policy.

Thus ended prohibition: Washington and Colorado, two of the 18 states that already permit medical marijuana by prescription, had taken a plunge that would make Amsterdam blush. Weed would become a retail product for anyone 21 or older. Taxed and regulated from seed to sale.

But how?

When state regulators and stakeholders sat down after the vote to work out the details, the buzz faded quickly against an almost endless stream of vexing questions.

Who and how many will be licensed to grow, process and sell weed? What constitutes a “serving” of marijuana, and how potent should it

be? What about stoned drivers? Should people be able to grow/sell their own?

What guarantee is there that what happens in Washington and Colorado stays in Washington and Colorado? Or should neighbouring states brace for “leakage” in the form of bud-laden trucks, fanning out across the nation?

And what, most of all, can be done to combat arguably the biggest concern of all — that Big Marijuana will inevitably emerge, alongside Big Tobacco and Big Alcohol, and aggressively advertise pot to smithereens, planting lifelong habits targeting adolescents. Picture a grinning Joe Camel with a doobie dangling from his lips. That can’t be good.

“For 40 years, the academic debate over legalization had the character of a simple binary choice — yes or no — and that turned out to be completely false,” said Jonathan Caulkins, a public policy expert with Carnegie Mellon University.

“The entire enterprise is far more complicated than people imagined. There are a thousand ways to legalize. Many, many details that need to get worked out. And many ways to get it wrong. These are interesting times, to say the least.”

Entrepreneurs line up

Here on the streets in legal marijuana’s ground zero, one finds a blend of excitement, apprehension and indifference at the still-hazy changes. Some anticipate a boom in marijuana tourism starting early in 2014, when legal sales begin. Others say the boom has already begun.

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“It’s definitely brought some people out of the closet and into the store,” said a saleswoman at the Federal Way location of Mary Jane’s House of Glass, a chain of pipe and paraphernalia stores throughout the Pacific Northwest. “And we’re more than happy to serve them.”

Entrepreneurs are already jumping on the pot wagon. In Olympia, the state capital, the owner of a shabby dive, Frankie’s Sports Bar & Grill, tested the patience of lawmakers after last November’s vote by allowing patrons to smoke marijuana on the premises — a no-no, even when the new law takes effect next year.

In Seattle, former Microsoft executive Jamen Shively made a splash in May in a showy announcement of a \$10-million startup to establish a national marijuana brand, the weedy analog to the city’s ubiquitous Starbucks franchise.

Shively was flanked by longtime acquaintance Vincente Fox, the former Mexican president, who described the project as the perfect antidote to murderous Mexican drug cartels.

Yet marijuana enthusiasts in unsleepy Seattle may yet discover that the new law can bite, as well. Pot use has long been the lowest priority for Seattle police, who have not issued a single ticket for smoking in public since last November’s vote.

Seattle City Attorney Pete Holmes last month called on police to start cracking down on street smokers, imposing fines of \$103, saying the public expects strict enforcement on the heels of Initiative 502.

“People pretty much expect, if they carry an open can of beer down the street, they will get a ticket,” said Holmes. “If those smoking marijuana don’t expect similar treatment, they are missing the point.”

Canada keeps breaking bad

What is especially astonishing, from a Canadian perspective, is that all this is happening south of us and not the other way around. A decade ago, it was the Bush-era Americans, as war-on-drug as ever, frothing over the scourge of “B.C. Bud” and the Liberal government of Prime Minister Jean Chrétien introducing a bill for decriminalization in Canada that died when Parliament was prorogued. Prime Minister

Paul Martin, though enfeebled by a minority government, tried again in 2004 and got nowhere. The Conservative victory of 2006 turned the tide, with Prime Minister Stephen Harper's government signalling that if anything, Canadians should ready for a hardening, not softening, of marijuana laws.

Canada's political dichotomy on pot seems even more acute now, in the wake of Liberal Leader [Justin Trudeau's endorsement](#) of not just decriminalization but outright legalization during a recent visit to Vancouver.

Taxation, control and regulation, Trudeau argued, would keep cannabis out of the hands of young people because, like cigarettes and alcohol, proof of age will be required.

"The Conservatives base their approach on ideology and fear. I prefer to base my approach on evidence and best practices and I think that is what Canadians will respond to," said Trudeau.

