

Research Protocol for Recreational Marijuana Laws

Prepared by Legal Science

February 2017

RECREATIONAL MARIJUANA LAWS

February 2017

Research Protocol

- I. **Date of Protocol:** September 1, 2014; September 25, 2014; October 24, 2014; February 24, 2015; February 26, 2015; June 24, 2015; August 10, 2016; November 17, 2016; February 15, 2017

- II. **Scope:** Compile state constitutional amendments, statutes, and regulations authorizing and regulating recreational marijuana in the first jurisdictions to authorize the sale of recreational marijuana, Alaska (AK), Colorado (CO), the District of Columbia (DC), Oregon (OR), and Washington (WA). The scope of the dataset will expand to include any states that enact legislation authorizing recreational marijuana in the future. This dataset began as a cross-sectional dataset on September 1, 2014, but has since expanded to be a longitudinal dataset. It includes coding questions about the cultivation, retail sale, taxation, purchase, and possession of recreational marijuana. After several updates, it is now valid through February 1, 2017.

- III. **Primary Data Collection**
 - a. **Original Project Dates:** August 4, 2014 – August 10, 2016

 - b. **Dates Covered in the Dataset:** June 12, 2014 – February 1, 2017

 - c. **Data Collection Methods:** The team building this dataset consisted of two legal researchers (“Researcher #1” and “Researcher #2” or “Researchers”) and two supervisors (“Supervisor #1” and “Supervisor #2” or “Supervisors”).
 - i. Researcher #1 identified all statutes and regulations related to the authorization of recreational marijuana in the two states covered in the dataset, CO and WA. Researcher #1 created a master sheet for each state summarizing relevant statutes and regulations, including the most recent statutory history for each statute and regulation and the effective date for the most current version of the law (as of September 1, 2014; then confirmed to be effective as of October 1, 2014 before publication).

 - ii. After coding questions were drafted as described in **Development of Coding Scheme** below, Researcher #2 redundantly researched CO and WA and collected all laws related to the authorization of recreational marijuana that would assist in answering the drafted questions. Researcher #2 also created a master sheet for each state.

 - iii. Supervisor #1 compared the master sheets of both Researchers and discussed any variation with the Researchers in order to determine which laws were significantly related to the scope of the dataset; those significantly related to the scope were retained for the coding process.

 - d. **Databases Used:** Searches were conducted using WestlawNext and state-specific legislature websites. Full text versions of the laws collected were pulled from state legislature websites.

 - e. **Search Terms:** Recreational marijuana, retail & marijuana & tax, driving under the influence marijuana

- i. The Researchers supplemented key word searches by examining the table of contents of each relevant section of the state law that they identified.
- f. Initial Returns and Additional Inclusion or Exclusion Criteria:** Included laws pertaining to the authorization of retail marijuana cultivation and retail sale; required licensing of cultivation facilities and retail stores; licensing application fees and issuance fees; testing of retail marijuana prior to retail sale; regulation of retail sale amounts and customer types; limitation on purchase amounts; limitations on possession amounts; driving under the influence (DUI) of marijuana regulation; and taxation of retail marijuana.
- i. Excluded laws pertaining specifically to retail marijuana processing and wholesaling (the step following cultivation at a cultivation facility and prior to distribution to retail stores for retail sale); laws specific to the process of testing marijuana; and laws regarding taxation administration and the specific uses of tax revenue.

IV. Coding

- a. Development of Coding Scheme:** To develop coding questions, Researcher #1 and Supervisors met as a group to narrow the scope of the dataset from all topics related to the authorization of retail marijuana in CO and WA to specific topics that would be of interest to most dataset users. The group conceptualized coding questions to properly gather information on those specific topics. Researcher #1 drafted the conceptualized questions, then circulated them for review by both Supervisors until the group was satisfied with them. Once the coding questions were finalized, Researcher #1 entered the questions into the LawAtlas Workbench.
- i. Dataset terminology:
 1. The term “recreational” is used throughout the coding questions to distinguish the laws in CO and WA related to marijuana produced and sold by retail stores for non-medical purposes from laws in those states specific to the authorization of medical marijuana. CO differentiates between these two uses of marijuana by referring to recreational marijuana as “retail marijuana.” WA does not use an explicit term to differentiate between medical and recreational marijuana. State laws relating to marijuana authorized for retail sale were collected and coded identically regardless of the differing terminology.
 2. The cultivation of marijuana is referred to in both states’ laws as “production.” The terms cultivate, cultivator, cultivation were used instead of produce, producer, and production in order to clearly distinguish between the cultivation of marijuana, which is included in the scope of this dataset, and the processing and wholesaling of marijuana, which is not included in this dataset. The use of cultivation also is consistent with the terminology of the medical marijuana datasets published on LawAtlas.org.
 3. The term “consumer” is used throughout the dataset to refer to any persons who purchase and/or possess marijuana for a recreational, non-medical purpose.
 4. The term “resident” is used to refer to consumers in relation to where they live; either in-state residents living in the state being coded, or out-of-state residents living in a state other than the state being coded.

