

Millions in Revenue Anticipated from Legalizing Marijuana in Delaware

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A special report by Delaware State Auditor
Kathy McGuinness, RPh, CFE

Auditor's Comment



The State of Delaware is missing out on millions in tax revenue by not taxing and regulating marijuana – money that could be used to plug budget holes in the immediate term and continue to provide revenue in future years. Marijuana legalization saw the light of day in the Legislature over the years, but this year public opinion stands at an all-time high. With nearby states like New Jersey, Pennsylvania, New York, and Virginia on the cusp of legalization and implementation, Delaware should apply the same consideration. Inaction doesn't reward us with curbed usage but will prevent us from realizing economic benefits and the \$43 million that could be available if Delaware were to devise a responsible regulatory framework. It's time to legalize it.

The Math:

ECONOMIC IMPACT OF LEGALIZING MARIJUANA

DELAWARE
ADULT POPULATION

792,119



ADULT USE
13.07%



ESTIMATED USERS

103,529



ESTIMATED SPENDING
PER USER

\$2,080



ESTIMATED
INDUSTRY
SIZE
\$215M



EXCISE TAX
RATE
20%



Estimated Gross Tax Revenue

= \$43 MILLION

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Introduction

Fifteen states now allow the recreational sale and use of marijuana, with others expressing interest. In the most recent election, voters in New Jersey, as well as the traditionally conservative-leaning states of South Dakota, Arizona and Montana passed referendums to legalize marijuana.¹ The decision from nearby New Jersey will likely trigger a push for residents on the East Coast to obtain legal marijuana.² Likewise Governors in Connecticut, New York, and Virginia have expressed their desire for legalization.³ There has been action at the federal level toward legalization as well. Earlier last year, the U.S. House of Representatives passed the Marijuana Opportunity Reinvestment and Expungement (MORE) Act with bipartisan support to decriminalize marijuana and allow states to determine their own policies.⁴

Society's attitudes toward legalization are clearly changing. If Delaware policymakers continue to ignore these changes, it could mean that the First State will be the last state in the region to take progressive action. A delayed decision could diminish the economic potential.

The Office of the Auditor of Accounts (OAOA) would like to acknowledge the work and discussions that have taken place as a result of the Adult Use Cannabis Task Force in 2017-2018. The taxation component to legalization is a moving target – our report doesn't select a single tax design but rather illuminates a competitive tax estimate. It outlines how legalization provides significant upside and economic benefit to our state rather than doing nothing.

The OAOA estimates that regulating the sale of marijuana would generate more than **\$43 million** in annual tax revenue and allow for new business formation and more jobs. While our report focuses on the economic implications of legalization, such a move would surely be a positive step forward in reforming our criminal justice system. However, choosing instead to allow the sale of marijuana on the black market to go unregulated will mean Delaware will be left behind as other states realize the important economic, public health and social equity advantages that legalization provides.

Now is the time for Delaware to legalize marijuana.

¹ Lukas Southard. "Could the Success of Ballot Measures to Legalize Marijuana Add Pressure for Federal Legalization?" *Marketplace*. Nov. 16, 2020. <https://www.marketplace.org/2020/11/16/could-the-success-of-ballot-measures-to-legalize-marijuana-add-pressure-for-federal-legalization/>

² Mona Zhang, et al. "New Jersey's Vote for Weed Could Kickstart Legalization across the Northeast." *POLITICO*. Nov. 16, 2020. <https://www.politico.com/news/2020/11/06/new-jersey-weed-legalization-northeast-434644>

³ Mili Godio. "Marijuana Legalization 2021: These U.S. States Could Legalize Weed in 2021." *Newsweek*. December 30, 2020. <https://www.newsweek.com/marijuana-legalization-2021-these-us-states-could-legalize-weed-2021-1558014>

⁴ Deirdre Walsh. "House Approves Decriminalizing Marijuana; Bill To Stall In Senate." *NPR*. <https://www.npr.org/2020/12/04/942949288/house-approves-decriminalizing-marijuana-bill-to-stall-in-senate>

Overview

The OAOA analysis primarily focuses on the revenue gains and job potential that could result from legalizing marijuana; however, there are other clear benefits that deserve additional consideration beyond this report. Indeed, this report provides the fiscal context to further discussion around this issue, particularly in light of the economic challenges the state now faces brought on by the pandemic. It's our view that the action taken by other states to legalize the recreational sale of marijuana puts Delaware at a competitive disadvantage if we continue to ignore the economic potential that this could yield. No Delaware taxpayer wants to see cuts in essential services nor see the door closed to economic growth and good jobs when revenue options like this exist.

