Research Protocol for Recreational Marijuana Laws

Prepared by the Policy Surveillance Program Staff

July 2015
RESEARCH PROTOCOL

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Recreational Marijuana Laws

I. Date of Protocol: September 1, 2014; September 25, 2014; October 24, 2014; February 24, 2015; February 26, 2015; June 24, 2015

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.

III. Primary Data Collection


b. Dates Covered in the Dataset: June 12, 2014 – October 1, 2014

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, using the databases and search terms described in Databases Used below. 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 as follows:
   i. CO statutes: http://tornado.state.co.us/gov_dir/leg_dir/olls/session_laws_of_colorado.htm
   ii. CO regulations: http://www.sos.state.co.us/CCR/NumericalDeptList.do
   iii. WA statutes: http://app.leg.wa.gov/rcw/Default.aspx

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, http://w3.legis.state.ak.us/, 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.