5. The unit of measurement “ng/ml” is used in the answer choice, “5 ng/ml,” for the question “What is the legal limit for driving under the influence of marijuana?” This unit of measurement is short for nanograms per milliliter, and is utilized to measure the amount of a substance in a person’s blood in medical tests.
- ii. Scope inclusion and exclusion determinations:
 1. Statutes regarding marijuana processors, which process marijuana after it has been cultivated and before it is distributed to retailers, were not included in the scope of the dataset. Coding questions were not written to identify information about processors.
 2. Statutes describing the state regulatory agency regulating recreational marijuana were not included, beyond statutes indicating what body is responsible for regulation (in CO, the Department of Revenue; in WA, the Liquor Control Board). Statutes pertaining to the composition of the agencies, voting, and other functions were excluded and not coded. Coding questions were not written to identify the composition or functions of the state regulatory agencies.
 3. Statutes regarding the specifics of taxation on marijuana were not included, beyond statutes indicating that the state imposes excise taxes and/or retail sales taxes on marijuana sales. Coding questions ask whether an excise tax and a sales tax charged to marijuana consumers is imposed in each state, but questions were not created to identify further information about taxation scheme and the states’ uses of tax revenue.
- b. Coding methods:** Researcher #1 was responsible for coding one record each for CO and WA in the Workbench. Researcher #2 redundantly coded both states, as described below in **Quality Control**.
- c. Quality Control:**
- i. Both states with laws authorizing recreational marijuana, CO and WA, were redundantly coded. To be redundantly coded, two records were created for each state containing the same state laws and regulations, coding questions, and effective dates. Researcher #1 and Researcher #2 each coded one record per state.
 - ii. Supervisor #1 reviewed the redundant coding by downloading the coding answers, the data, from both states’ records from the Workbench into Microsoft Excel and comparing the records. Supervisor #1 compared records variable by variable to find differing answers between the Researchers, or divergences, for each state. A measure of divergence was calculated by the Supervisor and recorded in the Excel data sheet. The total rate of divergence was 6.5%. One divergence was identified in CO, and two divergences were identified in WA. The three divergences were discussed with the Researchers and quickly resolved. After divergences were discussed and resolved, the redundant coding record completed by Researcher #2 was deleted.
 1. The divergence in CO stemmed from the questions about licensing fees for cultivation facilities and retail stores, as Researcher #2 suggested distinguishing between licensing application fees and licensing issuance fees. To solve this issue, the previous coding question asking “What is the fee?” to capture the total

licensing fee dollar amount was broken into two questions, “What is the license application fee?” to identify the fee to apply for a license, and “What is the license issuance fee?” to capture the fee to have a license issued when an application is approved.

2. The divergences in WA were caused by incomplete answers in the redundant record; Researcher #2 did not initially agree that the answers were identifiable in the law, but was able to locate them after the group discussion. The answers located were consistent with the answers of Researcher #1.
- iii. Lastly, two naïve coders, one per state, were tasked to code a duplicate coding record for CO and WA to further assure the quality of the coding questions and accuracy of the coded answers. Once naïve coding was complete, Supervisor #1 reviewed the naïve and original coders’ answers in the method described previously. The total rate of divergence was 2.2%. No divergences were discovered in CO and one divergence occurred in WA. After discussing the answers and resolving the single divergence with Researcher #1 and the naïve coders, the naïve coding records were deleted.

V. Update (February 2015)

a. Data Collection

- i. Research was conducted by a researcher and the supervisor to identify legislation in Alaska, effective February 24, 2015, and in the District of Columbia, effective February 26, 2015, regarding the regulation of recreational marijuana.
- ii. Searches were conducted using WestlawNext, the Alaska state legislative website, and Google, using the search terms: “Ballot Measure 2,” “Initiative 71,” and “recreational marijuana.”