Our report illustrates the need for the Legislature to pass a bill to legalize marijuana and regulate its sale – the first step to eliminating the black market. It provides a calculation for the revenue potential to illustrate the monetary benefits of legalization based on best practice and national trends. It takes into account evolving public perception and helps make the case for why Delaware should recognize these trends by also highlighting its job creation potential.

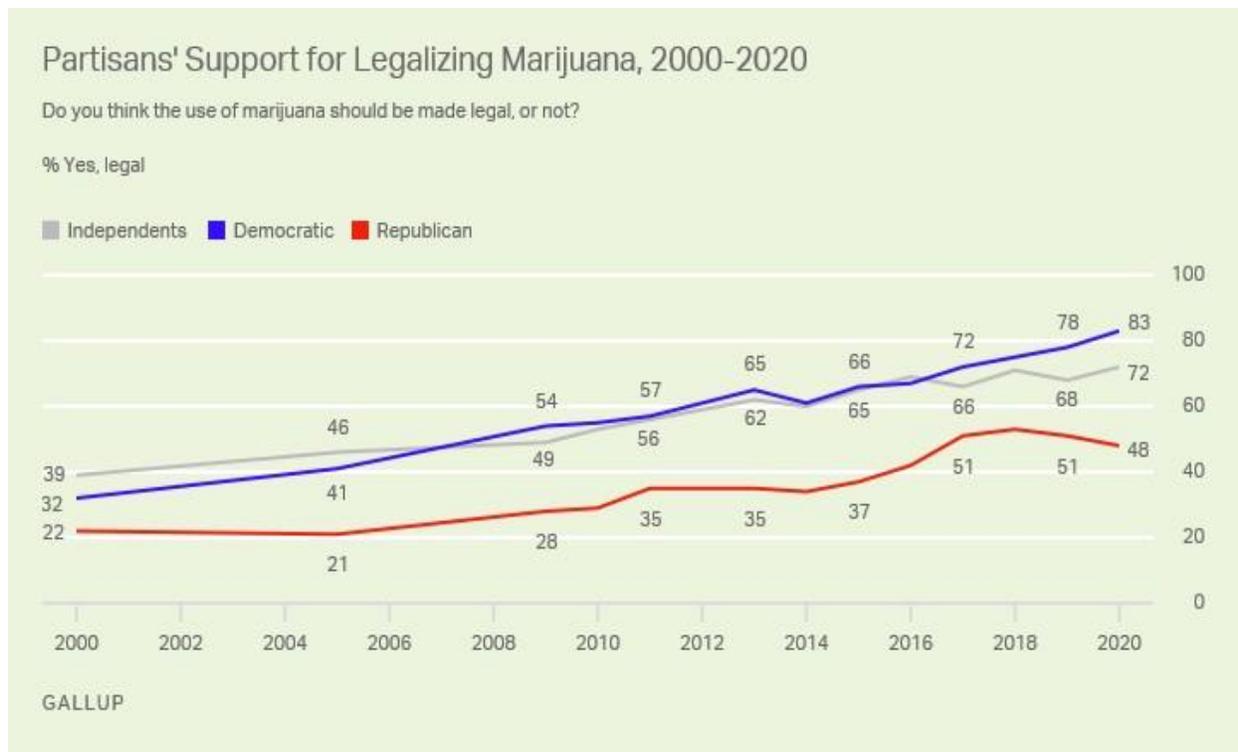
The revenue from creating a framework for legal marijuana in Delaware cannot be ignored. Fighting the war on marijuana has been costly for taxpayers – about \$3.6 billion is spent per year on this battle, according to a 2013 ACLU report.⁵ Yet, the effort has failed to diminish the black market or to keep marijuana from the hands of our youth. This report makes the case for a different approach to addressing the recreational sale and use of marijuana to shed a light on an industry that exists in the shadows today.

