Observatoire français des drogues et des tendances addictives

# In a glimpse

SEPTEMBER 2024

## The legalisation of cannabis in the United States. Results from the ASTRACAN survey

This report presents the results of the ASTRACAN survey (For a strategic analysis of cannabis regulation policies), coordinated by the OFDT, which focuses on the regulatory practices implemented in the context of the legalisation of cannabis for "recreational" use and their initial effects in terms of public health. It reports on feedback on the conditions of implementation and the short-term effects of these legalisation reforms as perceived by public authorities and health professionals interviewed in three jurisdictions in the United States (Washington State, Oregon, California). This report completes an initial investigation carried out in three jurisdictions in Canada (Ontario, Quebec, British Columbia), which resulted in three monographs published by the OFDT.

The comparative analysis of feedback from the United States reveals, firstly, convergences in the reform objectives. Wherever they are implemented, cannabis legalisation projects promise to reinforce the ban on minors' access to cannabis, regain control of the market, and better protect adult consumers through improved control of the substance, its uses, and its consequences (social, economic, and health). However, in addition to these general objectives, there are more specific objectives depending on the State: developing a profitable cannabis economic sector (California, Oregon), while promoting access to the legal market for "small operators" (*social equity*, in California) and avoiding the creation of monopolies (Washington State).

In practice, these reform objectives take the form of a broad spectrum of regulatory policies, although the framework plans for the cannabis sector remain focused on the objective of developing a new economic sector, a guarantee of local jobs and tax revenues.

The table below summarises the characteristics and differences between the cannabis regulatory regimes implemented in Washington State, Oregon and California, mobilising the classic public policy instruments already implemented in the regulation of tobacco and alcohol: taxation, legislative and regulatory restrictions (minimum legal age, packaging and labelling, product appearance, promotion of cannabis-related products and accessories), education and awareness initiatives on the risks associated with consumption, etc.

## *Description of the cannabis regulatory regimes implemented in Washington State, Oregon and California.*

| | WASHINGTON STATE | OREGON | CALIFORNIA |
|---|---|---|---|
| Population (number of inhabitants in 2021) | 7 738 692 | 4 246 155 | 39 237 836 |
| Approval of the reform | 2012<br>Referendum (56%) (Initiative 502/State statute) | 2014<br>Referendum (56%) (Measure 91/State statute) | 2016<br>Referendum (57%) (Proposition 64) |
| Minimum age for purchase and possession | 21 years old | 21 years old | 21 years old |
| Entry into force of retail sales (point of sale) | 8th July 2014 | 1st October 2015 (dispensaries)<br>then 1st October 2016 (shops) | 1st January 2018 |
| Regulatory authority | Washington State Liquor & Cannabis Board (WSLCB) (Production-distribution-sale) (formerly Liquor Control Board) | Oregon Liquor and Cannabis Control Commission (OLCC) (Production-distribution-sale) | Department of Cannabis Control (DCC) - since 2021, after a three-headed regulation from 2018 to 2021 |
| Personal quantity authorised for purchase (maximum transaction threshold authorised) | Herbal cannabis: 1 oz (28.3g)<br>Extracts and concentrates: 7g<br>Edibles/space food:<br>Solids: 16 oz<br>(≈10 bars of chocolate)<br>Drinks mixed with cannabis:<br>72 oz<br>(≈six 12-oz sodas or 2.13 l) | Herbal cannabis: 1 oz (28.3g)<br>Extracts and concentrates: 5g<br>Edibles/space food:<br>Solids: 16 oz (≈450g)<br>(≈10 bars of chocolate)<br>Drinks mixed with cannabis:<br>72 oz<br>(≈six 12-oz sodas or 2.13 l) | Herbal cannabis: 1 oz (28.3g)<br>Concentrates: 1/4 oz (8g)<br>Edibles: limit not specified |
| Threshold for authorised personal quantities | No restrictions | 56g in public (2 oz)<br>228g at home (8 oz) | No restrictions |
| Home growing (maximum authorised) | Prohibited<br>One of the 3 American States that are exceptions (along with Illinois and New Jersey) | Authorised<br>4 plants | Authorised<br>6 plants |
| Distribution and physical sale model | Private | Private | Private |
| Online sales model | Private | Private | Private |
| Number of licensed retail stores | 2014: 85<br>2015: 198<br>2016: 339<br>2017: 399<br>2018: 431<br>2019: 438<br>2020: 484<br>2021: 450<br>2022: 443<br>2023: 503 | 2018: 260<br>2019: 550<br>2020: 650<br>2022: 707<br>2023: more than 770 | 2018: 358 retail stores<br>2019: 448<br>2020: 918<br>2021: 823<br>2022: 1 200<br>2023: 1 216 |
| Physical accessibility: Number of stores per 100 000 habitants | 2018: 6.5<br>2021: 6.6<br>2022: 5.8<br>2023: 6 | 2018: 14.0<br>2021: 17.9<br>2022: 16.8<br>2023: 19 | 2018: 0.9<br>2021: 2.1<br>2022: 4.5<br>2023: 3.1 |
| Accessibility of stores | Everyday from 08:00 to midnight | Everyday from 07:00 to 22:00 | Everyday from 06:00 to 22:00 (except municipal restrictions) |
| Maximum THC content authorised in products on sale | 10Mg of THC per packet<br>Child-proof packaging<br>Labelling of THC content<br>Approval of cannabis-infused products, packaging, and labelling before going on sale | 10mg of THC per unit since April 2022 (increased by 5mg) but no more than 100mg per packet (increased by 50mg) | 10mg of THC per portion<br>Mandatory labelling of THC content |
| Restrictions on public consumption | Authorised as for tobacco | Authorised as for tobacco | Authorised as for tobacco |