b. Coding Updated Findings

- i. The researcher and supervisor located and collected relevant statutes in accordance with the inclusion/exclusion determinations described in **Primary Data Collection**, above. The researcher coded a new record in Alaska and D.C. with the relevant laws.
- ii. Clarification on marijuana sales to in-state and out-of-state residents, and limits on amounts purchased by consumers:
 1. The questions “Can an in-state resident purchase marijuana?” and “Can an out-of-state resident purchase marijuana?” are coded “Yes” if the state permits purchase by any consumer, without explicit distinction between in-state and out-of-state residency of consumers.
 - a. Colorado limits sales to non-Colorado residents to one quarter of an ounce, while Colorado residents are permitted to purchase up to one ounce.
 - b. Alaska and Washington do not make a distinction in their laws about sales to or purchase of recreational marijuana to consumers based on

their residency within or out of the state. Secondary research confirmed that currently, no distinction between in-state and out-of-state resident consumers is made in these states. In other words, all consumers are permitted to purchase and possess up to one ounce of recreational marijuana at this time. Therefore, the questions “Can an in-state resident purchase marijuana?” and “Can an out-of-state resident purchase marijuana?” are coded “Yes” in these states.

- c. D.C. at this time does not authorize the sale or purchase, only the possession, of recreational marijuana.

c. Quality Control

- i. After the researcher coded a new Alaska and D.C. entry, the project manager performed quality control. The project manager downloaded all coding data into Microsoft Excel and examined the data for any missing answers, incorrect citations, and caution notes.
- ii. A naïve researcher redundantly coded the Alaska record. The supervisor downloaded the redundantly coded record in Excel and identified coding errors and divergences between originally and redundantly coded records. There was 1 substantive divergence; the rate of divergence was 2%. The divergence and caution notes were discussed and resolved by the supervisor and researchers in a coding review meeting.

VI. Update (June 2015)

a. Data Collection

- i. Research was conducted by a researcher to identify legislation in Alaska, effective May 5, 2015, Colorado, effective June 5, 2015, the District of Columbia, effective February 26, 2015, Oregon, effective July 1, 2015, and Washington, effective June 20, 2015, regarding the regulation of recreational marijuana.
- ii. Searches were conducted using WestlawNext, openstates.org, and Google, using the search terms: “recreational marijuana,” “marijuana & testing,” “marijuana & tax!”.

b. Coding Updated Findings

- i. The researcher and supervisor located and collected relevant statutes and regulations in accordance with the inclusion/exclusion determinations described in **Primary Data Collection**, above. The researcher coded a new record in Alaska, Colorado, D.C., and Washington. The researcher also coded a new record in Oregon, to reflect recreational marijuana laws that took effect for the first time on July 1, 2015.

c. Quality Control

- i. The only entries that had substantive updates were Alaska, which implemented a new Marijuana Control Board, and Oregon, whose recreational marijuana laws were taking effect for the first time. The researcher coded a new entry for each of the five jurisdictions, and assigned redundant coding for Alaska and Oregon to a redundant coder. The

researcher then downloaded all coding data into Microsoft Excel and examined the data for any missing answers, incorrect citations, and caution notes.

- ii. The redundant coder redundantly coded the Alaska and Oregon records. The researcher downloaded the redundantly coded record in Excel and identified coding errors and divergences between originally and redundantly coded records. There was a divergence rate of 23% in Alaska, which was due to the redundant coder coding that no licenses were required for cultivators or retailers of marijuana. The original entry included a yes answer to these questions, because the law indicated that licenses would be required for these parties when regulations were enacted to delineate licensing, further explaining this detail in caution notes. Oregon's entry had one substantive divergence; the rate of divergence was 2%. The divergence and caution notes were discussed and resolved by the researcher and his supervisor via electronic communication.

VII. Update (July 2016)

a. Data Collection

- i. The Legal Science team evaluated the dataset on LawAtlas and began working to update and maintain the dataset longitudinally as a part of DAPS, the Drug Abuse Policy System.
- ii. Research was conducted by a researcher to check for amendments to existing laws in Alaska, Colorado, the District of Columbia, Oregon, and Washington regarding the regulation of recreational marijuana. Alaska, Colorado, Oregon, and Washington each amended their laws in scope since the most recent update.
- iii. Research was also conducted to find states with any new recreational marijuana laws, however, no states have added recreational marijuana laws since the previous update.
- iv. Searches were conducted using WestlawNext, openstates.org, and state legislative websites.

b. Coding Updated Findings

- i. The researcher and supervisor located and collected relevant statutes and regulations in accordance with the inclusion/exclusion determinations described in **Primary Data Collection**, above. The researcher coded new amendment records in Alaska, Colorado, Oregon and Washington. The researcher also checked the previous records to ensure the quality of the coding and the legal text.

c. Quality Control

- i. The researcher coded all new entries and second researcher redundantly coded 100% of all states with recreational marijuana laws. The divergence rate on August 4, 2016 was 2.5%. The divergence and caution notes were discussed and resolved. The supervisor then downloaded all coding data into Microsoft Excel and examined the data for any missing answers, incorrect citations, and caution notes. All edits were made accordingly.