⁵ Andrew Daniller. “Two-Thirds of Americans Support Marijuana Legalization.” *Pew Research*, Nov. 14, 2019, <https://www.pewresearch.org/fact-tank/2019/11/14/americans-support-marijuana-legalization/>

Public Opinion on Legalization

The Pew Research Center found that 2 out of every 3 Americans supported full legalization last year.⁶ This is a significant change considering where we were just a decade ago. Figure 1 shows how public opinion has evolved over time to demonstrate how far society has come on this issue.

Figure 1: Public Opinion Over Time



Source: Gallup, Partisans' Support for Legalizing Marijuana, 2000-2010⁷

Two decades ago, 31 percent of Americans on average supported marijuana legalization, as Figure 1 shows. Now public attitude has notably changed, both nationally and in our state. Attitudes surrounding legalization in Delaware are evolving.⁸ A clear majority of Delawareans

⁶ Ibid.

⁷ Megan Brenan. "Support for Legal Marijuana Inches Up to New High of 68%." *Gallup*. November 2020. <https://news.gallup.com/poll/323582/support-legal-marijuana-inches-new-high.aspx>

⁸ Daniller. "Two-Thirds of Americans Support Marijuana Legalization."

supports legalization, according to the latest University of Delaware poll, with 61 percent in favor of such a measure and 33 percent against – in line with national trends.⁹

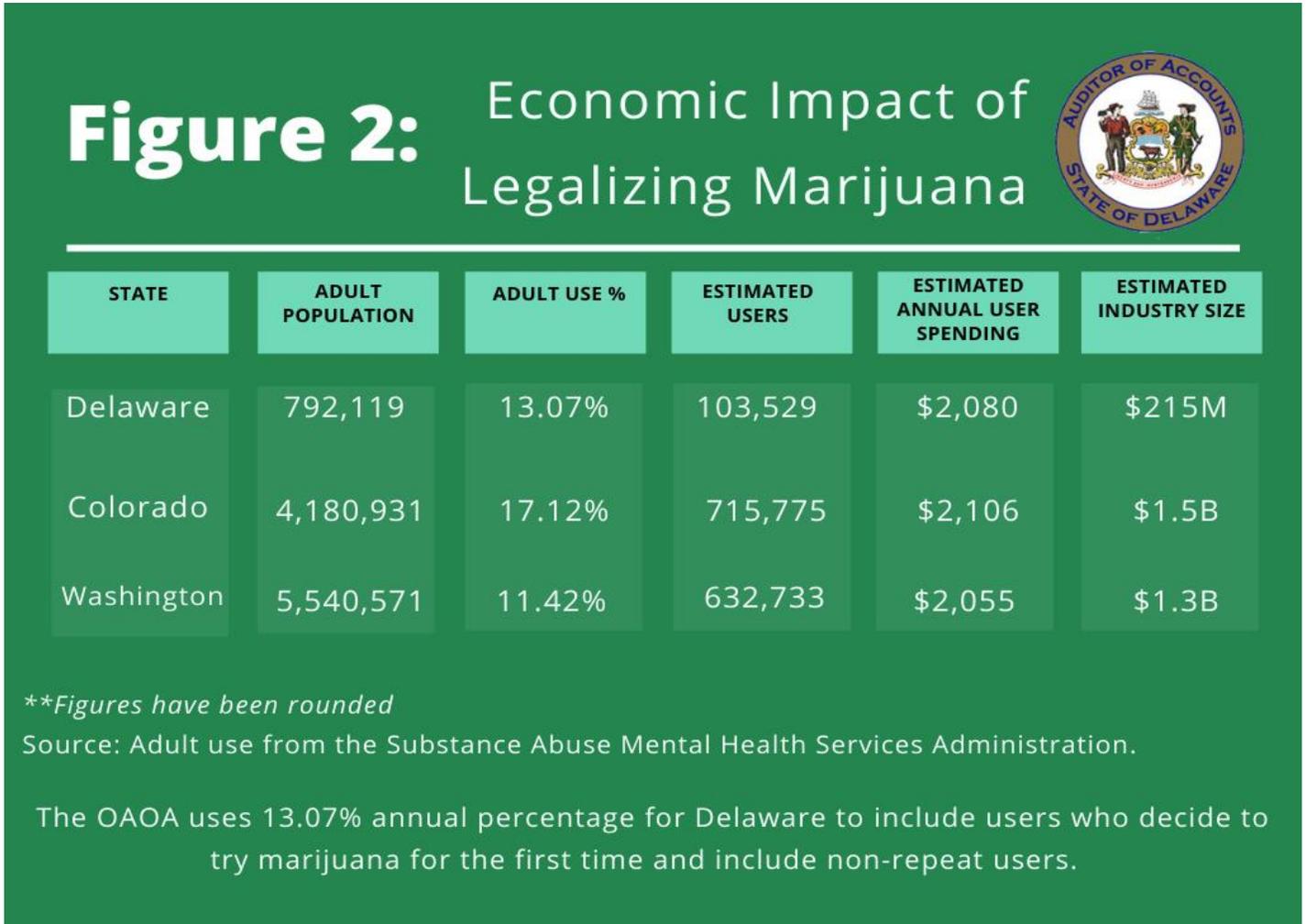
Cultural opinions on marijuana legalization are no longer cut clearly along party lines. A majority of Republicans nationally favored legalization for the first time in 2017.¹⁰ We see this also in the number of voters from conservative-leaning states that voted in favor of legalization in the past election.

