

Tribal Regulation of Marijuana is a Public Health Imperative



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With the legalization of recreational marijuana sweeping across the states one-by-one—and the possibility of federal legalization—Tribes are in a unique position to capitalize on this emerging market. When Tribal governments are deciding whether to engage in this new industry, they have several considerations including legal, cultural, economic, and public health and safety considerations. In other words, Tribes will have to answer the questions of: Can we? Should we? And how? This latter question typically gets lost in the debate or is given little emphasis in formulating answers to these important policy concerns. Public health, however, is arguably the most important factor for Tribal governments to consider after they have decided to engage in the cannabis industry.

Tribal regulation of the on-reservation cannabis industry is the most important component of creating a safe and successful cannabis market in Indian country. Robust policy development and enforcement of cannabis regulations will further strengthen Tribal governance and Tribal judicial structures while preserving public health and safety.

Some examples of sound public health policy regarding the legalization of cannabis are: advertising and packaging restrictions; preventing driving under the influence; controls to deter the diversion of legal cannabis to the black market, and; robust quality control and testing policies. Regardless of whether a Tribal government decides to create a wholly-owned cannabis industry, or allow member-owned businesses to participate, proper regulation will be critical to creating an on-reservation cannabis market that benefits the greatest number of Tribal members while protecting Tribal communities.

A legal cannabis market in Indian country also has the potential to address health issues of significant concern to Tribal nations. Although federal policy restrictions have hindered medical cannabis research, the existing literature is promising for the use of cannabis to reduce the use of prescription opioid medications. One study published in 2014 found that in states where medical marijuana was legal, deaths linked to opioid use declined by almost 25% compared to states where marijuana was not legal. Thus, from a harm reduction perspective, there is a logical recognition of the potential for marijuana to be used as a replacement for opioid prescription medications.

On-reservation legalization will also drive much needed revenues for essential government services. In 2019, nationwide marijuana sales totaled over \$10 billion and in 2020, the cannabis market was valued at \$16 billion. Current estimates suggest that the marijuana industry is expected to increase to \$37 billion by 2024. In New York State, which recently legalized adult-use cannabis, the current cannabis market is estimated to be \$4.6 billion in annual sales, including black market sales. The legal cannabis industry is expected to capture \$1.2 billion in sales by 2023 and \$4.2 billion by 2027. The State projects tax revenues to reach \$350 million annually, with the potential to create 30,000 to 60,000 new jobs. The potential for Tribal governments to reap massive rewards is apparent given the unique advantages Tribal governments enjoy due to their sovereign status.

Despite the potential benefits of a well-regulated cannabis industry, marijuana remains a controlled substance that must be used responsibly. The most immediate concern for any Tribal community is protecting the most vulnerable populations, i.e., our children. The legalization of cannabis creates a potential for increased use of recreational marijuana in the early adult population, the effects of which are currently unknown. Thus, Tribes should implement strict regulations to mitigate some of the potential harms to Tribal communities from the legalization of cannabis.

With just a few examples of the pros and cons, it is readily apparent that cannabis legalization in Indian country will result in both positive and negative outcomes. The magnitude of benefit or threat to our public health will become known over time as science advances our knowledge about its effects on our health and behaviors. Harms to individuals and society are greatest in both unregulated illegal markets and unregulated legal markets. Sound tribal policy regarding the on-reservation legalization of marijuana, then, must balance the need to drive revenue with the potential harm to the Tribal community. In short, how cannabis is legalized and regulated will ultimately determine if Tribal public health is protected successfully.

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