The Harper government answered quickly, with Justice Minister Peter MacKay saying, "I find it quite strange, frankly, that Mr. Trudeau would be talking about legalization as a priority at this time. Our government has no intention of legalization."

In the U.S., by contrast, the war on marijuana spent the decade coming apart at every seam. The largely problem-free proliferation of medical marijuana laws (the District of Columbia joined the club in July and there is now a medical pot dispensary within walking distance of the federal Drug Enforcement Agency headquarters) coincided with a deepening consensus that close to a century of prohibition had failed miserably to put the slightest dent in America's recreational choices, legal or otherwise. Murderous cartels and private prisons have done well. People, not so much.

That, perhaps, is the best thing the closely watched legalization regimes in Colorado and Washington have going for them — that however these new laws ultimately perform, the bar they must rise above stands pathetically low, as measured by public opinion on the status quo.

How low? Consider this: In March last year, U.S. evangelical leader Pat Robertson put his five decades of moral sway over Christian America on the line, announcing on *The 700 Club* that “I really believe we should treat marijuana the way we treat beverage alcohol.”

“I’ve never used marijuana and I don’t intend to, but it’s just one of those things that I think: this war on drugs just hasn’t succeeded.”

The Canadian government surely comes by its views honestly. And nowadays, on marijuana, they fall to the right of Pat Robertson.

Same drug, different paths

It is far too soon to prejudge the tentative marijuana rulebooks emerging in Washington and Colorado. But it does seem safe to say Washington has come out of the gate with a clearer sense of where it wants to go.

Some marijuana researchers say the difference was built into the questions put to voters. In Colorado, the ballot initiative, known as [Amendment 64](#) fixated upon comparing marijuana’s safety to that of alcohol and urging that it be legalized, taxed and controlled accordingly.

Washington, by contrast, built a far more comprehensive campaign known as [Initiative 502](#) with public health and safety as its core message. Advocates stressed the failure of prohibition and the merits of a new approach that would tightly regulate legal marijuana while steering tax revenues to public education, health care, research and substance abuse prevention, while simultaneously establishing a new threshold for driving under the influence of marijuana.

There was little to no gloating on the Yes side in Washington state, apart from the usual gaggle of stoners mugging (and puffing) for the TV cameras on election night. Instead, the backers of I-502 went straight to work, reaching out to the losing side and asking the law’s opponents, including leaders in the fields of drug treatment, to sit together and use their collective influence to press for the smartest possible rules.

“It’s been an incredibly progressive undertaking. You had the yeas and the nays working together in a respectful way,” said University of Washington professor emeritus Roger Roffman, a veteran marijuana-dependency researcher and one of the sponsors of the Washington law.

The Colorado effort, said Roffman, missed the mark because its message of comparative safety to alcohol came across to many “as a code for ‘there’s nothing to worry about, it’s harmless, there’s no danger to marijuana and it is alright to use without any constraints.’”

“As a longtime marijuana researcher, I don’t believe that. I favoured legalization not only because prohibition has failed miserably to educate the consumer to appreciate the good stuff about the benefits of marijuana. But it has almost failed miserably about the potential harms. Drug education was skewed to scare, and that very skewing pulled credibility from the message. So the risks — and there are real risks — to children, to adolescents, potentially for people with cardiovascular disease or pulmonary disease, that wasn’t getting through either.

“So the goal now is an approach based in reality, in science, in compassion, in wisdom and serious thinking. I’m optimistic given the quality of minds going into putting these rules together. Washington state has a chance now to show the federal government, and the country and the whole world that we can find a smarter way to co-exist with marijuana in our society.”

The devil, of course, is in the details. And only now are they beginning to emerge. The [Washington regulations](#) will begin issuing licenses in December with the intent of creating a three-tiered marijuana industry, distinguishing between growers (indoor and outdoor), processors and retailers, with two excise taxes of 25 per cent at the wholesale and retail points of sale.

Though the Washington State Liquor Control Board, which will oversee regulation, has yet to indicate the number of retail locations it will approve, the expectation is anyone aged 21 and over will be able to buy up to an ounce of usable marijuana, from 8 a.m. to midnight, when the first crop comes online in March 2014.