There has been consideration in Delaware to legalize recreational marijuana over the years and the Adult Use Cannabis Task Force was created to study how to regulate and tax it. However, they did not have the support needed to advance the legislation in 2018.¹¹ Most recently, House Bill 110 was introduced in the Revenue and Finance Committee on May 16, 2019. It was subsequently reported out of committee but did not advance. After several years of review and discussion, policymakers should now address the will of their constituents by developing a responsible framework to legalize the recreational sale and use of marijuana for adults over age 21. Ignoring public opinion could jeopardize Delaware's economic position in the region.

Economic Potential

Our analysis assumes Delaware would follow other states in how it decides to structure legalization, permitting the sale and use of recreational marijuana to adults over the age of 21. Legalization under this general framework would make it permissible for 792,119 Delawareans based on data from the 2019 American Community Survey.¹² A reported 13.07 percent of Delaware adults admitted to using marijuana, according to a 2015-2016 study by the Substance Abuse and Mental Health Services Administration – a number that is likely conservative given the stigma surrounding the illicit nature of the substance.¹³ A review of spending found that users in West Coast states, Colorado and Washington, spent on average about \$2,080 per year on marijuana.¹⁴ If consumer habits were consistent in Delaware, it would mean a potential industry size valued at **\$215 million**, as Figure 2 illustrates.

Figure 2: Economic Impact of Legalizing Marijuana



⁹ “Delawareans Continue to Back Progressive Agenda, Elected Officials.” *CPC University of Delaware Poll*.

¹⁰ Kleiman, Mark A. R., et al. “The Public-Health Case for Legalizing Marijuana.” *National Affairs*. 2019. <https://www.nationalaffairs.com/publications/detail/the-public-health-case-for-legalizing-marijuana>

¹¹ “Marijuana legalization bill to be rewritten in hopes of passage,” *The News Journal*, Jan. 3, 2018, <https://www.delawareonline.com/story/news/politics/2018/01/03/delaware-marijuana-task-force-begin-drafting-final-report/998999001/>

¹² 2019 American Community Survey 1-Year Estimate. <https://data.census.gov/cedsci/table?q=delaware&tid=ACSST1Y2019.S0101&hidePreview=false>. Accessed Dec. 22, 2020.