| | WASHINGTON STATE | OREGON | CALIFORNIA |
|---|---|---|---|
| Driving under the influence (Legal limit for THC concentration in blood) | 5ng THC/ml blood | No defined limit | No defined limit |
| Retail sales taxes (sales + excise taxes) | 37% (excise tax, on retail sales) + optional sales taxes: State (7-10.4%) + local (0.5-3.1%) | 17% (excise tax, on retail sales)<br>Up to 20% depending on counties and municipalities (local taxes up to 3%) | 15% (excise tax, on retail sales)<br>(19% at term)<br>$9.25 on dry weight after harvest (flowers)<br>$2.75 on weight of fresh leaves |
| Specific sales restrictions | Cap on the number of points of sale<br>(334 then 556) | Restriction on trade names | |
| Health warnings | 1. Not for children<br>2. Not recommended before driving<br>3. Risk of intoxication<br>4. Risk of addiction<br>5. Not for use outside the State<br>6. Smoking is dangerous for your health<br>  | 1. Not for children<br>2. Not recommended before driving<br>  | 1. Not for children<br>2. Not recommended before driving<br>3. Risk of intoxication<br>4. Not recommended during pregnancy<br>5. Health risks<br>  |
| Advertising restrictions | Advertising restrictions (without mention of billboards) | Advertising restrictions (without mention of billboards) | Advertising restrictions (without mention of billboards) |
| Tax revenue allocation | 50% Public health<br>31% General Fund<br>13% Other<br>4% Counties and municipalities | 40% Public schools<br>15% Law enforcement<br>25% Mental health and treatment programmes<br>20% Counties and municipalities | 60% Education, prevention, early treatment and care<br>20% Law enforcement<br>20% Environment |

This synoptic table shows strong variations between States, for example, in the taxation regime applied to cannabis and in the restrictions applied to consumers (authorised quantities) or to market operators (capping of points of sale, authorisation or not of vertical integration, etc.). The level and degree of regulation chosen in the different States logically determine the pace and scale of the development of the legal cannabis market, which varies greatly from one State to another, as demonstrated by the indicator of accessibility of physical cannabis sales points, which varies from 3 stores per 100 000 inhabitants in California to 19 in Oregon, reflecting significant disparities in access to legal cannabis even within the States that have legalised cannabis.