There will be no free samples. Retailers will be allowed to let customers sniff the product only. No outlet can be within 300 metres of a school, childcare centre, library or public transportation hub. Some marijuana products, including pot-infused candies, cookies and other baked goods, will require childproof packaging. Store signage and advertising that may appeal to youth will also be restricted.

Washington's emerging legal marijuana industry will also have to spend more on strict chemical testing of each shipment to establish chemical content and purity and to meet strict labelling requirements, including trace herbicides and insecticides used during cultivation. All licensed facilities will be subject to state inspection.

And to combat "leakage" — the potential for product to be siphoned into the black market and exported to other states — Washington is initiating a "seed-to-sale" tracking system involving computer software that will assign each legal grower a bar code accounting for every ounce.

Colorado, by contrast, seems to have copied a great deal of Washington's regime, with one significant difference — the Mile High State, unlike Washington, will allow any adult to home grow up to six plants for personal use. But Colorado has been late out of the gate with regulation and [those rules thus far are described as "temporary,"](#) even though the first retail outlets are expected to open in January.

Carnegie Mellon scholar Caulkins, who opposes legalization, is serving as a consultant to Washington officials as they work through the details, with price, marketing and drugged driving three of the most crucial unknowns going forward.

"It takes some time, but you expect marijuana prices to go down in the long run," Caulkins said. "Historically, the industry has operated in inefficient ways because they had to avoid detection. Now, when you don't have to hide what you're doing, we expect economies of scale, greater automation and greater specialization of labour to lead to declining prices in the long run. And that, without adjustments such as tax hikes on pot, will lead to increased use."

Secondly, said Caulkins, is the worry of youth-themed advertising. "The free market is pretty darn creative, as we can see from the

alcohol and tobacco industries, which have a bad track record in terms of targeting youth. So we're trying to be ready for that.

“Tied in with that concern is how a younger generation will be influenced by growing up in a world with more normalized marijuana. I think it would be crazy not to be open to that possibility. But it's also crazy to forecast how big a deal it's going to be, because we have no historic precedent to measure it against.”

Washington state set its new “driving high” impairment threshold at five nanograms last December and Colorado has since adopted the same number. But that baseline has since sparked a controversy because THC, the psychoactive ingredient in pot, is fat soluble and, unlike alcohol, can remain in the bloodstream days after a person last used marijuana. Police in both states will base their findings on blood tests as there is as yet no reliable Breathalyzer system available.

“The (drugged) driving issue is going to be fought about for a very long time,” said Caulkins. “That's just going to be a headache because we don't have a good test for impairment.”

What will Obama do?

But far and away the biggest wild card of all remains the other Washington — Washington, D.C. — where the Obama administration has maintained a stoic, and increasingly conspicuous, silence as Washington and Colorado plunge into the wild green yonder.

Apart from a single throwaway comment — President Barack Obama acknowledged he had “bigger fish to fry” — the feds are in a position to quash the entire enterprise at any time. Marijuana, federally, remains classified as Schedule 1, the highest order of no-no.

The fact that a legal pot industry has spent the better part of a year readying for the change without federal interference is leaving many with the impression that Obama intends to let states do what they (sometimes) do best — serve as incubators in democracy, trying out things that may or may not work.

“With the whole world watching this, I would love to be a fly on the wall in the Oval Office, or for that matter, the Justice Department, in

order to figure out what their rationale is for holding back,” said Roffman, author of the soon-to-be-published book, *Marijuana Nation: One Man’s Chronicle of America Getting High, From Vietnam to Legalization* (Pegasus).

“There has not been a single statement from the feds that says ‘We are going to co-operate with these two states and permit them to function as a laboratory of democracy.’ We’re at a major turning point here, yet federal silence hovers over it all.”

Caulkins, who also admits to “some frustration” with Obama’s silence, said the absence of federal input speaks to a larger theme of how the outside world views American policy.

“When it comes to drug policy, the U.S. has been misunderstood around the world for 20 years or more, because the outside world listens to what Washington, D.C., says when nobody in the states listens to what Washington, D.C., says.

“So, in totality, the U.S. is much less hawkish than what federal drug officials say when they go off to the United Nations or run around the world preaching at people. I think what we’re seeing in Washington and Colorado is the clearest evidence.”