¹³ The Substance Abuse Mental Health Services Administration. Table 25 – Selected Drug Use, Perceptions of Great Risk, Past Year Substance Use Disorder and Treatment and Past Year Mental Health Measures in Delaware, by Age Group: Percentages, Annual Averages Based on 2015-16.

¹⁴ Pennsylvania Auditor General. *Regulating & Taxing Marijuana*. July 2018. https://www.paauditor.gov/Media/Default/Reports/RPT_Marijuana_FINAL_reduced%20size_071918.pdf

In addition to tax revenue, the legal marijuana industry is responsible for job creation. A 2020 report by the Virginia Joint Legislative Audit and Review Commission (JRARC) concluded that legalizing marijuana would create upwards of 18,000 jobs over five years.¹⁵ Using similar methodology, Delaware could stand to gain more than 1,400 jobs in a similar 5-year period, as Figure 3 shows.

Figure 3: Potential for Jobs in Delaware

State	Total Civilian Workforce	Estimation of Total Workforce (%)	Jobs Created Over 5 Years
Delaware	476,200	0.3 - 0.5%	1,400-2,400

** Figures have been rounded.

Source: Delaware’s total civilian labor force from U.S. Bureau of Labor Statistic data for Nov 2020.¹⁶

¹⁵ Virginia Joint Legislative Audit and Review Commission. *Key Considerations for Marijuana Legalization*. Nov. 16, 2020. <http://jlarc.virginia.gov/pdfs/reports/Rpt542-6.pdf>

¹⁶ U.S. Bureau of Labor Statistics. Delaware. November 2020

Note: Job creation estimates are based off of the Virginia (JLARC) report on marijuana legalization. Applying similar methodology, the OAOA applies the estimation of 0.003-0.005 percent to Delaware’s total civilian labor force of 476,200 to calculate job creation.

Figure 4 provides a comparison of tax rates used and/or considered by other states and corresponding revenues. To avoid a state-to-state pricing competition, marijuana is more likely to be taxed in weight like alcohol or tobacco. If Delaware were to propose an excise tax of just 20 percent – a rate consistent with rates imposed and considered by other states, we estimated that Delaware would see an immediate increase in gross tax revenue of more than **\$43 million**.

Figure 4: Revenue Calculations

State	Excise Tax	Sales Tax	Other Tax	Year of Legalization	Tax Revenue
*Colorado	15%	15%	0%	2012	\$267M
*Washington	37%	0%	0%	2012	\$439M
Delaware	20%	0%	0%	TBD	\$43M
**Virginia	0%	20-25%	5.3%	TBD	\$154-\$308M
**Pennsylvania	29%	6%	0%	TBD	\$581M

*Estimates based on actual tax revenue for 2018-2019 and not on projected potential.

**States considering legalizing marijuana.

Source: “How Do Marijuana Taxes Work?” Tax Policy Center.¹⁷

Note: Virginia’s revenue estimate from JLARC report in the fifth year of legalization. Pennsylvania’s revenue estimate from Pennsylvania Auditor General’s Report. Delaware’s revenue is based on the OAOA’s calculations.

¹⁷ “How Do Marijuana Taxes Work?” *Tax Policy Center*. May 2020. Accessed January 7, 2021. <https://www.taxpolicycenter.org/briefing-book/how-do-marijuana-taxes-work>

Conclusion

It is a misconception to think that supporting legalization also means supporting marijuana consumption. These two issues are not one in the same. Prohibition has done little to prevent the sale and recreational use of marijuana in Delaware, but it has allowed a black market to remain intact. Regulation is a key toward controlling commercially legalized marijuana for production, sale and consumption. Legalization done right in our view would allow Delaware to establish a policy framework to suppress the black market, curb usage through regulation for minors and collect revenue on a market demand that seems only to be increasing. It would also provide a new revenue stream and new potential for economic growth. Additionally, it would eliminate arrests and keep people out of prison. Each year that we fail to capitalize on this opportunity means more money could flow to neighboring states instead of being invested here. It is time Delaware pursue legalizing marijuana.