The ASTRACAN survey describes the constellation of cannabis regulation models developed in the United States, broken down into special localised regimes, multiplied by the absence of federal directives and a unified State framework (cannabis remains prohibited at the federal level). Furthermore, the diversity of cannabis regulation models is exacerbated by the prerogatives left to the discretion of local authorities, counties and municipalities, so much so that each State is characterised by several dozen different legal regimes.

Cannabis regulation gives rise to a complex governance system, which is all the more difficult to grasp due to the bureaucratisation of the procedures for approving market operators (licensing, issuing permits, etc.) and control standards. The bureaucratisation that went hand in hand with the legalisation of cannabis is regularly mentioned by economic players in the sector, but also by certain public regulatory players who deplore the loss of efficiency induced by the deployment of the legal market, which in fact benefits the black market and contributes to its persistence. However, in all three States studied, the black market is gradually declining, although legalisation has helped to juxtapose markets: legal market, semi-legal market ("grey market" fuelled by cannabis produced illegally but sold in "dispensaries", or buyers' clubs, uncontrolled, offering cannabis for medical use), illicit market (partly fuelled now by cannabis legally produced but not finding an outlet on the legal market due to the lack of physical points of sale in sufficient number to absorb the production which has increased much more quickly).

The ASTRACAN survey looked at the practical conditions and difficulties of regulating cannabis as perceived by those directly involved in its implementation. It shows that, in the three States studied here, the strategies for establishing a legal cannabis market are very marginally structured around public health, as evidenced by several indicators: low level of constraints on the rules for packaging and labelling cannabis products, attempts to limit advertising and promotion of timid and ineffective cannabis-derived products, etc. Above all, they allow commercial innovation, opening the way to a rapid diversification of the offer, likely to broaden customer bases. This amplification of the supply of cannabis-derived products helps explain the increase in consumption observed among adults in the three States considered.

Alongside the expansion of the consumer base, the legalisation of cannabis has gone hand in hand with a dynamic of market segmentation. Cannabis is available in various forms, at various prices, aimed at both broad and increasingly specific clienteles: the offer ranges from entry-level products ("general public") to niche products (with, for example, a booming "gourmet cannabis" or "premium cannabis" market in California, which mimics the promotional codes and know-how of oenology and the luxury industry). Furthermore, the choices made in the marketing of cannabis prove to be not very restrictive on the composition of authorised products. They do not therefore cap the tetrahydrocannabinol (THC) content of products put on sale, giving free rein to the growth of products highly concentrated in active ingredient/THC (*concentrates*), presenting a high risk of intoxication.

Three factors contribute to increasing the availability of the product and the fears of health professionals regarding a normalisation and euphemisation of the risks induced by the regular use of cannabis:

- the diversification of cannabis-derived products, including highly concentrated forms and new methods of administration (such as dabbing, consisting of smoking cannabis in the manner of opium, but also regular vaping of cannabis);
- the increased accessibility of cannabis (due to the superposition of different market strata that have contributed to increasing the overall supply);
- and the accessibility of legal cannabis (via the rise of physical stores but also due to the general drop in cannabis prices induced by legalisation).

Cannabis regulation therefore claims to order the market and dissuade consumption among young people by controlling the visibility and attractiveness of cannabis products to minors, but this gamble is confronted with a paradox: how can we authorise and encourage the development of a market without helping to promote it?

Despite the limited perspective available to assess the specific effects of cannabis legalisation in the Pacific Coast States, the analysis highlights the main challenges of implementing this type of reform: practical difficulties of implementation in a context where cannabis remains prohibited at the federal level, depriving the public authorities of the States that have legalised of any support and logistical assistance from the federal authorities (on the control of products, for example); difficulties in making the transition from the illicit market to the legal market; difficulties in stabilising a market that is economically buoyant, in a context of uncertainty about the long-term health effects of new forms of cannabis placed on the market (in particular concentrates with high doses of active ingredients) and emerging modes of cannabis use (vaping, dabbing, etc.).