VIII. Update (November 2016)

a. Data Collection

- i. While the Legal Science tech team worked on the DAPS portal through the MonQcle publishing software, the Legal Science legal team preformed another update beginning in late October.
- ii. Research was conducted by the supervisor to check for amendments to existing laws in Alaska, Colorado, the District of Columbia, Oregon, and Washington regarding the regulation of recreational marijuana before the publication of DAPS. Alaska, Colorado, and Washington each amended their laws in scope since July. The supervisor pulled those session laws and regulation changes from state legislative websites and built new coding records reflecting the new versions of the laws. The supervisor noted, however, that each of these changes were minor, non-substance changes that did not impact any of the coding changes.
- iii. Research was also conducted to find states with any new recreational marijuana laws, however, no states added recreational marijuana laws since July 2016 as of November 1, 2016. The team did find that several states included recreational marijuana propositions on the ballot for the 2016 election. The supervisor therefore delayed publication pending the outcome of the state election results to see if any new states would legalize recreational marijuana. As of November 17, 2016, voters in four states voted to legalize recreational marijuana: California, Massachusetts, Maine, and Nevada. Due to the close voting tally in Maine, this law may face a recount challenge over the next few days. These laws will become effective after our November 1, 2016 valid through date, so the researchers added caution notes to alert DAPS users to the upcoming laws. These states will be captured by our next update, if not sooner, once the official codification of these new recreational marijuana laws becomes publicly available.

b. Coding Updated Findings

- i. The supervisor coded new amendment records in Alaska, Colorado and Washington and confirmed that no substantive changes affecting coding answered occurred. The supervisor also checked the previous records to ensure the quality of the coding and the legal text.

c. Quality Control

- i. The supervisor reviewed the legal text for all states to check for any errors. The supervisor then assigned all states with an amendment (Alaska, Colorado, and Washington) for redundant coding by a researcher. The divergence rate was 0.95%. The one divergence was discussed and resolved. The supervisor then downloaded all coding data into Microsoft Excel and examined the data for any missing answers, incorrect citations, and caution notes. All edits were made accordingly and the supervisor published this update to the DAPS site.

IX. Update (February 2017)**a. Data Collection**

- i. For the February update, a Researcher checked for new laws and amendments to existing laws in Alaska, Colorado, the District of Columbia, Oregon, and Washington regarding the regulation of recreational marijuana. Alaska, Colorado, and Oregon each amended their laws in scope since the update in November. The Researcher pulled those session laws and regulation changes from state legislative websites and built new coding records reflecting the new versions of the laws.
- ii. Research was also conducted to find the laws from the four states that passed recreational marijuana initiatives during the November 2016 election. The Researcher located the text of the law and the respective effective dates for the new recreational marijuana laws in California, Maine, Massachusetts, and Nevada. The Researcher built new coding records for each of these four states.

b. Coding Updated Findings

- i. The Researcher coded new amendment records in Alaska, Colorado and Oregon, as well as the new laws in California, Maine, Massachusetts, and Nevada. The Researcher also checked the previous records to ensure the quality of the coding and the legal text.
- ii. The new laws in the four states led to the addition of several answer choices in coding questions on fee amounts, tax rates, regulating agencies, and marijuana purchase and possession amounts. The team also added a new legal limit answer choice for driving under the influence of marijuana and further clarify that this question is asking about the legal limit measured in a person's blood.
- iii. The team also added an answer choice to each fee question to capture the new state laws like Maine and Massachusetts where regulations have yet to be passed explicitly establishing the fee amounts for cultivation and retail applications and licenses.

c. Quality Control

- i. The Supervisor downloaded the original coding for the new and amended records and checked for any errors. An original coding review was sent to the Researcher containing those corrections. The Supervisor then assigned all states for redundant coding by another Researcher. The divergence rate was 4.89%. The divergences were discussed and resolved. All edits were made accordingly and the Supervisor published this update to the DAPS site.
- ii. One coding divergence led to an edit in the question language to help clarify an emerging nuance in the law. Several states, like Oregon and Maine, began implementing excise taxes on the consumers, which in effect act more like a sales tax on the consumer. The original intent of the coding scheme was to capture excise taxes on the production side and sales taxes on the consumer in the two separate questions. This became confusing when states started labeling the tax on the consumer as an excise tax. To clarify the nuance, the team decided to change the question wording about excise taxes to "Is there an excise tax not imposed on the consumer?" to capture states where there is an excise tax on the production of the recreational marijuana that is not paid by the consumer directly. The question "Do consumers pay a marijuana- specific sales tax?" is mean to cover taxes on the consumer, even if the state law labels it as an excise tax on the consumer.